

Volume: 3
Pages: 1-299
Exhibits: See Index

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT

IN RE: INQUEST INTO THE DEATH *
OF BRENDAN REILLY * 2227IN000001

RE: INQUEST
(ENTIRE TRANSCRIPT IMPOUNDED)
DAY 3
BEFORE THE HONORABLE MICHAEL D. BRENNAN

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(Appearances continued on page 2.)

Concord, Massachusetts
Courtroom 2
December 16, 2022

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IMPOUNDED TRANSCRIPT

3-3

I N D E X

WITNESS:	PAGE:
Ryan Hutchinson (By Mr. Van Epps)	16, 55
(By Mr. Heineman)	41
(By Mr. McDonald)	52
David Meharry (By Mr. Van Epps)	60, 76
(By Mr. Heineman)	71, 78
Alexandra Hanley (By Ms. Gemmill)	79
Stephanie Waite (By Mr. Van Epps)	99
(By Mr. Heineman)	110
(By Mr. McDonald)	111
Paul Cunningham (By Ms. Gemmill)	113
Rabbi Israel New (By Mr. Van Epps)	130
(By Mr. McDonald)	156
(By Mr. Heineman)	156
James Lane (By Ms. Gemmill)	162, 200
(By Mr. Heineman)	196, 202

IMPOUNDED TRANSCRIPT

3-4

I N D E X

EXHIBITS:		PAGE:
47	Ryan Hutchinson map	21
48	Disk	40
48A	Still images printed off disk	41
49	Ryan Hutchinson report	58
50	Two pages of photographs	67
51	David Meharry map	69
52	David Meharry report	78
53	Alexandra Hanley report	96
54	Stephanie Waite report	103
55	Paul Cunningham map	123
56	Paul Cunningham report	129
57	Rabbi Israel New map	137
58	James Lane map	166
59	James Lane report	196
60	Rabbi Israel New report	202

1 P R O C E E D I N G S

2 (Court called to order.)

3 (9:03 a.m.)

4 THE COURT OFFICER: You may be seated.
5 Court is in session.

6 UNIDENTIFIED SPEAKER: Good morning, your
7 Honor.

8 THE COURT: Good morning.

9 THE CLERK: And, your Honor, resuming
10 with the Inquest into the Death of Brendan Reilly
11 2227IN01.

12 THE COURT: So I guess before we get
13 started with the witnesses in question, I've been
14 going through my various notes and other things,
15 are you planning on calling someone who can
16 testify about the bullet trajectory?

17 MR. VAN EPPS: Bullet trajectory?

18 THE COURT: Yes.

19 MR. VAN EPPS: Um --

20 THE COURT: Something that might
21 establish where Mr. Reilly was, or at least
22 some approximation of where he was when he was
23 shot so -- because it appears that we have one
24 beveled shot, which may indicate, or may not, I
25 don't know, a downward trajectory.

1 And we have two, what I would refer to as
2 the center mass rounds, the two rounds that
3 are -- appear to be straight on but then travel
4 and end up where I would expect them to end up if
5 the relative positions of the muzzle of the
6 handgun and Mr. Reilly were in -- were not -- I
7 guess what I'm saying is is I don't see anything
8 that shows that Mr. Reilly was -- well, I'm not
9 going sure it shows -- what I'm trying to find
10 out is where he was -- I know where he was, but
11 it seems to me that one of the questions is: Was
12 he still seated or was he standing up?

13 And the witness testimony is all over the
14 place; the -- as far as that.

15 I don't think there's any -- as it is
16 with respect to -- and I'm not faulting anyone
17 for that. I think that's just the nature of
18 these kinds of inquests where you can't really
19 prepare your witnesses and go over everything.
20 They're not really your witnesses.

21 But, I guess, I think it would be helpful
22 for me if -- and I know there's a ballistic
23 person from the -- from the State Police Crime
24 Lab -- I think it would be helpful for me to have
25 an understanding, I mean, as a lay person who

1 spent a lot of time trying gun cases and a lot of
2 time -- I'm pretty familiar with certain wound
3 characteristics and certain things and that's one
4 of the reasons I was asking the question of the
5 ME about the performance of the particular round
6 that was used because, at least if I look at the
7 pictures, the bullet performed as it was designed
8 to and it didn't break up -- well, the two -- the
9 two rounds that hit Mr. Reilly in the chest did
10 not break up in the same way that the other
11 rounds did that hit bone, which would be
12 expected.

13 But it would be nice to have testimony
14 about that, particularly given the fact, again,
15 that we've got one penetrating wound that is a
16 beveled wound and the other two wounds that
17 clearly, I believe, to be the fatal shots, the
18 two shots that basically hit him in the heart,
19 are if the officer who fired the shots is
20 bleeding and Mr. Reilly is coming up off of his
21 side, the wounds make sense if he's coming up, if
22 he's rising.

23 But I don't have any testimony about
24 that, and I don't know if there are some cases
25 that say that I can make certain findings, but I

1 think it would be nice if I had something more
2 than...

3 MR. VAN EPPS: Well, I guess it's good
4 that we are potentially adjourning --

5 THE COURT: Yeah.

6 MR. VAN EPPS: -- (indiscernible) --

7 THE COURT: Exactly.

8 MR. VAN EPPS: I will look into that,
9 Judge.

10 THE COURT: And that's one of the
11 things -- that's one of the reasons why when you
12 were asking the questions of the ME, I was hoping
13 that she was going to give us more on the
14 trajectory, and that's why I was asking more
15 about the questions of the path of the bullet and
16 what the bullet did because one of the questions,
17 I think at least as I understand some of the
18 questioning from both sides, is did he get to his
19 feet?

20 Was he on his way up to his feet?

21 Was he leaned over and charging or
22 walking towards where the officer who had fallen?

23 And I think that bullet path may or may
24 not be able to help with that.

25 MR. VAN EPPS: Um-hum. Okay. Well, it's

1 something we'll definitely look into for the next
2 date after today.

3 THE COURT: Yeah. And it may be -- quite
4 frankly, it may be something that Lieutenant
5 Cahill can testify to.

6 MR. VAN EPPS: And I expect we're going
7 to have more eyewitnesses as to --

8 THE COURT: Correct.

9 MR. VAN EPPS: -- the last few minutes of
10 the...

11 THE COURT: Yeah. And I -- I -- agreed.

12 So and it may turn out that what I think
13 might be helpful right now wouldn't necessarily
14 be as helpful by the end of today --

15 MR. VAN EPPS: Sure.

16 THE COURT: -- you know, or that last
17 day.

18 But, you know, as I said, having some
19 familiarity with some of the issues here and some
20 of the stuff it just was something that I was
21 thinking about last night, so. All right.

22 MR. VAN EPPS: Judge, the first witness
23 is going to be Ryan Hutchinson, who's a juvenile,
24 and I would ask that one of his parents be
25 able --

1 THE COURT: That's fine.

2 MR. VAN EPPS: -- to sit with him, sit in
3 the courtroom.

4 THE COURT: Totally fine. Any objection
5 to that?

6 MR. HEINEMAN: No, not at all. But I do
7 have an issue with regard to Mr. Hutchinson I'd
8 like to bring to the Court's attention.

9 At the outset we were provided with a
10 report that indicated that the father, Robert
11 Hutchinson, who's the parent who was going to be
12 coming in today -- and I have no objection to him
13 coming in -- went to the police department and
14 told the police department that there -- that his
15 son had still photos, only still photos, and
16 provided those.

17 Sometime -- it was the night before
18 this -- this inquest began that I was told that,
19 in fact, that wasn't true, that the son had also
20 taken some video.

21 And the video -- two videos were provided
22 to me.

23 THE COURT: Those are videos that are
24 kind of through trees and bushes where you can
25 hear shots?

1 MR. HEINEMAN: No.

2 MR. VAN EPPS: No. That's the
3 Mukherjee's (phonetic) video.

4 MR. HEINEMAN: No. This is -- this is --
5 these were just uploaded --

6 THE COURT: Okay.

7 MR. HEINEMAN: -- the night before we
8 began -- they're very short clips -- and from a
9 moving vehicle where his mother is driving and
10 he's in the passenger seat going to a basketball
11 game, I presume, at the Diamond is what we're
12 going to here.

13 THE COURT: Okay.

14 MR. HEINEMAN: So when I was given that
15 information by Mr. Van Epps, I immediately
16 responded saying what can we -- what's with the
17 phone, you know? Where's the kid's phone? Can
18 we get a look at the kid's phone?

19 Mr. Van Epps and I had conversations or
20 email communications about they were attempting
21 to gain access to the kid's phone -- Ryan, I
22 shouldn't call him a kid -- Ryan's phone, so that
23 we could do an analysis of what was on there.

24 That was the last I heard until this
25 morning. And just this morning I'm told that the

1 videos were not on the child's phone, but
2 were -- he took them on mom's phone, which is a
3 totally different version of events than I had
4 been told before.

5 Now I have no interest -- I don't intend
6 to ask a single question of this 14-year-old
7 child, but I have concerns about who took these
8 videos, where and when; and Robert Hutchinson,
9 the father, was on the witness list, he I would
10 ask questions about this, but I'm now told that
11 he's not going to testify.

12 So I just want that out there --

13 THE COURT: Okay.

14 MR. HEINEMAN: -- before this child
15 testifies.

16 THE COURT: All right.

17 MR. VAN EPPS: And to be clear, and
18 actually I think before we get started it makes
19 sense for me to -- counsel has given that
20 prologue -- to offer the Robert Hutchinson
21 report.

22 THE COURT: Is that 46?

23 THE CLERK: I'm sorry?

24 THE COURT: Is that going to be 46?

25 THE CLERK: We're at 45, your Honor.

1 THE COURT: I thought 45 was Olidort's
2 interview.

3 Is that right.

4 THE CLERK: Hutchinson?

5 THE COURT: Yeah, the next exhibit would
6 be 46?

7 THE CLERK: The next one would be 46.

8 THE COURT: Okay.

9 MR. VAN EPPS: Which Mr. Hutchinson
10 were -- were -- well, I think it makes it clear
11 that -- and you can see in the video
12 (indiscernible) later -- he's not actually in the
13 car. He's not a percipient witness --

14 THE COURT: Okay.

15 MR. VAN EPPS: -- as far as what happened
16 (indiscernible).

17 THE COURT: Because I've read everything,
18 is this the individual who responds to the
19 police; informs the police about certain things,
20 and then says, You can't talk to my kid?

21 MR. VAN EPPS: He'd prefer
22 them (indiscernible) --

23 THE COURT: More or less, right?

24 MR. VAN EPPS: -- and Lexington sort of
25 backed off of that.

1 THE COURT: Okay. That was my memory was
2 that he was the one that said, Hey, you're not
3 talking to my child.

4 MR. VAN EPPS: Right.

5 THE COURT: Okay. All right.

6 MR. VAN EPPS: I'll --

7 THE COURT: And also, I guess, for the
8 record to deal with that, I mean, obviously this
9 is not a trial, so that while, I understand
10 Mr. Heineman's concerns, really the role is
11 whether or not it's going to be helpful to me,
12 not helpful to you guys, so.

13 MR. VAN EPPS: Okay.

14 MR. HEINEMAN: And my only concern is
15 that we know which cam --

16 THE COURT: Sure.

17 MR. HEINEMAN: -- which phone actually
18 took the video so that --

19 THE COURT: Yeah.

20 MR. VAN EPPS: I will try to bring that
21 out --

22 THE COURT: Yeah.

23 MR. HEINEMAN: Thank you.

24 THE COURT: All right.

25 MR. VAN EPPS: -- so that it's clear.

1 I'll go get Mr. Hutchinson.

2 THE COURT OFFICER: Face the clerk and
3 just raise your right hand, please.

4 THE CLERK: Sir, do you solemnly swear or
5 affirm that the testimony you'll provide the
6 Court today will be the truth so help you God?

7 MR. HUTCHINSON: Yes.

8 RYAN HUTCHINSON, SWORN

9 THE COURT OFFICER: Right over here, sir.
10 Step down a seat and then face the court and talk
11 into the mic, okay.

12 MR. HUTCHINSON: All right. Thank you.

13 THE COURT: Mr. Van Epps, before we get
14 started.

15 So, Mr. Hutchinson, a couple of things.
16 I'm sure you're a little nervous, but there's
17 nothing to be nervous about, okay.

18 THE WITNESS: All right.

19 THE COURT: What I've been asking
20 everyone to do, everyone who's testified, we've
21 had a lot of people testify in here in connection
22 with this is this is what we call an inquest.

23 THE WITNESS: Okay.

24 THE COURT: It's not really a trial, but
25 it is a court proceeding where I'm going to try

1 figure out what happened.

2 THE WITNESS: Yeah.

3 THE COURT: So at some point I have to
4 write a report based upon everyone's testimony
5 and figuring out what happened.

6 I can't order you not to talk about this,
7 and certainly you can talk to your parents about
8 what's going on or that kind of thing, but what
9 I'd ask you to do is just not discuss your
10 testimony with your friends or anything like
11 that --

12 THE WITNESS: Okay.

13 THE COURT: -- or post it on social media
14 or anything like that --

15 THE WITNESS: Yes.

16 THE COURT: -- all right.

17 Like I said, I can't order you to do
18 that, but I'd ask that you wait until the report
19 comes out.

20 THE WITNESS: Okay.

21 THE COURT: Okay.

22 EXAMINATION

23 BY MR. VAN EPPS:

24 Q. Good morning.

25 A. Good morning.

1 Q. And could you give us your full name, and
2 just speak into microphone so we can all hear
3 you?

4 A. Ryan Devlin Hutchinson.

5 Q. Can you spell your last name for our court
6 reporter?

7 A. H-U-T-C-H-I-N-S-O-N.

8 Q. And how old are you, sir?

9 A. I am 15 years old.

10 Q. Fifteen?

11 A. Yes.

12 Q. Do you live in Lexington?

13 A. Yes.

14 Q. Where?

15 A. Ledge -- 63 Ledgelawn Avenue -- 63 Ledgelawn
16 Avenue.

17 Q. Okay. And you live with your mom and dad?

18 A. Yes.

19 Q. Where do you go to school?

20 A. Lexington High School.

21 Q. Okay. And on -- I want to ask you some
22 questions about February 12th.

23 A. Um-hum.

24 Q. Did you have a -- was there a reason you were
25 going to Diamond Middle School that day?

1 A. Yes.

2 Q. What was that?

3 A. I had a basketball game.

4 Q. Okay. And how were you getting to the
5 school?

6 A. My mom was going to drive me.

7 Q. Okay. And that school is right near the
8 rotary that connects the school and North Hancock
9 and --

10 A. Correct.

11 Q. Okay. Is that an area you're familiar with?

12 A. Yes.

13 Q. Okay. Have you been there a number of times?

14 A. A lot.

15 Q. Okay. When you got to the rotary around
16 12:30 in the afternoon, did something draw your
17 attention that there was something going on in
18 the rotary?

19 A. Yes.

20 Q. Can you tell me about that, please?

21 A. I saw several police officers and --
22 surrounding a man.

23 Q. Okay. Can you -- can you tell me -- first of
24 all -- so you're approaching the rotary.

25 How are you getting into the rotary, like

1 how are you approaching it?

2 A. So we approached through Hamilton Street --

3 Q. Okay.

4 A. -- which is the easiest way for us to get to
5 the rotary and Diamond, and we just go -- come
6 through -- we come from Hamilton Street.

7 Q. And that's basically, like, across the rotary
8 from where you --

9 A. Yeah. Exactly.

10 Q. Can you tell us how many police officers you
11 recall?

12 A. I think a maximum of four.

13 Q. Okay. And what were they doing?

14 A. I saw three of them, but I remember I saw
15 another one later on; but three of them were on
16 one side of the road facing one guy.

17 Q. So if you're coming into the rotary from
18 Hamilton and you're trying to get to essentially
19 across the rotary?

20 A. Yeah, Diamond.

21 Q. That's like a straight line in front of you?

22 A. Not exactly, but it's the rotary --

23 Q. Right.

24 A. Yeah, so it is true.

25 Q. So where are they in relation to that?

1 A. They're -- I don't actually -- unfortunately,
2 I don't know the name of the street they're on,
3 but to the left of the entrance of Diamond --

4 Q. Okay.

5 A. -- like the next road and it's very close.

6 Q. Okay. And were there any other people in
7 that area besides what you believe were police
8 officers?

9 A. No, I think they blocked that area off pretty
10 well; but there were, like, several other cars
11 with me, so --

12 Q. Okay.

13 A. -- it was like other people, I guess.

14 Q. And so there's police officers over on that
15 side of the rotary.

16 Let me -- I'm going to hand you a --

17 A. Oh, thank you.

18 Q. Let me just show you this map, first of all.

19 A. Um-hum.

20 Q. I think it's a Google map.

21 Just take a couple of minutes and look at
22 it so you get a point?

23 A. Okay. Here's Hamilton, all right. All
24 right, so Burlington Street would be the road
25 they're on.

1 So Hamilton's right here. Diamond's right
2 here.

3 Q. Okay.

4 A. And this is --

5 Q. Okay. Can you use the marker and just put a
6 big X where you think the police officers were
7 standing.

8 A. Oh, yeah. Right there.

9 Q. Can you make that a little darker.

10 A. Yeah, sure.

11 Q. Okay. Thank you.

12 MR. VAN EPPS: All right. Your Honor, I
13 would offer this as the next exhibit.

14 THE COURT: All right. That would be
15 Exhibit 47.

16 (Exhibit No. 47, Ryan Hutchinson map, was
17 received into evidence.)

18 BY MR. VAN EPPS:

19 Q. I'm sorry, so you're coming in from Hamilton,
20 you're looking sort of across, you see the police
21 officers.

22 What do you see that's going on over
23 there?

24 A. Police officers -- the police officers were
25 seemingly armed.

1 Q. Okay. Could you tell armed how?

2 A. I saw two small firearms. I don't know if
3 they were lethal or not.

4 Q. Okay.

5 A. It's kind of hard to tell from that point of
6 view, but...

7 Q. Like handguns or more or something like that?

8 A. Yeah, handguns and there was one officer with
9 a longer gun.

10 Q. What do you remember about that longer gun?

11 A. It had orange markings on it, so to me that's
12 a nonlethal weapon probably.

13 Q. Okay. So you're coming into the rotary.

14 Can you see who -- whether there's anybody
15 over with the police officers as you're -- or
16 what they're doing over there?

17 A. Can you repeat that, sir?

18 Q. So the officers that you're -- you're seeing
19 in the rotary, can you see what they're doing or
20 whether they're with anybody else?

21 A. I just see the police officers, and they're
22 just pointing their firearms at the man.

23 Q. At the man?

24 A. Yeah.

25 Q. What could you see about the man?

1 A. It's a little bit fuzzy to describe him, but
2 he seemed -- he seemed like he had baggy
3 clothing, loose clothing, kind of like a New
4 England Patriots fan going to the game. That's
5 probably the best way I can describe him.

6 Q. Okay. And pointing at him.

7 Do you remember what the position was he,
8 the man?

9 A. At this point he was on the ground, I
10 think -- yeah, he was on the ground, pretty sure.

11 Q. Could you tell how far he was from the
12 officers?

13 A. So the officers were on the curb kind of and
14 he was like on the yellow strips of the busy
15 road, so like...

16 Q. Like in the middle of the street?

17 A. Yeah, exactly.

18 Q. Okay. I think you said he was down.

19 Is he -- could you tell whether the man
20 and the officers were facing each other?

21 A. They were.

22 Q. Could you hear anything at this point?

23 A. I -- it's really -- -- it was -- at that
24 point it was really hard to hear the officers,
25 but you could tell they're yelling because I

1 heard muffled sounds.

2 I could hear the man a little more clearly
3 because he was yelling louder.

4 Q. Okay. Let's start with the officers first.

5 A. Um-hum.

6 Q. Could you make out whether they were -- was
7 there one voice or more than one voice?

8 A. I think probably two voices, but I can't tell
9 you what they were saying. I just can't really
10 remember. I don't remember hearing them.

11 Q. You're not sure about the words?

12 A. Yeah, I'm not -- yeah.

13 Q. Okay. Putting aside the words, can you tell
14 us anything about their -- their volume and their
15 tone and, you know, sort of the -- the way
16 they're --

17 A. Demanding I'd say. Like kind of like orders,
18 like someone giving orders to someone.

19 Q. Now, with respect to the -- the man, could
20 you make out anything about his voice or any of
21 his words?

22 A. Yeah.

23 I guess, you could say he was a little
24 like -- it's kind of, um, I can't really describe
25 it to you, but he was just yelling get away from

1 me, that's all I really remember.

2 Q. You remember him yelling get away from me?

3 A. Yeah. I just don't know what tone he was
4 like really speaking it in. I don't really
5 remember.

6 Q. But it was loud enough for you to hear in the
7 car?

8 A. Yeah.

9 Q. As you're going through the rotary -- this is
10 in February --

11 A. Um-hum.

12 Q. -- are the windows in the car up or down?

13 A. They're up.

14 Q. So you're -- you're trying to get over to
15 Diamond -- all right.

16 Are you aware of any police vehicles in
17 the rotary as this is happening?

18 A. The only police vehicles that were there, it
19 was just Burlington Street, that's all the --
20 that's where they were.

21 Q. All right.

22 A. Nowhere else.

23 Q. So then --

24 A. Or actually -- actually, I think North
25 Hancock they might have blocked off later on, I

1 think.

2 I -- I can't really remember, I'm sorry.

3 Q. Okay. So your mom's driving the car?

4 A. Um-hum.

5 Q. Where does -- where does she go?

6 What route does she take?

7 A. Hamilton, a slight right, because it's a
8 rotary, and then she heads -- oh, yeah, so the
9 rotary, and then I think we were told to turn
10 around by the police officers, or, like, we can't
11 really enter Diamond, I think, the first time
12 around because I -- we go around the rotary
13 twice.

14 So I think we go slightly a bit around the
15 rotary and then we end up going down the road
16 that is where Victory Garden is, and eventually
17 we turn back around.

18 Q. Okay. As you're -- as you're going around,
19 is your attention still drawn to what's going on
20 with the police and this man?

21 A. Yes.

22 Q. And -- and what do you recall seeing at that
23 point?

24 A. The first time or second time going around
25 the --

1 Q. Let's start with the first.

2 A. First time, not -- nothing crazy, just
3 officers surround -- like just in front of the
4 guy.

5 Q. Okay.

6 A. And that was really it, and we left because I
7 don't -- I think an officer told us to leave. I
8 don't really remember.

9 We come around the second time, but this
10 time coming down the road we left and this time
11 we actually do end up going on the road that goes
12 straight to Diamond.

13 Q. Okay.

14 A. At that point the officers were in a
15 triangular formation around the guy.

16 Q. Okay.

17 A. And they were more in the center of the road.

18 Q. Okay. And so what happens at that point?

19 A. At that point the man is standing. That's
20 really where everything happens.

21 The officer with the longer -- the longer
22 rifle with the orange tape around it, starts to
23 head closer.

24 And I remember there's ice on the ground
25 and snow because it snowed, I think, previously,

1 like probably a few days before; um, and he ends
2 up slipping because I think the guy kind of like
3 jerks his body a little bit, catches the police
4 officer off-guard and he falls like...

5 Q. The officer falls?

6 A. Yeah. Very similar to like how a cartoon
7 character falls, like slips on a banana peel I
8 guess you could say.

9 Q. Like (indiscernible).

10 A. Yeah, exactly.

11 Q. How does he land?

12 A. On his back.

13 Q. Okay. So what happens after that?

14 A. Well, I mean, the police officer was very
15 vulnerable, I could tell you that. I think he
16 dropped his gun, I'm not sure. I think. I'm
17 pretty sure.

18 And at that point the guy starts to head
19 towards him, I think.

20 Kind of -- it's not like -- he's like --
21 he doesn't seem very, like, strong, if that make
22 sense, like he's kind of like -- like a little
23 wobbly, but...

24 Q. Let me ask you this.

25 So you're describing the movement of the

1 man towards the fallen officer, right?

2 A. Yeah.

3 Q. Before the man started moving, did you get a
4 sense of how far he was from the officer?

5 A. Probably how far -- around how far you and me
6 are, you and me are --

7 Q. Okay.

8 A. -- right now.

9 MR. VAN EPPS: Judge, you've been calling
10 distances.

11 THE COURT: I've been calling distances.
12 I'd call that somewhere around 8 feet,
13 9 feet.

14 MR. VAN EPPS: Okay.

15 THE COURT: Less than a foul shot, how
16 about that.

17 BY MR. VAN EPPS:

18 Q. Okay. So the man starts moving towards the
19 fallen officer --

20 A. Yeah.

21 Q. -- from this point.

22 Do you get a sense or could you tell
23 how -- how close he was able to get?

24 A. He was able to cover a good amount of ground,
25 actually, very quickly.

1 Q. All right. So, I mean, using, again, the
2 objects in this room.

3 A. Yeah. He probably got to where that like --
4 nearly at the edge of the table probably.

5 It's -- so the angle I was at it's very
6 hard to like tell like how close the guy got, but
7 he -- he covered a lot of ground pretty quickly
8 I'm pretty sure -- or, I'm sorry, I'm not pretty
9 sure, I know he covered a lot of ground quickly.
10 It's just I was at a weird angle, so it's kind of
11 hard to tell like how truly close he was, but...

12 Q. But your perception is that he got to the
13 corner of this table in the witness box, which is
14 maybe --

15 A. Maybe a little closer, but that -- that's
16 probably the best estimate I can give you.

17 THE COURT: Three or 4 feet.

18 MR. VAN EPPS: Okay.

19 BY MR. VAN EPPS:

20 Q. Now, I know you're in a moving vehicle.

21 Was this an event that you were at this
22 point trying to pay attention to?

23 A. Yes, definitely.

24 Q. Okay. As the -- the man approaches, did you
25 make -- did you see anything about his hands?

1 A. He was holding a knife.

2 Q. In what way?

3 A. At the start it was just down by his side.
4 The first time we go around the rotary it's just
5 by his side, I don't think I've mentioned the
6 knife before.

7 But the second time, when he's standing,
8 it's still by his side; but, when the officer
9 fell, it was coming out like protruding this way.

10 Q. So the first time you see it, the first trip
11 around the rotary --

12 A. Yeah.

13 Q. -- so it's at his side and is the blade
14 coming out of the part of the hand where the
15 thumb is or (indiscernible)?

16 A. Where the thumb is the first time. He's
17 just, like, on the ground though.

18 Q. Okay. The second time you're describing him,
19 you see the knife and in -- in this way it's
20 coming out the bottom of the hand section?

21 A. Yeah.

22 Q. Okay. And --

23 A. That was when the officer fell.

24 I'm not sure when he switched it, though,
25 because I wasn't paying attention to that, but...

1 Q. And so he's got that knife in his hand.

2 Can you show us how you remember his --
3 his hand and his arm being positioned?

4 A. Um, I remember his hand was raised, and the
5 knife protruding out of it this way.

6 Q. Okay. So you -- so you've raised your left
7 hand and you sort of --

8 A. Or -- I don't really know. I think it was
9 probably his right. I think his right. I don't
10 know.

11 Q. So you think it was his right.

12 A. Actually, yeah, I'm pretty sure it was his
13 right, I think. I'm sorry, I can't really
14 remember.

15 Q. You're not sure about the hand?

16 A. No, no, it was raised, I remember that, but I
17 don't know if he was lefty or righty. I don't
18 really remember that.

19 Q. Okay. I understand. So you described the
20 officer having fallen; you described him moving.

21 What do you recall after that?

22 A. At this point we're nearly entering Diamond,
23 and there's like a Chabad Center I think right
24 there; and there's trees behind it, so the trees
25 are coming up very soon, and they block my vision

1 at this point.

2 But from what I like see in the last few
3 seconds is the man starts to, like, kind of like
4 lunge towards the police officer, kind of like
5 directly moving towards him.

6 And I'd say if I was in the police
7 officer's position I'd say --

8 Q. Let's --

9 A. Sorry.

10 Q. Let's -- let's back up and do it this way.

11 He lunges towards him. What's the next
12 thing you actually see?

13 A. The trees.

14 Q. Okay.

15 A. It blocks.

16 Q. What's the next thing you hear?

17 A. Several shots.

18 Q. Do you recall how many you heard?

19 A. Probably around four or five.

20 Q. And when you hear those, so the trees have
21 just sort of come into your view?

22 A. Yeah.

23 Q. Are you -- at this point are you going into
24 where Diamond is?

25 A. Um-hum.

1 Q. Okay. Now, in your -- in your trip --

2 A. Sorry.

3 Q. -- in your trip around the rotary, did you
4 try to record this in any way?

5 A. Yes.

6 Q. How did you do that?

7 A. First time around the rotary, I took two
8 pictures and one video.

9 The second time around the rotary I took a
10 longer video and one picture.

11 Q. Okay. What phone did you use to do that?

12 A. I used my mother's phone.

13 Q. Why didn't you use your phone?

14 A. Because I didn't bring my phone.

15 Q. Why didn't you bring your phone?

16 A. Like I said earlier, I had a basketball game
17 and all I bring to my basketball game is my ball
18 and water. I don't bring that much.

19 So bringing my phone would be kind of a
20 nuisance because I don't have pockets, so.

21 Q. And there's no place to leave it?

22 A. Not really.

23 Q. Okay. So you used your mom's phone and
24 you -- you took some pictures.

25 Your -- I think you're aware, correct me

1 if I'm wrong, but at one point your -- your
2 father submitted pictures to the police --

3 A. Yeah.

4 Q. -- that -- that he understood you had taken?

5 A. Yeah.

6 Q. Okay. Was there a point within the last
7 we'll say a week or so where the police came to
8 your house to get additional copies -- additional
9 photos and videos?

10 A. Yeah.

11 Q. Okay. So you took them with your mom's
12 phone; is that right?

13 A. Um-hum.

14 Q. Once they're on your mom's phone, did you
15 share copies of any of them with anyone?

16 A. I shared them with myself --

17 Q. Okay.

18 A. -- and with my brother.

19 Q. Okay. And at one point you had -- you had
20 posted one of -- one of the photos to social
21 media or something; is that right?

22 A. Yes, that is correct.

23 Q. Okay. Did there come a time when you took it
24 down from social media?

25 A. Um-hum.

1 Q. Tell us about that.

2 A. So the day I posted them was the day I
3 posted -- I posted a singular photo, and the day
4 I posted it was the day I took it down.

5 Q. Why did you take it down?

6 A. Because a neighbor that saw the photo was
7 upset about this because their kids could see it,
8 which I used to be friends with the kid.

9 So he called my mom, and then my mom told
10 me, and I took it down.

11 Q. Okay. Now, you reviewed the things that were
12 collected off your mom's phone by the police,
13 correct?

14 A. Um-hum.

15 Q. And we actually went through them this
16 morning --

17 A. Yeah.

18 Q. -- in the office across the hall; is that
19 right?

20 A. Um-hum.

21 Q. I'm showing you...

22 THE COURT: So the DA's office is still
23 the only one to use CDs. They don't even make
24 computers with disk drives.

25 So while we're waiting, I grew up at

1 63 Liberty.

2 THE WITNESS: Really.

3 THE COURT: Yeah.

4 THE WITNESS: Oh, I -- oh, we always get
5 package mix-ups with the lady.

6 THE COURT: That was before they had
7 packages.

8 Pony Express when I was growing up.

9 THE WITNESS: That's pretty neat.

10 BY MR. VAN EPPS:

11 Q. So let me first -- do you remember looking at
12 this disk this morning?

13 A. I guess.

14 Q. Okay. Well, I'll show you the contents of
15 the screen and you can just tell me. Okay.

16 Do you see that there's -- do you see the
17 screen all right?

18 A. Yeah.

19 Q. Okay. Let me see if I can -- all right. So
20 you see there's three images and then two video
21 files?

22 A. Yeah.

23 Q. Can you make that out? Okay. Just putting
24 up on the screen the first image.

25 Can you see the image all right?

1 A. Um-hum.

2 Q. Okay. Did you see this image before?

3 A. Yes.

4 Q. Did you take that image?

5 A. Yeah.

6 Q. And I'm trying to load the next one.

7 How about this one?

8 A. It's a little far to see it, but I can see
9 it.

10 THE COURT: If you want to step down; get
11 a little bit closer, you can do that, too.

12 Q. Yeah, you can come over closer to the screen
13 so you can see.

14 A. Okay.

15 THE COURT: Just do me a favor -- careful
16 -- if you can get on that microphone just so we
17 can make sure everything you say is being
18 recorded.

19 A. Yeah, I can see it.

20 Q. Okay. What about that one, do you recognize
21 that one?

22 A. Um-hmm.

23 Q. And you can see actually on the bottom right
24 there's a little Honda?

25 A. Yeah.

1 Q. I looks like a windshield or some kind of
2 glass logo?

3 A. Yeah.

4 Q. And how about this one, this dark one?

5 A. Yeah.

6 Q. Okay. And then I'm just going to play the
7 two videos and after each one just tell me if you
8 recognize them and if you took...

9 A. Okay.

10 Q. I'm going to start the video.

11 (Video played.)

12 A. Yeah, I recognize that.

13 (Video played.)

14 Q. Do you recognize that?

15 A. Yes.

16 Q. You recognize your voice on that?

17 A. A little bit, yeah.

18 Q. Yeah.

19 A. It sounds a little different now, but...

20 (Video played.)

21 Q. Is that everything you recorded that day?

22 A. Yes.

23 Q. Okay. And of those five things that's
24 showing, can you tell us which image is the one
25 that you sent to your phone and then posted to

1 social media and then took down?

2 A. Probably the third image you showed us.

3 Q. Okay. And if I understand you correctly
4 these five -- these three images and these three
5 videos, that's everything you captured on your
6 mom's phone?

7 A. Yes.

8 Q. Okay. You can have a seat.

9 A. All right.

10 THE COURT: Just watch your -- watch your
11 step.

12 MR. VAN EPPS: Your Honor, I'm going to
13 offer the disk as the next exhibit.

14 THE COURT: All right.

15 THE CLERK: Your Honor, that would be
16 Exhibit 48.

17 (Exhibit No. 48, Disk, was received into
18 evidence.)

19 THE COURT: Thank you.

20 BY MR. VAN EPPS:

21 Q. I'm just going to show you these paper
22 copies.

23 Can you tell me if these appear to be
24 printed out versions of the three images on the
25 disk, three still images on the disk?

1 A. Yeah. Yeah.

2 Q. All right.

3 MR. VAN EPPS: Can we make this 43Aor --

4 THE COURT: 48A?

5 MR. VAN EPPS: 48A.

6 THE COURT: I'm sorry, these are the
7 photos?

8 MR. VAN EPPS: These are still images
9 printed off the disk.

10 THE COURT: From -- so that would be 48A.

11 (Exhibit No. 48A, Still images printed off
12 disk, was received into evidence.)

13 MR. VAN EPPS: 48A, thank you.

14 MR. VAN EPPS: Thank you, Mr. Hutchinson.

15 I don't have any more questions. Judge
16 Brennan might and counsel might, I'm not sure.

17 THE COURT: Anybody have any questions?

18 MR. HEINEMAN: Just a couple.

19 EXAMINATION

20 BY MR. HEINEMAN:

21 Q. My name is Mike.

22 It's nice to meet you.

23 A. Nice to meet you too.

24 Q. I hope you're not too nervous. I know most
25 people do get nervous.

1 A. I was a little bit before.

2 Q. Good. You're comfortable now?

3 A. A little bit more, yeah.

4 Q. Good. If I ask you something that you get
5 confused by just tell me, I'm not trying to
6 confuse you.

7 A. Okay.

8 Q. I just want to get an idea of how things
9 happened.

10 Am I right that you guys were coming down
11 Hamilton Street, and your plan was to go halfway
12 around the rotary and go down Diamond?

13 A. That is correct, yeah.

14 Q. And, instead, because all this was going on,
15 your mom went maybe a quarter way around the
16 roadway and then down Hancock?

17 A. Not Hancock. There's -- I can't -- I
18 actually don't know what the street is, but
19 Victory Garden -- the street where Victory Garden
20 is, that's the street we go off of.

21 Q. Okay.

22 MR. HEINEMAN: Can I approach, your
23 Honor?

24 THE COURT: Sure.

25 BY MR. HEINEMAN:

1 Q. I'm terrible with street names myself, so
2 let's use the map.

3 A. Yeah. So we entered through Hamilton.

4 Q. Yeah.

5 A. And then we go right here -- oh, Hancock
6 Street is -- yeah, okay, sorry.

7 Q. Okay. So there's Hancock and there's North
8 Hancock?

9 A. Yeah. So the -- yeah, this Hancock.

10 Q. Okay. Great.

11 So your plan was to go straight across to
12 Diamond and instead your mom turned right on to
13 Hancock because all this was going on?

14 A. Yes.

15 Q. Your mom kept moving the whole time?

16 A. No, I wouldn't say that --

17 Q. All right.

18 A. -- because the first time we go around we
19 stop a bit --

20 Q. Okay.

21 A. -- because like there's traffic and that's
22 really the only times we stop.

23 Q. Okay. And do you remember where your mom's
24 car was when -- when you stopped?

25 A. The rotary.

1 Q. Okay. And was your mom looking at what was
2 going on, too?

3 A. No.

4 Q. And in that first time that you were in the
5 rotary before you turned down Hancock, the
6 observations you made then were what?

7 You saw the officers standing. And what
8 was the man doing then?

9 A. At that point I think he was on the ground.

10 Q. And so when you're in the rotary the first
11 time the man's on the ground, and then your mom
12 starts to drive down Hancock?

13 A. Um-hum.

14 Q. And that's the audio we hear there you're
15 talking about are we going to be able to get to
16 the game?

17 A. Yeah.

18 Q. I heard shots?

19 A. Yeah.

20 Q. That's when that happens?

21 A. My -- my remember -- my memory is a little
22 fuzzy, but the first time -- sorry.

23 Q. That's okay.

24 A. The first time we go around, I guess from the
25 videos the -- the time I hear the shots. The

1 second time -- or no, no, sorry.

2 Actually, the first time was shots I think
3 and the second time we come around and they're
4 there. I'm sorry, I can't remember.

5 Q. That's all right. Ten months -- it's been
6 ten months --

7 A. Yeah.

8 Q. -- since this happened?

9 A. Yeah, it has been a little bit.

10 Q. All right. Have you talked about what you
11 saw that day with your mom and your dad?

12 A. Oh, just my family.

13 Q. Yeah.

14 A. That was it.

15 Q. And -- and when you talked about it with your
16 mom and dad, did they try to help you process
17 what you had seen that day?

18 A. My dad certainly did, yeah.

19 Q. Yeah.

20 And -- and did you know that at some point
21 your dad told the police he didn't want them
22 talking to you?

23 A. I think so. I think he might have said
24 something like that.

25 Q. All right. The social media that you -- you

1 posted it on, I'm not hip to all of them, which
2 social media did you post it on?

3 A. Snapchat.

4 Q. On?

5 A. Snapchat.

6 Q. Snapchat.

7 A. Oh, thank you.

8 MR. HEINEMAN: Thanks.

9 That's all I have.

10 THE COURT: So could I just ask a couple
11 of questions?

12 THE WITNESS: Yeah. Of course.

13 THE COURT: So if I understood what you
14 said initially when you were being questioned, it
15 sounded like when you guys were coming up
16 Hamilton you had to stop -- you had to stop there
17 and you kind of -- because of the traffic and
18 what was going on?

19 THE WITNESS: Everybody was leaving
20 through Hancock.

21 THE COURT: Right.

22 THE WITNESS: So...

23 THE COURT: But you guys had to wait at
24 that point and you -- you could see the man
25 sitting on the ground with the police near him?

1 THE WITNESS: Yeah.

2 THE COURT: All right. And then at some
3 point your mom was able to turn basically right
4 into the rotary?

5 THE WITNESS: If I'm going to be honest,
6 I don't really remember how we were able to turn
7 the car.

8 THE COURT: Okay.

9 THE WITNESS: But all I remember --

10 THE COURT: But at some point the car
11 was --

12 THE WITNESS: Yeah, the car was out of
13 there, yeah.

14 THE COURT: Yeah. And when the car was
15 out of there was that when you saw the man
16 standing?

17 THE WITNESS: Well, we were gone, so I --
18 I couldn't see him.

19 THE COURT: Okay.

20 THE WITNESS: So like -- like at that
21 point I think the first time we left was probably
22 when we heard shots because the video said that.

23 THE COURT: Okay.

24 THE WITNESS: I think I remember that a
25 bit more now.

1 THE COURT: I'm just a little confused as
2 to when you saw the man standing.

3 THE WITNESS: That was the second time we
4 came around -- see, I can't really remember that.
5 I remember he was standing though, but I don't...

6 THE COURT: But at some point he was on
7 the ground?

8 THE WITNESS: At some point he was on the
9 ground and then he got up.

10 THE COURT: And then as you were coming
11 back --

12 THE WITNESS: He --

13 THE COURT: -- because the second video,
14 which is when --

15 THE WITNESS: Yeah, okay, so, yeah,
16 that's the thing, I think the second video was
17 after the shots were fired.

18 THE COURT: Right.

19 THE WITNESS: So I think the first video
20 was us leaving and then there were shots.

21 So I think what happened was -- actually
22 I can't -- I really don't remember that, sorry.

23 THE COURT: That's okay.

24 And I know you, you know, now you're
25 probably are getting nervous.

1 THE WITNESS: Yeah, a little bit.

2 THE COURT: Just take your time. All we
3 want is your best memory --

4 THE WITNESS: Um-hum.

5 THE COURT: -- all right. And I know
6 it's been a while.

7 So -- but my understanding is that at
8 some point you saw the police kind of surrounding
9 the man on the ground.

10 THE WITNESS: At the start, no. There
11 was just kind of like them and then the guy. No
12 one was behind him --

13 THE COURT: Okay.

14 THE WITNESS: -- or at least that's --

15 THE COURT: All right. And then at some
16 point you saw the man on his feet --

17 THE WITNESS: Um-hum.

18 THE COURT: -- standing up, and that's
19 when the police officer fell?

20 THE WITNESS: Yeah, the three officers --

21 THE COURT: Okay.

22 THE WITNESS: -- and then -- yeah.

23 THE COURT: Was that before you headed
24 down towards Victory Lane?

25 THE WITNESS: I can't remember that.

IMPOUNDED TRANSCRIPT

3-50

1 THE COURT: So I guess let me ask this.

2 So when you came out of the rotary and
3 when your mom turned out of the rotary onto
4 Hancock --

5 THE WITNESS: Um-hum.

6 THE COURT: -- you guys must have turned
7 into Victory --

8 THE WITNESS: Yeah.

9 THE COURT: -- and then turned around and
10 headed back down Hancock --

11 THE WITNESS: Hit it again probably.

12 THE COURT: -- to head down Diamond?

13 THE WITNESS: So that I -- we might have
14 hit it three times then. I just -- I'm sorry, I
15 just can't remember it.

16 THE COURT: That's -- that's okay.

17 But you're sure that you saw him one
18 time -- the man --

19 THE WITNESS: Um-hum.

20 THE COURT: -- one time on the ground and
21 then one time on his feet --

22 THE WITNESS: One time standing, yeah,
23 that's correct.

24 THE COURT: -- with the knife raised up?

25 THE WITNESS: Yes.

1 THE COURT: Okay. And then, as you were
2 headed down wherever you were headed, on the
3 video it says -- basically you and your mom are
4 talking about hearing shots --

5 THE WITNESS: Yeah. I think --

6 THE COURT: -- and you thought that they
7 were rubber bullets?

8 THE WITNESS: Um-hum.

9 THE COURT: Okay. And then when you're
10 coming back in and you're actually able to turn
11 onto Diamond Lane, that's when there's the video
12 of everybody -- like all the emergency people --

13 THE WITNESS: Yeah.

14 THE COURT: -- kind of working and you
15 say I think they handcuffed him and I think he's
16 bleeding?

17 THE WITNESS: Yeah.

18 THE COURT: Okay.

19 THE WITNESS: From seeing the video
20 again, I think the shots happened during the
21 first video or before, prior.

22 THE COURT: Okay. Okay.

23 THE WITNESS: And then the second time
24 you come around is when I started taking the
25 video again.

1 THE COURT: Okay.

2 THE WITNESS: And that's like the
3 aftermath.

4 THE COURT: All right.

5 Anything on that.

6 MR. MCDONALD: Just a couple, your Honor.

7 EXAMINATION

8 BY MR. MCDONALD:

9 Q. Ryan, my name is Alan McDonald.

10 I represent the Arlington police officers
11 in this matter.

12 I heard you say, I believe, on one of the
13 videos in kind of an excited way, The dude had a
14 knife and was chasing a cop.

15 Do you recall saying that?

16 A. I think I do, yes.

17 Q. And who was the guy, the dude?

18 Who was the dude with the knife?

19 A. The guy dressed like the New England Patriots
20 fan.

21 Q. Okay. And -- and who was the cop that he was
22 chasing?

23 A. I don't really know.

24 Q. What direction did he seem to be going in?

25 A. Towards Hancock Street.

1 Q. Okay. And do you -- do you remember what the
2 direction was of the officer who had fallen?

3 A. Am I able to use the map that we had earlier?

4 Q. Sure. Yes. Yes.

5 A. Is there, like, a pen I could use?

6 All right. Thank you.

7 MR. VAN EPPS: Here, if you want to use a
8 marker.

9 THE WITNESS: All right. Thank you.

10 A. So I don't know how to (indiscernible).

11 Q. Hopefully you're a better artist than me.

12 A. So I mean, I guess --

13 Q. Was the man kind of in the middle of the
14 street?

15 A. Yeah. This is all happening, like, in the
16 middle of the street.

17 Q. And then the police --

18 A. The police are --

19 Q. -- were kind of over by the curb, over by the
20 Chabad Center?

21 A. The -- he's like -- no, he's like by this
22 island kind of thing.

23 Q. Okay.

24 A. And then the dude's, like, pretty close to
25 the sidewalk or maybe, like, on it, I'm not

1 really sure.

2 Q. In the crosswalk?

3 A. Yeah. Yeah. That's right.

4 Q. Okay.

5 A. Like, maybe further back; but this is the
6 position they're in -- the police officer here
7 and then guy right there.

8 Q. Okay.

9 A. There's also like -- like, another guy like
10 that, police officers.

11 Q. Okay. Do you recall which police officer
12 fell?

13 A. The one with the longer rifle.

14 Q. Okay. Can you identify his -- him by
15 location?

16 A. Yeah. Again, it's -- they're just black
17 dots.

18 Q. Okay.

19 A. But the one basically closest to the rotary
20 is the police officer that fell.

21 Q. Okay. Thank you.

22 I notice that you're making markings with
23 your left hand.

24 Are you left-handed?

25 A. Yeah, I am left-handed.

1 Q. Okay. Is that why you first raised your left
2 hand when you were asked to show --

3 THE COURT: As a lefty I assumed that's
4 what he was doing.

5 MR. MCDONALD: I've noticed that we share
6 the infliction, Judge.

7 No more questions.

8 THE WITNESS: All right.

9 THE COURT: Just leave them.

10 THE WITNESS: All right.

11 EXAMINATION

12 BY MR. VAN EPPS:

13 Q. (Indiscernible) looking for 47.

14 So -- just so the record is clear. So you
15 marked up 47; I just want to make sure that we
16 have a good record of what you've drawn here.

17 So you have an X, which I think earlier
18 was -- was -- your general position that you
19 thought everybody --

20 A. Yeah, I did probably like here, that's
21 actually, but...

22 Q. So you're indicating above the X of this
23 tree?

24 A. Yeah, you see like (indiscernible).

25 Q. Okay.

1 A. Yeah.

2 Q. So the X is below the crosswalk and then
3 you've got some dots?

4 A. I believe the X is probably, like, a little
5 higher.

6 Q. But here you've drawn it --

7 A. Yeah. Yeah.

8 Q. So these dots are --

9 A. So the police officer that falls, the guy
10 that they're surrounding, and these are the two
11 other police officers.

12 Q. Okay.

13 A. I think they're -- realistically it's
14 probably up a little higher.

15 Q. Okay. Close -- closer towards --

16 A. I think --

17 Q. -- (indiscernible).

18 A. I think (indiscernible).

19 Q. Okay. And near the --

20 A. I mean, crosswalk, sorry.

21 (Indiscernible).

22 Q. And the dot that's circled, that's the one
23 you're indicating is the --

24 A. (Indiscernible.)

25 Q. That's the one you described as looking like

1 the Patriots guy?

2 A. Patriots guy.

3 Q. Is that -- and I think you told Attorney
4 McDonald, that's the man that had the knife?

5 A. Yeah.

6 THE COURT: Okay. All set.

7 MR. VAN EPPS: Thank you.

8 THE WITNESS: Is that it?

9 THE COURT: All done.

10 THE WITNESS: All right. Thank you.

11 THE COURT: Back to school?

12 THE WITNESS: Yes. I have study hall,
13 actually.

14 THE COURT: Are you at Diamond or the
15 high school?

16 THE WITNESS: High school.

17 THE COURT: So it was a junior high when
18 I was a kid.

19 Now it's middle school.

20 THE WITNESS: Yeah.

21 MR. VAN EPPS: I went to Diamond as well.

22 THE WITNESS: Yeah.

23 (Witness excused.)

24 MR. VAN EPPS: Your Honor, I'm going to
25 offer the two-page State Police Ryan Hutchinson

1 (indiscernible) report.

2 THE COURT: All right.

3 THE CLERK: For the record, your Honor,
4 this will be Exhibit 49.

5 (Exhibit No. 49, Ryan Hutchinson report, was
6 received into evidence.)

7 THE COURT: All right.

8 MR. VAN EPPS: Your Honor, the next
9 witness is going to be David Meharry.

10 THE COURT: Okay. While we're waiting
11 for him to come in, any chance of uploading the
12 videos and the pictures to the shared drive just
13 so...

14 MR. VAN EPPS: I believe they are, your
15 Honor.

16 THE COURT: They're up there. Okay. I
17 missed those. Okay.

18 MR. HEINEMAN: I think those were the
19 recently added ones.

20 And, candidly, that second video was
21 longer than the one that was in the ShareFile, so
22 you may want to make sure that the right one is
23 up there.

24 MR. VAN EPPS: Okay.

25 THE COURT: Okay.

1 MR. VAN EPPS: I'll double-check, but...

2 THE COURT OFFICER: All set with the
3 witness?

4 THE COURT: Yes, sir.

5 THE COURT OFFICER: Right this way, sir.
6 You're just going to face the clerk and raise
7 your right hand, please.

8 THE CLERK: Do you swear and affirm that
9 the testimony you give here today will be the
10 truth and nothing but the truth so some help you
11 God?

12 MR. MEHARRY: I do.

13 DAVID MEHARRY, SWORN

14 THE CLERK: Thank you.

15 THE COURT OFFICER: Right this way, sir.
16 You're going to come right over here. Just be
17 careful getting in there and sit as closely to
18 the microphone as you can.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Meharry, if it's more
21 comfortable and you want to move the chair back
22 that's fine too.

23 THE WITNESS: I'm fine.

24 Thank you.

25 THE COURT: Before we get started, I've

1 been asking this of all the witnesses, which
2 is -- or explaining a couple of things.

3 So an inquest is a formal investigative
4 process that is supposed to be confidential,
5 secret for, I guess, want of a better way of
6 describing it in the sense that it's not open to
7 the public and the proceedings and what happens.

8 Ultimately, there's a report that's
9 generated, and that becomes public, or at least
10 findings become public, but the testimony of the
11 witnesses is not, so what I've been -- I can't
12 order you not to talk about your testimony
13 publicly, but I'd ask that you refrain from doing
14 that until we generate or until I generate the
15 report, all right.

16 THE WITNESS: I understand.

17 THE COURT: Thank you.

18 EXAMINATION

19 BY MR. VAN EPPS:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. Could we have your full name and if you can
23 spell it for our court reporter, please?

24 A. My full name is David Edward Meharry,
25 D-A-V-I-D, E-D-W-A-R-D, and M-E-H-A-R-R-Y.

1 Q. And, sir, what do you do for a living?

2 A. I'm a retired engineer.

3 Q. Okay. How long have you been retired for?

4 A. Since 2008.

5 Q. Congratulations.

6 A. Thank you.

7 Q. You live in the Town of Lexington?

8 A. I do.

9 Q. Where do you live?

10 A. I live at 105 North Hancock Street.

11 Q. So I imagine you're familiar then with the
12 rotary and Hancock --

13 A. Yes.

14 I'm the Hamilton Street/North Hancock
15 corner of that rotary.

16 Q. Okay. And is there -- I want to ask you some
17 questions about February 12th of this year.

18 Did there come a time that morning around
19 noon where you were in your kitchen and you heard
20 something outside that drew your attention?

21 A. Yes.

22 Q. Can you tell us about that, please?

23 A. Um, the -- as near as I can describe it, my
24 wife and I were just relaxing at home. There was
25 what I would call a commotion.

1 The -- on reflection, I remember that
2 there was a -- I believe a police car or two on
3 Hamilton Street.

4 So it was enough of a commotion that,
5 although being curious, decided not to go outside
6 and we continued to observe what was going on.

7 Eventually we moved to an upstairs window
8 to look out over the rotary to see what was going
9 on.

10 Q. Okay. And what could you see?

11 A. The part of the events that I saw included
12 the -- a few police officers and an individual
13 who was, I guess, wearing sweatpants and so
14 forth.

15 There was a confrontation. It was moving
16 gradually from my right to left.

17 Q. The individual wearing sweatpants, can you
18 give us any more information about his
19 appearance?

20 A. He was a large man. He -- by large, he was
21 both tall and, I mean, you know, somewhat bulky.

22 He was, at least on the latter part, which
23 is what I remember more clearly before he
24 disappeared from view, on his -- sort of sitting
25 on the ground with his -- you know, moving

1 backwards with his legs out and the -- you're
2 talking about physical appearance, I presume?

3 Q. Yes.

4 A. Yeah.

5 Q. And I think you mentioned some police
6 officers.

7 Can you describe what you remember about
8 how many officers and where -- where they were
9 standing in relation to the man?

10 A. There was a group of three police officers
11 facing a raid over an angle maybe, you know,
12 approaching 90 degrees -- 60 to 90 degrees spread
13 evenly apart facing him.

14 Q. Facing him?

15 A. Yeah.

16 Q. And the commotion, the noise that you heard,
17 was it coming from this group of police officers
18 and this man?

19 A. I don't recall anything specific noise-wise
20 about the commotion. There may have been some.

21 The windows were closed. Not a huge
22 amount of noise coming through.

23 It was just, um, in memory there's -- I
24 just have this sense that there were -- there
25 were things going on that were not normal.

1 Q. Okay.

2 A. And then --

3 Q. So some kind of noise that's not normal, is
4 that -- do I understand you right?

5 A. I don't remember specifically so much about
6 the noise as becoming aware of something going on
7 and seeing things happening.

8 Q. Okay. All right. So you -- you detected
9 this sort of unusual thing, gotten up, you looked
10 out the window; you're now aware of this unusual
11 thing going on.

12 Are you then sort of paying attention to
13 what's going on there?

14 A. Yes.

15 The tableau was disturbing. I decided to
16 go get -- I have, like, a nice camera.

17 I -- I thought it might be important to
18 make -- to record a little bit about what I saw.

19 A cell phone camera would not have been
20 sufficient for that, so I had a nice handheld --

21 Q. A real camera?

22 A. -- a real camera.

23 Q. Were you -- were you able to observe anything
24 about the man's hands when you started paying
25 attention to this event?

1 A. He had a knife in his right hand.

2 Q. Could you describe anything about the knife,
3 the appearance of it?

4 A. It was not a long blade. It was -- but it
5 wasn't, like, a pocketknife. It was a small to
6 medium-size knife.

7 And it was, you know, it was -- he was
8 holding it with -- with a blade like this.

9 Q. Protruding from the bottom of his hand?

10 A. Yes.

11 Q. Could you tell which hand he was holding it
12 in?

13 A. Right hand.

14 Q. So then you go and you get a camera to try to
15 take a picture, and you came back.

16 Had the position of the police officers or
17 the man changed?

18 A. Not to my recollection.

19 Q. And how far were they from each other, if you
20 can recall?

21 A. I'd say about 10 feet or so from the man and
22 maybe 6 feet apart from each other 6 -- 6 -- 6 to
23 8 feet apart from each other.

24 Q. The officers were spread out?

25 A. Yes.

1 Q. And at this point when you come back now that
2 you're paying attention, I know your windows are
3 closed, but can you make out any words or any
4 noises coming from the group?

5 A. I don't recall that I did.

6 Q. Okay. Did you, in fact, take a picture of
7 what was going on?

8 A. I did.

9 Q. Okay.

10 MR. VAN EPPS: Can I borrow your stapler?

11 THE COURT: You may.

12 MR. VAN EPPS: Thank you.

13 BY VAN EPPS:

14 Q. Mr. Meharry, I'm going to show you a
15 two-page -- two pages of photos.

16 Just take a second and look at those, tell
17 me if you can -- if you recognize what they are?

18 A. Yes, that's the photograph that I took on
19 that morning.

20 Q. Okay. There's a second photograph on the
21 second page. It's a clock face?

22 A. Yes.

23 Q. Tell me why you took a photograph of the --

24 A. I wanted to -- in -- after I'd taken the
25 photo I wanted to make sure that the time stamp

1 on the photograph was correct, and I noticed that
2 my -- my -- my camera had been used most recently
3 on a trip that my wife and I took, so it was a
4 different time zone.

5 Q. Um-hum.

6 A. So the difference between the time showing
7 and the time stamp on the watch should have
8 indicated the approximate time within the
9 accuracy of the -- of the clock inside the camera
10 as to when the photo was taken, the other photo
11 was taken.

12 Q. So the watch face says 5:17?

13 A. Um-hum.

14 Q. But it's not -- it's obviously not 5:17 in
15 the afternoon at this point?

16 A. No.

17 Q. Okay. It's around -- it's a little after
18 lunchtime; is that right?

19 A. I believe so.

20 MR. VAN EPPS: I'd offer these as the
21 next exhibit.

22 THE CLERK: It will be Exhibit 50.

23 (Exhibit No. 50, Two pages of photos, were
24 received into evidence.)

25 THE COURT: All right.

1 A. So the -- the digital image that I provided
2 would have had a time stamp on each of those
3 photos.

4 Q. In the metadata you mean? In the -- in the
5 actual --

6 A. Yes.

7 Q. -- file information?

8 A. Yeah.

9 Q. All right. In that photograph essentially
10 there's a man in gray sort of on the ground on
11 his backside and there's some police officers in
12 front of him; is that right?

13 A. Correct.

14 Q. And so what transpires that you can see after
15 have that?

16 A. They were moving gradually from my right to
17 my left.

18 And if you -- you can notice in the
19 photograph that there is a -- a group of --
20 there's some foliage, a tree and some
21 rhododendron bushes.

22 And they moved out of my sight line --
23 line behind -- to beyond that -- from my sight
24 line to behind the trees and the other foliage.

25 Q. And I'm going to show you just a Google map

1 of the rotary and the streets that feed into it.

2 And if you could take this Magic Marker
3 and just indicate, with your initials, sort of
4 where you're watching from?

5 MR. VAN EPPS: I'll offer this as the
6 next exhibit.

7 THE CLERK: Exhibit 51.

8 (Exhibit No. 51, David Meharry map, was
9 received into evidence.)

10 BY MR. VAN EPPS:

11 Q. So they -- they move from right to left
12 across.

13 And at some point do you lose sight of
14 them?

15 A. Yes.

16 Q. Okay. Do you become aware of noises --
17 unusual noises or something like that?

18 A. A short time after they disappeared from
19 sight -- maybe 30 seconds, maybe a minute, but
20 not a very long time -- I heard what I believed
21 to have been shots fired.

22 Q. How many did you hear?

23 A. I believe I heard three shots.

24 Q. Okay. Had you heard any other loud noises --
25 loud noises that were not, you know, conversation

1 earlier during watching this incident?

2 A. There was some discussion amongst neighbors
3 and I; at that time learned that there had been
4 bean bag type of projectile shots.

5 I do not recall having heard the bean bag
6 shots.

7 Q. Okay. But you become away of hearing what
8 you described as gunshots; and I understand you
9 have a little familiarity with what those sound
10 like anyway?

11 A. Somewhat, yes.

12 Q. Okay. Did you -- after they move out of your
13 field of view, did you keep trying to watch or --
14 or try to regain a view of what's going on or
15 what did you do?

16 A. There's not really much hope of being able to
17 see what's going on.

18 For me to have seen more, I'd have had
19 gone outdoors. I didn't do that for awhile.

20 Q. Okay.

21 A. Eventually I did, and at that time the -- the
22 participants in the event, if you want to call it
23 that, were gone or were not visible to me. It
24 had changed.

25 Q. How much later in the afternoon did you then

1 take another look in that area?

2 A. I didn't go over there -- within a short time
3 the crime scene tape was up, and the press was --
4 and the media were coming in, and that was not
5 accessible.

6 Q. Okay. The officers who were -- you described
7 them several feet apart and a number of feet from
8 the man -- could you see what, if anything, they
9 were holding?

10 A. They were holding what looked like orange
11 rifles or -- or -- not long rifles, but not
12 handguns, but larger guns, but they were orange.

13 Q. Okay.

14 MR. VAN EPPS: Nothing further.

15 THE COURT: Any questions?

16 EXAMINATION

17 BY MR. HEINEMAN:

18 Q. If I could just follow up a little bit,
19 Mr. Meharry.

20 The date of the shooting you spoke with
21 the State Police; is that right?

22 A. Yes.

23 Q. The State Police wrote that when they spoke
24 to you on February 12th David, stated he heard
25 yelling outside of his home, but couldn't make

1 out what was being said.

2 Does that refresh your recollection that
3 you might have heard some yelling and that's what
4 drew your attention?

5 A. That would have been part of it.

6 The -- as of the last month or so in
7 trying to recall what was taking place, I have no
8 recollection of that shouting.

9 I had a fairly thorough, not very long,
10 discussion with the -- the police man when he
11 came to visit in the evening, but -- so that's --
12 I can't -- I can't say that that's -- there's
13 anything wrong with that statement.

14 Q. Okay. It sounds like a stupid question, but
15 your memory of what happened was better on the
16 day it happened?

17 A. And my -- and my memory of what I saw is
18 better than the memory of what I heard.

19 Q. Okay.

20 A. Certainly the memory of the shots was
21 distinct, and I remember that.

22 Q. It also says that you described, quote, The
23 man was sitting on his butt and leaning back and
24 sliding backwards on the ground.

25 Do you remember seeing that?

1 A. Yes, very much.

2 Q. During the time that you described this
3 incident moving from your right to left, did the
4 man appear to you to be kind of shuffling
5 backwards away from the police officers?

6 A. Yes.

7 Q. And during the time he was on his back
8 shuffling away from the police officers, did you
9 hear multiple rubber bullet shots?

10 A. I did not hear at that time.

11 Q. All right. The police report that the State
12 Police wrote when they spoke to you that day
13 says, Throughout the incident David heard
14 multiple rubber bullet shots --

15 A. Again --

16 Q. -- outside and then heard four shots right in
17 sequence.

18 Having read that to you does that bring
19 back any memory that you heard multiple shots
20 before the final shots?

21 A. I would describe what you just read to me as
22 reinforcing of -- of what I -- what I do
23 remember.

24 I -- I did not -- I still do not remember
25 distinctly the -- what would have been the

1 projectile shots.

2 It sounds like I heard four actual shots
3 fired that were different.

4 Q. Yeah, gunshots --

5 A. Yeah.

6 Q. -- as opposed to something else?

7 A. About three was the number that I remember.

8 Q. Okay. But just this global concept of before
9 those final three or four shots, do you have a
10 memory of hearing other types of shots which
11 neighbors may talk bean bag shots; the police
12 officer said you said were rubber bullet shots?

13 Do you have a memory of hearing those
14 types of shots --

15 A. I have no memory of that.

16 Q. Okay. And I was talking over you, I
17 apologize.

18 A. That's fine.

19 Q. I didn't hear your answer, you do have a
20 memory or don't?

21 A. I have no memory of that.

22 Q. Okay. Thank you. And just for clarification
23 on the time, you -- you're an engineer and I love
24 engineers because they do this, but you -- you
25 looked at the time on your camera; then compared

1 it with the actual time and realized it was off
2 by eight hours, and that's why you took that
3 photo of your watch to show the camera time was
4 off by eight hours?

5 A. That's an accurate distinct distinction of
6 what I tried to do, yes.

7 Q. And so when you did that calculation you
8 realized that the time that you took that photo
9 that is in evidence was 12:55 p.m., is that
10 accurate? Do you remember that?

11 A. Whatever the -- the timestamp on the -- on
12 the file was. I don't -- I do not currently
13 remember the time. But the -- the photograph of
14 the watch was not taken at the instant of the
15 first photograph. It was taken a short time
16 later.

17 Q. Correct.

18 The police officer report reports that you
19 said the watch face -- watch face says 5:17 p.m.
20 and the file information on the photo shows it
21 was taken at 1:18 a.m. advanced eight hours?

22 A. Yes.

23 Q. That's consistent with your memory. Thank
24 you.

25 EXAMINATION

1 BY MR. VAN EPPS:

2 Q. So Attorney Heineman asked you a number of
3 questions about the report.

4 When you spoke to Lieutenant O'Rourke --
5 and I think it was in your kitchen; is that
6 right?

7 A. Yes.

8 Q. Okay. In the -- in the photograph and -- and
9 in some of your testimony you described the man
10 on his backside at one point moving away from the
11 officers.

12 You've also, if I understand your
13 interview correctly, originally described him at
14 one point holding the knife up about shoulder
15 high and pointing outwards?

16 A. It may have been, yeah.

17 Q. Okay.

18 A. But you can't scoot holding both arms up in
19 the air; you have to have your arms down, so
20 that -- that's consistent with what I saw.

21 Q. Okay. So at different points -- he's
22 scooting at different points; he's got it up, do
23 I -- is that --

24 A. Yes. Yes.

25 Q. Okay. I didn't want to put words in your

1 mouth.

2 A. No.

3 Q. And when you say pointing outwards, that's
4 pointing in the direction of the -- when the
5 police officers were in front of him?

6 A. In the general direction of, but it's -- I
7 couldn't say it was pointed -- I -- like I would
8 not have -- I couldn't say if you were the police
9 officers it was pointed at you.

10 Q. Right.

11 A. It might have been off to the side somewhat.

12 Q. But (indiscernible) in their direction?

13 A. Yes.

14 Q. Okay.

15 A. General direction.

16 Q. All right. And when you -- when you talked
17 to Lieutenant O'Rourke on February 12th, this had
18 just happened, it was fresh in your mind, and you
19 were attempting to be as forthcoming as you could
20 I imagine?

21 A. That's correct.

22 MR. VAN EPPS: I have nothing further.

23 MR. HEINEMAN: Could I have just have one
24 last one, your Honor?

25 THE COURT: Um-hum.

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EXAMINATION

BY MR. HEINEMAN:

Q. During the time that this man was in your view he was never on his feet; he was always on his rear end, right?

A. Correct.

Q. Thank you.

MR. VAN EPPS: Nothing further.

THE COURT: Thank you very much, sir.

(Witness excused.)

MR. VAN EPPS: Your Honor, I would offer the one page State Police report interview of David Meharry.

THE CLERK: This will be Exhibit 52.

(Exhibit No. 52, David Meharry report, was received into evidence.)

THE CLERK: Hi. Please raise your right hand.

Do you swear and affirm that the testimony you give here today will be the truth and nothing but the truth so help you God?

MS. HANLEY: I do.

ALEXANDRA HANLEY, SWORN

THE CLERK: Thank you.

THE COURT OFFICER: Just come right over

1 here, please. Just sit as close to the
2 microphone as you can, okay.

3 THE WITNESS: Okay.

4 THE COURT: And, Ms. Hanley, before we
5 begin, I've been asking this of all the
6 witnesses; you may be familiar with this given
7 your work, but an inquest as an investigatory
8 proceeding that's supposed to be confidential, at
9 least until the report is generated and published
10 at least to the parties.

11 I can't order you not to talk about your
12 testimony.

13 And to the extent that you need to talk
14 about your testimony, as it's work-related, you
15 can do that, but I'd ask that at least in a
16 general sense that you not discuss your testimony
17 until the report is generated.

18 THE WITNESS: Okay.

19 EXAMINATION

20 BY MS. GEMMILL:

21 Q. Good morning.

22 A. Good morning.

23 Q. Could you please introduce yourself to the
24 Court and spell your first and last name for
25 us?

1 A. My name is Alexandra Hanley, and it's spelled
2 A-L-E-X-A-N-D-R-A. And my last name is spelled
3 H-A-N-L-E-Y.

4 Q. Are you currently employed?

5 A. Yes.

6 Q. Where do you work?

7 A. I work for the Massachusetts State Police
8 Crime Lab in the DNA Unit.

9 Q. The DNA Unit?

10 A. Yes.

11 Q. What is your position with the DNA Unit?

12 A. I'm a forensic scientist II within the DNA
13 Unit.

14 Q. Can you tell us how long you have held the
15 position as forensic scientist II?

16 A. Since December of 2020. I've -- I've been
17 employed since June of 2019.

18 Q. What was your position -- was that at the
19 Massachusetts State Police Crime Lab?

20 A. Yes, I was a forensic scientist I.

21 Q. Okay. And how do you become a forensic
22 scientist II, how do you go from I to II?

23 A. You're there for a year, and you complete
24 your training program.

25 Q. Can you give us a very brief overview right

1 now of what you do as a forensic scientist II in
2 the DNA Unit at the lab?

3 A. So right now I'm an interpreting analyst,
4 which means that another laboratory analyst will
5 process the samples in the lab.

6 And, once that is finished, the case will
7 come to me and I'll interpret the data, write the
8 reports, make comparisons if need be, and testify
9 in court if need be.

10 Q. And, in your interpreting data, are you
11 looking at essential DNA profiles in the DNA
12 Unit?

13 A. Yes.

14 Q. We'll get into that in just a little bit.

15 Have you had any specialized training to
16 do what you do as a forensic scientist?

17 A. Yes. Like I said before we have to go
18 through a training program, and that training
19 program consists of different lectures on
20 different DNA topics and a history of DNA.

21 And then we process mock samples in the
22 lab, we do different quizzes, and at the end we
23 have to complete a competency test.

24 Q. Do you have any higher education degrees?

25 A. Yes.

1 I have a bachelor's degree from West New
2 England University in forensic biology and then
3 also a master's degree from Boston University
4 School of Medicine in biomedical forensic
5 sciences.

6 Q. When did you get your master's degree?

7 A. I graduated in 2018.

8 Q. Did you work anywhere after your master's
9 degree prior to joining the State Police Crime
10 Lab?

11 A. Yes, I worked at LabCorp Integrated Genetics.

12 Q. What did you do in LabCorp?

13 A. I was a molecular technologist.

14 Q. You mentioned that as part of your work in
15 the DNA Unit part of your ongoing training you
16 have to (indiscernible) -- did you call that
17 competency test?

18 A. Yes.

19 So every time a new method comes online,
20 or if you're starting out new, before you can
21 perform a certain DNA task a competency test must
22 be passed before you can work on real case
23 working samples in the lab.

24 So that would consist of a training
25 program. It could be a lecture and then a quiz.

1 Q. Did you actually have to take competency
2 tests to do what you're doing now for the DNA
3 Unit?

4 A. Correct. Yes.

5 Q. And were you able to pass your competency
6 test?

7 A. Yes.

8 Q. Do you have to take any proficiency tests as
9 part of your position?

10 A. Yes.

11 In the DNA Unit we have to take a minimum
12 of two proficiency tests per year.

13 Q. Okay. And is that to make sure that you're
14 staying up-to-date with standards, techniques,
15 that kind of thing?

16 A. Yes.

17 Q. Are you able to pass your proficiency tests?

18 A. Yes.

19 I have completed six proficiency tests.
20 I've passed five. The sixth one is still being
21 graded.

22 Q. Great.

23 When did you have to take that sixth test?

24 A. That was submitted this November, so about a
25 month ago.

1 Q. During your time at the Massachusetts State
2 Police Crime Lab DNA Unit, do you have any sense
3 of how many different samples you've analyzed?

4 A. Approximately over 300 samples.

5 Q. And how many times have you been the actual
6 technical reviewer, the -- the interpreting
7 analyst as you called it?

8 A. So I'm not a technical reviewer. I'm not
9 trained in that right now; but a DNA analyst or
10 an interpreting analyst, I would say I've
11 performed interpretation work on about 70 cases.

12 Q. Okay. So as you're working as the
13 interpreting analyst, do you do the actual wet
14 lab work to generate profiles?

15 A. No, I do not.

16 Q. Who does the wet lab work?

17 A. That is different analysts.

18 One analyst will be assigned a case, and
19 they'll take it through the first step of the DNA
20 process.

21 And then from there it could go on to
22 different laboratory analysts for the other three
23 steps.

24 It's just for the -- for time and the ease
25 of processing.

1 Q. Do you have to have special additional
2 training to be an interpreting analysis rather
3 than just doing the wet lab work?

4 A. Yes.

5 Q. And you have gone through that process,
6 correct?

7 A. Correct. Correct.

8 Q. Is the Massachusetts State Police Crime Lab
9 currently accredited?

10 A. It is.

11 Q. Who is it accredited by?

12 A. It is accredited by ANAB, which stands for
13 ANSI National Accreditation Board.

14 Q. Does that mean that the lab has to follow
15 certain standards and protocols to maintain that
16 accreditation?

17 A. Yes.

18 They'll come in and check our protocols,
19 procedures, our validations, and our casework to
20 make sure everything we're doing is up to their
21 standards.

22 Q. Do you know how often that process happens?

23 A. I -- I'm not sure. I don't want to misspeak.

24 I can -- I can definitely look into that
25 for you.

1 Q. Fair to say that it happens more than just
2 once in the lifetime of the lab?

3 A. Correct.

4 Q. Okay. Let's talk a little bit now about DNA.

5 I've used this term as probably pretty
6 familiar to the Judge in this courtroom, but can
7 you tell us what DNA actually is?

8 A. DNA stands for deoxyribonucleic acid.

9 It is basically the genetic code that
10 makes you you.

11 It makes up what your body will look like;
12 what hair color you'll have; what eye color
13 you'll have.

14 And everyone will have a different DNA
15 profile besides identical twins because it is
16 inherited by your biological mother and
17 biological father.

18 Q. Can you explain to us what the process is
19 that the lab uses to analyze DNA that has been
20 submitted in a case?

21 A. So the DNA process is generally four steps.

22 So the first step is called extraction
23 where we use heat and chemicals to break open the
24 cells where the DNA is located.

25 And then we separate out the DNA from the

1 rest of the other cellular components, so what is
2 left is just the DNA profile.

3 The second -- the second step is called
4 quantitation, which is to tell us how much DNA is
5 present within that sample.

6 The third step is called PCR, which is
7 transfer preliminary chain reaction.

8 And that is essentially photocopying the
9 DNA regions of interest that we're looking at, so
10 we have plenty of sample to work with.

11 And then the last is called detection.
12 And that uses an instrument in a software which
13 separates the DNA based on size.

14 And the software will assign those DNA
15 fragments that we're looking at a number; and, at
16 the end, it will produce the DNA profile.

17 Q. That part you are talking about, the
18 preliminary chain reaction, is that analogous to
19 amplification of the DNA?

20 A. Yes.

21 Q. And fair to say that that process creates
22 millions of copies of the DNA?

23 A. Correct.

24 Q. And that let's you have enough samples to
25 be able to actually look at the sequence of the

1 DNA?

2 A. Correct.

3 Q. Does the DNA Unit, in going through those
4 processes, is it following standardized protocol
5 and procedures?

6 A. Yes. Correct.

7 Q. And is each analyst, who is participating in
8 these steps, required to follow those procedures
9 and protocols?

10 A. Correct.

11 Q. Are there any kind of controls used in the
12 testing process?

13 A. Yes.

14 We have positive controls and negative
15 controls.

16 Q. Can you explain to the Court, first, what is
17 a positive control?

18 A. A positive control is a sample that's
19 processed along with the case working samples
20 that has a known DNA profile attached to it.

21 So it's a known DNA profile plus all of
22 the chemicals that we use; and at the end if
23 what -- if that known profile is produced we can
24 insure that each step was followed correctly and
25 worked correctly.

1 Q. What is the negative control?

2 A. The negative control is there's no DNA
3 profile attached to that; it's just the chemicals
4 that we use.

5 And that ensures -- once we go through the
6 four steps that ensures that there's no
7 extraneous DNA involved in the case.

8 Q. So by using controls in the testing process,
9 does that help assure that there's nothing that
10 has contaminated the actual DNA samples you're
11 looking at?

12 A. Yes, that's the -- the purpose of a negative
13 control.

14 Q. Are those controls used in every -- in every
15 piece of the process of analyzing DNA?

16 A. Correct.

17 Q. Okay. Does the work that analysts in this
18 lab do and the work that you do go -- undergo any
19 kind of review process?

20 A. Yes. Every case goes through two review
21 processes.

22 Q. What does the review process entail?

23 A. The first review is a called a technical
24 review, and that is a -- that's performed by a
25 trained analyst in technical reviews.

1 And they are looking for all the work is
2 scientifically correct, and we are following
3 protocols and procedures correctly, and our
4 conclusions are correct.

5 The second is called an administrative
6 review, and that's also performed by another -- a
7 different trained analyst, and they are looking
8 for administrative errors such as grammar,
9 spelling, everything is filled in correctly,
10 those type of things.

11 Q. Okay. When a case comes to you as the
12 interpreting analyst, what kind of information
13 are you receiving?

14 A. So when it comes to me all of the wet work or
15 lab work is done, so I'll take ownership of the
16 case after the fourth step.

17 So, as I said, before, the fourth step
18 actually produces the DNA profile, so I will look
19 at that data, I'll interpret that data, and write
20 the reports and make conclusions.

21 Q. Are you able to review all of the steps that
22 the -- the lab process that was performed by the
23 lab analysts?

24 A. Yes.

25 So in the case all of the worksheets will

1 be retained in the files, so I'll go over
2 everything to make sure everything is correct.

3 I'll also look at the positive and
4 negative controls to make sure those pass.

5 Q. Okay. Did you have the opportunity to work
6 on a sample submitted in conjunction with
7 Laboratory Case No. 22-03176 in Lexington?

8 A. Yes.

9 Q. Okay. And were you able to bring a copy of
10 your report with you today?

11 A. Yes, I did.

12 Q. All right. What was the sample that you were
13 responsible for interpreting in this case?

14 A. Can I report -- refer to my report?

15 THE COURT: Of course.

16 A. The item number was 3-1.2.1, which is the
17 sample of knife handle on road, Burlington
18 Street.

19 Q. Okay. Were you able to see whether or not
20 any lab work was conducted on this sample?

21 A. Yes.

22 Q. Okay. So when -- once this was assigned to
23 you, what was your responsibility in relationship
24 to Item 3-1.2.1?

25 A. To look at the DNA profile, to interpret the

1 DNA profile, make a comparison, because there was
2 a reference in this case, and generate a
3 statistic to that reference, write the report,
4 and then testify in court.

5 Q. Was the fourth-step process that you
6 described to us earlier for DNA analysts used to
7 analyze this sample?

8 A. Yes.

9 Q. Okay. Were you able to identify a DNA
10 profile from this sample?

11 A. Yes.

12 Q. What kind of DNA profile were you able to --
13 was generated from this sample?

14 A. An STR DNA profile is a mixture including
15 male DNA assuming two contributors.

16 Q. Can you tell us what a STR is?

17 A. It's called a short tandem repeat. It's the
18 fragments of DNA, like I was talking previously,
19 that we look at that will give -- give rise to
20 the DNA profile.

21 Q. Okay. And that's something that you can look
22 at to try to make a match; is that fair?

23 A. Yes.

24 We'll provide statistics for that.

25 Q. Okay. You mentioned that you had -- I

1 believe you said that you had a known sample.

2 Can you explain what the difference is
3 between a question sample, like what was
4 submitted here from the knife, and the known
5 sample?

6 A. A known sample is directly taken from a
7 person.

8 So if someone collected my blood or saliva
9 standard from me, it's known to be coming from
10 me.

11 Q. Okay. And a question sample would be what
12 we're trying to figure out whose DNA it belongs
13 to; is that fair?

14 A. Yes.

15 It's a sample found at a crime scene that
16 we do not know who the profile belongs to.

17 Q. Okay. And were you able to use a known
18 reference standard in this case?

19 A. Yes.

20 Q. And who's standard was that?

21 A. That was Item 8-1.1.1 from Brendan Reilly.

22 Q. Okay. Were you able to make a comparison of
23 the question DNA sample from Item 3-1.2.1 to the
24 known profile of Brendan Reilly?

25 A. Yes.

1 Q. Can you explain to us what your conclusions
2 were?

3 A. The DNA profile from this item is at least
4 17 octillion times more likely if the DNA profile
5 originated from Brendan Reilly in an unknown
6 individual than if it originated from two unknown
7 individuals unrelated to Brendan Reilly.

8 This provides support for an inclusion.

9 Q. Okay. Can you explain to us -- you're
10 describing a likelihood ratio there; is that
11 correct?

12 A. Correct.

13 Q. Okay. Can you explain to us what the
14 likelihood ratio is trying to say?

15 A. A likelihood ratio is a calculation that
16 compares the probability of obtaining a certain
17 evidence profile, given two competing
18 propositions.

19 So the first proposition is that the
20 probability of the person being included, and we
21 call that H1.

22 The second proposition is a probability of
23 the person being excluded, which we call H2.

24 So the likelihood ratio -- the value of
25 the likelihood ratio shows us how likely it is

1 that the profile is given, given these two
2 competing hypothesis.

3 Q. Okay. And, as part of the way that
4 Massachusetts State Police DNA Unit, the Crime
5 Lab, interprets DNA data, it's always in a
6 likelihood ratio like this; is that correct?

7 A. Correct.

8 We -- this is done using a DNA software
9 called STRmix.

10 And we went online with all of our case
11 work in March of 2021, so everything after that
12 has used this method.

13 Q. Okay. And so you express the likelihood of
14 the DNA profile as somebody being included in the
15 DNA profile rather than reaching a conclusion and
16 saying, yes, this is one person versus another
17 person, correct?

18 A. Yes. These provide support for inclusion or
19 an exclusion.

20 Q. Okay. And, again, you said that in this case
21 the hypothesis that Brendan Reilly was included
22 was -- can you give us that statistic again?

23 A. Yes, I'll read the statement.

24 Q. Okay.

25 A. The DNA profile from this item is at least

1 17 octillion times more like if the DNA profile
2 originated from Brendan Reilly and an unknown
3 individual than if it originated from two unknown
4 individuals unrelated to Brendan Reilly.

5 This support -- this provides support for
6 an inclusion.

7 Q. Okay. And I'm just going to show you a copy
8 of your report that was prepared in connection
9 with this, okay.

10 A. Okay.

11 Q. Is this three-page document your report from
12 your interpretation of the DNA results in this
13 case?

14 A. Correct.

15 MS. GEMMILL: I ask that this be
16 introduced as our next exhibit.

17 MR. HEINEMAN: No objection.

18 THE CLERK: That will be Exhibit 53.

19 (Exhibit No. 53, Alexandra Hanley's
20 report, was received into evidence.)

21 MS. GEMMILL: Thank you.

22 BY MS. GEMMILL:

23 Q. Thank you so much, Ms. Hanley. I don't have
24 any further questions for you.

25 A. Thank you.

1 THE COURT: Any questions?

2 MR. HEINEMAN: Only my curiosity, how
3 many zeros in octillion?

4 No, no questions, your Honor.

5 THE COURT: A lot of zeros.

6 THE WITNESS: Yes.

7 THE COURT: All right. Thank you very
8 much.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: Is this a good time to take a
12 break?

13 MR. VAN EPPS: It is.

14 THE COURT OFFICER: All rise.

15 We'll be in recess.

16 (At 10:35 a.m. court recesses.)

17 (At 10:51 a.m. court resumes.)

18 THE COURT OFFICER: You may be seated.
19 Court is in session.

20 MR. VAN EPPS: Stephanie Waite, please.

21 THE COURT: And we're definitely
22 impounded, right?

23 THE CLERK: Yes, your Honor.

24 THE COURT: Perfect. Thank you.

25 THE COURT OFFICER: Right this way,

1 please. I'm just going to ask that you stop
2 right there, face the clerk, and raise your right
3 hand, please.

4 THE CLERK: Do you swear and affirm that
5 the testimony you give here today will be the
6 truth and nothing but the truth so help you God?

7 MS. WAITE: Yes, I do.

8 STEPHANIE WAITE, SWORN

9 THE CLERK: Thank you.

10 THE COURT OFFICER: Right this way,
11 Ms. Waite.

12 Sit as close as you can to the
13 microphone.

14 THE WITNESS: Okay.

15 THE COURT OFFICER: Thank you.

16 THE COURT: Okay. Ms. Waite, before we
17 get started, I've been asking this of all the
18 witnesses, which is, and I'm sure -- you may or
19 may not -- I'm assuming you're familiar with the
20 inquest proceedings, given your work at the Crime
21 Lab.

22 These are supposed to be confidential
23 or investigatory proceedings where they're not
24 open to the public, so I can't order you not
25 to testify -- or not to talk about your testimony

1 -- and to the extent that you have to as it
2 relates to your performance of your job, that's
3 fine; but until the report is generated I'd just
4 ask that you not discuss it generally, your
5 testimony in general, okay.

6 THE WITNESS: Okay. I understand.

7 MR. VAN EPPS: Thank you.

8 EXAMINATION

9 BY MR. VAN EPPS:

10 Q. Good morning, Ms. Waite.

11 Can we have your full name and could you
12 spell it for our court reporter, please?

13 A. Stephanie Waite, S-T-E-P-H-A-N-I-E W-A-I-T-E.

14 Q. And are you employed, Ms. Waite?

15 A. Yes, I am.

16 Q. By whom?

17 A. The Massachusetts State Police crime
18 laboratory.

19 Q. In what capacity?

20 A. I'm a forensic scientist in the crime scene
21 response and criminal statistics units.

22 Q. How long have you held that position?

23 A. Approximately 14 years.

24 Q. Do you have any experience or training as it
25 pertains to trying to identify residue from

1 gunshots?

2 A. Yes, I do.

3 Q. All right. Tell me about that training and
4 experience?

5 A. When I was training as the initial part of my
6 job, I went through a module for GSR or gunshot
7 residue.

8 I am in that module. I process several
9 known standards, some question items, write
10 protocols, and took a competency test.

11 Q. And how often have you had to do tests
12 pertaining to gunshot residue in your career?

13 A. I have done 15 cases plus five PTs.

14 Q. Have you ever testified about it before?

15 A. Yes, I have.

16 Q. In what courts?

17 A. I don't remember exactly which courts, but
18 I've done that five times.

19 Q. And can you tell us what is gunshot residue?

20 A. Gunshot residue is the cloud of gunpowder
21 particles and copper and lead residues that
22 escape from a firearm when a projectile is shot
23 out of it.

24 Q. Okay. So when the -- when the firearm is
25 fired and the -- the cartridge usually has some

1 kind of gunpowder on it -- the primer -- that
2 ignites, pushes the bullet out and this stuff
3 basically spews out of the front of the firearm?

4 A. The front and then also any other openings.

5 Q. Okay. And are there tests that you can
6 detect the presence of those things --

7 A. Yes.

8 Q. -- when they land on clothing, things likes
9 that?

10 A. Yes, I can.

11 Q. All right. Were you asked to do some gunshot
12 residue testing pertaining to the death of
13 Brendan Reilly and an investigation of that?

14 A. Yes, I was.

15 Q. What type of testing were you asked to
16 perform?

17 A. I did what's called the Griess test for
18 distance determination on a pair of shorts and on
19 a T-shirt.

20 Q. Okay. Can you explain to Judge Brennan the
21 methodology of that test?

22 A. So, in order to do that test, I will first
23 look at the garment to identify where there are
24 potential holes.

25 I do this both with my naked eye and then

1 also I have a microscope to assist me in that.

2 And then, once I identify the holes, I
3 will make notes about the presence of any sort of
4 particulate I see around it, any permanent
5 residue, things of that nature.

6 And then I'll perform the actual chemical
7 test, which, as I said before was the Griess
8 test.

9 And that includes taking a piece of paper
10 that has chemicals impregnated in it and putting
11 that on the holes, ironing over it, and seeing
12 what sort of color change happens on the paper.

13 Q. And did you do that with clothing for
14 Mr. Reilly?

15 A. Yes, I did.

16 Q. And where was that clothing obtained from by
17 the State Police?

18 A. I believe it came off his person. I wasn't
19 there when it was collected.

20 Q. Okay. You understand it was collected from
21 the medical examiner?

22 A. Yes.

23 Q. Okay. So what did you observe during this
24 first part of the testing you did with respect to
25 testing the clothes?

1 A. I started with the shorts, and I saw that
2 there was 26 holes in various locations on the
3 shorts that I tested.

4 Q. Okay. And before we get too far afield, did
5 you ultimately do a report documenting testing
6 done in this case?

7 A. Yes, I did.

8 Q. Is what I've handed you that report?

9 I'm sorry, I think I gave you a
10 double-sided one. Let me give you a single-sided
11 one.

12 There you go.

13 A. Yes, this is a copy of my report.

14 Q. Okay.

15 MR. VAN EPPS: I would offer this as the
16 next exhibit.

17 THE CLERK: It will be Exhibit 54.

18 (Exhibit No. 54, Stephanie Waite's report,
19 was received into evidence.)

20 BY MR. VAN EPPS:

21 Q. And do you have a copy of that in your notes
22 that you brought with you?

23 A. Yes, I do.

24 Q. Okay. You can refer to that since it's
25 been -- we have a copy in evidence.

1 Tell us about your observations at this
2 part of the test.

3 A. So, with the shorts, I found that there were
4 five separate areas of holes.

5 One was on the front of the right leg; one
6 was on the front of the left leg; there was one
7 on the back of the right leg; one in the center
8 back just under the waistband; and then one in
9 the back of the left leg.

10 Q. Okay. Thank you.

11 What observations did you make from
12 testing the areas around this?

13 A. The test results showed the positive -- it
14 was a positive result, so nitrates were present.

15 Q. Okay. And what does that indicate in your
16 training and experience?

17 A. There is gunshot residue present in those
18 areas.

19 Q. Okay. And that just means that some of it
20 landed on the clothes from whatever firearm was
21 discharged; is that right?

22 A. Correct.

23 Q. Okay. What was the next step of the testing
24 that you did?

25 A. The next thing I did was to process the

1 T-shirt in the same manner.

2 Q. Okay. In the same manner.

3 And your observations were what?

4 A. For the T-shirt, there was four specific
5 single holes; and then there was an another area
6 that had several -- seven additional holes that I
7 tested those areas.

8 Q. Okay. And your observations?

9 A. My observations?

10 I had positive results, again, nitrates were
11 present in all of the areas tested.

12 Q. Okay. The -- the -- so that, again, just
13 indicates that some amount of gunshot residue
14 landed on those clothes?

15 A. Correct.

16 Q. Okay. Did you then do further testing to
17 attempt to determine if you could figure out the
18 distance those clothes were from whatever gun
19 discharged that -- those nitrates that landed on
20 the clothes?

21 A. Yes, I did.

22 Q. How did you do that?

23 A. I went to our lab in Springfield, the FIS
24 Unit.

25 The Firearms Identification Unit out there

1 to, did a series of test-fires for me at known
2 distances using the firearm used in this case.

3 Q. Okay. And is there a -- why is it important
4 to use the firearm that was actually believed to
5 be used and discharge the gunshot residue in the
6 first place, why is it important to use that same
7 gun?

8 A. Because every firearm will have a distant --
9 pardon me, a different muzzle-to-target distance,
10 so using the one actually part of the case would
11 be the most accurate results.

12 Q. Okay. And what's the -- the apparatus or the
13 setup they used to -- to do the test-firing of
14 that gun as part of this test?

15 A. In Springfield, they have a room where they
16 do their test-fires.

17 There's a water tank that they shoot into;
18 and, to the front of that water tank, I attached
19 a piece of cardboard that had a piece of white
20 fabric on it.

21 And then the actual firearm that FIS
22 handles is on -- it's essentially a big metal
23 sled, I guess you could call it, and they can --
24 it has wheels so they can move it at very
25 specific distances from that target that I have

1 put up in front of the tank.

2 Q. Okay. And then the apparatus, or the sled,
3 has some way to fire the firearm?

4 A. Correct.

5 Q. Okay. And then -- so doing that you then do
6 a series of shots at this fabric and then examine
7 whether there's anything on the fabric?

8 A. That's correct.

9 Q. And tell us what you were able to observe?

10 A. So we did known test-fires at distances of
11 48 to 108 inches -- there were six all
12 together -- and I had positive results on five of
13 the six of them.

14 So nitrates were detected up to 108
15 inches, which is 9 feet.

16 Q. So does that mean that the -- the firearm in
17 question can -- would -- was discharging nitrates
18 up to 9 feet?

19 A. At least 9 feet, yes.

20 Q. Why is 108 inches or 9 feet, why is that the
21 limit of what you were able to observe in your
22 testing?

23 A. The physical space allowance in the room with
24 the test-fires only allows us to you get 108
25 inches away and then we hit the wall, literally

1 hit a wall.

2 Q. Okay. And so, based on your testing, were
3 you able to draw any inferences or -- or -- or
4 conclusions about the distance between -- between
5 the gun that fired those shots and the -- the
6 clothes you tested that had been -- the gunshot
7 residue on it in the first place?

8 A. For the T-shirt, there were three holes that
9 I do have a conclusion on.

10 Q. What are those conclusions?

11 A. The holes are the two in the chest and then
12 the one in the front abdomen.

13 And the conclusion is that those holes
14 were created within the muzzle-to-target distance
15 of the firearm; and the muzzle-to-target distance
16 is, as I said before I couldn't go passed 108
17 inches, so it's at least 108 inches.

18 Q. All right. So at -- at some point up to
19 9 feet and possibly further, but you're limited
20 by the testing facility you have; is that right?

21 A. That's correct.

22 Q. And just so I -- just so I understand what
23 you're saying about 9 feet, does it mean -- can
24 you tell where within the 9 feet the muzzle was
25 compared to the clothes that ultimately had the

1 powder on it -- the nitrate powder?

2 A. No, I cannot.

3 Q. Okay. You're just -- you're able just to say
4 it's that 9 feet and -- and, due to the limits of
5 the testing facility, potentially could be
6 further?

7 A. That's correct.

8 Q. And since we're talking about 9 feet, it
9 could be closer than 9 feet, if I understand?

10 A. It could be.

11 Q. Okay. So it could be three, four, five or --
12 or up to nine?

13 A. Correct.

14 Q. The -- you're aware that there's some
15 involvement of bean bag (indiscernible) in this
16 case; is that right?

17 A. Yes, I am.

18 Q. Okay. A bean bag is discharged by a
19 shotgun -- would a shotgun firing those bean bags
20 also produce gunshot residue?

21 A. Yes.

22 There is a similar mechanism, however, we
23 don't have a validated method at the lab for
24 using bean bags, so I couldn't make any
25 conclusions with any of the potential bean bag

1 holes.

2 MR. VAN EPPS: I have nothing further,
3 Judge.

4 EXAMINATION

5 BY MR. HEINEMAN:

6 Q. Just on that, the propellant in the bean bag
7 round or the soft -- the Soft Socks [sic] is
8 this propellant the same as would be found in a
9 9 millimeter cartridge?

10 A. That is outside my area of expertise.

11 Q. Okay. And with respect to -- the only thing
12 that you were able to -- the only thing that was
13 positive were nitrates, not any other metals that
14 would have made up the round, the live rounds --
15 I should say the -- the 9 millimeter rounds?

16 A. The only testing I did was for nitrates.

17 Q. Okay.

18 A. So that could -- lead and copper testing I
19 did not perform for this case.

20 Q. Okay. All right. And each -- and those
21 rounds are made up of lead and copper jacketing,
22 correct?

23 A. They could be. I'm not sure of the
24 specific --

25 Q. Okay.

1 A. -- ammunition for this case.

2 Q. All right.

3 EXAMINATION

4 BY MR. MCDONALD:

5 Q. Did the State Police or the district
6 Attorney's Office provide to you the shotguns
7 that were used to fire the bean bags so you could
8 test how far out they expelled nitrates?

9 A. The shotgun was never submitted to the lab.

10 Q. So they never gave either of the two shotguns
11 to you?

12 A. I wasn't even aware there was two.

13 Q. So it's possible that all the nitrates you're
14 seeing on the front and back of Mr. Reilly could
15 have come from some weapon other than the one
16 weapon that the DA provided to you or that the
17 State Police provided to you, correct?

18 A. So the three holes that I made a conclusion
19 on, those were where the projectiles from the
20 firearm were removed by the OCME. Everything
21 else is inconclusive.

22 Q. All right. And, although I think it's clear
23 because Mr. Van Epps went and asked about 3 feet
24 and 4 feet, you can't tell whether that shell was
25 fired from 10 feet or 11 feet or 12 feet?

1 A. Correct.

2 Q. Thank you.

3 THE COURT: Anything else?

4 MR. VAN EPPS: Just a second, your Honor.

5 Nothing further, Judge.

6 THE COURT: Thank you very much.

7 THE WITNESS: You're welcome.

8 (Witness excused.)

9 MR. VAN EPPS: Let's have Paul
10 Cunningham.

11 THE COURT OFFICER: Stop right here, and
12 raise your right hand.

13 THE CLERK: Sir, do you swear and affirm
14 that the testimony you give here today will be
15 the truth and nothing but the truth so help you
16 God?

17 MR. CUNNINGHAM: I do.

18 PAUL CUNNINGHAM, SWORN

19 THE CLERK: Thank you.

20 THE COURT OFFICER: Right this way, sir.

21 THE COURT: Good morning, Mr. Cunningham.

22 Before we get started -- I've been doing
23 this with all the witnesses -- which is basically
24 to give you a little -- you may have some
25 familiarity with this with talking with the DA's

1 office, but this is an inquest proceeding which
2 is a closed proceeding. It's not open to the
3 public.

4 The findings at some point will more or
5 less public, but your testimony and the testimony
6 of the other witnesses is not something that's
7 available to the general public.

8 And we actually have a closed courtroom
9 and only certain identified people are allowed in
10 the room and that's it.

11 But -- so my purpose in saying that is I
12 can't order you not to talk about your testimony,
13 but what I'd ask is that until the report is
14 generated, until I generate the report at some
15 point down the road, you do not discuss your
16 testimony in public.

17 THE WITNESS: I understand.

18 THE COURT: Thank you.

19 EXAMINATION

20 BY MS. GEMMILL:

21 Q. Good morning, sir.

22 A. Did morning.

23 Q. Could you tell us your first and last name
24 and spell them both for the Court?

25 A. Paul, P-A-U-L, Cunningham,

1 C-U-N-N-I-N-G-H-A-M.

2 Q. How old are you as you sit here today?

3 A. I'm 60 years old.

4 Q. Can you tell us your date of birth?

5 A. 7/19/62.

6 Q. Sir, do you currently work?

7 A. Yes.

8 Q. What do you do to work?

9 A. I'm with a software startup company.

10 Q. A software startup company?

11 A. Yes.

12 Q. What is your role in that?

13 A. I'm chief business officer.

14 Q. Where do you currently live?

15 A. I live in Lexington.

16 Q. And what's your address?

17 A. 31 Thoreau Road.

18 Q. How long have you lived at 31 Thoreau Road?

19 A. About 11 years.

20 Q. And did you live anywhere else in Lexington
21 before going to that address?

22 A. Yes.

23 I lived on (indiscernible).

24 Q. How long did you live in (indiscernible)?

25 A. I lived there about eight years.

1 Q. Okay. So fair to say you're pretty familiar
2 with Lexington?

3 A. Yes.

4 Q. Are you familiar with the rotary area around
5 North Hancock Street and Hancock Street and
6 Burlington --

7 A. Yes.

8 Q. -- Burlington Street?

9 A. Yes.

10 Q. Do you drive through that area regularly?

11 A. Fair -- fairly regular, yes.

12 Q. What sort of activities take you through that
13 rotary?

14 A. Coming back from Bedford and also my son
15 attended school over in Concord, so we'd come
16 back that way sometimes.

17 And then as I, you know, come off
18 490 -- sorry, 128 North, I'd frequently exit and
19 come back to my home that way.

20 Q. I'm going to turn your attention now to
21 Saturday, February 12th of 2022.

22 On that particular day did you have
23 occasion to drive in the area of that rotary
24 around midday?

25 A. I did.

1 Q. Do you recall why you were in the area of the
2 rotary?

3 Where were you going?

4 A. Returning -- I was running to my home coming
5 off of 128 North.

6 Q. Were you with anyone else?

7 A. I was with my daughter.

8 Q. How old is your daughter?

9 A. She's 19.

10 Q. Okay. What road do you take to enter that
11 rotary?

12 A. I believe it's -- the road there as you come
13 up to the Mobil station is North Hancock Street.

14 Q. Okay. And what would your path be to get
15 home from that rotary area?

16 A. My path would be to proceed down North
17 Hancock Street, come to the rotary, go to my
18 right, which I think that becomes Hancock at that
19 point, I believe, and then proceed up towards
20 Coolidge -- Coolidge Ave. I believe it is; I take
21 a left on Coolidge Ave., and then I would come to
22 I believe it's Adam Street, I take a left on Adam
23 Street and then take a right on E Street and then
24 a left on I believe it's East Emerson and then a
25 right on Thoreau --

1 Q. Okay.

2 A. -- I would come to my home.

3 Q. So on that particular day you get off of 128,
4 do you find yourself on North Hancock Street?

5 A. Yes.

6 Q. Okay. Did something interesting happen as
7 you were traveling towards the rotary on North
8 Hancock Street?

9 A. Yes.

10 So I was proceeding down the hill towards
11 the rotary and I -- I noticed a woman with a dog
12 and she was waving me to slow down and --

13 Q. Did you recognize that woman?

14 A. I did not, no.

15 Q. So what -- what did you do when this woman
16 was directing you to slow down?

17 A. Well I -- I pro -- I continued to move
18 towards the -- the rotary.

19 I was kind of wondering why she was
20 telling me to do that because I wasn't speeding.

21 I'm familiar with that rotary and I know
22 you have to be going slowly as you approach it
23 because of the way cars come from the top of the
24 rotary, it's pretty -- there's not a lot of
25 distance there.

1 So I proceeded down the hill towards the
2 rotary. I kind of was -- as I drove by her, I
3 kind of looked at her.

4 And then I turned to my left to, you know,
5 to merge onto the rotary as I normally do when I
6 saw a police officer with a gun trained --
7 pointing, yes.

8 Q. Okay. I'm going to show you a map of the
9 rotary area. I'll give you a marker.

10 Do you recognize this map I'm showing you
11 of the rotary area and North Hancock Street?

12 A. Yes.

13 Q. Okay. Can you just initial for us the spot
14 on the map where you first noticed the police
15 officers, like where were you when you first
16 noticed the police officer?

17 A. Yeah, I was -- I was probably right around
18 here.

19 Q. Okay. Can you put your little initials
20 there?

21 A. Okay. All right.

22 Q. Okay. And where did you notice the police
23 officer -- sorry, was it more than one police
24 officer?

25 A. I -- I just looked at one, but I sensed there

1 as more than one.

2 But I didn't look at more than one, I just
3 sort of sensed there was more people there, but I
4 just looked at one.

5 Q. Okay. Can you put a No. 1 in the approximate
6 area where you noticed that police officer
7 standing?

8 A. All right. And, you know, I'm not exactly
9 sure, you know, where he was.

10 I know he was sort of in between me and as
11 I looked out to my left, so probably maybe --
12 maybe around here or so.

13 Q. Okay. That's kind of towards the area of
14 Burlington -- Burlington Street?

15 A. Yes.

16 Q. Okay.

17 A. Yes. Yes.

18 Q. Okay. And you could hold on to that for just
19 a second.

20 A. Okay.

21 Q. Okay. So what did you notice about that
22 police officer, you said he had something trained
23 on someone?

24 A. Yeah, he had a pistol -- I thought it was a
25 pistol pointed.

1 Q. Okay. So it looked like the police officer
2 was holding a pistol?

3 A. Yes.

4 Q. Did you see where he was pointing that --
5 that object?

6 A. No.

7 I just noticed he was pointing the pistol,
8 and I proceeded to exit towards where I wanted to
9 go.

10 Q. Okay. Did you see anybody else besides the
11 police officer at that point?

12 A. Not -- not directly until I started to
13 proceed towards the Hancock Street because I
14 want -- you know, my first inclination was this
15 isn't a place I want to be; proceeded towards
16 Hancock Street.

17 And I was going to -- as I was doing that
18 I did kind of glance to my -- to my left.

19 And that's when I noticed someone in the
20 road on their back with a what appeared to be a
21 knife.

22 Q. Did you have a sense of about how far into
23 the rotary you drove before you noticed the man?

24 A. Um...

25 Q. And if you could mark on the map for us with

1 your initials again about where you were?

2 A. Yeah. I mean, what I -- what I noticed --
3 what I remember in my mind is that I noticed that
4 I was probably pretty close to, you know, around
5 here when I noticed where -- looking back and the
6 person was sort of up in this area I thought.

7 Q. Can you draw a little -- and you're drawing a
8 little X in the area where the man was?

9 A. The man was, yeah, to my -- to my
10 recollection because as I -- as I looked I
11 remember he was sort of in this direction from
12 me.

13 You know, I wasn't -- it wasn't in this
14 direction closer to where I first exited; it was
15 more as I pulled onto Hancock I noticed, you
16 know, he was sort of in -- in this direction of
17 Burlington Street from me.

18 Q. Okay.

19 A. So I was sort of here.

20 Q. So, for the record, where you're marking
21 you've put your initials almost to Hancock Street
22 in the rotary?

23 A. Yes.

24 Q. And you're looking up to your left up towards
25 Burlington you've made an X in Burlington -- the

1 Burlington Street road there?

2 A. Correct.

3 Q. In the approximate area where you saw a man?

4 A. Correct.

5 Q. Okay. At the time you saw the man did you
6 see any other police officers?

7 A. I didn't look at any other police officers.
8 I just -- at that point it was all happening very
9 quickly.

10 I just -- I saw the man, I saw the
11 wielding and -- and then I just left.

12 I -- yeah, I didn't look at any other
13 police officers.

14 Q. Do you recall still seeing the first police
15 officer that you noticed?

16 A. Yes.

17 Q. All right. What was the police officer you
18 noticed doing?

19 A. Just standing there pointing.

20 Q. Pointing that same...

21 A. Just pointing -- yeah, and that's all I
22 remember.

23 Q. Had the police officer moved to a different
24 location from where you first noticed him?

25 A. I didn't see him after I first saw him and

1 then I proceeded towards Hancock and I didn't
2 notice him again.

3 Q. Okay. I'm going to take that map from you
4 and ask that this be introduced as our next
5 exhibit.

6 Thank you.

7 THE CLERK: That will be Exhibit 55.

8 (Exhibit No. 55, Paul Cunningham's map,
9 was received into evidence.)

10 MS. GEMMILL: Thank you.

11 BY MS. GEMMILL:

12 Q. Do you have a sense about how long you
13 watched as you got into the like, area, around
14 Hancock and you look up at the man, how long are
15 you there for?

16 A. A few seconds.

17 Q. When you noticed the man can you tell us
18 whether he was sitting down, standing up, how was
19 he positioned?

20 A. I seem to recall he was on his back, flat on
21 his back, kind of making a waving motion.

22 Q. Okay. And you're lifting your right hand up
23 that's sort of like a chopping motion --

24 A. Right.

25 Q. -- with your arm.

1 Can you describe for us what you were
2 seeing the man doing with that -- was it his
3 right arm?

4 A. I -- I -- to be honest with you I can't
5 remember whether it was his right or his left
6 now. I can't remember exactly which one it was.

7 But I -- but I do seem to recall him on
8 his back making -- you know, thrashing and making
9 kind of a chopping motion with some kind of, you
10 know, knife or something --

11 Q. Okay.

12 A. -- is what it appeared to me.

13 Q. Did it appear he had an object in that hand?

14 A. Yes.

15 Q. All right. And I think you said it appeared
16 to be a knife?

17 A. I -- I thought that's what it was.

18 Q. Did you have a sense of how -- how large that
19 object was?

20 A. It appeared to be rather large; but I was,
21 you know, a pretty good distance away, so...

22 Q. While this was happening do you remember
23 hearing any sounds?

24 A. I heard no sounds.

25 Q. Did you have your car windows rolled up?

1 A. I had them rolled up.

2 Q. Do you remember if there was anything --
3 music playing in your car or anything like that?

4 A. I'm certain there was or -- or talk radio,
5 but I don't know -- I can't remember what I was
6 listening to, but I will always have something on
7 in the car, so.

8 Q. Okay. And, to be clear, the first time you
9 slow down and you look to your left to see a
10 police officer, did you hear any sounds at that
11 point?

12 A. I did not.

13 Q. Could you tell anything about the demeanor of
14 the man who was on the ground with -- waving his
15 arm?

16 Like, could you tell anything about his
17 mood?

18 A. I -- I couldn't tell anything about his mood.
19 I mean, obviously, he was in some distress.

20 You know, again, I just saw the -- the
21 thrashing and the waving and -- and I exited --
22 and I left the area, so.

23 Q. Do you have any idea about how far away the
24 police officer was from the man on the ground?

25 A. He was good a distance away. He wasn't very

1 close, as I recall.

2 I -- I don't remember seeing -- again, I
3 don't remember seeing that police officer again
4 when I saw the man, okay.

5 But what I remember when I was first in
6 that exit and I first noticed the police officer,
7 the police officer was probably 20 yards or so
8 from me, 15 yards -- 15, 20 yards from me or
9 something around there.

10 But he did not -- I didn't notice the two
11 at the same time when I looked.

12 I just noticed the police officer; and
13 then I exited towards the street, towards Hancock
14 and then I remember seeing the man, and then I
15 just left.

16 Q. And what made you drive away?

17 Why did you leave?

18 A. A bad scene and not interested in hanging
19 around when officers have guns out, the like,
20 yeah.

21 Q. Did you see more than one officer with a gun?

22 A. I did not see -- again --

23 THE COURT: I think he said he didn't see
24 any other police officers, but had the sense that
25 somebody else was there.

1 A. I had a sense it was like a semicircle, but I
2 don't -- I didn't like -- I remember seeing the
3 one officer.

4 I remember sensing a semicircle, but I
5 didn't look at any of the people that might be in
6 that semicircle.

7 I'm just telling you what my --

8 Q. Okay.

9 A. -- brain is telling me.

10 Q. And you knew that there were more people, but
11 not specifics.

12 A. Yeah, that was my sense that there were --
13 there were -- there may have been officers in a
14 semicircle is what I sensed, but then I just
15 looked at the one closely.

16 And then when I went to leave to proceed
17 towards Hancock Street, again, I looked at -- at
18 the man on the -- on the ground.

19 I didn't look at any other police officers
20 at that point.

21 What -- what I did -- then what happened
22 was as I got onto Hancock what I noticed was
23 there was a gentleman with a car parked on the
24 right side, like they were from Hancock, had
25 stopped their car prior to going into that

1 rotary; and then there was a gentleman standing
2 behind the car, and that's what kind of caught my
3 attention at that point and then I -- I just left
4 the area.

5 Q. Did you notice anything about that -- that
6 gentleman?

7 Did he appear to be in uniform or anything
8 like that?

9 A. No. I don't -- I didn't -- I didn't -- it
10 wasn't a police car, to my recollection.

11 I thought it was just a -- I don't know
12 whether it was an unmarked car or if it was just
13 a citizen. I didn't know.

14 I mean, I just -- I just remember seeing a
15 car there and a gentleman behind it -- kind of
16 behind the car, and then I left the area.

17 Q. Do you remember talking to a police officer
18 from Lexington about what you saw?

19 A. Yes.

20 Q. And do you remember giving a description of
21 sort of the -- the way that the person on the
22 ground was moving that knife?

23 A. Yes.

24 Q. What -- what is your recollection?

25 A. It was aggressive.

1 He was moving it very aggressively and
2 very, you know, thrashing, hard is what I recall.

3 MS. GEMMILL: One moment.

4 MS. GEMMILL: Thank you so much,
5 Mr. Cunningham. I don't have any further
6 questions for you.

7 Other folks might.

8 THE WITNESS: Okay.

9 MR. HEINEMAN: Nothing.

10 THE COURT: That's all, sir.

11 Thank you very much.

12 THE WITNESS: Okay.

13 (Witness excused.)

14 MR. VAN EPPS: We're going to offer the
15 Lexington police interview report for Paul
16 Cunningham as the next exhibit.

17 THE CLERK: That will be marked as
18 Exhibit 56.

19 (Exhibit No. 56, Paul Cunningham report,
20 was received into evidence.)

21 MR. VAN EPPS: Can we have Rabbi New.

22 THE COURT OFFICER: Stop right there;
23 raise your right hand.

24 THE CLERK: Do you swear and affirm that
25 the testimony you give here today will be the

1 truth and nothing but the truth so help you God?

2 MR. NEW: I do.

3 ISRAEL NEW, SWORN

4 THE CLERK: Thank you.

5 THE COURT OFFICER: Right this way.

6 THE COURT: And, Rabbi, before we get
7 started, I've been doing this with all the
8 witnesses.

9 I just let them know this inquest is a
10 closed proceeding. It is not open to the public.

11 It is supposed to be confidential until a
12 report is generated -- until I generate a report.

13 I can't order you not to talk about your
14 testimony, and I get that you have family members
15 that were involved, at least as far as being
16 witnesses; but I just ask that you not talk about
17 your testimony publicly, all right.

18 THE WITNESS: Okay.

19 EXAMINATION

20 BY MR. VAN EPPS:

21 Q. Good morning, sir.

22 A. Good morning.

23 Q. Could we have your name and could you spell
24 it for our court reporter?

25 A. Sure.

1 Israel, I-S-R-A-E-L; last name New, N-E-W.
2 Q. Okay. And what do you do for a living, sir?
3 A. I'm a rabbi.
4 Q. Are you a rabbi at the Chabad Center at
5 9 Burlington Street --
6 A. I am.
7 Q. -- in Lexington?
8 A. Yeah.
9 Q. Okay. Do you live there as well?
10 A. Not at the center. I live a few doors down
11 on (indiscernible) Road.
12 Q. And are you familiar with -- how long have
13 you lived at that house a few doors down?
14 A. Since February --
15 (Person Sneezes.)
16 A. -- bless you -- since February of 2020.
17 Q. Okay. And are you related to Rabbi Bukiet?
18 A. I am. He's my father-in-law.
19 Q. Okay. And what about -- well, are you
20 familiar with the house 98 Hancock Street that is
21 sort of diagonally across the rotary?
22 A. I am.
23 Q. Okay. How are you familiar with it, just
24 from living there?
25 A. Yeah.

1 Q. Living nearby, okay.

2 On Saturday, February 12th of this year
3 were you at 9 Burlington Street?

4 A. I was.

5 Q. Okay. And were there services going on that
6 morning, religious services?

7 A. Um-hum. Yeah.

8 Q. Okay. Around what time did they conclude or
9 wrap up?

10 A. So the religious services are broke into two
11 parts.

12 You have the actual service. And then
13 after people stay for what's called a Kiddush,
14 which is like a meal after.

15 So concluded, again, I don't remember
16 exactly, but typically around 12:30 most weeks;
17 between 12:00 and 1:00 depending.

18 Q. And did there come a time where you were
19 walking outside that -- that house when you heard
20 something unusual --

21 A. Yes.

22 Q. -- (indiscernible)?

23 A. So actually when I was coming out of the
24 house and the center are the same address, so I
25 was coming out of the sanctuary, the synagogue.

1 Q. Okay. So what did you hear?

2 A. So we heard a commotion.

3 Like, it sounded like people were --
4 raised voices.

5 Q. And when you say "we," who were you with?

6 A. I was with another brother-in-law of mine who
7 was visiting from New York for the weekend.

8 Q. Okay. You heard raised voices.

9 Could you make out the words?

10 A. No.

11 Q. Okay. In terms of them being raised, could
12 you tell anything about the tone or the demeanor
13 of the voices?

14 A. So not specifically, but I do remember that
15 my bother-in-law commented he says -- he said it
16 sounds like there are people who are arguing or
17 people are discussing.

18 I said, No, it's in Lexington. It's
19 probably just over a football game or something.

20 Q. And did you hear anything else unusual at
21 about that time?

22 A. No.

23 Q. So what did you do -- you've heard these
24 raised voices.

25 Then what do you do?

1 A. So, because there was no calls for concern,
2 we just continued to leave the parking lot to get
3 on to the street when we saw on the left -- we
4 came out; and on the left-hand side there was the
5 events transpiring with, you know, policemen
6 and -- and another man, a male there.

7 Q. Okay. Can you tell me how many policemen you
8 saw?

9 A. So, again, it's been a while, but I believe
10 it was five all together, four or five.

11 Q. What did you see being done?

12 A. So they were basically -- it appeared to be
13 deescalating a situation that there somebody was
14 standing there holding a knife and that they were
15 trying to deal with that.

16 Q. What I want to do is I'm going to show you a
17 map and see if we can figure out where you were
18 watching from and where approximately they were,
19 all right.

20 A. Okay.

21 Q. I'm going to hand you a Magic Marker and a
22 map.

23 A. Okay.

24 Q. So if you can put -- take a second to look at
25 that to get oriented.

1 What I'd like you to do is put your
2 initials where you think you were standing, and
3 if you can sort of indicate with numbers the
4 police officers --

5 A. So the problem is it's not on the map because
6 this is the house; the center is right here,
7 which I was standing right here.

8 Q. Okay. So you're over here?

9 A. Yes.

10 Q. Okay.

11 A. I mean, that's where our parking lot is.

12 Q. Okay. So you're -- you're looking this way?

13 A. Yes.

14 I came out on the left hand -- there's two
15 entrances, so I was on the left-hand one, yes.

16 Q. Okay. So why don't we do this, why don't we
17 just draw an arrow that you're looking this way.

18 Is that -- would you agree with that?

19 A. Yeah.

20 Q. More or less?

21 A. Yeah, more or less.

22 Q. Okay. And then if you could use the marker
23 and try to draw where the officers were?

24 A. Could you be more -- could you explain it a
25 little bit better what you mean?

1 Like, where on the street they were?

2 Q. So you're looking, and where do you see them?

3 A. So they're over here, meaning it's really
4 over here; but for the intent -- all intents and
5 purposes, over here on the street.

6 They were -- I was seeing them --

7 Q. Um-hum.

8 A. -- this male was -- his back and side was to
9 me, so he was backing up --

10 Q. Um-hum.

11 A. -- and they were -- like he kept on going
12 forward, backward, forward, backward; but at this
13 particular stage I didn't really see so much on
14 this side because the second I saw that something
15 was going on, I took a glance, saw that there
16 was, you know, police involved and actually went
17 back into the parking lot because the first
18 assumption was, you know, God forbid he does
19 something to the synagogue to make sure, and that
20 was what happened there.

21 Q. Okay.

22 A. Does that make sense?

23 Q. Yes.

24 A. Okay.

25 Q. So then what happened, you go back and check

1 the synagogue?

2 A. Correct, to make sure, but, like, quickly
3 because -- and then I came back over here, and I
4 was standing right here.

5 Q. Okay. So why don't you put your initials
6 there.

7 A. Okay. So this is the front door of -- you
8 met Rabbi Bukiet.

9 So he's right -- this is his -- the
10 residence that he stays in, so front door was
11 right there.

12 Q. Okay.

13 A. That's where we were standing.

14 Q. All right. And I'm just going to mark this
15 so we have -- we have the map as the exhibit?

16 THE CLERK: Marked as Exhibit 57.

17 (Exhibit No. 57, Rabbi Israel New map, was
18 received into evidence.)

19 BY MR. VAN EPPS:

20 Q. That's fine. Okay. So you got Exhibit 57
21 here; we've got this arrow indicating that you're
22 sort of looking this way at the crosswalk area
23 and -- and where Blake and Burlington kind of
24 join and detour the rotary?

25 A. Correct.

1 So, but, again, just -- I just want to
2 make clear originally --

3 Q. Yes.

4 A. -- or when --

5 Q. Originally.

6 A. Originally.

7 So it was further than Blake because the
8 parking lot is (indiscernible), so it would be
9 after Blake --

10 Q. All right.

11 A. -- in reality.

12 Q. So it's over here?

13 A. Correct.

14 Q. So it's off of (indiscernible)?

15 A. Absolutely, yeah.

16 Q. Okay. You see this, you go -- you see police
17 officers and a man; you go to check on the
18 synagogue, you come back, and you end up where
19 you've indicated in --

20 A. Correct.

21 Q. -- in front of 9 Burlington?

22 A. It's right over here there's a gate, if you
23 can see.

24 Q. Yeah.

25 A. Come from there, so I came out this way to

1 right over there to see what was going on.

2 Q. All right. So at that point what did you
3 see?

4 A. So at that point the -- again, it had
5 been -- I don't know how many seconds or minutes
6 had elapsed since the original scene, going to
7 the synagogue, coming go back there; but then I
8 see at this stage there was a number of policemen
9 who were like in a semicircle, if you will.

10 Q. Um-hum.

11 A. And there was a man holding a knife like
12 swaying, like, you know -- and there was one
13 police man standing behind, I think it was, let's
14 say four, maybe in that circle; there was one
15 behind.

16 And he was like -- he was the one doing
17 the talking.

18 Q. A couple of minutes ago when we were talking
19 about your initial view of the police where you
20 said it was kind of off the map --

21 A. Yeah.

22 Q. -- you described, if I understood you, the
23 police and a man and kind of a back-and-forth
24 movement?

25 A. Correct.

1 Q. Can you elaborate on what you mean by
2 back-and-forth movement?

3 A. What I meant to say is that he -- the guy
4 wasn't being still, so he kept on moving and the
5 police were readjusting to all those movements.

6 Q. When you're initially watching, again, this
7 is before you go through and end up on the front
8 of the property, could you make out what was
9 being said --

10 A. No.

11 Q. -- by anybody?

12 A. I mean, like, I would have to maybe think
13 about it to remember, but, no, I'm not...

14 Q. You couldn't make out words?

15 A. I could hear meaning -- but, again, it was in
16 the moment, so it wasn't like a specific, so not
17 really.

18 It was more my immediate concern was
19 what's going on? Is there a response that's
20 needed from us at the center?

21 Q. And to check your --

22 A. The congregants, exactly.

23 Q. -- the synagogue.

24 At that point -- a minute ago you
25 described later seeing a man and you actually

1 raised your hand and gestured as if you had an
2 imaginary knife.

3 When you initially watched, when you
4 initially saw could you observe the man's hands?

5 A. Yes.

6 Q. And what did you observe?

7 A. He was holding -- he was holding a knife.

8 Q. How was he holding the knife?

9 A. So another thing because, like, the movement
10 had changed, but it was definitely in a -- in
11 a -- like holding like that, if you will.

12 Q. All right. So you --

13 A. It was -- I'm pretty clear, I don't remember
14 like that, it was like that.

15 THE COURT: So just for the record it's
16 an overhand grip?

17 THE WITNESS: Yeah.

18 THE COURT: Overhand grip?

19 THE WITNESS: Correct. Yes.

20 BY MR. VAN EPPS:

21 Q. Sure.

22 And that's when you're initially watching.

23 And can you estimate how far the man was
24 from the police, understanding that they sort of
25 move back and forth?

1 A. A number of feet. I can't be specific more
2 than that.

3 Q. All right. So this -- you've heard the
4 raised voices; you saw this, this led you to go
5 check the folks at the synagogue, you end up in
6 the front of the property.

7 Now what are you observing?

8 A. So at this stage, like I said, I want to move
9 back -- so from your exhibit they've now move
10 towards the rotary.

11 Q. Okay.

12 A. So they were basically going between the
13 opening where the driveway was --

14 Q. Um-hum.

15 A. -- to in between -- like where you saw Blake
16 is, that is where it was, but they basically
17 stayed in the line of vision from the house
18 virtually the whole time.

19 Q. Okay. So if I can have 57 back.

20 I don't want to put words in your mouth,
21 but --

22 A. Yep.

23 Q. -- if I understand you, you're watching from
24 off the map, you're watching and --

25 A. You are saying originally?

1 Q. Originally?

2 A. Yep.

3 Q. They're sort of -- they're closer to Blake
4 and Burlington, the second time you watched them
5 they're -- they're closer to the crosswalk?

6 A. Exactly. Literally right where it says
7 Burlington, it would be right around there.

8 Q. Okay. All right. Can you describe the
9 position of the police officers?

10 Were they -- I think you described it
11 earlier a little bit, but were there in a line, a
12 semicircle?

13 A. No, like, a semicircle around.

14 Q. Okay.

15 A. Like -- I mean, I can show you, but I think
16 it's pretty self-explanatory. I'm saying he was
17 on the right-hand side --

18 Q. Um-hum.

19 A. -- the male; and then the police were on the
20 left typically, like, in a semicircle, obviously
21 facing, him.

22 And, like I said, there was one always
23 standing a little bit back and he was the one
24 that I was able to hear what they were actually
25 saying at that stage.

1 Q. Okay. And how -- the police, they're in a
2 semicircle, how far were they from each other?

3 A. From each other?

4 Q. How were they spaced out?

5 A. Yeah. I mean, I have to think about that. I
6 mean, close. Not like shoulder to shoulder, but
7 like close.

8 Enough that there was, like, free
9 movement, but that there wasn't, you know, gaps
10 in their ranks, I suppose.

11 Q. Could you observe whether they were holding
12 anything?

13 A. Yes.

14 They were -- there were weapons drawn.

15 Q. Did you -- do you recall what they looked
16 like?

17 A. Sure.

18 So in the beginning, they were yellow,
19 like a -- and then like you could -- there was a
20 TASER shot, so I just assumed it was a TASER gun.

21 Now I don't remember exactly then -- well,
22 not all of them were holding; like, maybe two of
23 them were holding a weapon, meaning that -- that
24 TASER gun and I don't remember the -- you know,
25 it's blurry who was holding what.

1 There was -- definitely everyone was drawn
2 with a weapon.

3 Q. And you described earlier that there was one
4 officer who appeared to be doing more talking?

5 A. Absolutely.

6 Q. Could you observe what that officer was
7 holding?

8 A. What he was holding?

9 Q. Yes.

10 A. So I believe he wasn't holding anything.

11 Q. Okay. And he's doing more of the talking,
12 he's talking to the man with the knife?

13 A. Yes.

14 Q. What is being said?

15 A. It seemed like he's trying to deescalate. He
16 was calling him by name, I believe Brandon or
17 Brendan, I don't remember, it was one of those
18 and he was saying Brendan just drop the knife.

19 We're not here to hurt you. There is
20 no -- we want to get you to your family.

21 Like, he was, again, just repeating it
22 again and again and then every so often when
23 there was a movement on the male's part, so then
24 obviously, like, as it readjusted, so some of the
25 other officers would be like, you know, stop, but

1 only words, not more talking just like -- but,
2 again, in reaction to a movement.

3 Q. So they would occasionally -- if there was --
4 if you saw the man move, they would occasionally
5 interject something else?

6 A. Correct. Exactly.

7 Q. What were they --

8 A. Like, Stop. Like, Just stay where you are or
9 like that.

10 Q. Okay. Can you remember the -- the coloring
11 of any of the weapons that the police were
12 holding?

13 A. Saying the yellow was definitely -- went
14 every time a TASER-like sound came out, but the
15 rest -- I mean, there was definitely proper guns,
16 black.

17 Q. So you described a sound from what you
18 thought was a TASER.

19 What would that sound sound like?

20 A. I can't -- like -- like it has that, you
21 know, it feels like -- the way it released is
22 like a spring, so you hear like the spring being
23 released, like a TASER.

24 Q. Okay. So you heard some -- so there's this
25 other noise -- there's this noise that you hear.

1 Did you hear that once, more than once?

2 A. No, it was a few times. Two, maybe three, I
3 would have to think, but it was definitely
4 multiple times.

5 Also it, like, it shoots with a cord, like
6 you can see.

7 Q. Do you remember when you were -- I think you
8 were originally interviewed by Trooper Quigley
9 back the day after this happened.

10 Do you remember meeting with him?

11 A. Yes.

12 It was in the middle of Sunday school, I
13 remember.

14 Q. Okay. Do you remember describing hearing
15 noises that to you sounded like a BB gun noises
16 or soft pops?

17 A. Later on.

18 Q. Okay. So they happened --

19 A. Yes.

20 Q. -- later?

21 A. Yes.

22 Q. Okay. As the officer is talking to the man
23 who's got the knife --

24 A. When you say "the officer," the one that was
25 standing behind?

1 Q. Yeah.

2 A. Yeah.

3 Q. As they're talking to him, is the man moving
4 and if so how?

5 A. So that's a very -- so he was very much not
6 still like majority of the time.

7 So it was, like, I guess, lumbering, if
8 you will, if that's an appropriate way, like
9 taking a step forward; taking a step back.

10 Like he wasn't consistent. It kept on,
11 like, changing. It moved. I think it appeared
12 maybe that -- yeah.

13 Q. And the officer who was doing most of the
14 talking, can you describe his tone and his
15 delivery, you know, the way he's talking?

16 A. In a very, very, like, pointedly relaxed not
17 trying to like scare -- there was no like cursing
18 or cussing.

19 It was just, like I said, Just drop the
20 knife, pleading, if you will.

21 Q. Could you observe the -- the man's face, the
22 man who was the holding the knife?

23 A. Yeah.

24 Q. What do you remember about his expression,
25 his -- his looks?

1 A. He looked, on one hand, angry; on the other
2 hand lost.

3 I would say more lost also.

4 Q. Could you tell where he was looking or -- or
5 in what direction he was looking?

6 A. Sort of glancing.

7 There was a few -- because it was a
8 semicircle, he kept on, like, looking at all of
9 them.

10 Q. So this is going on.

11 How long do you watch it before you go
12 back toward the house?

13 A. (Indiscernible) explain -- meaning?

14 Q. How long do you watch this part of the
15 incident?

16 A. I watched to, sadly, there was gunshots and
17 it was the end of the story.

18 Q. Okay. So describe how it unfolds from here.

19 A. So, like I said, we're sitting and we
20 were -- I mean, sitting -- we're standing at the
21 door there, we were watching, they kept on going
22 back and forth between -- you know, there was
23 Tasing and the male got, like, a little bit down,
24 but immediately popped back up.

25 Like, there was a never a time when he was

1 down, et cetera, he was always on his two feet,
2 and I'm now trying to remember what happened
3 after that.

4 Then eventually, like I said because of
5 that movement, one of the officers, I believe he
6 was all the way on the right of that semicircle,
7 was backing up and he slipped.

8 And then the male, like, leaned forward
9 into him and then there was, like I said, the
10 sounds I described to -- I believe you said
11 Trooper Quigley -- was like the sound of a
12 low-caliber, like, a BB gun kind of shot.

13 There was a number of them, I don't
14 remember exactly how many, and then the male was
15 on the floor and then very quickly there was
16 ambulances there, they were administering like --
17 there was like things -- then it was already --
18 you know like when you're caught in the moment
19 and you're watching, but then all of a sudden
20 when it was -- it felt like over so you kind of
21 snapped out and...

22 Q. I understand.

23 The -- the officer that slipped, did you
24 observe what that officer was carrying, if
25 anything?

1 A. I don't remember.

2 Q. And was he the officer doing most of the
3 talking or one of the other officers
4 occasionally --

5 A. No, one of the other officers.

6 Q. -- occasionally interjected?

7 A. Correct.

8 One of the other ones.

9 Q. So just describe him falling.

10 Can you give us a little bit more detail
11 as to -- in what way he fell and how he landed?

12 A. It seemed like -- like ice, so like it was
13 more of a slip than a fall, but he fell -- I
14 believe -- now I have to think because he was --
15 he very clearly falls, so he was moving
16 backwards, so, like, did he fall on the side,
17 like, his thigh or his knee? I don't remember
18 exactly. He was definitely down.

19 Q. Okay. And did that fall happen as he was
20 moving toward the man or back away from the man?

21 A. No, back away.

22 Q. And from where you're watching is this
23 officer basically backing up toward you?

24 A. Yes.

25 Q. When that happened, were you able to observe

1 whether anybody else was moving?

2 A. So after it was very quick.

3 From fall to that popping noise was like
4 in a matter of -- of, like, a moment.

5 So ask the question again, but just bear
6 that in mind.

7 Q. So -- yeah, the officer slips and falls
8 backing up it seems.

9 What other movements can you see between
10 them and the noises?

11 A. So the male definitely reached or lunged
12 forward, like slightly, meaning he was on that
13 direction, and then there was the multiple shots.

14 Q. From where you're watching, how far did that
15 man move forward?

16 A. It's hard to tell. I don't know, but def --
17 not that I saw it. I was a good 50 feet away, 40
18 feet away, however far it is.

19 Q. When he moved forward, were you able to
20 observe his face or his hands?

21 A. His face -- I -- I don't remember. I was --
22 I keep on flashing to my mind like what he was
23 wearing.

24 Q. What he was what?

25 A. What he was wearing.

1 Like, he was wearing like a white
2 undershirt, T-shirt.

3 It looked like his -- like you could see
4 the bottom of his belly. It was dirty.

5 It was more like it was that -- it was --
6 it wasn't -- you know what I'm saying, like
7 the(indiscernible), but I don't remember he was
8 holding a knife like this, I don't remember.

9 Q. So you don't remember if he was holding it
10 out in front of you?

11 A. I definitely saw the knife.

12 It was, like, the whole time the knife was
13 very visible.

14 Q. Okay. And when he moved forward, what
15 position was he in, meaning was he standing?
16 Seated? Crouched? Jumping?

17 A. No, he was very much stand -- he was
18 standing.

19 Q. Okay.

20 A. I'm exactly trying to remember was it in his
21 right hand or left hand? My mind is playing
22 tricks. I don't remember.

23 And, basically, as the officer slipped, he
24 was in that direction, so which means that he was
25 basically -- he was basically looking at me

1 directly on at that stage from where I was to
2 him.

3 Q. Okay. And where was the knife at that point?

4 A. I don't remember. I don't recall.

5 Q. But you were aware that he was still holding
6 it?

7 A. Yes.

8 Q. How many noises did you hear as this unfolds?

9 As he moves towards the officer, you
10 described as slipping, how many noises did you
11 hear?

12 A. You're saying has he -- has he moved forward
13 and lunged yet or not?

14 Q. The officer has slipped.

15 A. Yep.

16 Q. There's the forward movement that you
17 described.

18 A. Correct.

19 And then there was a number -- it was
20 definitely more than one.

21 I don't know if it was two, three, or,
22 four though. I don't remember. I can't recall
23 well enough.

24 Q. And what did the man with the knife do?

25 A. Just crumbled onto his back.

1 Q. All right. At this point are the officers
2 still speaking or giving instructions or -- or
3 what is -- what are they doing?

4 A. So right after that happened -- like I said,
5 it was very quick -- there was an ambulance that
6 was there, it must have been right there, very
7 quickly.

8 And they immediately -- there was someone
9 who immediately started -- I don't believe it was
10 a police officers, but I don't remember clearly,
11 someone started to do some kind of CPR.

12 Q. Um-hum.

13 A. And then very quickly was moved -- you know,
14 the body was moved to the ambulance where they
15 could -- I have no idea what happened inside, and
16 then there was a covering of the scene, but...

17 Q. The man with the knife, was this somebody you
18 had seen in the neighborhood before?

19 A. So I can't say specifically him, but one of
20 the, like, indicators of the -- that house over
21 there is that many times are people who are
22 smoking outside, which is rare, so I can't
23 remember specifically, you know, if it was him.
24 He didn't look unfamiliar, though. We've never
25 had any problems there.

1 MR. VAN EPPS: I don't have any more
2 questions, Judge.

3 I don't know if you can...

4 THE COURT: Mr. McDonald?

5 MR. MCDONALD: A couple, your Honor.

6 EXAMINATION

7 BY MR. MCDONALD:

8 Q. Rabbi, at some point you met with a trooper
9 from the State Police to talk about what you saw?

10 A. Um-hum.

11 Q. I'm reading from the statement that the
12 trooper prepared and he says he -- he notes that
13 you said, I really don't know what else the
14 officers could possibly have done to try to
15 prevent the situation from unfolding the way it
16 did.

17 Do you recall saying that?

18 A. I mean to -- yeah.

19 Q. And you believe that?

20 A. Yeah.

21 MR. MCDONALD: That's all I have.

22 Thank you.

23 THE COURT: Mr. Heineman.

24 EXAMINATION

25 BY MR. HEINEMAN:

1 Q. Good morning, Rabbi.

2 A. Good morning.

3 Q. I just want to try to get some sense of time.

4 A. Okay.

5 Q. From the moment you came out of services and
6 first heard something to the time the final
7 gunshots happened, are we talking -- can you
8 estimate that time for us?

9 A. I would say 15 to 20 minutes.

10 Q. So this went on for quite a period of time?

11 A. Yes.

12 Q. And during that period of time you've told us
13 your movements first from your initial
14 observations over by the driveway and then your
15 later observations from the front stoop or the
16 front area --

17 A. Correct.

18 Q. -- of the house?

19 While you were on the front -- I say front
20 stoop, I don't know if there's a stoop or not --
21 but in the front of the house your father-in-law
22 was there as well?

23 A. Yes.

24 Q. Well, I shouldn't put words in your mouth.

25 Where was your father-in-law?

1 A. What I'm saying is, like, so the front door
2 was there, as what was going on, like I said, it
3 was unfolding, so there was -- he was coming --
4 like, he was there; then he went in -- I wasn't
5 really concentrating on him so much, so I don't
6 know.

7 I wasn't watching his specific movements.

8 Q. Okay.

9 A. I'm also then at a stage I had a nephew,
10 like, had come out, so, like, I know that all of
11 a sudden there was movement behind to obviously
12 take, you know, back in because he shouldn't be
13 there.

14 Q. Right.

15 And so over this entire 15 minutes or so,
16 you never saw the man with the knife on his back
17 on the ground until he was shot?

18 A. I don't -- like, I'm trying to, but I don't
19 believe so.

20 Like I said, the only time there was
21 a -- besides the time when there was -- like
22 appeared that he was Tased, there was a falter,
23 like a little bit, but I never saw him down, no.

24 Q. So let's talk about the TASERS because you've
25 said that a couple of times and -- and I think

1 you told us that when a TASER is used, by your
2 understanding, that something shot out, wires
3 that you could see.

4 Could you see those wires that day?

5 A. So now all of a sudden you're telling me like
6 to specifically remember this and that, I
7 believe, so --

8 Q. Um-hum.

9 A. -- but, yeah, I definitely -- like hearing --
10 because I -- the DA was asking me, like, about
11 the different sounds.

12 It was a noticeably different sound it how
13 it was. Like the weapon looked different and the
14 sound looked different.

15 Q. And the sound -- I think you described this as
16 almost like an electrical type sound?

17 A. Something like that, yeah.

18 Q. And -- and you definitely heard that a couple
19 of times?

20 A. Correct. Yes.

21 Q. And when you would hear that -- in
22 conjunction with hearing that you would see the
23 man falter?

24 A. Correct.

25 Q. But never go all the way down to the ground --

1 A. No.

2 Q. -- and he never was seated on his rear end,
3 on his back for any extended period of time?

4 A. No.

5 Q. No, okay. Between the date of this incident
6 and today have you and your father-in-law and
7 your brother-in-law and nephews that all
8 witnessed parts of this talk about what you each
9 saw?

10 A. So I will do it individually.

11 So my nephew is now maybe five, six. Him
12 definitely not.

13 My father-in-law, we never really like
14 discussed the specifics of it, because obviously
15 it was more as in, like, the practical nature as
16 once one was interviewed, like, Oh, were you also
17 interviewed, like, Oh, you were served, were you
18 also -- like -- like that, but never going
19 through a specific -- and my brother-in-law
20 similar story, Eli.

21 Q. Eli, yeah.

22 A. I'm just making sure that we're talking about
23 you have the whole family tree.

24 Q. Thank you very much.

25 A. Okay.

1 MR. VAN EPPS: Nothing further.

2 THE COURT: Thank you, sir.

3 THE WITNESS: Okay.

4 (Witness excused.)

5 THE COURT: Careful. It's a little tight
6 back there.

7 THE WITNESS: No, it's fine.

8 MR. VAN EPPS: James Lane.

9 THE COURT OFFICER: Sir, you're just
10 going to stop right there; face the clerk, and
11 raise your right hand, please.

12 THE CLERK: Sir, do you swear and affirm
13 that the testimony you give here today will be
14 the truth and nothing but the truth so help you
15 God?

16 MR. LANE: I do.

17 JAMES LANE, SWORN

18 THE CLERK: Thank you.

19 THE COURT OFFICER: Right this way,
20 please. Just be careful getting in there. Just
21 sit as close as you can to the microphone.

22 THE WITNESS: Okay.

23 THE COURT OFFICER: Thank you.

24 THE COURT: Okay, Mr. Lane, before we get
25 started, I've been telling all of the

1 witnesses -- witnesses that testify the same
2 thing, which is this is an inquest proceeding,
3 which is basically an investigatory proceeding.

4 And at some point I'm going to have to
5 generate a report.

6 The proceedings are closed to the public
7 and the nature of the testimony and the other
8 things are supposed to be confidential. I can't
9 order you not to talk about your testimony, but
10 what I'd ask is that you not do so in a public
11 form.

12 THE WITNESS: Sure.

13 EXAMINATION

14 BY MS. GEMMILL:

15 Q. It's still morning for just a couple more
16 minutes.

17 Good morning, sir.

18 A. Good morning.

19 Can you hear that okay?

20 Q. Yes.

21 And you can always pull that microphone
22 closer to you?

23 A. Okay.

24 Q. Can you introduce yourself to the Court and
25 spell your first and last name for us?

1 A. Sure.

2 My name is Jim Lane, J-I-M L-A-N-E.

3 And what else, just -- that's it?

4 Q. Is Jim a nickname or?

5 A. Jim is a nickname, the formal name is James,
6 J-A-M-E-S.

7 Q. How old are you, sir?

8 A. I just turned 59.

9 Q. What is your date of birth?

10 A. 11/4/1963.

11 Q. Do you currently work?

12 A. I do.

13 Q. What do you do for work?

14 A. I work in finance for Thermo Fisher
15 Scientific.

16 Q. And what is your position in finance for
17 them?

18 A. It is the vice president of finance for
19 global business services.

20 Q. Do you currently live in Lexington?

21 A. I do.

22 Q. What is your address?

23 A. It's 6 Victory Garden Way, Lexington, 02420.

24 Q. And that's right on the rotary near Hamilton,
25 Victory Garden, Burlington, correct?

1 A. That's correct. My -- the side of my house
2 abuts Hancock Street; the back of it is the
3 street going into the middle school, which is
4 Diamond Middle School, and the corner of my
5 backyard abuts -- is right up against the rotary.

6 Q. How long have you lived at that home?

7 A. I've lived there ten years.

8 Q. Does anyone live there with you?

9 A. Yes.

10 So my wife, Abby; my daughter, Madeline,
11 and at the time last year was probably my other
12 daughter Carolyn.

13 Q. I'm going to turn your attention now to
14 Saturday, February 12th of 2022.

15 Were you home in the middle of the day on
16 that day?

17 A. I was.

18 Q. All right. Do you recall what you were doing
19 in the very early afternoon?

20 A. I was.

21 I was watching a basketball game in my
22 family room.

23 Q. Tell us about the layout of your house.

24 Like, where is your family room positioned
25 within the home?

1 A. So my family room is the -- the far end of
2 the family room -- the house is -- is vertical on
3 Victory Garden Way.

4 As you're looking at the house, you will
5 see the garage; behind the garage is my family
6 room, which abuts the -- Hancock Street.

7 And -- and that's the side of the -- the
8 back end of the family room where the fireplace
9 is, the back of it would face the backyard.

10 Q. Okay. Sir, I'm going to show you a map of
11 the area of the rotary here that has hopefully
12 6 Victory Garden Way on it.

13 A. Okay.

14 Q. Do you recognize the area of Lexington
15 depicted here?

16 A. Let me just get my bearings straight.

17 Q. Just look over to the right-hand side.

18 A. Okay. Yes, I do now.

19 Q. All right.

20 A. Yes.

21 Q. Do you see 6 Victory Garden Way --

22 A. I do.

23 Q. -- at the edge of the map?

24 A. I do. It's -- it's right over here to the
25 right. The tree is in the corner over toward the

1 rotary.

2 Q. Can you see the part of your home -- the
3 aerial view of the part of your home where your
4 windows look out towards the rotary?

5 A. Yes, I can see the deck.

6 The deck is in the -- off the kitchen,
7 which is, let's call it -- it's right next to the
8 family room; and the deck is -- is where, you
9 know, we -- we go in and out of the backyard.

10 Q. I'm going to mark this map as our next
11 exhibit and then I'll have some more questions
12 for you about it, okay?

13 A. Sure.

14 THE CLERK: For the record, that will be
15 Exhibit 58.

16 (Exhibit No. 58, James Lane map, was
17 received into evidence.)

18 MS. GEMMILL: Thank you.

19 BY MS. GEMMILL:

20 Q. Okay. So you're watching a basketball
21 game --

22 A. I am.

23 Q. -- is anyone else with you in the family
24 room?

25 A. Nobody was with me in the family room, no.

1 Q. Do you recall if anyone else in your family
2 was home?

3 A. Two -- two people were home.

4 My wife was upstairs, and my daughter was
5 upstairs and was -- had just come down when --
6 when the incident had started to occur.

7 Q. Okay. So you're sitting -- you're watching a
8 basketball game.

9 What do you notice? Something draw your
10 attention?

11 A. I heard a little bit of noise outside, a
12 little bit of ruckus outside.

13 I was focused on the basketball game at
14 the time; but, as I was sitting there, in -- and
15 I noticed my daughter was in the kitchen looking
16 out the back window and I heard what I thought
17 was -- it sounded like -- initially it sounded
18 like gunshots.

19 And I thought to myself was that a
20 gunshot, and I asked my daughter, and I heard my
21 wife upstairs say, you know, What are you guys
22 talking about?

23 And I hadn't said anything to my daughter
24 yet, so I said, Nothing.

25 And -- and then I could hear the ruckus

1 going on outside.

2 And then I realized that -- I looked at my
3 daughter and I said, Were those gunshots?

4 And she said, It sounded -- didn't sound
5 like a gunshot; it sounded more like a TASER.

6 And -- and that's when we determined
7 that -- because it was -- it was too rapid, the
8 noise that I heard coming out, so I said it's
9 probably -- it probably was a TASER and then I
10 proceeded to the window.

11 Q. Okay. So you start to hear a ruckus and some
12 of the sounds that you're hearing sounds like
13 some kind of a machine noise like a TASER.

14 Can you just describe that for us a little
15 bit what you were hearing?

16 A. Yes, I could because I couldn't exactly --
17 because the windows were all closed I could just
18 hear verbal altercations going back and forth, I
19 couldn't tell what they were saying at the time,
20 but then I would hear the pe, pe, pe, pe, and it
21 was very rapid and -- and then, you know, I would
22 hear the -- the yelling again.

23 But I had just heard that once while I
24 inside -- inside the house at that time. I
25 hadn't even made it to the kitchen yet.

1 Q. Okay. So you can hear voices yelling?

2 A. Yes.

3 Q. Do you hear more than one voice at that
4 point, could you tell?

5 A. I mean, it sounded like more than one voice.

6 I -- I just imagined it was more than one
7 voice, of course, because I wouldn't -- I
8 wouldn't think one individual would be screaming
9 out there, but I could tell it was more than one
10 voice, yes.

11 Q. Could you make out any words just at that
12 first time when you're hearing this ruckus?

13 A. No, because I was little too far away from --
14 I was in the family room, I was not near the
15 kitchen with the -- with the door, so I could
16 just hear, you know, people screaming loud.

17 I couldn't exactly tell what they were
18 saying, the first time I heard it.

19 Q. Okay. So you go into the kitchen?

20 A. Yeah.

21 Q. Your daughter is in the kitchen too, correct?

22 A. Yes.

23 Q. All right. What does -- does the kitchen
24 have any windows?

25 A. The kitchen has -- the -- the -- the place

1 that looks over the deck has three main windows
2 and it's a full -- full window from top to bottom
3 with one of them being a slider -- sliding door
4 to the deck.

5 Q. Okay. And is that something you can look out
6 of?

7 A. Yes.

8 Q. All right. Does that sliding door -- is it
9 something you could walk out of too?

10 A. Yes.

11 Q. All right. So tell us -- tell us what you
12 do?

13 Do you actually look out of that slider?

14 A. I look out of the slider.

15 I see through the -- through the window a
16 gentleman on the ground, and I see a police car.

17 And -- and then I see what appears to be
18 at the time, because I was looking at their back,
19 police -- a couple of police people surrounding
20 this particular individual that was on the
21 ground.

22 And -- and then at the same time I think
23 Diamond school was letting out, so a couple of
24 cars were coming by at the time this was going on
25 as well.

1 Q. Sir, do you stay looking out of that slider
2 window for a period of time?

3 A. I did.

4 The rest of the time I stood at -- at one
5 point I walked -- I opened the slider, and I
6 walked through my backyard and I was at my fence,
7 which is, you know, a three -- a three-level
8 fence.

9 And I was watching what was going on
10 within 20 yards, 30 yards maybe, probably not
11 even 30.

12 It's probably only 40 yards from my
13 backyard, it was probably 10 yards from -- 10 to
14 15 from where I was.

15 Q. I'm going to give you back Exhibit 58, which
16 is our map that has your house on it.

17 A. Okay.

18 Q. I'm going to ask, sir, if you can please put
19 your initials and a No. 1 next to the kitchen
20 area on your home where you were first watching,
21 and then if you can put your initials and a
22 No. 2 in the spot where you moved to to keep
23 watching?

24 A. Okay. So this is one, and two would be
25 right -- approximately right around here.

1 I can't really see it, my two, but I'll
2 put my initials right there. I need a new pen, I
3 think.

4 Q. Oh, hold on. I'm going to get you a new
5 marker --

6 A. Okay.

7 Q. -- because this one seems like it's running
8 out.

9 All right, try this fresh marker.

10 A. Okay. So one is here. Two would be right
11 around here.

12 Q. Okay. Now on this map, Exhibit 58, here
13 there's -- it looks like there's a lot of leaves
14 on your trees in your backyard area.

15 Do you see that?

16 A. That's right. I do.

17 Q. At this time of year what's going on with
18 those trees?

19 A. So there's only one leafed -- actual leafed
20 tree, and it's quite large that, resides in my
21 backyard.

22 So there are no leaves on any of the trees
23 that are behind my yard right at this time of
24 year nor are there leaves on that main tree
25 that's in my backyard.

1 These are primarily pine trees, and this
2 time of year they shed a lot -- a lot of their
3 needles and they have been for quite some time
4 because they don't get a lot of sun.

5 So near the bottoms of the trees you'll
6 notice that they're -- they're quite bare, to the
7 point where we've tried to plant some trees,
8 which are very immature trees to my less -- lower
9 than my knee that -- to -- to block the view of
10 the traffic and that particular rotary.

11 Q. So when you're standing in your kitchen
12 looking out of the slider, how does your view
13 toward the rotary?

14 A. I can -- I can see the cars going up and down
15 the school to Diamond.

16 I can see the traffic in the mornings all
17 throughout the rotary.

18 And I can -- from my window I could
19 probably name the type of car that is going by
20 quite easily.

21 Q. And how about once you move to sort of the
22 fenced area at the edge of your backyard?

23 A. By the edge of the backyard I have a very,
24 very good view of anything that's happening in
25 that particular area.

1 Q. Okay. So while you -- when you're first
2 looking out of the window of your slider, can you
3 describe for us what you're seeing?

4 A. Sure.

5 Q. I know you've gone over it a little bit,
6 but...

7 A. Sure.

8 So I look at my house as probably -- I'm
9 saying 5:00, with the rotary being a clock.

10 The -- the closest to my house on Hancock
11 Street would be 6:00.

12 My house is at 5:00. There was an
13 individual that was sitting at probably 3:00 in
14 the street.

15 Q. Can you make a little X for us with a
16 No. 1 --

17 A. Sure.

18 Q. -- in the spot where you first saw the man
19 sitting in the street.

20 A. I think he was right about -- right about
21 here, which would be -- if this is 12, this is
22 three, six, nine, so he was there, so I was
23 relatively close to -- to what was happening,
24 within probably 10 feet right there.

25 And so the gentleman by this time

1 was -- he had been -- I had -- I had heard
2 another Tase while I was by my door going on.

3 And he had attempted to run and that
4 brought him down pretty quickly, so he didn't get
5 far.

6 By the time I got over to the fence, he
7 was -- he was in a let's call it a crab-walking
8 position; and -- and the officers were -- and
9 it's either Brandon or Brendan -- Brandon, or
10 Brendan, put the knife down, put the knife down
11 and he would try to get a little closer to the
12 officers. I don't know how many there were.

13 There were more than -- there were more
14 than three there at the time, probably three to
15 four.

16 And he would -- he would so call crab-walk
17 toward them and they would all back up, so they
18 would try to keep a relative distance from him
19 and while -- at one point while I was standing
20 there shortly after he had gotten up to run one
21 more time while I was there.

22 He got up quick and started to run toward
23 Burlington Street and the -- I think it's bean
24 bags is what they are, the bean bags and the legs
25 had taken him down pretty quickly.

1 So he hadn't gotten far. He continued to
2 be on his -- on his hands, and let's call it
3 legs, almost with his buttocks on the ground with
4 what appeared to be a knife in his hand.

5 And the officers continue to say, Put the
6 knife down. We want to get you back to your
7 family. Everything is going to be all right.

8 And -- and it just continued to escalate
9 from there. He was not happy. He -- you'll have
10 to excuse my language -- said at one point he
11 said he was angry with the officers; he said, I'm
12 going to fucking kill everybody here.

13 And then he said to the officer, I'm going
14 to kill you.

15 And so I was -- I -- at that point I felt
16 it had escalated to a point that I probably
17 shouldn't be that close.

18 So I slowly but surely walked back a
19 little ways, maybe another 10 feet back towards
20 my house, continued to watch the escalation and
21 the -- the police officers try to calm Brendan or
22 Brandon down and it wasn't -- it was just -- it
23 just continued to escalate.

24 And he was -- he was not happy, he was
25 quite angry, and was quite -- and continued to

1 say, I'm going to fucking kill you.

2 Q. Okay. So you see the man; he's down on the
3 ground --

4 A. Yes.

5 Q. -- at one point.

6 He gets back up; he runs, and he does --
7 and he eventually gets back down on the ground
8 pretty quickly; is that right?

9 A. Pretty quickly, yeah.

10 Q. Can you draw for us another X with a No. 2 in
11 the area where he falls down again?

12 A. I think it was probably -- probably around
13 here.

14 Q. Okay. So the first mark you made for us with
15 the X and the No. 1 is kind of in front of the
16 crosswalk that's on the road that goes to Diamond
17 and then --

18 A. Yes.

19 Q. -- the second area sort of in front of the --
20 like in the middle of the rotary, kind of right
21 in front of Burlington Street --

22 A. That's correct.

23 Q. -- is that correct?

24 A. That's correct.

25 Q. Okay. Is that the approximate area where the

1 man stays?

2 Does he move further into Burlington
3 Street?

4 A. He did not move further into Burlington
5 Street at that time.

6 He -- that's where he had tried to go
7 initially, but they -- they had stopped him with
8 the bean bags.

9 And at that time I had ventured back into
10 my -- into my backyard to watch what was going to
11 happen after the threats that occurred.

12 Q. Can you draw for us little circles with one,
13 two, and three, and four of where you saw the
14 police officers during that second time once --
15 once --

16 A. Sure.

17 Q. -- once Brendan is down the second area.

18 A. So there was little circles, okay.

19 So there was one, two, there was three --
20 this two may have been up here a little more --
21 and I think there was probably let's just call it
22 four right now, it was four.

23 So you got one, two, three, and four.

24 Q. Okay.

25 A. And this gentleman may have been over here

1 just a little ways.

2 Q. So kind of around Brendan in a semicircle?

3 A. That's right.

4 Q. And with one officer further to, like, kind
5 of behind him a little bit?

6 A. There were other officers over here in
7 the -- between -- at the front of the -- North
8 Hancock, so there may have been a couple officers
9 over around here and I -- I couldn't tell if
10 there was any behind here.

11 Q. Okay. So those three officers were closest
12 to Brendan?

13 A. Yes.

14 Q. Can you see them holding anything?

15 A. The officers?

16 Q. Yes.

17 A. No, I could not see them -- I mean, there was
18 one gentleman, I should say, that I -- I believe
19 had the -- the bean bag gun.

20 Q. Okay. Can you describe for us what that
21 looked like to you?

22 A. I -- I -- I didn't pay a whole lot of
23 attention it.

24 I want to say the bags were maybe -- maybe
25 orangish, and it looked more like a -- kind of

1 like a rifle that the bags had come out of.

2 But, again, I didn't -- I didn't pay close
3 attention to that because while I was -- yeah.

4 Q. Can you describe for us the physical
5 appearance of the man who was the on the
6 ground --

7 A. Yes.

8 Q. -- that they were calling Brendan?

9 A. He had shorts on. He had a T-shirt on. It
10 was quite cold out, so I was surprised. It was a
11 sunny day, though.

12 And I -- I can't even remember if he had
13 shoes on or not to be honest with you. But he
14 had shorts on and -- and a T-shirt.

15 Q. Okay. Did you notice anything else about his
16 physical size or anything like that?

17 A. Yes.

18 He was -- he was a large gentleman. It
19 appeared, I think I had said, mid to late 30s at
20 the time.

21 He wasn't obese; he was just -- he was
22 just a big gentleman.

23 Q. Had you have seen him before?

24 A. I had never seen him before.

25 Q. All right. Can you describe what his

1 demeanor was like as he was saying the words you
2 were telling us earlier?

3 A. He was extremely angry and -- and yelling, I
4 would say, at the top of his lungs at that --
5 while -- while I was out there you could really
6 hear it.

7 You could hear it while I was in my house
8 with the doors closed as well.

9 You could hear the officers telling him to
10 put the knife down also, but not -- they
11 weren't -- they weren't yelling from anger
12 standpoint unless he approached them too close;
13 they said to get back.

14 Q. You could hear the officers telling him put
15 the knife down.

16 Could you see a knife?

17 A. I could see -- I could see an object in his
18 hand, but his hands were primarily behind him the
19 whole time.

20 Q. And you kind of like have a crouch --

21 A. Yes.

22 Q. -- (indiscernible)?

23 A. And he was in a crouched position like that,
24 so he had the, what appeared to be the knife
25 because I --- I heard the officers continue to

1 say put the knife down.

2 So I could see an object in his hands, I
3 couldn't -- I assumed it was a knife, given --
4 given what they were saying.

5 But, again, it was -- it was kind of
6 behind him from my view because the -- his hands
7 were holding him up and giving him leverage to
8 continue to move.

9 Q. Could you tell which hand he was holding the
10 object in?

11 A. You know, I -- I -- I want to say it was his
12 right hand because I didn't get a great view of
13 it.

14 And I could view his left hand a little
15 bit better.

16 And so I want -- I want to say it was in
17 his right hand, but I could -- I could -- I --
18 you know, I could be wrong there, but I want to
19 say it was in his right hand.

20 Q. From your advantage point, what direction is
21 this man facing?

22 A. He was facing my house, my backyard at --
23 for -- for quite a -- quite a lot of time
24 and -- and then when he -- because that's the
25 officers that were addressing him.

1 When he turned to the left while he was at
2 3:00 I could then see the right side of his face
3 and he was facing the street that went to Diamond
4 Middle School at one point at -- at the very end
5 is what he was doing.

6 Q. You mentioned that he was down on the ground,
7 and it appeared that he was sometimes trying to
8 get up --

9 A. Yes.

10 Q. -- is that correct?

11 Did you notice any physical reaction from
12 the police officers around him when he would try
13 to move?

14 A. When he would try to get closer to them, they
15 backed up and told him to put the knife down and
16 told him not to -- not to get any closer.

17 And so, I mean, the action of the police
18 officers at that time would be to back up and try
19 to calm the situation down and keep the distance
20 between themselves and the gentleman with the
21 knife.

22 Q. As you were watching, did you hear any more
23 of those pop, pop, pop, sounds like the TASER
24 sounds you were describing?

25 A. I mean, I -- I -- I -- while I was watching

1 I, I heard one and I saw him get up.

2 While I was out there, it happened one
3 more time and -- and I was pretty close to that.

4 And afterward -- I think that was probably
5 the third time I had heard it -- once while I was
6 in the house, once with the door open, once while
7 I was in -- in, you know, at the fence, and
8 then -- and I didn't -- don't recall hearing
9 anything after that.

10 Q. Do you remember seeing any reaction from the
11 man on the -- from the man at the time you were
12 hearing the pop sounds?

13 A. Absolutely.

14 I -- I mean, he was -- he would become
15 quite angry when -- when you heard the pop sounds
16 because he wasn't -- I'm not sure where he had
17 intended to go, but they wanted to keep him on
18 the ground, that was pretty clear.

19 So when he got up to -- to run, they would
20 hit him with the bean bags, and that would
21 agitate him quite a bit.

22 Q. Okay. Would the bean bag -- did it have any
23 physical affect on him, like, making him fall
24 down or stumbling or anything like that?

25 A. It would bring him to the ground.

1 Q. Okay.

2 A. It -- it appeared that it was -- it was
3 hitting him in the legs.

4 Q. You mentioned hearing the police officers
5 talking to him.

6 Did it appear to be one police officer
7 talking or more than one police officer talking?

8 A. I mean, it appeared to be primarily one; but
9 it was also, as he would approach a different
10 officer, I think they would become a little bit
11 verbal as well.

12 But I recall primarily one officer talking
13 to him quite a bit.

14 Q. Could you tell which one of the officers it
15 was who was doing most of the talking?

16 You can tell us by number if you --

17 A. I want to say it was number -- No. 2 or 3
18 doing most of the talking --

19 Q. Okay.

20 A. -- I believe.

21 But, I mean, it also could have been
22 No. 1 and I just -- I -- you know, I was -- I was
23 a little far away; and their backs were to me, so
24 I couldn't really tell which one was -- was --
25 was talking the most.

1 Q. What was the tone of voice of the officer
2 who's doing most of the talking?

3 A. I would say when -- when Brendan or Brandon
4 was calm, the tone was -- was very, you know, Put
5 the knife down. We want to reunite you with your
6 family.

7 It was more calming than when Brandon or
8 Brendan approached the officers because that's
9 when they said -- they continually said, Put the
10 knife down, but they got a little bit more, I'd
11 say, vocal as he approached them.

12 Q. Okay. All right. So you start to back away
13 a bit.

14 What happens as you are leaving like
15 you're going to go back home?

16 What do you notice?

17 A. So I went back after he threatened everybody
18 there and -- and the particular -- and the
19 particular officer that he was facing, it would
20 probably be number -- No. 1 or 2 at that time --
21 No. 1.

22 And so I went back into my house and
23 watched the rest of it with the door open and at
24 the -- at the kitchen table.

25 And as he continued to move while his

1 hands were on the ground and his feet were on the
2 ground, he -- he continued to get closer to the
3 officers and that's when they started, you know,
4 yelling at him, Put the knife down, put the knife
5 down.

6 And one of the officers, because the
7 gentleman with the knife was moving toward them,
8 I -- I believe he -- it was -- there was ice out'
9 and he either hit the curb as he was backing up
10 or he hit an ice patch on the curb -- one of the
11 two -- but he went down really quick and things
12 escalated.

13 And I -- I -- as soon as he went down I
14 said to my daughter, I said, Oh. My gosh the guy
15 is down.

16 And at that moment Brandon or Brendan, the
17 gentleman with the knife, got up immediately and
18 went after the gentleman that had just fallen --

19 Q. Okay.

20 A. -- and -- go ahead.

21 Q. Okay. Which one of the police officers in
22 your drawing was the one who fell?

23 A. I want to say it was No. 2.

24 And there was probably somebody over -- I
25 want to say it was No. 2.

1 No. 2, I think -- No. 2 or No. 3 had
2 fallen. I can't -- I can't remember if No. 2 had
3 moved closer to No. 1 at the time, but let's just
4 say No. 2 had fallen and -- and he had gone down
5 really quickly.

6 Q. Did you notice a size difference from any of
7 the police officers, like, between each other?

8 A. I didn't notice a size difference between --
9 of the police officers to be honest.

10 Q. Okay. So you see one of the police officers
11 slip.

12 What direction does he fall?

13 A. He fell backyard.

14 Q. Okay. And where was Brendan at the time that
15 he fell -- as he's falling?

16 A. Brendan was approaching him with -- as he was
17 crab-walking, which is why the officer was
18 walking backward.

19 And, as he was approaching him, and they
20 were telling him to put the knife down and -- and
21 to back off, that officer, who's backing up from
22 him, had fallen down right on his back.

23 Q. Did you have -- did you have a sense of how
24 close Brendan was to the officer who fell at the
25 moment of the fall?

1 A. He was -- they usually try to keep a distance
2 of, I want to say -- and this is me guessing --
3 10 to 15 feet.

4 At this time when he was approaching him,
5 Brendan -- or the gentleman -- the police officer
6 fell, I would say Brendan was closer than -- he
7 was probably 6 to 7 feet away from him, 5 to 7
8 feet away --

9 Q. Okay.

10 A. -- at that time when he -- when he started to
11 get up.

12 Q. So you see him start to get up.

13 Does he actually get to his feet?

14 A. He got to his feet.

15 Q. Okay.

16 A. He did.

17 Q. Can you --

18 A. I don't know if he stood straight up, but
19 he got -- he definitely got up to his feet and
20 was -- was lunging that way toward the officer
21 had started...

22 Q. Could you see what he was doing with his
23 hands?

24 A. Well, initially he was -- he quickly got off
25 the ground, and what I -- what I saw was an arm

1 go up in the air.

2 Q. You're raising your right arm?

3 A. I assume -- yeah.

4 I'm pretty sure it was his right arm up in
5 the air.

6 And I thought -- and I looked at my
7 daughter, Oh, my gosh, he's going to -- he's
8 going to -- he's going to kill him.

9 And then I heard pop, pop, pop.

10 Q. Okay. And when you say, He's going to kill
11 him, who did you think was going to kill who?

12 A. I thought the gentleman with the knife was
13 going to -- was going to stab the officer.

14 Q. At that point could you see that the object
15 in his hand was a knife?

16 A. I couldn't tell if it was a knife because I
17 was probably 40 yards back, but I could see an
18 object in his hand.

19 Q. Okay. And you had heard the word "knife" at
20 some point, correct?

21 A. I heard the word knife a number of times.

22 Q. You said that he was making a lunging
23 movement.

24 Did he actually move forward --

25 A. He did.

1 Q. -- towards the officer?

2 A. He absolutely got off the ground and -- and
3 lunged toward the officer.

4 THE COURT: Why don't we -- why don't we
5 just recover the exhibit.

6 MS. GEMMILL: Before we fold it.

7 I'll take that.

8 THE WITNESS: Oh, I'm sorry.

9 THE COURT: That's okay.

10 MS. GEMMILL: Thank you.

11 THE WITNESS: Sure.

12 MS. GEMMILL: Returning Exhibit 58
13 to you.

14 THE COURT: Thank you.

15 MS. GEMMILL: There may be some minor
16 creases, though.

17 THE COURT: That's all right.

18 BY MS. GEMMILL:

19 Q. Did he make any progress as far as, like,
20 closing that gap?

21 A. Well, I mean, from a -- if you -- if you
22 think of his entire body he made -- he made
23 almost a full body's progress toward him because
24 his feet were -- he -- he got passed -- probably
25 passed his feet and maybe one step forward toward

1 the officer as he -- as he got up.

2 Q. So about how close would you say he got to
3 the officer before you heard the pop sound?

4 A. I'd say he was within -- he was probably
5 within 5 feet of him, maybe even a little bit
6 closer by the time -- you know, if he would have
7 fallen he -- he would have been really close to
8 being on top of the officer.

9 Q. Okay. So if he -- if he had fallen from that
10 last moment you see him he would have landed on
11 the police officer who was on the ground?

12 A. I think so, yes.

13 Q. Okay. Did the police officer stay -- was he
14 still on the ground at the time Brendan was
15 making this movement?

16 A. Yes, he was.

17 Q. Okay. The sound that you heard, what did
18 that sound like as compared to the bean bag
19 sounds you were hearing before?

20 A. It was completely different. It was -- these
21 were pops -- pop, pop, pop.

22 The -- the bean bags were more of cha,
23 cha, cha, cha, cha, just rapid --

24 Q. Okay.

25 A. -- rapid fire, not nearly as loud.

1 Q. Okay. Could you see whether or not there was
2 a reaction from the man at the time that -- that
3 those popping sounds were fired?

4 A. The man?

5 Q. The man with the knife, Brendan.

6 A. He fell -- he fell backward.

7 Q. Okay.

8 A. Down and then backward is what he did.

9 So I could not tell where the -- where --
10 where the gunfire came from.

11 Q. Did it sound like a gunfire to you?

12 A. Absolutely.

13 Q. Are you familiar with the sound of gunshots?

14 A. I mean, I -- I -- I'm not 100 percent
15 familiar, but I've shot guns before, so.

16 Q. How many did you hear?

17 A. Three.

18 Q. Did Brendan get up again after that last
19 round?

20 A. No, he did not.

21 Q. Could you see whether or not he still had an
22 object in his hand when he fell to the ground?

23 A. They continued to tell him to drop the knife
24 while he was down and then -- and they -- they
25 said that several times, and then they moved in

1 and did CPR because he either dropped the knife
2 or they found -- they felt that he wasn't capable
3 of using it.

4 Q. At what point did you stop watching?

5 A. Oh, I watched until they gave him CPR and
6 watched all through that.

7 I watched them put him in the ambulance.

8 I watched them put the tape around the
9 crime scene.

10 So I was watching for a while after that
11 as to what -- what they were going to do. I
12 watched the ambulance drive -- the ambulance
13 drive off as well.

14 Q. Could you tell which -- where -- where the
15 shots came from that were fired?

16 A. I could not.

17 The only thing I could think of is
18 and -- and, again, I don't know how people react
19 when they get shot.

20 I just felt as if though -- if he was
21 lunging forward they may have come from Officer
22 No. 3, unless there was another officer I didn't
23 see behind officer or closer -- closer to Officer
24 No. 2.

25 Q. Okay. Did it appear to be coming from an

1 officer other than the officer who fell as far as
2 you could tell?

3 A. Yes, because the officer -- it happened too
4 quick.

5 There was no -- he did not -- I did not
6 see any guns in his hand. He didn't have any
7 guns.

8 Most of the officers did not have guns
9 in -- you know, pulled, so he would have had to
10 -- after he fell and it happened so quick there's
11 no way he would have been able to pull a gun and
12 point it at -- at Brendan or Brandon.

13 Q. Did you see that officer with one of the bean
14 bag rifles?

15 A. No.

16 MS. GEMMILL: Okay. Mr. Lane, I don't
17 have any further questions for you at this time,
18 but other folks may have.

19 Thank you so much.

20 THE WITNESS: Okay.

21 THE COURT: Mr. McDonald?

22 MR. MCDONALD: No questions.

23 THE COURT: Mr. Heineman?

24 MR. HEINEMAN: Yes. Graham, can I have
25 the statement?

1 MR. VAN EPPS: Oh, yes.

2 MS. GEMMILL: And we can go ahead and
3 offer that the -- if you want.

4 MR. HEINEMAN: Sure.

5 THE CLERK: This will be marked as
6 Exhibit No. 59.

7 (Exhibit No. 59, James Lane report, was
8 received into evidence.)

9 MR. HEINEMAN: Thank you.

10 May I approach, your Honor?

11 THE COURT: Yes.

12 EXAMINATION

13 BY MR. HEINEMAN:

14 Q. Mr. Lane, my name is Mike Heineman.

15 We haven't met before, have we?

16 A. Hi, Mike.

17 No, we haven't.

18 Q. That's a report that was prepared by some
19 police officer of his meeting with you and your
20 wife, Patricia.

21 A. Yep.

22 Q. Could you just read that all to yourself, and
23 let me know when you're done.

24 A. I've read it.

25 Q. When did you last read it?

1 A. A couple of days ago.

2 Q. And how did you get it?

3 A. I asked for it.

4 Q. So you know in the statement there's not a
5 single mention of bean bags, right?

6 A. Right. You hear TASERS.

7 Q. Right.

8 A. Yes.

9 Q. And there's no mention of a bean bag gun?

10 A. Right.

11 Q. Who was it that told you this concept of bean
12 bags and bean bags guns?

13 A. Well, when I -- I asked the officers because
14 I had -- I had also walked out toward the --
15 indicating that I witnessed what -- everything
16 that happened, including the -- the Tasing and
17 stuff like that and they said it's not TASERS,
18 it's bean bags.

19 Q. So at the time when you saw it you were
20 thinking TASERS and it was only after the police
21 officers told you that there's bean bags that you
22 now in your mind are thinking bean bags and
23 saying bean bag guns?

24 A. That's correct.

25 And -- and I believe I saw a -- at one

1 point I said I had that I had seen the -- I was
2 out there when -- when the bean bags came out, so
3 I also witnessed that as well.

4 Q. And the police when they interviewed you your
5 wife Patricia was present too, right?

6 A. She was.

7 Q. They didn't separate you?

8 A. She wasn't with me the whole time, but she
9 witnessed -- but she was right there with me the
10 whole time when we were -- when we were watching
11 this.

12 As a matter of fact, she walked out there
13 with me at one point too.

14 Q. So your wife was out in the backyard, too?

15 A. She walked out, but she didn't go -- she
16 didn't go as close as I did, she went back in
17 house.

18 Q. Okay. How about your daughter, you mentioned
19 that at the last moments you turned -- I think
20 you said, I turned to my daughter and said, Oh,
21 my God he's going to kill him or words to that
22 effect?

23 A. That's correct.

24 Q. Was your daughter right there with you as
25 well?

1 A. The whole time.

2 Q. And she wasn't interviewed by the police
3 either, was she?

4 A. She -- I don't think she was home at the time
5 because the police came later.

6 Q. And as far as you know right up until today
7 she's never been asked what she saw by the
8 police?

9 A. Not by the police I don't think so.

10 Q. Have you talked about it with your daughter
11 about what she saw?

12 A. I mean, we talked about it that day, but we
13 haven't really talked about it since then.

14 Q. I want to focus, if I can -- and if you can't
15 do it just tell me you can't do it, okay.

16 A. Sure.

17 Q. I want to focus on the last 10 seconds, all
18 right.

19 So the 10 seconds leading up to the pop,
20 pop, pop?

21 A. Yes.

22 Q. In that last 10 seconds, did you see any
23 police officer get closer to Brendan?

24 A. No.

25 I saw police officers -- I saw Brendan get

1 closer to police officers though.

2 Q. In the last 10 seconds, did you see any of
3 the police officers discharge those long shotguns
4 at Brendan?

5 A. No.

6 Q. So your memory is if we had an audio
7 recording of the last 10, seconds, there would be
8 no sounds of any firing of weapons until the
9 final pop, pop, pop?

10 A. That's correct.

11 MR. HEINEMAN: That's all I have, your
12 Honor.

13 I'll retrieve the (inaudible).

14 THE COURT: Anything on that?

15 MS. GEMMILL: Just briefly.

16 THE COURT: Sure.

17 EXAMINATION

18 BY MS. GEMMILL:

19 Q. Mr. Lane, so at certain points you described
20 the sound you were hearing as a TASER?

21 A. I did.

22 Q. What did that mean to you in this context?

23 A. The TASER to me is -- is something that I
24 would say incapacitates somebody for a very short
25 amount of time to get them under control.

1 THE COURT: Can I ask you different
2 question?

3 MS. GEMMILL: Sure.

4 THE WITNESS: Sure.

5 THE COURT: So -- because I think this is
6 what we're talking about.

7 When you heard the thing that was not --
8 I think you first identified it as a TASER, you
9 knew that was not a firearm.

10 THE WITNESS: I did not think it was a
11 firearm.

12 THE COURT: It did not sound to you like
13 gunshots?

14 THE WITNESS: It did not and I was
15 certainly --

16 THE COURT: It sounded like something
17 different than gunshots?

18 THE WITNESS: It was certainly distinct
19 from the gunshots that I heard at the end, yeah.

20 MS. GEMMILL: Thank you. That's all.

21 THE COURT: All right.

22 MR. HEINEMAN: Just one follow up on
23 that.

24 THE WITNESS: Sure.

25 EXAMINATION

1 BY MR. HEINEMAN:

2 Q. That sound, whatever that sound was, TASER,
3 bean bag, going back to my 10 seconds --

4 A. Sure.

5 Q. -- you didn't hear that sound in the
6 10 seconds leading up to --

7 THE COURT: I think he said that already.

8 MR. HEINEMAN: Oh, okay. I just -- with
9 the different sound.

10 Okay. Thank you.

11 THE COURT: All set, sir. Thank you very
12 much.

13 THE WITNESS: Okay.

14 (Witness excused.)

15 THE COURT: Do we have another witness?

16 MR. VAN EPPS: No, I don't. I was going
17 to offer Rabbi New's statement.

18 THE COURT: That's fine. So do we
19 have -- no more live testimony for today?

20 MR. VAN EPPS: Correct. Correct.

21 THE COURT: Thank you, sir.

22 THE CLERK: For the record, this
23 statement will be marked as Exhibit 60.

24 (Exhibit No. 60, Rabbi Israel New report,
25 was received into evidence.)

1 MR. VAN EPPS: Um, in terms of, you know,
2 we need to pick a date and then -- I suppose we
3 can do this on the next date, too, there's jus
4 the issue of marking things for ID --

5 THE COURT: Right.

6 MR. VAN EPPS: -- and some other
7 housekeeping stuff, but I leave it to the Court
8 as to when...

9 THE COURT: Yes. So why don't we do
10 this, given that this is not my court, so I can't
11 control it --

12 MR. HEINEMAN: Yes, you can, Judge.

13 THE COURT: I can -- I can try.

14 But it probably makes sense for everyone
15 to coordinate with Carlos; we can then coordinate
16 with Ann Colicko (phonetic) as to when --

17 THE CLERK: Yes.

18 THE COURT: -- we're going to be okay as
19 far as dates, and I'll just make myself...

20 MR. VAN EPPS: I'll get an email chain
21 going this afternoon.

22 THE COURT: Perfect.

23 MR. VAN EPPS: And we (indiscernible) --

24 THE CLERK: And I will inform my clerk
25 magistrate --

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3-204

1 THE COURT: Perfect.

2 THE CLERK: -- and Assistant Clerk Rojas
3 (phonetic).

4 THE COURT: Perfect.

5 So, with that said I guess we're all done
6 for today, right?

7 MR. VAN EPPS: Yes. Thank you.

8 THE COURT: All right.

9 MS. GEMMILL: Thank you, your Honor.

10 THE COURT: Have a good weekend.

11 MR. HEINEMAN: Thank you, your Honor.

12 You too.

13 THE COURT OFFICER: All rise.

14 (At 12:36 p.m. the matter concluded.)

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/	61 17, 71 24, 77 17, 115 21, 132 2, 164 14	3
/s [1] - 206 14	130 [1] - 3 16 137 [1] - 4 9 14 [1] - 99 23	3 [7] - 1 1, 1 10, 111 23, 185 17, 188 1, 194 22, 205 13 3-1.2.1 [3] - 91 16, 91 24, 93 23 3/30/2023 [1] - 205 10 30 [4] - 69 19, 171 10, 171 11, 206 17 300 [1] - 84 4 30s [1] - 180 19 31 [2] - 114 17, 114 18 347 [1] - 206-19 352 [1] - 1 18 3:00 [2] - 174 13, 183 2
0	14-year-old [1] - 12 6 15 [9] - 1 15, 17 9, 100 13, 126 8, 157 9, 158 15, 171 14, 189 3	4
01702 [1] - 2 4 01721 [1] - 206 20 01772-1756 [1] - 1 18 01801 [1] - 1 15 02420 [1] - 163 23	156 [2] - 3 16, 3 17 16 [3] - 1 21, 3 4, 206 4 162 [1] - 3 19 166 [1] - 4 9 17 [2] - 94 4, 96 1 19 [1] - 116 9 196 [2] - 3 19, 4 10 1:00 [1] - 132-17 1:18 [1] - 75 21	4 [2] - 30 17, 111 24 40 [4] - 4 4, 152 17, 171 12, 190 17 41 [2] - 3 4, 4 4 43Aor [1] - 41 3 45 [2] - 12 25, 13 1 46 [4] - 12 22, 12-24, 13 6, 13 7 47 [5] - 4 3, 21 15, 21 16, 55.13, 55 15 48 [4] - 4 4, 40 16, 40 17, 107 11 48A [6] - 4 4, 41 4, 41.5, 41 10, 41 11, 41 13 49 [3] - 4-5, 58 4, 58 5 490 [1] - 115 18
1	2	5
1 [8] - 119 5, 171 19, 174 16, 177 15, 185 22, 186 20, 186 21, 188 3 1-299 [1] - 1 1 10 [14] - 65 21, 111.25, 171 13, 174 24, 176 19, 189 3, 199 17, 199 19, 199-22, 200 2, 200 7 202 3, 202 6 100 [1] - 193 14 103 [1] - 4 7 105 [1] - 61 10 108 [6] - 107 11, 107.14, 107 20, 107-24, 108 16, 108 17 10:35 [1] - 97 16 10:51 [1] - 97 17 11 [2] - 111 25, 114 19 11/4/1963 [1] - 163 10 110 [1] - 3 12 111 [1] - 3 12 113 [1] - 3 14 12 [2] - 111 25, 174-21 12/16/2022 [1] - 205 13 123 [1] - 4 8 128 [3] - 115 18, 116 5, 117 3 129 [1] - 4 8 12:00 [1] - 132 17 12:30 [2] - 18 16, 132 16 12:36 [1] - 204 14 12:55 [1] - 75 9 12th [7] - 17 22,	2 [12] - 1 19, 171 22, 177 10, 185 17, 186 20, 187 23, 187 25, 188 1, 188 2, 188 4, 194 24 20 [4] - 126 7, 126 8, 157 9, 171 10 200 [1] - 3 19 2008 [1] - 61 4 2018 [1] - 82 7 2019 [1] - 80 17 202 [2] - 3 19, 4 10 2020 [2] - 80 16, 131 16 2021 [1] - 95 11 2022 [4] - 1 21, 115 21, 164 14, 206 4 2023 [1] - 206 17 21 [1] - 4 3 210 [1] - 1 18 22-03176 [1] - 91 7 2227IN000001 [2] - 1 7, 205 12 2227IN01 [1] - 5 11 26 [1] - 103 2 276 [1] - 2 3	5 [3] - 189 7, 192 5, 205 13 50 [4] - 4 5, 67 22, 67-23, 152 17 508 [1] - 206 21 51 [3] - 4 6, 69 7, 69 8 52 [4] - 3 5, 4 6, 78 14, 78 15 53 [3] - 4 7, 96 18, 96 19 54 [3] - 4 7, 103 17, 103.18 55 [4] - 3 4, 4 8,

<p>123 7, 123 8 56 [3] - 4 8, 129 18, 129 19 57 [5] - 4 9, 137 16, 137 17, 137 20, 142 19 58 [7] - 4 5, 4 9, 166 15, 166 16, 171 15, 172 12, 191 12 59 [4] - 4 10, 163 8, 196 6, 196 7 5:00 [2] - 174 9, 174 12 5:17 [3] - 67 12, 67 14, 75 19</p>	<p>90 [2] - 63 12 96 [1] - 4 7 98 [1] - 131 20 99 [1] - 3 11 9:03 [1] - 5 3</p>	<p>65 14, 65 15, 66 6, 66 14, 66 16, 66 20, 66 21, 66 23, 67 3, 67 17, 68 2, 68 10, 68 19, 68.20, 68 25, 69-18, 69 19, 69 20, 70 9, 70 14, 71 2, 71 7, 71 18, 72 9, 72 14, 74 9, 74 13, 74 19, 75 15, 76 2, 79 15, 80 12, 80.20, 80 21, 80 23, 80 25, 81.1, 81.14, 81 16, 81.18, 81 20, 81 23, 82 1, 82 3, 82 13, 82.19, 82 21, 82 24, 82 25, 83 11, 83 24, 84 8, 84 9, 84 18, 86 4, 86 14, 86 20, 87 12, 87 15, 88 17, 88 18, 88 20, 88 21, 89 12, 89 23, 89 24, 90 6, 90 11, 91 6, 91 9, 92 1, 92 2, 92 9, 92 14, 92 16, 92 17, 92 22, 93 1, 93 3, 93 6, 93 11, 93 15, 93 17, 93 22, 94 10, 94 15, 94 16, 94-22, 95 5, 95 8, 95 15, 96 7, 97 5, 97.11, 99 20, 100 6, 100 10, 100 22, 101 18, 101.19, 102 1, 102 9, 103 5, 103 9, 103 10, 103 13, 103 21, 103 25, 104 14, 106 1, 106 3, 106 8, 106 9, 106 15, 106 17, 106 19, 106 22, 107 6, 108 1, 108 9, 109 18, 109 19, 109 22, 109 23, 110 8, 111 18, 112 4, 112 24, 113 2,</p>
<p>6</p>	<p>A</p>	
<p>6 [8] - 65 22, 163 23, 165 12, 165 21, 189 7 60 [6] - 3 7, 4 10, 63 12, 114 3, 202 23, 202 24 63 [3] - 17 15, 37 1 641-5801 [1] - 206 21 67 [1] - 4 5 69 [1] - 4 6 6:00 [1] - 174 11</p>	<p>a [537] - 5 25, 6 22, 6 25, 7 1, 7 15, 9 23, 10 9, 11 8, 11 10, 11 18, 11 22, 12 2, 12 6, 13 13, 14 9, 15 10, 15 15, 15 16, 15 21, 15 24, 15 25, 16 4, 17 24, 18 3, 18 13, 18 14, 18 22, 19 12, 19 21, 20 16, 20 20, 20 21, 20 22, 21 5, 21 9, 22.9, 22 12, 23 1, 23 3, 24 2, 24 23, 26 7, 26 14, 27 14, 28.1, 28 3, 28 6, 28 7, 28 22, 29 3, 29 15, 29 22, 29 24, 30.7, 30 9, 30 10, 30 15, 30 20, 31.1, 32 23, 34 9, 34 16, 34 19, 35 6, 35 7, 35 23, 36 3, 36 6, 38 8, 38 11, 38 15, 38 24, 39 1, 39 17, 39 19, 40 8, 41 18, 42 1, 42 3, 42.15, 43 19, 44 21, 45 9, 46 10, 47 24, 48 1, 49 1, 49 6, 52 6, 52 13, 52 14, 53 5, 53 7, 53 11, 55 3, 55 16, 56 4, 56 14, 57 17, 57 18, 60 2, 60 3, 60 5, 60 8, 61 1, 61 2, 61 18, 61.25, 62 2, 62 4, 62.12, 62 15, 62 20, 63 10, 63 11, 63 21, 64 16, 64 18, 64 19, 64 20, 64 21, 64.22, 65 1, 65 4, 65 5, 65 8,</p>	
<p>7</p>		
<p>7 [2] - 189 7 7/19/62 [1] - 114 5 70 [1] - 84 11 71 [1] - 3 7 76 [1] - 3 7 78 [2] - 3 7, 4 6 79 [1] - 3 9</p>		
<p>8</p>		
<p>8 [2] - 29 12, 65 23 8-1.1.1 [1] - 93.21</p>		
<p>9</p>		
<p>9 [16] - 29 13, 107 15, 107 18, 107 19, 107 20, 108 19, 108 23, 108 24, 109 4, 109 8, 109 9, 110 9, 110.15, 131 5, 132 3, 138 21</p>		

<p>113 8, 114 9, 114 10, 116 21, 116 22, 116 23, 116 24, 117 11, 117 24, 118 6, 118 8, 118 9, 119 5, 119 19, 119 24, 120 2, 120 15, 120 20, 120 22, 121 7, 122 3, 122 23, 123 12, 123 16, 123 21, 123 23, 124 9, 124 16, 124 18, 124 21, 125 9, 125 25, 126 18, 126 21, 127 1, 127 4, 127.13, 127 23, 128.1, 128 10, 128.11, 128 13, 128 14, 128 15, 128 17, 128 20, 130 9, 130.11, 130 12, 131 2, 131 3, 131.4, 131 10, 131 13, 132 13, 132 14, 132 18, 133 2, 133 19, 134 6, 134 9, 134 13, 134 14, 134 16, 134 21, 134 24, 135 24, 136 15, 138 17, 138 22, 139 8, 139 9, 139 11, 139 18, 139 23, 140 16, 140 19, 140 24, 140 25, 141 7, 141 10, 141 11, 142 1, 143 11, 143-13, 143 20, 143 23, 144 1, 144.19, 144 20, 144 23, 145 2, 145 23, 146 2, 146 14, 146 17, 146 18, 146 22, 146 23, 147 2, 147 5, 147 15, 148 5, 148 9, 148 16, 149 7, 149 23, 149 25, 150 11, 150 12,</p>	<p>150 13, 150 19, 151 10, 151 13, 152 4, 152 17, 153 1, 153 8, 154 19, 155 10, 155 16, 156 5, 156 8, 157 10, 157 20, 158 9, 158.11, 158 21, 158 22, 158 23, 158.25, 159 1, 159 5, 159 12, 159 18, 160 19, 161 5, 162.5, 162 10, 162 15, 163 4, 163 5, 164 21, 165 10, 166 20, 167 7, 167 11, 167 19, 168 5, 168 9, 168 11, 168 13, 168 14, 170 2, 170 3, 170 15, 170 16, 170 19, 170 23, 171 2, 171 7, 171 19, 171-21, 172 2, 172.4, 172 13, 173 2, 173 4, 173 23, 174 5, 174 9, 174.15, 175 7, 175.11, 175 18, 176 4, 176 16, 176 18, 177 10, 178 20, 179 1, 179 2, 179 5, 179 8, 179 22, 179 25, 180 1, 180 9, 180 10, 180.14, 180 18, 180.22, 181 16, 181 20, 181 23, 182 3, 182 12, 182 14, 182.23, 184 21, 185.9, 185 10, 185-13, 185 23, 186 10, 186 13, 188 6, 188 8, 188 23, 189 1, 190 15, 190 16, 190 21, 190 22, 191 21, 191 23, 192 5, 193 2, 193 11, 194 10,</p>	<p>195 11, 196 18, 197 1, 197 4, 197 9, 197 25, 198 12, 200 20, 200 24, 201 8, 201 9, 201 10, 203 2, 204 10 A [12] - 1.10, 60 25, 80 2, 80 3, 99 13, 114 1, 163 2, 163 6, 206.1, 206 2 A-L-E-X-A-N-D-R-A [1] - 80 2 a.m [4] - 5 3, 75 21, 97-16, 97 17 Abby [1] - 164 10 abdomen [1] - 108 12 able [30] - 8 24, 9 25, 29 23, 29 24, 44 15, 47 3, 47 6, 51 10, 53 3, 64 23, 70 16, 83 5, 83 17, 87 25, 90 21, 91 9, 91 19, 92.9, 92 12, 93 17, 93.22, 107 9, 107 21, 108 3, 109 3, 110 12, 143 24, 151 25, 152 19, 195 11 about [104] - 5 16, 7-5, 7 14, 7 23, 8 15, 9 21, 11 20, 12 7, 12 10, 13 19, 15 17, 16 6, 16 7, 17 22, 18 20, 22 10, 22 25, 24.11, 24 14, 24.20, 29 16, 30.25, 32 15, 36 1, 36 7, 38 7, 38 20, 39 4, 44 15, 45 10, 45 15, 51 4, 60 12, 61 17, 61 22, 62 18, 63.2, 63 7, 63 20, 64.5, 64 18, 64 24, 65.2, 65 21, 74 7, 76 3, 76 14, 79 11, 79 14, 83 24, 84 11, 86 4, 87 17, 98 25, 100 3, 100.14, 102.3, 104 1, 108 4, 108 23, 109.8, 111 23,</p>
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<p>113 12, 114 19, 114 25, 119 21, 120 22, 121 1, 123 12, 125 13, 125 16, 125 18, 125 23, 128 5, 128 18, 130 13, 130 16, 131 19, 133 12, 133 21, 139 19, 140 13, 144 5, 148 24, 156 9, 158 24, 159 10, 160 8, 160 22, 162 9, 164 23, 166 12, 167 22, 173 21, 174 20, 180 15, 192 2, 198 18, 199 10, 199 11, 199 12, 199 13, 201 6 above [1] - 55-22 absolutely [5] - 138 15, 145 5, 184 13, 191.2, 193 12 abuts [3] - 164 2, 164 5, 165 6 access [1] - 11 21 accessible [1] - 71 5 Accreditation [1] - 85 13 accreditation [1] - 85 16 accredited [3] - 85 9, 85 11, 85 12 accuracy [1] - 67-9 accurate [3] - 75 5, 75 10, 106 11 ACCURATE [1] - 206 3 acid [1] - 86 8 across [7] - 19 7, 19 19, 21 20, 36 18, 43 11, 69 12, 131 21 action [1] - 183 17 ACTION [2] - 206 8, 206 9 activities [1] - 115 12 actual [10] - 68 5, 74 2, 75 1, 84 5, 84 13, 89 10, 102 6, 106 21, 132 12, 172 19</p>	<p>actually [32] - 12 18, 13 12, 14.17, 20.1, 25 24, 27 11, 29 25, 32-12, 33 12, 36 15, 38 23, 42 18, 45 2, 48 21, 51 10, 55 21, 57 13, 83 1, 86 7, 87 25, 90 18, 106 4, 106-10, 113 8, 132 23, 136 16, 140 25, 143 24, 170-13, 189 13, 190 24 Adam [2] - 116 22 added [1] - 58 19 additional [4] - 35 8, 85 1, 105 6 ADDRESS [2] - 206 20, 206 23 address [4] - 114 16, 114 21, 132.24, 163 22 addressing [1] - 182 25 adjourning [1] - 8 4 administering [1] - 150 16 ADMINISTRATIVE [1] - 206 5 administrative [2] - 90 5, 90 8 advanced [1] - 75 21 advantage [1] - 182 20 aerial [1] - 166 3 affect [1] - 184 23 affirm [7] - 15 5, 59 8, 78 19, 98 4, 112 13, 129 24, 161 12 afield [1] - 103.4 after [30] - 9 2, 28.13, 32 21, 39 7, 48 17, 66 24, 67.17, 68 14, 69-18, 70 12, 82 8, 90 16, 95 11, 122 25, 132 13, 132.14, 138 9, 147 9, 150 3, 152 2, 155-4, 175 20, 178 11, 184 9, 186 17, 187.18, 193 18, 194-10,</p>	<p>195 10, 197 20 aftermath [1] - 52 3 afternoon [5] - 18 16, 67 15, 70 25, 164 19, 203 21 afterward [1] - 184 4 again [35] - 7 14, 30 1, 50 11, 51-20, 51 25, 54 16, 73 15, 95 20, 95 22, 105 10, 105 12, 121 1, 123 2, 125 20, 126 2, 126 3, 126 22, 127 17, 132 15, 134 9, 138 1, 139 4, 140 6, 140 15, 145 21, 145 22, 146 2, 152 5, 168 22, 177.11, 180 2, 182-5, 193 18, 194 18 against [1] - 164 5 aggressive [1] - 128 25 aggressively [1] - 129 1 agitate [1] - 184 21 ago [4] - 83 25, 139 18, 140 24, 197 1 agree [1] - 135 18 agreed [1] - 9 11 ahead [2] - 187 20, 196 2 air [3] - 76 19, 190 1, 190 5 Alan [2] - 2 3, 52 9 ALEXANDRA [1] - 78 23 Alexandra [4] - 3 9, 4 7, 80 1, 96 19 all [136] - 6 13, 9.21, 10 6, 12 16, 14 5, 14 24, 15 12, 15.18, 16.16, 17 2, 18-24, 20-18, 20 23, 21 12, 21 14, 25 1, 25.15, 25 19, 25 21, 30 1, 34 17, 37 17, 37 19, 37 25, 40 9, 40 14, 41 2, 42 14, 43 13, 43 17, 45 5,</p>
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IMPOUNDED TRANSCRIPT

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<p>169 11, 169 24, 172 22, 179 10, 183 11, 183 16, 183 22, 184 10, 184 22, 188 6, 191 19, 195 6, 195 17, 199 22, 200 2, 200 8 anybody [6] - 22 14, 22 20, 41 17, 120 10, 140 11, 152 1 anyone [6] - 6 16, 35 15, 116 6, 164 8, 166 23, 167 1 anything [35] - 6 7, 16 10, 16 14, 23 22, 24 14, 24 20, 30 25, 52.5, 63 19, 64 23, 65 2, 71 8, 72 13, 107.7, 112 3, 125 2, 125 3, 125 13, 125 16, 125 18, 128 5, 128 7, 133 12, 133 20, 144 12, 145 10, 150 25, 167 23, 173 24, 179 14, 180 15, 180 16, 184 9, 184 24, 200 14 anyway [1] - 70 10 anywhere [2] - 82 8, 114 20 apart [4] - 63.13, 65 22, 65 23, 71 7 apologize [1] - 74 17 apparatus [2] - 106 12, 107.2 appear [7] - 6 3, 40 23, 73 4, 124 13, 128 7, 185 6, 194 25 appearance [4] - 62 19, 63 2, 65 3, 180 5 APPEARANCES [2] - 1 12, 2 1 Appearances [1] - 1 19 appeared [14] - 120 20, 124 12, 124 15, 124 20,</p>	<p>134 12, 145-4, 148 11, 158 22, 176 4, 180 19, 181 24, 183 7, 185 2, 185 8 appears [2] - 5 23, 170 17 Applicant [1] - 1 13 apply [1] - 205 16 approach [4] - 42 22, 117 22, 185 9, 196 10 approached [4] - 19 2, 181 12, 186 8, 186 11 approaches [1] - 30-24 approaching [6] - 18 24, 19 1, 63 12, 188 16, 188 19, 189 4 appropriate [1] - 148 8 APPROVED [2] - 206 2, 206 14 approximate [4] - 67 8, 119 5, 122 3, 177 25 approximately [4] - 84 4, 99 23, 134 18, 171 25 approximation [1] - 5 22 are [86] - 5 15, 6.3, 7 19, 7 24, 8 4, 10 23, 17 8, 18 25, 19 1, 19.25, 25 12, 25 16, 29 6, 32 25, 33 23, 41 6, 41 8, 44 15, 48 25, 51 3, 53 18, 54 24, 56 8, 56 10, 57 14, 58 14, 64 12, 66 2, 66 17, 80 4, 81-10, 83 17, 87 17, 88 11, 89.14, 90 1, 90 2, 90-4, 90 7, 90 13, 90 21, 98 22, 99 14, 101 5, 101 23, 108 10, 108 11, 110 21, 113 9, 114 2, 115 4, 123 14, 131 4, 131 12, 131 17,</p>	<p>131 19, 131 23, 132 10, 132 24, 133 16, 133 17, 142 7, 142 25, 146 8, 155.1, 155 3, 155-21, 157 7, 162 6, 162 8, 163.7, 167 21, 172 22, 172 23, 172 24, 173 1, 173 8, 175 24, 186 14, 193 13, 197 22 area [34] - 18 11, 20 7, 20 9, 71 1, 105 5, 110:10, 115 4, 115 10, 115 23, 116 1, 116 15, 118 9, 118 11, 119 6, 119 13, 121 6, 121 8, 122 3, 123 13, 125.22, 128 4, 128-16, 137 22, 157.16, 165 11, 165 14, 171 20, 172 14, 173 22, 173.25, 177 11, 177-19, 177 25, 178 17 areas [5] - 104.4, 104 12, 104-18, 105 7, 105.11 arguing [1] - 133 16 Arlington [1] - 52 10 arm [7] - 32.3, 123 25, 124 3, 125 15, 189 25, 190-2, 190 4 armed [2] - 21 25, 22 1 arms [2] - 76 18, 76 19 around [50] - 18 15, 26 10, 26 12, 26 14, 26 17, 26 18, 26 24, 27 9, 27 15, 27 22, 29 5, 29 12, 31 4, 31 11, 33 19, 34 3, 34 7, 34 9, 42 12, 42 15, 43 18, 44 24, 45 3, 48 4, 50 9, 51 24, 61 18, 67 17, 102:4, 104 12,</p>
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<p>115 4, 115 24, 118 17, 119 12, 121.4, 123 13, 126 9, 126 19, 132 8, 132 16, 143 7, 143 13, 171 25, 172-11, 177 12, 179 2, 179 9, 183 12, 194 8 arrow [2] - 135 17, 137 21 artist [1] - 53 11 as [155] - 6-1, 6-14, 6 15, 6 25, 7 7, 8 17, 9 7, 9 14, 9 18, 13 15, 21.13, 22 15, 25 9, 25.17, 26 18, 30 24, 40 13, 48 1, 48.10, 51 1, 55 3, 56 25, 57 21, 59 17, 59 18, 61 23, 64 6, 67 10, 67 20, 69 5, 70 8, 72 6, 73 21, 74 6, 77 19, 79 1, 79 2, 79 7, 79 14, 80 15, 81 1, 81 16, 82.14, 83.8, 84 7, 84-12, 86-5, 90 8, 90 11, 90 17, 95 3, 95 14, 96-16, 98 12, 99-1, 99 24, 100 5, 102 7, 103 15, 106 14, 108 16, 110 8, 114 2, 115 17, 116 12, 117 6, 117 22, 118 2, 118 5, 119.1, 119 10, 120 17, 121 10, 121 15, 123 4, 123 13, 126 1, 127 22, 129 16, 129 17, 130.15, 131 9, 137-15, 137 16, 141 1, 145 24, 147 22, 148 3, 151 11, 151 19, 153 23, 154 8, 154 9, 154 10, 157 22, 158 2, 159 15, 160 15, 161 21, 165 4,</p>	<p>166 10, 167 14, 170 25, 174 8, 181 1, 181 8, 183 22, 185 9, 185 11, 186 11, 186 14, 186 25, 187 9, 187 13, 188 15, 188 16, 188 19, 191 19, 192 1, 192 18, 192 25, 194 11, 194 13, 194 20, 195 1, 196 5, 198.3, 198 12, 198 16, 198 24, 199 6, 200 20, 201 8, 202 23, 203 8, 203 16, 203 18, 203 19 Ashland [1] - 206 20 aside [1] - 24 13 ask [23] - 9 24, 12 6, 12 10, 16 9, 16 18, 17-21, 28 24, 42 4, 46.10, 50 1, 60 13, 61.16, 79 15, 96 15, 98-1, 99 4, 113 13, 123 4, 130 16, 152 5, 162.10, 171 18, 201 1 asked [9] - 55 2, 76 2, 101.11, 101 15, 111-23, 167 20, 197 3, 197 13, 199.7 asking [8] - 7 4, 8 12, 8 14, 15 19, 60 1, 79 5, 98-17, 159 10 ASSESSMENT [1] - 205 4 assessment [1] - 205 7 assign [1] - 87 14 assigned [2] - 84 18, 91 22 assist [1] - 102 1 Assistant [3] - 1 14, 1 14, 204 2 assume [1] - 190 3 assumed [3] - 55 3, 144 20, 182 3 assuming [2] - 92 15, 98 19 assumption [1] -</p>	<p>136 18 assure [1] - 89 9 at [227] - 5 21, 7 6, 8 17, 10 6, 10.9, 11 11, 11 18, 12 25, 16 3, 20 21, 22 22, 22 23, 23 6, 23 9, 23.22, 23 23, 26 22, 27 14, 27 18, 27 19, 28 18, 30 4, 30.5, 30 10, 30 21, 31 3, 31 13, 32 22, 33 1, 33 23, 35.1, 35 19, 36-25, 37-11, 44 1, 44 9, 45 20, 46 23, 47 2, 47 10, 47 20, 48 6, 48 8, 49 7, 49 10, 49 14, 49 15, 57 14, 60-9, 61 10, 61 24, 62 22, 66 1, 66 16, 67 15, 69 13, 70 3, 70 21, 73 10, 74 25, 75 14, 75 21, 76 10, 76 13, 76 21, 76 22, 77 9, 79 8, 79 10, 79 15, 80 18, 81 2, 81 11, 81 22, 82 11, 84 1, 87 9, 87-15, 87 25, 88 22, 89 11, 90 19, 91 3, 91.25, 92 19, 92 22, 93 15, 94 3, 95 25, 97 16, 97 17, 98-20, 101 23, 104 1, 106 1, 106-24, 107 6, 107 10, 107 19, 108 17, 108 18, 109 23, 113 4, 113 14, 114 18, 116 18, 118 3, 118 25, 119 2, 119 4, 120-11, 122 5, 122 7, 122 8, 122 12, 123 14, 125 10, 126 11, 127 5, 127 15, 127 17, 127 19, 127 20, 128 3, 130 15, 131.4, 131 10,</p>
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<p>131 13, 132 3, 133 20, 134 24, 136 12, 137 22, 139 2, 139 4, 139 8, 140 20, 140 24, 142 5, 142 8, 143 25, 149 8, 149 20, 153 25, 154 1, 154 3, 155 1, 156 8, 158 9, 162 4, 164 6, 164 11, 165 4, 165 23, 167 13, 168 2, 168 19, 168 24, 169 3, 169 11, 170 18, 170 22, 170 24, 171 4, 171 6, 172 17, 172 23, 173 22, 174 8, 174 12, 174 13, 175 14, 175 19, 176 10, 176 15, 177 5, 178 5, 178 9, 179 7, 180 19, 181 4, 182 22, 183 1, 183 4, 183 18, 184 7, 184:11, 186 20, 186 23, 186 24, 187 4, 187 16, 188 3, 188 14, 188 24, 189 4, 189 10, 190 6, 190 14, 190 19, 192 14, 193 2, 194 4, 195 12, 195 17, 197 19, 197 25, 198 13, 198 19, 199 4, 200 4, 200 19, 201 19, 204 14, 205 7, 205 18 attached [3] - 88 20, 89 3, 106 18 attempt [1] - 105 17 attempted [1] - 175 3 attempting [2] - 11 20, 77 19 attended [1] - 115 15 attention [16] - 10 8, 18 17, 26 19, 30 22, 31 25,</p>	<p>61 20, 64 12, 64 25, 66 2, 72 4, 115 20, 128 3, 164 13, 167 10, 179 23, 180 3 Attorney [4] - 1 14, 1 14, 57 3, 76 2 Attorney's [2] - 1 13, 111 6 AUDIO [3] - 205 4, 206 3, 206 15 audio [4] - 44 14, 200 6, 205 18, 205 18 available [1] - 113 7 Ave [2] - 116 20, 116 21 Avenue [4] - 1 15, 2 3, 17 15, 17 16 aware [8] - 25 16, 34 25, 64.6, 64 10, 69 16, 109 14, 111 12, 154 5 away [21] - 24 25, 25 2, 70 7, 73 5, 73 8, 76 10, 107 25, 124 21, 125 23, 125 25, 126 16, 151 20, 151 21, 152 17, 152 18, 169 13, 185 23, 186 12, 189 7, 189 8, 205 19 awhile [1] - 70 19</p>	<p>141 25, 142 9, 142 19, 143 23, 147 9, 148 9, 149 12, 149 22, 149 24, 151 20, 151 21, 154 25, 158 12, 158 16, 160 3, 161 6, 164 2, 165 8, 165 9, 167 16, 168 18, 170 18, 171 15, 175 17, 176 6, 176 18, 176 19, 177 6, 177 7, 178 9, 181 13, 183 18, 186 12, 186 15, 186 17, 186 22, 188 21, 188 22, 190 17, 198 16, 202 3, 205 7 back-and-forth [2] - 139 23, 140 2 backed [2] - 13 25, 183 15 background [1] - 205 17 backing [6] - 136 9, 150 7, 151 23, 152 8, 187 9, 188 21 backs [1] - 185 23 backside [2] - 68 11, 76 10 backward [5] - 136 12, 188 18, 193 6, 193 8 backwards [4] - 63 1, 72 24, 73 5, 151 16 backyard [14] - 164 5, 165 9, 166 9, 171 6, 171 13, 172 14, 172 21, 172 25, 173 22, 173 23, 178 10, 182 22, 188 13, 198 14 bad [1] - 126 18 bag [14] - 70 4, 70 5, 74 11, 109 15, 109 18, 109 25, 110 6, 179 19, 184 22, 192 18, 195 14, 197 9, 197 23, 202 3</p>
	<p style="text-align: center;">B</p> <p>bachelor's [1] - 82 1 back [76] - 26 17, 28 12, 33 10, 48 11, 50 10, 51 10, 54 5, 57 11, 59 21, 65 15, 66 1, 72 23, 73 7, 73 19, 104 7, 104 8, 104 9, 111 14, 115 14, 115 16, 115 19, 120 20, 121 5, 123 20, 123 21, 124 8, 136 8, 136 17, 136 25, 137 3, 138 18, 139 7, 139 23, 140 2,</p>	

<p>baggy [1] - 23 2 bags [17] - 109 19, 109 24, 111 7, 175 24, 178 8, 179 24, 180 1, 184 20, 192 22, 197 5, 197.12, 197 18, 197 21, 197 22, 198 2 ball [1] - 34 17 ballistic [1] - 6 22 banana [1] - 28.7 bare [1] - 173 6 based [3] - 16 4, 87 13, 108 2 basically [16] - 7 18, 19 7, 47 3, 51 3, 54 19, 86 9, 101 3, 112 23, 134 12, 142 12, 142 16, 151 23, 153 23, 153 25, 162 3 basketball [8] - 11 10, 18 3, 34 16, 34 17, 164 21, 166 20, 167 8, 167.13 BB [2] - 147 15, 150 12 be [124] - 5 4, 6 3, 6 21, 6 24, 7 11, 7 13, 7 17, 8 1, 8 24, 9 3, 9 4, 9 13, 9 14, 9 23, 9 24, 10 11, 12.17, 12 24, 13.6, 13 7, 14 11, 15 6, 15 17, 20 24, 21 14, 34 19, 36 8, 40.15, 40 23, 41 10, 44 15, 47 5, 52 24, 58 4, 58 9, 59 9, 59 16, 60 4, 64 17, 67 22, 73 4, 77 19, 78 14, 78 20, 79 6, 79 8, 81 8, 81 9, 82 22, 82 25, 84 18, 85 2, 87 25, 91-1, 93 9, 93 11, 96 15, 96 18, 97 15, 97 18, 98 5, 98 22, 103 17, 106 5, 106 11, 109.5, 109 9, 109-10, 109 11, 110.8, 110 23,</p>	<p>112 14, 116 14, 116 16, 117 22, 120 15, 120 20, 123 4, 123 7, 124 4, 124 16, 124 20, 125 8, 127 5, 128 7, 129 17, 129 25, 130 11, 134 12, 135 24, 138 8, 142 1, 143 7, 145 4, 145 25, 158.12, 161 13, 161-20, 162 8, 166.14, 169 8, 170 17, 171 24, 172 10, 174 11, 174 21, 176 2, 176 4, 176 7, 176 17, 180 13, 181 24, 182 18, 183 18, 185 6, 185 8, 186 20, 188 9, 191 15, 194 25, 196 5, 200 7, 202 23, 203 18 bean [29] - 70 4, 70 5, 74 11, 109.15, 109 18, 109 19, 109.24, 109.25, 110.6, 111-7, 175 23, 175 24, 178 8, 179 19, 184 20, 184 22, 192 18, 192 22, 195 13, 197 5, 197 9, 197 11, 197 12, 197 18, 197 21, 197 22, 197 23, 198 2, 202 3 bear [1] - 152 5 bearings [1] - 165 16 because [69] - 5 23, 7 6, 8 16, 13 17, 23 25, 24 3, 26 7, 26 12, 27-6, 27 25, 28 2, 31 25, 34 14, 34 20, 36 6, 36 7, 42 14, 43 13, 43 18, 43 21, 46 17, 47 22, 48 13, 74 24, 86 15, 92 1, 106 8,</p>	<p>111 23, 117 20, 117.23, 120 13, 121-10, 134 1, 135 5, 136 14, 136 17, 137 3, 138 7, 141 9, 149 7, 150 4, 151 14, 158 12, 158 24, 159 10, 160 14, 168 7, 168 16, 168 17, 169 7, 169 13, 170 18, 172 7, 173 4, 180 3, 181 25, 182 6, 182 12, 182 24, 184 16, 186 8, 187 6, 190-16, 191 23, 194 1, 195 3, 197 13, 199 5, 201 5 become [6] - 60 10, 69-16, 70 7, 80 21, 184 14, 185 10 becomes [2] - 60-9, 116 18 becoming [1] - 64 6 Bedford [1] - 115 14 Beeler [1] - 2 2 been [44] - 5 13, 12 4, 15 19, 18 13, 29 9, 29 11, 45 5, 45 9, 49 6, 60 1, 60 11, 61 3, 63 20, 64 19, 67 2, 69 21, 70 3, 72 5, 73 25, 76 16, 77 11, 79 5, 80 16, 84 5, 86 19, 98 17, 103 25, 108-6, 112 22, 127.13, 130-7, 134 9, 139 5, 155 6, 161 25, 173 3, 175 1, 178 20, 178 25, 179 8, 185 21, 192 7, 195 11, 199 7 BEFORE [1] - 1 10 before [45] - 5 12, 10 17, 11 7, 12 4, 12 14, 12 18, 15-13, 28 1, 29 3, 31 6, 37 6, 38 2, 42.1, 44 5, 49 23, 51-21, 59 25,</p>
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<p>62 23, 73 20, 74 8, 79 4, 81 17, 82 20, 82.22, 90 17, 98-16, 100 14, 102 7, 103 4, 108 16, 112 22, 114 21, 120 23, 130 6, 140 7, 149 11, 155 18, 161 24, 180 23, 180 24, 191 6, 192 3, 192 19, 193 15, 196 15 began [2] - 10 18, 11 8 begin [1] - 79 5 beginning [1] - 144 18 behind [18] - 32 24, 49 12, 68 23, 68 24, 128 2, 128 15, 128 16, 139 13, 139 15, 147 25, 158 11, 165 5, 172.23, 179 5, 179-10, 181.18, 182 6, 194 23 being [20] - 32 3, 38 17, 46 14, 62 5, 70 16, 72 1, 83 20, 94 20, 94 23, 95.14, 130 15, 133 11, 134 11, 140 4, 140 9, 145 14, 146 22, 170 3, 174 9, 192 8 believe [29] - 7 17, 20 7, 52 12, 56 4, 58 14, 62 2, 67 19, 69 23, 93 1, 102 18, 116 12, 116 19, 116 20, 116 22, 116 24, 134.9, 145 10, 145 16, 150-5, 150 10, 151 14, 155 9, 156 19, 158 19, 159 7, 179 18, 185 20, 187 8, 197 25 believed [2] - 69 20, 106 4 belly [1] - 153 4 belongs [2] - 93 12,</p>	<p>93 16 below [1] - 56 2 besides [4] - 20 7, 86 15, 120-10, 158 21 best [3] - 23 5, 30 16, 49 3 better [6] - 53 11, 60 5, 72 15, 72 18, 135 25, 182 15 between [15] - 67 6, 93 3, 108 4, 119 10, 132 17, 142.12, 142 15, 149 22, 152 9, 160 5, 179-7, 183.20, 188 7, 188-8 beveled [2] - 5 24, 7 16 beyond [1] - 68 23 big [3] - 21 6, 106 22, 180 22 biological [2] - 86 16, 86 17 biology [1] - 82 2 biomedical [1] - 82 4 birth [2] - 114 4, 163.9 bit [33] - 23 1, 26-14, 28 3, 38 11, 39 17, 42 1, 42 3, 43 19, 45 9, 47 25, 49 1, 64 18, 71 18, 81 14, 86 4, 135 25, 143.11, 143 23, 149-23, 151 10, 158 23, 167 11, 167 12, 168 15, 174 5, 179 5, 182 15, 184 21, 185 10, 185.13, 186 10, 186 13, 192 5 black [2] - 54 16, 146 16 blade [3] - 31 13, 65 4, 65 8 Blake [5] - 137 23, 138 7, 138 9, 142 15, 143 3 bleeding [2] - 7 20, 51 16 bless [1] - 131 16 block [2] - 32 25,</p>	<p>173 9 blocked [2] - 20 9, 25 25 blocks [1] - 33 15 blood [1] - 93 8 blurry [1] - 144 25 Board [1] - 85 13 body [4] - 28 3, 86 11, 155 14, 191 22 body's [1] - 191 23 bone [1] - 7 11 borrow [1] - 66 10 Boston [1] - 82 3 both [5] - 8 18, 62 21, 76 18, 101 25, 113 24 bother [1] - 133 15 bother-in-law [1] - 133 15 bottom [5] - 31-20, 38 23, 65 9, 153 4, 170 2 bottoms [1] - 173 5 box [1] - 30 13 brain [1] - 127.9 Brandon [8] - 145.16, 175 9, 176 22, 186 3, 186 7, 187 16, 195 12 break [4] - 7-8, 7 10, 86 23, 97 12 Brendan [33] - 5 10, 93 21, 93 24, 94 5, 94 7, 95 21, 96.2, 96 4, 101 13, 145 17, 145 18, 175 9, 175 10, 176 21, 178 17, 179 2, 179 12, 180 8, 186 3, 186 8, 187 16, 188 14, 188 16, 188-24, 189 5, 189 6, 192 14, 193 5, 193.18, 195 12, 199-23, 199 25, 200 4 BRENDAN [3] - 1.7, 205 11, 206 4 Brennan [2] - 41 16, 101 20 BRENNAN [1] - 1 10 brief [1] - 80-25 briefly [1] - 200 15 bring [9] - 10 8,</p>
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<p>14 20, 34 14, 34 15, 34 17, 34 18, 73 18, 91 9, 184 25 bringing [1] - 34 19 broke [1] - 132 10 brother [4] - 35 18, 133 6, 160 7, 160 19 brother-in-law [3] - 133 6, 160 7, 160 19 brought [2] - 103 22, 175 4 Bukiet [2] - 131 17, 137 8 bulky [1] - 62 21 bullet [9] - 5 16, 7 7, 8 15, 8 16, 8 23, 73 9, 73 14, 74.12, 101 2 Bullet [1] - 5 17 bullets [1] - 51 7 Burlington [22] - 20 24, 25 19, 91 17, 115 6, 115 8, 119 14, 121 17, 121 25, 122 1, 131 5, 132 3, 137 23, 138 21, 143 4, 143 7, 163 25, 175 23, 177 21, 178 2, 178 4 bushes [2] - 10 24, 68 21 BUSINESS [2] - 206 20, 206 22 business [2] - 114 13, 163 19 busy [1] - 23 14 but [167] - 6 3, 6 10, 6 21, 7-13, 7 23, 7 25, 9 18, 10 6, 12 1, 12 7, 12 10, 15 16, 15-24, 16 8, 16 18, 19 14, 19 15, 19 22, 20.3, 20 10, 23 1, 23 25, 24 8, 24-25, 25 6, 27 9, 30 6, 30 12, 30 15, 31 7, 31 8, 32 16, 33 2, 35 1, 38 8, 42 18, 44 22, 46 23, 47 9, 47 10,</p>	<p>48 5, 48 6, 49 7, 50 17, 54 5, 54 19, 56 6, 59 10, 60 10, 60 13, 65 4, 66 3, 67 14, 69 19, 70 7, 71 11, 71 12, 71 25, 72 11, 72 14, 74 8, 74 24, 75.13, 76 18, 77 6, 77 12, 78 21, 79 7, 79 15, 84 9, 86 6, 98 6, 99 3, 100 17, 108 19, 112 15, 113 1, 113 5, 113 11, 113 13, 118 25, 119 2, 119.3, 124 7, 124 20, 125 5, 125 6, 126 5, 126 10, 126 24, 127 1, 127 4, 127 10, 127 14, 130 1, 130-16, 132 16, 133 14, 134 9, 136-4, 136 12, 137 2, 138 1, 139 7, 140 13, 140 15, 141 10, 142 16, 142 21, 143 11, 143 15, 144 6, 144 9, 145 25, 146 1, 146 14, 147 3, 149 24, 150 19, 151 13, 152 5, 152 16, 153 7, 154 5, 155 10, 155 19, 157-21, 158 18, 158 23, 159 9, 159 25, 160 18, 161 14, 162 9, 167 14, 168 20, 168 23, 169 9, 172 1, 176 18, 178 7, 180 2, 180 13, 181 10, 181 18, 182 5, 182 17, 182 18, 184 17, 185 8, 185 12, 185-21, 186 10, 187 11, 188 3, 189 18, 190 17, 193 15, 195-18, 198 8,</p>	<p>198 9, 198 15, 199 12, 203 7, 203 14 but. [9] - 22 6, 28 23, 30 11, 31 25, 39 19, 55 21, 59 1, 155 16, 174 6 butt [1] - 72 23 buttocks [1] - 176 3 By [17] - 1 14, 1:14, 1 17, 2 3, 3 4, 3 4, 3 5, 3-7, 3 7, 3 9, 3 11, 3 12, 3 12, 3 14, 3 17, 3 19, 3 19 BY [35] - 16 23, 21 18, 29 17, 30 19, 37 10, 40 20, 41 20, 42 25, 52 8, 55 12, 66 13, 69 10, 71 17, 78 2, 79 20, 96 22, 99 9, 103 20, 110 5, 111 4, 113 20, 123 11, 130 20, 137 19, 141 20, 156 7, 156 25, 162 14, 166 19, 191 18, 196 13, 200 18, 202 1, 206 8, 206 15 by [50] - 3 16, 3 16, 9 14, 11 15, 26 10, 31 3, 31 5, 31 8, 36.12, 42 5, 53 19, 53 21, 54 14, 60 19, 62 20, 75 2, 75 4, 76 1, 85.11, 85 12, 86 16, 89 8, 89 24, 90 6, 90 22, 99 16, 102-16, 108 20, 109 18, 111 20, 118 2, 140 1, 140 11, 145 16, 147 8, 157 14, 159 1, 170 24, 173 19, 173 23, 174-25, 175 2, 175 6, 185 16, 192.6, 196.18, 199.2, 199 7, 199 9</p>
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C		
<p>C [5] - 5 1, 17 7, 114 1, 206 1</p> <p>C-U-N-I-N-G-H-A-M [1] - 114 1</p> <p>Cahill [1] - 9 5</p> <p>Caitlin [1] - 1 14</p> <p>calculation [2] - 75 7, 94 15</p> <p>caliber [1] - 150 12</p> <p>call [14] - 11 22, 15 22, 29 12, 61 25, 70 22, 82 16, 94 21, 94 23, 106 23, 166 7, 175 7, 175 16, 176 2, 178 21</p> <p>called [13] - 5 2, 36 9, 84 7, 86 22, 87 3, 87 6, 87 11, 89 23, 90 5, 92 17, 95 9, 101 17, 132 13</p> <p>calling [5] - 5 15, 29.9, 29 11, 145 16, 180 8</p> <p>calls [1] - 134 1</p> <p>calm [3] - 176 21, 183 19, 186 4</p> <p>calming [1] - 186 7</p> <p>cam [1] - 14 15</p> <p>came [16] - 35 7, 48 4, 50 2, 65 15, 72 11, 102 18, 134 4, 135 14, 137 3, 138 25, 146 14, 157 5, 193 10, 194 15, 198 2, 199 5</p> <p>camera [9] - 64 16, 64 19, 64 21, 64.22, 65 14, 67 2, 67 9, 74 25, 75 3</p> <p>can [142] - 5 15, 7 25, 9 5, 10 24, 11 16, 11 17, 13 11, 16 7, 17 2, 17 5, 18 20, 18 23, 19 10, 21 5, 21 9, 22 14, 22.17, 22 19, 23 5, 24 13, 30 16, 32 2, 37 15, 37 19, 37 23, 37 25, 38 8, 38 11, 38 12, 38 13,</p>	<p>38 16, 38 17, 38 19, 38.23, 39 24, 40 8, 40 23, 41 3, 42 22, 54 14, 59 18, 60 22, 61 22, 61 23, 62 17, 63 7, 65 20, 66 3, 66 10, 66 17, 68 14, 68 18, 79 2, 79 15, 80 14, 80 25, 82 20, 82 22, 85 24, 86.6, 86 18, 88 16, 88 23, 91 14, 92 16, 92 21, 93 2, 94 1, 94 9, 94 13, 95.22, 98.12, 99 11, 100 19, 101 5, 101 10, 101 20, 103 24, 106 23, 106 24, 107.17, 108.23, 114 4, 118 13, 118.19, 119 5, 121.7, 123 17, 124 1, 129 21, 134 7, 134 17, 134 24, 135 3, 138 23, 140 1, 141 23, 142 19, 143 8, 143 15, 146 10, 147 6, 148 14, 151 10, 152 9, 157.7, 161 21, 162 19, 162 21, 162 24, 166 2, 166 5, 168 14, 169 1, 170 5, 171 18, 171.21, 173 14, 173 16, 173 18, 174 2, 174 15, 177.10, 178 12, 179 14, 179 20, 180 4, 180 25, 185 16, 189 17, 195 24, 196 2, 199 14, 201 1, 203.3, 203.12, 203 13, 203 15</p> <p>can't [41] - 6 18, 13 20, 16 6, 16 17, 24 8, 24 9, 24 24, 26 2, 26 10, 32 13, 42 17, 45 4, 48 4,</p>	<p>48 22, 49 25, 50 15, 60 11, 72 12, 76 18, 79 11, 98 24, 111 24, 113 12, 124 4, 124 6, 125 5, 130 13, 142 1, 146 20, 154 22, 155 19, 155 22, 162 8, 172.1, 180 12, 188 2, 199 14, 199 15, 203 10</p> <p>can.. [1] - 156 3</p> <p>candidly [1] - 58 20</p> <p>cannot [1] - 109 2</p> <p>Canzoneri [1] - 1 17</p> <p>capable [1] - 194 2</p> <p>capacity [1] - 99 19</p> <p>captured [1] - 40 5</p> <p>car [22] - 13 13, 25 7, 25 12, 26 3, 43 24, 47 7, 47 10, 47 12, 47 14, 62 2, 124 25, 125 3, 125.7, 127 23, 127.25, 128 2, 128.10, 128 12, 128 15, 128 16, 170 16, 173.19</p> <p>cardboard [1] - 106 19</p> <p>career [1] - 100 12</p> <p>Careful [1] - 161 5</p> <p>careful [3] - 38 15, 59 17, 161 20</p> <p>Carlos [1] - 203 15</p> <p>Carolyn [1] - 164 12</p> <p>carrying [1] - 150 24</p> <p>cars [4] - 20 10, 117 23, 170 24, 173 14</p> <p>cartoon [1] - 28 6</p> <p>cartridge [2] - 100 25, 110 9</p> <p>case [22] - 81 6, 82 22, 84 18, 86 20, 88 19, 89 7, 89 20, 90 11, 90 16, 90 25, 91 13, 92 2, 93 18, 95 10, 95 20, 96 13, 103 6, 106 2, 106 10, 109 16, 110 19,</p>

<p>111 1 Case [1] - 91 7 CASE [1] - 205 11 cases [4] - 7 1, 7 24, 84 11, 100 13 casework [1] - 85 19 catches [1] - 28 3 caught [2] - 128 2, 150 18 CD [2] - 205 8, 205 15 CDs [1] - 36 23 cell [1] - 64 19 cells [1] - 86 24 cellular [1] - 87 1 Center [3] - 32 23, 53 20, 131 4 center [7] - 6 2, 27.17, 104 7, 131 10, 132 24, 135 6, 140 20 certain [10] - 7 2, 7 3, 7 25, 13 19, 82 21, 85 15, 94 16, 113 9, 125 4, 200 19 certainly [5] - 16 7, 45 18, 72.20, 201 15, 201 18 certificate [1] - 205 8 Certified [2] - 1 22, 1 23 CERTIFY [3] - 206 2, 206 5, 206 7 cetera [1] - 150 1 cha [5] - 192 22, 192 23 Chabad [3] - 32 23, 53 20, 131 4 chain [3] - 87 7, 87 18, 203 20 chair [1] - 59 21 chance [1] - 58 11 change [1] - 102 12 changed [3] - 65 17, 70 24, 141 10 changing [1] - 148 11 character [1] - 28 7 characteristics [1] - 7 3 charging [1] - 8 21 chasing [2] - 52 14, 52 22 check [6] - 59 1, 85 18, 136 25,</p>	<p>138 17, 140 21, 142 5 chemical [1] - 102 6 chemicals [4] - 86 23, 88 22, 89 3, 102 10 chest [2] - 7 9, 108 11 chief [1] - 114 13 child [3] - 12 7, 12 14, 14 3 child's [1] - 12 1 chopping [2] - 123 23, 124 9 circle [3] - 139 14, 205 15, 205 16 circled [1] - 56 22 circles [2] - 178 12, 178 18 citizen [1] - 128 13 clarification [1] - 74 22 clear [9] - 12 17, 13 10, 14 25, 55 14, 111 22, 125.8, 138 2, 141 13, 184 18 clearly [5] - 7 17, 24 2, 62 23, 151 15, 155 10 Clerk [1] - 204 2 CLERK [35] - 5 9, 12 23, 12.25, 13 4, 13 7, 15 4, 40.15, 58.3, 59 8, 59 14, 67 22, 69 7, 78 14, 78 17, 78 24, 96 18, 97 23, 98 4, 98 9, 103 17, 112 13, 112 19, 123.7, 129 17, 129.24, 130.4, 137 16, 161 12, 161.18, 166 14, 196 5, 202 22, 203 17, 203 24, 204 2 clerk [5] - 15 2, 59 6, 98.2, 161 10, 203 24 clips [1] - 11 8 clock [3] - 66 21, 67 9, 174 9 close [22] - 20.5, 29 23, 30 6, 30 11, 53 24, 56 15, 79 1, 98 12, 121 4,</p>	<p>126.1, 144 6, 144 7, 161 21, 174 23, 176 17, 180 2, 181 12, 184 3, 188 24, 192 2, 192 7, 198 16 closed [8] - 63 21, 66 3, 113 2, 113 8, 130 10, 162 6, 168 17, 181 8 closely [2] - 59 17, 127 15 closer [21] - 27.23, 30 15, 38 11, 38 12, 56 15, 109 9, 121 14, 143 3, 143 5, 162.22, 175 11, 183 14, 183.16, 187 2, 188 3, 189 6, 192 6, 194 23, 199 23, 200 1 closest [3] - 54 19, 174 10, 179 11 closing [1] - 191 20 clothes [7] - 102 25, 104 20, 105 14, 105 18, 105 20, 108 6, 108 25 clothing [5] - 23.3, 101 8, 102 13, 102 16 cloud [1] - 100 20 code [1] - 86 9 cold [1] - 180 10 Colicko [1] - 203 16 collected [4] - 36 12, 93 8, 102 19, 102 20 color [3] - 86 12, 102 12 coloring [1] - 146.10 come [31] - 19 5, 19 6, 27 9, 33 21, 35 23, 38 12, 45.3, 51 24, 58 11, 59 16, 61 18, 66 1, 78 25, 81 7, 85 18, 111 15, 115 15, 115 17, 115 19, 116 12, 116 17, 116 21, 117 2, 117 23, 132 18,</p>
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<p>138 18, 138.25, 158 10, 167 5, 180 1, 194 21 comes [4] - 16 19, 82 19, 90 11, 90 14 comfortable [2] - 42 2, 59 21 coming [30] - 7-20, 7.21, 10 12, 10 13, 19 17, 21.19, 22 13, 27 10, 31 9, 31 14, 31 20, 32 25, 42 10, 46 15, 48 10, 51 10, 63 17, 63 22, 66 4, 71 4, 93 9, 115 14, 116 4, 132 23, 132 25, 139 7, 158 3, 168 8, 170 24, 194-25 commented [1] - 133 15 COMMENTS [1] - 205 22 COMMONWEALTH [1] - 1 3 Commonwealth [2] - 1.15, 205 3 commotion [5] - 61 25, 62 4, 63-16, 63.20, 133 2 communications [1] - 11 20 company [2] - 114 9, 114 10 compared [3] - 74 25, 108 25, 192 18 compares [1] - 94 16 comparison [2] - 92 1, 93 22 comparisons [1] - 81 8 competency [6] - 81 23, 82 17, 82 21, 83-1, 83 5, 100 10 competing [2] - 94 17, 95 2 Complete [1] - 205 7 complete [2] - 80 23, 81 23 completed [1] - 83 19 completely [1] - 192 20</p>	<p>COMPLIANCE [1] - 206 5 components [1] - 87 1 COMPUTER [1] - 206 15 computers [1] - 36 24 concentrating [1] - 158 5 concept [2] - 74 8, 197 11 concern [3] - 14 14, 134 1, 140 18 concerns [2] - 12 7, 14 10 conclude [1] - 132 8 concluded [2] - 132 15, 204 14 conclusion [4] - 95 15, 108 9, 108.13, 111 18 conclusions [6] - 90 4, 90 20, 94 1, 108:4, 108 10, 109 25 Concord [1] - 115 15 conducted [1] - 91 20 confidential [5] - 60 4, 79 8, 98 22, 130 11, 162 8 confrontation [1] - 62 15 confuse [1] - 42 6 confused [2] - 42 5, 48 1 congratulations [1] - 61 5 congregants [1] - 140 22 conjunction [2] - 91 6, 159 22 connection [2] - 15 21, 96 8 connects [1] - 18 8 consist [1] - 82 24 consistent [3] - 75 23, 76 20, 148 10 consists [1] - 81 19 contaminated [1] - 89 10 contents [1] - 37 14 context [1] - 200 22 continually [1] -</p>	<p>186 9 continue [3] - 176 5, 181 25, 182 8 continued [13] - 1 19, 2 1, 62 6, 117 17, 134 2, 176 1, 176 8, 176 20, 176 23, 176 25, 186.25, 187 2, 193-23 contributors [1] - 92 15 control [7] - 88 17, 88 18, 89.1, 89 2, 89 13, 200 25, 203 11 controls [6] - 88 11, 88 14, 88 15, 89 8, 89 14, 91 4 conversation [1] - 69 25 conversations [1] - 11 19 Coolidge [3] - 116 20, 116 21 coordinate [2] - 203 15 cop [2] - 52-14, 52:21 copies [4] - 35 8, 35 15, 40 22, 87 22 copper [3] - 100 21, 110 18, 110 21 copy [6] - 91 9, 96 7, 103 13, 103 21, 103 25, 205 8 cord [1] - 147 5 corner [4] - 30 13, 61 15, 164 4, 165 25 correct [68] - 9 8, 18 10, 34 25, 35 22, 36 13, 42 13, 50 23, 67 1, 68-13, 75 17, 77 21, 78 6, 83-4, 85 6, 85 7, 86 3, 87 23, 88 2, 88 6, 88 10, 89 16, 90 2, 90 4, 91 2, 94 11, 94 12, 95.6, 95 7, 95 17, 96 14, 104 22, 105 15, 107 4, 107 8, 108 21, 109 7, 109 13, 110 22,</p>
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<p>111.17, 112 1, 122-2, 122 4, 137 2, 137 25, 138 13, 138.20, 139 25, 141 19, 146 6, 151 7, 154 18, 157 17, 159 20, 159 24, 163 25, 164 1, 169 21, 177 22, 177 23, 177 24, 183 10, 190 20, 197 24, 198 23, 200 10, 202 20 correctly [6] - 40 3, 76 13, 88 24, 88 25, 90 3, 90 9 could [104] - 11 23, 17 1, 22 1, 22 25, 23 11, 23 19, 23 22, 23 25, 24 2, 24 6, 24.19, 24 23, 28 8, 28-15, 29 22, 36 7, 46 10, 46 24, 53 5, 60 22, 62 10, 65 2, 65 11, 69 2, 71 8, 71 18, 77 19, 77 23, 79 23, 82.25, 84 21, 99 11, 105:17, 106 23, 109 5, 109 9, 109.10, 109 11, 110 18, 110 23, 111 7, 111 14, 113 23, 119 18, 120 25, 125.13, 125 16, 130 23, 133 9, 133 11, 135 22, 135.24, 140.8, 140-15, 141 4, 144 11, 144 19, 145 6, 148 21, 149 4, 153 3, 155 15, 156 14, 159 3, 159 4, 167 25, 168 16, 168 17, 169 4, 169 9, 169 11, 169 15, 170 9, 173 18, 179 17, 181 5, 181 7, 181 9, 181 14, 181 16, 181-17, 182 2, 182 9,</p>	<p>182 14, 182 17, 182.18, 183 2, 185-14, 185 21, 189 22, 190 14, 190 17, 193 1, 193 9, 193 21, 194 14, 194 16, 194 17, 195 2, 196 22 couldn't [15] - 47 18, 71 25, 77 7, 77 8, 108 16, 109 24, 125 18, 140 14, 168 16, 168 19, 169 17, 179 9, 182 3, 185 24, 190.16 counsel [2] - 12 19, 41 16 COUNSEL [1] - 206 8 couple [15] - 15 15, 20 21, 41 18, 46 10, 52 6, 60 2, 139 18, 156 5, 158 25, 159 18, 162 15, 170 19, 170 23, 179 8, 197 1 course [3] - 46 12, 91 15, 169 7 court [14] - 5 5, 15 10, 15 25, 17 5, 60 23, 81 9, 92-4, 97 16, 97 17, 97 19, 99 12, 130-24, 203 10, 205 7 COURT [193] - 1 4, 1-5, 5 4, 5 8, 5 12, 5 18, 5 20, 8 5, 8 7, 8 10, 9 3, 9 8, 9 11, 9 16, 10 1, 10 4, 10 23, 11 6, 11 13, 12 13, 12 16, 12 22, 12 24, 13 1, 13 5, 13 8, 13 14, 13 17, 13 23, 14 1, 14 5, 14 7, 14 16, 14 19, 14 22, 14 24, 15 2, 15 9, 15 13, 15 19, 15 24, 16 3, 16 13, 16 16, 16-21, 21 14, 29.11, 29 15, 30-17,</p>	<p>36 22, 37 3, 37 6, 38 10, 38 15, 40.10, 40 14, 40 19, 41 4, 41 6, 41 10, 41 17, 42 24, 46 10, 46 13, 46 21, 46 23, 47 2, 47 8, 47 10, 47 14, 47 19, 47.23, 48 1, 48 6, 48 10, 48 13, 48 18, 48 23, 49 2, 49 5, 49 13, 49 15, 49 18, 49 21, 49 23, 50 1, 50 6, 50 9, 50 12, 50 16, 50 20, 50 24, 51 1, 51.6, 51 9, 51 14, 51 18, 51 22, 52 1, 52 4, 55 3, 55 9, 57-6, 57 9, 57 11, 57 14, 57 17, 58 2, 58 7, 58 10, 58 16, 58 25, 59 2, 59 4, 59 5, 59 15, 59-20, 59 25, 60-17, 66 11, 67 25, 71 15, 77.25, 78 9, 78 25, 79 4, 91 15, 97 1, 97 5, 97 7, 97 11, 97 14, 97 18, 97 21, 97 24, 97 25, 98 10, 98 15, 98 16, 112 3, 112 6, 112.11, 112 20, 112 21, 113.18, 126 23, 129.10, 129 22, 130 5, 130 6, 141 15, 141 18, 156 4, 156 23, 161 2, 161 5, 161 9, 161 19, 161 23, 161 24, 191 4, 191 9, 191 14, 191 17, 195 21, 195.23, 196 11, 200-14, 200 16, 201 1, 201.5, 201 12, 201-16, 201 21, 202.7, 202 11, 202 15, 202 18, 202 21, 203 5,</p>
---	---	--

<p>203 9, 203 13, 203 18, 203 22, 204 1, 204 4, 204 8, 204 10, 204 13, 205 3, 206 2, 206 6, 206 14 Court [9] - 1 22, 5 2, 15 6, 79 24, 88 16, 113 24, 162 24, 203 7, 206 19 Court's [1] - 10 8 Courtroom [1] - 1 21 courtroom [3] - 10 3, 86 6, 113 8 courts [2] - 100 16, 100 17 cover [1] - 29 24 covered [2] - 30 7, 30 9 covering [1] - 155 16 CPR [3] - 155 11, 194 1, 194 5 crab [3] - 175 7, 175 16, 188 17 crab-walk [1] - 175 16 crab-walking [2] - 175 7, 188 17 crazy [1] - 27 2 creases [1] - 191 16 created [1] - 108 14 creates [1] - 87 21 Crime [8] - 6 23, 80 8, 80 19, 82 9, 84 2, 85 8, 95 4, 98 20 crime [5] - 71 3, 93 15, 99 17, 99 20, 194 9 criminal [1] - 99 21 crosswalk [6] - 54 2, 56 2, 56 20, 137 22, 143 5, 177.16 crouch [1] - 181 20 crouched [2] - 153 16, 181 23 crumbled [1] - 154 25 Cunningham [9] - 3.14, 4 8, 4 8, 112 10, 112 21, 113 25, 129 5, 129 16, 129 19 CUNNINGHAM [2] - 112 17, 112 18 Cunningham's [1] -</p>	<p>123 8 curb [4] - 23 13, 53 19, 187 9, 187 10 curiosity [1] - 97 2 curious [1] - 62 5 currently [7] - 75 12, 80 4, 85 9, 114 6, 114 14, 163 11, 163 20 cursing [1] - 148 17 cussing [1] - 148 18</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D [4] - 3 1, 4 1, 5 1, 80 2 DA [2] - 111 16, 159 10 DA's [2] - 36 22, 112 25 dad [5] - 17 17, 45 11, 45 16, 45.18, 45.21 dark [1] - 39 4 darker [1] - 21 9 data [5] - 81 7, 81 10, 90 19, 95 5 DATE [3] - 205 10, 205 13, 206 17 date [8] - 9 2, 71 20, 83 14, 114 4, 160 5, 163 9, 203 2, 203 3 dates [1] - 203 19 daughter [16] - 116:7, 116 8, 164 10, 164 12, 167 4, 167 15, 167 20, 167 23, 168 3, 169 21, 187 14, 190 7, 198 18, 198 20, 198 24, 199 10 David [10] - 3 6, 4 6, 4 6, 58 9, 60 24, 69 8, 71 24, 73 13, 78 13, 78 15 DAVID [2] - 59 13, 60 25 day [19] - 9 17, 17 25, 36 2, 36 3, 36 4, 39 21, 45 11, 45 17, 72 16, 73 12, 115 22, 117 3, 147 9,</p>	<p>159 4, 164 15, 164 16, 180 11, 199 12 DAY [1] - 1 10 days [2] - 28 1, 197.1 deal [2] - 14 8, 134 15 Death [1] - 5 10 death [1] - 101 12 DEATH [3] - 1 7, 205 11, 206 4 DECEMBER [1] - 206 4 December [2] - 1 21, 80 16 decided [2] - 62 5, 64 15 deck [5] - 166 5, 166 6, 166 8, 170 1, 170 4 deescalate [1] - 145 15 deescalating [1] - 134 13 def [1] - 152 16 definitely [17] - 9 1, 30 23, 85 24, 97 21, 141 10, 145 1, 146 13, 146 15, 147 3, 151 18, 152 11, 153 11, 154 20, 159.9, 159 18, 160 12, 189 19 degree [4] - 82 1, 82.3, 82 6, 82.9 degrees [3] - 63.12, 81 24 delivery [1] - 148 15 demanding [1] - 24 17 demeanor [3] - 125 13, 133 12, 181 1 deoxyribonucleic [1] - 86 8 DEPARTMENT [1] - 1 4 department [2] - 10 13, 10 14 depending [1] - 132 17 depicted [1] - 165 15 describe [17] - 23 1, 23 5, 24 24, 61 23, 63 7, 65 2, 73 21.</p>
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<p>124 1, 143 8, 148 14, 149 18, 151 9, 168 14, 174 3, 179 20, 180 4, 180 25 described [20] - 32 19, 32 20, 56 25, 70 8, 71 6, 72 22, 73 2, 76 9, 76 13, 92 6, 139 22, 140 25, 143 10, 145 3, 146 17, 150 10, 154 10, 154 17, 159 15, 200 19 describing [6] - 28 25, 31 18, 60 6, 94 10, 147 14, 183 24 description [1] - 128 20 designed [1] - 7.7 detail [1] - 151 10 detect [1] - 101.6 detected [2] - 64 8, 107.14 detection [1] - 87 11 determination [1] - 101 18 determine [1] - 105.17 determined [1] - 168 6 detour [1] - 137 24 Devlin [1] - 17 4 diagonally [1] - 131 21 Diamond [21] - 11 11, 17 25, 19 5, 19 20, 20 3, 25 15, 26 11, 27 12, 32 22, 33 24, 42 12, 43 12, 50 12, 51 11, 57 14, 57 21, 164 4, 170 23, 173 15, 177 16, 183 3 Diamond's [1] - 21.1 did [149] - 7 9, 7 11, 8 16, 8 18, 17.24, 18 16, 29 3, 30 24, 30 25, 34 3, 34 6, 34 11, 35 14, 35 23, 36.5, 38.2, 38 4, 45.16, 45.18,</p>	<p>45 20, 46 2, 52 24, 55 20, 61 18, 66 5, 66 6, 66 8, 69 22, 70 12, 70 13, 70 15, 70 21, 70 25, 73.3, 73.8, 73 10, 73.24, 75 7, 82 6, 82 8, 82 12, 82 16, 83 1, 83 23, 91 5, 91 11, 101 17, 102.13, 102 15, 102 23, 102 24, 103 4, 103 7, 104 11, 104 24, 104 25, 105 16, 105 21, 105 22, 106 1, 107 10, 110 16, 110 19, 111 5, 113 22, 114 20, 114 24, 115 22, 115 25, 117 6, 117.13, 117 14, 117.15, 118 22, 119.21, 120.4, 120.10, 120.18, 120 22, 122 5, 124 13, 124.18, 124 25, 125 10, 125 12, 126.10, 126 17, 126 21, 126 22, 127 21, 128 5, 128 7, 132 8, 132 18, 133 1, 133 20, 133 23, 134 11, 139 2, 141 6, 144 15, 147 1, 150 23, 151 16, 151 19, 152 14, 154 8, 154 10, 154.24, 156 16, 171 3, 178 4, 180 15, 183 11, 183 22, 184.22, 185 6, 188 6, 188 23, 189 16, 190 11, 190.24, 190 25, 191 19, 192 13, 192 17, 193 8, 193 11, 193 16, 193 18, 193 20, 194 1, 194 4, 194 25, 195 5, 195 8,</p>	<p>195 13, 196 25, 197 2, 198 16, 199 22, 200 2, 200 21, 200 22, 201 10, 201 12, 201.14 didn't [38] - 7 8, 34 13, 34 14, 34 15, 45 21, 70 19, 71 2, 74 19, 76 25, 119 2, 122 7, 122 12, 122 25, 123 1, 126 10, 126 23, 127 2, 127 5, 127 19, 128 9, 128 13, 136.13, 155 24, 168.4, 175 4, 179.22, 180 2, 182.12, 184 8, 188 8, 194 22, 195 6, 198 7, 198 15, 198.16, 202 5 difference [4] - 67 6, 93 2, 188 6, 188.8 different [25] - 12 3, 39 19, 67.4, 74 3, 76 21, 76.22, 81 19, 81.20, 81 22, 84.3, 84 17, 84 22, 86 14, 90 7, 106 9, 122 23, 159 11, 159 12, 159 13, 159 14, 185 9, 192 20, 201 1, 201.17, 202 9 digital [1] - 68 1 directing [1] - 117 16 direction [14] - 52 24, 53 2, 77 4, 77 6, 77 12, 77 15, 121 11, 121 14, 121 16, 149 5, 152 13, 153 24, 182 20, 188 12 DIRECTIVE [1] - 206 6 directly [4] - 33 5, 93 6, 120 12, 154 1 dirty [1] - 153 4 disappeared [2] - 62.24, 69 18 discharge [2] - 106 5,</p>
---	--	---

<p>200 3 discharged [3] - 104 21, 105 19, 109 18 discharging [1] - 107.17 discuss [4] - 16 9, 79 16, 99 4, 113 15 discussed [1] - 160 14 discussing [1] - 133 17 discussion [2] - 70 2, 72 10 Disk [2] - 4 4, 40 17 disk [8] - 4 4, 36 24, 37 12, 40 13, 40 25, 41 9, 41 12 distance [12] - 101 18, 105 18, 106 9, 108 4, 108 14, 108 15, 117 25, 124 21, 125 25, 175.18, 183 19, 189 1 distances [5] - 29 10, 29 11, 106 2, 106 25, 107 10 distant [1] - 106 8 distinct [3] - 72 21, 75 5, 201 18 distinction [1] - 75 5 distinctly [1] - 73 25 distress [1] - 125 19 DISTRICT [1] - 1 4 district [1] - 111 5 District [3] - 1 13, 1 14, 1 14 disturbing [1] - 64 15 DNA [62] - 80 8, 80 9, 80 11, 80 12, 81 2, 81 11, 81 20, 82 15, 82 21, 83 2, 83 11, 84 2, 84 9, 84 19, 86 4, 86 7, 86 8, 86 14, 86 19, 86 21, 86 24, 86 25, 87 2, 87 4, 87 9, 87.13, 87 14, 87-16, 87-19, 87.22, 88 1, 88 3, 88 20, 88 21, 89 2, 89 7, 89 10, 89 15, 90 18, 91 25, 92 1, 92 6, 92 9, 92 12,</p>	<p>92 14, 92 15, 92 18, 92 20, 93 12, 93-23, 94 3, 94 4, 95 4, 95 5, 95 8, 95 14, 95 15, 95 25, 96 1, 96 12 DO [1] - 206.2 do [176] - 10 6, 11 23, 15.4, 15 20, 16 9, 16 17, 17 12, 17 19, 21 22, 22 10, 23 7, 26 22, 27 11, 29 22, 32 21, 33 10, 33 18, 34 6, 34 11, 37 11, 37.16, 38 11, 38 15, 38 20, 39 14, 41 25, 43 23, 52.15, 52 16, 53 1, 54 11, 59 8, 59 12, 61 1, 61 8, 61 9, 64 4, 69.13, 69 16, 70 5, 70 15, 70 19, 72 25, 73 22, 73 24, 74 9, 74 13, 74 19, 74.24, 75 6, 75 10, 75-12, 76 22, 78 19, 78 22, 79 15, 80 6, 80 21, 80 22, 81-1, 81.16, 81 22, 81-24, 82 12, 83.2, 83 8, 84 2, 84-13, 84 15, 85 1, 85 22, 89 18, 93 16, 98 4, 98 7, 99 24, 100 2, 100.11, 101 11, 101-22, 101 25, 102 13, 103 5, 103 21, 103 23, 105 16, 105 22, 106 13, 106 16, 107 5, 108 9, 112 13, 112-17, 113 15, 114 6, 114.8, 114 14, 115-10, 116 1, 116 10, 117 4, 117 15, 117 20, 118 5, 118 10, 122 14, 123 12, 124 7, 124 22, 125 2, 125 23, 128 17, 128 20,</p>	<p>129 24, 130 2, 131 2, 131 9, 133 14, 133 23, 133 25, 134 16, 135 1, 135 16, 136 2, 144 15, 147 7, 147 10, 147 14, 148 24, 149 11, 149 14, 154.24, 155 11, 156 17, 160 10, 161 12, 161 16, 162 10, 163 11, 163 12, 163 13, 163 20, 163 21, 164 18, 165 14, 165 18, 165 21, 165 22, 165 24, 167 1, 167 9, 169 3, 170 12, 170 13, 171 1, 172 15, 172 16, 184.10, 186 16, 194 11, 199 15, 202 15, 202 18, 203 3, 203.9 DOCKET [1] - 205 12 document [1] - 96 11 documenting [1] - 103 5 does [26] - 26 5, 26 6, 28 11, 72.2, 73 18, 84 16, 85-14, 88 3, 89 9, 89 17, 89 22, 104 15, 107 16, 108 23, 136 18, 136 22, 164 8, 169 23, 170 8, 173 12, 177 6, 178 2, 188 12, 189 13 doesn't [1] - 28 21 dog [1] - 117 11 doing [27] - 19.13, 22 16, 22.19, 44 8, 55.4, 60 13, 83 2, 85-3, 85 20, 107 5, 112 22, 120 17, 122 18, 124 2, 130 7, 139 16, 145 4, 145 11, 148 13, 151 2, 155 3, 164 18, 183 5, 185 15, 185 18, 186 2,</p>
---	--	---

<p>189 22 don't [88] - 5 25, 6 7, 6 15, 7 23, 7 24, 12 5, 20:1, 20 2, 22 2, 24 10, 25 3, 25 4, 27 7, 27 8, 31 5, 32 8, 32 9, 32 17, 34 18, 34 20, 36 23, 41 15, 42 18, 47 6, 48 22, 52 23, 53 10, 63 19, 64 5, 66 5, 74 20, 75 12, 85 23, 96 23, 100 17, 109 23, 125 5, 126 2, 126 3, 127 2, 128 9, 128 11, 129 5, 132 15, 135 16, 137 5, 139 5, 141 13, 142 20, 144 21, 144 24, 145 17, 150 13, 151 1, 151.17, 152 16, 152 21, 153 7, 153 8, 153 9, 153.22, 154 4, 154.21, 154 22, 155 9, 155 10, 156 1, 156 3, 156 13, 157 20, 158 5, 158 18, 173 4, 175 12, 184 8, 189 18, 191 4, 194 18, 195 16, 199 4, 199 9, 202 16, 203 9 don't. [1] - 48 5 done [11] - 57 9, 90 15, 95 8, 100 13, 100 18, 103 6, 134 11, 156 14, 188 20, 196 23, 204 5 door [10] - 137 7, 137 10, 149 21, 158 1, 169.15, 170 3, 170.8, 175 2, 184 6, 186.23 doors [3] - 131 10, 131.13, 181 8 dot [1] - 56 22</p>	<p>dots [3] - 54 17, 56 3, 56 8 double [2] - 59 1, 103 10 double-check [1] - 59 1 double-sided [1] - 103 10 down [67] - 15 10, 23 18, 25 12, 26 15, 27 10, 31 3, 35 24, 36 4, 36 5, 36.10, 38 10, 40 1, 42 10, 42 12, 42 16, 44 5, 44.12, 49 24, 50 10, 50 12, 51 2, 76 19, 113 15, 116.16, 117 10, 117.12, 117.16, 118.1, 123.18, 125 9, 131.10, 131 13, 149.23, 150 1, 151 18, 158 23, 159 25, 167 5, 173.14, 175 4, 175 10, 175 25, 176 6, 176 22, 177 2, 177 7, 177 11, 178 17, 181 10, 181 15, 182 1, 183 6, 183 15, 183 19, 184 24, 186 5, 186 10, 187 4, 187 5, 187.11, 187 13, 187 15, 188 4, 188.22, 193 8, 193.24 downward [1] - 5 25 draw [8] - 18 16, 108 3, 121 7, 135 17, 135 23, 167 9, 177 10, 178 12 drawing [2] - 121 7, 187 22 drawn [5] - 26 19, 55 16, 56 6, 144 14, 145 1 dressed [1] - 52 19 drew [2] - 61 20, 72 4 drive [8] - 18 6, 44 12, 58 12, 115 10, 115 23, 126 16,</p>	<p>194 12, 194 13 drives [1] - 36 24 driveway [2] - 142 13, 157.14 driving [2] - 11.9, 26 3 drop [3] - 145 18, 148 19, 193 23 dropped [2] - 28 16, 194.1 drove [2] - 118 2, 120 23 dude [3] - 52 13, 52 17, 52.18 dude's [1] - 53 24 due [1] - 109 4 during [9] - 51.20, 70 1, 73 2, 73 7, 78 3, 84 1, 102 23, 157 12, 178 14</p> <p style="text-align: center;">E</p> <p>E [14] - 3 1, 4 1, 5 1, 60 25, 80 2, 80 3, 99 13, 116 23, 131 1, 163 2, 163 6, 206 1 each [14] - 23 20, 39 7, 65 19, 65 22, 65.23, 68 2, 88.7, 88 24, 110 20, 144 2, 144 3, 160 8, 188 7, 205 7 earlier [8] - 34 16, 53.3, 55.17, 70 1, 92 6, 143.11, 145 3, 181 2 early [1] - 164 19 ease [1] - 84 24 easiest [1] - 19 4 easily [1] - 173 20 East [1] - 116 24 edge [4] - 30 4, 165 23, 173 22, 173 23 education [1] - 81 24 Edward [1] - 60 24 EDWARD [1] - 60.25 effect [1] - 198 22 eight [4] - 75 2, 75 4, 75.21, 114 25 either [5] - 111 10, 175.9, 187 9, 194 1, 199 3</p>
---	--	---

<p> elaborate [1] - 140 1 elapsed [1] - 139 6 electrical [1] - 159 16 Eli [1] - 160 20 eli [1] - 160 21 Eliot [1] - 206 19 else [17] - 22 20, 25 22, 74.6, 111 21, 112 3, 114 20, 116 6, 120 10, 126 25, 133 20, 146 5, 152.1, 156 13, 163-3, 166 23, 167 1, 180 15 EMAIL [1] - 206 23 email [2] - 11 20, 203 20 emergency [1] - 51 12 Emerson [1] - 116 24 EMPLOYED [1] - 206 8 employed [3] - 80 4, 80 17, 99 14 end [18] - 6 4, 9 14, 26 15, 27 11, 78:5, 81 22, 87 16, 88 22, 138 18, 140 7, 142-5, 149.17, 160 2, 165-1, 165-8, 183 4, 201 19 ends [1] - 28 1 engineer [2] - 61 2, 74 23 engineers [1] - 74 24 England [3] - 23 4, 52 19, 82 2 enough [5] - 25 6, 62 4, 87-24, 144 8, 154 23 ensures [2] - 89 5, 89-6 entail [1] - 89.22 enter [2] - 26 11, 116 10 entered [1] - 43-3 entering [1] - 32-22 entire [2] - 158 15, 191-22 ENTIRE [1] - 1.9 entrance [1] - 20 3 entrances [1] - 135 15 </p>	<p> EPPS [84] - 5 17, 5 19, 8-3, 8 6, 8 8, 8 25, 9 6, 9 9, 9 15, 9 22, 10 2, 11 2, 12 17, 13 9, 13 15, 13 21, 13 24, 14 4, 14 6, 14 13, 14 20, 14 25, 16.23, 21 12, 21-18, 29 9, 29 14, 29 17, 30 18, 30.19, 37 10, 40 12, 40 20, 41 3, 41 5, 41.8, 41 13, 41 14, 53-7, 55 12, 57 7, 57 21, 57 24, 58 8, 58 14, 58 24, 59 1, 60 19, 66 10, 66 12, 66 13, 67 20, 69 5, 69 10, 71 14, 76 1, 77 22, 78 8, 78.11, 97 13, 97 20, 99 7, 99 9, 103 15, 103 20, 110 2, 112-4, 112 9, 129.14, 129 21, 130 20, 137 19, 141 20, 156 1, 161 1, 161 8, 196 1, 202 16, 202 20, 203 1, 203 6, 203 20, 203 23, 204 7 Epps [9] - 1 14, 3 4, 3 7, 3 11, 3 16, 11 15, 11 19, 15 13, 111 23 errors [1] - 90 8 escalate [2] - 176 8, 176.23 escalated [2] - 176-16, 187 12 escalation [1] - 176 20 escape [1] - 100 22 Esquire [2] - 1.17, 2 3 essential [1] - 81 11 essentially [4] - 19 18, 68 9, 87 8, 106 22 establish [1] - 5 21 estimate [3] - 30 16, 141 23, 157 8 et [1] - 150-1 </p>	<p> even [6] - 36 23, 111 12, 168 25, 171 11, 180 12, 192 5 evening [1] - 72-11 evenly [1] - 63-13 event [3] - 30 21, 64 25, 70 22 events [3] - 12 3, 62 11, 134 5 eventually [5] - 26-16, 62 7, 70 21, 150 4, 177 7 ever [1] - 100 14 every [8] - 82 19, 89 14, 89 20, 106 8, 145 22, 146 14, 205 7 everybody [5] - 46 19, 51 12, 55 19, 176-12, 186 17 everyone [5] - 15 20, 86 14, 145 1, 203 14 everyone's [1] - 16 4 everything [14] - 6 19, 13-17, 27 20, 38 17, 39 21, 40 5, 85 20, 90 9, 91 2, 95 11, 111 20, 176 7, 197 15 evidence [18] - 21 17, 40 18, 41:12, 58 6, 67 24, 69 9, 75 9, 78 16, 94.17, 96 20, 103 19, 103 25, 123 9, 129 20, 137 18, 166 17, 196 8, 202 25 exactly [18] - 8 7, 19 9, 19 22, 23 17, 28 10, 100-17, 119 8, 124 6, 132.16, 140 22, 143-6, 144 21, 146 6, 150 14, 151.18, 153 20, 168 16, 169 17 EXAMINATION [20] - 16 22, 41 19, 52 7, 55 11, 60 18, 71 16, 75 25, 78 1, 79 19, 99 8, 110 4, </p>
--	---	--

<p>111 3, 113 19, 130 19, 156 6, 156 24, 162 13, 196 12, 200 17, 201 25 examine [1] - 107 6 examiner [1] - 102 21 EXCELLENT [1] - 205 15 excited [1] - 52 13 excluded [1] - 94 23 exclusion [1] - 95-19 excuse [1] - 176 10 excused [7] - 57 23, 78 10, 97 10, 112 8, 129 13, 161 4, 202 14 exhibit [14] - 13 5, 21 13, 40 13, 67 21, 69 6, 96 16, 103 16, 123 5, 129 16, 137 15, 142 9, 166 11, 191 5, 205 22 Exhibit [33] - 21 15, 21 16, 40:16, 40 17, 41 11, 58 4, 58 5, 67.22, 67.23, 69 7, 69 8, 78 14, 78 15, 96 18, 96 19, 103-17, 103 18, 123 7, 123 8, 129.18, 129 19, 137 16, 137 17, 137 20, 166 15, 166 16, 171 15, 172 12, 191 12, 196 6, 196 7, 202 23, 202 24 Exhibits [1] - 1 2 EXHIBITS [1] - 4 2 exit [3] - 115 18, 120-8, 126 6 exited [3] - 121 14, 125 21, 126 13 expect [2] - 6 4, 9 6 expected [1] - 7 12 expelled [1] - 111 8 experience [3] - 99 24, 100 4, 104 16 expertise [1] - 110 10 explain [9] - 86 18, 88 16, 93 2, 94 1,</p>	<p>94 9, 94 13, 101 20, 135 24, 149 13 explaining [1] - 60 2 explanatory [1] - 143 16 Express [1] - 37 8 express [1] - 95 13 expression [1] - 148 24 extended [1] - 160 3 extent [2] - 79 13, 99 1 extraction [1] - 86.22 extraneous [1] - 89 7 extremely [1] - 181-3 eye [2] - 86 12, 101 25 eyewitnesses [1] - 9 7</p>	<p>188 2, 188 4, 188 22, 192 7, 192.9 falling [2] - 151 9, 188-15 falls [7] - 28 4, 28 5, 28 7, 56 9, 151 15, 152.7, 177 11 falter [2] - 158.22, 159 23 familiar [14] - 7 2, 18 11, 61.11, 79 6, 86 6, 98 19, 115 1, 115 4, 117 21, 131 12, 131 20, 131 23, 193 13, 193 15 familiarity [3] - 9 19, 70 9, 112 25 family [17] - 45 12, 130 14, 145 20, 160 23, 164 22, 164 24, 165 1, 165 2, 165 5, 165 8, 166 8, 166 23, 166 25, 167 1, 169 14, 176 7, 186 6 Family [1] - 1 16 fan [2] - 23 4, 52 20 far [26] - 6 14, 13 15, 23 11, 29 4, 29 5, 38 8, 65 19, 103 4, 111 8, 120 22, 125 23, 130 15, 141 23, 144 2, 152 14, 152 18, 165 1, 169 13, 175 5, 176 1, 185 23, 191 19, 195 1, 199 6, 203 19 fatal [1] - 7 17 father [9] - 10 10, 12 9, 35 2, 86 17, 131 18, 157 21, 157 25, 160 6, 160 13 father-in-law [5] - 131-18, 157 21, 157 25, 160 6, 160 13 faulting [1] - 6 16 favor [1] - 38 15 February [10] - 17 22,</p>
	<p style="text-align: center;">F</p> <p>F [1] - 206 1 fabric [3] - 106 20, 107 6, 107 7 face [14] - 15 2, 15 10, 59 6, 66 21, 67 12, 75 19, 98 2, 148 21, 152 20, 152 21, 161 10, 165 9, 183 2 facility [2] - 108 20, 109 5 facing [10] - 19 16, 23 20, 63 11, 63 13, 63 14, 143 21, 182 21, 182 22, 183 3, 186 19 fact [4] - 7 14, 10 19, 66 6, 198 12 fair [6] - 86.1, 87 21, 92 22, 93 13, 115 1, 115-11 FAIR [1] - 205 15 fairly [2] - 72 9, 115 11 fall [7] - 151 13, 151 16, 151 19, 152 3, 184 23, 188.12, 188 25 fallen [11] - 8 22, 29 1, 29 19, 32 20, 53 2, 187 18,</p>	

<p>25 10, 61 17, 71 24, 77 17, 115 21, 131 14, 131 16, 132 2, 164 14</p> <p>feed [1] - 69 1</p> <p>feels [1] - 146 21</p> <p>feet [44] - 8 19, 8 20, 29 12, 29 13, 30 17, 49 16, 50 21, 65 21, 65 22, 65 23, 71 7, 78 4, 107 15, 107 18, 107 19, 107 20, 108 19, 108 23, 108 24, 109 4, 109 8, 109 9, 111 23, 111 24, 111 25, 142 1, 150 1, 152 17, 152 18, 174 24, 176 19, 187 1, 189 3, 189 7, 189 8, 189 13, 189 14, 189 19, 191 24, 191 25, 192 5</p> <p>fell [17] - 31 9, 31 23, 49 19, 54 12, 54 20, 151 11, 151 13, 187 22, 188 13, 188 15, 188 24, 189 6, 193 6, 193 22, 195 1, 195 10</p> <p>felt [4] - 150 20, 176 15, 194 2, 194 20</p> <p>fence [4] - 171 6, 171 8, 175 6, 184 7</p> <p>fenced [1] - 173 22</p> <p>few [9] - 9 9, 28 1, 33 2, 62 12, 123 16, 131 10, 131 13, 147 2, 149 7</p> <p>field [1] - 70 13</p> <p>fifteen [1] - 17 10</p> <p>figure [4] - 16 1, 93 12, 105 17, 134 17</p> <p>figuring [1] - 16 5</p> <p>file [3] - 68:7, 75 12, 75 20</p> <p>files [2] - 37 21, 91 1</p>	<p>filled [1] - 90 9</p> <p>final [4] - 73 20, 74 9, 157 6, 200.9</p> <p>finance [3] - 163 14, 163 16, 163 18</p> <p>FINANCIALLY [1] - 206 9</p> <p>find [2] - 6 9, 117 4</p> <p>findings [3] - 7 25, 60 10, 113 4</p> <p>fine [9] - 10 1, 10 4, 59 22, 59 23, 74 18, 99 3, 137 20, 161 7, 202 18</p> <p>finished [1] - 81 6</p> <p>fire [3] - 107.3, 111.7, 192 25</p> <p>firearm [14] - 100 22, 100 24, 101 3, 104 20, 106 2, 106 4, 106 8, 106 21, 107 3, 107 16, 108 15, 111 20, 201 9, 201 11</p> <p>firearms [2] - 22 2, 22 22</p> <p>Firearms [1] - 105 25</p> <p>fired [9] - 7 19, 48 17, 69 21, 74 3, 100 25, 108 5, 111 25, 193 3, 194 15</p> <p>fireplace [1] - 165 8</p> <p>fires [4] - 106 1, 106 16, 107:10, 107 24</p> <p>firing [3] - 106 13, 109 19, 200.8</p> <p>first [58] - 9 22, 18 23, 20 18, 24 4, 26 11, 26 24, 27 1, 27 2, 31 4, 31.10, 31:16, 34 7, 37 11, 37 24, 43 18, 44 4, 44 10, 44 22, 44 24, 45 2, 47 21, 48 19, 51 21, 55 1, 75 15, 79 24, 84 19, 86 22, 88 16, 89 23, 94 19, 101 22, 102 24, 106 6, 108.7, 113 23, 118 14,</p>	<p>118 15, 120 14, 121 14, 122 14, 122 24, 122 25, 125 8, 126 5, 126 6, 136 17, 157 6, 157 13, 162 25, 169 12, 169 18, 171 20, 174 1, 174 18, 177 14, 201 8</p> <p>FIS [2] - 105 23, 106 21</p> <p>Fisher [1] - 163 14</p> <p>five [12] - 33 19, 39 23, 40 4, 83 20, 100 13, 100 18, 104 4, 107 12, 109 11, 134.10, 160 11</p> <p>flashing [1] - 152 22</p> <p>flat [1] - 123 20</p> <p>floor [1] - 150 15</p> <p>focus [2] - 199 14, 199 17</p> <p>focused [1] - 167 13</p> <p>fold [1] - 191 6</p> <p>follage [2] - 68 20, 68 24</p> <p>folks [3] - 129 7, 142 5, 195 18</p> <p>follow [4] - 71 18, 85 14, 88 8, 201.22</p> <p>followed [1] - 88 24</p> <p>following [2] - 88 4, 90 2</p> <p>football [1] - 133 19</p> <p>FOR [1] - 206 8</p> <p>For [4] - 1 13, 1 16, 2 2, 205 7</p> <p>for [99] - 6 17, 6 22, 6 24, 9 1, 12 19, 14 7, 17 5, 19 4, 25 6, 55 13, 58 3, 58 11, 60 5, 60 23, 61 1, 61 3, 64 20, 70 18, 70 19, 74 22, 79 24, 80 7, 80 23, 83 2, 84 22, 84 24, 85 12, 85 25, 86 8, 90 1, 90 8, 91 13, 92 6, 92 24, 94 8, 95 18, 96 5, 96 24, 99 12, 100 6, 101 17, 102.13, 105 4,</p>
--	--	---

<p>106 1, 108 8, 109 23, 110 16, 110 19, 111 1, 113 24, 118 13, 119 18, 120 25, 121 20, 123 15, 124 1, 129 6, 129.15, 130 24, 131.2, 132 13, 133 7, 134 1, 136 4, 141 15, 157 8, 157 10, 160 3, 162 15, 162 25, 163 13, 163 14, 163 16, 163 18, 166 12, 166 14, 168 14, 171 2, 173 3, 174 3, 174 15, 177 10, 177 14, 178 12, 179 20, 180 4, 182 23, 194 10, 195 17, 197 3, 200 24, 202 19, 202 22, 203 4, 203 14, 204 6, 205.7 forbid [1] - 136 18 FOREGOING [2] - 206 2, 206 5 forensic [9] - 80 12, 80 15, 80 20, 80 21, 81 1, 81 16, 82 2, 82 4, 99 20 FORM [1] - 205 4 form [2] - 162 11, 205 7 formal [2] - 60 3, 163 5 FORMAT [1] - 206 6 formation [1] - 27 15 forth [6] - 62 14, 139-23, 140 2, 141-25, 149-22, 168 18 forthcoming [1] - 77 19 forward [13] - 136 12, 148 9, 150 8, 152 12, 152 15, 152 19, 153 14, 154 12, 154 16, 190.24, 191 25, 194-21 foul [1] - 29 15</p>	<p>found [4] - 93 15, 104 3, 110 8, 194 2 four [17] - 19 12, 33 19, 73 16, 74.2, 74 9, 86 21, 89 6, 105.4, 109 11, 134 10, 139 14, 154 22, 175.15, 178 13, 178 22, 178 23 fourth [3] - 90 16, 90 17, 92 5 fourth-step [1] - 92 5 fragments [2] - 87 15, 92 18 Framingham [1] - 2 4 frankly [1] - 9 4 free [1] - 144 8 frequently [1] - 115 18 fresh [2] - 77 18, 172 9 friends [2] - 16 10, 36 8 from [131] - 6 23, 8 18, 11 8, 19 6, 19 8, 19 17, 21 19, 22 5, 23 11, 24 25, 25 2, 29 4, 29-21, 33 2, 35 24, 41 10, 44 24, 51 19, 60 13, 62 16, 62 24, 63 17, 65 9, 65 19, 65 21, 65 22, 65 23, 66 4, 68 16, 68 23, 69 4, 69 11, 69-18, 71 7, 73 3, 73 5, 73 8, 76 10, 80 22, 82 1, 82 3, 84 21, 86 25, 92 10, 92 13, 93 4, 93-6, 93 9, 93 21, 93 23, 94 3, 94 5, 94 6, 95 25, 96 2, 96 3, 96 11, 99 25, 100 22, 102 16, 102 20, 104 11, 104.20, 105 18, 106 25, 111.15, 111 19, 111 25, 115 14, 116 15, 117 23, 121 11, 121 17, 122 24, 123 3, 125 24, 126 8, 127.24,</p>	<p>128 18, 131 24, 133 7, 134 18, 138 25, 140 20, 141 24, 142 9, 142 17, 142 23, 144 2, 144 3, 146 17, 149 18, 151.20, 151 22, 152.3, 152.14, 154 1, 156 9, 156 11, 156 15, 157 5, 157 13, 157 15, 169 13, 170 2, 171 12, 171 13, 171 14, 173 18, 175 18, 176 9, 181 11, 182 6, 182 20, 183 11, 184 10, 184.11, 188.6, 188 21, 189-7, 191 21, 192 9, 193 2, 193 10, 194 15, 194 21, 194 25, 201 19 FROM [2] - 206 3, 206 15 front [28] - 19 21, 27 3, 68 12, 77 5, 101 3, 101 4, 104 5, 104 6, 106 18, 107-1, 108.12, 111 14, 137 7, 137-10, 138 21, 140 7, 142 6, 153 10, 157 15, 157 16, 157 19, 157 21, 158 1, 177 15, 177 19, 177 21, 179 7 FTR [1] - 206 15 fucking [2] - 176 12, 177 1 full [7] - 17 1, 60 22, 60 24, 99 11, 170 2, 191 23 further [17] - 54 5, 71 14, 77-22, 78 8, 96 24, 105 16, 108 19, 109 6, 110 2, 112 5, 129 5, 138 7, 161 1, 178 2, 178 4, 179 4,</p>
---	---	---

<p>195 17 FURTHER [3] - 206 5, 206 7, 206 9 fuzzy [2] - 23 1, 44 22</p>	<p>Genetics [1] - 82 11 gentleman [16] - 127 23, 128 1, 128 6, 128 15, 170-16, 174 25, 178 25, 179 18, 180-18, 180 22, 183.20, 187 7, 187.17, 187 18, 189 5, 190 12</p>	<p>182 3, 182 4, 203 10 giving [4] - 24 18, 128 20, 155 2, 182 7 glance [2] - 120 18, 136 15 glancing [1] - 149 6 glass [1] - 39-2 global [2] - 74-8, 163 19</p>
<p>G</p>		
<p>G [2] - 5 1, 114 1 gain [1] - 11.21 game [11] - 11 11, 18 3, 23 4, 34 16, 34.17, 44 16, 133 19, 164 21, 166 21, 167 8, 167 13 gap [1] - 191 20 gaps [1] - 144 9 garage [2] - 165-5 Garden [8] - 26 16, 42 19, 163-23, 163 25, 165 3, 165:12, 165 21 garment [1] - 101 23 gate [1] - 138 22 gave [3] - 103 9, 111 10, 194 5 GEMMILL [24] - 79 20, 96 15, 96 21, 96 22, 113 20, 123.10, 123 11, 129-3, 129 4, 162 14, 166 18, 166 19, 191 6, 191 10, 191 12, 191 15, 191 18, 195 16, 196 2, 200 15, 200 18, 201 3, 201 20, 204 9 Gemmill [4] - 1 14, 3 9, 3 14, 3 19 general [6] - 55-18, 77 6, 77 15, 79 16, 99 5, 113 7 generally [2] - 86 21, 99 4 generate [7] - 60 14, 84 14, 92 2, 113 14, 130 12, 162 5 generated [7] - 60 9, 79 9, 79 17, 92 13, 99 3, 113 14, 130 12 genetic [1] - 86 9</p>	<p>gestured [1] - 141 1 get [64] - 5 12, 8 18, 11 18, 12.18, 15 1, 15 13, 19 4, 19 18, 20 22, 24 25, 25 2, 25 14, 29 3, 29 22, 29 23, 35 8, 37 4, 38 10, 38 16, 41 25, 42 4, 42 8, 44 15, 59 25, 64 16, 65 14, 81 14, 82 6, 98 17, 103 4, 107 24, 112 22, 116 14, 117 3, 130 6, 130 14, 134 2, 134 25, 145 20, 157 3, 161 24, 165-16, 172 4, 173.4, 175 4, 175-11, 176 6, 181 13, 182 12, 183-8, 183 14, 183-16, 184 1, 187.2, 189.11, 189:12, 189 13, 193-18, 194 19, 197 2, 199 23, 199 25, 200 25, 203 20 gets [2] - 177 6, 177 7 getting [5] - 18 4, 18 25, 48 25, 59 17, 161 20 give [19] - 8 13, 17 1, 30 16, 59 9, 62 18, 78 20, 80 25, 92 19, 95 22, 98 5, 103 10, 112 14, 112 24, 118 9, 129 25, 151 10, 161 13, 171 15 given [11] - 7 14, 11 14, 12 19, 79 6, 94 17, 95 1, 98 20,</p>	<p>163 19 go [47] - 6 19, 15 1, 17 19, 19 5, 26 5, 26 12, 26 14, 31 4, 42 11, 42 12, 42 20, 43 5, 43 11, 43 18, 44 24, 62 5, 64 16, 65 14, 71 2, 80.22, 81 17, 84.21, 89 5, 89 18, 91-1, 103 12, 108.16, 116.17, 120-9, 136 25, 138.16, 138.17, 139-7, 140 7, 142 4, 149 11, 159.25, 166 9, 169 19, 178 6, 184 17, 186 15, 187 20, 190 1, 196 2, 198 15, 198 16 God [9] - 15 6, 59 11, 78 21, 98 6, 112 16, 130 1, 136 18, 161 15, 198 21 goes [3] - 27 11, 89 20, 177 16 going [114] - 5 14, 6 9, 8 13, 9 6, 9 23, 10 11, 11 10, 11 12, 12 11, 12 24, 14 11, 15.25, 16 8, 17 25, 18 6, 18 17, 20 16, 21 22, 23 4, 25 9, 26.15, 26 18, 26-19, 26 24, 27 11, 33 23, 39 6, 39 10, 40 12, 40 21, 42 14, 43 13, 44 2, 44 15, 46 18, 47 5, 52 24, 57 24, 58-9, 59 6,</p>

<p>59 16, 62.6, 62 8, 63 25, 64 6, 64 11, 64 13, 66.7, 66 14, 68 25, 70.14, 70 17, 88 3, 96 7, 98 1, 114 21, 115 20, 116 3, 117 22, 118 8, 120 17, 123 3, 127 25, 129 14, 132 5, 134 16, 134 21, 136 11, 136 15, 137 14, 139 1, 139 6, 140 19, 142 12, 149.10, 149 21, 158.2, 160.18, 161 10, 162 4, 164.3, 164 13, 165 10, 166 10, 168 1, 168 18, 170 24, 171 9, 171 15, 171 18, 172 4, 172 17, 173 14, 173 19, 175 2, 176 7, 176 12, 176 13, 177 1, 178 10, 186 15, 190.7, 190 8, 190 10, 190 11, 190.13, 194 11, 198.21, 202 3, 202 16, 203 18, 203.21 gone [6] - 47 17, 70 19, 70.23, 85 5, 174 5, 188 4 good [26] - 5 6, 5 8, 8 3, 16 24, 16 25, 29 24, 42 2, 42 4, 55 16, 60 20, 60 21, 79 21, 79 22, 97 11, 112 21, 113 21, 124 21, 125 25, 130 21, 130 22, 152 17, 157 1, 157 2, 162 18, 173 24, 204 10 GOOD [1] - 205 15 Good [2] - 99 10, 162 17 Google [2] - 20 20, 68 25 gosh [2] - 187 14,</p>	<p>190 7 got [29] - 7 15, 18 15, 30 3, 30 6, 30 12, 32 1, 48 9, 56 3, 76 22, 123 13, 127 22, 137 20, 137 21, 147 23, 149 23, 175 6, 175 22, 178 23, 184 19, 186 10, 187.17, 189 14, 189.19, 189 24, 191 2, 191 24, 192 1, 192 2 gotten [3] - 64 9, 175 20, 176 1 graded [1] - 83 21 gradually [2] - 62 16, 68 16 graduated [1] - 82 7 Graham [2] - 1 14, 195 24 grammar [1] - 90 8 gray [1] - 68 10 great [3] - 43 10, 83 22, 182 12 grew [1] - 36.25 Griess [2] - 101 17, 102 7 grip [2] - 141.16, 141 18 ground [39] - 23 9, 23.10, 27 24, 29.24, 30 7, 30 9, 31 17, 44 9, 44 11, 46 25, 48 7, 48 9, 49 9, 50 20, 62 25, 68 10, 72 24, 125 14, 125 24, 127 18, 128 22, 158 17, 159 25, 170 16, 170 21, 176 3, 177 3, 177.7, 180 6, 183 6, 184 18, 184 25, 187 1, 187 2, 189.25, 191 2, 192.11, 192 14, 193 22 group [4] - 63.10, 63 17, 66.4, 68.19 growing [1] - 37 8 GSR [1] - 100 6 guard [1] - 28 4 guess [17] - 5 12, 6 7,</p>	<p>6 21, 8 3, 14 7, 20 13, 24 23, 28 8, 37 13, 44 24, 50 1, 53 12, 60 5, 62 13, 106 23, 148 7, 204 5 guessing [1] - 189 2 gun [17] - 7 1, 22 9, 22 10, 28.16, 105 18, 106 7, 106 14, 108 5, 118 6, 126 21, 144 20, 144 24, 147 15, 150 12, 179.19, 195 11, 197.9 gunfire [2] - 193 10, 193 11 gunpowder [2] - 100 20, 101 1 guns [9] - 71 12, 126 19, 146 15, 193 15, 195 6, 195 7, 195 8, 197 12, 197.23 gunshot [12] - 100 6, 100 12, 100 19, 100 20, 101 11, 104 17, 105 13, 106 5, 108 6, 109 20, 167 20, 168 5 gunshots [11] - 70.8, 74 4, 100 1, 149 16, 157 7, 167 18, 168 3, 193 13, 201 13, 201 17, 201 19 guy [16] - 19 16, 27 4, 27 15, 28 2, 28 18, 30 6, 49 11, 52 17, 52 19, 54.7, 54 9, 56 9, 57 1, 57 2, 140 3, 187 14 guys [6] - 14 12, 42 10, 46 15, 46 23, 50 6, 167 21</p> <p style="text-align: center;">H</p> <p>H [5] - 17.7, 60 25, 80 3, 114 1 H-A-N-L-E-Y [1] - 80 3 H-U-T-C-H-I-N-S-O-N [1] - 177</p>
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<p>H1 [1] - 94 21 H2 [1] - 94 23 had [101] - 8 1, 8 22, 10 15, 10 19, 11 19, 12 3, 15 21, 18 3, 22 11, 23 2, 34 16, 35 4, 35 19, 37 6, 45.17, 46.16, 46 23, 52 13, 53 2, 53 3, 57 4, 64 20, 65 1, 65 16, 67 2, 68 2, 69 24, 70 3, 70 18, 70 24, 72 9, 77.17, 81 15, 92 25, 93 1, 100 11, 105 6, 105 10, 106 19, 107 12, 108 6, 108 25, 119 22, 119 24, 122 23, 124 13, 125 1, 126:24, 127 1, 127 24, 139 4, 139 6, 141 1, 141 10, 155 18, 155 25, 158 9, 158 10, 167.5, 167 6, 168 23, 175 1, 175 3, 175 20, 175 25, 176 16, 178 6, 178 7, 178 9, 179 19, 180 1, 180 9, 180.12, 180 14, 180 19, 180 23, 180 24, 181 24, 184 5, 184 16, 187 18, 188 1, 188 2, 188 4, 188 22, 189 21, 190 19, 192.9, 193 21, 195 9, 197 14, 198 1, 200 6 hadn't [3] - 167 23, 168 25, 176 1 hair [1] - 86 12 halfway [1] - 42 11 hall [2] - 36 18, 57 12 Hamilton [12] - 19 2, 19 6, 19 18, 20 23, 21 19, 26 7, 42 11, 43 3, 46 16, 61 14, 62 3, 163 24 Hamilton's [1] - 21 1</p>	<p>Hancock [41] - 18 8, 25 25, 42-16, 42 17, 43 5, 43-7, 43 8, 43 9, 43 13, 44 5, 44 12, 46 20, 50 4, 50 10, 52 25, 61 10, 61 12, 61 14, 115 5, 116-13, 116-17, 116 18, 117 4, 117 8, 118 11, 120 13, 120 16, 121 15, 121 21, 123 1, 123 14, 126 13, 127 17, 127 22, 127 24, 131 20, 164 2, 165 6, 174 10, 179 8 hand [45] - 15 3, 20 16, 31 14, 31 20, 32 1, 32 3, 32 4, 32 7, 32 15, 54 23, 55 2, 59 7, 65 1, 65.9, 65 11, 65 13, 78 18, 98 3, 112 12, 123 22, 124 13, 129 23, 134 4, 134 21, 135 14, 135 15, 141 1, 143 17, 149 1, 149 2, 153 21, 161 11, 165 17, 176 4, 181 18, 182 9, 182 12, 182 14, 182 17, 182 19, 190 15, 190 18, 193 22, 195 6 handcuffed [1] - 51 15 handed [3] - 54 24, 54 25, 103 8 handgun [1] - 6 6 handguns [3] - 22 7, 22 8, 71 12 handheld [1] - 64 20 handle [1] - 91 17 handles [1] - 106 22 hands [10] - 30 25, 64 24, 141.4, 152 20, 176 2, 181 18, 182 2, 182 6, 187 1, 189 23</p>	<p>hanging [1] - 126 18 Hanley [5] - 3 9, 4 7, 79 4, 80 1, 96 23 HANLEY [2] - 78 22, 78 23 Hanley's [1] - 96 19 happen [3] - 117 6, 151 19, 178 11 happened [24] - 13 15, 16 1, 16 5, 42 9, 45 8, 48 21, 51 20, 72 15, 72 16, 77 18, 127-21, 136.20, 136 25, 147 9, 147 18, 150.2, 151 25, 155 4, 155 15, 157 7, 184 2, 195-3, 195 10, 197 16 happening [7] - 25 17, 53 15, 64 7, 122 8, 124 22, 173 24, 174 23 happens [9] - 27 18, 27 20, 28 13, 44 20, 60 7, 85 22, 86 1, 102 12, 186.14 happy [2] - 176 9, 176 24 hard [6] - 22 5, 23 24, 30 6, 30 11, 129.2, 152 16 has [19] - 12 19, 45-9, 85 14, 86 19, 88 20, 89 10, 95 12, 100 25, 102 10, 106 24, 107 3, 146 20, 154 12, 154 14, 165 11, 169 25, 170 1, 171 16 have [169] - 5 23, 6 1, 6.24, 7 13, 7 23, 9 7, 10 7, 10 12, 12-5, 12 7, 16 3, 17 24, 18 13, 25 25, 33 20, 34 20, 40 8, 41 15, 41 17, 45 10, 45 23, 46 9, 50 6, 50 13, 55 16, 55 17, 57 12, 60 22, 61 3, 63 20,</p>
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<p>63 24, 64 16, 64 19, 67 7, 68 2, 68 15, 69 21, 70 9, 70 18, 72 3, 72 5, 72 7, 73 25, 74 9, 74 13, 74.15, 74 19, 74-21, 76 16, 76 19, 77 8, 77 11, 77 22, 77 23, 80 14, 81 15, 81 17, 81 23, 81 24, 82 1, 82.16, 83 1, 83.8, 83-11, 83 19, 83 23, 84 2, 84 5, 85 1, 85 5, 86 12, 86 13, 86 14, 87 10, 87 24, 88 14, 91 5, 96 23, 99 1, 99 11, 99 22, 99 24, 100.11, 100 13, 100 14, 100 15, 102 1, 103-21, 103 25, 106 8, 106 15, 106 25, 108 9, 108 20, 109 23, 110 2, 110 14, 111 15, 112 9, 112 24, 113 8, 114 18, 115 22, 117 22, 120 22, 123 12, 124 18, 124 25, 125 6, 125 23, 126 19, 127 13, 129 5, 129 21, 130 14, 130 23, 131 12, 132 12, 137 15, 140 12, 142 19, 144 5, 147 3, 151 14, 155 6, 155 15, 156 1, 156 14, 156 21, 160 6, 160 23, 162 4, 164 6, 166 11, 169 24, 173 3, 173 23, 176 9, 178-20, 178.25, 179 8, 180-23, 181 20, 184 22, 185 21, 188.23, 192 6, 192-7, 192 10, 194-21, 195 6,</p>	<p>195 8, 195 9, 195 11, 195-17, 195 18, 195 24, 196 15, 199 10, 200 11, 202 15, 202 19, 204 10 haven't [3] - 196 15, 196 17, 199 13 having [4] - 9 18, 32 20, 70 5, 73 18 he [294] - 5 22, 6 10, 6 12, 8 18, 8 20, 8 21, 12:2, 12 9, 14 2, 23-2, 23 7, 23 9, 23 10, 23 11, 23 14, 23-18, 23 19, 24 3, 24 23, 24 25, 25.3, 28 1, 28 4, 28 11, 28-15, 28 21, 29 4, 29.23, 29 24, 30 3, 30-7, 30 9, 30 11, 30 12, 31 1, 31 24, 32 17, 33 11, 35 4, 36 9, 44 9, 45 21, 45 23, 48 5, 48 6, 48 8, 48 9, 48 12, 52 21, 52 24, 55 4, 62 20, 62 22, 62 23, 65 1, 65 7, 65 11, 71 24, 72 10, 73 7, 78 4, 119 9, 119 10, 119 22, 119 24, 120 4, 120 7, 121 11, 121 16, 123 18, 123 19, 123 20, 124 13, 125 19, 125 25, 126 10, 126 23, 128.7, 129.1, 133.15, 136 9, 136 11, 136 18, 137.10, 139 16, 140 3, 140 4, 141 7, 141 8, 143 16, 143 23, 145 8, 145 10, 145 15, 145 18, 145 21, 148 5, 148 10, 149 1, 149 4, 149 5, 149 8, 149 25, 150 1, 150 5, 150 7, 151 2, 151 11, 151 13,</p>	<p>151.14, 151 15, 151-16, 151 18, 151 19, 152 12, 152.19, 152 22, 152-24, 152 25, 153 1, 153 7, 153.9, 153 14, 153 15, 153 17, 153 23, 153 24, 153 25, 154 5, 154 9, 154 12, 155 24, 156 12, 158 3, 158 4, 158 12, 158 17, 158 22, 160 2, 174 20, 174 22, 175 1, 175 3, 175 4, 175 6, 175 7, 175 11, 175 16, 175 20, 175 22, 176 1, 176 9, 176 10, 176 11, 176 13, 176 24, 177 6, 177 7, 177-11, 178 2, 178.4, 178 6, 180-9, 180 12, 180 13, 180 18, 180 21, 181 1, 181 3, 181.12, 181 23, 181-24, 182 9, 182.22, 182 24, 183:1, 183 3, 183-5, 183 6, 183.7, 183 12, 183 14, 184 14, 184 16, 184 19, 185 9, 186 11, 186 17, 186 19, 186 25, 187 2, 187 8, 187 9, 187 10, 187 11, 187 13, 188 4, 188 12, 188 13, 188 15, 188 16, 188 19, 189 1, 189 4, 189 6, 189 10, 189 13, 189 14, 189 16, 189 18, 189 19, 189 22, 189.24, 190 22, 190-24, 190.25, 191 2, 191.19, 191 22,</p>
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<p>191 24, 192 1, 192 2, 192 4, 192 6, 192 7, 192 9, 192 10, 192 13, 192 16, 193 6, 193 8, 193 20, 193 21, 193 22, 193 24, 194 1, 194 2, 194 20, 195 5, 195 6, 195 9, 195 10, 195 11, 202 7</p> <p>he'd [1] - 13 21</p> <p>he's [28] - 7 21, 7 22, 11 10, 12 11, 13 12, 13 13, 28 20, 28 22, 31 7, 31 16, 32 1, 51 15, 53 21, 76 21, 76 22, 131 18, 137 9, 145 11, 145 12, 145 15, 148 15, 177 2, 188 15, 190 7, 190 8, 198 21</p> <p>He's [1] - 190 10</p> <p>head [3] - 27 23, 28 18, 50 12</p> <p>headed [4] - 49 23, 50 10, 51 2</p> <p>heads [1] - 26 8</p> <p>hear [42] - 10 25, 17 2, 23 22, 23 24, 24 2, 25 6, 33.16, 33 20, 44 14, 44 25, 69 22, 73 9, 73 10, 74 19, 125.10, 133 1, 133 20, 140 15, 143 24, 146 22, 146 25, 147 1, 154 8, 154 11, 159 21, 162 19, 167 25, 168-11, 168 18, 168-20, 168 22, 169 1, 169 3, 169 16, 181 6, 181 7, 181 9, 181 14, 183 22, 193 16, 197 6, 202 5</p> <p>heard [46] - 11 24, 24 1, 33 18, 44 18, 47 22, 52-12,</p>	<p>61 19, 63 16, 69 20, 69 23, 69 24, 70 5, 71 24, 72 3, 72 18, 73 13, 73 16, 73 19, 74 2, 124 24, 132 19, 133 2, 133 8, 133-23, 142 3, 146-24, 157 6, 159 18, 167 11, 167 16, 167 20, 168 8, 168 23, 169 18, 175 1, 181 25, 184 1, 184 5, 184 15, 190 9, 190 19, 190 21, 192 3, 192 17, 201-7, 201 19</p> <p>HEARING [1] - 206 8</p> <p>hearing [17] - 24 10, 51 4, 70 7, 74 10, 74 13, 124 23, 147 14, 159 9, 159 22, 168 12, 168 15, 169 12, 184 8, 184 12, 185 4, 192-19, 200 20</p> <p>heart [1] - 7 18</p> <p>heat [1] - 86 23</p> <p>HEINEMAN [33] - 10 6, 11 1, 11 4, 11 7, 11 14, 12 14, 14 14, 14 17, 14 23, 41 18, 41 20, 42 22, 42 25, 46 8, 58 18, 71 17, 77 23, 78 2, 96 17, 97 2, 110 5, 129 9, 156 25, 195 24, 196 4, 196 9, 196 13, 200 11, 201 22, 202 1, 202.8, 203 12, 204 11</p> <p>Heineman [11] - 1.17, 2 2, 3 4, 3 7, 3 12, 3 17, 3.19, 76 2, 156 23, 195 23, 196 14</p> <p>Heineman's [1] - 14 10</p> <p>Heinlein [1] - 2.2</p> <p>held [2] - 80 14, 99 22</p>	<p>HELD [1] - 206 4</p> <p>help [10] - 8.24, 15 6, 45 16, 59 10, 78 21, 89 9, 98 6, 112 15, 130 1, 161 14</p> <p>helpful [6] - 6 21, 6 24, 9 13, 9 14, 14 11, 14 12</p> <p>her [2] - 118 2, 118 3</p> <p>here [55] - 9 19, 11 12, 15 9, 15 21, 21 1, 21 2, 43.5, 53 7, 54 6, 55 16, 55 20, 56 6, 59 9, 59 16, 78 20, 79 1, 93-4, 98 5, 112 11, 112 14, 114 2, 118 18, 119 12, 121 5, 121 19, 129-25, 135 6, 135 7, 135 8, 136 3, 136 4, 136 5, 137 3, 137 4, 137 21, 138 12, 138 22, 145 19, 149 18, 161 13, 165 11, 165 15, 165 24, 171 25, 172 10, 172 11, 172 12, 174 21, 176 12, 177 13, 178.20, 178 25, 179 6, 179 9, 179 10</p> <p>here's [1] - 20 23</p> <p>HEREBY [1] - 206 2</p> <p>Hey [1] - 14 2</p> <p>hi [2] - 78 17, 196 16</p> <p>high [4] - 57 15, 57 16, 57 17, 76 15</p> <p>High [1] - 17 20</p> <p>higher [3] - 56 5, 56 14, 81 24</p> <p>hill [2] - 117 10, 118.1</p> <p>him [86] - 7 18, 10 2, 10 12, 11 22, 23 1, 23 5, 23-6, 25 2, 28 19, 31 18, 32 20, 33 5, 33 11, 46 25, 47 18, 49 12, 50 17, 51 15, 54 14, 58 11, 63 13, 63 14, 68-12,</p>
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<p>76 13, 77 5, 122 24, 122 25, 123 2, 124 7, 143 21, 145 16, 147 10, 148.3, 150 9, 151 9, 154 2, 155 19, 155 23, 158 5, 158 23, 160 11, 175 4, 175 18, 175 25, 178 7, 179 5, 180 23, 180 24, 181 9, 181 14, 181 18, 182 6, 182 7, 182 25, 183 12, 183 15, 183 16, 184-1, 184 17, 184 20, 184 21, 184 23, 184.25, 185 3, 185 5, 185 13, 187 4, 188 16, 188 19, 188 20, 188 22, 189 4, 189 7, 189 12, 190 8, 190 11, 191 23, 192 5, 192 10, 193 23, 194 5, 194 7, 198 21</p> <p>hip [1] - 46 1</p> <p>his [105] - 7 20, 8 18, 8 20, 9 24, 10 14, 11 9, 24 20, 24 21, 28 3, 28.12, 28 16, 30 25, 31-3, 31 5, 31 8, 31 13, 32 1, 32 2, 32 3, 32 4, 32 9, 32 11, 32 12, 49 16, 50 21, 54 14, 62 18, 62 24, 62 25, 63 1, 65 1, 65 9, 68 11, 71 25, 72 23, 73 7, 76 10, 78 4, 78 5, 102 18, 123 20, 123.21, 124.2, 124-5, 124 8, 125 14, 125 16, 125 18, 136 8, 137 9, 148 14, 148 24, 148 25, 150 1, 151 17, 152 20, 152 21, 153 3, 153-4,</p>	<p>153 20, 154 25, 158 7, 158 16, 160 2, 160 3, 176 2, 176 3, 176 4, 180 15, 180 25, 181 4, 181 17, 181 18, 182 2, 182 6, 182 11, 182 14, 182.17, 182 19, 183 2, 186 25, 187 1, 188 22, 189 13, 189 14, 189 19, 189-22, 190 4, 190 15, 190 18, 191 22, 191 24, 191 25, 193 22, 195 6, 196 19</p> <p>history [1] - 81 20</p> <p>hit [10] - 7 9, 7 11, 7 18, 50 11, 50 14, 107-25, 108 1, 184 20, 187 9, 187 10</p> <p>hitting [1] - 185 3</p> <p>hmm [1] - 38 22</p> <p>hold [2] - 119 18, 172 4</p> <p>holding [29] - 31.1, 65 8, 65.11, 71.9, 71 10, 76 14, 76 18, 120 2, 134 14, 139 11, 141 7, 141-8, 141.11, 144 11, 144-22, 144 23, 144 25, 145 7, 145 8, 145 10, 146 12, 148 22, 153 8, 153 9, 154 5, 179 14, 182 7, 182 9</p> <p>holes [12] - 101 24, 102 2, 102 11, 103 2, 104 4, 105 5, 105.6, 108.8, 108 11, 108.13, 110 1, 111 18</p> <p>home [16] - 61 24, 71 25, 115 19, 116 4, 116 15, 117 2, 164 6, 164 15, 164 25,</p>	<p>166 2, 166 3, 167 2, 167.3, 171 20, 186 15, 199 4</p> <p>Honda [1] - 38 24</p> <p>honest [4] - 47 5, 124 4, 180 13, 188 9</p> <p>Honor [22] - 5 7, 5.9, 12 25, 21 12, 40 12, 40 15, 42 23, 52 6, 57 24, 58 3, 58.8, 58 15, 77 24, 78.11, 97 4, 97 23, 112 4, 156 5, 196.10, 200 12, 204-9, 204 11</p> <p>HONORABLE [1] - 1-10</p> <p>hope [2] - 41-24, 70 16</p> <p>hopefully [2] - 53 11, 165 11</p> <p>hoping [1] - 8 12</p> <p>hours [3] - 75 2, 75 4, 75 21</p> <p>house [26] - 35-8, 131 13, 131 20, 132 19, 132 24, 135 6, 142.17, 149 12, 155 20, 157 18, 157 21, 164 1, 164 23, 165 2, 165 4, 168 24, 171 16, 174 8, 174 10, 174 12, 176 20, 181 7, 182 22, 184.6, 186 22, 198 17</p> <p>housekeeping [1] - 203 7</p> <p>how [84] - 17 8, 18 4, 18 25, 19 1, 19 10, 22 1, 23 11, 28 6, 28 11, 29 4, 29 5, 29 15, 29 23, 30-6, 30 11, 32 2, 33 18, 34 6, 38 7, 39 4, 42 8, 47.6, 53 10, 61 3, 63 8, 65-19, 69 22, 70.25, 80 14, 80-21, 80 22, 84 3, 84 5,</p>
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<p>85 22, 87 4, 94 25, 97 2, 99 22, 100 11, 105 22, 111 8, 114 2, 114 18, 114 24, 116 8, 120 22, 123 12, 123 14, 123 18, 124 18, 125 23, 131 12, 131 23, 134 7, 139 5, 141 8, 141 23, 144 1, 144 2, 144 4, 148 4, 149 11, 149 14, 149 18, 150 14, 151 11, 152 14, 154 8, 154.10, 159 12, 163 7, 164 6, 173 12, 173 21, 175 12, 188 23, 192 2, 193 16, 194 18, 197 2, 198 18</p> <p>however [2] - 109-22, 152 18</p> <p>huge [1] - 63 21</p> <p>hum [30] - 8 25, 17 23, 20 19, 24 5, 25 11, 26 4, 33 25, 35 13, 35 25, 36 14, 36 20, 38 1, 44 13, 49 4, 49.17, 50 5, 50 19, 51.8, 67 5, 67 13, 77.25, 132 7, 136 7, 136 10, 139 10, 142 14, 143 18, 155 12, 156 10, 159 8</p> <p>hurt [1] - 145 19</p> <p>Hutchinson [17] - 3 3, 4 3, 4 5, 9-23, 10 7, 10 11, 12 8, 12 20, 13 4, 13 9, 15 1, 15 15, 17 4, 21 16, 41 14, 57 25, 58 5</p> <p>HUTCHINSON [3] - 15 7, 15 8, 15 12</p> <p>hypothesis [2] - 95-2, 95 21</p>	<p style="text-align: center;">I</p> <p>i [2] - 39 1, 202 7</p> <p>I [981] - 3.1, 4.1, 5.1, 5 12, 5 24, 6 1, 6 4, 6 6, 6 7, 6 10, 6 15, 6 17, 6 21, 6-22, 6 24, 6 25, 7-4, 7 6, 7 17, 7 23, 7 24, 7-25, 8 1, 8 3, 8 8, 8 12, 8 14, 8 17, 8 23, 9 6, 9 11, 9 12, 9 18, 9 20, 9 24, 10 6, 10 12, 10 18, 11 11, 11 14, 11 15, 11 19, 11 21, 11 24, 12 3, 12 5, 12 7, 12 9, 12 12, 12 18, 13 1, 13 10, 14 7, 14 8, 14 9, 14 20, 16 3, 16 6, 16 17, 17 7, 17 9, 17 21, 18 3, 18 21, 19 12, 19 14, 20 1, 20 2, 20 9, 20 13, 20 20, 21 12, 22 2, 22 21, 23.5, 23 9, 23 18, 23 23, 23 25, 24 2, 24 8, 24 9, 24 10, 24 23, 24 24, 25 1, 25 3, 25 4, 25 24, 25 25, 26 2, 26 9, 26 11, 26 12, 26 14, 27 6, 27 7, 27 24, 27 25, 28 2, 28 7, 28-14, 28 15, 28 16, 28 19, 30 1, 30.5, 30 9, 30 10, 30-16, 30.20, 31 5, 31 25, 32-4, 32 8, 32 9, 32 13, 32 16, 32 17, 32 19, 32 23, 33 2, 33 6, 34 7, 34 9, 34 12, 34 14, 34 16, 34 17, 34 18, 34 20, 34 25, 35 16, 36 2, 36 3, 36 4, 36 8, 36 10, 36 25, 37 4, 37-8, 37.13, 37 19, 38 8, 38 19, 39 12, 40.3, 41 15, 41 24, 42 1,</p>	<p>42 4, 42 8, 42 10, 42 17, 42 22, 43 16, 44 9, 44 18, 44 24, 44 25, 45 2, 45 4, 45 23, 46 9, 46-10, 46 13, 47 6, 47 9, 47 17, 47 18, 47.21, 47 24, 48 4, 48 5, 48 16, 48 19, 48 21, 48 22, 48 24, 49 5, 49 25, 50 1, 50 13, 50 14, 51 5, 51 15, 51 20, 51 24, 52 10, 52 12, 52 16, 52 23, 53 3, 53 5, 53 10, 53 12, 54 22, 54 25, 55 3, 55 15, 55 17, 55 20, 56 4, 56 13, 56 16, 56 18, 56 20, 57 3, 57 12, 57 18, 57 21, 58 14, 58 16, 58 18, 59.12, 60 5, 60 11, 60-14, 60 16, 61 8, 61 10, 61 11, 61-16, 61 23, 61 24, 61 25, 62 1, 62 2, 62 11, 62 13, 62.21, 62 23, 63 2, 63-5, 63 19, 63 23, 64 4, 64 5, 64 15, 64 16, 64 17, 64 18, 64 20, 66 2, 66 5, 66 8, 66 10, 66 18, 66 24, 66 25, 67-1, 67 3, 67 19, 68 1, 69 20, 69 23, 70.3, 70 5, 70 8, 70 19, 70 21, 71 2, 71 18, 72 7, 72 9, 72 12, 72 17, 72-18, 72 21, 73.10, 73 21, 73 22, 73 24, 74 2, 74 7, 74 15, 74 16, 74 19, 74 21, 74 23, 75.6, 75 12, 76 5, 76 12, 76 20, 76 23, 76 25, 77 6, 77 7, 77 8, 77 20, 77 22, 77 23, 78 11, 78 22,</p>
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IMPOUNDED TRANSCRIPT

<p>79 11, 80.7, 80 20, 80 22, 81-17, 82 1, 82 7, 82 11, 82 13, 83 19, 84 10, 84 15, 85 23, 85 24, 90 17, 90 18, 91 11, 91 14, 92 18, 92 25, 96 15, 96 23, 98 7, 98 24, 99 6, 99 13, 99 15, 100 2, 100 5, 100.6, 100 8, 100 13, 100 15, 100 17, 101 10, 101 14, 101 17, 101 22, 101.25, 102 1, 102 2, 102 4, 102 7, 102 15, 102-18, 103 1, 103 3, 103 7, 103 9, 103 15, 103 23, 104 3, 104 25, 105 6, 105 10, 105 21, 105 23, 106 18, 106 23, 106 25, 107 12, 108 9, 108 16, 108 22, 109 2, 109 9, 109 17, 109 24, 110 2, 110 15, 110 16, 110 18, 111 12, 111 18, 111 22, 112 17, 113 11, 113 14, 113 17, 114 1, 114.15, 114 23, 114 25, 115 17, 115 25, 116 4, 116 7, 116 12, 116 18, 116 19, 116 20, 116 21, 116 22, 116-24, 117 2, 117 10, 117 11, 117 14, 117 17, 117 19, 117 20, 117 21, 118 1, 118 2, 118 4, 118 5, 118 17, 118 25, 119 2, 119 3, 119 10, 119 11, 119 24, 120 7, 120 8,</p>	<p>120 12, 120 13, 120 15, 120 17, 120 18, 120 19, 121 2, 121 3, 121 4, 121 5, 121 6, 121 10, 121 13, 121 14, 121 15, 121 19, 122 7, 122 8, 122 10, 122 11, 122 12, 122 21, 122 25, 123 1, 123 20, 124 4, 124 6, 124.7, 124 15, 124 17, 124 20, 124 24, 125 1, 125 5, 125 6, 125 12, 125 18, 125 19, 125 20, 125 21, 125 22, 126 1, 126 2, 126 4, 126 5, 126 6, 126 10, 126 11, 126 12, 126 13, 126 14, 126 22, 126 23, 127 1, 127 2, 127 4, 127 14, 127 16, 127 17, 127 19, 127 21, 127 22, 128 3, 128 9, 128 11, 128 13, 128 14, 128 16, 129 2, 129 5, 130 2, 130 9, 130-12, 130 13, 130 14, 130 16, 131 6, 131-10, 131 18, 131 22, 132 4, 132-15, 132 23, 132 24, 133 6, 133.14, 133 18, 134 9, 134 16, 135.7, 135 11, 135 14, 135 15, 136 6, 136 13, 136 14, 136 15, 137 3, 138 1, 138 25, 139 5, 139 7, 139 13, 139 22, 140 3, 140 12, 140 15, 141 13, 142 1, 142 8,</p>	<p>142 19, 142 20, 142 23, 143 10, 143 15, 143 22, 143 24, 144 5, 144 10, 144 20, 144 21, 144 24, 145 10, 145 16, 145 17, 146.15, 146 20, 147.2, 147 7, 147-12, 148 7, 148 11, 148-19, 149 3, 149 16, 149 19, 149.20, 150 4, 150 5, 150 9, 150 10, 150 13, 150 22, 151 1, 151-13, 151 14, 151 17, 152 16, 152 17, 152 21, 152 22, 153 7, 153 8, 153 11, 153 22, 154 1, 154 4, 154 21, 154 22, 155 4, 155 9, 155 10, 155 15, 155 19, 155 22, 156 1, 156 3, 156 13, 156 18, 156 21, 157 3, 157 9, 157 19, 157 20, 157 24, 158 2, 158 4, 158 5, 158 7, 158.9, 158 10, 158 18, 158 20, 158.23, 158 25, 159-6, 159 9, 159-10, 159.15, 160 10, 161-16, 162 8, 163 8, 163 12, 163 14, 163 21, 164 17, 164 20, 164 21, 165 18, 165 22, 165 24, 166 5, 166 22, 167 11, 167 13, 167 14, 167 15, 167 16, 167 19, 167 20, 167 23, 167 24, 167 25, 168 2, 168 3, 168 8, 168 9, 168 16, 168 17,</p>
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<p>168-18, 168 20, 168 21, 168 23, 168 24, 169 5, 169 6, 169 7, 169 9, 169 13, 169 14, 169 15, 169 17, 169 18, 170 14, 170 15, 170 16, 170 17, 170 18, 170 22, 171 3, 171 4, 171 5, 171 6, 171 9, 171 14, 172 1, 172 2, 172 16, 173.14, 173 16, 173 18, 173 23, 174 5, 174.8, 174 20, 174-22, 175 1, 175.2, 175 6, 175 12, 175 19, 175 21, 175 23, 176 15, 176 16, 176 18, 177 12, 178 9, 178-21, 179 9, 179-17, 179 18, 179 22, 179 24, 180 2, 180 3, 180 10, 180 12, 180 19, 180 24, 181 3, 181 5, 181 7, 181 17, 181-25, 182 2, 182 3, 182 11, 182 12, 182 14, 182 16, 182.17, 182 18, 183-2, 183 17, 183-25, 184 1, 184.2, 184 3, 184-4, 184 5, 184 7, 184 8, 184 14, 185 8, 185 10, 185 12, 185 17, 185 20, 185 21, 185 22, 185 24, 186 3, 186 17, 186 22, 187 8, 187 13, 187 14, 187.23, 187 24, 188 1, 188 2, 188 8, 189 2, 189 6, 189 18, 189 25, 190 3, 190 6,</p>	<p>190.9, 190 12, 190-16, 190 17, 190 21, 191 21, 192 12, 193 9, 193 14, 194 5, 194 7, 194-8, 194 10, 194 11, 194 16, 194.17, 194 18, 194.20, 194 22, 195-5, 195 16, 195 24, 196 10, 197 3, 197 13, 197 14, 197 15, 197 25, 198 1, 198 3, 198 16, 198 19, 198.20, 199 4, 199-9, 199 12, 199 14, 199 17, 199 25, 200 11, 200 21, 200 23, 201 1, 201.5, 201 8, 201 10, 201 14, 201 19, 202 8, 202-16, 203 2, 203 7, 203 10, 203.13, 203 24, 204-5, 206 1, 206 2, 206 5, 206 7, 206 8, 206 9 I'd [20] - 10 7, 16 9, 16 18, 24 17, 29 12, 33 6, 33 7, 60 13, 65 21, 66 24, 67 20, 70 18, 79 15, 99 3, 113 13, 115 18, 135 1, 162 10, 186 10, 192 4 I'll [19] - 14 6, 15 1, 37 14, 59 1, 69 5, 81.7, 90 15, 90 19, 91:1, 91 3, 95 23, 102 6, 118 9, 166 11, 172 1, 191 7, 200 13, 203 19, 203 20 I'm [98] - 6 7, 6 8, 6.9, 6 16, 7 2, 11 25, 12 10, 12 23, 15 16, 15 25, 20 16, 21 19, 24 12, 26 2, 28 16, 30 8, 31 24, 32 12,</p>	<p>32 13, 35 1, 36 21, 38 6, 39 6, 39 10, 40 12, 40 21, 41 6, 41 16, 42 5, 43 1, 45 4, 46 1, 47 5, 48 1, 50 14, 53 25, 57 24, 59 23, 61 2, 61 14, 66 14, 68 25, 80 12, 81 3, 84 8, 85 23, 96 7, 98 1, 98 18, 98 19, 99 20, 103 9, 110 23, 114 3, 114 9, 114 13, 115 20, 117 21, 118 8, 118 10, 119 8, 123 3, 125 4, 127 7, 131 3, 134 16, 134 21, 137 14, 140-13, 141 13, 143 16, 150 2, 153 6, 153 20, 156 11, 158 1, 158 9, 158 18, 160 22, 162 4, 164 13, 165 10, 166 10, 171:15, 171 18, 172 4, 174 8, 176 11, 176 13, 177 1, 184 16, 190 4, 191 8, 193 14 I've [23] - 5 13, 13 17, 15 19, 29 11, 31 5, 55.5, 59 25, 60.11, 79-5, 80 16, 83-20, 84.10, 86 5, 98 17, 100 18, 103 8, 112 22, 130 7, 161 25, 164 7, 193.15, 196 24 ice [4] - 27 24, 151 12, 187 8, 187 10 ID [1] - 203 4 Idea [3] - 42 8, 125 23, 155 15 identical [1] - 86 15 Identification [1] - 105 25 Identified [2] - 113 9, 201 8 identify [5] - 54 14, 92 9, 99 25,</p>
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<p>101 23, 102 2 IDs [1] - 205 22 if [96] - 6 4, 6 22, 7 6, 7 19, 7.21, 7 24, 8 1, 19 17, 22.2, 28 21, 32 17, 33 6, 35 1, 37 19, 38 10, 38 16, 39 7, 39 8, 40 3, 40.23, 42 4, 46 13, 47 5, 53 7, 59 20, 60 22, 65 19, 66.17, 68 18, 69 2, 70 22, 71.8, 71 18, 76 12, 77.8, 81 8, 81 9, 82 20, 88 22, 88.23, 93 8, 94 4, 94 6, 96 1, 96 3, 105 17, 109 9, 120 25, 125 2, 128 12, 134 17, 134 24, 135 3, 135 22, 138 22, 139.9, 139 22, 141 1, 141 11, 142 19, 142 23, 146 3, 146 4, 148 4, 148 7, 148 8, 148 20, 150 24, 153 9, 154 21, 155 23, 156 3, 157 20, 167 1, 171 18, 171 21, 174.21, 179 9, 180 12, 185 16, 188 2, 189 18, 190 16, 191 21, 192 6, 192 9, 194 20, 196 3, 199 14, 200 6 ignites [1] - 101 2 il [5] - 80 12, 80 15, 80 22, 81 1 image [7] - 37 24, 37 25, 38 2, 38 4, 39 24, 40 2, 68 1 images [7] - 4 4, 37 20, 40 4, 40 24, 40 25, 41 8, 41 11 imaginary [1] - 141 2 imagine [2] - 61 11, 77 20 imagined [1] - 169 6 immature [1] - 173.8</p>	<p>immediate [1] - 140 18 immediately [5] - 11 15, 149 24, 155 8, 155 9, 187 17 important [3] - 64 17, 106 3, 106 6 impounded [1] - 97 22 IMPOUNDED [1] - 1 9 impregnated [1] - 102 10 in [330] - 5 5, 5 13, 6 6, 7 9, 7 10, 7 18, 10 2, 10 12, 10 13, 10 19, 11 10, 13 11, 13.12, 15 21, 17 12, 18.16, 18 17, 19 21, 19.25, 20 6, 21 19, 22 19, 23 16, 25 4, 25.6, 25 10, 25 12, 25 16, 27 3, 27 14, 27 17, 30 2, 30 13, 30 20, 31 2, 31 19, 32 1, 33.2, 33 6, 34 1, 34 3, 34 4, 36 18, 44 4, 44 10, 51 10, 52 11, 52 13, 52 24, 53 13, 53 15, 54 2, 54 6, 58 11, 58 21, 59 17, 60 6, 61 7, 61 19, 63 9, 63 23, 65.1, 65 12, 66 6, 66.24, 67 14, 68 4, 68.9, 68 10, 68.11, 68 18, 70 22, 70 25, 71 1, 71 4, 72 6, 72 11, 73 16, 75 9, 76 5, 76 8, 76 9, 76 18, 76 25, 77 4, 77.5, 77 6, 77 12, 77 18, 78 3, 79 15, 80 8, 81 1, 81 5, 81 9, 81 10, 81 11, 81 14, 81 21, 82.2, 82 4, 82.7, 82 12, 82 14, 82 23, 83 11, 84 9, 85 18, 86 2, 86.6, 86 20, 87 12, 88 3, 88 7, 88 11, 89 7,</p>	<p>89 8, 89 14, 89 17, 89 25, 90 9, 90 25, 91 1, 91 6, 91 7, 91 13, 91 23, 92 2, 92 4, 93 18, 94 5, 95 5, 95.11, 95.14, 95 20, 96 8, 96.12, 97 3, 97 15, 97.19, 99 5, 99.19, 99.20, 100 8, 100 12, 100 16, 101 22, 102.1, 102 10, 103 2, 103.6, 103 21, 103 25, 104 7, 104.8, 104 15, 104 17, 105 1, 105 2, 105 11, 105 23, 106 2, 106 5, 106 15, 107 1, 107 16, 107 21, 107 23, 108 7, 108 11, 108 12, 109 15, 110 6, 110 8, 113 9, 113 11, 113 16, 114 12, 114 15, 114 20, 114 24, 115 15, 115 23, 116.1, 119 5, 119 10, 120 19, 121 3, 121.6, 121.8, 121.11, 121 13, 121 16, 121 22, 121 25, 122 3, 124 13, 125 3, 125 7, 125 19, 126 5, 126 18, 127 5, 127 13, 128 7, 131 7, 131 18, 133 6, 133 11, 133 15, 133 18, 137 10, 138 11, 138 19, 138 21, 139 9, 139 14, 140 15, 141.10, 142 5, 142.15, 142 17, 142 20, 143 11, 143 20, 144 1, 144 10, 144 18, 146 2, 147 12, 148 16, 149 5, 150 18, 151 11, 152 4,</p>
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<p>152 6, 153 10, 153 15, 153 20, 153 24, 155 18, 157.21, 157 24, 157-25, 158 4, 158 12, 159 21, 160 6, 160 7, 160 13, 160 15, 160 19, 161 20, 162 10, 163 14, 163 16, 163 20, 164 15, 164 19, 164 21, 165 25, 166 6, 166 9, 166 23, 166 25, 167 1, 167 14, 167 15, 169 14, 169 21, 171 22, 172 14, 172 20, 172 25, 173 11, 173 16, 173.24, 174 13, 174-18, 174 19, 175.7, 176 4, 177 10, 177 15, 177-19, 177 20, 177.21, 179 2, 179 6, 181 7, 181 17, 181 23, 182-2, 182 10, 182 16, 182 19, 184 6, 184 7, 185 3, 187 21, 190 1, 190 4, 190 15, 190 18, 193 22, 193 25, 194 7, 195 6, 195 9, 197 4, 197 22, 198 14, 198 16, 199 22, 200 2, 200 22, 202 5, 203 1 IN [6] - 1 7, 205 11, 206 3, 206 5, 206 8, 206 9 inaudible [1] - 200 13 incapacitates [1] - 200 24 inches [6] - 107 11, 107 15, 107 20, 107 25, 108 17 incident [6] - 70-1, 73 3, 73 13, 149.15, 160 5,</p>	<p>167 6 Inclination [1] - 120 14 include [2] - 205 7, 205 16 included [4] - 62 11, 94 20, 95 14, 95 21 includes [1] - 102 9 including [2] - 92 14, 197 16 inclusion [3] - 94 8, 95.18, 96 6 inconclusive [1] - 111 21 index [1] - 205 8 Index [1] - 1 2 indicate [4] - 5 24, 69 3, 104 15, 135 3 indicated [3] - 10 10, 67 8, 138.19 indicates [1] - 105 13 indicating [4] - 55 22, 56 23, 137 21, 197 15 indicators [1] - 155 20 Indiscernible [18] - 8 6, 13 12, 13 22, 31 15, 55 13, 56 24, 58 1, 77 12, 82 16, 109 15, 114-24, 131 11, 132 22, 138 8, 138-14, 149 13, 181 22, 203 23 indiscernible [8] - 13 16, 28 9, 53 10, 55 24, 56 17, 56 18, 56 21, 114-23 individual [8] - 13 18, 62 12, 62 17, 94 6, 96 3, 169 8, 170 20, 174 13 individually [1] - 160 10 individuals [2] - 94 7, 96 4 inferences [1] - 108 3 Infliction [1] - 55 6 inform [1] - 203 24 information [5] - 11 15, 62 18, 68.7, 75 20, 90-12 informs [1] - 13 19</p>	<p>inherited [1] - 86 16 initial [4] - 100 5, 118 13, 139 19, 157 13 initially [8] - 46 14, 140 6, 141 3, 141 4, 141 22, 167 17, 178 7, 189 24 initials [9] - 69 3, 118 19, 121 1, 121 21, 135 2, 137 5, 171 19, 171 21, 172 2 inquest [8] - 10 18, 15 22, 60 3, 79 7, 98 20, 113 1, 130 9, 162 2 INQUEST [4] - 1 7, 1 9, 205-11, 206 3 Inquest [1] - 5 10 inquests [1] - 6 18 inside [4] - 67 9, 155-15, 168 24 instant [1] - 75 14 instead [2] - 42 14, 43-12 instructions [1] - 155 2 instrument [1] - 87 12 insure [1] - 88 24 Integrated [1] - 82-11 intend [1] - 12 5 intended [1] - 184 17 intent [1] - 136 4 intents [1] - 136 4 interest [2] - 12 5, 87 9 interested [1] - 126 18 INTERESTED [1] - 206 9 interesting [1] - 117 6 interject [1] - 146 5 interjected [1] - 151 6 interpret [3] - 81 7, 90 19, 91 25 interpretation [2] - 84 11, 96 12 interpreting [8] - 81 3, 81 10, 84 6, 84 10, 84 13, 85 2, 90 12, 91 13 interprets [1] - 95 5</p>
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<p>interview [4] - 13 2, 76 13, 78 12, 129 15</p> <p>interviewed [5] - 147 8, 160 16, 160 17, 198 4, 199 2</p> <p>into [44] - 5 10, 8 8, 9 1, 15-11, 17 2, 18 25, 19 17, 21 17, 22 13, 33 21, 33 23, 40 17, 41 12, 47 4, 50 7, 58.6, 67 24, 69 1, 69-9, 78 16, 81 14, 85 24, 96 20, 103 19, 106 17, 120 22, 123 9, 123 13, 127 25, 129 20, 132 10, 136 17, 137 18, 150 9, 164 3, 166 17, 169 19, 178 2, 178 4, 178 9, 178 10, 186 22, 196 8, 202.25</p> <p>INTO [3] - 1 7, 205 11, 206 3</p> <p>introduce [2] - 79 23, 162 24</p> <p>introduced [2] - 96 16, 123 4</p> <p>investigation [1] - 101 13</p> <p>investigative [1] - 60 3</p> <p>investigatory [3] - 79 7, 98 23, 162 3</p> <p>involved [3] - 89 7, 130 15, 136 16</p> <p>involvement [1] - 109 15</p> <p>ironing [1] - 102 11</p> <p>IS [2] - 206 2, 206 5</p> <p>Is [1] - 103 8</p> <p>Is [303] - 5 5, 6 7, 6 10, 6 11, 6 13, 6 15, 7 15, 7 19, 7 20, 8.18, 9 23, 11 4, 11 9, 11 11, 12 2, 12 22, 12 24, 13 3, 13 18, 14 9, 14 10, 14 14, 15 22, 15 25, 16 9,</p>	<p>18 7, 18 11, 19 4, 19 24, 21.4, 23 19, 25 9, 25 17, 26 16, 26 19, 27 19, 30 12, 30 13, 31 13, 31 15, 31 16, 33 3, 33 24, 34 17, 35 12, 35 21, 35 22, 36 18, 36 22, 38 17, 39 21, 39 24, 41 21, 42 13, 42 18, 42 20, 43.6, 44 21, 48 14, 49-3, 49 7, 51 24, 52 9, 53 5, 53 15, 54 5, 54 20, 55 1, 55 14, 56 2, 56 4, 56 23, 57 3, 57-8, 58 9, 58 22, 60 2, 60 3, 60 4, 60 11, 60 24, 61 16, 62 23, 64 3, 67 18, 68 12, 68 19, 71 21, 72 17, 75 9, 76 5, 76 23, 79 9, 79 17, 80 1, 80 2, 80-11, 81 6, 83 13, 83 20, 84 17, 85 8, 85 10, 85 11, 85 12, 85 20, 86 7, 86 9, 86 15, 86 18, 86.21, 86 22, 86-24, 87 1, 87 2, 87 3, 87 4, 87 6, 87 8, 87 11, 87 18, 88 4, 88 7, 88 16, 88 18, 88 23, 89-1, 89 2, 89 23, 89 24, 90 1, 90 5, 90 9, 90 15, 91 2, 91 16, 92 14, 92 16, 92 22, 93-2, 93 6, 93 13, 94 3, 94 10, 94 14, 94 15, 94-19, 94 22, 94.25, 95 1, 95 6, 95 8, 95 16, 95 25, 96 11, 97 11, 97 13, 97 19, 98 18, 99 3, 100 19, 100 20, 100.22, 100 24, 103 13, 104 17,</p>	<p>104 21, 106 3, 106 6, 106 22, 107 15, 107 20, 108 13, 108 16, 108 20, 109-16, 109 18, 109 22, 110.7, 110.10, 111-21, 112 23, 113-1, 113 2, 113 6, 113 11, 113 13, 114 12, 116 8, 116 13, 116 20, 121 3, 124 12, 127 9, 127 14, 128 24, 129 2, 130 9, 130 10, 130 11, 130 12, 131 20, 132 14, 134 16, 135 1, 135 5, 135 6, 135 11, 135 18, 137-7, 137.9, 138 8, 140.3, 140.7, 140-19, 142-16, 145 14, 145 19, 146 21, 147 22, 148 3, 149 10, 151 22, 152 18, 153 21, 155 3, 155 21, 155 22, 158 1, 159 1, 160 11, 162 2, 162 3, 162 10, 163 2, 163 4, 163 5, 163 9, 163 16, 163 18, 163 22, 164 2, 164 3, 164 5, 164 24, 165 1, 165 2, 165 5, 165 9, 165 25, 166 6, 166 7, 166 8, 166 23, 169 21, 170 5, 170 8, 171 7, 171 16, 171 24, 172 10, 173 19, 174.12, 174 21, 175 24, 176-7, 177 8, 177 15, 177 23, 177 25, 178 17, 182 20, 183 5, 183 10, 187 15, 188 17,</p>
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<p>189 2, 193 8, 194 17, 196 14, 200 6, 200 23, 201 5, 203 10 island [1] - 53 22 isn't [1] - 120.15 ISRAEL [2] - 130 3, 131 1 Israel [6] - 3 15, 4 9, 4 10, 131 1, 137-17, 202 24 issue [2] - 10 7, 203 4 ISSUES [1] - 205 16 issues [1] - 9 19 It [1] - 168 4 it [366] - 5 23, 6 9, 6 11, 6-15, 6 21, 6.24, 7.7, 7 8, 7 13, 8-1, 9 3, 9 4, 9 12, 9.20, 10.17, 12 18, 13 10, 15 25, 16 13, 19 1, 19 24, 20 13, 20 22, 22 11, 23 23, 23 24, 24 25, 25 4, 25 6, 25 18, 27 6, 27.22, 27 25, 31 3, 31 9, 31-10, 31 24, 32-5, 32-8, 32 11, 32 12, 32 16, 32-24, 33 10, 33 15, 34 21, 35 23, 36 4, 36 5, 36 7, 36 10, 38 8, 38 9, 38.19, 39 19, 45.9, 45:14, 45 15, 46 1, 46 2, 46 14, 50 11, 50 14, 50-15, 51 3, 53 25, 56 6, 57 8, 57 17, 60 6, 60 23, 61.23, 62 4, 62 15, 63 17, 63 23, 64 17, 65 3, 65 4, 65 5, 65 7, 65 8, 65 11, 67:3, 67 22, 69 1, 70-22, 70 23, 72 5, 72 14, 72 16, 72 22, 74 2, 75 1, 75 15, 75 20, 76 5, 76 16, 76 22, 77 7, 77 9, 77 11, 77 18, 82 25, 84-7, 84 19, 84 21, 85 10, 85 11, 85 12, 86 1, 86 9,</p>	<p>86 11, 86 15, 87 16, 88 4, 88 20, 90 14, 93 12, 94 6, 94 25, 96 3, 97 13, 99 1, 99-4, 99 12, 99 24, 100 14, 100 23, 101 1, 102 4, 102 10, 102 11, 102 18, 102 19, 102 20, 103 17, 104 13, 104 19, 106 3, 106 6, 106 20, 106 23, 106 24, 108 7, 108 23, 109 1, 109 8, 109 10, 109 11, 113 10, 116 20, 117 22, 118 23, 119 24, 120 1, 121 13, 121 14, 122 8, 124 2, 124 5, 124.6, 124 12, 124 13, 124 15, 124 17, 124 20, 127 1, 128 9, 128 11, 128 12, 128 15, 128 25, 129 1, 130 10, 130 11, 130 24, 131 23, 133 3, 133 15, 134 10, 134 12, 135 24, 138 7, 138 8, 139 4, 139 13, 139.20, 140 13, 140 15, 140.16, 140.18, 141.10, 141.13, 141-14, 142 16, 143 6, 143 7, 143-10, 144 20, 145 15, 145 17, 145 21, 145 24, 146 20, 146 21, 147 2, 147 3, 147 5, 147 12, 148 7, 148 10, 148 11, 148 19, 149 7, 149 11, 149 17, 149 18, 150 17, 150 20, 151 12, 152 2, 152 8, 152 17, 152 18, 153 3,</p>	<p>153 4, 153 5, 153 6, 153 9, 153 12, 153 20, 154 6, 154 19, 154 21, 155 5, 155 6, 155 9, 155 23, 156 15, 158 2, 159 12, 159 13, 160 10, 160 14, 160 15, 163 3, 163 18, 164 2, 165 9, 165 12, 166.7, 166 12, 167 17, 168 5, 168 7, 168 9, 168.20, 168 25, 169 5, 169 6, 169 9, 169 18, 170-8, 171 13, 171 16, 172 1, 172.13, 174 5, 175 7, 176 2, 176 8, 176 16, 176 22, 177 12, 178 21, 178 22, 179 23, 179 25, 180 9, 180.10, 180 18, 181 6, 181 7, 182.3, 182 5, 182 11, 182 13, 182 16, 182 19, 183 7, 184 2, 184 5, 184 22, 184 25, 185 2, 185 6, 185 8, 185 9, 185 14, 185 17, 185 21, 186 7, 186 19, 186 23, 187 8, 187 23, 187 25, 190 4, 190 16, 191 6, 192 20, 193 11, 194 3, 194 25, 195 3, 195 10, 195 12, 196 24, 196 25, 197 2, 197 3, 197 11, 197 19, 197 20, 199 10, 199 12, 199 13, 199 15, 201 8, 201 10, 201 12, 201 14, 201 16, 201 18, 203 7,</p>
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<p>203 11, 203 14, 205.7 It's [1] - 161.5 It's [85] - 8 3, 8 25, 14 11, 14 25, 15 24, 19.22, 20 5, 20 20, 22.5, 23 1, 23 23, 24 24, 26 7, 28 20, 30 5, 30 10, 31 4, 31.8, 31.13, 31 19, 38 8, 41 22, 45 5, 49 6, 54 16, 56 13, 57 19, 59 20, 60 6, 66 21, 67 14, 67 17, 77 6, 79 14, 80 1, 84 24, 88 21, 89 3, 92 17, 93 9, 93 15, 95 5, 103 24, 106 22, 108 17, 109 4, 111 13, 111 22, 113 2, 116 12, 116 22, 116 24, 117 24, 133 18, 134 9, 135 5, 136 3, 138 12, 138 14, 138 22, 141 15, 143 16, 144 25, 152 16, 161 7, 162 15, 163 23, 165 24, 166 7, 168 8, 170 2, 171 12, 172 7, 172 20, 175 9, 175 23, 197 17, 197 18 item [3] - 91 16, 94 3, 95 25 Item [3] - 91 24, 93 21, 93 23 items [1] - 100 9</p>	<p>job [2] - 99 2, 100 6 join [1] - 137 24 joining [1] - 82 9 Judge [9] - 8 9, 41 15, 55 6, 86.6, 101 20, 110 3, 112 5, 156 2, 203 12 judge [2] - 9 22, 29 9 jumping [1] - 153 16 June [1] - 80 17 junior [1] - 57 17 jus [1] - 203 3 Just [158] - 6 17, 9 20, 11 5, 11 25, 12 12, 15 3, 16 9, 17 2, 19 5, 20 18, 20 21, 21 5, 22 21, 22 22, 24 9, 24 25, 25 3, 25 19, 27 2, 27 3, 30 10, 31.3, 31 4, 31 17, 33.21, 37 15, 37 23, 38 15, 38.16, 39 6, 39 7, 40 10, 40 21, 41 18, 42 5, 42 8, 45 12, 46 10, 48 1, 49 2, 49 11, 50 14, 50 15, 52 6, 54.16, 55 9, 55 14, 55.15, 58 12, 59 6, 59.16, 61 24, 63 23, 63 24, 66 16, 68 25, 69 3, 71.18, 73 21, 74 8, 74 22, 77 18, 77 23, 78 25, 79 1, 81.14, 84 24, 85 3, 86 1, 87 2, 89 3, 96 7, 98 1, 99 3, 104 8, 104 19, 105 12, 108 22, 109 3, 110 6, 112 4, 118 13, 118 25, 119 2, 119 4, 119 18, 120 7, 122 8, 122 10, 122 11, 122 19, 122 21, 125 20, 126 12, 126 15, 127 7, 127.14, 128 3, 128.11, 128 12, 128 14, 130 9, 130.16, 131 23, 133 19, 134 2, 135.17,</p>	<p>137 14, 138 1, 141 15, 144 20, 145 18, 145 21, 146 1, 148 19, 151 9, 152 5, 154 25, 157 3, 160 22, 161 9, 161 20, 162 15, 163 3, 163 8, 165 16, 165 17, 167 5, 168 14, 168.17, 168 23, 169 6, 169 11, 169 16, 176 8, 176.22, 176 23, 178.21, 179 1, 180.21, 180 22, 185.22, 187.18, 188.3, 191.5, 192 23, 194.20, 196 22, 199.15, 200 15, 201.22, 202.8, 203 19 Just [2] - 146 8, 148 19 juvenile [1] - 9 23</p>
<p>J</p>		<p>K</p>
<p>J [2] - 2 3, 163 6 J-A-M-E-S [1] - 163 6 jacketing [1] - 110 21 James [7] - 3 18, 4 9, 4.10, 161 8, 163 5, 166 16, 196 7 JAMES [1] - 161 17 jerks [1] - 28 3 Jim [3] - 163.2, 163 4, 163 5 JIM [1] - 163 2</p>		<p>keep [7] - 70 13, 152 22, 171 22, 175 18, 183 19, 184 17, 189 1 kept [6] - 43 15, 136 11, 140 4, 148 10, 149 8, 149 21 kid [4] - 11 22, 13 20, 36 8, 57 18 kid's [3] - 11 17, 11 18, 11 21 Kiddush [1] - 132.13 kids [1] - 36 7 kill [7] - 176 12, 176 14, 177 1, 190 8, 190 10, 190 11, 198 21 kind [55] - 10 24, 16 8, 22 5, 23 3, 23 13, 24 17, 24 24, 28.2, 28 20, 28 22, 30 10, 33 3, 33 4, 34 19, 39 1, 46 17, 49 8, 49 11, 51.14, 52 13,</p>

<p>53 13, 53 19, 53 22, 64 3, 73 4, 83 15, 88 11, 89 19, 90 12, 92 12, 101 1, 117 19, 118 2, 118 3, 119 13, 120 18, 123 21, 124 9, 128 2, 128 15, 137 23, 139 20, 139 23, 150 12, 150 20, 155 11, 168 13, 177 15, 177 20, 179 2, 179 4, 179 25, 181 20, 182 5 kinds [1] - 6 18 kitchen [13] - 61 19, 76 5, 166 6, 167 15, 168 25, 169 15, 169 19, 169 21, 169 23, 169.25, 171 19, 173 11, 186 24 knee [2] - 151 17, 173 9 knew [2] - 127 10, 201 9 knife [63] - 31 1, 31 6, 31 19, 32 1, 32-5, 50 24, 52 14, 52 18, 57 4, 65 1, 65 2, 65 6, 76 14, 91 17, 93 4, 120 21, 124 10, 124 16, 128 22, 134 14, 139 11, 141 2, 141 7, 141 8, 145 12, 145.18, 147 23, 148-20, 148 22, 153 8, 153 11, 153 12, 154 3, 154 24, 155 17, 158 16, 175 10, 176 4, 176 6, 181 10, 181 15, 181 16, 181 24, 182 1, 182 3, 183 15, 183.21, 186 5, 186 10, 187.4, 187 7, 187-17, 188 20, 190-12, 190 15,</p>	<p>190 16, 190 19, 190 21, 193 5, 193 23, 194 1 know [96] - 5 25, 6 10, 6 22, 7 24, 9 16, 9 18, 11 17, 14 15, 20 2, 22.2, 24 15, 25 3, 30 9, 30 20, 32 8, 32 10, 32 17, 41 24, 42 18, 45 20, 48 24, 49 5, 52 23, 53 10, 62.21, 62 25, 63 11, 65 7, 66 2, 69 25, 85 22, 93 16, 115 17, 117.21, 118 4, 119-8, 119 9, 119 10, 120 14, 121 4, 121 13, 121 16, 124 8, 124 10, 124 21, 125 5, 125 20, 128 11, 128 13, 129 2, 130.9, 134 5, 136 16, 136 18, 139 5, 139 12, 144 9, 144.24, 145 25, 146 21, 148 15, 149 22, 150-18, 152 16, 153 6, 154 21, 155 13, 155 23, 156 3, 156 13, 157 20, 158 6, 158 10, 158 12, 166 9, 167 21, 168 21, 169 16, 171 7, 174 5, 175.12, 182 11, 182 18, 184 7, 185 22, 186 4, 187 3, 189 18, 192 6, 194 18, 195 9, 196 23, 197 4, 199 6, 203 1 known [12] - 88 20, 88 21, 88 23, 93 1, 93 4, 93 6, 93 9, 93 17, 93 24, 100 9, 106 1, 107 10</p>	<p style="text-align: center;">L</p> <p>L [3] - 80 2, 80 3, 163-2 L-A-N-E [1] - 163 2 lab [18] - 81 2, 81.5, 81 22, 82 23, 84 14, 84 16, 85 3, 85 14, 86 2, 86 19, 89 18, 90 15, 90 22, 90.23, 91 20, 105 23, 109 23, 111 9 Lab [8] - 6 24, 80 8, 80 19, 82 10, 84 2, 85 8, 95 5, 98 21 LabCorp [2] - 82 11, 82 12 Laboratory [1] - 91 7 laboratory [3] - 81 4, 84 22, 99 18 lady [1] - 37 5 Lamond [1] - 1 17 land [2] - 28 11, 101 8 landed [5] - 104 20, 105 14, 105.19, 151 11, 192 10 LANE [2] - 161 16, 161 17 Lane [9] - 3 18, 4.9, 4 10, 49 24, 51 11, 161-8, 163 2, 166 16, 196 7 lane [4] - 161 24, 195 16, 196 14, 200 19 language [1] - 176 10 large [6] - 62 20, 124 18, 124.20, 172 20, 180-18 larger [1] - 71 12 last [24] - 9 9, 9 16, 9 21, 11 24, 17 5, 33 2, 35 6, 72 6, 77 24, 79 24, 80 2, 87 11, 113 23, 131 1, 162 25, 164 11, 192 10, 193 18, 196.25, 198 19, 199 17, 199 22, 200 2, 200 7 late [1] - 180 19 later [10] - 13.12, 19 15, 25 25,</p>
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<p>70 25, 75 16, 140 25, 147 17, 147 20, 157 15, 199 5 latter [1] - 62.22 law [9] - 131 18, 133 6, 133 15, 157 21, 157 25, 160.6, 160 7, 160 13, 160 19 lay [1] - 6 25 layout [1] - 164 23 lead [3] - 100 21, 110 18, 110 21 leading [2] - 199.19, 202.6 leafed [2] - 172 19 leaned [2] - 8 21, 150 8 leaning [1] - 72 23 learned [1] - 70 3 least [14] - 5 21, 7 6, 8 17, 49 14, 60 9, 62 22, 79 9, 79 10, 79 15, 94 3, 95 25, 107 19, 108 17, 130 15 leave [7] - 27 7, 34 21, 55 9, 126 17, 127 16, 134 2, 203 7 leaves [3] - 172 13, 172 22, 172 24 leaving [3] - 46 19, 48 20, 186 14 lecture [1] - 82.25 lectures [1] - 81 19 led [1] - 142 4 ledge [1] - 17 15 Ledgelawn [2] - 17 15 left [38] - 20 3, 27 6, 27 10, 32 6, 47 21, 54 23, 54 24, 54 25, 55 1, 62 16, 68 17, 69 11, 73 3, 87 2, 104 6, 104 9, 116 21, 116 22, 116 24, 118 4, 119 11, 120 18, 121 24, 122 11, 124 5, 125 9, 125 22, 126 15, 128 3, 128 16, 134 3, 134 4, 135 14, 135 15,</p>	<p>143 20, 153 21, 182 14, 183 1 left-hand [2] - 134 4, 135 15 left-handed [2] - 54 24, 54 25 lefty [2] - 32 17, 55 3 leg [4] - 104 5, 104 6, 104 7, 104 9 legs [4] - 63 1, 175 24, 176 3, 185 3 less [6] - 13 23, 29 15, 113 5, 135 20, 135 21, 173 8 let [10] - 20 16, 20 18, 28 24, 37 11, 37 19, 50 1, 103 10, 130 9, 165 16, 196 23 let's [16] - 24 4, 27 1, 33 8, 33 10, 43 2, 86 4, 87 24, 112 9, 139 13, 158 24, 166 7, 175 7, 176 2, 178 21, 188 3 lethal [1] - 22 3 letting [1] - 170 23 level [1] - 171 7 leverage [1] - 182 7 Lexington [16] - 2 2, 13 24, 17 12, 17 20, 61 7, 91 7, 114 15, 114 20, 115.2, 128.18, 129 15, 131 7, 133 18, 163 20, 163.23, 165 14 Liberty [1] - 37 1 Lieutenant [3] - 9 4, 76 4, 77 17 lifetime [1] - 86 2 lifting [1] - 123 22 like [239] - 10 8, 16 10, 16 14, 16 17, 18 25, 19 7, 19 21, 20 5, 20 10, 20.13, 22 7, 23 2, 23 3, 23 14, 23.16, 24 17, 24 18, 24 24, 25 4, 26.10, 27 3, 28 1, 28 2, 28 6, 28.7, 28 9,</p>	<p>28.20, 28 21, 28 22, 30 3, 30 6, 30 11, 31 9, 31 17, 32.23, 33.2, 33 3, 33 4, 34 16, 39 1, 43 21, 45 24, 46.15, 47.20, 49 11, 51 12, 52 2, 52 19, 53 5, 53 15, 53 21, 53 24, 53 25, 54 5, 54 9, 55 20, 55 24, 56 4, 56 25, 64 16, 65 5, 65 8, 69 17, 70 10, 71 10, 72 14, 74 2, 77 7, 81 17, 86 11, 92 18, 93 3, 95 6, 96 1, 118 15, 120 1, 123 13, 123 23, 125 3, 125 16, 126 19, 127 1, 127 2, 127 24, 128 8, 132 14, 133 3, 133 16, 135 1, 136 1, 136.11, 137 2, 139 9, 139 11, 139.12, 139 16, 140 12, 140 16, 141 9, 141 11, 141 14, 142 8, 142 15, 143 13, 143 15, 143 20, 143 22, 144 6, 144 7, 144 8, 144.16, 144 19, 144 22, 145 15, 145.21, 145 24, 145 25, 146 1, 146 8, 146 9, 146 14, 146 19, 146 20, 146 21, 146 22, 146 23, 147 5, 147 15, 148 6, 148 7, 148 8, 148 10, 148 11, 148 16, 148 17, 148 19, 149 8, 149 19, 149 23, 149.25, 150 4, 150 8, 150 9, 150 11, 150 12, 150.16, 150 17, 150 18, 150 20,</p>
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<p>151 12, 151 16, 151 17, 152 3, 152 4, 152 12, 152 22, 153 1, 153 3, 153 5, 153 6, 153 8, 153 12, 155 4, 155 20, 158 1, 158 2, 158 4, 158 10, 158 18, 158 20, 158 21, 158 23, 159 5, 159 9, 159 10, 159 13, 159 16, 159 17, 160 13, 160 15, 160 16, 160 17, 160 18, 164 24, 167 17, 167 18, 168 5, 168 12, 168 13, 169 5, 172 7, 172 13, 177 20, 179 4, 179 21, 179 25, 180 1, 180 16, 181 1, 181 20, 181 23, 183 23, 184 23, 184 24, 186 14, 188 7, 191 19, 192 18, 193 11, 197 17, 201 12, 201 16 like.. [2] - 23 15, 28 4 likelihood [7] - 94 10, 94 14, 94 15, 94 24, 94 25, 95 6, 95 13 likely [2] - 94 4, 94 25 likes [1] - 101 8 limit [1] - 107 21 limited [1] - 108.19 limits [1] - 109 4 line [6] - 19 21, 68.22, 68 23, 68 24, 142 17, 143.11 LISA [3] - 206 2, 206 5, 206 7 Lisa [2] - 1 22, 205 10 list [2] - 12 9, 205 22 listening [1] - 125 6 literally [2] - 107 25, 143 6 little [56] - 15 16, 21 9, 23 1, 24 2, 24 23, 28 3, 28 22,</p>	<p>30 15, 38 8, 38.11, 38 24, 39 17, 39 19, 42 1, 42 3, 44 21, 45 9, 48.1, 49 1, 56 4, 56 14, 64 18, 67 17, 70 9, 71 18, 81 14, 86 4, 112 24, 118 19, 121 7, 121 8, 135 25, 143 11, 143 23, 149 23, 151 10, 158 23, 161 5, 167 11, 167.12, 168 14, 169 13, 174 5, 174 15, 175 11, 176 19, 178 12, 178 18, 178 20, 179 1, 179 5, 182 14, 185 10, 185 23, 186 10, 192 5 live [15] - 17 12, 17 17, 61 7, 61 9, 61 10, 110 14, 114 14, 114 15, 114 20, 114 24, 131 9, 131 10, 163 20, 164 8, 202 19 lived [6] - 114 18, 114 23, 114 25, 131 13, 164 6, 164 7 living [4] - 61 1, 131 2, 131 24, 132 1 LMP [1] - 206 19 Impreporting@gmail .com [1] - 206 23 load [1] - 38 6 located [1] - 86 24 location [2] - 54 15, 122 24 locations [1] - 103 2 log [1] - 205 22 logo [1] - 39 2 long [16] - 61:3, 65 4, 69 20, 71 11, 72 9, 80 14, 99 22, 114 18, 114 24, 123 12, 123 14, 131 12, 149 11, 149 14, 164 6, 200 3</p>	<p>longer [7] - 22 9, 22 10, 27 21, 34 10, 54 13, 58 21 look [32] - 7 6, 8 8, 9 1, 11 18, 20 21, 62 8, 66 16, 71 1, 85 24, 86 11, 87 25, 90 18, 91 3, 91 25, 92.19, 92 21, 101 23, 119 2, 122 7, 122 12, 123 14, 125 9, 127 5, 127 19, 134 24, 155 24, 165 17, 166 4, 170 5, 170 13, 170 14, 174 8 looked [21] - 64 9, 71 10, 74 25, 118 3, 118.25, 119 4, 119 11, 120.1, 121 10, 126 11, 127 15, 127:17, 144.15, 149:1, 153.3, 159 13, 159 14, 168:2, 179.21, 179 25, 190 6 looking [27] - 21 20, 37 11, 44 1, 55 13, 56 25, 81 11, 87 9, 87 15, 89 11, 90 1, 90 7, 121 5, 121.24, 135 12, 135 17, 136 2, 137 22, 149 4, 149 5, 149 8, 153 25, 165 4, 167 15, 170 18, 171 1, 173 12, 174 2 looks [4] - 39 1, 148 25, 170 1, 172 13 loose [1] - 23 3 lose [1] - 69 13 lost [2] - 149 2, 149 3 lot [18] - 7 1, 15 21, 18 14, 30 7, 30 9, 97 5, 117 24, 134 2, 135 11, 136 17, 138 8, 172 13, 173 2, 173 4, 179 22,</p>
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<p>182 23 loud [5] - 25 6, 69 24, 69 25, 169 16, 192 25 louder [1] - 24 3 love [1] - 74 23 low [3] - 150 12, 205 18, 205 18 low-caliber [1] - 150 12 lower [1] - 173.8 lumbering [1] - 148.7 lunchtime [1] - 67 18 lunge [1] - 33 4 lunged [3] - 152 11, 154 13, 191 3 lunges [1] - 33 11 lunging [3] - 189 20, 190 22, 194 21 lungs [1] - 181.4</p>	<p>136 22, 137 2, 138 2, 140 8, 140 14, 169.11, 174 15, 191.19, 203 19 makes [5] - 12.18, 13 10, 86 10, 86 11, 203 14 making [8] - 54 22, 123 21, 124.8, 160 22, 184.23, 190 22, 192 15 male [8] - 92 15, 134 6, 136 8, 143 19, 149 23, 150 8, 150 14, 152 11 male's [1] - 145 23 man [79] - 18 22, 22 22, 22 23, 22 25, 23 8, 23 19, 24 2, 24 19, 26 20, 27 19, 29 1, 29 3, 29 18, 30 24, 33 3, 44 8, 46 24, 47 15, 48 2, 49 9, 49 16, 50 18, 53 13, 57 4, 62 20, 63 9, 63.18, 65 17, 65 21, 68 10, 71 8, 72.10, 72 23, 73 4, 76.9, 78 3, 120 23, 121.8, 121 9, 122.3, 122.5, 122 10, 123 14, 123 17, 124 2, 125 14, 125 24, 126 4, 126.14, 127 18, 134 6, 138 17, 139 11, 139 13, 139 23, 140 25, 141 23, 145 12, 146 4, 147 22, 148 3, 148 22, 151 20, 152 15, 154.24, 155 17, 158 16, 159 23, 174.18, 177 2, 178 1, 180 5, 182 21, 184 11, 193 2, 193 4, 193 5 man's [4] - 44.11, 64 24, 141 4, 148 21</p>	<p>MANAGEMENT [1] - 205 3 manner [2] - 105 1, 105 2 many [15] - 19 10, 33 18, 63 8, 69.22, 84 3, 84 5, 97 3, 134 7, 139.5, 150 14, 154.8, 154 10, 155 21, 175 12, 193 16 map [31] - 4 3, 4 6, 4 8, 4 9, 4 9, 20 18, 20 20, 21 16, 43 2, 53 3, 68 25, 69 8, 118 8, 118 10, 118 14, 120 25, 123 3, 123 8, 134 17, 134 22, 135 5, 137 15, 137 17, 139 20, 142 24, 165 10, 165 23, 166 10, 166 16, 171 16, 172 12 March [2] - 95 11, 206 17 Marie [1] - 1 22 MARIE [3] - 206.2, 206 5, 206 7 mark [4] - 120 25, 137 14, 166 10, 177 14 marked [5] - 55 15, 129 17, 137 16, 196 5, 202 23 Marker [2] - 69 2, 134 21 marker [6] - 21 5, 53 8, 118 9, 135 22, 172 5, 172 9 marking [2] - 121 20, 203 4 markings [2] - 22 11, 54.22 mass [1] - 6 2 MASSACHUSETTS [1] - 1 3 Massachusetts [12] - 1 15, 1 18, 1 20, 2 4, 80 7, 80 19, 84 1, 85.8, 95 4, 99 17, 205 3, 206 20</p>
<p>M</p>		
<p>M [3] - 60.25, 114 1, 163 6 M-E-H-A-R-R-Y [1] - 60 25 machine [1] - 168 13 made [10] - 44 6, 110 14, 110.21, 111 18, 121 25, 126 16, 168.25, 177 14, 191 22 Madeline [1] - 164 10 Magic [2] - 69 2, 134 21 magistrate [1] - 203 25 main [2] - 170 1, 172 24 maintain [1] - 85 15 majority [1] - 148 6 make [40] - 7 21, 7.25, 21 9, 24 6, 24 20, 28 21, 30 25, 36 23, 37 23, 38 17, 41 3, 55 15, 58 22, 64 18, 66 3, 66 25, 71 25, 81 8, 83 13, 85 20, 90 20, 91 2, 91.4, 92 1, 92 22, 93 22, 102 3, 104 11, 109 24, 133 9, 136 19,</p>		

<p>master's [3] - 82 3, 82 6, 82 8 match [1] - 92 22 matter [4] - 52 11, 152 4, 198 12, 204 14 maximum [1] - 19 12 may [26] - 5 4, 5 24, 8.23, 9 3, 9 4, 9 12, 58 22, 63 20, 66 11, 74 11, 76 16, 79 6, 97 18, 98 18, 98 19, 112 24, 127 13, 178 20, 178 25, 179 8, 191 15, 194 21, 195 18, 196 10 maybe [23] - 30 14, 30 15, 42 15, 53 25, 54 5, 63 11, 65 22, 69 19, 119 11, 119 12, 139 14, 140 12, 144 22, 147 2, 148 12, 160 11, 171 10, 176 19, 179 24, 191.25, 192 5 mcDonald [1] - 3 5 MCDONALD [8] - 52 6, 52 8, 55 5, 111 4, 156 5, 156 7, 156 21, 195 22 McDonald [8] - 1 17, 2 3, 3 12, 3 16, 52 9, 57 4, 156 4, 195 21 ME [3] - 7 5, 8 12, 206 3 me [67] - 6 11, 6 22, 6 24, 10 22, 12 19, 14 11, 18 6, 18 20, 18 23, 20 11, 20 16, 20 18, 22 11, 25 1, 25 2, 28 24, 29 5, 29 6, 34 25, 36 10, 37 11, 37 15, 37 19, 38 15, 39 7, 40 23, 42 5, 50 1, 53 11, 66 17, 66 23, 70 18, 70 23, 73 21, 81 7,</p>	<p>90 14, 93 9, 93 10, 100 3, 102 1, 103 10, 106 1, 106 9, 117 12, 117 20, 119 10, 121-12, 121 17, 124 12, 126 8, 127 9, 134.7, 136 9, 153 25, 159-5, 159 10, 165 16, 166 25, 185 23, 189 2, 196 23, 198 8, 198 9, 198 13, 199 15, 200 23 meal [1] - 132 14 mean [35] - 6 25, 14 8, 28.14, 30 1, 53 12, 56 20, 62 21, 68 4, 85 14, 107 16, 108.23, 121 2, 125 19, 128 14, 135.11, 135 25, 140 1, 140 12, 143 15, 144 5, 144 6, 146 15, 149 20, 156 18, 169 5, 179 17, 183 17, 183 25, 184 14, 185 8, 185 21, 191 21, 193 14, 199 12, 200 22 meaning [6] - 136 3, 140 15, 144 23, 149 13, 152 12, 153 15 means [3] - 81 4, 104 19, 153 24 meant [1] - 140 3 mechanism [1] - 109 22 media [7] - 16 13, 35 21, 35.24, 40 1, 45 25, 46 2, 71 4 medical [1] - 102 21 Medicine [1] - 82 4 medium [1] - 65 6 medium-size [1] - 65 6 meet [2] - 41 22, 41 23 meeting [2] - 147 10, 196 19 Meharry [10] - 3 6,</p>	<p>4 6, 4 6, 58 9, 60 24, 66.14, 69 8, 71 19, 78-13, 78 15 MEHARRY [2] - 59 12, 59 13 meharry [1] - 59 20 members [1] - 130 14 memory [16] - 14 1, 44 21, 49 3, 63-23, 72 15, 72 17, 72.18, 72 20, 73-19, 74 10, 74-13, 74 15, 74 20, 74 21, 75 23, 200 6 mention [2] - 197 5, 197 9 mentioned [7] - 31 5, 63 5, 82 14, 92 25, 183 6, 185 4, 198 18 merge [1] - 118 5 met [3] - 137 8, 156 8, 196 15 metadata [1] - 68 4 metal [1] - 106 22 metals [1] - 110 13 method [3] - 82 19, 95 12, 109 23 methodology [1] - 101 21 mic [1] - 15 11 Michael [1] - 1 17 microphone [8] - 17 2, 38 16, 59 18, 79 2, 98 13, 161 21, 162 21, 205 19 microscope [1] - 102 1 mid [1] - 180 19 midday [1] - 115 24 Middle [3] - 17 25, 164.4, 183 4 middle [8] - 23 16, 53-13, 53 16, 57.19, 147 12, 164 3, 164 15, 177 20 MIDDLESEX [1] - 1 4 Middlesex [1] - 1 13 might [12] - 5 20, 9 13, 25.25, 41 16, 45 23, 50 13, 64 17, 72 3, 77 11,</p>
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<p>127 5, 129 7 Mike [3] - 41 21, 196 14, 196 16 millimeter [2] - 110 9, 110 15 millions [1] - 87.22 mind [6] - 77 18, 121 3, 152 6, 152 22, 153 21, 197 22 mine [1] - 133 6 Mingace [1] - 2 2 minimum [1] - 83 11 minor [1] - 191 15 minute [2] - 69 19, 140 24 minutes [7] - 9 9, 20 21, 139 5, 139 18, 157 9, 158 15, 162 16 missed [1] - 58 17 misspeak [1] - 85 23 mix [1] - 37 5 mix-ups [1] - 37 5 mixture [1] - 92 14 Mobil [1] - 116.13 mock [1] - 81 21 module [2] - 100 6, 100 8 molecular [1] - 82 13 mom [14] - 17-17, 18 6, 36.9, 42 15, 43-12, 43 15, 44 1, 44 11, 45 11, 45 16, 47 3, 50 3, 51 3 mom's [8] - 12 2, 26 3, 34 23, 35.11, 35 14, 36 12, 40 6, 43 23 moment [8] - 129 3, 140 16, 150 18, 152 4, 157 5, 187.16, 188 25, 192 10 moments [1] - 198 19 month [2] - 72 6, 83 25 months [2] - 45-5, 45 6 mood [2] - 125 17, 125 18 more [63] - 8 1, 8-13, 8 14, 9 7, 13 23, 22 7, 24 2, 24 7,</p>	<p>27 17, 41 15, 42 3, 47 25, 55 7, 59 20, 62 18, 62 23, 70 18, 86 1, 94 4, 96 1, 113 4, 118 23, 119 1, 119 2, 119 3, 121 15, 126 21, 127 10, 135 20, 135 21, 135 24, 140 18, 142 1, 145 4, 145 11, 146 1, 147.1, 149 3, 151 10, 151 13, 153 5, 154 20, 156 1, 160 15, 162 15, 166 11, 168 5, 169 3, 169 5, 169 6, 169 9, 175 13, 175.21, 178 20, 179-25, 183 22, 184 3, 185 7, 186 7, 186 10, 192 22, 202 19 morning [26] - 5 6, 5 8, 11 25, 16 24, 16 25, 36 16, 37 12, 60 20, 60 21, 61 18, 66 19, 79 21, 79 22, 99 10, 112 21, 113 21, 113 22, 130 21, 130 22, 132 6, 157 1, 157 2, 162 15, 162 17, 162 18 mornings [1] - 173 16 most [11] - 41 24, 67-2, 106 11, 132 16, 148 13, 151 2, 185 15, 185 18, 185 25, 186.2, 195 8 mother [2] - 11 9, 86 16 mother's [1] - 34 12 motion [3] - 123 21, 123 23, 124 9 mouth [3] - 77 1, 142 20, 157 24 move [17] - 59.21, 69 11, 70 12,</p>	<p>106 24, 117 17, 141 25, 142 8, 142 9, 146 4, 152 15, 173 21, 178 2, 178 4, 182 8, 183 13, 186 25, 190 24 moved [12] - 62 7, 68 22, 122 23, 148 11, 152 19, 153.14, 154 12, 155.13, 155 14, 171-22, 188 3, 193 25 movement [12] - 28 25, 139 24, 140 2, 141 9, 144 9, 145 23, 146 2, 150 5, 154 16, 158 11, 190 23, 192 15 movements [4] - 140 5, 152 9, 157 13, 158 7 moves [1] - 154 9 moving [20] - 11 9, 29-3, 29 18, 30 20, 32 20, 33 5, 43 15, 62 15, 62 25, 68 16, 73 3, 76-10, 128 22, 129 1, 140 4, 148 3, 151 15, 151 20, 152.1, 187.7 MR [130] - 5 17, 5 19, 8 3, 8 6, 8 8, 8 25, 9 6, 9 9, 9 15, 9 22, 10 2, 10-6, 11 1, 11 2, 11 4, 11 7, 11 14, 12 14, 12 17, 13 9, 13 15, 13 21, 13 24, 14 4, 14 6, 14 13, 14 14, 14 17, 14 20, 14 23, 14 25, 15 7, 15 12, 16 23, 21 12, 21 18, 29 9, 29 14, 29 17, 30 18, 30 19, 37 10, 40 12, 40 20, 41 3, 41 5, 41 8, 41 13, 41 14, 41 18, 41 20, 42 22, 42 25, 46 8, 52 6, 52 8, 53 7,</p>
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<p>55 5, 55 12, 57 7, 57 21, 57 24, 58 8, 58 14, 58 18, 58 24, 59 1, 59 12, 60 19, 66 10, 66 12, 67 20, 69 5, 69 10, 71 14, 71 17, 76 1, 77 22, 77 23, 78 2, 78 8, 78 11, 96 17, 97 2, 97 13, 97 20, 99 7, 99 9, 103 15, 103.20, 110 2, 110 5, 111 4, 112.4, 112 9, 112.17, 129 9, 129.14, 129 21, 130.2, 130 20, 137-19, 141 20, 156 1, 156 5, 156.7, 156 21, 156 25, 161.1, 161 8, 161 16, 195 22, 195.24, 196 1, 196 4, 196 9, 196 13, 200 11, 201.22, 202 1, 202 8, 202 16, 202.20, 203 1, 203 6, 203 12, 203 20, 203 23, 204 7, 204 11 Mr [42] - 3 4, 3 4, 3 5, 3 7, 3 7, 3 11, 3 12, 3 12, 3 16, 3 16, 3 17, 3 19, 5 21, 6 6, 6.8, 7 9, 7 20, 10.7, 11 15, 11 19, 13 9, 14 10, 15 1, 15.13, 15 15, 41.14, 59 20, 66 14, 71 19, 102 14, 111 14, 111 23, 112 21, 129 5, 156 4, 156 23, 161 24, 195 16, 195 21, 195 23, 196 14, 200 19 Ms [9] - 3 9, 3 14, 3.19, 79 4, 96 23, 98 11, 98 16, 99 10, 99 14 MS [26] - 78 22,</p>	<p>79 20, 96 15, 96 21, 96 22, 98 7, 113 20, 123 10, 123 11, 129 3, 129 4, 162 14, 166 18, 166 19, 191 6, 191 10, 191 12, 191 15, 191 18, 195 16, 196 2, 200 15, 200 18, 201 3, 201 20, 204 9 much [19] - 34 18, 64 5, 70 16, 70 25, 73 1, 78 9, 87 4, 96 23, 97 8, 112 6, 129 4, 129 11, 136 13, 148 5, 153 17, 158 5, 160 24, 195 19, 202 12 muffled [1] - 24 1 Mukherjee's [1] - 11 3 multiple [5] - 73 9, 73 14, 73 19, 147 4, 152 13 music [1] - 125 3 must [3] - 50 6, 82 21, 155 6 muzzle [5] - 6 5, 106 9, 108 14, 108 15, 108 24 muzzle-to-target [3] - 106 9, 108 14, 108 15 my [127] - 5 14, 13 20, 14 1, 14 3, 14 14, 18 6, 32 25, 34 12, 34 14, 34 17, 34 19, 35 18, 36 9, 41.21, 44 21, 45 12, 45 18, 49 7, 52.9, 60 24, 61 23, 62 16, 65 18, 67 2, 67 3, 68 16, 68.17, 68 22, 68 23, 72 17, 80 1, 80.2, 91 14, 93 8, 97.2, 100 5, 101.25, 103 13, 105 9, 110 10, 113 11, 115 14, 115 19, 116 4, 116.7, 116 16, 116 17,</p>	<p>117 2, 118 4, 119 11, 120 14, 120 18, 121 3, 121 9, 127 7, 127 12, 128 2, 128 10, 131 18, 133 15, 140 18, 152 22, 153 21, 160 11, 160 13, 160.19, 163 2, 164.1, 164 4, 164 10, 164 11, 164.21, 165 1, 165.5, 165 16, 167.4, 167 15, 167.20, 167 23, 168.2, 171 6, 171 12, 172 1, 172.2, 172 20, 172 23, 172 25, 173 8, 173 9, 173 18, 174 8, 174 10, 174 12, 175 2, 176 10, 176 20, 178 10, 181 7, 182 6, 182 22, 186 22, 187 14, 190 6, 190 7, 196 14, 198 20, 198 21, 202 3, 203 10, 203 24 myself [3] - 35 16, 43 1, 167 19 myself. [1] - 203 19</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N [12] - 3 1, 4 1, 5 1, 17 7, 80 2, 80 3, 114 1, 131 1, 163 2 N-E-W [1] - 131 1 naked [1] - 101 25 name [20] - 17 1, 17 5, 20 2, 41 21, 52 9, 60 22, 60 24, 79 24, 80 1, 80 2, 99.11, 113 23, 130 23, 131 1, 145 16, 162 25, 163 2, 163 5, 173 19, 196 14 NAME [3] - 205 10, 205 11, 206 14 names [1] - 43 1</p>
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<p>National [1] - 85 13 nature [4] - 6 17, 102 5, 160 15, 162 7 near [7] - 18 7, 46 25, 56 19, 61 23, 163 24, 169 14, 173 5 nearby [1] - 132 1 nearly [3] - 30 4, 32.22, 192 25 neat [1] - 37 9 necessarily [1] - 9 13 need [5] - 79 13, 81 8, 81.9, 172 2, 203 2 needed [1] - 140 20 needles [1] - 173 3 negative [5] - 88 14, 89.1, 89.2, 89 12, 91.4 neighbor [1] - 36 6 neighborhood [1] - 155 18 neighbors [2] - 70 2, 74 11 NEITHER [1] - 206 8 nephew [2] - 158 9, 160 11 nephews [1] - 160 7 nervous [5] - 15 16, 15 17, 41 24, 41.25, 48 25 never [13] - 78 4, 111 9, 111 10, 149 25, 155 24, 158 16, 158 23, 159 25, 160 2, 160 13, 160 18, 180 24, 199 7 New [11] - 3 15, 4 9, 4 10, 23 3, 52 19, 82.1, 129 21, 131 1, 133 7, 137 17, 202 24 NEW [2] - 130 2, 130 3 new [4] - 82 19, 82 20, 172 2, 172 4 New's [1] - 202 17 next [22] - 9 1, 13 5, 13 7, 20 5, 21 13, 33 11, 33 16, 38 6, 40 13, 58 8, 67 21, 69 6, 96 16, 103 16, 104 23,</p>	<p>104 25, 123 4, 129 16, 166 7, 166 10, 171 19, 203 3 nice [6] - 7 13, 8 1, 41 22, 41 23, 64 16, 64.20 nickname [2] - 163 4, 163 5 night [3] - 9 21, 10 17, 11 7 nine [2] - 109.12, 174 22 nitrate [1] - 109 1 nitrites [9] - 104 14, 105 10, 105 19, 107 14, 107 17, 110 13, 110 16, 111 8, 111 13 No [45] - 21 16, 32 16, 40.17, 41 11, 58 5, 67 23, 69 8, 78 15, 91 7, 96 19, 103 18, 119 5, 120 6, 123 8, 129 19, 133 18, 137 17, 147 2, 161 7, 166.16, 171 19, 171 22, 174 16, 177 10, 177 15, 179 17, 185 17, 185 22, 186 20, 186 21, 187 23, 187 25, 188 1, 188 2, 188 3, 188 4, 194 22, 194 24, 196 6, 196 7, 199 24, 202 24, 205 22 no [62] - 10 6, 10 12, 11 1, 11 2, 11 4, 12.5, 20 9, 32 16, 34 21, 43 16, 44 3, 45 1, 49 10, 49 11, 53 21, 55 7, 67 16, 72 7, 74 15, 74 21, 77 2, 84 15, 89 2, 89 6, 96 17, 97 4, 109 2, 117 14, 124 24, 128 9, 133 10, 133.22, 134 1, 140 10, 140 13, 143 13, 145 20, 148 17,</p>	<p>151 5, 151 21, 153 17, 155 15, 158 23, 160 1, 160 4, 160 5, 166 25, 169 13, 172 22, 193 20, 195 5, 195 11, 195 15, 195 22, 196 17, 197 9, 200 5, 200 8, 202 16, 202 19 nobody [1] - 166.25 noise [12] - 63 16, 63 19, 63 22, 64.3, 64 6, 146 25, 152 3, 167 11, 168 8, 168 13, 205 17 noise-wise [1] - 63 19 noises [10] - 66 4, 69 16, 69 17, 69 24, 69 25, 147 15, 152 10, 154 8, 154 10 nonlethal [1] - 22:12 noon [1] - 61 19 nor [1] - 172 24 NOR [2] - 206 8, 206 9 normal [2] - 63 25, 64 3 normally [1] - 118 5 North [13] - 18 8, 25 24, 43 7, 61 10, 115 5, 115 18, 116 5, 116 13, 116 16, 117 4, 117 7, 118 11, 179 7 NOT [1] - 206 9 not [143] - 1 21, 5 24, 6 6, 6 8, 6 16, 6 20, 7 10, 8 24, 10 6, 12 1, 12 11, 13 12, 13 13, 14 2, 14 9, 14 11, 14 12, 15 24, 16 6, 16 9, 19 22, 22 3, 24 11, 24 12, 27 2, 28 16, 28 20, 30 8, 31 24, 32 15, 34 22, 41 16, 41 24, 42 5, 42 17, 46 1, 53 25, 60 6, 60 11, 60 12, 62 5, 63 21, 63 25,</p>
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<p>64 3, 64 19, 65 4, 65 18, 67 14, 69 20, 69 25, 70 5, 70 16, 70 23, 71 4, 71 11, 72 9, 73 10, 73 24, 75 12, 75 14, 77 8, 79 11, 79 16, 84 8, 84 15, 85 23, 91 19, 93 16, 98 19, 98 23, 98 24, 98 25, 99 4, 110 13, 110 19, 110 23, 113 2, 113 6, 113 12, 113 15, 117 14, 117 24, 119 8, 120 12, 125 12, 126 10, 126 18, 126 22, 127 11, 130 10, 130 13, 130 16, 131 10, 133 14, 135 5, 140 16, 144 6, 144 22, 145 19, 146 1, 148.5, 148 16, 152 17, 154 13, 157 20, 160 12, 162 9, 162 10, 169 14, 171 10, 176 9, 176 24, 178 4, 179 17, 180.13, 181 10, 183-16, 184 16, 192.25, 193 1, 193 9, 193 14, 193 20, 193 21, 194 16, 195 5, 195 8, 197 4, 197 17, 199 9, 201 7, 201 9, 201 10, 201 12, 201 14, 203 10 not. [1] - 140 13 notes [5] - 5 14, 102 3, 103-21, 156.12, 205 22 nothing [15] - 15 17, 27 2, 59 10, 77.22, 78 8, 78 21, 89-9, 98 6, 110 2, 112 5, 112 15, 129-9, 130 1, 161 1, 161 14</p>	<p>Nothing [2] - 71 14, 167 24 notice [14] - 54 22, 68 18, 118 22, 119 21, 123 2, 126 10, 128 5, 167 9, 173.6, 180 15, 183 11, 186 16, 188 6, 188 8 noticeably [1] - 159 12 noticed [21] - 55 5, 67 1, 117 11, 118 14, 118-16, 119 6, 120 7, 120-19, 120 23, 121 2, 121 3, 121 5, 121 15, 122 15, 122 18, 122 24, 123 17, 126 6, 126 12, 127 22, 167 15 November [1] - 83 24 now [34] - 9 13, 12 5, 12 10, 24 19, 29 8, 30 20, 34 1, 36 11, 39 19, 42 2, 47 25, 48 24, 57 19, 64 10, 66 1, 81 1, 81 3, 83 2, 84 9, 86 4, 115 20, 124 6, 142 7, 142 9, 144 21, 150 2, 151 14, 159 5, 160 11, 164 13, 165 18, 172.12, 178 22, 197 22 nowhere [1] - 25 22 nuisance [1] - 34 20 NUMBER [1] - 205 12 number [14] - 18 13, 71-7, 74 7, 76 2, 87 15, 91 16, 139 8, 142.1, 150 13, 154 19, 185 16, 185 17, 186 20, 190 21 numbers [1] - 135 3</p>	<p>77 17 obese [1] - 180 21 object [9] - 120 5, 124 13, 124 19, 181 17, 182 2, 182 10, 190 14, 190 18, 193 22 objection [3] - 10 4, 10 12, 96 17 objects [1] - 30:2 observations [8] - 44 6, 104 1, 104 11, 105 3, 105 8, 105 9, 157.14, 157 15 observe [13] - 62 6, 64 23, 102 23, 107 9, 107.21, 141-4, 141-6, 144 11, 145 6, 148 21, 150 24, 151 25, 152 20 observing [1] - 142 7 obtained [1] - 102 16 obtaining [1] - 94 16 obviously [7] - 14 8, 67 14, 125 19, 143 20, 145 24, 158 11, 160 14 occasion [1] - 115 23 occasionally [4] - 146 3, 146 4, 151 4, 151 6 occur [1] - 167 6 occurred [1] - 178 11 OCME [1] - 111 20 octillion [3] - 94 4, 96 1, 97 3 of [530] - 4 5, 5 10, 5 22, 6 5, 6.11, 6 17, 6 18, 7 1, 7 4, 7 5, 7 20, 8 10, 8 11, 8 12, 8 15, 8 16, 8 17, 9 9, 9.14, 9 19, 9 20, 9.24, 10 24, 11 23, 12 3, 12 6, 13 24, 13 25, 15 15, 15.21, 16.8, 18 13, 18-23, 19-12, 19 14, 19 15, 19 16, 19 21, 20 2, 20 3, 20 15, 20 18, 20 21, 21 20, 22 5, 23 3, 23 13, 23.14,</p>
	<p>O</p>	
	<p>O [2] - 5 1, 17 7 O'Rourke [2] - 76 4,</p>	

IMPOUNDED TRANSCRIPT

<p>23 16, 24 15, 24 17, 24 20, 24 24, 25 16, 27 3, 27 17, 28 2, 28 20, 28 22, 28 25, 29 4, 29 24, 30 4, 30 7, 30 9, 30.10, 30 13, 31 14, 31 20, 32 5, 32 7, 33 3, 33 4, 33 21, 34 19, 35 15, 35 20, 37 14, 39 1, 39 23, 40.24, 42 8, 42 20, 46 1, 46 11, 46 12, 46 17, 47 12, 47 15, 49 8, 49 11, 50 2, 50 3, 51 12, 51 14, 52 12, 52 13, 53 2, 53 13, 53 16, 53 19, 53 22, 55 16, 55 22, 58 11, 60 1, 60 2, 60 5, 60.10, 61 7, 61 15, 61 17, 62 4, 62 11, 62 24, 63 10, 63 17, 63 22, 64 3, 64 6, 64 9, 64 10, 64 12, 65 3, 65 9, 65 16, 66 6, 66 15, 66 23, 67 9, 67 23, 68 2, 68 10, 68 12, 68 19, 68 22, 69 1, 69 3, 69.13, 69 16, 70 4, 70 7, 70 12, 70 13, 70 14, 70 16, 71 7, 71 20, 71 25, 72 5, 72.6, 72.8, 72 15, 72.17, 72 18, 72 20, 73 4, 73 22, 74 8, 74 10, 74 13, 74 14, 74 15, 74 21, 75 3, 75 5, 75 13, 75 14, 76 2, 76 9, 77 4, 77 5, 77 6, 78 12, 79 5, 80 16, 80 17, 81 1, 81 19, 81 20, 82 4, 82 14, 82 15, 82 24, 83 9, 83 12, 83 15, 84 3, 84 19, 84 25, 86 2, 87 1, 87 9, 87 10, 87 19, 87 22, 87 25, 88 11, 88 21,</p>	<p>89 12, 89 15, 89 19, 90 10, 90 12, 90 14, 90 15, 90 21, 90 25, 91 9, 91 15, 91 17, 92 12, 92 18, 93 22, 93 24, 94 16, 94 20, 94 22, 94 24, 95 3, 95 10, 95 11, 95 13, 96 8, 96 12, 97 5, 98 17, 99 2, 100 5, 100 20, 100.23, 101 1, 101 3, 101 6, 101 12, 101 13, 101 15, 101 18, 101 21, 102 3, 102 5, 102 9, 102 12, 102 24, 103 13, 103 21, 104 2, 104 4, 104 5, 104 6, 104 7, 104 9, 104 19, 104 23, 105 11, 105 13, 106 1, 106.10, 106 13, 106.14, 106 18, 106 19, 107 1, 107.6, 107 10, 107 12, 107 13, 107.21, 108 15, 109.4, 109 15, 109 25, 110 10, 110 21, 110 23, 111 10, 111 14, 113 6, 114 4, 115 12, 115.21, 115 23, 116.1, 116 5, 117 3, 117 19, 117 23, 117 24, 118 2, 118 3, 118 8, 118 11, 119 3, 119 10, 119 13, 120 18, 120 22, 121 6, 121 11, 121 16, 121 19, 123 21, 123 23, 124.9, 124.18, 125.13, 127 5, 128 2, 128 15, 128 20, 128 21, 131 16, 131 21,</p>	<p>132 2, 132 23, 132 25, 133 6, 133 11, 133 13, 135 3, 137 7, 137 22, 137 23, 138 14, 138 21, 139 8, 139 18, 139 19, 139 20, 139 23, 140 8, 141 24, 142 1, 142 6, 142 17, 143 3, 143 9, 144 22, 145 11, 145.17, 145 24, 146 11, 147 12, 148 6, 148 13, 149.6, 149 8, 149 14, 149 17, 150 4, 150 5, 150 6, 150 11, 150 12, 150 13, 150 19, 150 20, 151 2, 151 3, 151 5, 151 8, 151 13, 152 4, 153 4, 153 10, 155 11, 155 16, 155 19, 155 20, 157 3, 157 5, 157 10, 157 12, 157 18, 157 21, 158 10, 158 25, 159 5, 159 19, 160 3, 160 5, 160 8, 160 14, 161 25, 162 7, 163 9, 163 18, 164 1, 164 2, 164 4, 164 14, 164 15, 164 23, 165 1, 165 7, 165 8, 165 9, 165.10, 165 11, 165 14, 165 23, 166 2, 166 3, 166 9, 167 11, 167 12, 168.12, 168 13, 169.7, 170 3, 170 6, 170 9, 170 13, 170 14, 170 19, 170 23, 171 1, 171 2, 171 4, 172 13, 172 17, 172 22, 172 23,</p>
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<p>173 2, 173 4, 173 5, 173 9, 173 12, 173-19, 173 21, 173 22, 173 23, 173 24, 174 2, 177 15, 177 19, 177 20, 177.21, 178 13, 179 2, 179 5, 179 7, 179 22, 179 25, 180 1, 180 5, 181 4, 181 20, 182 5, 182 12, 182 23, 183 2, 183 17, 183 23, 185 14, 185 15, 185 18, 186 1, 186 2, 186 23, 187 6, 187-10, 187 21, 188 6, 188-9, 188 10, 188 23, 188 25, 189 2, 190 21, 191 22, 192 5, 192 8, 192 22, 193 13, 194 3, 194 17, 195 8, 195 13, 196 19, 197 1, 197 5, 197 9, 197 11, 198 12, 200.2, 200 7, 200 8, 200-25, 203 1, 203 4, 205 3, 205 7, 205 19 OF [12] - 1-3, 1 5, 1 7, 205 3, 205 11, 205 13, 206 3, 206 4, 206 6, 206 8, 206 9, 206 14 off [25] - 4 4, 7 20, 13 25, 20 9, 25 25, 28 4, 36 12, 41 9, 41 11, 42 20, 75 1, 75 4, 77 11, 102-18, 115 17, 116 5, 117 3, 138 14, 139 20, 142 24, 166.6, 188 21, 189 24, 191 2, 194 13 off-guard [1] - 28 4 offer [11] - 12 20,</p>	<p>21 13, 40 13, 57 25, 67 20, 69 5, 78 11, 103 15, 129 14, 196 3, 202 17 OFFICE [2] - 205 3, 206 6 office [3] - 36-18, 36 22, 113 1 Office [2] - 1 13, 111 6 OFFICER [20] - 5 4, 15 2, 15 9, 59 2, 59 5, 59 15, 78 25, 97 14, 97 18, 97 25, 98 10, 98 15, 112 11, 112 20, 129 22, 130 5, 161 9, 161 19, 161 23, 204 13 Officer [2] - 194 21, 194 23 officer [86] - 7 19, 8 22, 22 8, 27 7, 27 21, 28 4, 28 5, 28 14, 29 1, 29 4, 29 19, 31 8, 31 23, 32 20, 33 4, 49 19, 53 2, 54 6, 54.11, 54 20, 56 9, 74 12, 75 18, 114 13, 118 6, 118 16, 118 23, 118 24, 119 6, 119 22, 120 1, 120 11, 122 15, 122 17, 122 23, 125 10, 125 24, 126 3, 126 6, 126 7, 126 12, 126 21, 127 3, 128 17, 145 4, 145 6, 147 22, 147 24, 148 13, 150 23, 150 24, 151 2, 151 23, 152 7, 153 23, 154 9, 154 14, 176 13, 179 4, 185 6, 185 7, 185 10, 185 12, 186 1, 186 19, 188 17, 188 21, 188 24, 189 5, 189 20,</p>	<p>190:13, 191 1, 191-3, 192-1, 192 3, 192 8, 192 11, 192 13, 194 22, 194 23, 195 1, 195 3, 195 13, 196 19, 199 23 officer's [1] - 33 7 officers [88] - 18.21, 19 10, 20 8, 20 14, 21 6, 21 21, 21 24, 22 15, 22-18, 22 21, 23 12, 23 13, 23 20, 23 24, 24 4, 26 10, 27 3, 27 14, 44 7, 49 20, 52 10, 54 10, 56 11, 62 12, 63 6, 63 8, 63 10, 63 17, 65 16, 65 24, 68 11, 71 6, 73 5, 73 8, 76 11, 77 5, 77 9, 118.15, 122 6, 122 7, 122:13, 126.19, 126 24, 127-13, 127 19, 135 4, 135 23, 138 17, 143 9, 145 25, 150 5, 151 3, 151 5, 155 1, 155 10, 156 14, 175 8, 175 12, 176 5, 176 11, 176 21, 178 14, 179 6, 179 8, 179 11, 179 15, 181 9, 181 14, 181-25, 182.25, 183 12, 183 18, 185 4, 185.14, 186 8, 187 3, 187 6, 187 21, 188 7, 188 9, 188 10, 195 8, 197 13, 197 21, 199 25, 200 1, 200.3 Officers [1] - 2 2 often [3] - 85.22, 100 11, 145 22 Oh [5] - 160 16, 160 17, 187 14,</p>
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IMPOUNDED TRANSCRIPT

<p>190 7, 198 20 oh [13] - 20 17, 21 8, 26 8, 37-4, 43 5, 45 12, 46 7, 172 4, 191 8, 194 5, 196 1, 202 8 Okay [2] - 15 23, 38 14 okay [336] - 8 25, 11 6, 11 13, 12 13, 13 8, 13 14, 14 1, 14 5, 14 13, 15 11, 15 17, 16 12, 16 20, 16 21, 17 17, 17 21, 18 4, 18 7, 18.11, 18 13, 18 15, 18 23, 19-3, 19 13, 20 4, 20 6, 20 12, 20 23, 21 3, 21 5, 21 11, 22 1, 22 4, 22 13, 23 6, 23 18, 24-4, 24:13, 26 3, 26 18, 27 5, 27 13, 27 16, 27.18, 28 13, 29 7, 29.14, 29 18, 30-18, 30 24, 31 18, 31 22, 32 6, 32 19, 33 14, 34:1, 34 11, 34 23, 35 6, 35 11, 35 17, 35 19, 35 23, 36 11, 37 14, 37 15, 37 19, 37 23, 38 2, 38 20, 39 6, 39 9, 39 23, 40 3, 40 8, 42 7, 42 21, 43 6, 43 7, 43 10, 43 20, 43 23, 44 1, 44-23, 47 8, 47 19, 47 23, 48.15, 48 23, 49-13, 49 21, 50 16, 51 1, 51 9, 51 18, 51 22, 52.1, 52 21, 53 1, 53 23, 54 4, 54 8, 54 11, 54 14, 54 18, 54 21, 55 1, 55 25, 56 12, 56 15, 56 19, 57 6, 58 10, 58 16, 58 17, 58 24, 58 25, 61 3, 61.16, 62 10, 64 1, 64 8, 66 6, 66 9,</p>	<p>66.20, 67 17, 69-16, 69 24, 70 7, 70 12, 70 20, 71 6, 71 13, 72 14, 72 19, 74 8, 74 16, 74 22, 76 8, 76 17, 76 21, 76 25, 77 14, 79 2, 79-3, 79 18, 80-21, 83 13, 84 12, 86 4, 89 17, 90 11, 91 5, 91 9, 91 19, 91 22, 92 9, 92 21, 92 25, 93 11, 93 17, 93 22, 94 9, 94 13, 95 3, 95 13, 95 20, 95 24, 96 7, 96 9, 96 10, 98 14, 98 16, 99.5, 99 6, 100 24, 101 5, 101 20, 102 20, 102 23, 103-4, 103 14, 103.24, 104 10, 104 15, 104 19, 104 23, 105 2, 105 8, 105 12, 105 16, 106 3, 106 12, 107 2, 107 5, 108 2, 109 3, 109 11, 109 18, 110-11, 110 17, 110.20, 110 25, 115 1, 116 10, 116 14, 117 1, 117 6, 118 8, 118 13, 118-19, 118 21, 118 22, 119 5, 119 13, 119 16, 119 18, 119 20, 119 21, 120 1, 120 10, 121 18, 122 5, 123 3, 123 22, 124.11, 125 8, 126-4, 127-8, 129 8, 129-12, 130 18, 131 2, 131 9, 131 17, 131 19, 131 23, 132 1, 132 5, 132 8, 133 1, 133 8, 133 11, 134 7, 134 20, 134 23, 135 8,</p>	<p>135 10, 135 12, 135 16, 135 22, 136 21, 136.24, 137 5, 137 7, 137 12, 137-20, 138 16, 142 11, 142 19, 143 8, 143 14, 144 1, 145 11, 146 10, 146 24, 147 14, 147:18, 147 22, 149 18, 151 19, 153 14, 153 19, 154 3, 157 4, 158 8, 160 5, 160 25, 161 3, 161 22, 161 24, 162 19, 162 23, 165 10, 165 13, 165 18, 166 12, 166 20, 167.7, 168 11, 169 1, 169 19, 170 5, 171 17, 171 24, 172 6, 172 10, 172 12, 174 1, 177 2, 177 14, 177 25, 178 18, 178 24, 179 11, 179 20, 180 15, 184 22, 185 1, 185 19, 186 12, 187 19, 187 21, 188 10, 188-14, 189 9, 189 15, 190 10, 190 19, 191 9, 192 9, 192 13, 192 17, 192.24, 193 1, 193-7, 194 25, 195 16, 195 20, 198 18, 199 15, 202 8, 202 10, 202 13, 203 18 old [6] - 17-8, 17 9, 114 2, 114.3, 116 8, 163 7 Olidort's [1] - 13 1 on [245] - 1 19, 5-15, 6 3, 8 13, 8 20, 11-23, 12 1, 12 2, 12 9, 16 8, 16 13, 17 21, 18.17, 19 15, 20-2, 20-14, 20 25, 21 22,</p>
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<p>22.11, 23 9, 23.10, 23 13, 23 14, 25 25, 26 19, 27 11, 27 24, 28 7, 28 12, 31 17, 35 14, 37 24, 38 16, 38 23, 39 16, 40 5, 40 24, 40 25, 42 14, 43 12, 43 13, 44 2, 44 9, 44 11, 46 1, 46 2, 46 4, 46 18, 46 25, 48 6, 48 8, 49 9, 49 16, 50 20, 50 21, 51 2, 52 5, 52 12, 53 25, 62 1, 62 2, 62.6, 62 9, 62 22, 62 24, 62 25, 63.25, 64 6, 64 11, 64-13, 66 7, 66.18, 66 20, 67 1, 67-3, 67 7, 68 2, 68 10, 70 14, 70 17, 71 24, 72 15, 72 23, 72 24, 73 7, 74 23, 74 25, 75 11, 75 20, 76 10, 77 17, 78 4, 81 19, 82 22, 84 11, 84 21, 87 13, 91.6, 91 17, 91 20, 101.1, 101 8, 101 18, 102 11, 102 12, 103 2, 104 5, 104 6, 104 7, 104-20, 105 14, 105 19, 106 20, 106 22, 107 7, 107 12, 108 2, 108 7, 108 9, 109 1, 110 6, 111 14, 111 19, 114 23, 115 22, 116 21, 116 22, 116 23, 116 24, 116 25, 117 3, 117 4, 117 7, 118 14, 119 18, 119 23, 120 20, 120 25, 123 20, 124-7, 125 6, 125 14, 125 24, 127 18, 127-23, 128 21,</p>	<p>131 11, 132 2, 132:5, 134 3, 134-4, 135 5, 135 14, 135 15, 136 1, 136 5, 136 11, 136 13, 136 15, 138 17, 139 1, 140 1, 140 4, 140 7, 140 19, 143 17, 143 19, 145 23, 147 17, 148 10, 149 1, 149 8, 149 10, 149.21, 150 1, 150 6, 150 15, 151 16, 152 12, 152 22, 154 1, 157 10, 157 19, 158 2, 158 5, 158 16, 158 17, 160 2, 160.3, 163 24, 164 15, 165 2, 165.12, 167 13, 168-1, 170 16, 170 20, 170 24, 171 9, 171:16, 171 20, 172 4, 172 12, 172 14, 172 17, 172 22, 172 24, 174 10, 175 2, 176 2, 176 3, 177 2, 177 7, 177 16, 180 5, 180 9, 180 13, 180 14, 183 6, 184 11, 184 17, 184 23, 187 1, 187 10, 188 22, 192 8, 192 10, 192 11, 192 14, 199 17, 200 14, 201 22, 203 3 ON [2] - 206 4, 206 6 once [17] - 35 14, 81 6, 86 2, 89 5, 91 22, 102-2, 147 1, 160 16, 168 23, 173.21, 178 14, 178 15, 178 17, 184 5, 184 6 One [1] - 50 22 one [127] - 5 23, 6 11,</p>	<p>7 3, 7 15, 8 10, 8 11, 8 16, 9 24, 13 7, 14 2, 19 15, 19 16, 22 8, 24 7, 34.8, 34.10, 35 1, 35-19, 35 20, 36 23, 38 6, 38 7, 38.20, 38 21, 39 4, 39 7, 39 24, 49 12, 50 17, 50 20, 50 21, 52 12, 54 13, 54 19, 56 22, 56-25, 58 21, 58 22, 76 10, 76 14, 77 23, 77 24, 78 12, 83 20, 84 18, 95 16, 103 10, 103 11, 104 5, 104 6, 104 7, 104 8, 106 10, 108 12, 111 15, 118-23, 118 25, 119 1, 119 2, 119:4, 124 6, 126 21, 127.3, 127.15, 129-3, 135 15, 139.12, 139 14, 139 16, 143 22, 143 23, 145 3, 145 17, 147 24, 149 1, 150 5, 151 3, 151 5, 151 8, 154 20, 155 19, 160 16, 169 3, 169 5, 169 6, 169 8, 169 9, 170 3, 171 4, 171 24, 172 7, 172 10, 172 19, 175 19, 175 20, 176 10, 177 5, 178 12, 178 19, 178 23, 179 4, 179 18, 183.4, 184.1, 184-2, 185 6, 185 7, 185 8, 185 12, 185 14, 185 24, 187 6, 187 10, 187 21, 187 22, 188 10, 191 25, 195 13, 197 25, 198 13,</p>
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<p>201 22, 205 15 ones [2] - 58 19, 151 8 ongoing [1] - 82 15 online [2] - 82 19, 95 10 only [17] - 10 15, 14 14, 25 18, 36 23, 43 22, 97 2, 107 24, 110-11, 110 12, 110 16, 113 9, 146 1, 158 20, 171 12, 172 19, 194-17, 197 20 onto [6] - 50 3, 51 11, 118 5, 121 15, 127 22, 154 25 open [7] - 60 6, 86 23, 98 24, 113 2, 130 10, 184 6, 186 23 opened [1] - 171 5 opening [1] - 142 13 openings [1] - 101 4 opportunity [1] - 91 5 opposed [1] - 74 6 or [145] - 5 21, 5 24, 6 12, 8.21, 8 23, 9.16, 11 19, 13 23, 14 11, 15 4, 16 8, 16 10, 16 13, 16 14, 22 3, 22 7, 22 15, 22 19, 24 7, 24 20, 25 12, 25 24, 26 10, 26 24, 29 22, 30 8, 30 17, 31 15, 32 8, 32 17, 33 19, 35 7, 35 21, 39 1, 45 1, 49 14, 51 21, 53 25, 57 14, 60.2, 60 9, 60 14, 62 2, 65 16, 65 21, 66 3, 69 17, 70 13, 70 14, 70 23, 71.11, 72 6, 74 9, 74 20, 82 20, 84 9, 90 14, 91 19, 93 8, 95 18, 98 18, 98 23, 98 25, 99 24, 100 6, 106 12, 107.2, 107 20, 108-3, 109 11, 109.12,</p>	<p>110 7, 111 5, 111 16, 111 25, 113 4, 119 12, 124 5, 124 10, 125 3, 125 4, 126 7, 126 8, 128 7, 128 12, 132 8, 133 12, 133 16, 133 19, 134.10, 135 20, 135-21, 138 4, 139 5, 145 16, 146.8, 147 16, 148-18, 149-4, 151.3, 151 17, 151 20, 152 11, 152 20, 153 21, 154 13, 154 21, 155 2, 157 15, 157 20, 158 15, 163 4, 175 9, 176 21, 180 13, 180 16, 184 24, 185 7, 185 17, 186 3, 186 7, 186 20, 187 10, 187 16, 188 1, 189 5, 193.1, 193 21, 194 2, 194 23, 195 12, 198 21, 205 22 orange [4] - 22 11, 27 22, 71 10, 71 12 orangish [1] - 179 25 order [10] - 5 2, 16 6, 16 17, 60 12, 79 11, 98 24, 101 22, 113 12, 130 13, 162 9 orders [2] - 24 17, 24.18 oriented [1] - 134 25 original [2] - 139 6, 205-7 originally [7] - 76 13, 138 2, 138 5, 138-6, 142 25, 143 1, 147 8 originated [4] - 94 5, 94 6, 96 2, 96 3 other [44] - 5 14, 7 10, 7 16, 20 6, 20 10, 20 13, 23 20, 56 11, 65 19, 65 22,</p>	<p>65 23, 67 10, 68-24, 69 24, 74 10, 84 22, 87 1, 101.4, 110 13, 111-15, 113 6, 122 6, 122 7, 122.12, 126 24, 127:19, 129 7, 144 2, 144 3, 145 25, 146 25, 149 1, 151 3, 151 5, 151 8, 152 9, 162 7, 164 11, 179 6, 188 7, 195 1, 195 18, 203 6, 205 20 OTHERWISE [1] - 206 9 our [15] - 17 5, 60 23, 85 18, 85 19, 90 3, 95 10, 96.16, 99 12, 105 23, 123 4, 130 24, 135 11, 166 10, 171 16 out [79] - 6 10, 9 12, 12 12, 14 21, 16 1, 16 5, 16 19, 24 6, 24 20, 31 9, 31 14, 31 20, 32 5, 37-23, 40 24, 47 12, 47 15, 50 2, 50.3, 62 8, 63 1, 64 10, 65 24, 66 3, 68 22, 70 12, 72 1, 82.20, 86 25, 93 12, 100 23, 101 2, 101 3, 105-17, 105 25, 111 8, 119 11, 126 19, 132 23, 132 25, 133 9, 134-4, 134 17, 135 14, 138 25, 140 8, 140 14, 144 4, 146.14, 150 21, 153-10, 157 5, 158 10, 159 2, 166 4, 166 9, 167 16, 168 8, 169 9, 169 11, 170 5, 170 9, 170 13, 170 14, 170 23, 171 1,</p>
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<p>172 8, 173 12, 174 2, 180 1, 180 10, 181 5, 184 2, 197 14, 198 2, 198 12, 198 14, 198 15 out' [1] - 187 8 OUTCOME [1] - 206 9 outdoors [1] - 70 19 outset [1] - 10 9 outside [10] - 61 20, 62 5, 71 25, 73 16, 110 10, 132 19, 155 22, 167 11, 167 12, 168 1 outwards [2] - 76 15, 77.3 over [45] - 6 13, 6 19, 8 21, 15 9, 20 14, 21 22, 22.15, 22 16, 25:14, 38 12, 53 19, 59 16, 62 8, 63 11, 71 2, 74 16, 78 25, 84 4, 91 1, 102 11, 115 15, 133 19, 135.8, 136 3, 136-4, 136 5, 137 3, 138 12, 138 22, 139.1, 150 20, 155:20, 157 14, 158 15, 165 17, 165 24, 165 25, 170 1, 174 5, 175 6, 178 25, 179 6, 179 9, 187 24 overhand [2] - 141 16, 141 18 overview [1] - 80 25 ownership [1] - 90 15</p>	<p>pages [3] - 4 5, 66:15, 67 23 pair [1] - 101 18 paper [3] - 40 21, 102 9, 102 12 pardon [1] - 106 9 parent [1] - 10 11 parents [2] - 9 24, 16 7 parked [1] - 127 23 parking [4] - 134 2, 135 11, 136 17, 138 8 part [18] - 31 14, 62 11, 62 22, 72 5, 82 14, 82 15, 83 9, 87.17, 95 3, 100 5, 102 24, 104-2, 106 10, 106 14, 145 23, 149 14, 166 2, 166 3 participants [1] - 70 22 participating [1] - 88 7 particles [1] - 100 21 particular [9] - 7 5, 115 22, 117 3, 136 13, 170 20, 173 10, 173 25, 186 18, 186 19 particularly [1] - 7 14 particulate [1] - 102 4 parties [1] - 79 10 PARTIES [1] - 206 8 parts [2] - 132 11, 160 8 pass [3] - 83 5, 83 17, 91 4 passed [5] - 82 22, 83 20, 108 16, 191 24, 191 25 passenger [1] - 11-10 patch [1] - 187 10 path [4] - 8 15, 8 23, 116 14, 116 16 Patricia [2] - 196 20, 198 5 Patriots [4] - 23 4, 52 19, 57 1, 57 2 PAUL [2] - 112 18, 113 25 Paul [8] - 3 14, 4 8, 4 8, 112 9, 113 25, 123 8, 129 15,</p>	<p>129 19 pay [3] - 30 22, 179 22, 180 2 paying [4] - 31-25, 64 12, 64 24, 66 2 PCR [1] - 87 6 PDF [1] - 205 8 pe [4] - 168 20 peel [1] - 28 7 pen [2] - 53 5, 172.2 penetrating [1] - 7 15 people [18] - 15 21, 20 6, 20.13, 41 25, 51 12, 113 9, 119 3, 127 5, 127 10, 132 13, 133 3, 133 16, 133 17, 155 21, 167 3, 169 16, 170.19, 194 18 per [1] - 83 12 percent [1] - 193 14 perception [1] - 30 12 percipient [1] - 13 13 perfect [4] - 97 24, 203 22, 204 1, 204 4 perform [4] - 82 21, 101 16, 102 6, 110 19 performance [2] - 7 5, 99 2 performed [5] - 7 7, 84 11, 89 24, 90 6, 90 22 period [4] - 157 10, 157.12, 160 3, 171 2 permanent [1] - 102 4 person [11] - 6-23, 6 25, 93 7, 94 20, 94.23, 95 16, 95 17, 102 18, 121 6, 128 21, 131 15 pertaining [2] - 100 12, 101 12 pertains [1] - 99 25 PHIPPS [3] - 206 2, 206 5, 206.7 Philpps [2] - 1 22, 205 10 phone [21] - 11 17, 11-18, 11 21, 11 22, 12 1, 12 2,</p>
<p>P</p>		
<p>P [1] - 5 1 P.C [1] - 2 2 p.m [3] - 75 9, 75 19, 204 14 package [1] - 37 5 packages [1] - 37 7 page [7] - 1 19, 57 25, 66 15, 66 21, 78 12, 96 11, 205 8 PAGE [2] - 3 2, 4-2 Pages [1] - 1 1</p>	<p>pages [3] - 4 5, 66:15, 67 23 pair [1] - 101 18 paper [3] - 40 21, 102 9, 102 12 pardon [1] - 106 9 parent [1] - 10 11 parents [2] - 9 24, 16 7 parked [1] - 127 23 parking [4] - 134 2, 135 11, 136 17, 138 8 part [18] - 31 14, 62 11, 62 22, 72 5, 82 14, 82 15, 83 9, 87.17, 95 3, 100 5, 102 24, 104-2, 106 10, 106 14, 145 23, 149 14, 166 2, 166 3 participants [1] - 70 22 participating [1] - 88 7 particles [1] - 100 21 particular [9] - 7 5, 115 22, 117 3, 136 13, 170 20, 173 10, 173 25, 186 18, 186 19 particularly [1] - 7 14 particulate [1] - 102 4 parties [1] - 79 10 PARTIES [1] - 206 8 parts [2] - 132 11, 160 8 pass [3] - 83 5, 83 17, 91 4 passed [5] - 82 22, 83 20, 108 16, 191 24, 191 25 passenger [1] - 11-10 patch [1] - 187 10 path [4] - 8 15, 8 23, 116 14, 116 16 Patricia [2] - 196 20, 198 5 Patriots [4] - 23 4, 52 19, 57 1, 57 2 PAUL [2] - 112 18, 113 25 Paul [8] - 3 14, 4 8, 4 8, 112 9, 113 25, 123 8, 129 15,</p>	<p>129 19 pay [3] - 30 22, 179 22, 180 2 paying [4] - 31-25, 64 12, 64 24, 66 2 PCR [1] - 87 6 PDF [1] - 205 8 pe [4] - 168 20 peel [1] - 28 7 pen [2] - 53 5, 172.2 penetrating [1] - 7 15 people [18] - 15 21, 20 6, 20.13, 41 25, 51 12, 113 9, 119 3, 127 5, 127 10, 132 13, 133 3, 133 16, 133 17, 155 21, 167 3, 169 16, 170.19, 194 18 per [1] - 83 12 percent [1] - 193 14 perception [1] - 30 12 percipient [1] - 13 13 perfect [4] - 97 24, 203 22, 204 1, 204 4 perform [4] - 82 21, 101 16, 102 6, 110 19 performance [2] - 7 5, 99 2 performed [5] - 7 7, 84 11, 89 24, 90 6, 90 22 period [4] - 157 10, 157.12, 160 3, 171 2 permanent [1] - 102 4 person [11] - 6-23, 6 25, 93 7, 94 20, 94.23, 95 16, 95 17, 102 18, 121 6, 128 21, 131 15 pertaining [2] - 100 12, 101 12 pertains [1] - 99 25 PHIPPS [3] - 206 2, 206 5, 206.7 Philpps [2] - 1 22, 205 10 phone [21] - 11 17, 11-18, 11 21, 11 22, 12 1, 12 2,</p>

<p>14 17, 34 11, 34 12, 34 13, 34 14, 34 15, 34 19, 34 23, 35 12, 35 14, 36 12, 39 25, 40 6, 64 19 phonetic [2] - 11 3, 203 16 phonetic [1] - 204 3 photo [8] - 36 3, 36 6, 66 25, 67 10, 75 3, 75 8, 75 20 photocopying [1] - 87 8 photograph [9] - 66 18, 66 20, 66 23, 67.1, 68 9, 68 19, 75 13, 75 15, 76 8 photographs [1] - 4 5 photos [8] - 10 15, 35 9, 35 20, 41 7, 66 15, 67 23, 68 3 physical [6] - 63 2, 107 23, 180 4, 180:16, 183 11, 184 23 pick [1] - 203 2 picture [3] - 34 10, 65 15, 66 6 pictures [5] - 7 7, 34 8, 34 24, 35 2, 58 12 piece [4] - 89 15, 102 9, 106 19 pine [1] - 173 1 pistol [4] - 119 24, 119 25, 120 2, 120 7 place [7] - 6 14, 34 21, 72 7, 106 6, 108.7, 120 15, 169:25 plan [2] - 42 11, 43 11 planning [1] - 5 15 plant [1] - 173 7 play [1] - 39 6 played [3] - 39 11, 39 13, 39 20 playing [2] - 125 3, 153 21 pleading [1] - 148 20 please [15] - 15 3, 18 20, 59 7, 60 23,</p>	<p>61 22, 78 17, 79 1, 79 23, 97 20, 98 1, 98 3, 99 12, 161 11, 161 20, 171.18 plenty [1] - 87 10 plus [2] - 88 21, 100 13 pocketknife [1] - 65 5 pockets [1] - 34 20 point [66] - 16 3, 20 22, 22 5, 23 9, 23 22, 23 24, 26 23, 27 14, 27 18, 27 19, 28 18, 29 21, 30 22, 32 22, 33 1, 33 23, 35 1, 35 6, 35 19, 44 9, 45 20, 46 24, 47 3, 47 10, 47 21, 48 6, 48 8, 49 8, 49 16, 66 1, 67 15, 69 13, 76 10, 76 14, 108 18, 113 4, 113 15, 116 19, 120 11, 122.8, 125 11, 127 20, 128.3, 139 2, 139.4, 140 24, 154.3, 155 1, 156 8, 162 4, 169 4, 171 5, 173 7, 175 19, 176 10, 176 15, 176 16, 177 5, 182 20, 183 4, 190 14, 190 20, 194 4, 195 12, 198 1, 198 13 pointed [3] - 77 7, 77 9, 119 25 pointedly [1] - 148 16 pointing [11] - 22 22, 23 6, 76 15, 77 3, 77 4, 118 7, 120 4, 120 7, 122 19, 122 20, 122 21 points [3] - 76 21, 76 22, 200 19 police [120] - 10 13, 10 14, 13 19, 18 21, 19 10, 20 7, 20 14, 21 6, 21 20, 21 24, 22 15,</p>	<p>22 21, 25 16, 25 18, 26 10, 26 20, 28 3, 28 14, 33 4, 33 6, 35 2, 35 7, 36 12, 45 21, 46 25, 49 8, 49 19, 52 10, 53 17, 53 18, 54.6, 54 10, 54 11, 54 20, 56 9, 56 11, 62 2, 62 12, 63 5, 63 10, 63 17, 65 16, 68 11, 72 10, 73 5, 73 8, 73 11, 74 11, 75 18, 77 5, 77.8, 118 6, 118 14, 118 16, 118 22, 118 23, 119 6, 119 22, 120 1, 120 11, 122 6, 122 7, 122 13, 122 14, 122 17, 122 23, 125 10, 125 24, 126 3, 126 6, 126 7, 126 12, 126 24, 127.19, 128 10, 128 17, 129 15, 135 4, 136 16, 138 16, 139 13, 139 19, 139.23, 140 5, 141.24, 143 9, 143 19, 144 1, 146 11, 155 10, 170 16, 170 19, 176 21, 178 14, 183 12, 183 17, 185 4, 185 6, 185 7, 187 21, 188 7, 188 9, 188 10, 189 5, 192 11, 192-13, 196 19, 197 20, 198 4, 199 2, 199 5, 199 8, 199.9, 199 23, 199 25, 200 1, 200 3 Police [18] - 2 2, 6 23, 57 25, 71.21, 71 23, 73-12, 78 12, 80 7, 80 19, 82 9, 84 2, 85 8, 95.4, 99 17, 102 17, 111 5,</p>
---	---	--

<p>111.17, 156 9 policemen [3] - 134 5, 134 7, 139 8 pony [1] - 37 8 POOR [1] - 205 15 pop [18] - 183 23, 184 12, 184 15, 190 9, 192.3, 192 21, 199 19, 199 20, 200 9 popped [1] - 149 24 popping [2] - 152 3, 193 3 pops [2] - 147 16, 192 21 position [15] - 23 7, 33 7, 54 6, 55 18, 65 16, 80 11, 80 15, 80 18, 83 9, 99 22, 143 9, 153 15, 163 16, 175 8, 181 23 positioned [3] - 32 3, 123 19, 164 24 positions [1] - 6 5 positive [9] - 88 14, 88 17, 88 18, 91 3, 104 13, 104 14, 105.10, 107 12, 110 13 possible [1] - 111 13 possibly [2] - 108 19, 156 14 post [2] - 16 13, 46.2 posted [7] - 35 20, 36 2, 36 3, 36 4, 39 25, 46 1 potential [2] - 101 24, 109 25 potentially [2] - 8 4, 109 5 powder [2] - 109.1 practical [1] - 160.15 prefer [1] - 13 21 preliminary [2] - 87 7, 87 18 prepare [1] - 6 18 prepared [3] - 96 8, 156 12, 196 18 presence [2] - 101 6, 102 3 present [5] - 87 5, 104 14, 104 17, 105 11, 198 5 president [1] - 163 18</p>	<p>press [1] - 71 3 presume [2] - 11.11, 63 2 pretty [24] - 7 2, 20 9, 23 10, 28 17, 30 7, 30 8, 32 12, 37 9, 53 24, 86 5, 115 1, 117 24, 121 4, 124 21, 141 13, 143 16, 175 4, 175 25, 177 8, 177 9, 184 3, 184 18, 190 4 prevent [1] - 156 15 previously [2] - 27 25, 92.18 primarily [4] - 173 1, 181 18, 185 8, 185 12 primer [1] - 101.1 printed [4] - 4 4, 40:24, 41 9, 41 11 prior [3] - 51 21, 82 9, 127 25 pro [1] - 117 17 probability [3] - 94 16, 94:20, 94 22 probably [46] - 22 12, 23 5, 24 8, 28 1, 29 5, 30 3, 30 4, 30 16, 32 9, 33 19, 40 2, 47 21, 48 25, 50 11, 55 20, 56 4, 56.14, 86 5, 118 17, 119 11, 121 4, 126 7, 133 19, 164 11, 168 9, 171 10, 171 12, 171 13, 173 19, 174 8, 174 13, 174 24, 175 14, 176 16, 177 12, 178 21, 184 4, 186 20, 187 24, 189.7, 190 17, 191 24, 192 4, 203 14 problem [1] - 135 5 problems [1] - 155 25 procedures [4] - 85 19, 88.5, 88 8, 90 3 proceed [4] - 116 16, 116 19, 120 13, 127 16</p>	<p>proceeded [5] - 118 1, 120 8, 120 15, 123 1, 168 10 proceeding [8] - 15 25, 79 8, 113 1, 113 2, 117.10, 130 10, 162 2, 162 3 PROCEEDINGS [2] - 206 3, 206 15 proceedings [4] - 60 7, 98 20, 98 23, 162 6 process [19] - 45 16, 60 4, 81 5, 81 21, 84 20, 85 5, 85 22, 86 18, 86 21, 87 21, 88 12, 89 8, 89 15, 89 19, 89 22, 90 22, 92 5, 100 8, 104 25 processed [1] - 88 19 processes [2] - 88 4, 89 21 processing [1] - 84 25 produce [2] - 87 16, 109 20 PRODUCED [1] - 206 15 produced [2] - 88 23, 205 7 produces [1] - 90 18 Professional [1] - 1.23 proficiency [4] - 83 8, 83 12, 83 17, 83 19 profile [24] - 86 15, 87 2, 87 16, 88 20, 88 21, 88.23, 89 3, 90 18, 91 25, 92 1, 92 10, 92 12, 92 14, 92 20, 93 16, 93 24, 94 3, 94 4, 94.17, 95 1, 95 14, 95 15, 95 25, 96 1 profiles [2] - 81 11, 84 14 program [4] - 80 24, 81 18, 81 19, 82 25 progress [2] - 191 19, 191 23 projectile [3] - 70 4,</p>
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<p>74.1, 100 22 projectiles [1] - 111 19 prologue [1] - 12.20 propellant [2] - 110 6, 110.8 proper [1] - 146 15 property [2] - 140 8, 142 6 proposition [2] - 94 19, 94 22 propositions [1] - 94 18 protocol [1] - 88 4 protocols [5] - 85 15, 85.18, 88 9, 90 3, 100 10 protruding [3] - 31 9, 32 5, 85 9 provide [4] - 15 5, 92 24, 95 18, 111 6 PROVIDED [1] - 206 3 provided [8] - 1.21, 10 9, 10 16, 10 21, 68 1, 111 16, 111 17, 205 22 provides [2] - 94 8, 96:5 PTs [1] - 100 13 public [11] - 60 7, 60 9, 60 10, 98 24, 113 3, 113 5, 113 7, 113 16, 130 10, 162.6, 162 10 publicly [2] - 60 13, 130.17 published [1] - 79 9 pull [2] - 162 21, 195 11 pulled [2] - 121 15, 195 9 purpose [2] - 89 12, 113 11 purposes [1] - 136 5 pushes [1] - 101 2 put [24] - 21 5, 76.25, 107 1, 118 19, 119.5, 121 21, 134:24, 135 1, 137:5, 142 20, 157 24, 171 18, 171 21, 172 2, 175 10, 181 10,</p>	<p>181 14, 182 1, 183 15, 187 4, 188 20, 194 7, 194 8 Put [4] - 176 5, 186 4, 186 9, 187 4 putting [3] - 24 13, 37 23, 102 10</p>	<p style="text-align: center;">R</p> <p>R [5] - 5 1, 60 25, 80 2, 206.1 rabbi [2] - 131 3, 131 4 Rabbi [12] - 3 15, 4 9, 4 10, 129 21, 130.6, 131 17, 137 8, 137-17, 156 8, 157 1, 202 17, 202 24 radio [1] - 125 4 raid [1] - 63 11 raise [7] - 15 3, 59 6, 78 17, 98 2, 112 12, 129 23, 161 11 raised [11] - 32 4, 32.6, 32 16, 50 24, 55 1, 133-4, 133-8, 133.11, 133 24, 141-1, 142-4 raising [1] - 190 2 ranks [1] - 144 10 rapid [4] - 168 7, 168 21, 192 23, 192 25 rare [1] - 155 22 rate [1] - 15 3 rather [3] - 85 2, 95 15, 124 20 ratio [6] - 94 10, 94 14, 94-15, 94.24, 94 25, 95 6 RE [4] - 1 7, 1 9, 205 11, 206 3 reached [1] - 152 11 reaching [1] - 95 15 react [1] - 194 18 reaction [6] - 87 7, 87 18, 146 2, 183 11, 184 10, 193 2 read [7] - 13 17, 73 18, 73.21, 95 23, 196 22, 196 24, 196 25 reading [1] - 156 11 readjusted [1] - 145-24 readjusting [1] - 140 5 real [3] - 64 21, 64.22, 82 22</p>
	<p style="text-align: center;">Q</p> <p>QUALITY [1] - 205 15 quantitation [1] - 87 4 quarter [1] - 42 15 question [11] - 5 13, 7 4, 12 6, 72 14, 93 3, 93 11, 93 23, 100 9, 107 17, 152 5, 201 2 questioned [1] - 46 14 questioning [1] - 8 18 questions [21] - 6 11, 8 12, 8 15, 8 16, 12 10, 17 22, 41 15, 41 17, 46 11, 55 7, 61.17, 71 15, 76 3, 96-24, 97 1, 97 4, 129 6, 156 2, 166 11, 195 17, 195 22 quick [6] - 152 2, 155 5, 175 22, 187 11, 195 4, 195 10 quickly [14] - 29 25, 30 7, 30 9, 122 9, 137 2, 150 15, 155 7, 155 13, 175 4, 175 25, 177 8, 177 9, 188 5, 189 24 Quigley [2] - 147 8, 150 11 quite [14] - 9 3, 157 10, 172 20, 173 3, 173 6, 173 20, 176 25, 180-10, 182 23, 184 15, 184 21, 185 13 quiz [1] - 82 25 quizzes [1] - 81 22 quote [1] - 72 22</p>	

<p>realistically [1] - 56 13</p> <p>reality [1] - 138 11</p> <p>realized [3] - 75 1, 75 8, 168 2</p> <p>really [41] - 6 18, 6 20, 14 10, 15 24, 23 23, 23 24, 24 9, 24 24, 25 1, 25 4, 26 2, 26 11, 27 6, 27 8, 27 20, 32 8, 32 13, 32 18, 34 22, 37 2, 43 22, 47 6, 48 4, 48 22, 52.23, 54 1, 70 16, 136 3, 136 13, 140 17, 156 13, 158 5, 160 13, 172 1, 181 5, 185 24, 187 11, 188 5, 192 7, 199 13</p> <p>Realtime [1] - 1.23</p> <p>rear [2] - 78 5, 160.2</p> <p>reason [1] - 17 24</p> <p>reasons [2] - 7 4, 8 11</p> <p>recall [25] - 19 11, 26 22, 32 21, 33 18, 52 15, 54 11, 63 19, 65 20, 66 5, 70 5, 72 7, 116.1, 122 14, 123 20, 124 7, 126 1, 129 2, 144 15, 154.4, 154 22, 156 17, 164 18, 167:1, 184 8, 185 12</p> <p>received [15] - 21 17, 40 17, 41 12, 58 6, 67 24, 69 9, 78 16, 96 20, 103 19, 123 9, 129 20, 137 18, 166 17, 196 8, 202 25</p> <p>receiving [1] - 90 13</p> <p>recently [2] - 58 19, 67:2</p> <p>recess [1] - 97 15</p> <p>recesses [1] - 97 16</p> <p>recognize [9] - 38 20, 39.8, 39 12, 39 14, 39-16, 66 17, 117 13, 118 10,</p>	<p>165 14</p> <p>recollection [6] - 65 18, 72 2, 72 8, 121 10, 128 10, 128 24</p> <p>record [10] - 14 8, 34 4, 55 14, 55 16, 58 3, 64 18, 121 20, 141 15, 166 14, 202 22</p> <p>RECORDED [1] - 206 15</p> <p>recorded [2] - 38 18, 39 21</p> <p>recording [1] - 200 7</p> <p>RECORDING [3] - 205 13, 206 3, 206 15</p> <p>recover [1] - 191 5</p> <p>refer [3] - 6 1, 91 14, 103 24</p> <p>reference [3] - 92 2, 92 3, 93 18</p> <p>reflection [1] - 62-1</p> <p>refrain [1] - 60-13</p> <p>refresh [1] - 72 2</p> <p>regain [1] - 70 14</p> <p>regard [1] - 10 7</p> <p>regions [1] - 87 9</p> <p>Registered [1] - 1 23</p> <p>regular [1] - 115 11</p> <p>regularly [1] - 115 10</p> <p>REILLY [3] - 1 7, 205 11, 206 4</p> <p>Reilly [17] - 1 16, 5 10, 5 21, 6 6, 6 8, 7 9, 7 20, 93 21, 93 24, 94 5, 94 7, 95 21, 96 2, 96 4, 101 13, 102 14, 111 14</p> <p>reinforcing [1] - 73 22</p> <p>related [2] - 79 14, 131 17</p> <p>RELATED [1] - 206 8</p> <p>relates [1] - 99 2</p> <p>relation [2] - 19 25, 63 9</p> <p>relationship [1] - 91 23</p> <p>relative [2] - 6 5, 175 18</p> <p>relatively [1] - 174 23</p> <p>relaxed [1] - 148 16</p>	<p>relaxing [1] - 61 24</p> <p>released [2] - 146 21, 146 23</p> <p>religious [2] - 132 6, 132 10</p> <p>remember [89] - 19:14, 22 10, 23 7, 24-10, 25 1, 25 2, 25 5, 26 2, 27 8, 27.24, 32 2, 32 4, 32 14, 32 16, 32.18, 37 11, 43 23, 44 21, 45 4, 47 6, 47 9, 47 24, 48 4, 48 5, 48 22, 49 25, 50 15, 53 1, 62 1, 62 23, 63 7, 64 5, 72 21, 72 25, 73 23, 73 24, 74 7, 75 10, 75 13, 100 17, 121 3, 121 11, 122 22, 124 5, 124 6, 124 22, 125 2, 125 5, 126 2, 126 3, 126 5, 126 14, 127 2, 127 4, 128 14, 128 17, 128 20, 132 15, 133 14, 140 13, 141 13, 144 21, 144 24, 145 17, 146 10, 147 7, 147 10, 147 13, 147.14, 148 24, 150 2, 150 14, 151-1, 151 17, 152 21, 153 7, 153 8, 153 9, 153 20, 153 22, 154.4, 154 22, 155-10, 155 23, 159 6, 180 12, 184 10, 188 2</p> <p>removed [1] - 111 20</p> <p>repeat [2] - 22 17, 92.17</p> <p>repeating [1] - 145 21</p> <p>report [44] - 4 5, 4 6, 4 7, 4 7, 4 8, 4.10, 4 10, 10 10, 12 21, 16 4, 16.18, 58.1, 58 5, 60-8, 60 15, 73 11, 75 18, 76 3,</p>
---	--	--

<p>78 12, 78 15, 79 9, 79 17, 91 10, 91 14, 92 3, 96 8, 96 11, 96 20, 99 3, 103 5, 103 8, 103 13, 103 18, 113 13, 113 14, 129 15, 129 19, 130 12, 162.5, 196 7, 196 18, 202 24 reporter [4] - 17 6, 60 23, 99 12, 130 24 Reporter [3] - 1 23, 1 23 Reporting [1] - 206 19 reports [3] - 75 18, 81 8, 90 20 represent [1] - 52 10 required [1] - 88 8 residence [1] - 137.10 resides [1] - 172 20 residue [12] - 99 25, 100 7, 100 12, 100 19, 100 20, 101 12, 102 5, 104 17, 105 13, 106 5, 108 7, 109 20 residues [1] - 100 21 respect [4] - 6 16, 24 19, 102 24, 110 11 responded [1] - 11-16 responds [1] - 13 18 response [2] - 99 21, 140 19 responsibility [1] - 91 23 responsible [1] - 91 13 rest [4] - 87 1, 146 15, 171 4, 186 23 result [1] - 104 14 results [5] - 96 12, 104 13, 105 10, 106 11, 107 12 resumes [1] - 97 17 resuming [1] - 5 9 retained [1] - 91 1 retired [2] - 61 2, 61 3 retrieve [1] - 200 13 returning [2] - 116 4,</p>	<p>191 12 reunite [1] - 186.5 review [7] - 89 19, 89 20, 89 22, 89 23, 89 24, 90.6, 90 21 reviewed [1] - 36 11 reviewer [2] - 84 6, 84 8 reviews [1] - 89 25 rhododendron [1] - 68 21 rifle [3] - 27 22, 54 13, 180 1 rifles [3] - 71 11, 195 14 right [208] - 9 13, 9 21, 12 16, 13 3, 13 23, 14 4, 14 5, 14 24, 15 9, 15 12, 15 18, 16 16, 18 7, 19 23, 20 23, 20 24, 21 1, 21 8, 21 12, 21.14, 25 15, 25 21, 26 7, 29 1, 29 8, 30 1, 32 9, 32 11, 32 13, 32 23, 35 12, 35 21, 36 19, 37 17, 37 19, 37 25, 38 23, 40 9, 40 14, 41 2, 42 10, 43 5, 43 12, 43.17, 45 5, 45 10, 45-25, 46 21, 47 2, 47 3, 48 18, 49 5, 49.15, 52 4, 53 6, 53 9, 54 3, 54 7, 55 8, 55 10, 57 10, 58 2, 58 7, 58-22, 59-5, 59 7, 59 15, 59 16, 60 15, 62 16, 64 4, 64 8, 65 1, 65 13, 67 18, 67 25, 68 9, 68 12, 68 16, 69 11, 71 21, 73 3, 73 11, 73 16, 76 6, 77 10, 77 16, 78 5, 78 17, 78 25, 80 25, 81 3, 84 9, 91.12, 97 7, 97 22, 97.25, 98 2, 98 10, 100 3, 101 11, 104 5, 104 7, 104 21, 108 18,</p>	<p>108 20, 109 16, 110 20, 111 2, 111 22, 112 11, 112 12, 112 20, 116 18, 116 23, 116 25, 118 17, 118 21, 119 8, 122 17, 123 22, 123 24, 124 3, 124 5, 124 15, 127 24, 129 22, 129 23, 130 5, 130 17, 134 19, 135 6, 135 7, 137 4, 137 9, 137 11, 137 14, 138 10, 138 22, 139 1, 139 2, 141 12, 142 3, 143 6, 143 7, 143 8, 143 17, 150 6, 153 21, 155 1, 155 4, 155 6, 158 14, 161 10, 161 11, 161 19, 163 24, 164 5, 164 18, 165 17, 165 19, 165 24, 165 25, 166 7, 169 23, 170 8, 170 11, 171 25, 172 2, 172 9, 172 10, 172 16, 172 23, 174 20, 174 24, 176 7, 177 8, 177 20, 178 22, 179 3, 180 25, 182 12, 182 17, 182 19, 183 2, 186 12, 188 22, 190 2, 190 4, 191 17, 197-5, 197 6, 197 7, 197.10, 198 5, 198-9, 198-24, 199-6, 199-18, 201 21, 203 5, 204 6, 204 8 right-hand [2] - 143 17, 165 17 righty [1] - 32 17 rise [3] - 92 19, 97 14, 204 13 rising [1] - 7 22</p>
---	---	---

<p>Road [4] - 1 18, 114 17, 114 18, 131 11</p> <p>road [15] - 19 16, 20.5, 20 24, 23 15, 26 15, 27 10, 27-11, 27 17, 91 17, 113 15, 116 10, 116 12, 120 20, 122.1, 177 16</p> <p>roadway [1] - 42 16</p> <p>ROBERT [1] - 1 10</p> <p>Robert [3] - 10 10, 12 8, 12 20</p> <p>Rojas [1] - 204 2</p> <p>role [2] - 14 10, 114 12</p> <p>rolled [2] - 124 25, 125 1</p> <p>room [14] - 30 2, 106 15, 107 23, 113 10, 164 22, 164 24, 165 1, 165 2, 165 6, 165 8, 166 8, 166 24, 166 25, 169 14</p>	<p>173 10, 173-13, 173 17, 174 9, 177 20</p> <p>round [4] - 7 5, 110 7, 110 14, 193 19</p> <p>rounds [7] - 6 2, 7 9, 7 11, 110 14, 110 15, 110 21</p> <p>route [1] - 26.6</p> <p>rubber [4] - 51:7, 73 9, 73 14, 74 12</p> <p>ruckus [4] - 167 12, 167-25, 168 11, 169 12</p> <p>run [4] - 175 3, 175 20, 175.22, 184 19</p> <p>running [2] - 116 4, 172 7</p> <p>runs [1] - 177 6</p> <p>RYAN [1] - 15 8</p> <p>Ryan [10] - 3 3, 4-3, 4 5, 9 23, 11 21, 17 4, 21 16, 52 9, 57 25, 58 5</p> <p>Ryan's [1] - 11 22</p>	<p>193 25, 197 17, 198 1, 198.20, 202 7, 204-5</p> <p>saliva [1] - 93 8</p> <p>same [9] - 7 10, 105 1, 105 2, 106.6, 110 8, 126 11, 132 24, 162.1, 170 22</p> <p>same.. [1] - 122 20</p> <p>sample [17] - 87 5, 87 10, 88 18, 91 6, 91 12, 91 17, 91 20, 92 7, 92 10, 92 13, 93 1, 93-3, 93 5, 93 6, 93 11, 93 15, 93 23</p> <p>samples [8] - 81 5, 81 21, 82 23, 84 3, 84 4, 87 24, 88 19, 89 10</p> <p>sanctuary [1] - 132 25</p> <p>Saturday [3] - 115 21, 132.2, 164 14</p> <p>saw [50] - 18 21, 19 14, 22 2, 36 6, 44 7, 45.11, 47 15, 48 2, 49-8, 49-16, 50 17, 62 11, 64 18, 72-17, 76 20, 103 1, 118 6, 122 3, 122 5, 122.10, 122 25, 125 20, 126 4, 128:18, 134 3, 134-8, 136 14, 136 15, 141 4, 142 4, 142 15, 146 4, 152 17, 153 11, 156 9, 158 16, 158 23, 160 9, 174 18, 178 13, 184 1, 189 25, 197 19, 197-25, 199 7, 199 11, 199 25</p>
<p>rotary [68] - 18 8, 18 15, 18 18, 18 24, 18 25, 19 5, 19 7, 19 17, 19 19, 19 22, 20 15, 22 13, 22 19, 25 9, 25 17, 26 8, 26 9, 26 12, 26 15, 31 4, 31 11, 34 3, 34 7, 34 9, 42 12, 43.25, 44 5, 44 10, 47-4, 50-2, 50 3, 54 19, 61 12, 61 15, 62 8, 69 1, 115.4, 115 13, 115 23, 116 2, 116 11, 116-15, 116 17, 117 7, 117 11, 117 18, 117 21, 117 24, 118 2, 118 5, 118-9, 118 11, 120 23, 121 22, 128 1, 131 21, 137 24, 142 10, 163 24, 164 5, 165 11, 166 1, 166 4,</p>	<p style="text-align: center;">S</p> <p>S [3] - 5 1, 17 7, 163 6</p> <p>sadly [1] - 149-16</p> <p>said [61] - 9 18, 14 2, 16 17, 23 18, 34 16, 45 23, 46 14, 47 22, 72 1, 74-12, 75 19, 81 17, 90 17, 93 1, 95 20, 102 7, 108 16, 119 22, 124 15, 126 23, 133 15, 133 18, 139 20, 140 9, 142 8, 143-22, 145.14, 148 19, 149-19, 150.4, 150 9, 150 10, 155 4, 156 13, 158 2, 158 20, 158 25, 167 23, 167 24, 168 3, 168 4, 168 8, 176 10, 176 11, 176 13, 180 19, 181 13, 186 9, 187 14, 190 22,</p>	<p>19 14, 22 2, 36 6, 44 7, 45.11, 47 15, 48 2, 49-8, 49-16, 50 17, 62 11, 64 18, 72-17, 76 20, 103 1, 118 6, 122 3, 122 5, 122.10, 122 25, 125 20, 126 4, 128:18, 134 3, 134-8, 136 14, 136 15, 141 4, 142 4, 142 15, 146 4, 152 17, 153 11, 156 9, 158 16, 158 23, 160 9, 174 18, 178 13, 184 1, 189 25, 197 19, 197-25, 199 7, 199 11, 199 25</p> <p>say [53] - 7 25, 24 17, 24 23, 28 8, 33 6, 33 7, 35 7, 38 17, 43 16, 51 15, 52 12, 65 21, 72 12, 77 3, 77 7, 77 8, 84.10, 86 1,</p>

<p>87 21, 94 14, 109 3, 110 15, 115 1, 133 5, 139 14, 140 3, 147 24, 149 3, 155 19, 157 9, 157 19, 167 21, 176 5, 177 1, 179 18, 179 24, 181 4, 182 1, 182 11, 182 16, 182 19, 185 17, 186 3, 186 11, 187 23, 187 25, 188 4, 189 2, 189 6, 190 10, 192 2, 192 4, 200 24 saying [22] - 6 7, 11 16, 24 9, 52 15, 95.16, 108 23, 113 11, 142 25, 143 16, 143 25, 145 18, 146 13, 153 6, 154 12, 156 17, 158 1, 168 19, 169.18, 174 9, 181 1, 182 4, 197 23 says [9] - 13 20, 51 3, 67 12, 72 22, 73-13, 75 19, 133 15, 143 6, 156 12 scare [1] - 148 17 scene [7] - 71 3, 93 15, 99 20, 126.18, 139 6, 155-16, 194 9 school [13] - 17 19, 18 5, 18 7, 18 8, 57 11, 57 15, 57 16, 57 19, 115 15, 147 12, 164 3, 170 23, 173 15 School [5] - 17.20, 17 25, 82 4, 164 4, 183 4 sciences [1] - 82 5 Scientific [1] - 163 15 scientifically [1] - 90 2 scientist [7] - 80 12, 80 15, 80 20,</p>	<p>80 22, 81 1, 81 16, 99 20 scoot [1] - 76 18 scooting [1] - 76 22 screaming [2] - 169-8, 169.16 screen [4] - 37 15, 37 17, 37 24, 38-12 seat [3] - 11 10, 15 10, 40 8 seated [5] - 5 4, 6 12, 97 18, 153 16, 160 2 second [27] - 26 24, 27 9, 31 7, 31 18, 34 9, 45 1, 45 3, 48 3, 48 13, 48 16, 51-23, 58 20, 66.16, 66 20, 66 21, 87 3, 90 5, 94 22, 112 4, 119 19, 134 24, 136 14, 143 4, 177 19, 178 14, 178 17 seconds [11] - 33 3, 69.19, 123 16, 139 5, 199 17, 199 19, 199 22, 200 2, 200 7, 202 3, 202 6 secret [1] - 60-5 section [1] - 31 20 see [92] - 6 7, 13 11, 21 20, 21 22, 22 14, 22 19, 22 21, 22 25, 30 25, 31 10, 31:19, 33 2, 33 12, 36 7, 37 16, 37 19, 37 20, 37 25, 38 2, 38 8, 38 13, 38 19, 38 23, 46.24, 47 18, 48-4, 55-24, 62 8, 62 10, 68 14, 70 17, 71 8, 91 19, 102 4, 120 4, 120 10, 122 6, 122 25, 125 9, 126 21, 126 22, 126 23, 134 11, 134 17, 136 2, 136 13, 138 16, 138 23, 139 1, 139 3, 139 8,</p>	<p>147 6, 152 9, 153 3, 159 3, 159.4, 159 22, 165 5, 165.21, 166 2, 166-5, 170 15, 170 16, 170 17, 172.1, 172 15, 173 14, 173 16, 177 2, 179 14, 179 17, 181 16, 181 17, 182 2, 183 2, 188.10, 189 12, 189 22, 190 14, 190 17, 192 10, 193 1, 193 21, 194 23, 195 6, 195 13, 199 22, 200 2 See [1] - 1 2 seeing [18] - 22 18, 26-22, 51 19, 64 7, 72 25, 102 11, 111 14, 122 14, 124 2, 126 2, 126 3, 126 14, 127 2, 128 14, 136 6, 140 25, 174 3, 184 10 seem [4] - 28 21, 52 24, 123 20, 124 7 seemed [4] - 23 2, 145 15, 151 12 seemingly [1] - 21 25 seems [3] - 6 11, 152 8, 172 7 seen [6] - 45 17, 70 18, 155 18, 180.23, 180 24, 198-1 self [1] - 143 16 self-explanatory [1] - 143 16 semicircle [12] - 127 1, 127 4, 127 6, 127 14, 139 9, 143 12, 143-13, 143 20, 144 2, 149 8, 150 6, 179.2 sense [19] - 7 21, 12 19, 28 22, 29 4, 29 22, 60 6, 63 24, 79 16, 84.2,</p>
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<p>120 22, 123 12, 124 18, 126 24, 127 1, 127 12, 136 22, 157 3, 188 23, 203 14 sensed [3] - 118 25, 119 3, 127 14 sensing [1] - 127 4 sent [1] - 39 25 separate [3] - 86 25, 104 4, 198 7 separates [1] - 87 13 sequence [2] - 73 17, 87 25 series [2] - 106.1, 107 6 served [1] - 160 17 service [1] - 132 12 Services [1] - 205 3 services [5] - 132 5, 132 6, 132 10, 157 5, 163 19 session [2] - 5 5, 97.19 set [3] - 57.6, 59 2, 202 11 setup [1] - 106 13 seven [1] - 105 6 several [7] - 18 21, 20 10, 33 17, 71 7, 100 8, 105 6, 193 25 share [2] - 35 15, 55 5 shared [2] - 35 16, 58 12 ShareFile [1] - 58 21 she [22] - 8 13, 26 5, 26 6, 26 8, 117 12, 117 19, 168 4, 198 6, 198 8, 198 9, 198 12, 198 15, 198 16, 199 2, 199 3, 199 4, 199 7, 199 11 she's [2] - 116 9, 199 7 shed [1] - 173 2 shell [1] - 111 24 shirt [7] - 101 19, 105 1, 105 4, 108 8, 153 2, 180 9, 180 14 shoes [1] - 180.13 shoot [1] - 106 17</p>	<p>shooting [1] - 71 20 shoots [1] - 147.5 short [6] - 11 8, 69 18, 71 2, 75 15, 92 17, 200 24 Shorthand [1] - 1 22 shortly [1] - 175 20 shorts [6] - 101 18, 103 1, 103 3, 104 3, 180 9, 180 14 shot [10] - 5 23, 5 24, 29 15, 100 22, 144 20, 150 12, 158 17, 159 2, 193 15, 194 19 shotgun [3] - 109 19, 111 9 shotguns [3] - 111 6, 111 10, 200.3 shots [34] - 7 17, 7 18, 7.19, 10 25, 33 17, 44 18, 44 25, 45 2, 47 22, 48 17, 48 20, 51 4, 51 20, 69 21, 69 23, 70 4, 70 6, 72 20, 73 9, 73 14, 73 16, 73 19, 73 20, 74 1, 74 2, 74 9, 74 10, 74 11, 74.12, 74 14, 107 6, 108.5, 152 13, 194 15 should [3] - 67 7, 110 15, 179 18 shoulder [3] - 76 14, 144 6 shouldn't [4] - 11 22, 157.24, 158 12, 176 17 shouting [1] - 72 8 show [13] - 20 18, 32 2, 37 14, 40 21, 55 2, 66 14, 68 25, 75.3, 96 7, 118 8, 134 16, 143 15, 165 10 showed [2] - 40 2, 104 13 showing [4] - 36 21, 39 24, 67 6, 118 10 shows [4] - 6.8, 6 9, 75 20, 94 25 shuffling [2] - 73 4,</p>	<p>73.8 sic [1] - 110 7 side [18] - 7 21, 19 16, 20-15, 31 3, 31 5, 31 8, 31 13, 77 11, 127 24, 134 4, 136 8, 136 14, 143 17, 151 16, 164 1, 165 7, 165 17, 183 2 sidebar [1] - 205 18 sided [2] - 103 10 sides [1] - 8 18 sidewalk [1] - 53 25 sight [4] - 68 22, 68 23, 69 13, 69-19 similar [3] - 28 6, 109 22, 160 20 simultaneous [1] - 205 19 since [10] - 45 8, 61 4, 80 16, 80 17, 103 24, 109 8, 131 14, 131:16, 139 6, 199 13 single [4] - 12 6, 103 10, 105 5, 197 5 single-sided [1] - 103:10 singular [1] - 36 3 sir [27] - 15 4, 15 9, 17 8, 22 17, 59 4, 59 5, 59 15, 60 20, 61 1, 78 9, 112 13, 112 20, 113 21, 114 6, 129 10, 130 21, 131 2, 161 2, 161 9, 161 12, 162-17, 163 7, 165 10, 171 1, 171 18, 202-11, 202 21 sit [7] - 10-2, 59-17, 79 1, 98 12, 114.2, 161 21 sitting [10] - 46 25, 62 24, 72 23, 123 18, 149 19, 149 20, 167:7, 167 14, 174 13, 174 19 situation [3] - 134 13, 156 15, 183 19</p>
---	--	--

<p>six [5] - 83 19, 107 11, 107 13, 160 11, 174 22 sixth [2] - 83 20, 83 23 size [5] - 65 6, 87 13, 180 16, 188 6, 188 8 sled [2] - 106 23, 107 2 slider [7] - 170 3, 170 13, 170 14, 171 1, 171 5, 173 12, 174 2 sliding [3] - 72 24, 170 3, 170.8 slight [1] - 26 7 slightly [2] - 26 14, 152 12 slip [2] - 151 13, 188 11 slipped [4] - 150 7, 150 23, 153 23, 154 14 slipping [2] - 28 2, 154 10 slips [2] - 28 7, 152 7 slow [3] - 117.12, 117 16, 125 9 slowly [2] - 117 22, 176 18 small [2] - 22 2, 65 5 smoking [1] - 155 22 Snapchat [3] - 46 3, 46 5, 46 6 snapped [1] - 150 21 Sneezes [1] - 131 15 snow [1] - 27 25 snowed [1] - 27 25 so [359] - 5.12, 5 23, 9 12, 9 21, 11 14, 11 22, 12.12, 14 9, 14 12, 14 18, 14 25, 15 6, 15 15, 16 3, 17 2, 18 24, 19 2, 19 17, 19 24, 19 25, 20 11, 20 14, 20 22, 20 24, 21 1, 21 19, 22 11, 22 13, 22 18, 23 13, 23 15, 25 14, 25 23, 26 3, 26 8, 26 14, 27 18, 28 13, 28 25,</p>	<p>29 18, 30 1, 30 5, 30 10, 31 10, 31 13, 32 1, 32 6, 32 11, 32 19, 32 24, 33 20, 34 19, 34 20, 34 23, 35 7, 35.11, 36 2, 36 9, 36 22, 36 25, 37 11, 37 19, 38 13, 38 16, 41 10, 43 1, 43 3, 43 7, 43 9, 43 11, 44 10, 45 23, 46.10, 46 13, 47-17, 47 20, 48 15, 48 19, 48 21, 49 7, 50 1, 50 2, 50-13, 53 10, 53 12, 55 14, 55 17, 55 22, 56 2, 56 8, 56 9, 57 17, 58 21, 59 10, 60 3, 60 11, 61 11, 62 4, 62.13, 64 3, 64.5, 64 8, 64 20, 65 14, 65 21, 67 3, 67 6, 67 12, 67 19, 68 1, 68 14, 69 11, 72.6, 72 11, 75 7, 76 2, 76 19, 76 21, 78 21, 81 3, 82 19, 82 24, 83 24, 84 8, 84 12, 86 21, 86 22, 87 1, 87 9, 88 21, 89 8, 90 14, 90 15, 90 17, 90 18, 90 25, 91 1, 91 22, 93 8, 94 19, 94 24, 95 11, 95 13, 96 23, 98 6, 98 24, 100 24, 101 22, 102 23, 104 3, 104-14, 105 12, 106 10, 106 24, 107 5, 107 10, 107-14, 107 16, 108 2, 108 17, 108 18, 108 22, 109 11, 109 24, 110 18, 111.7, 111 10, 111-13, 111 18, 112 15, 113 11, 115 1, 115 15,</p>	<p>117 3, 117 10, 117.15, 118 1, 119:11, 119 12, 119 21, 120 1, 121 19, 121 20, 125 7, 125 22, 126 7, 129 4, 130 1, 132 10, 132 15, 132 23, 132 24, 133 1, 133 2, 133 14, 133 23, 134 1, 134 9, 134 12, 134 24, 135 5, 135 8, 135 12, 135 15, 135 16, 136 2, 136 3, 136 9, 136.13, 136 25, 137 5, 137 7, 137.9, 137 10, 137-15, 137.20, 138 1, 138-7, 138 8, 138-12, 138 14, 138-25, 139 2, 139 4, 140 4, 140 16, 141 9, 141 12, 141 15, 142 3, 142 8, 142 9, 142 12, 142 19, 144 18, 144 20, 145 10, 145 22, 145 23, 145 24, 146 3, 146 17, 146 22, 146 24, 147-18, 148 4, 148 5, 148 7, 149 10, 149 18, 149-19, 150 20, 151 9, 151 12, 151 15, 151 16, 152 2, 152 5, 152 7, 152 11, 153 9, 153 24, 155 4, 155 19, 155 22, 157 10, 158 1, 158 3, 158 5, 158 10, 158 15, 158 19, 158 24, 159 5, 159 7, 160 10, 160 11, 161 14, 162 10, 164 10, 165 1, 166 20, 167 7,</p>
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<p>167 24, 168 8, 168 11, 169 1, 169 15, 169 19, 170 11, 170 23, 171 24, 172 10, 172 19, 172 22, 173 5, 173 11, 174 1, 174.8, 174 22, 174 25, 175 4, 175 16, 175 17, 176 1, 176.15, 176 18, 177 2, 177 14, 178 18, 178 19, 178 23, 179 2, 179 8, 179 11, 180 10, 181 24, 182 2, 182 16, 183 17, 184 19, 185 23, 186 12, 186 17, 186 22, 188 10, 189 12, 192 2, 192 9, 192 12, 193 9, 193 15, 194.10, 195 9, 195 10, 195 19, 197 4, 197 19, 198 2, 198 14, 199 9, 199 19, 200 6, 200 19, 201 5, 202 18, 203 9, 203 10, 204 5 so.. [3] - 46 22, 58 13, 124 21 social [6] - 16 13, 35 20, 35 24, 40 1, 45 25, 46 2 Socks [1] - 110 7 soft [2] - 110 7, 147 16 Soft [1] - 110 7 software [5] - 87 12, 87 14, 95 8, 114 9, 114 10 solemnly [1] - 15 4 some [60] - 5 22, 7 24, 8 17, 9 18, 9 19, 10 20, 16.3, 17 21, 34 24, 39 1, 45 20, 47 2, 47.10, 48 6, 48 8, 49 8, 49 15, 56 3, 59 10, 61 16, 63.5, 63.20, 64 3, 68 11, 68 20,</p>	<p>69 13, 70 2, 72 3, 76 9, 100 9, 100.25, 101 11, 104 19, 105 13, 107 3, 108 18, 109 14, 111 15, 112 24, 113 4, 113 14, 124 9, 125 19, 145 24, 146 24, 155 11, 156 8, 157 3, 162 4, 166 11, 168 11, 168.13, 173 3, 173 7, 190 20, 191 15, 196 18, 203 6 somebody [6] - 95 14, 126 25, 134 13, 155 17, 187 24, 200 24 someone [8] - 5 15, 24 18, 93 8, 119 23, 120 19, 155 8, 155 11 something [35] - 5 20, 8 1, 9 1, 9 4, 9 20, 18 16, 18.17, 22 7, 35 21, 42 4, 45 24, 61 20, 64 6, 69 17, 74 6, 92 21, 113 6, 117.6, 119 22, 124 10, 125 6, 126 9, 132 20, 133 19, 136 14, 136 19, 146 5, 157 6, 159 2, 159 17, 167 9, 170 5, 170 9, 200 23, 201 16 sometime [1] - 10 17 sometimes [2] - 115 16, 183 7 somewhat [3] - 62 21, 70.11, 77 11 somewhere [1] - 29 12 son [3] - 10 15, 10 19, 115 14 soon [2] - 32 25, 187 13 sorry [19] - 12 23, 21 19, 26.2, 30 8, 32 13, 33 9, 34 2, 41 6, 43 6, 44 22,</p>	<p>45 1, 45 4, 48 22, 50 14, 56 20, 103 9, 115 18, 118 23, 191 8 sort [29] - 13 24, 21 20, 24 15, 32 7, 33 21, 62 24, 64 9, 64 12, 68 10, 69 3, 102 3, 102 12, 115 12, 119 3, 119 10, 121 6, 121 11, 121 16, 121 19, 123 23, 128 21, 131 21, 135 3, 137 22, 141 24, 143 3, 149 6, 173 21, 177 19 sound [22] - 70 9, 146 14, 146 17, 146 19, 150 11, 159 12, 159 14, 159 15, 159 16, 168 4, 192 3, 192 17, 192 18, 193 11, 193 13, 200 20, 201 12, 202 2, 202 5, 202 9 sounded [9] - 46 15, 133 3, 147 15, 167 17, 168 4, 168 5, 169 5, 201 16 sounds [19] - 24 1, 39 19, 72.14, 74.2, 124 23, 124 24, 125 10, 133 16, 150 10, 159 11, 168 12, 183 23, 183 24, 184 12, 184 15, 192 19, 193 3, 200 8 Southborough [1] - 1 18 space [1] - 107 23 spaced [1] - 144 4 speak [1] - 17 2 speaker [1] - 205 22 SPEAKER [1] - 5 6 speaking [3] - 25 4, 155 2, 205 19 special [1] - 85 1 specialized [1] - 81 15 specific [8] - 63 19,</p>
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<p>105 4, 106 25, 110 24, 140 16, 142 1, 158 7, 160 19 specifically [5] - 64 5, 133 14, 155 19, 155 23, 159 6 specifics [2] - 127 11, 160 14 speech [1] - 205 19 speeding [1] - 117 20 spell [7] - 17 5, 60 23, 79 24, 99 12, 113 24, 130.23, 162 25 spelled [2] - 80 1, 80 2 spelling [1] - 90 9 spellings [1] - 205 22 spent [1] - 7 1 spews [1] - 101 3 spoke [4] - 71 20, 71 23, 73 12, 76 4 spot [3] - 118 13, 171 22, 174 18 spread [2] - 63 12, 65 24 spring [2] - 146 22 Springfield [2] - 105 23, 106 15 SS [1] - 1 4 stab [1] - 190 13 stage [6] - 136 13, 139 8, 142 8, 143 25, 154 1, 158 9 stamp [6] - 66 25, 67 7, 68 2, 205 16, 205 17, 205 20 stand [1] - 153 17 standard [3] - 93 9, 93 18, 93 20 standardized [1] - 88 4 standards [4] - 83 14, 85 15, 85 21, 100 9 standing [28] - 6 12, 21 7, 27.19, 31 7, 44 7, 47-16, 48 2, 48 5, 49 18, 50 22, 63 9, 119 7, 122 19, 123 18, 128 1, 134 14, 135 2, 135 7, 137 4, 137 13,</p>	<p>139 13, 143 23, 147 25, 149 20, 153 15, 153 18, 173 11, 175 19 standpoint [1] - 181 12 stands [2] - 85.12, 86 8 stapler [1] - 66 10 start [8] - 24 4, 27-1, 31 3, 39 10, 49 10, 168 11, 186-12, 189 12 started [19] - 5 13, 12 18, 15 14, 29 3, 51 24, 59 25, 64 24, 98 17, 103 1, 112 22, 120 12, 130 7, 155 9, 155 11, 161 25, 167 6, 175 22, 187 3, 189 10 started.. [1] - 189 21 starting [1] - 82 20 starts [5] - 27 22, 28 18, 29 18, 33.3, 44 12 startup [2] - 114 9, 114 10 State [17] - 6 23, 57 25, 71 21, 71 23, 73 11, 78 12, 80 7, 80 19, 82 9, 84.1, 85.8, 95 4, 99-17, 102 17, 111 5, 111 17, 156 9 stated [1] - 71 24 statement [7] - 72.13, 95 23, 156 11, 195 25, 197 4, 202 17, 202 23 station [1] - 116 13 statistic [2] - 92-3, 95 22 statistics [2] - 92 24, 99 21 stay [4] - 132 13, 146 8, 171 1, 192 13 stayed [1] - 142 17 staying [1] - 83 14 stays [2] - 137 10, 178 1</p>	<p>STENOGRAPHICALL Y [1] - 206 15 step [15] - 15 10, 38 10, 40 11, 84 19, 86 22, 87 3, 87 6, 88 24, 90 16, 90 17, 92 5, 104 23, 148 9, 191 25 stephanie [1] - 97 20 STEPHANIE [2] - 98 8, 99 13 Stephanie [4] - 3 11, 4.7, 99 13, 103 18 steps [5] - 84 23, 86 21, 88 8, 89-6, 90 21 Still [2] - 4 4, 41 11 still [18] - 6.12, 10 15, 26 19, 31 8, 36 22, 40 25, 41 8, 73 24, 83 20, 122 14, 140 4, 148 6, 154 5, 155 2, 162 15, 192 14, 193 21 stood [2] - 171 4, 189 18 stoop [3] - 157 15, 157 20 stop [10] - 43 19, 43 22, 46 16, 98 1, 112 11, 129 22, 145 25, 161 10, 194:4 Stop [1] - 146 8 stopped [3] - 43 24, 127 25, 178 7 story [2] - 149 17, 160 20 STR [2] - 92 14, 92.16 straight [6] - 6 3, 19 21, 27 12, 43 11, 165 16, 189 18 Street [39] - 19 2, 19 6, 20 24, 25 19, 42 11, 43 6, 52 25, 61 10, 62 3, 91-18, 115.5, 115 8, 116 13, 116.17, 116 22, 116 23, 117 4, 117 8, 118 11, 119 14, 120 13, 120 16,</p>
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<p>121 17, 121 21, 122 1, 127 17, 131 5, 131 20, 132 3, 164 2, 165 6, 174 11, 175 23, 177 21, 178 3, 178 5, 206 19 street [16] - 20 2, 23 16, 42 18, 42 19, 42 20, 43.1, 53 14, 53 16, 126 13, 134 3, 136.1, 136 5, 164 3, 174 14, 174 19, 183 3 Street/North [1] - 61 14 streets [1] - 69 1 strips [1] - 23 14 STRmix [1] - 95 9 strong [1] - 28 21 study [1] - 57 12 stuff [4] - 9 20, 101 2, 197 17, 203 7 stumbling [1] - 184 24 stupid [1] - 72 14 submitted [6] - 35 2, 83 24, 86 20, 91 6, 93 4, 111 9 such [1] - 90 8 sudden [3] - 150 19, 158 11, 159 5 sufficient [1] - 64 20 Suite [1] - 1 18 sun [1] - 173 4 Sunday [1] - 147 12 sunny [1] - 180 11 support [4] - 94 8, 95 18, 96 5 suppose [2] - 144 10, 203 2 supposed [5] - 60 4, 79 8, 98 22, 130 11, 162 8 sure [54] - 6 9, 9 15, 14 16, 15 16, 21 10, 23 10, 24 11, 28 16, 28 17, 30 8, 30 9, 31 24, 32 12, 32 15, 38 17, 41 16, 42 24, 50 17, 53 4, 54 1,</p>	<p>55 15, 58 22, 66 25, 83 13, 85 20, 85-23, 91 2, 91 4, 98 18, 110 23, 119.9, 130 25, 136 19, 137 2, 141 21, 144 17, 160.22, 162 12, 163 1, 166 13, 174 4, 174 7, 174 17, 178 16, 184 16, 190 4, 191 11, 196 4, 199 16, 200 16, 201 3, 201 4, 201 24, 202 4 surely [1] - 176 18 surprised [1] - 180 10 surround [1] - 27.3 surrounding [4] - 18 22, 49.8, 56 10, 170 19 swaying [1] - 139 12 swear [7] - 15 4, 59 8, 78 19, 98 4, 112 13, 129 24, 161 12 sweatpants [2] - 62 13, 62 17 switched [1] - 31 24 SWORN [7] - 15 8, 59 13, 78 23, 98 8, 112 18, 130 3, 161 17 synagogue [7] - 132 25, 136 19, 137 1, 138 18, 139.7, 140 23, 142 5</p>	<p>take [26] - 20 21, 26 6, 36 5, 38 4, 49 2, 65 15, 66 6, 66 16, 69 2, 71 1, 83 1, 83 8, 83 11, 83 23, 84 19, 90 15, 97 11, 115 12, 116 10, 116 20, 116 22, 116 23, 123 3, 134 24, 158 12, 191 7 taken [10] - 10 20, 35-4, 66-24, 67 10, 67-11, 75 14, 75 15, 75 21, 93 6, 175 25 TAKEN [1] - 206 9 taking [5] - 51 24, 72 7, 102 9, 148 9 talk [18] - 13.20, 15 10, 16 6, 16 7, 60 12, 74 11, 79 11, 79 13, 86 4, 98 25, 113 12, 125 4, 130 13, 130 16, 156 9, 158 24, 160 8, 162 9 talked [6] - 45 10, 45 15, 77 16, 199 10, 199 12, 199.13 talking [34] - 14 3, 44 15, 45 22, 51.4, 63 2, 74 16, 87 17, 92 18, 109 8, 112 25, 128 17, 139 17, 139 18, 145 4, 145 11, 145 12, 146 1, 147 22, 148 3, 148 14, 148 15, 151 3, 157 7, 160 22, 167 22, 185 5, 185.7, 185 12, 185-15, 185 18, 185-25, 186 2, 201 6 tall [1] - 62.21 tandem [1] - 92.17 tank [3] - 106 17, 106 18, 107 1 TAPE [1] - 205 15 tape [3] - 27 22, 71 3,</p>
	<p style="text-align: center;">T</p> <p>T [11] - 17 7, 99 13, 101 19, 105 1, 105 4, 108 8, 153 2, 180 9, 180 14, 206 1 T-shirt [7] - 101 19, 105 1, 105 4, 108 8, 153 2, 180 9, 180 14 table [3] - 30 4, 30 13, 186 24 tableau [1] - 64 15</p>	

<p>194 8 target [4] - 106 9, 106 25, 108 14, 108 15 Tase [1] - 175 2 Tased [1] - 158 22 TASER [15] - 144 20, 144.24, 146 14, 146 18, 146 23, 159 1, 168 5, 168 9, 168 13, 183 23, 200 20, 200 23, 201 8, 202 2 TASER-like [1] - 146 14 TASERS [4] - 158 24, 197 6, 197 17, 197 20 Tasing [2] - 149 23, 197 16 task [1] - 82 21 technical [4] - 84 6, 84 8, 89 23, 89 25 techniques [1] - 83 14 technologist [1] - 82 13 TELEPHONE [1] - 206 22 tell [62] - 18 20, 18 23, 19 10, 22 1, 22 5, 23 11, 23 19, 23 25, 24 8, 24 13, 28 15, 29 22, 30 6, 30 11, 36 1, 37.15, 39 7, 39 24, 40-23, 42 5, 61.22, 65.11, 66 16, 66 23, 80 14, 86 7, 87 4, 92 16, 100 3, 100 19, 104 1, 107 9, 108 24, 111 24, 113 23, 114 4, 123 17, 125 13, 125 16, 125 18, 133 12, 134 7, 149 4, 152 16, 164 23, 168 19, 169 4, 169 9, 169 17, 170 11, 179 9, 182 9, 185 14, 185 16, 185 24, 190 16, 193 9,</p>	<p>193 23, 194 14, 195 2, 199 15 telling [9] - 117 20, 127 7, 127 9, 159 5, 161 25, 181 2, 181.9, 181 14, 188 20 ten [3] - 45 5, 45 6, 164 7 term [1] - 86 5 terms [2] - 133 11, 203 1 terrible [1] - 43.1 test [20] - 81 23, 82 17, 82.21, 83 6, 83 23, 100 10, 101 17, 101 21, 101-22, 102 7, 102 8, 104 2, 104 13, 106 1, 106 13, 106 14, 106 16, 107 10, 107 24, 111 8 test-fires [4] - 106 1, 106 16, 107 10, 107 24 test-firing [1] - 106 13 tested [4] - 103-3, 105 7, 105 11, 108 6 testified [2] - 15-20, 100 14 testifies [1] - 12 15 testify [8] - 5.16, 9 5, 12.11, 15 21, 81 8, 92-4, 98:25, 162:1 testimony [29] - 6 13, 7 13, 7 23, 15 5, 16 4, 16 10, 59 9, 60 10, 60 12, 76 9, 78 20, 79 12, 79 14, 79 16, 98 5, 98 25, 99 5, 112 14, 113 5, 113.12, 113 16, 129 25, 130-14, 130 17, 161 13, 162.7, 162 9, 202 19 testing [16] - 88 12, 89 8, 101 12, 101 15, 102 24, 102 25, 103 5, 104 12, 104 23, 105 16, 107 22,</p>	<p>108 2, 108 20, 109 5, 110 16, 110 18 tests [7] - 83 2, 83.8, 83 12, 83 17, 83 19, 100 11, 101.5 than [34] - 12 3, 24 7, 29 15, 53 11, 58.21, 72 18, 85 3, 86 1, 94 6, 95 15, 96 3, 109 9, 111.15, 118 23, 119-1, 119 2, 126 21, 138 7, 142 2, 147 1, 151 13, 154 20, 169 3, 169 5, 169 6, 169 9, 173 9, 175 13, 175 14, 185 7, 186 7, 189 6, 195 1, 201 17 than.. [1] - 8 2 Thank [2] - 66 12, 161 18 thank [58] - 14 23, 15 12, 20.17, 21 11, 40 19, 41 13, 41.14, 46 7, 53 6, 53 9, 54-21, 57 7, 57 10, 59 14, 59 19, 59 24, 60 17, 61 6, 74 22, 75 23, 78 7, 78 9, 78 24, 96 21, 96 23, 96 25, 97 7, 97 9, 97 24, 98.9, 98 15, 99 7, 104 10, 112 2, 112 6, 112.19, 113-18, 123 6, 123 10, 129 4, 129.11, 130 4, 156 22, 160 24, 161 2, 161 23, 166 18, 191 10, 191 14, 195 19, 196 9, 201 20, 202 10, 202 11, 202 21, 204 7, 204 9, 204 11 thanks [1] - 46 8 THAT [4] - 206 2, 206 5, 206 7, 206.9</p>
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IMPOUNDED TRANSCRIPT

3-274

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3-278

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3-279

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<p>189 20, 189 25, 190 1, 190 5, 190 12, 190-13, 190 14, 190 19, 190 21, 191 1, 191 2, 191 3, 191 5, 192 1, 192 3, 192 6, 192 8, 192 11, 192 13, 192 14, 192 17, 192 18, 192 22, 193 2, 193 4, 193 5, 193 9, 193.10, 193 13, 193 22, 193 23, 194 1, 194 7, 194 8, 194 12, 194 14, 194 17, 195 1, 195 3, 195 8, 195-13, 195 25, 196 3, 197 4, 197 13, 197 14, 197 16, 197 19, 197-20, 198-1, 198 2, 198 4, 198 8, 198 9, 198 14, 198 19, 199 1, 199 2, 199 4, 199 5, 199 7, 199 9, 199 17, 199 19, 200 2, 200 3, 200 7, 200 8, 200 13, 200 20, 200 23, 201 7, 201 19, 202 5, 202 9, 202 22, 203 3, 203 4, 203 7, 204.14, 205 7, 205 8 the(indiscernible [1] - 153 7 the.. [1] - 9.10 their [14] - 22 22, 24 14, 36 7, 77 12, 85 20, 106 16, 120-20, 127 25, 144 10, 170-18, 173 2, 185 23 them [43] - 6 4, 12 2, 13 22, 19 14, 19 15, 24 10, 35 11, 35 15, 35 16, 36 2, 36 15,</p>	<p>39 8, 45 21, 46 1, 49 11, 55.9, 69 14, 71 7, 107-13, 113 24, 125 1, 130 9, 133 11, 136 2, 136 6, 143 4, 144 22, 144 23, 149 9, 150 13, 152 10, 163 17, 170 3, 175 17, 179 14, 179 17, 181 12, 183 14, 186 11, 187 7, 194 7, 194 8, 200 25 themselves [1] - 183 20 then [126] - 6 3, 13 20, 15 10, 25 23, 26 8, 26-9, 26 15, 36 9, 37.20, 39 6, 39 25, 40-1, 42 16, 43 5, 44 6, 44 8, 44 11, 47.2, 48 9, 48 10, 48 20, 49 11, 49.15, 49 22, 50 9, 50 14, 50 21, 51.1, 51 9, 51 23, 53 17, 53 24, 54 7, 56 2, 61 11, 64 2, 64 12, 65 14, 70 25, 73 16, 74 25, 81 21, 82 2, 82 25, 84 21, 86 25, 87 11, 92 4, 101 4, 101 25, 102 2, 102 6, 104 8, 105 5, 105 16, 106 21, 107 2, 107 5, 107 6, 107 25, 108 11, 115 17, 116 19, 116 21, 116 23, 116 24, 118 4, 122-11, 123 1, 126 13, 126 14, 127 14, 127 16, 127 21, 128 1, 128 3, 128 16, 132 12, 133 25, 135 22, 136 25, 137 3, 139 7, 143 19, 144 19, 144 21, 145 22,</p>	<p>145 23, 150-4, 150 8, 150 9, 150.14, 150 15, 150.17, 150 19, 152-13, 154 19, 155.13, 155 16, 157 14, 158 4, 158 9, 166 11, 167 25, 168 2, 168 9, 168 20, 168 21, 170 17, 170 22, 171 21, 176 13, 177 17, 182 24, 183 2, 184 8, 190 9, 193 8, 193 24, 193 25, 199 13, 203 2, 203 15 there [195] - 7 24, 10 14, 11 23, 12 12, 17 24, 18 13, 18 17, 20 6, 20 10, 21 8, 21 23, 22 8, 22 16, 24 7, 25 18, 32 24, 35 6, 35 23, 44 14, 45 4, 46 16, 47 13, 47 15, 48 20, 49 10, 53 5, 54.7, 58 16, 58 23, 59.17, 61 16, 61 18, 61 24, 62 2, 62.15, 63 10, 63 20, 63 24, 64 13, 68 19, 70 2, 70 3, 71 2, 80 23, 84 21, 88 11, 92 1, 94 10, 98 2, 101 5, 101 23, 102 19, 103 2, 103 12, 104 3, 104 6, 104 17, 105 4, 105 5, 105 25, 106 3, 107 11, 108 8, 109 22, 111 12, 114 25, 116 12, 117 25, 118 20, 118 25, 119 3, 122 1, 122 19, 123.15, 125 2, 125 4, 126 9, 126 25, 127 10, 127 12, 127 13, 127 23, 128 1, 128 15,</p>
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<p>129 22, 131 9, 131.24, 132.5, 132-18, 133-16, 134 1, 134 4, 134 6, 134 13, 134 14, 136 15, 136 20, 137 6, 137 11, 138 25, 139 1, 139 7, 139 8, 139 11, 139 12, 139 14, 140 19, 143 7, 143 11, 143 22, 144 8, 144.9, 144 14, 144 19, 145 1, 145-3, 145 19, 145 23, 146 3, 146 15, 148 17, 149 7, 149 16, 149 21, 149 22, 149 25, 150-9, 150 13, 150 15, 150 16, 150 17, 152.13, 154-19, 155 5, 155 6, 155 8, 155 16, 155 21, 155 25, 157 22, 158 2, 158 3, 158 4, 158 11, 158 13, 158 20, 158 21, 158 22, 161 6, 161 10, 161 20, 164 7, 164 8, 167 14, 169 9, 172 2, 172 22, 172 24, 174 12, 174 22, 174 24, 175 12, 175 13, 175 14, 175 20, 175 21, 176 9, 178.18, 178 19, 178 21, 179 6, 179 8, 179 10, 179 17, 181 5, 182 18, 184-2, 186 18, 187 8, 187 24, 191.15, 193 1, 194-22, 195 5, 198 2, 198 9, 198 12, 198 24, 200 7 there's [47] - 6-15, 6 22, 15 16, 20 14,</p>	<p>22 14, 27 24, 32 23, 32 24, 34 21, 37 16, 37 20, 38 24, 42 17, 43 7, 43 21, 51 11, 54 9, 60 8, 63 23, 66 20, 68 10, 68 11, 68 20, 70 16, 72 12, 89 2, 89 6, 89 9, 106 17, 107.7, 109 14, 117-24, 135 14, 138 22, 146 24, 146 25, 154 16, 157 20, 172 13, 172 19, 195 10, 197 4, 197 9, 197 21, 203 3 Thermo [1] - 163 14 these [20] - 6 18, 11 5, 12 7, 40 4, 40 21, 40 23, 41 6, 41 8, 56 8, 56 10, 67 20, 88 8, 95 1, 95 18, 98 22, 133 23, 173 1, 192 20 they [111] - 11 20, 19 13, 19 25, 20 9, 22 3, 23 21, 24 6, 24 9, 25 20, 25 25, 27 17, 32 25, 36 23, 37 6, 45 16, 51 6, 51-15, 58 14, 63 8, 65.19, 66 17, 68 16, 68 22, 69 11, 69 18, 70 12, 71 8, 71 10, 71 12, 71 23, 73 12, 74 24, 90 1, 90 7, 101 8, 106 13, 106 15, 106 17, 106 23, 106 24, 110 23, 111 8, 111 10, 127 24, 132 8, 134 12, 134 14, 134 18, 136 1, 136 6, 136-11, 141 24, 142 12, 142 16, 143 10, 143-24, 144 2, 144.4, 144 11, 144 14, 144 15,</p>	<p>144 18, 146 3, 146 4, 146 7, 147 18, 149 21, 150 16, 155 3, 155 8, 155 14, 168.19, 169 17, 173 2, 173 3, 173 4, 175 17, 175 24, 178 7, 180.8, 181 10, 181-11, 181 13, 182 4, 183 14, 184 17, 184 19, 185 10, 186 9, 186 10, 187.3, 188 19, 189 1, 193 23, 193 24, 193 25, 194 2, 194 5, 194 11, 194 19, 194 21, 197 17, 198 4, 198 7 they'll [2] - 84 19, 85 18 they're [29] - 6 20, 11 8, 20 1, 20.2, 20 25, 22 16, 22.19, 22 20, 22 21, 23 25, 24 16, 25 13, 35.14, 45 3, 54 6, 54-16, 56 10, 56 13, 58 16, 98 23, 136 3, 143 3, 143 5, 144.1, 148 3, 173 6 they've [1] - 142 9 thigh [1] - 151 17 thing [15] - 16 8, 33 12, 33 16, 48 16, 53.22, 64 9, 64 11, 83-15, 104 25, 110 11, 110 12, 141 9, 162 2, 194-17, 201 7 things [19] - 5 14, 7 3, 8 11, 13 19, 15 15, 36 11, 39 23, 42 8, 60 2, 63 25, 64 7, 90.10, 101 6, 101-8, 102 5, 150 17, 162 8, 187 11, 203.4 think [96] - 6 15, 6 17,</p>
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<p>6 21, 6 24, 8 1, 8 17, 8 23, 9 12, 12 18, 13 10, 19 12, 20 9, 20 20, 21 6, 23.10, 23 18, 24 8, 25 24, 26 1, 26 9, 26 11, 26.14, 27 7, 27 25, 28 2, 28 15, 28 16, 28 19, 31 5, 32.8, 32 9, 32 11, 32.13, 32 23, 34 25, 44 9, 45 2, 45 23, 47.21, 47 24, 48 16, 48 19, 48 21, 51 5, 51 15, 51 20, 52 16, 55 17, 56 13, 56 16, 56 18, 57 3, 58 18, 63 5, 76 5, 103 9, 111 22, 116 18, 124 15, 126 23, 135 2, 139 13, 140 12, 143 10, 143 15, 144 5, 147 3, 147.7, 148 11, 151 14, 158 25, 159 15, 169.8, 170 22, 172 3, 174 20, 175 23, 177 12, 178 21, 180 19, 184 4, 185 10, 188 1, 190 11, 191 22, 192 12, 194 17, 198 19, 199 4, 199 9, 201 5, 201 8, 201 10, 202 7 thinking [3] - 9 21, 197 20, 197 22 third [3] - 40 2, 87 6, 184 5 THIS [1] - 206 8 this [214] - 10 18, 11 4, 11 24, 11 25, 12 6, 12 10, 12 14, 13 18, 14 8, 15 22, 16 6, 20 18, 21 4, 21 13, 23 9, 23 22, 25 9, 25 17, 26 20, 27 9, 27 10, 28 24, 29 21, 30 2, 30 13, 30 21, 31 9, 31 19, 32 5, 32 22, 33 1,</p>	<p>33 10, 33 23, 34 4, 36 7, 36 15, 37 12, 38 2, 38 7, 39 4, 41 3, 42 14, 43 9, 43 13, 45 8, 50 1, 52 11, 53 15, 53 21, 54 5, 55 22, 58 4, 59 5, 59 15, 60 1, 61 17, 63 17, 63 18, 63 24, 64 9, 64 10, 64 25, 65 8, 66 1, 67 15, 69 2, 69 5, 70 1, 73 2, 74 8, 74 24, 77 17, 78 3, 78 14, 79 5, 79 6, 83 24, 86 5, 86 6, 89 17, 91 13, 91 20, 91 22, 92.2, 92 7, 92 10, 92 13, 93 18, 94 3, 94 8, 95 6, 95 8, 95 12, 95 16, 95 20, 95 25, 96 5, 96 9, 96 11, 96 12, 96 15, 97 11, 97 25, 98 10, 98 17, 101.2, 101 25, 102 23, 103 6, 103.13, 103 15, 104 1, 104 12, 106 2, 106 14, 107 6, 109 15, 110 8, 110 19, 111 1, 112 20, 112 23, 112 25, 113 1, 117 15, 118 10, 120 14, 121 6, 121 11, 121 13, 121 16, 123 4, 124 22, 130 5, 130 7, 130 9, 132 2, 135 6, 135 12, 135 16, 135 17, 136 8, 136 12, 136 14, 137 7, 137 9, 137 14, 137 21, 137 22, 138 16, 138 25, 139 8, 140 6, 142 3, 142 4, 142 8, 146 24, 146 25, 147 9, 149 10, 149 14, 151 22,</p>	<p>153 8, 154.8, 155 1, 155 17, 157 10, 158.15, 159 6, 159 15, 160 5, 160 8, 161 19, 162 2, 166 10, 169 12, 170 20, 170 24, 171 24, 172 7, 172 9, 172 12, 172 17, 172 23, 173 1, 174 21, 174 25, 178 20, 178 25, 182 21, 189 2, 189 4, 192 15, 195 17, 196 5, 197 11, 198 11, 200 22, 201 5, 202 22, 203 3, 203 10, 203 21, 205 7 Thoreau [3] - 114 17, 114 18, 116 25 thorough [1] - 72 9 those [38] - 10 16, 10 23, 33 20, 39 23, 58 17, 58.18, 66 16, 68 2, 70 9, 74 9, 74 13, 87.14, 88 3, 88 8, 89 14, 90 10, 91 4, 101 6, 104 17, 105 7, 105 14, 105 18, 105 19, 108 5, 108 10, 108 13, 109 19, 110 20, 111 19, 140 5, 145 17, 159 4, 168 3, 172 18, 179 11, 183 23, 193 3, 200 3 though [9] - 31 17, 31 24, 48 5, 154 22, 155 24, 180 11, 191 16, 194 20, 200 1 thought [13] - 13 1, 51 6, 55 19, 64 17, 119 24, 121 6, 124 17, 128 11, 146 18, 167 16, 167 19, 190 6, 190 12 thrashing [3] - 124 8,</p>
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<p>125 21, 129 2 threatened [1] - 186 17 threats [1] - 178-11 three [32] - 19-14, 19 15, 30 17, 37 20, 40 4, 40 24, 40 25, 49 20, 50 14, 63 10, 69 23, 74 7, 74 9, 84 22, 96 11, 108 8, 109 11, 111-18, 147 2, 154 21, 170 1, 171 7, 174 22, 175-14, 178 13, 178 19, 178 23, 179 11, 193 17 three-level [1] - 171 7 three-page [1] - 96 11 through [24] - 5 14, 10 24, 19 2, 19 6, 25 9, 36 15, 43 3, 46 20, 63.22, 81 18, 84 19, 85 5, 88 3, 89 5, 89 20, 100 6, 115 10, 115 12, 140 7, 160 19, 170:15, 171 6, 194 6 Throughout [1] - 73 13 throughout [1] - 173 17 thumb [2] - 31 15, 31 16 tight [1] - 161 5 time [129] - 7 1, 7-2, 26 11, 26 24, 27.2, 27 9, 27 10, 31 4, 31 7, 31 10, 31 16, 31 18, 34 7, 34 9, 35 23, 43 15, 43 18, 44 4, 44 11, 44 22, 44 24, 44 25, 45 1, 45 2, 45 3, 47 21, 48 3, 49 2, 50.18, 50 20, 50 21, 50 22, 51 23, 61 18, 66 25, 67 4, 67 6, 67 7, 67.8, 68 2, 69 18, 69 20, 70 3, 70 21, 71 2, 73 2, 73 7, 73 10, 74 23,</p>	<p>74 25, 75 1, 75 3, 75 8, 75 13, 75 15, 78 3, 82 19, 84 1, 84 24, 97 11, 122 5, 125 8, 126 11, 132 8, 132 18, 133 21, 142 18, 143 4, 146 14, 148 6, 149 25, 153 12, 157 3, 157 6, 157 8, 157 10, 157 12, 158 20, 158 21, 160 3, 164 11, 167 14, 168 19, 168 24, 169 12, 169 18, 170 18, 170 22, 170 24, 171 2, 171 4, 172 17, 172-23, 173 2, 173 3, 174 25, 175 6, 175.14, 175.21, 178 5, 178 9, 178 14, 180 20, 181 19, 182 23, 183 18, 184 3, 184 5, 184 11, 186 20, 188 3, 188 14, 189 4, 189 10, 192 6, 192 14, 193 2, 195 17, 197 19, 198 8, 198 10, 199 1, 199 4, 200 25, 205 16, 205 17, 205 20 times [14] - 18 13, 43 22, 50 14, 84 5, 94 4, 96 1, 100 18, 147 2, 147 4, 155 21, 158 25, 159 19, 190 21, 193 25 timestamp [1] - 75 11 TO [3] - 206.3, 206 8, 206 8 to [676] - 5 2, 6 1, 6-3, 6 4, 6 9, 6.11, 6.16, 6 24, 7-8, 7 13, 7 17, 8-13, 8 18, 8 20, 8.24, 9 5, 9 7, 9 23, 10 2, 10 5, 10 7, 10 8, 10 11,</p>	<p>10 12, 10 13, 10 22, 11 10, 11 12, 11 21, 12 6, 12 11, 12 17, 12 19, 12 20, 12 24, 13 18, 13 20, 14 3, 14 8, 14 11, 14 12, 14 20, 15 17, 15.20, 15 25, 16 3, 16 6, 16 7, 16 9, 16 17, 17 19, 17.21, 17 25, 18 4, 18 6, 18 15, 19 4, 19 18, 19 25, 20 3, 20 16, 22 5, 22 11, 23 1, 23 4, 23 24, 24 18, 24 19, 24 25, 25 6, 25 14, 26 9, 26 19, 27.7, 27 12, 27 22, 28 6, 28 18, 29 23, 29 24, 30 3, 30.6, 30 11, 30 12, 30 22, 31 25, 33 3, 34 4, 34-11, 34 17, 34 21, 35 2, 35 7, 35 8, 35.20, 36 8, 36 23, 38 6, 38 8, 38 10, 38.12, 39 6, 39 10, 39-25, 40 12, 40 21, 40 23, 41.22, 41 23, 41 24, 42:5, 42 8, 42 11, 43 11, 43 12, 44 12, 44 15, 45 16, 45 22, 46 1, 46 16, 46 23, 47 3, 47 5, 47 6, 48 2, 50 12, 51 10, 52 24, 53 3, 53.7, 53 10, 53 24, 54-19, 55 2, 55 15, 57 11, 57 21, 57 24, 58 9, 58 11, 58 12, 58 22, 59 6, 59 16, 59 17, 59 21, 60 4, 60 6, 60 12, 61 16, 62 5, 62 6, 62 7, 62-8, 62 16, 63 9, 63.12, 64 12, 64 15, 64 17, 64.18, 64 23, 64.25, 65 5, 65 14, 65-18,</p>
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IMPOUNDED TRANSCRIPT

<p>65 22, 66 14, 66 24, 66 25, 67 10, 68 16, 68 23, 68 24, 68 25, 69 11, 69 21, 70 13, 70 14, 70 16, 70 18, 70 22, 70 23, 71 24, 72 7, 72 11, 73 3, 73.4, 73 12, 73 18, 73 21, 74 6, 75.3, 75 6, 76 4, 76 19, 76 25, 77 11, 77 17, 77 19, 79 1, 79 8, 79 10, 79:11, 79 13, 79 23, 80 22, 81 7, 81.15, 81 17, 81 23, 82 9, 82 16, 83 1, 83 2, 83 5, 83 8, 83 11, 83 13, 83 14, 83 17, 83 23, 84-14, 84 21, 85 1, 85 2, 85 14, 85 15, 85 19, 85 20, 85 23, 86 1, 86 6, 86 18, 86-19, 86 23, 87 4, 87 10, 87 18, 87.21, 87 24, 87 25, 88 8, 88 16, 88 20, 89 3, 90 11, 90 14, 90 21, 91 2, 91 4, 91.5, 91 9, 91 14, 91-19, 91 22, 91 24, 91 25, 92 3, 92 6, 92 9, 92 12, 92 19, 92 22, 93-9, 93 12, 93 13, 93.16, 93.17, 93 22, 93 23, 94 1, 94 7, 94 9, 94 13, 94.14, 96 4, 96 7, 97 11, 98 1, 98 12, 98 22, 98 24, 98 25, 99.1, 99 2, 99 25, 100 11, 100 12, 101 11, 101 12, 101 15, 101 20, 101 22, 101 23, 102 1, 102 24, 103 24, 104 25, 105 16, 105 17, 105 23,</p>	<p>106 1, 106 4, 106 6, 106 9, 106 13, 106 18, 107 3, 107 9, 107 11, 107 14, 107 18, 107 21, 107 24, 108 3, 108 14, 108 15, 108 18, 108 25, 109 3, 109 4, 109 12, 110 11, 110 12, 111 6, 111 7, 111 9, 111 11, 111 16, 111 17, 112 24, 113 2, 113 7, 113 12, 114 8, 114 21, 115 1, 115 19, 115 20, 115 23, 116 4, 116 10, 116 13, 116 14, 116 16, 116 17, 116 21, 117 2, 117-12, 117 16, 117 17, 117 20, 117 22, 118 4, 118.5, 118 8, 119:11, 119 18, 120 8, 120 12, 120 15, 120 17, 120 18, 120 20, 121 4, 121 9, 121:14, 121 21, 121 24, 122 23, 123 3, 123 20, 124 4, 124 7, 124 12, 124 16, 124 20, 125 6, 125 8, 125 9, 127 16, 127 25, 128 7, 128 10, 128 17, 129 14, 130 10, 130 11, 130 13, 131 17, 134 2, 134 3, 134 12, 134 15, 134 16, 134 21, 134 24, 134 25, 135:1, 135 23, 136.8, 136 19, 137-2, 137 14, 138 1, 138.17, 138 25, 139-1, 139 6, 140-3, 140 5,</p>	<p>140 12, 140 13, 140 21, 142 4, 142 8, 142 15, 142 20, 143 3, 143 5, 143 24, 144 5, 144 6, 145 4, 145 12, 145 15, 145 19, 145 20, 146 2, 147 3, 147 15, 147 22, 148 3, 148 17, 149 16, 150 2, 150 10, 151 11, 151 14, 151 25, 152 3, 152 16, 152 19, 152 22, 153 20, 154 1, 155 11, 155 14, 156 9, 156 14, 156 18, 157 3, 157 6, 157 9, 158 11, 158 18, 159 6, 159 25, 161 10, 161 21, 162 4, 162 6, 162 8, 162 9, 162 22, 162 24, 164 13, 165 10, 165 17, 165 24, 166 7, 166 10, 167 6, 167 19, 167 23, 168 10, 168 11, 168 25, 170 2, 170 4, 170 17, 171 13, 171 15, 171 18, 171 19, 171 22, 172 4, 173 6, 173 7, 173 8, 173 9, 173 15, 173 21, 174 10, 174 23, 175 3, 175 6, 175 11, 175 14, 175 18, 175 20, 175 22, 176 1, 176 4, 176 5, 176 6, 176 7, 176 8, 176 10, 176 12, 176 13, 176-14, 176-16, 176 20, 176 21, 176 23, 176.25, 177 1, 177 16, 178 6, 178 10,</p>
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<p>179 4, 179 12, 179 21, 179.24, 180 3, 180 13, 180 19, 181 9, 181 13, 181 24, 181 25, 182 7, 182 8, 182 11, 182 16, 182 18, 183 1, 183 3, 183 7, 183 13, 183 14, 183 15, 183 16, 183 18, 183 19, 184 3, 184 17, 184 19, 184 25, 185 5, 185 6, 185 8, 185 13, 185 17, 185 23, 186 5, 186 12, 186 15, 186 25, 187 2, 187 14, 187 23, 187 25, 188 3, 188 9, 188 20, 188 21, 188 24, 189 1, 189 2, 189 3, 189 7, 189 10, 189 12, 189 13, 189 14, 189.19, 190 7, 190 8, 190 10, 190 11, 190 13, 191.13, 192 2, 192 7, 192 18, 193 11, 193 22, 193 23, 194 11, 194 23, 194 25, 195.9, 195 11, 196 22, 198 20, 198 21, 199 14, 199.17, 199 19, 199 23, 200 1, 200 22, 200 23, 200.25, 201 12, 202 3, 202 6, 202 17, 203 2, 203 7, 203 8, 203.15, 203 16, 203 18 today [16] - 9 2, 9 14, 10 12, 15.6, 59 9, 78 20, 91 10, 98 5, 112 14, 114 2, 129 25, 160 6, 161 13, 199 6, 202 19, 204 6</p>	<p>TODAYS [1] - 205 10 together [2] - 107 12, 134 10 told [16] - 10 14, 10 18, 11 25, 12 4, 12 10, 26 9, 27 7, 36 9, 45 21, 57 3, 157 12, 159 1, 183 15, 183 16, 197.11, 197 21 tone [6] - 24 15, 25 3, 133 12, 148 14, 186 1, 186 4 too [16] - 38 11, 41 23, 44 2, 59 22, 103 4, 168 7, 169 13, 169 21, 170 9, 181 12, 195 3, 198 5, 198 13, 198 14, 203 3, 204 12 took [18] - 12 2, 12 7, 14 18, 34 7, 34 9, 34 24, 35 11, 35 23, 36 4, 36 10, 40 1, 66 18, 66 23, 67 3, 75 2, 75 8, 100 10, 136 15 took. [1] - 39 8 top [4] - 117 23, 170 2, 181 4, 192 8 topics [1] - 81 20 totally [2] - 10 4, 12 3 toward [13] - 149 12, 151 20, 151 23, 165 25, 173 13, 175 17, 175 22, 187 7, 189 20, 191 3, 191 23, 191 25, 197 14 towards [29] - 8 22, 28 19, 29 1, 29 18, 33 4, 33 5, 33 11, 49 24, 52 25, 56 15, 116 19, 117 7, 117 10, 117 18, 118 1, 119 13, 120 8, 120 13, 120 15, 121 24, 123.1, 126 13, 127 17, 142 10, 154 9, 166 4, 176 19, 191 1 Town [1] - 61.7</p>	<p>traffic [4] - 43 21, 46 17, 173 10, 173 16 trained [5] - 84 9, 89 25, 90.7, 118 6, 119 22 training [11] - 80 24, 81 15, 81 18, 82 15, 82.24, 85 2, 99 24, 100 3, 100 5, 104 16 trajectory [4] - 5 16, 5 17, 5 25, 8 14 Transcriber [1] - 1 22 TRANSCRIBER [3] - 205 10, 206 2, 206 14 transcribers [1] - 205 7 TRANSCRIPT [5] - 1 9, 205 13, 206 3, 206 6, 206 15 transcript [3] - 205 7, 205 8, 205 8 Transcription [1] - 205 3 transfer [1] - 87.7 transpres [1] - 68 14 transpiring [1] - 134 5 travel [1] - 6 3 traveling [1] - 117 7 tree [6] - 55 23, 68 20, 160 23, 165.25, 172 20, 172.24 trees [13] - 10 24, 32.24, 33 13, 33.20, 68 24, 172 14, 172 18, 172.22, 173 1, 173 5, 173 7, 173 8 trial [2] - 14 9, 15 24 TRIAL [2] - 1 5, 206 6 triangular [1] - 27 15 tricks [1] - 153 22 tried [3] - 75 6, 173 7, 178 6 trip [4] - 31 10, 34 1, 34 3, 67 3 Trooper [2] - 147 8, 150 11 trooper [2] - 156 8, 156 12 true [2] - 10 19, 19 24 TRUE [1] - 206 3</p>
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<p>truly [1] - 30 11 truth [13] - 15 6, 59 10, 78.20, 78 21, 98-6, 112 15, 130 1, 161 14 try [19] - 14 20, 15 25, 34 4, 45 16, 65 14, 70 14, 92 22, 135 23, 156 14, 157 3, 172 9, 175 11, 175 18, 176 21, 183 12, 183 14, 183 18, 189 1, 203 13 trying [19] - 6-9, 7 1, 19 18, 25 14, 30 22, 38 6, 42 5, 70 13, 72 7, 93 12, 94 14, 99 25, 134 15, 145 15, 148 17, 150 2, 153 20, 158 18, 183 7 turn [8] - 9 12, 26 9, 26 17, 47 3, 47 6, 51 10, 115.20, 164 13 turned [10] - 43 12, 44 5, 50 3, 50 6, 50 9, 118 4, 163 8, 183 1, 198 19, 198 20 Turnpike [1] - 1 18 twice [1] - 26 13 twins [1] - 86 15 two [44] - 6 1, 6 2, 7 8, 7 9, 7 16, 7 18, 10.21, 22 2, 24 8, 34.7, 37 20, 39 7, 56 10, 57 25, 62 2, 66 15, 83 12, 89 20, 92 15, 94 6, 94 17, 95 1, 96 3, 108 11, 111 10, 111 12, 126 10, 132-10, 135 14, 144 22, 147 2, 150 1, 154 21, 167 3, 171 24, 172 1, 172 10, 178 13, 178 19, 178 20, 178 23, 187 11 Two [2] - 4-5, 67 23</p>	<p>two-page [2] - 57 25, 66 15 TYPE [1] - 205 15 type [5] - 70 4, 90 10, 101 15, 159 16, 173 19 types [2] - 74 10, 74 14 typically [2] - 132 16, 143 20</p> <p style="text-align: center;">U</p> <p>U [2] - 17-7, 114 1 ultimately [3] - 60 8, 103 5, 108 25 um [38] - 5 19, 8 25, 17 23, 20 19, 24 5, 24 24, 25 11, 26 4, 28 1, 32 4, 33 25, 35 13, 35 25, 36 14, 36 20, 38 1, 38 22, 44 13, 49.4, 49 17, 50 5, 50 19, 51 8, 61 23, 63 23, 67 5, 67 13, 77 25, 132 7, 136-7, 136.10, 139 10, 142-14, 143 18, 155 12, 156 10, 159 8, 203 1 um-hmm [1] - 38 22 um-hum [30] - 8 25, 17 23, 20 19, 24 5, 25 11, 26 4, 33 25, 35 13, 35 25, 36 14, 36 20, 38 1, 44 13, 49 4, 49 17, 50 5, 50 19, 51 8, 67 5, 67.13, 77.25, 132 7, 136 7, 136 10, 139 10, 142 14, 143 18, 155 12, 156 10, 159 8 um.. [1] - 120 24 under [2] - 104 8, 200 25 undergo [1] - 89 18 undershirt [1] - 153 2 understand [15] - 8-17, 14 9, 32 19, 40 3, 60 16, 64 4, 70 8, 76 12, 99 6, 102 20, 108 22,</p>	<p>109 9, 113 17, 142-23, 150 22 understanding [4] - 6 25, 49 7, 141 24, 159 2 understood [3] - 35 4, 46 13, 139 22 unfamiliar [1] - 155 24 unfolding [2] - 156 15, 158-3 unfolds [2] - 149 18, 154 8 unfortunately [1] - 20 1 UNIDENTIFIED [1] - 5.6 uniform [1] - 128 7 Union [1] - 2 3 Unit [14] - 80 8, 80 9, 80 11, 80 13, 81.2, 81 12, 82 15, 83-3, 83 11, 84.2, 88 3, 95.4, 105.24, 105 25 units [1] - 99 21 University [2] - 82 2, 82 3 unknown [4] - 94 5, 94 6, 96 2, 96 3 unless [2] - 181 12, 194 22 unmarked [1] - 128 12 unrelated [2] - 94 7, 96 4 until [16] - 11 24, 16 18, 60 14, 79 9, 79 17, 99 3, 113 13, 113 14, 120 12, 130 11, 130 12, 158 17, 194 5, 199 6, 200 8 unusual [5] - 64 9, 64 10, 69 17, 132 20, 133 20 up [89] - 6 4, 6 12, 7 8, 7:10, 7 20, 7 21, 8-20, 25 12, 25 13, 26 15, 27 11, 28 2, 32 25, 33 10, 36 25, 37 8, 37 24, 46 15, 48 9, 49 18, 50 24, 55 15, 56 14,</p>
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<p>58 16, 58 23, 64 9, 71 3, 71 18, 76 14, 76 18, 76 22, 83 14, 85 20, 86 11, 107 1, 107 14, 107 18, 108 18, 109 12, 110 14, 110 21, 116 13, 116 19, 121 6, 121 24, 123 14, 123 18, 123 22, 124 25, 125 1, 132 9, 136 9, 138 18, 140 7, 142 5, 149 24, 150 7, 151 23, 152 8, 164 5, 173 14, 175 17, 175 20, 175 22, 177 6, 178 20, 182 7, 183 8, 183 15, 183 18, 184 1, 184 19, 187 9, 167 17, 188 21, 189 11, 189 12, 189 18, 189 19, 190.1, 190 4, 192 1, 193 18, 199.6, 199 19, 201 22, 202 6</p>	<p>140 20, 151 10, 157 8, 157 12, 159 1, 162 25, 164 23, 168 14, 170 11, 174 3, 174 15, 177 10, 177 14, 178 12, 179 20, 180 4, 181 2, 185 16 use [15] - 21 5, 34 11, 34 13, 36 23, 43 2, 53 3, 53 5, 53 7, 86 23, 88 22, 89 4, 93 17, 106 4, 106 6, 135 22 used [15] - 7.6, 34 12, 34.23, 36 8, 67 2, 86 5, 88 11, 89 14, 92.6, 95 12, 106 2, 106 5, 106 13, 111 7, 159 1 uses [2] - 86 19, 87 12 using [7] - 30 1, 89 8, 95 8, 106 2, 106 10, 109 24, 194.3 usually [2] - 100 25, 189 1</p>	<p>71 14, 76 1, 77 22, 78 8, 78 11, 97 13, 97 20, 99 7, 99 9, 103 15, 103 20, 110 2, 112 4, 112 9, 129 14, 129 21, 130 20, 137 19, 141 20, 156 1, 161 1, 161 8, 196 1, 202 16, 202 20, 203 1, 203 6, 203.20, 203 23, 204 7 Van [6] - 1 14, 3 4, 3 7, 3 11, 3 16, 15 13 van [3] - 11 15, 11 19, 111 23 various [2] - 5 14, 103 2 vehicle [2] - 11 9, 30 20 vehicles [2] - 25 16, 25 18 ventured [1] - 178 9 verbal [2] - 168 18, 185 11 version [1] - 12 3 versions [1] - 40 24 versus [1] - 95 16 vertical [1] - 165 2 very [43] - 11 8, 20 5, 28 6, 28 14, 28 21, 29 25, 30 5, 32 25, 69 20, 72 9, 73 1, 78 9, 80 25, 97 7, 106 24, 112 6, 122 8, 125 25, 129 1, 129 2, 129 11, 148 5, 148 16, 150 15, 151 15, 152 2, 153 13, 153 17, 155 5, 155 6, 155.13, 160 24, 164.19, 168 21, 173 8, 173 23, 173 24, 183 4, 186 4, 200 24, 202 11 vice [1] - 163 18 Victory [10] - 26 16, 42 19, 49 24, 50 7, 163 23, 163 25,</p>
<p>up-to-date [1] - 83 14 uploaded [1] - 11 5 uploading [1] - 58 11 upon [1] - 16 4 ups [1] - 37 5 upset [1] - 36 7 upstairs [4] - 62 7, 167 4, 167 5, 167 21 us [55] - 8 13, 17 1, 19 4, 19 10, 24 14, 27 7, 32 2, 36 1, 39 24, 40 2, 48 20, 61 22, 62 18, 79 25, 80 14, 80 25, 86 7, 86 18, 87 4, 92 6, 92 16, 94 1, 94 9, 94 13, 94 25, 95 22, 100 19, 104 1, 107 9, 107 24, 113 23, 114 4, 118 13, 120 25, 123 17, 124 1,</p>	<p style="text-align: center;">V</p> <p>validated [1] - 109 23 validations [1] - 85 19 value [1] - 94 24 VAN [84] - 5 17, 5 19, 8 3, 8 6, 8 8, 8 25, 9 6, 9 9, 9 15, 9 22, 10 2, 11 2, 12 17, 13 9, 13 15, 13 21, 13 24, 14 4, 14 6, 14 13, 14 20, 14 25, 16 23, 21 12, 21 18, 29 9, 29 14, 29 17, 30 18, 30 19, 37 10, 40 12, 40.20, 41 3, 41 5, 41 8, 41 13, 41 14, 53 7, 55 12, 57 7, 57 21, 57 24, 58 8, 58 14, 58 24, 59 1, 60 19, 66 10, 66 12, 66 13, 67 20, 69 5, 69 10,</p>	<p>71 14, 76 1, 77 22, 78 8, 78 11, 97 13, 97 20, 99 7, 99 9, 103 15, 103 20, 110 2, 112 4, 112 9, 129 14, 129 21, 130 20, 137 19, 141 20, 156 1, 161 1, 161 8, 196 1, 202 16, 202 20, 203 1, 203 6, 203.20, 203 23, 204 7 Van [6] - 1 14, 3 4, 3 7, 3 11, 3 16, 15 13 van [3] - 11 15, 11 19, 111 23 various [2] - 5 14, 103 2 vehicle [2] - 11 9, 30 20 vehicles [2] - 25 16, 25 18 ventured [1] - 178 9 verbal [2] - 168 18, 185 11 version [1] - 12 3 versions [1] - 40 24 versus [1] - 95 16 vertical [1] - 165 2 very [43] - 11 8, 20 5, 28 6, 28 14, 28 21, 29 25, 30 5, 32 25, 69 20, 72 9, 73 1, 78 9, 80 25, 97 7, 106 24, 112 6, 122 8, 125 25, 129 1, 129 2, 129 11, 148 5, 148 16, 150 15, 151 15, 152 2, 153 13, 153 17, 155 5, 155 6, 155.13, 160 24, 164.19, 168 21, 173 8, 173 23, 173 24, 183 4, 186 4, 200 24, 202 11 vice [1] - 163 18 Victory [10] - 26 16, 42 19, 49 24, 50 7, 163 23, 163 25,</p>

<p>165 3, 165 12, 165 21 video [22] - 10 20, 10 21, 11 3, 13 11, 14 18, 34 8, 34 10, 37 20, 39 10, 39 11, 39 13, 39 20, 47 22, 48 13, 48 16, 48 19, 51 3, 51 11, 51 19, 51 21, 51 25, 58 20 videos [10] - 10 21, 10 23, 12 1, 12 8, 35 9, 39.7, 40 5, 44 25, 52 13, 58 12 view [14] - 22 6, 33 21, 62 24, 70-13, 70 14, 78 4, 139 19, 166 3, 173 9, 173 12, 173 24, 182 6, 182 12, 182 14 virtually [1] - 142 18 visible [2] - 70-23, 153 13 vision [2] - 32 25, 142 17 visit [1] - 72 11 visiting [1] - 133 7 vocal [1] - 186 11 voice [9] - 24 7, 24 20, 39 16, 169 3, 169 5, 169 7, 169 10, 186 1 voices [7] - 24 8, 133-4, 133 8, 133 13, 133.24, 142-4, 169 1 VOLUME [1] - 205 13 volume [2] - 24 14, 205 7 Volume [1] - 1 1 vulnerable [1] - 28 15</p>	<p>99 13, 99 14 WAITE [2] - 98 7, 98 8 Waite's [1] - 103 18 waiting [2] - 36 25, 58 10 walk [2] - 170 9, 175 16 walked [6] - 171 5, 171 6, 176 18, 197 14, 198 12, 198 15 walking [5] - 8 22, 132 19, 175 7, 188 17, 188 18 wall [2] - 107 25, 108.1 want [37] - 12 12, 17 21, 38 10, 42 8, 45 21, 49 3, 53.7, 55 15, 58 22, 59 21, 60 5, 61 16, 70 22, 76 25, 85 23, 120 14, 120 15, 134-16, 138 1, 142 8, 142 20, 145.20, 157 3, 176 6, 179 24, 182 11, 182 16, 182 18, 185 17, 186 5, 187 23, 187 25, 189 2, 196 3, 199 14, 199 17 wanted [4] - 66 24, 66 25, 120 8, 184 17 WAS [1] - 206 9 was [639] - 5 21, 5 22, 6 8, 6 10, 6 11, 6.12, 7 4, 7 6, 7 7, 8 12, 8 13, 8 14, 8 20, 8 21, 9 20, 10 11, 10 17, 10 18, 11 14, 11 23, 11 24, 12 9, 13 1, 14 1, 14 2, 17 24, 18 2, 18 6, 18 17, 20 13, 21 16, 22 8, 23 7, 23 9, 23 10, 23 11, 23 14, 23 18, 23 23, 23 24, 24 3, 24 6, 24 23, 24 25, 25 3, 25 6, 25-19, 27 6, 28 14, 29 4,</p>	<p>29 23, 29 24, 30 5, 30 10, 30 11, 30 21, 31 1, 31 3, 31 9, 31 23, 32 4, 32 8, 32 11, 32 12, 32 16, 32 17, 33 6, 35 6, 36 2, 36 4, 36 6, 37 6, 37 8, 40 17, 41 12, 42 1, 42 11, 42 14, 43 11, 43 13, 43 24, 44 1, 44 8, 44 9, 45 2, 45 14, 46 18, 46 19, 47 3, 47-11, 47 12, 47-14, 47 15, 47 21, 48 3, 48 5, 48-6, 48 8, 48 16, 48 20, 48 21, 49 11, 49.12, 49 23, 52 14, 52 17, 52.18, 52 21, 53-2, 53 13, 55 4, 55 18, 57 17, 57 18, 58.5, 58 20, 58 21, 61-24, 62-2, 62 4, 62 6, 62.8, 62 13, 62 15, 62 20, 62 22, 63 10, 63 17, 63 23, 64 15, 65 4, 65 5, 65 7, 65 11, 66 7, 67 1, 67 3, 67 10, 67 11, 69 8, 70 2, 71 3, 71 4, 72 1, 72 7, 72 15, 72 20, 72 23, 73 7, 74 7, 74 16, 75 1, 75 3, 75 9, 75 12, 75 14, 75 15, 75 21, 76 5, 77 7, 77 9, 77-18, 78 3, 78 4, 78 15, 80 18, 80-20, 82 13, 83-24, 88 24, 90.22, 91.12, 91 16, 91.20, 91 22, 91:23, 92 1, 92 5, 92 13, 92 18, 93 3, 93 20, 93 21, 95 21, 95 22, 96-8, 96 20, 100 5, 101 14, 102.7, 102 16, 102-19, 102 20, 103 2,</p>
<p>W</p>	<p>W [2] - 99 13, 131 1 W-A-I-T-E [1] - 99 13 waistband [1] - 104 8 wait [2] - 16 18, 46 23 Waite [8] - 3.11, 4 7, 97 20, 98 11, 98 16, 99 10,</p>	

IMPOUNDED TRANSCRIPT

3-289

<p>103 19, 104 5, 104 6, 104 14, 104 20, 104 23, 104 25, 105 4, 105 5, 106 4, 107 17, 108 24, 110 12, 110 16, 111 9, 111 12, 111 24, 116.4, 116.7, 117 10, 117 12, 117 16, 117.19, 118 2, 118 17, 118 23, 119 3, 119 9, 119 10, 119 24, 120 2, 120 4, 120 7, 120 14, 120 17, 121 4, 121 6, 121 8, 121 9, 121 11, 121 14, 121 16, 121 19, 122 8, 122 17, 123 9, 123 18, 123 20, 124 2, 124.5, 124 6, 124 17, 124 19, 124 20, 124 22, 125 2, 125 4, 125.5, 125 14, 125 19, 125 24, 125 25, 126 5, 126 7, 126 25, 127 1, 127 12, 127 22, 127 23, 128 1, 128 11, 128 12, 128 22, 128 25, 129 1, 129 20, 132 4, 132 23, 132 25, 133 6, 133 7, 134 1, 134 4, 134 10, 134.13, 135 7, 135-15, 136 6, 136 8, 136 9, 136 15, 136 16, 136 18, 136 20, 137 4, 137 10, 137 17, 138 7, 139 1, 139 8, 139 11, 139 12, 139 13, 139 14, 139 16, 139 20, 140 8, 140 15, 140 18, 141 7,</p>	<p>141 8, 141 10, 141 13, 141 14, 141 23, 142 13, 142 16, 143 16, 143 22, 143 23, 143 24, 144 8, 144 19, 144 20, 144 25, 145 1, 145 3, 145 6, 145 8, 145 16, 145 17, 145 18, 145 21, 145 23, 146 3, 146 13, 146 15, 146 18, 147 2, 147 3, 147 12, 147 24, 148 5, 148 7, 148 13, 148 17, 148-19, 148 22, 149.4, 149.5, 149 7, 149-16, 149 17, 149 22, 149-25, 150 1, 150 6, 150-7, 150.9, 150.11, 150 13, 150 14, 150 15, 150 17, 150 20, 150 24, 151 2, 151 12, 151 14, 151 15, 151 18, 151 19, 152 1, 152 2, 152 3, 152 12, 152 13, 152 17, 152 21, 152.22, 152 24, 152-25, 153 1, 153 4, 153 5, 153 7, 153 9, 153 12, 153 15, 153 17, 153 20, 153 24, 153 25, 154 1, 154 3, 154 5, 154 19, 154 21, 155 5, 155 6, 155 8, 155 9, 155 13, 155 14, 155 16, 155 17, 155 23, 157 22, 157.25, 158 2, 158-3, 158-4, 158 11, 158 17, 158-20, 158 21, 158 22, 159 10, 159 12, 159 13,</p>	<p>160 2, 160 15, 160 16, 164 11, 164 17, 164 20, 164 21, 166 16, 166 25, 167 2, 167 4, 167 5, 167 13, 167 14, 167 15, 167 17, 167 19, 168 7, 168 9, 168 21, 169 6, 169 9, 169 13, 169 14, 170 18, 170 20, 170 23, 170 24, 171 6, 171 9, 171.13, 171.14, 174 12, 174-13, 174 20, 174 22, 174 23, 175 1, 175 2, 175 7, 175 19, 175 21, 176 9, 176 11, 176 15, 176 22, 176 24, 176 25, 177 12, 178 10, 178 18, 178 19, 178 21, 178 22, 179 10, 179 17, 180 3, 180 5, 180 10, 180 18, 180 21, 181 1, 181 3, 181 5, 181 7, 181 23, 182 3, 182 5, 182 9, 182 11, 182 16, 182 19, 182 22, 183 1, 183 3, 183 5, 183 6, 183 7, 183 25, 184 2, 184 3, 184 4, 184 5, 184 7, 184 14, 184 18, 185 2, 185 9, 185-15, 185 17, 185 22, 185 24, 185 25, 186 1, 186 4, 186-7, 186 19, 187 7, 187 8, 187 9, 187 22, 187 23, 187 24, 187 25, 188 14, 188 16, 188 17, 188 19, 188 24, 189 1,</p>
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<p>189 4, 189 6, 189 7, 189 20, 189 22, 189 24, 189 25, 190 4, 190 11, 190 12, 190 13, 190 15, 190 16, 190 17, 190 22, 192 4, 192 11, 192 13, 192.14, 192 16, 192-20, 193 1, 193 24, 194 10, 194.20, 194 22, 195-5, 196 7, 196 18, 197 11, 197 20, 198 1, 198 5, 198-6, 198 9, 198.14, 198 24, 199 3, 199 4, 201 7, 201 9, 201 10, 201 14, 201 18, 202 2, 202 16, 202 25 wasn't [24] - 10 19, 31 25, 65 5, 102 18, 111 12, 117 20, 121 13, 125 25, 128 10, 140 4, 140 16, 144 9, 145 10, 148 10, 153 6, 158 4, 158 7, 176 22, 180 21, 184 16, 194 2, 198 8, 199 2 watch [13] - 40 10, 67 7, 67 12, 70 13, 75 3, 75.14, 75 19, 149 11, 149 14, 176 20, 178 10 watched [10] - 123 13, 141 3, 143 4, 149 16, 186 23, 194 5, 194 6, 194 7, 194 8, 194 12 watching [23] - 69 4, 70 1, 134 18, 140 6, 141 22, 142 23, 142 24, 149 21, 150 19, 151 22, 152 14, 158 7, 164 21, 166 20, 167 7,</p>	<p>171 9, 171 20, 171 23, 183 22, 183 25, 194 4, 194 10, 198.10 water [3] - 34.18, 106 17, 106-18 waving [4] - 117 12, 123 21, 125 14, 125 21 Way [4] - 163 23, 165 3, 165 12, 165 21 way [40] - 7 10, 8 20, 19 4, 23 5, 24 15, 31 2, 31 9, 31 19, 32 5, 33 10, 34 4, 42 15, 52 13, 59 5, 59 15, 60.5, 95 3, 97 25, 98-10, 107 3, 112.20, 115 16, 115 19, 117-23, 128 21, 130 5, 135.12, 135 17, 137 22, 138 25, 146 21, 148 8, 148 15, 150 6, 151 11, 156 15, 159 25, 161-19, 189 20, 195 11 ways [2] - 176 19, 179 1 we [132] - 5 12, 5 23, 6 1, 8 4, 10 9, 11-7, 11 16, 11 18, 11 23, 12 18, 14 15, 15 13, 15 22, 17 2, 19 2, 19 5, 19 6, 26 9, 26 10, 26 12, 26 14, 26 15, 26 17, 27 6, 27-9, 27 10, 27 11, 31 4, 36 15, 37 4, 38-16, 41 3, 42 20, 43.3, 43 5, 43.18, 43:22, 44 14, 44 15, 44 24, 45 3, 47.6, 47 17, 47 21, 47 22, 48 3, 49-2, 50 13, 53 3, 55 5, 55 15, 59 25, 60 14, 60 22, 62 6, 62 7, 79 4, 81 17, 81 21, 81 22,</p>	<p>83 11, 86 23, 86 25, 87 10, 88 14, 88 22, 88 23, 89 4, 89 5, 90 2, 92 19, 93.16, 94 20, 94 23, 95 8, 95 10, 98 16, 99 11, 103 4, 103 25, 107 10, 107 25, 109 22, 112 22, 113 8, 129 21, 130 6, 130 23, 133 2, 133 5, 134 2, 134 3, 134 17, 135 16, 137 13, 137 15, 139 18, 145 20, 149 19, 149 21, 157 7, 160 13, 161 24, 166 9, 168 6, 176 6, 186 5, 191 4, 191 6, 196 2, 196 15, 196 17, 198 10, 199 12, 200 6, 202.15, 202.18, 203 2, 203 9, 203.15, 203.23 we'd [1] - 115 15 we'll [5] - 9 1, 35 7, 81 14, 92 24, 97 15 we're [20] - 9 6, 11 11, 12 25, 32 22, 36 25, 58 10, 85 20, 87 9, 87 15, 93 12, 97 21, 109 8, 129 14, 145 19, 149 19, 149 20, 160 22, 201 6, 203.18, 204 5 we've [5] - 7 15, 15 20, 137 21, 155 24, 173 7 weapon [6] - 22 12, 111 15, 111 16, 144 23, 145 2, 159 13 weapons [3] - 144 14, 146-11, 200 8 wearing [5] - 62 13, 62 17, 152 23, 152 25, 153 1 week [1] - 35 7</p>
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<p>weekend [2] - 133 7, 204 10</p> <p>weeks [1] - 132 16</p> <p>weird [1] - 30 10</p> <p>welcome [1] - 112.7</p> <p>well [26] - 6 8, 7 8, 8 3, 8 25, 13 10, 20 10, 28 14, 37 14, 47 17, 57 21, 117 17, 131 9, 131 19, 144 21, 154 23, 157 22, 157 24, 170 25, 181 8, 185 11, 189 24, 191 21, 194 13, 197 13, 198 3, 198 25</p> <p>went [20] - 10 13, 36 15, 42 15, 57 21, 95 10, 100 6, 105 23, 111 23, 127 16, 136 16, 146 13, 157 10, 158 4, 183 3, 186 17, 186 22, 187.11, 187 13, 187 18, 198 16</p> <p>were [200] - 6 6, 8 12, 10 9, 10-21, 11 5, 11 20, 12 1, 12 2, 13 10, 17 24, 18 4, 19 13, 19 15, 20 6, 20 7, 20.10, 21 6, 21-24, 22 3, 23 13, 23 20, 23 21, 24 6, 24 9, 25.18, 25 20, 26 9, 27-14, 27 17, 30 21, 36 11, 42.10, 44 4, 44 6, 46-14, 46 15, 47 6, 47 17, 48 10, 48.17, 48 20, 51 1, 51 2, 51 7, 53 19, 55-2, 58 18, 61 19, 61.24, 63 8, 63 21, 63 24, 63 25, 64 23, 65 19, 65 24, 67 23, 68 16, 69 25, 70 23, 71 4, 71 6, 71 9, 71 10, 71 12, 74 3, 74 12, 77.5, 77 8, 77 19, 83-5,</p>	<p>91 9, 91 12, 91 19, 92 9, 92 12, 93.17, 93-22, 94 2, 101 11, 101 15, 104 3, 104.14, 105 3, 105 10, 105 18, 107 9, 107 11, 107.14, 107 21, 108.2, 108 8, 108 14, 110 12, 110 13, 111 7, 111 19, 111 20, 116 1, 116 3, 116 6, 117 7, 118 15, 121 1, 124 1, 127 10, 127 12, 127 13, 127 24, 130 15, 132 3, 132 5, 132 18, 133 3, 133 5, 134 12, 134 14, 134 17, 134 18, 135 2, 135 23, 136.1, 136 6, 136-11, 137 13, 139.9, 139 18, 140 5, 142 12, 143.10, 143 11, 143-19, 143 24, 144.2, 144 4, 144.11, 144 14, 144-18, 144 22, 144.23, 146 7, 146 11, 147 7, 147 8, 149 20, 149.21, 150 16, 151 25, 152 19, 154 5, 157 19, 160 16, 160 17, 164 15, 164 18, 167 3, 168 15, 168 17, 168 19, 169 17, 170 24, 171 20, 175 8, 175 12, 175 13, 179 6, 179 11, 179 24, 180 8, 181 2, 181 18, 182 4, 182.7, 182 25, 183 22, 183 24, 184 11, 185 23, 187 1, 188 20, 191 24, 192 19, 192 21,</p>	<p>192 22, 193 3, 194 11, 194.15, 197 19, 198-10, 200 20</p> <p>Were [1] - 168 3</p> <p>weren't [2] - 181 11</p> <p>West [1] - 82 1</p> <p>wet [4] - 84 13, 84 16, 85 3, 90 14</p> <p>what [243] - 6 1, 6 7, 6 9, 8 16, 9.12, 11 11, 11 16, 11 23, 13 15, 15 19, 15 22, 16 1, 16 5, 16 8, 18 2, 19 13, 20 7, 21 22, 22 10, 22 16, 22 19, 22 25, 23 7, 24 9, 25 3, 26 6, 26 22, 27 18, 28 13, 31 2, 32 21, 33 2, 34 11, 38 20, 42 18, 44 1, 44 6, 44 7, 45 10, 45 17, 46 13, 46 18, 48 21, 52 24, 53 1, 55 4, 55 16, 60 7, 60 11, 61 1, 61 25, 62 6, 62 8, 62 10, 62 23, 63 7, 64 18, 66 7, 66 17, 68 14, 69 20, 70 7, 70 9, 70 15, 71 8, 71 10, 72 1, 72 3, 72 7, 72 15, 72 17, 72 18, 73 21, 73 22, 73 25, 75 6, 76 20, 80 11, 80 18, 81 1, 81 16, 82 12, 83 2, 86 7, 86 11, 86 12, 86 18, 87 1, 88 16, 88 23, 89 1, 89 22, 90 12, 91 12, 91 23, 92 12, 92 16, 93 2, 93 3, 93 11, 94 1, 94 13, 99 19, 100-16, 100 19, 101 15, 102 12, 102 23, 103 8, 104 11, 104 15, 104 23, 105 3, 107 9, 107 21, 108 10, 108 22, 113 13,</p>
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<p>114 8, 114 12, 115 12, 116 10, 116 14, 117 15, 119-21, 120 20, 121 2, 121 3, 122.17, 124 1, 124 12, 124 17, 125 5, 126 5, 126 16, 127 7, 127 14, 127 21, 127 22, 128 2, 128 18, 128 24, 129 2, 131 2, 131 19, 132 8, 133 1, 133 23, 133 25, 134 11, 134 16, 135 1, 135 25, 136 20, 136 25, 139 1, 139 2, 140 1, 140 3, 140 8, 141 6, 142 7, 143 24, 144 15, 144 25, 145 6, 145 8, 145 14, 146 7, 146 17, 146 19, 148 24, 149 5, 150 2, 150 24, 151 11, 152 9, 152 22, 152 24, 152 25, 153 6, 153 14, 154 24, 155 3, 155 15, 156 9, 156 13, 158 1, 158 2, 160 8, 162 10, 163 3, 163 9, 163 13, 163 16, 163 22, 164 18, 167 9, 167.16, 168 15, 168-19, 169 17, 169 23, 170 11, 170.17, 171 9, 174:3, 174 23, 175 24, 176 4, 178 10, 179 20, 180 25, 181 24, 182 4, 182 20, 183 5, 186 1, 186 14, 186 16, 188 12, 189 22, 189 25, 192 17, 193 8, 194 4, 194 11, 197 15,</p>	<p>199 7, 199 11, 200 22, 201 6 What [1] - 167 21 what's [14] - 11 16, 16 8, 26 19, 33 11, 33 16, 64 13, 70 14, 70 17, 101 17, 106 12, 114 16, 132 13, 140 19, 172 17 whatever [4] - 75 11, 104 20, 105 18, 202 2 wheels [1] - 106 24 when [123] - 5 22, 8 11, 11 14, 12 8, 18 15, 31 7, 31 8, 31 23, 31 24, 33 20, 35 23, 37 8, 43 24, 44 10, 44 20, 45 15, 46 14, 46 15, 47 14, 47 15, 47.22, 48 2, 48 14, 49 19, 50 2, 50.3, 51 9, 51 11, 51 24, 55 2, 57 17, 64 24, 66 1, 67 10, 71 23, 72 10, 73 12, 75 7, 76 4, 77 3, 77 4, 77 16, 82 6, 83 23, 90 11, 90 14, 91 22, 100 5, 100 22, 100 24, 101 8, 102 19, 117 15, 118 5, 118 15, 120 19, 121 5, 123 17, 126 4, 126 5, 126 11, 126 19, 127 16, 132 19, 132 23, 133 5, 134 3, 138 4, 139.18, 140 6, 141-3, 141-22, 145.22, 147 7, 147.24, 149 25, 150-18, 150 20, 151 25, 152 19, 153 14, 158 21, 159 1, 159 21, 167 5, 167 6, 168 6, 169 12, 173 11, 174 1, 182 24, 183-1,</p>	<p>183 12, 183 14, 184 15, 184 19, 186 3, 186 7, 186 9, 187 3, 189 4, 189 10, 190 10, 193 22, 194 19, 196 23, 196 25, 197 13, 197 19, 198 2, 198 4, 198 10, 201 7, 203 16 when. [1] - 203 8 where [102] - 5 21, 5 22, 6-4, 6:10, 6 18, 8-22, 10 24, 11 9, 12 8, 15 25, 17 14, 17 19, 19.8, 19 25, 21 6, 25 20, 26 5, 26 16, 27 20, 30 3, 31 14, 31 16, 33 24, 35 7, 42 19, 43 23, 61 9, 61 19, 63 8, 69 4, 80 6, 86 23, 86 24, 98 23, 101 23, 102 16, 106 15, 108 24, 111 19, 114.14, 116 3, 118-14, 118 15, 118-22, 119 6, 119 9, 120 4, 120-8, 121 1, 121 5, 121 8, 121 14, 121 20, 122 3, 122 24, 132.18, 134 17, 134 18, 135 2, 135 11, 135 23, 136 1, 136 2, 137 13, 137 23, 138 18, 139 19, 142 13, 142 15, 142 16, 143 6, 146 8, 149 4, 151 22, 152 14, 154 1, 154 3, 155 14, 157-25, 164 24, 165 8, 166 3, 166 8, 171 14, 171-20, 171 22, 173 7, 174 18, 177 11, 177 25, 178 6, 178 13, 184 16, 188.14, 193 9,</p>
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<p>193 10, 194 14 where's [1] - 11 17 wherever [1] - 51 2 whether [15] - 14 11, 22 14, 22 20, 23 19, 24 6, 91 19, 107 7, 111 24, 123 18, 124 5, 128 12, 144 11, 152 1, 193.1, 193 21 which [52] - 5 24, 7 11, 12 2, 13 9, 14 15, 14 17, 19 4, 30 13, 36 8, 39 24, 46 1, 48 14, 54 11, 55 17, 60 1, 62 22, 65 11, 74 10, 81 4, 85 12, 87 4, 87 6, 87 12, 91 16, 94 23, 98 18, 100 17, 102 7, 107 15, 112 23, 113 1, 116 18, 124 6, 132 14, 135.7, 153 24, 155 22, 162 2, 162.3, 164 3, 165.6, 166 7, 171 7, 171 15, 173.8, 174 21, 182 9, 185 14, 185.24, 187 21, 188.17, 194 14 WHICH [1] - 206 8 while [25] - 14 9, 36 25, 49 6, 58 10, 124.22, 134 9, 157 19, 168 23, 174 1, 175 2, 175 19, 175 21, 180 3, 181 5, 181.7, 183 1, 183.25, 184 2, 184 5, 184 6, 186 25, 193 24, 194 10 white [2] - 106 19, 153 1 who [38] - 5 15, 6.25, 7.19, 8 22, 10 11, 12 7, 13 18, 22 14, 52 17, 52 18, 52 21, 53 2, 62 13, 71 6, 84 16, 85 11,</p>	<p>88 7, 93 16, 125 14, 133 5, 133 6, 133 16, 139 9, 144 25, 145 4, 148 13, 148 22, 155 9, 155 21, 180 5, 185 15, 187 22, 188 24, 190 11, 192 11, 195 1, 197 11 who's [7] - 9 23, 10 11, 15 20, 93 20, 147 23, 186 2, 188.21 whole [9] - 43 15, 142 18, 153 12, 160 23, 179 22, 181 19, 198 8, 198 10, 199 1 whom [1] - 99 16 whose [1] - 93 12 why [22] - 8 11, 8 14, 34 13, 34 15, 36 5, 55 1, 66 23, 75 2, 106 3, 106 6, 107 20, 116 1, 117 19, 126 17, 135 16, 137 5, 188 17, 191 4, 203 9 wielding [1] - 122 11 wife [8] - 61 24, 67.3, 164 10, 167 4, 167 21, 196 20, 198 5, 198 14 will [41] - 8 8, 14 20, 15 6, 58 4, 59 9, 67 22, 78 14, 78 20, 81 4, 81 6, 84 18, 86 11, 86 14, 87 14, 87 16, 90 18, 90 25, 92 19, 96 18, 98 5, 101 22, 102 3, 103 17, 106 8, 112 14, 113 4, 123 7, 125 6, 129 17, 129 25, 139 9, 141 11, 148 8, 148 20, 160 10, 161 13, 165.4, 166 14, 196 5, 202 23,</p>	<p>203 24 window [9] - 62 7, 64 10, 167 16, 168 10, 170 2, 170 15, 171 2, 173 18, 174 2 windows [8] - 25 12, 63 21, 66 2, 124 25, 166 4, 168 17, 169 24, 170 1 windshield [1] - 39 1 wires [2] - 159 2, 159 4 wise [1] - 63 19 with [156] - 5 10, 5 13, 6 16, 7.2, 8 24, 9 19, 10 2, 10 7, 10 9, 11 16, 14 8, 15 22, 16 10, 17 17, 18 11, 20 11, 22 8, 22 15, 22 20, 24 4, 24 19, 26 20, 27 1, 27 21, 27 22, 35 11, 35 15, 35 16, 35 18, 36 8, 36 24, 37 5, 43 1, 45 11, 45 15, 46 25, 50 24, 52 18, 54 13, 54 22, 59 2, 61 11, 62 25, 63 1, 65 8, 69 3, 70 9, 71 20, 72 10, 72 13, 75 1, 75 23, 76 20, 79 6, 80 11, 83 14, 87 10, 88 19, 91 6, 91 10, 95 10, 96 9, 98 19, 101 25, 102 13, 102 24, 103 1, 103 22, 104 3, 107 23, 109 25, 110 11, 112 23, 112 25, 114 9, 115 2, 115 4, 116 6, 116 7, 117 11, 117 21, 118 6, 120 20, 120 25, 123 25, 124 2, 124 4, 124 9, 125 14, 126 21, 127 23, 130 7, 131 12, 131 20, 131.23,</p>
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<p>133 5, 133 6, 134 5, 134 15, 135 3, 135 18, 145 2, 145 12, 147 5, 147 10, 154 24, 155.17, 156 8, 158 16, 159 22, 164 8, 166 23, 166 25, 169 15, 170 3, 172 17, 174 9, 174 15, 176 3, 176 11, 177 10, 177 14, 178 7, 178 12, 179 4, 180 13, 181 8, 183 20, 184 6, 184 20, 186 5, 186 23, 187 7, 187 17, 188 16, 189 22, 190 12, 193 5, 193 13, 195 13, 196 19, 198 8, 198 9, 198 13, 198 24, 199 10, 202 8, 203 15, 203 16, 204 5, 205 8 WITH [1] - 206 5 within [12] - 35 6, 67 8, 71 2, 80 12, 87.5, 108 14, 108 24, 164 25, 171.10, 174 24, 192.4, 192 5 WITNESS [85] - 3 2, 15 18, 15 23, 16 2, 16 12, 16 15, 16 20, 37 2, 37 4, 37 9, 46 12, 46 19, 46 22, 47 1, 47 5, 47 9, 47 12, 47 17, 47 20, 47 24, 48.3, 48 8, 48 12, 48 15, 48 19, 49 1, 49 4, 49 10, 49 14, 49 17, 49 20, 49 22, 49 25, 50.5, 50 8, 50 11, 50 13, 50 19, 50 22, 50 25, 51 5, 51 8, 51 13, 51 17, 51 19, 51 23, 52.2, 53 9, 55 8, 55 10, 57 8, 57.10, 57 12,</p>	<p>57 16, 57 20, 57 22, 59 19, 59 23, 60 16, 79 3, 79 18, 97 6, 97 9, 98 14, 99 6, 112 7, 113 17, 129 8, 129 12, 130 18, 141 17, 141 19, 161 3, 161 7, 161 22, 162 12, 191 8, 191 11, 195 20, 201 4, 201 10, 201 14, 201 18, 201 24, 202 13 witness [15] - 6 13, 9.22, 12 9, 13 13, 30 13, 57 23, 58 9, 59 3, 78 10, 97 10, 112 8, 129 13, 161 4, 202 14, 202 15 witnessed [4] - 160 8, 197 15, 198 3, 198 9 witnesses [13] - 5 13, 6 19, 6 20, 60 1, 60 11, 79.6, 98 18, 112 23, 113 6, 130 8, 130 16, 162.1 wobbly [1] - 28 23 Woburn [2] - 1 15, 1 20 woman [3] - 117 11, 117 13, 117 15 wondering [1] - 117.19 word [3] - 190 19, 190 21, 205 8 words [13] - 24 11, 24 13, 24 21, 66 3, 76 25, 133 9, 140 14, 142 20, 146 1, 157 24, 169 11, 181 1, 198 21 work [26] - 79 7, 79 14, 80 6, 80 7, 82 8, 82 14, 82 22, 84 11, 84 14, 84 16, 85 3, 87 10, 89 17, 89 18, 90 1, 90 14, 90 15, 91 5, 91 20, 95 11,</p>	<p>98 20, 114 6, 114 8, 163 11, 163 13, 163 14 work-related [1] - 79 14 worked [2] - 82 11, 88 25 working [4] - 51 14, 82 23, 84 12, 88 19 worksheets [1] - 90 25 would [86] - 6 1, 6 4, 6 21, 6 24, 7 11, 7 13, 8 1, 9 24, 12 9, 13 5, 13 7, 20 24, 21 13, 21 14, 34 19, 40 15, 41 10, 61 25, 64 19, 68 2, 72 5, 73 21, 73 25, 77 7, 78 11, 82 24, 84 10, 93 11, 103 15, 106 10, 107 17, 109 19, 110 8, 110 14, 116 14, 116 16, 116 21, 117 2, 135 18, 138.8, 140 12, 143.7, 145 25, 146.3, 146 4, 146 19, 147 3, 149 3, 157 9, 159 21, 159 22, 165 9, 168 20, 168 21, 169 8, 171 24, 172 10, 174 11, 174 21, 175 11, 175 16, 175 17, 175 18, 181 4, 183 12, 183 14, 183 18, 184 14, 184 19, 184 20, 184 22, 184 25, 185 9, 185 10, 186 3, 186 19, 189 6, 192 2, 192 6, 192 7, 192 10, 195 9, 195 11, 200 7, 200 24 wouldn't [4] - 9 13, 43 16, 169 7, 169 8 wound [3] - 7 2, 7 15, 7 16</p>
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<p>wounds [2] - 7 16, 7 21 wrap [1] - 132 9 write [5] - 16 4, 81 7, 90 19, 92 3, 100.9 wrong [3] - 35.1, 72 13, 182 18 wrote [2] - 71 23, 73 12</p>	<p>50 22, 51 13, 51 17, 53 15, 54 3, 54 16, 55 24, 56 1, 56 7, 57 5, 57.20, 57 22, 63 4, 63 15, 68 8, 74 4, 74 5, 76 16, 119 24, 121 2, 121 9, 122 12, 122.21, 126 20, 127.12, 131 8, 131 25, 132 7, 135 19, 135 21, 138 15, 138 24, 139.21, 141 17, 148.1, 148 2, 148 12, 148 23, 152.7, 156 18, 156.20, 159 9, 159 17, 160 21, 169 20, 177 9, 180 3, 190 3, 201 19</p>	<p>71 22, 73 1, 73 6, 75 6, 75 22, 76 7, 76.24, 77 13, 80 5, 80.10, 80 20, 81 13, 81 17, 81.25, 82 11, 82 18, 83 4, 83 7, 83 10, 83 16, 83 18, 85 4, 85 17, 87 20, 88 6, 88 13, 89 12, 89 20, 90 24, 91 8, 91 11, 91 21, 92 8, 92 11, 92 23, 93 14, 93 19, 93 25, 95 16, 95 18, 95 23, 97 6, 97 23, 98 7, 99.15, 100 2, 100.15, 101 7, 101 10, 101 14, 102.15, 102 22, 103 7, 103 13, 103 23, 105 21, 107.19, 109 17, 109 21, 114 7, 114 11, 114 22, 115 3, 115 7, 115 9, 115 11, 117 5, 117 9, 118 7, 118 12, 119 15, 119 17, 120 3, 121 23, 122 16, 124 14, 128 19, 128 23, 132 21, 135 9, 135 13, 135 15, 136 23, 138 3, 141 5, 141 19, 144 13, 145 9, 145 13, 147 11, 147 19, 147 21, 151 24, 154 7, 157 11, 157 23, 159 20, 162.20, 164 9, 165 18, 165 20, 166 5, 168 16, 169 2, 169 10, 169 22, 170 7, 170 10, 177 4, 177 18, 179 13, 179 16, 180 7, 180 17, 181.21, 183 9, 192.12, 192 16, 195 3, 195 24,</p>
<p>X</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>
<p>X [16] - 3 1, 4 1, 21 6, 55 17, 55 22, 56.2, 56 4, 80 2, 121 8, 121 25, 174 15, 177 10, 177 15, 205 17, 205 18, 205 19 XX [1] - 205 19</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>
<p>Y</p>	<p>year [8] - 61 17, 80 23, 83 12, 132 2, 164 11, 172 17, 172 24, 173 2 years [6] - 17 9, 99 23, 114 3, 114 19, 114 25, 164 7 yelling [11] - 23 25, 24 3, 24 25, 25 2, 71 25, 72 3, 168 22, 169 1, 181 3, 181.11, 187.4 yellow [3] - 23 14, 144 18, 146 13 yep [4] - 142 22, 143 2, 154.15, 196 21 yes [165] - 5 18, 15 7, 16 15, 17 11, 17 13, 17 18, 18 1, 18 12, 18 19, 26 21, 30 23, 34 5, 35 22, 38 3, 39 15, 39 22, 40 7, 43 14, 50 25, 52 16, 53 4, 57 12, 59 4, 61 13, 61 21, 63 3, 64 14, 65 10, 65 25, 66 18, 66 22, 68 6, 69 15, 70 11,</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>
<p>Y [2] - 60 25, 80 3 yard [1] - 172 23 yards [8] - 126 7, 126 8, 171 10, 171 12, 171 13, 190 17 Yeah [7] - 25 3, 38 19, 51 5, 54 25, 55 20, 118 17, 144 5 yeah [123] - 8 5, 9 3, 9 11, 13 5, 14 19, 14 22, 16 2, 19 9, 19 20, 19 24, 21 8, 21 10, 22 8, 22 24, 23 10, 23 17, 24 12, 24 22, 25 8, 26 8, 28 6, 28 10, 29 2, 29 20, 30 3, 31 12, 31 21, 32 12, 33 22, 35 3, 35 5, 35 10, 36 17, 37 3, 37 18, 37 22, 38 5, 38 12, 38 25, 39 3, 39 5, 39 12, 39 17, 39.18, 41 1, 42 3, 42 13, 43 3, 43 4, 43 6, 43 9, 44 17, 44.19, 45 7, 45 9, 45.13, 45 18, 45 19, 46 12, 47 1, 47 12, 47.13, 47 14, 48.15, 49 1, 49 20, 49 22, 50 8,</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>	<p>412 2, 412 9, 412 12, 412.21, 416 20, 417.12, 431 8, 431 25, 432 7, 435 19, 435 21, 438 15, 438 24, 439.21, 441 17, 448.1, 448 2, 448 12, 448 23, 452.7, 456 18, 456.20, 459 9, 459 17, 460 21, 469 20, 477 9, 480 3, 490 3, 491 19</p>

<p>196 1, 196 11, 197 8, 199 21, 203 9, 203 12, 203 17, 204 7 yet [3] - 154 13, 167 24, 168 25 York [1] - 133 7 You [1] - 13 20 you [977] - 5 4, 5 15, 6-18, 8 11, 9 16, 9 18, 10 24, 11 17, 13 11, 14 12, 14 23, 15 4, 15 6, 15 12, 16 6, 16 7, 16 9, 16 17, 16 18, 17 1, 17 3, 17 5, 17 8, 17 12, 17.17, 17 19, 17 21, 17 24, 18 4, 18.13, 18 15, 18 20, 18 23, 18 25, 19 1, 19 8, 19 10, 19.21, 20 7, 20 16, 20-17, 20 18, 20 22, 21 5, 21 6, 21 9, 21 11, 21 20, 21 22, 22 1, 22 10, 22 14, 22 17, 22 19, 22 25, 23 7, 23 11, 23 18, 23 19, 23 22, 23 25, 24 6, 24.9, 24:13, 24 15, 24 20, 24 23, 24.25, 25.2, 25 6, 25 16, 26 22, 28 8, 28-15, 28 24, 29 3, 29.5, 29 6, 29 22, 30.16, 30 21, 30 24, 30 25, 31 10, 31 19, 32 2, 32 6, 32 7, 32 11, 32 19, 32 20, 32 21, 33 12, 33 16, 33 18, 33 20, 33 23, 34 3, 34 6, 34 11, 34 13, 34 15, 34 23, 34 24, 35 4, 35 11, 35 14, 35 19, 35 23, 36 5, 36 11, 37 11, 37 14, 37 15, 37 16, 37 20, 37 23, 37 25, 38 2, 38 4, 38 10, 38 11,</p>	<p>38 12, 38 13, 38 16, 38 17, 38 20, 38 23, 39 7, 39-8, 39 14, 39 16, 39 21, 39 24, 39.25, 40 2, 40 3, 40 5, 40 8, 40 19, 40 21, 40 23, 41 13, 41 14, 41 22, 41 23, 42 4, 42 6, 42 10, 43 23, 43 24, 44 4, 44 5, 44 6, 44 7, 45 10, 45 15, 45 16, 45 17, 45 20, 45 22, 45 25, 46 2, 46 7, 46 13, 46 14, 46 15, 46 16, 46 17, 46 23, 46 24, 47 15, 48 2, 48 10, 48 24, 49-8, 49 16, 49 23, 50 2, 50 6, 50 17, 51 1, 51 2, 51 3, 51 6, 51 14, 51 24, 52 12, 52 15, 53 1, 53 6, 53 7, 53 9, 54 11, 54 14, 54 21, 54 24, 55 1, 55 2, 55 14, 55 17, 55 18, 55 24, 56 25, 57 3, 57 7, 57 10, 57 14, 58 22, 59 8, 59-9, 59 10, 59 14, 59 18, 59 19, 59 21, 59 24, 60 12, 60.13, 60 17, 60 22, 61 1, 61-3, 61 6, 61 7, 61 9, 61 16, 61 19, 61 22, 62 10, 62 17, 62 21, 62 25, 63 5, 63 7, 63 11, 63 16, 64 4, 64 8, 64 9, 64 12, 64 23, 64 24, 65 2, 65 7, 65 11, 65 14, 65 15, 65 19, 66 1, 66 3, 66 6, 66 11, 66 12, 66 14, 66 17, 66 23, 68 4, 68 14, 68 18, 68 25, 69 2, 69 13, 69 16, 69 22,</p>	<p>69 24, 69 25, 70 7, 70 8, 70 12, 70 13, 70 15, 70 22, 70 25, 71 6, 71 8, 71 20, 71 24, 72:3, 72-22, 72 25, 73 2, 73 4, 73 8, 73 12, 73 18, 73 19, 73.21, 74 9, 74 12, 74-13, 74 16, 74 19, 74 22, 74 23, 74 24, 75 2, 75 7, 75 8, 75 10, 75 18, 75 24, 76 2, 76 4, 76 9, 76-18, 76 19, 77 3, 77 8, 77 9, 77 16, 77 18, 77 19, 78 7, 78 9, 78 19, 78 20, 78 21, 78 24, 79 2, 79 6, 79 11, 79 13, 79 14, 79 16, 79 23, 80 4, 80 6, 80 14, 80 21, 80 22, 80 23, 80 25, 81 1, 81 10, 81 15, 81 16, 81 24, 82 6, 82 8, 82 12, 82 14, 82 15, 82 16, 82 20, 82 22, 83 1, 83 5, 83 8, 83 17, 83 23, 84 2, 84 5, 84.7, 84 13, 85 1, 85-5, 85 22, 85 25, 86 7, 86 10, 86 18, 87 17, 87 24, 88 16, 89 18, 90 11, 90 13, 90 21, 91 5, 91 9, 91 10, 91 12, 91 19, 91 23, 92 5, 92 9, 92 12, 92 16, 92 21, 92 25, 93 1, 93 2, 93 17, 93 22, 94 1, 94 9, 94 13, 95 13, 95-20, 95 22, 96 7, 96 21, 96 23, 96 24, 96 25, 97 7, 97 9, 97 18, 97 24, 98 1, 98 4, 98 5, 98 6, 98 9, 98 12, 98 15, 98 18, 98 24, 99 1, 99 4, 99 7, 99 11,</p>
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99 14, 99 22, 99.24, 100 11, 100 14, 100 19, 101 5, 101 11, 101 15, 101 20, 102 13, 102 20, 102 23, 102 24, 103 5, 103 8, 103 9, 103 10, 103 12, 103 21, 103 22, 103 24, 104 10, 104 11, 104 24, 105 16, 105 17, 105 22, 106 23, 107 5, 107 9, 107 21, 107 24, 108 3, 108 6, 108 20, 108 24, 110 12, 111 6, 111 7, 111 11, 111 16, 111 17, 111 24, 112 2, 112 6, 112 13, 112 14, 112 15, 112 19, 112 24, 113 12, 113 15, 113 18, 113 23, 114 2, 114 4, 114 6, 114 8, 114 14, 114 18, 114 20, 114.24, 115 4, 115 10, 115 12, 115 17, 115 22, 116.1, 116.3, 116 6, 116 10, 116.12, 117 3, 117.4, 117 7, 117 13, 117 15, 117 16, 117 22, 118 4, 118 8, 118 9, 118 10, 118.13, 118 14, 118 15, 118 19, 118 22, 119 5, 119 6, 119 8, 119 9, 119 18, 119 21, 119 22, 120 4, 120 10, 120 14, 120 22, 120 23, 120 25, 121 1, 121 4, 121 7, 121 13, 121 15, 122 3, 122 5, 122 14,	122 15, 122 17, 122 24, 123 3, 123 6, 123 10, 123 12, 123 13, 123 14, 123 15, 123 17, 124 1, 124 4, 124 8, 124 9, 124 15, 124 18, 124 21, 124 22, 124.25, 125 2, 125 8, 125 9, 125 10, 125 13, 125 16, 125 20, 125 23, 126 16, 126 17, 126 21, 127.7, 127 10, 128 5, 128 17, 128 18, 128 20, 129 2, 129 4, 129 6, 129 11, 129 24, 129 25, 130 1, 130 4, 130 13, 130 14, 130 16, 130 23, 131 2, 131 4, 131 9, 131 12, 131 13, 131 16, 131 17, 131 19, 131 23, 132.3, 132 12, 132-18, 132 19, 133-1, 133.5, 133.8, 133 9, 133-12, 133 20, 133.23, 133 25, 134 5, 134 7, 134 11, 134 16, 134 17, 134 21, 134.24, 135 1, 135.2, 135.3, 135 18, 135 22, 135 24, 135 25, 136 2, 136 16, 136.18, 136 25, 137 5, 137.7, 137 20, 138 16, 138 17, 138 18, 138 22, 139 2, 139 9, 139.12, 139 19, 139 22, 140.1, 140.7, 140 8, 140.14, 140 24, 140 25, 141 1, 141.3, 141 4, 141.6,	141 11, 141 12, 141 23, 142 4, 142 5, 142 7, 142 15, 142 23, 142 25, 143 4, 143 8, 143 10, 143 15, 144 9, 144:11, 144 15, 144:19, 144 24, 145.3, 145 6, 145.19, 145 20, 145.25, 146 4, 146 8, 146 10, 146:17, 146 20, 146 22, 146 24, 146 25, 147 1, 147 6, 147 7, 147 10, 147 14, 147 15, 147 24, 148 8, 148 14, 148 15, 148 20, 148 21, 148 24, 149 4, 149 11, 149 14, 149 22, 150 10, 150 18, 150 20, 150.23, 151 10, 151 23, 151 25, 152 9, 152 19, 153.3, 153 6, 153.9, 153 10, 154.5, 154 8, 154 9, 154 10, 154 16, 155 13, 155 17, 155 23, 156 3, 156 8, 156 9, 156 13, 156 17, 156 19, 156 22, 157 5, 157 7, 157 19, 158 12, 158 16, 159 1, 159 3, 159 4, 159 15, 159 18, 159 21, 159 22, 160 6, 160 8, 160 16, 160 17, 160 23, 160 24, 161 2, 161 12, 161 13, 161 14, 161 18, 161 21, 161 23, 162 9, 162 10, 162 19, 162 21, 162 22, 162 24, 163 7, 163 11, 163 13,
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