

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE DISTRICT OF OREGON
 3 EUGENE DIVISION
 4 JAMES M. CLEAVENGER,)
 5 Plaintiff,) Case No. 6:13-cv-01908-DOC
 6 v.)
 7 CAROLYN McDERMED, BRANDON) September 22, 2015
 8 LEBRECHT, and SCOTT CAMERON,)
 9 Defendants.) Portland, Oregon
 10

11 TRIAL DAY 9
 12 TRANSCRIPT OF PROCEEDINGS
 13 BEFORE THE HONORABLE DAVID O. CARTER
 14 UNITED STATES DISTRICT COURT JUDGE
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 20
 21
 22
 23
 24
 25

1 INDEX
 2 DEFENDANT'S WITNESSES:
 3 BRANDON LEBRECHT
 4 Direct Examination 2376
 5 Cross-Examination 2410
 6 Redirect Examination 2467
 7 Recross-Examination 2471
 8 NICOLE COMMISSIONG
 9 Direct Examination 2473
 10 Cross-Examination 2479
 11 Redirect Examination 2485
 12 Recross-Examination 2485
 13 CHELSEA BRANDENBURG
 14 (Deposition testimony read.)
 15 Direct Examination 2491
 16 Cross-Examination 2497
 17 SCOTT CAMERON
 18 Direct Examination 2505
 19 Cross-Examination 2550
 20
 21
 22
 23
 24
 25

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 25 * * *

1 Lebrecht - D
 2 TRANSCRIPT OF PROCEEDINGS
 3 THE COURT: We're back in session. The jury is
 4 present. Good morning. Parties are present.
 5 And, Lieutenant, if you would like to retake the witness
 6 stand, please.
 7 Counsel, if you would like to continue your direct
 8 examination.
 9 BRANDON LEBRECHT,
 10 called as a witness in behalf of the Defendant, being
 11 previously duly sworn, is examined and testified as follows:
 12 DIRECT EXAMINATION
 13 BY MS. COIT:
 14 Q. Good morning, Lieutenant Lebrecht.
 15 A. Good morning.
 16 Q. So we left off yesterday talking about some videos that
 17 you discussed with Mr. Cleavenger as part of your performance
 18 review. Do you recall that?
 19 A. Yes.
 20 Q. So I want to go through just a bit of the audio from that
 21 meeting. But, first, can you tell us when the meeting was that
 22 you discussed these videos with Mr. Cleavenger, the second one ?
 23 A. The second one was August 13, 2012.
 24 Q. And who was at that meeting?
 25 A. It was me; Mr. Cleavenger; Randy Wardlow, who was with

1 human resources; and Lois Yoshishige, who was with the SEIU
 2 union, representing Mr. Cleavenger.
 3 Q. Do you recall about how long that meeting was?
 4 A. I think it's up to about four hours, maybe. I believe it
 5 began about 11:00 a.m.
 6 Q. And was this a prearranged meeting with Mr. Cleavenger and
 7 his union steward?
 8 A. Yes.
 9 Q. What was the purpose of the meeting?
 10 A. To go over a lot of videos and discussions of officer
 11 safety, and it was structured at that time for retraining plan.
 12 It was an informal conference setting and not an interrogation.
 13 Q. Earlier we played a portion -- the first portion of that
 14 meeting with Mr. Cleavenger. Do you recall that?
 15 A. Yes.
 16 Q. And that's the same meeting we're talking about here
 17 today?
 18 A. Yes, it is.
 19 MS. COIT: Counsel, I'll play -- Your Honor, this is
 20 351I.
 21 THE COURT: "I." Thank you.
 22 MS. COIT: I'll play portions, so I'll give time
 23 stamps.
 24 THE COURT: All right.
 25 ///

1 BY MS. COIT: (Continuing)
 2 Q. So, again, for the jury, the voices that we'll hear on
 3 this audio are who?
 4 A. Me, Mr. Cleavenger, Randy Wardlow, and Lois Yoshishige.
 5 MS. COIT: Counsel, 52, 10 to 58.
 6 THE COURT: Are 52, 10 to 58.
 7 MS. COIT: And two hours, 10 minutes to two hours, 21
 8 seconds.
 9 THE COURT: Two hours, 10 minutes to two hours, 21
 10 seconds.
 11 MS. COIT: Two hours, 34 minutes --
 12 THE COURT: Two hours, 34 minutes.
 13 MS. COIT: -- to two hours, 58 minutes and 50
 14 seconds.
 15 THE COURT: Okay.
 16 MS. COIT: Two hours, 43 minutes to two hours and 50
 17 minutes.
 18 THE COURT: Two hours, 50 minutes. Okay.
 19 If you play those all the way through, and if you want to
 20 go back and ask questions about any particular area, you can
 21 replay it.
 22 MS. COIT: Thank you.
 23 THE COURT: All right.
 24 MS. COIT: Christy, we don't have audio again.
 25 DEPUTY COURTROOM CLERK: Can you try to start one

1 more time?
 2 (Audio played for the jury.)
 3 BY MS. COIT: (Continuing)
 4 Q. All right. Lieutenant Lebrecht, at the end of that we
 5 just -- there was discussion about a training plan that was
 6 going to be drafted.
 7 A. Yes.
 8 Q. Did you ultimately put one together?
 9 A. Yeah. I believe it was finalized sometime late in
 10 September.
 11 MS. COIT: Permission to approach, Your Honor?
 12 THE COURT: You may.
 13 MS. COIT: Exhibit 350.
 14 THE COURT: Three-five-zero?
 15 MS. COIT: Yes.
 16 BY MS. COIT: (Continuing)
 17 Q. Do you recognize Exhibit 350?
 18 A. Yes.
 19 Q. What is that?
 20 A. That is the patrol retraining plan for Mr. Cleavenger
 21 that's dated September 13, 2012.
 22 Q. Did you create this document?
 23 A. I know I had a part of creating it. I don't know if I did
 24 it all myself or HR. I don't remember.
 25 MS. COIT: Defendants offer 350.

1 THE COURT: Received.
 2 MR. JASON KAFOURY: No objection.
 3 MS. COIT: Permission to publish?
 4 THE COURT: You may.
 5 BY MS. COIT: (Continuing)
 6 Q. All right. So bottom of the first paragraph, it talks
 7 about kind of what we just heard in the audio, training is
 8 estimated to take approximately eight weeks, four full weeks
 9 with two FTOs, Officers Lillengreen and Brathwaite.
 10 Why did you choose those two officers?
 11 A. Because I feel that they were the most tactically
 12 proficient that we had at the time and they had experience in
 13 training some people.
 14 Q. Then, again, these are going to be the focuses of the new
 15 retraining plan?
 16 A. Yes.
 17 Q. All right. Exhibit 350, if you know, was it ever given to
 18 Mr. Cleavenger?
 19 A. Not that I'm aware of.
 20 Q. Do you know why?
 21 A. I don't know.
 22 Q. Did Mr. Cleavenger, as far as you know, decline the
 23 retraining offer?
 24 A. I know there was discussions with Randy Wardlow and either
 25 Mr. Cleavenger or his union rep and there were discussions

1 about the retraining, but I don't think he was accepting the
 2 terms that were offered to him, from what I recall.
 3 Q. Okay. So but as far as you know, this plan that you
 4 created was never implemented?
 5 A. It was never implemented. That's correct.
 6 Q. All right. There's been some testimony about training
 7 requests that Mr. Cleavenger made. Do you recall that?
 8 A. Yes.
 9 Q. Now, first off, do you know how many requests he has said
 10 in this lawsuit that he submitted and were denied?
 11 A. Well, I believe he said 33 that were submitted, denied
 12 and/or completely ignored.
 13 Q. Is that number accurate?
 14 A. To my recollection, no.
 15 Q. Why is that?
 16 A. Well, because when he would submit them, he would number
 17 them, and, to my knowledge, there was 20 of those. But then
 18 after he no longer worked in our building, 13 more were found
 19 in his box that had no numbers on them, so I didn't believe
 20 they were ever submitted.
 21 Q. Were those 13 ever submitted to you?
 22 A. No.
 23 Q. All right. The training requests -- we've seen a list --
 24 in your opinion, that was the sort of training that
 25 Mr. Cleavenger was in need of at this point in his career?

1 A. I think a lot of it didn't apply to public safety
 2 officers, and he was a new officer, and, you know, the
 3 lieutenant for professional standards and training, combined
 4 with the chief, usually determined who received what training.
 5 I know for a fact I didn't see a lot of those that he said
 6 were submitted.
 7 Q. Was your opinion that he needed a more remedial program,
 8 like we just saw in Exhibit 230?
 9 A. Yes. Definitely.
 10 Q. Now, there's been discussion of a -- of a meeting that you
 11 had with Mr. Cleavenger about these training requests. Can you
 12 tell us what led to you having this meeting with
 13 Mr. Cleavenger?
 14 A. Yes. Mike Morrow sent an email to both me and
 15 Sergeant Cameron about Mr. Cleavenger sending him an email,
 16 asking whether he had received any of the retraining requests
 17 that he submitted to his sergeant, which was Sergeant Cameron,
 18 and, aside from the email, Mike Morrow told me -- well, talked
 19 to me about following chain of command. So that was outside
 20 the email.
 21 So myself and Sergeant Cameron brought Mr. Cleavenger into
 22 the office, we were all seated, and we were talking to him
 23 about following the chain of command; the proper chain of
 24 command in training requests. I might have said, "Don't go
 25 behind my back," because that's circumventing the chain of

1 command.
 2 He's complaining about the sergeant who reports to me in
 3 this email. So he wasn't complaining about me at all. It was
 4 about the sergeant. I remember saying, you know, "I got you --
 5 you sent this email to Mike Morrow," and he says, "I never sent
 6 any email." And so I said, "Well, actually you did, and you
 7 just need to follow the chain of command." And it just kept
 8 going back and forth a few times that he never submitted an
 9 email. He didn't go to Mike Morrow. And at one point I said,
 10 "Jim, I don't know why you're lying to me." I said, "If you
 11 send an email, there's a chain of" -- you know, there's like
 12 a -- I don't remember the exact words I used, but there's a
 13 chain that can show that something was actually sent. It's
 14 because it was in an email so it could be tracked. And he
 15 still denied sending it.
 16 And I remember Sergeant Cameron said, "Well, I got the
 17 email, too." Because it got sent to both of us. And so it
 18 ended up just saying, "You just need to follow the chain of
 19 command and submit training requests that apply to your
 20 position," and that was it.
 21 Q. At that meeting did you ever threaten him that if he went
 22 to Mike Morrow that you would find out about it?
 23 A. No. I didn't tell him we were friends either.
 24 Q. Did you raise your voice at that meeting?
 25 A. No.

1 Q. Did you give Mr. Cleavenger at that meeting any reason to
 2 believe that he could not go to Mike Morrow if he had
 3 complaints or concerns that he needed to discuss with internal
 4 affairs?
 5 A. No. Again, the complaint that he sent -- it wasn't even a
 6 complaint, it was an inquiry to Mike Morrow, and it was
 7 discussing the sergeant. Sergeant Cameron. So it would make
 8 absolutely no sense for me to tell him, "You can't go to
 9 Mike Morrow, because" -- because of something to do with me,
 10 because it didn't even have anything to do with me.
 11 Q. And it was Mike Morrow that asked you and Sergeant Cameron
 12 to talk to Mr. Cleavenger about this?
 13 A. Yes. He sent us both the same email.
 14 Q. After Mr. Cleavenger was put on parking assignment --
 15 well, actually, let's go to the meeting first where he's given
 16 the written reprimand and the notice of reassignment. Were you
 17 there?
 18 A. Yes.
 19 Q. Tell us what happened there.
 20 A. Well, I remember Sergeant Cameron handed him the
 21 reprimand. He read it, and then he became very defensive and
 22 said that he never said that we should be talking to Hermens
 23 instead of him; he never said he could read the numbers as he
 24 passed Hermens' vehicle. And then I told him he, in fact, did
 25 say that. And then he got pretty defensive and was saying did

1 I record him saying that.
 2 At that point it became confrontational, so I go, "This
 3 meeting is over. You know, you can appeal it if you want, but
 4 we're done discussing this."
 5 Q. Did you give him the notice of reassignment from the
 6 chief?
 7 A. Yes. I handed that to him.
 8 Q. Was there any discussion about that notice?
 9 A. I don't recall there was. I know he read it.
 10 Q. Do you recall at that meeting Mr. Cleavenger telling you
 11 and Sergeant Cameron that he intended to file a grievance of
 12 his written reprimand?
 13 A. He didn't say that to me, because I left the room to make
 14 a copy. And that was never mentioned to me at that time.
 15 Q. So after Mr. Cleavenger was put on parking assignment --
 16 do you recall the date that he was transferred to parking
 17 assignment?
 18 A. The date on the letter was 5/18/12.
 19 Q. So May 18, 2012?
 20 A. Yes. Correct.
 21 Q. After he was put on parking assignment, did you observe
 22 him continuing to engage in PSO, public safety officer,
 23 functions?
 24 A. Well, I can't say I personally observed it, but the
 25 feedback that I was receiving is that he was calling things in

1 that were public safety officer related.
 2 Q. Tell us a little bit about that. What was the feedback
 3 you were getting? What was the complaints?
 4 A. Well, I had Hermens come to me and he told me, for one
 5 thing, Mr. Cleavenger was wearing a personal video recorder,
 6 and Hermens told me that he felt that Cleavenger was calling in
 7 bogus calls to try to film people doing stuff so he could
 8 complain about them.
 9 I don't remember the exact specifics about what Hermens
 10 was saying, but I know he talked about one that had to do with
 11 the beer can at the river, as an example. I believe that was
 12 Chris Waggoner's issue.
 13 Q. Were you aware of why Chief McDermed put Mr. Cleavenger on
 14 parking assignments?
 15 A. Well, I believed it was because he transported the woman
 16 with the loaded firearm.
 17 Q. Were you aware that she no longer wanted him engaging in
 18 any sort of enforcement actions?
 19 A. That was my impression.
 20 Q. In your opinion, was his continuing to call out over the
 21 radio the suspicious activities, engaging in public safety
 22 officer functions?
 23 A. Yeah. I think it was outside the scope of the parking
 24 duty he was assigned.
 25 Q. So there's also been discussion with -- of a meeting with

1 Mr. Cleavenger telling him to stop making these callouts. Do
 2 you recall that?
 3 A. Yes.
 4 Q. And were you present for that?
 5 A. Yes. I was asked to stand by, by Sergeant Cameron.
 6 Q. Tell us what you recall about that incident.
 7 A. Not much, because I wasn't even involved in the
 8 discussions about the callouts, as far as telling him that he
 9 could only call out certain things.
 10 Sergeant Cameron saw me in the hallway, because the
 11 lieutenant that was supervising Mr. Cleavenger at the time was
 12 Lieutenant Bechdolt. He was off that day.
 13 So Sergeant Cameron caught me in the hall and asked me to
 14 stand by. He had to talk to him about something. And I don't
 15 remember any of the conversation. I just remember saying --
 16 either Sergeant Cameron or me said I'm just there as an
 17 observer.
 18 Q. All right. Did you get a follow-up email from
 19 Mr. Cleavenger asking specifically to clarify what was told to
 20 him at that meeting?
 21 A. Yes.
 22 Q. Did you respond to that?
 23 A. Yes.
 24 Q. What did you respond?
 25 A. Well, I basically told him I didn't want to engage in his

1 performance over email, or something to that effect. I told
 2 him if he wanted clarification, he could come meet with me,
 3 because I would have had to go -- I didn't put this part in the
 4 email, but I would have had to go to talk to Mike Morrow to
 5 figure out the exact details about what this callout procedure
 6 was to be.
 7 Q. Did Mr. Cleavenger ever complain to you that he felt this
 8 instruction in that meeting was a violation of federal law?
 9 A. I don't remember hearing that at all in that meeting.
 10 Q. Did Mr. Cleavenger ever take you up on your offer to talk
 11 with him in person about what his responsibilities were
 12 supposed to be?
 13 A. No. He sent a response that was unless something along
 14 the lines -- unless my understanding is wrong, then I don't
 15 think we need to meet. It was something like that.
 16 MS. COIT: Your Honor, permission to approach?
 17 THE COURT: You may.
 18 MS. COIT: This is Defendants' Exhibit 414.
 19 THE COURT: 414. Thank you.
 20 BY MS. COIT: (Continuing)
 21 Q. All right. There's been a lot of testimony in this case
 22 that Mr. Cleavenger was the most active officer on his shift.
 23 Do you recall that?
 24 A. Yes.
 25 Q. Do you recognize what I handed you?

1 A. Yes. Basically his activity from January 1, 2010, to
 2 September 10 -- well, it says September 10, 2015. That's when
 3 it was run. But if I give an accurate date here, it just
 4 basically would be until he no longer worked there at some
 5 point. September 2012, I believe. So it would be essentially
 6 from early 2011 to September 2012.
 7 Q. All right. And is this a record that's kept in the normal
 8 course of business for the University of Oregon Police
 9 Department?
 10 A. Yes.
 11 Q. And it is specific to Mr. Cleavenger; correct?
 12 A. Yes.
 13 MS. COIT: Your Honor, Defendants offer 414.
 14 THE COURT: Received.
 15 MS. COIT: Permission to publish.
 16 THE COURT: You may.
 17 BY MS. COIT: (Continuing)
 18 Q. Let's look at the first four pages. Fair to say there's a
 19 lot of bike impound activity going on?
 20 A. Yeah. There appears to be well over 100. Maybe a couple
 21 hundred.
 22 Q. And starting on page four, the damage category, do you
 23 know what that is?
 24 A. That's most likely criminal mischief reports, vandalism,
 25 because he took a lot of those reports.

1 Q. Would that be graffiti-type reports?
 2 A. Yeah. The majority probably would be.
 3 Q. Flip to the second page.
 4 A. I remember seeing a lot of graffiti reports.
 5 Q. So there's a lot of those reports, as well; correct?
 6 A. Yes.
 7 Q. Let's go back to the first page.
 8 A. Okay.
 9 Q. So up at the top. Arrests. There's only two arrests?
 10 A. Let me look through the rest here real quick.
 11 Q. Okay.
 12 A. Because it looks like it's in alphabetical order. I can't
 13 see anything else that is titled "arrest."
 14 Q. So throughout his entire time at the University of Oregon
 15 Police Department, there's a record of him making two arrests?
 16 A. Per this log sheet that's what it shows. I know he had a
 17 couple of warrant arrests at least.
 18 Q. Okay. On a lot of these bike impounds -- for example,
 19 let's look on page 2.
 20 A. Okay.
 21 Q. There's four there for -- or five, I guess, for June 10,
 22 2012. Is there a reason that there's separate reports for each
 23 of these?
 24 A. It -- I don't know. I mean, if you find them all at the
 25 same area, usually it could just be one report, but if they're

1 different areas, then you would have different reports. I
 2 don't know if he got three or four at one location and took a
 3 different report for each or if they're all different.
 4 Q. Is it up to the officer whether or not he writes a
 5 separate report for each bike impound or --
 6 A. Yeah. We had no policy on that.
 7 Q. Okay. All right. I want to jump ahead now to June of --
 8 well, I guess May of 2014.
 9 A. Okay.
 10 Q. Well, I guess March. I won't jump that far. March of
 11 2014. You learn that Mr. Cleavenger has been given
 12 reinstatement rights in the arbitration?
 13 A. Yes.
 14 Q. Can you tell me what you recall when you first recall
 15 discussing with Chief McDermed or other command staff the idea
 16 of sending -- submitting the information to the district
 17 attorney about Mr. Cleavenger?
 18 A. Well, submitting the information was well after the
 19 initial arbitration decision, because, initially, I responded
 20 to something else, and that was in response to a global
 21 settlement. And so my response at that time was to try to use
 22 information to get him to settle so he wouldn't come back to
 23 the department. But as far as actually talking about
 24 submitting the *Brady* stuff, I don't know. April, May. I'm not
 25 quite sure.

1 Q. Had you ever participated in a *Brady* information
 2 submission before?
 3 A. No.
 4 Q. At that point in time, back in May, June 2014, what was
 5 your understanding of the department's responsibility with
 6 regard to possible *Brady* information?
 7 A. You're talking about May or June?
 8 Q. Yes.
 9 A. Well, after reading all the stuff from Alex Gardner and
 10 discussing with the chief that said we're obligated to provide
 11 information.
 12 Q. What sort of information?
 13 A. Potential witness disqualifier information. If they --
 14 you believe they're untruthful in their duties or if they
 15 committed certain years. But I think the crimes are more along
 16 the lines of theft and fraud, from my recall.
 17 Q. Back at that time period, May, June, 2014, did you believe
 18 that the University of Oregon Police Department had information
 19 that needed to be turned over to the district attorney?
 20 A. Yeah. I just wasn't happy that it took a couple of years.
 21 Q. All right. Did you prepare a packet of information to
 22 take to the district attorney?
 23 A. Yes.
 24 Q. Tell me how that came about, how that became your job.
 25 A. Well, the chief asked me to prepare a *Brady* report, and I

1 expressed some concern because of -- it's been a couple years .
 2 He just won his arbitration, got the reinstatement rights, and
 3 she discussed with me that it's because of the Alex Gardner
 4 information that came through. And so that's when I
 5 determined, okay, well, it's definitely not illegal, immoral,
 6 or unethical. You know, it's based on the information that
 7 says departments are obligated to provide it. I was concerned
 8 that it would look like retaliation based on the timing.
 9 Q. At this point in time you had been named as a defendant in
 10 this lawsuit; correct?
 11 A. That's correct, yeah. And I also said I didn't want to
 12 get sued again.
 13 Q. All right. In your role as a lieutenant, could you
 14 disobey an order of your chief?
 15 A. No lawful order. You can't disobey.
 16 Q. No lawful?
 17 A. Correct.
 18 Q. In your opinion, after speaking with the chief and knowing
 19 what information you had, did you believe this was a lawful
 20 order?
 21 A. Yes.
 22 Q. At this time and maybe still today, there are no actual
 23 rules or policies in the state of Oregon on how to prepare a
 24 *Brady* submission; is that correct?
 25 A. I'm not aware of any.

1 Q. So did you do your best to put together the information
 2 that you thought was relevant to the district attorney's
 3 inquiry?
 4 A. Yes.
 5 Q. Did you provide the initial packet of information you put
 6 together to Chief McDermed?
 7 A. Yes.
 8 Q. And did she give you comments about that initial packet?
 9 A. I remember she talked about there was too much information
 10 at one point. I remember we did have a discussion, you know, I
 11 vaguely remember, about whether we can or can't provide the
 12 arbitration decision; whether we're allowed to share that
 13 information at that time. I just remember she said I need ed to
 14 shorten the material, but she didn't say what needed to be
 15 shortened.
 16 Q. Do you recall yourself personally having any concerns
 17 about the DA reading the arbitration decision?
 18 A. The only concern I could remember is that I didn't know if
 19 we were supposed to share it at that time.
 20 Q. All right. So did you make the packet smaller?
 21 A. Yes.
 22 Q. In your opinion, was it still an accurate portrayal of the
 23 information you believe University of Oregon Police Department
 24 had regarding Mr. Cleavenger's credibility?
 25 A. Yes, I believe it was.

1 Q. Did you believe Chief McDermed was instructing you to
 2 submit this information to retaliate against Mr. Cleavenger?
 3 MR. JASON KAFOURY: Objection. Beyond his personal
 4 knowledge.
 5 MS. COIT: Based on his personal discussions with the
 6 chief and his opinion.
 7 THE COURT: Overruled.
 8 You can answer that.
 9 THE WITNESS: Not at all. I believe she instructed
 10 me to do it because she felt obligated.
 11 BY MS. COIT: (Continuing)
 12 Q. Let's actually look at the material you provided.
 13 A. Okay.
 14 MS. COIT: Your Honor, permission to approach?
 15 THE COURT: You may.
 16 MS. COIT: It's Exhibit 150. It's been offered and
 17 received in plaintiff's case.
 18 THE COURT: Thank you.
 19 MS. COIT: Permission to publish, Your Honor?
 20 THE COURT: You may.
 21 BY MS. COIT: (Continuing)
 22 Q. All right. Lieutenant Lebrecht, do you recognize
 23 Exhibit 150?
 24 A. Yes.
 25 Q. What is this?

1 A. That's the cover sheet of the *Brady* disqualifier review
 2 information I provided to Patty Perlow.
 3 Q. Did you -- is this a cover memo that you put on top of the
 4 actual information that you submitted?
 5 A. That's the way I recall it, yes.
 6 Q. And did you draft this memo yourself?
 7 A. Yes.
 8 Q. Along with this cover memo and the documents that went
 9 with it, did you also provide the entire internal affairs
 10 investigation that Mike Morrow did?
 11 A. Yes. Including any attachments or videos. The entire
 12 package.
 13 Q. Okay. Let's look at the memo that you drafted. The last
 14 paragraph on the first page. So this paragraph, why are you
 15 including this information in the memo?
 16 A. I just believe based on the fact that he was no longer an
 17 employee at the time and he had been terminated after the
 18 internal affairs investigation, so I think the main thing was
 19 that he was no longer an employee at the time. That just kind
 20 of briefly summarizes some stuff from the internal affairs
 21 investigation.
 22 Q. All right. So we put up the entire paragraph. It
 23 continues on to the next page.
 24 Take a look at what's up on the screen. Are you providing
 25 the DA with the context of Mr. Cleavenger's employment and what

1 has happened since that date?
 2 A. Yes.
 3 Q. And you say: The arbitrator upheld aspects of the written
 4 reprimand and the findings from the internal affairs
 5 investigation, but felt the punishment was too severe.
 6 Do you see that sentence?
 7 A. Yes.
 8 Q. Where did you get that sentence from, that information?
 9 A. Well, I saw -- basically, I read through the arbitration
 10 decision, for one. I also saw some stuff summarized from
 11 general counsel at the University of Oregon . And the "aspects"
 12 word I used myself because that means held up parts of a
 13 written reprimand and findings. It doesn't mean all the
 14 findings. It just means some findings of the internal affairs
 15 investigation and felt the punishment was too severe.
 16 Q. I left out a sentence. Cleavenger was awarded
 17 reinstatement rights with backpay per the arbitrator's
 18 decision.
 19 Is that an accurate portrayal of the arbitrator's
 20 decision?
 21 A. I believe it is.
 22 Q. If District Attorney Gardner had contacted you and said,
 23 "I want to read the decision," would you have given it to him?
 24 A. I would have checked with general counsel first and made
 25 sure we could provide it.

1 Q. All right.
 2 A. Or have the chief do that.
 3 Q. The last sentence you -- well, second-to-last, you inform
 4 the DA that Mr. Cleavenger currently works as a reserve police
 5 officer with the Coburg Police Department, and he's
 6 commissioned as a lawyer through the state of Washington.
 7 Again, was this just background information?
 8 A. Just background information.
 9 Q. Let's go to the second paragraph on page 2. What is the
 10 point of this paragraph?
 11 A. Well, the point there is that in the internal affairs
 12 investigation that Mr. Cleavenger had told Mike Morrow that his
 13 usual procedure was to advise people up front he was recording .
 14 And I know, based on the performance review I put together,
 15 there was about 25 other occasions which rendered that
 16 statement to be false.
 17 Q. Was -- all this information contained in this paragraph,
 18 is it accurate?
 19 A. Yes.
 20 Q. All right. Let's go to the next paragraph.
 21 It says: During the course of both investigations,
 22 Cleavenger provided false, misleading, and deceptive responses
 23 to questions and questioned the accuracy of the video evidence
 24 that was taken by his own patrol vehicle. This was a
 25 continuous pattern that Cleavenger had displayed previously

1 with supervisors when questioned and/or counseled for
 2 performance-related issues during his course of employment with
 3 UOPD.
 4 Was that your opinion at the time?
 5 A. Yes, it was.
 6 Q. Sitting here today, do you still believe that to be
 7 accurate?
 8 A. Absolutely.
 9 Q. Then it says: Below are examples of untruthfulness and
 10 deceptive response.
 11 Why did you give examples to the DA?
 12 A. Just to provide a little bit of background to what I just
 13 said.
 14 Q. Okay. You weren't asking the DA to take your word for it ?
 15 A. No. My understanding is they would do their own
 16 investigation.
 17 Q. Let's go to page 3 -- sorry, back on page 2. You start
 18 with the internal affairs investigation as examples. Any
 19 reason why you started with that?
 20 A. I think that's because that's basically what this was
 21 mainly focused on, the internal affairs investigation, and
 22 based on statements that were made there is why I tied in some
 23 other things.
 24 Q. Okay. All right. Page 3. First full paragraph. This
 25 all deals with the recordings and failing to advise people that

1 he's recording them. What about that whole issue that did you
 2 find to be dishonest?
 3 A. Well, these were based on the dash cam, which is Watch
 4 Guard, through our system, as were all those other videos that
 5 I had in mine. And, you know, he advised people on about three
 6 occasions in, I don't know, 28 or 29 different times. And so I
 7 felt that it was -- actually, his usual thing was to not advise
 8 people he was recording them through Watch Guard, because this
 9 was directly related to Watch Guard. Nothing to do with the
 10 digital PUMA audio recording, which are completely different.
 11 Q. Okay. Was that consistent with the finding Mike Morrow
 12 made in his internal affairs investigation?
 13 A. I believe so.
 14 Q. All right. Then in the next two paragraphs you discuss
 15 contacts you had with Chief Chase regarding Junction City's
 16 policies.
 17 A. Yes.
 18 Q. Can you explain those for us?
 19 A. Yeah. I remember part of stuff I read in the internal
 20 affairs investigation that Mr. Cleavenger had said that only
 21 one car was equipped with Watch Guard or mobile audio video,
 22 however he phrased it. So I talked to Chief Chase to find out
 23 if that was, in fact, accurate, and then he told me it wasn't.
 24 Then he told me there was -- whatever is here, maybe four
 25 vehicles, or so, that had Watch Guard, so it had nothing to do

1 with what vehicles Mr. Cleavenger had access to. The statement
 2 was Junction City PD only had one equipped with Watch Guard ,
 3 and that was usually broken.
 4 So Chief Chase felt that was inaccurate when I talked to
 5 him, so he gave me this other information.
 6 Q. Let's look at page 4. All right. Take a minute to review
 7 that and refresh your memory and tell the jury what you were
 8 trying to convey to the district attorney here.
 9 A. Okay. Okay. It's based on his statement that he made in
 10 his internal affairs investigation that he always acts in good
 11 faith. He never deliberately disregards instructions,
 12 policies, or department procedures. And, as I stated
 13 yesterday, that we had to discuss the grooming issues with him
 14 more than once. He even said he was well aware of the policy .
 15 Yet, he continued to come in unshaven. And also about Internet
 16 history, which I had researched for a previous issue based on
 17 some complaints a security guard had made.
 18 Q. Let me stop you there. Tell us about that. When did this
 19 occur?
 20 A. It was in 2012. There was an email about it. I don't
 21 remember when. Maybe April or May 2012. Not really sure. But
 22 it had to do with a security guard coming up to me and telling
 23 me that Mr. Cleavenger was sitting in the parking truck that he
 24 was assigned to and researching things on his personal computer
 25 and purchasing items at Best Buy and that sort of thing.

1 Q. So as a result of that complaint, did you ask to have his
 2 Internet history checked?
 3 A. Yes.
 4 Q. And that was in 2012?
 5 A. That it was.
 6 Q. So you didn't pull his Internet history in 2014 for this
 7 district attorney disclosure?
 8 A. No. Because I included it here. I mean, some of the
 9 things he was researching weren't work -related. I mean, some
 10 of the things he could say were. Bike lights, and that kind of
 11 thing. But researching lawyers, which, to me, obviously,
 12 probably had to do with finding something for a lawsuit;
 13 researching other jobs for different employment ; responding to
 14 wedding Evites and commenting that he hadn't had Chicago pizza
 15 in years. There was a lot of other things along those lines.
 16 Going into his personal email account and downloading
 17 timelines and pictures of Ronald Reagan that were obviously to
 18 be used in some arbitration and lawsuit to be named later.
 19 So to me he knew what the department policy was. He
 20 signed some things. And he knowingly violated it. So the
 21 statement that he always acted in good faith, never
 22 deliberately disregarded instruction, policy, and procedures, I
 23 felt wasn't accurate. That's why I put it in there. That
 24 included the Internet history.
 25 Q. So it wasn't the fact that he may have used the Internet

1 for personal use that you were turning over to the DA. It
 2 was --
 3 MR. JASON KAFOURY: Objection. Leading.
 4 THE COURT: Just reask the question, Counsel.
 5 BY MS. COIT: (Continuing)
 6 Q. Was your concern that he may have used the Internet for
 7 personal use, was that why you were turning that over to the
 8 DA?
 9 A. Definitely.
 10 Q. Was your concern that he was violating the policy -- or
 11 that he was deliberately violating the policy despite the fact
 12 he told Mike Morrow that he never did that?
 13 A. That's correct.
 14 MS. COIT: So let's go to the next page and pull up
 15 paragraph six.
 16 BY MS. COIT: (Continuing)
 17 Q. Tell us what paragraph six concerned.
 18 A. You want me to read it out loud or --
 19 Q. No. Just refresh your memory and describe for us why this
 20 is included in the materials to the district attorney.
 21 A. Okay. Okay. This is the one dealing with the student --
 22 her name was Madeline Eagan -- and the traffic stop made. I
 23 didn't -- I incorrectly put this in here that he said he didn't
 24 initiate the lights until the vehicle stopped. He had actually
 25 said that until the vehicle was stopped and he was behind the

1 vehicle. So I put it more in his favor here.
 2 But that's what this is commenting on and then him
 3 basically questioning the accuracy of the equipment when the
 4 Watch Guard system, the dash cam system, itself, puts in the
 5 bottom right-hand corner. It will say "lights" when the patrol
 6 lights were activated. So they were activated, from what I
 7 recall, about when he was somewhere in the middle of the
 8 student recreation center. She was stopped over on Onyx and, I
 9 believe, East 15th. I don't know. It could have been
 10 30 yards, or so, before he got there. It's just an estimate.
 11 But he had his lights on at that time. It wasn't when he
 12 actually pulled up behind her.
 13 Q. Again, this came from your reading of the internal affairs
 14 investigation and Mike Morrow's comments about Mr. Cleavenger's
 15 statements to him?
 16 A. That's correct.
 17 Q. And the last sentence says: Again, Mr. Cleavenger had
 18 provided an untruthful statement in an attempt to justify his
 19 actions.
 20 Why was it important that he was making an untruthful
 21 statement to justify his actions?
 22 A. Well, because I believe he did know that they weren't
 23 supposed to do traffic stops, and he didn't know what the
 24 findings were going to be, that it was essentially inconclusive
 25 because of the different versions that people thought was a

1 campus traffic stop. So I believe that he had told Mike Morrow
 2 that he didn't activate his lights until later, because he
 3 didn't want it to be viewed as a traffic stop.
 4 Q. Okay. All right. Let's look at paragraph 7. Now, this
 5 has to do with the -- Mr. Cleavenger's characterization of the
 6 letter of clarification that he gave to Lieutenant Morrow; is
 7 that correct?
 8 A. That's correct.
 9 Q. What about his statement to Morrow regarding the letter of
 10 clarification did you find to be evasive or untruthful?
 11 A. Well, as I recall correctly, this statement here is
 12 dealing with -- I think Mike Morrow was questioning on why he
 13 would say he tends to give warnings, but he should make her
 14 feel fearful for a short while. And then after saying that,
 15 why would you run the person for warrants if you're just going
 16 to give a warning. And then Mr. Cleavenger, in my opinion,
 17 alleged that he was running her for warrants because he
 18 received a clarification for not running somebody for warrants,
 19 and so he pretty much did it all the time after that.
 20 Q. Was that an accurate characterization of the clarification
 21 you gave him?
 22 A. No.
 23 Q. All right. Let's go to the next page. Later.
 24 Why did you feel it was important to include this
 25 information for the district attorney?

1 A. Well, based on the information after I talked to Junction
 2 City Police Chief Mark Chase that Mr. Cleavenger said there was
 3 only one vehicle equipped with a video system. It was often
 4 broken. Chief Chase contradicted that information when I
 5 talked to him.
 6 Then the fact that he said, "I've been up for 35 hours at
 7 the time of the statement and that did not impact my ability to
 8 voluntarily give a statement and my responses were true and
 9 accurate to the best of my recollection. My recall could have
 10 been impacted from this sleep deprivation."
 11 So to me that's just kind of putting a disclaimer out
 12 there. Even though it might look false, it's just my opinion.
 13 Even though the stuff I said might appear false, I didn't get
 14 much sleep, so it might have just slipped my mind because of
 15 that. That's how I took that.
 16 Q. Okay. So that is the entirety of the memo that you
 17 prepared for the DA; correct?
 18 A. Of that face sheet memo, yes.
 19 Q. Now, you also gave him all the supporting documents,
 20 including the entire internal affairs investigation and
 21 excerpts from your performance review; correct?
 22 A. Yeah. Little summaries of the videos from my performance
 23 review, from what I remember.
 24 Q. Well, let's look at -- I think it's a couple pages. Next
 25 page. All right. Are these the summaries? We looked at this

1 yesterday as well.
 2 A. Yes.
 3 Q. What did you believe the district attorney was going to do
 4 with this information?
 5 A. Well, I believed they would do their own investigation and
 6 determine if there was potential for disqualifying information
 7 regarding Mr. Cleavenger. If he needed anything else, he would
 8 have asked, because I put it at the bottom of the memo.
 9 Q. Did you do your best to give the district attorney
 10 everything you thought was relevant to his inquiry?
 11 A. I did.
 12 Q. Did you submit this information to the district attorney
 13 to retaliate against Mr. Cleavenger?
 14 A. Absolutely not.
 15 Q. A couple more things I want to touch on.
 16 Did you ever bring a football highlight tape to the
 17 office?
 18 A. No. There was talks about Adam Lillengreen trying to get
 19 me to bring a football highlight tape. I've never owned a
 20 football highlight tape of myself. He actually played one of
 21 his own for a few minutes at one point. So I don't know why
 22 I'm being accused of bringing a football highlight video.
 23 Q. So you've never brought a football highlight video to
 24 work?
 25 A. No. I've never owned one of myself.

1 Q. Did you have a conversation with Mr. Cleavenger about him
 2 eating lunch at the Occupy?
 3 A. Yes. I did.
 4 Q. Tell us about that.
 5 A. Well, it was -- he put himself out on the radio. Code
 6 seven, which is meal period. At Franklin and Onyx, which is
 7 right across the street from where the Occupy group was, Occupy
 8 Eugene. And I talked to him about that, and he said that he
 9 didn't eat there. I said, "Well, you said on the radio you
 10 did." And he told me he didn't say that.
 11 So I had to show him in the computer where he had put
 12 himself out there. And I said, "I can pull the radio traffic
 13 if you want, too."
 14 He said, "No. If it's in the computer, I must have said
 15 that."
 16 I said, "Well, if you didn't eat with them, why did you
 17 say that?"
 18 "Oh, I guess I was just tired, but I actually ate at a
 19 hotel." I believe he said Phoenix Inn at Franklin and Alder.
 20 I didn't know that Sergeant Cameron had talked to him
 21 earlier about the same issue. And from what I recall
 22 Sergeant Cameron telling me is it that Cleavenger told him --
 23 MR. JASON KAFOURY: Objection. Hearsay.
 24 THE COURT: Well --
 25 MS. COIT: Goes to his state of mind.

1 THE COURT: Overruled.
 2 THE WITNESS: -- that Mr. Cleavenger had told
 3 Sergeant Cameron that he was just merely getting paperwork
 4 together in the back parking lot behind Occupy Eugene.
 5 BY MS. COIT: (Continuing)
 6 Q. You were here when Officer Phillips testified; correct?
 7 A. Correct.
 8 Q. And you heard him say that he saw Mr. Cleavenger eating
 9 lunch at Occupy?
 10 A. Yes. He said he saw him eat a plate of noodles, I
 11 believe.
 12 MS. COIT: All right. I'm done. Thank you,
 13 Lieutenant Lebrecht.
 14 MR. JASON KAFOURY: Do you want to take a break now
 15 or just roll through? It will be a while.
 16 THE COURT: What's your preference? I'm trying not
 17 to interrupt.
 18 MR. JASON KAFOURY: Take a brief recess now.
 19 THE COURT: Take a recess now. We'll come and get
 20 you in about 15 minutes and begin cross-examination.
 21 (Jury not present.)
 22 THE COURT: Counsel, 15 minutes will be okay. Thank
 23 you.
 24 (Recess taken.)
 25 (Jury present.)

1 THE COURT: Jury is present, counsel and all the
 2 parties are present. Be seated. Counsel, your
 3 cross-examination.
 4
 5 CROSS-EXAMINATION
 6 BY MR. JASON KAFOURY:
 7 Q. Good morning --
 8 A. Good morning.
 9 Q. -- Lieutenant.
 10 I want to -- I got a bunch to go through here. I will try
 11 to go through this quickly. I just want to respond to a couple
 12 of things quickly that we dealt with there this morning.
 13 First, nowhere in that audio that we listened to with you,
 14 HR -- Mr. Wardlow -- my client, and his union steward, is there
 15 any reference to this retraining being tied to him dropping his
 16 grievance. Is there?
 17 A. Not in the audio. I don't believe so.
 18 Q. That didn't happen until later on. That wasn't part of
 19 your meeting when you discussed retraining before my client
 20 went on vacation; right?
 21 A. I wasn't involved in those discussions, so I couldn't give
 22 you a time frame.
 23 Q. But the meeting you were at, him dropping his union
 24 grievance wasn't brought up; isn't that right?
 25 A. I don't believe it was.

1 Q. These training requests, the chain of command was for my
 2 client to submit the training requests to Sergeant Cameron.
 3 That was his direct supervisor; right?
 4 A. That's correct.
 5 Q. Okay. Let's talk about officer safety. You have seen
 6 this video that was shown of Officer Hermens with the suspect
 7 who has a knife and is a robbery suspect. We watched that in
 8 this courtroom; right?
 9 A. Yes.
 10 MR. JASON KAFOURY: Mr. Hess, can you play the audio
 11 portion that was right before the call?
 12 THE COURT: Exhibit number?
 13 MR. HESS: Exhibit 130. The radio callout.
 14 THE COURT: Has that already been received?
 15 MR. JASON KAFOURY: Yes, it has, Your Honor, with
 16 Officer Hermens.
 17 MR. HESS: We'll start at two minutes, 50.
 18 THE COURT: Two minutes, 15?
 19 MR. HESS: Two minutes, 50.
 20 THE COURT: And how long?
 21 MR. HESS: It's only about 30 seconds long.
 22 (Audio played for the jury.)
 23 BY MR. JASON KAFOURY: (Continuing)
 24 Q. So going into this call, you hear James Cleavenger saying
 25 that EPD is -- says that the guy matching the description had a

1 knife; correct?
 2 A. That's what it sounded like.
 3 Q. Okay. Now, and that description that my client gave at
 4 that point of the person with the knife was this same person,
 5 wasn't it. That's how it turned out?
 6 A. I never looked into this. So I wouldn't be able to tell
 7 you, but it sounds like a similar description.
 8 MR. JASON KAFOURY: Well, let's watch the video,
 9 shall we? This would be Hermens' video 138.
 10 THE COURT: Thank you.
 11 (Video played for the jury.)
 12 THE COURT: Isn't there some audio to this, Counsel?
 13 MR. HESS: It starts -- it's delayed for two minutes.
 14 THE COURT: Okay. Thank you.
 15 (Video played for the jury.)
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. Now, Officer Lebrecht, you would agree it's an officer
 18 safety issue to go grab at a man's backpack when he knows he
 19 has priors for robbery, he's armed with a knife, and he has no
 20 weapon, other than pepper spray and a baton. You would agree
 21 that's pretty unsafe?
 22 A. Well, you're assuming that that is the exact guy that was
 23 referred to by Mr. Cleavenger. So that's jumping to an
 24 assumption.
 25 Q. Well, you heard Officer Hermens in the video, when he's

1 running around, saying "knife," didn't you? Do you want to
 2 watch it again?
 3 A. No. I know there was a knife in that situation.
 4 Q. So Officer Hermens, what's going through his mind at that
 5 moment: He thinks this person is armed with a knife and he's
 6 running around, chasing him, pepper-spraying everywhere.
 7 Is that good officer safety skills?
 8 A. I think you probably should have asked Officer Hermens
 9 those questions, because I have limited information of what I
 10 can see here.
 11 Q. You just spent -- 50 videos, going through every single
 12 thing that my client did, every unsafe act, and you're telling
 13 this jury that you can't go through this video with me and tell
 14 me what was unsafe or not?
 15 A. I would have done more research and listened to all the
 16 radio traffic associated with it.
 17 Q. Is it your testimony that going and grabbing somebody who
 18 you know has a knife, when you don't have any weapons, and they
 19 have a history for robbery, is that not unsafe?
 20 A. It depends on the situation. It can be deemed unsafe
 21 based on the totality of the circumstances.
 22 Q. And this was the incident where my client later on
 23 misidentified the same person in a parking lot, and he gets
 24 written up for a problematic callout. This is that same
 25 incident; right?

1 A. I believe so. But Lieutenant Bechdolt looked into this
 2 stuff.
 3 Q. Well, let's go through a couple of other videos.
 4 Yesterday you showed us a video of my client 351B, where he's
 5 speeding to go catch Officer Hermens again; right?
 6 A. Speeding to catch Officer Hermens.
 7 Q. Speeding to go help Officer Hermens. Officer Hermens was
 8 in a fight; right?
 9 A. Yes.
 10 Q. 351B; right?
 11 A. Yes.
 12 Q. This video we just watched. Hermens gets into an
 13 altercation with a person, runs around for multiple minutes,
 14 pepper-spraying, and the guy runs away, still smoking a
 15 cigarette, on a bike; right? That's the one we just saw?
 16 A. That's correct.
 17 Q. Okay. Now, this next scene that my client is going to
 18 help Officer Hermens, Officer Hermens was in a physical fight
 19 with a 60-year-old transient woman; isn't that right?
 20 MS. COIT: Object to the foundation.
 21 THE COURT: Overruled.
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. You investigated this incident of my client. Do you know
 24 those are facts or not?
 25 A. I don't know her age offhand. I know it was a woman.

1 Q. He's in an altercation, physical, with a woman. He
 2 deploys pepper spray, didn't he?
 3 A. From what I recall, yes. I believe she dragged him into
 4 the road.
 5 Q. Okay. And you have no issue with the fact that my client
 6 is going to help a fellow officer in a physical fight, right,
 7 in that incident?
 8 A. Yeah. I have no issue with that.
 9 Q. Do you know how many times Officer Hermens has used force
 10 on a citizen?
 11 A. I have no idea.
 12 Q. Never looked into that?
 13 A. Not to my recollection.
 14 Q. Do you know how many times he's used pepper spray?
 15 A. No. I believe he was asked and he couldn't give you a
 16 number.
 17 Q. Well, I can show you his deposition, if you would like to
 18 see it.
 19 A. Sure.
 20 Q. Page 100. Isn't it a fact that he testified over 10 times
 21 he's used pepper spray?
 22 A. Yeah. I never saw his deposition. I was referring to him
 23 being in court.
 24 Q. Okay. Well, at his deposition over 10 times he's used
 25 pepper spray?

1 A. That's what it says.
 2 Q. Do you know how many times James Cleavenger ever used
 3 pepper spray while he was at your department?
 4 A. I don't recall him ever using pepper spray.
 5 Q. Zero times; right?
 6 A. Yeah. He's -- as I said, I don't remember him ever using
 7 pepper spray.
 8 Q. Now, you showed some statistics of my client. Let's --
 9 I'll show you Exhibit 33. It's in evidence -- it's in
 10 evidence.
 11 MR. HESS: May we publish?
 12 THE COURT: You may.
 13 MR. JASON KAFOURY: May we publish 33?
 14 THE COURT: You may.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. Now, when you're comparing my client's statistics while
 17 he's there at the department, isn't a more fair way to compare
 18 the statistics to compare how he was doing versus other
 19 officers?
 20 A. I would say so.
 21 Q. Okay. Well, let's look at this. Let's start with the
 22 date range here. This is from August 22, 2011, to 3/5/12. So
 23 about an eight-month time frame; right?
 24 A. Correct.
 25 Q. And my client put this document together when he was

1 arguing with Sergeant Cameron about some of his scores in his
 2 annual evaluation. That's why he put this together?
 3 MS. COIT: Your Honor, I object to this exhibit. I
 4 don't believe it's in evidence.
 5 MR. JASON KAFOURY: It is in evidence.
 6 THE COURT: Overruled.
 7 THE WITNESS: I don't know why he put it together.
 8 MR. JASON KAFOURY: Okay.
 9 THE COURT: First of all, let's double check. My
 10 notes have it in evidence. Christy?
 11 DEPUTY COURTROOM CLERK: Yes.
 12 MS. COIT: My apologies.
 13 BY MR. JASON KAFOURY: (Continuing)
 14 Q. So let's look at the officer-initiated activities. 1,711
 15 for my client over an eight-month period; correct?
 16 A. That's what it shows.
 17 Q. So when he is in FTEP from March 2011 to September of
 18 2011, he doesn't have any statistics, right, because he's with
 19 someone else?
 20 A. It would depend on who the field training officer was and
 21 if they allowed the trainee to get the statistics on them.
 22 Q. Well, the next highest officer, Zach Hermens, has 711
 23 officer-initiated activities; right? So my client has a
 24 thousand more over an eight-month window; right?
 25 A. That's what it shows.

1 Q. Subjects contacted: 224. Negotiation highest,
 2 Sergeant Cameron, at 104; right?
 3 A. Zach Hermens. 136.
 4 Q. Sorry. 136. And in those 224 contacts, my client had no
 5 pepper spray; right?
 6 A. As far as I know, he didn't use pepper spray.
 7 Q. All right. We talked about his arrests. Warrant arrests:
 8 6. That's -- only one other officer has more warrant arrests
 9 during that time period; right?
 10 A. Yeah. It looks like he was basing it on the shift he was
 11 on.
 12 Q. Okay. Drug seizures. 15. Next highest, 11. Right?
 13 A. That's what it shows.
 14 Q. Misdemeanor reports. 62. Next highest person, 43?
 15 A. Correct.
 16 Q. Would you generally agree that looking at this eight-month
 17 window my client was much more active than every other officer
 18 on a whole variety of subject matters that are part of his job
 19 duties?
 20 A. I would agree this shows that he was active at work.
 21 Q. So you pointed out that there were a lot of bikes as part
 22 of his statistics; correct?
 23 A. Yeah. Said "bike impound" on several of them.
 24 Q. But the statistics you were showing include after May 18th
 25 when he was on parking duty only; right?

1 A. I believe so.
 2 Q. Okay. When he's on parking duty only, bike impounding was
 3 one of his big jobs. That was one of the things he was
 4 supposed to do; right?
 5 A. That's correct.
 6 Q. And he wasn't supposed to be doing any of these other
 7 things while he was on parking duty; right?
 8 A. He was supposed to be doing parking enforcement-related
 9 things only.
 10 Q. That helps explain why there's so many bike impounds in
 11 his statistics through September of 2012, doesn't it?
 12 A. Yes. If it's anywhere between May 18th and late
 13 September, that would be accurate.
 14 Q. And 147 written reports. Those are police reports where
 15 he sits down and writes it out. Enters it into the system;
 16 right?
 17 A. I don't know if that includes bike impounds. I don't know
 18 what exactly that is.
 19 Q. Well, cases 228. Cases, minus bikes, 164. So over this
 20 time period, only about 60 of the 228 involved bikes; isn't
 21 that right? Isn't that what the stats show?
 22 A. If this is accurate.
 23 Q. Did you do anything over the years to go look at the stats
 24 and see if they were inaccurate before you came to testify
 25 about my client's activity level?

1 MS. COIT: Objection. He didn't have this document.
 2 THE COURT: Overruled.
 3 THE WITNESS: I don't believe I put anything in
 4 writing about his stats, to my recollection.
 5 BY MR. JASON KAFOURY: (Continuing)
 6 Q. You just testified, didn't you, yesterday, that one of
 7 your concerns was that my client and Officer Drake were wasting
 8 time by just hanging out in the dispatch room. Isn't that what
 9 you testified to yesterday?
 10 A. Well, that was accurate. I believe that was more along
 11 the lines of Officer Drake and his training.
 12 Q. Let's talk about some more videos. You showed 351, video
 13 H; right? This is the one where my client stopped somebody for
 14 allegedly digging in a garbage can and getting cans; right?
 15 THE COURT: 351H?
 16 MR. JASON KAFOURY: Correct.
 17 THE WITNESS: Correct.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. You also gave opinions to this jury that it looked like
 20 this client was stopping this person because of the video
 21 portion you showed where the person walked by a garbage can and
 22 you didn't see them getting into anything; right?
 23 A. That's correct. I said by the video that I saw.
 24 Q. Okay. Let's start the video two minutes earlier and see
 25 what we see. Okay?

1 A. Okay.
 2 Q. 351. Video H.
 3 (Video played for the jury.)
 4 BY MR. JASON KAFOURY: (Continuing)
 5 Q. Now, my client has the ability to move this camera in his
 6 car; right?
 7 A. Yes.
 8 Q. All right. Now keep an eye here at what happens in one
 9 minute. You have no idea what my client is looking at at this
 10 point, do you?
 11 A. Doesn't appear so.
 12 Q. This area here is near garbage cans, isn't it?
 13 A. I think there's some over to the left.
 14 Q. In fact, there's a clear view through the quad of garbage
 15 cans; isn't that right?
 16 A. I don't know actually not being there right now. I know
 17 there was some garbage cans near the student recreation center.
 18 Q. You started the video well after he was in that parking
 19 lot and had stopped; right? You started this well past that at
 20 this point; right?
 21 A. I didn't start the video at all. I watched it while I was
 22 up here.
 23 Q. Well, it was your prepared testimony to put comments on
 24 whether that was a legal stop or not. That's what you
 25 testified to yesterday?

1 A. There was not prepared testimony.
 2 Q. Okay. You agree that in this video my client basically
 3 does a U-turn from the parking lot that he's in and goes right
 4 back to this area before he stops this person?
 5 A. Sure. I still didn't see anyone looking at a garbage can.
 6 Q. Right. Well, let's -- can you go back? One minute,
 7 again, fifty seconds.
 8 (Video played for the jury.)
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. To the left there, isn't there a clear view in the quad
 11 and garbage can to the left?
 12 A. I don't know if there's a clear view. I know there's
 13 garbage cans there. I already said that.
 14 Q. Before you got up to this jury, though, and made opinions
 15 about a stop, without showing the beginning of the stop, you
 16 didn't do any investigation of what happened before. Is that
 17 what you're testifying to?
 18 A. That's not what I testified to.
 19 Q. That's what -- well, you didn't -- that's my question.
 20 You didn't do any investigation, looking at this video two
 21 minutes earlier, to see what my client was doing or what might
 22 have been going through his head; right?
 23 A. I don't recall this discussion at the August 13 meeting.
 24 I don't think we actually got to talk about this one, to my
 25 recollection.

1 Q. Well, let's talk about the *Brady* materials. Give me 168.
 2 Do you recall you were on the witness stand a couple weeks ago
 3 and I was asking you questions about these *Brady* materials;
 4 right?
 5 A. Yes.
 6 MR. JASON KAFOURY: And can we bring up 168, please,
 7 Mr. Hess?
 8 BY MR. JASON KAFOURY: (Continuing)
 9 Q. And you remember I asked you questions about how you were
 10 cc'd on these emails? Do you remember that?
 11 A. I believe so. I don't really recall.
 12 MR. JASON KAFOURY: Okay. Let's bring up, Mr. Hess,
 13 Mr. Lebrecht's trial testimony, page 25, line 19.
 14 MR. HESS: Permission to publish, Your Honor?
 15 THE COURT: You're bringing up what, Counsel?
 16 MR. JASON KAFOURY: This is his trial testimony. He
 17 says he doesn't recall what he said about this email.
 18 THE COURT: It doesn't come up on the screen. It's
 19 for refreshing. He has a chance to refresh his recollection.
 20 Show it to him.
 21 Just approach him and show him his statement. If he
 22 recalls, he can state so, and, if not, you can read that into
 23 the record.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Please read silently the -- start with the highlighted

1 page on that page, going to page 2 that's highlighted.
 2 A. The red marks?
 3 Q. Yeah. Just the Q and A, starting with the beginning of
 4 the red marks down to the next portion.
 5 A. Okay.
 6 Q. Let's talk about this here. This is important. Your
 7 testimony in this courtroom was -- I asked: Is this an email
 8 chain that relates to my client's prevailing arbitration award
 9 between you and various members of the command staff? And your
 10 answer was: Yeah, I don't comment on this, but my name is in
 11 the email chain.
 12 Right?
 13 A. That's what I recalled, yeah.
 14 Q. And then I asked -- and then you said: Not that I'm
 15 commenting on that. I wasn't involved in the contents of that
 16 email conversation. And I said, "But you were cc'd on it?"
 17 And you said, "Correct." Right?
 18 A. That's what I recalled.
 19 Q. Okay. That was two weeks ago.
 20 Now, in between those two weeks, new documents have been
 21 produced in this case, haven't they?
 22 A. They have.
 23 Q. And those documents actually show you responding to this
 24 email chain right at the same time, don't they?
 25 A. They do.

1 MR. JASON KAFOURY: Can we please bring up
2 Exhibit 276?
3 MR. HESS: Permission to publish, Your Honor?
4 THE COURT: You may. Has it been received?
5 MR. JASON KAFOURY: Yes.
6 THE COURT: Okay. Thank you.
7 BY MR. JASON KAFOURY: (Continuing)
8 Q. All right. Let's start with down at the bottom. So we're
9 all on the same page. Carolyn McDermed's email. So she writes
10 at 11:35 a.m.: Here's the opinion and award from the
11 arbitrator. I responded to Doug Park's email that while I
12 respected his expertise, I feared the precedent that would be
13 set. Mr. Cleavenger committed crimes and the arbitrator
14 determined a reprimand and three-day suspension was appropriate
15 discipline. No police department would accept that. I also
16 said we would not take him back. Exclamation point. Jamie and
17 Randy Geller have not weighed in yet.
18 Next email?
19 Four minutes later Andy Bechtold responds: There are also
20 *Brady* issues to consider. Correct?
21 A. That's what it says.
22 Q. Let's look at your response that we didn't have two weeks
23 ago.
24 A. Five minute -- four minutes after that, 11:43 a.m., *Brady*
25 issues and the other large-scale investigation that wasn't part

1 of the termination.
2 Q. Now, Lieutenant Lebrecht, in this email chain, you're not
3 just casually watching your partners discussing *Brady*-listing
4 my client. You're contributing ideas to what else could be
5 included in the *Brady* list material. Isn't that right?
6 A. That's not right.
7 Q. Okay. Well, *Brady* issues and the other large-scale
8 investigation that wasn't part of the termination.
9 Isn't it true that you didn't say, "Hey, guys. We don't
10 want to *Brady*-list him at this point. This might look like
11 retaliation"?
12 You didn't write that here, did you?
13 A. No. That's in response to the part that you're not
14 showing that talked about a global settlement; that I thought
15 we could use this stuff to negotiate with Mr. Cleavenger.
16 Q. Okay. So let's talk about this for a moment. My client
17 does his First Amendment protected speech by filing a lawsuit
18 in this case; right? He's got a right to file a lawsuit,
19 doesn't he?
20 A. I would assume, yes.
21 Q. Okay. And he named you and the chief and Scott Cameron as
22 defendants in that lawsuit; right?
23 A. Yes.
24 Q. Okay. Now, you're talking about *Brady*-listing him to
25 force him to settle his claim. Is that what you're telling

1 this jury?
2 A. No. I'm not talking about *Brady*-listing. I was talking
3 about discussing with him there's a potential to try to get him
4 to settle before coming back to the department.
5 Q. Okay. Let's be a hundred percent clear about this. You
6 just testified that the reason you're putting all this out
7 there is because you wanted to get a global settlement to put
8 pressure on him, aren't you, to settle this lawsuit? That's
9 why you're responding here to a global settlement?
10 A. My intention was to try to get a global settlement,
11 correct.
12 Q. Okay. So you created the *Brady* materials over those
13 months. You've known about *Brady* obligations, as you testified
14 to, for 20 years in your law enforcement career; correct?
15 A. I've known about *Brady v. Maryland*, correct.
16 Q. And you agree, as you testified to earlier, that for a
17 patrol officer, an essential duty of them being an officer is
18 that they have to be able to testify in court; right?
19 A. Correct.
20 Q. You wanted to be -- when you put these *Brady* materials
21 together, you wanted to be fair to my client; right?
22 A. That's correct.
23 Q. You wanted to do it impartially; right?
24 A. That was my intention.
25 Q. You spent 40, 50 hours putting this together; right?

1 A. You had me estimate, and I believe that's what I came to.
2 It could be that long.
3 Q. When you did this project on my client, you were the head
4 of internal affairs; correct?
5 A. Correct.
6 Q. So as the head of internal affairs, you have access to all
7 letters of discipline; correct?
8 A. Possibly.
9 Q. You have access to all letters of termination, don't you?
10 A. Letters of termination? I don't know where those are
11 kept.
12 Q. Well, you have all the internal affairs investigative
13 files at your fingertips when you run the department; right?
14 A. There are several internal affairs investigations,
15 correct.
16 MR. JASON KAFOURY: Okay. Let's go to Exhibit 158.
17 THE COURT: 158?
18 MR. JASON KAFOURY: 158, yes. 612.4.
19 MR. HESS: Permission to publish, Your Honor?
20 THE COURT: Has it been received?
21 MR. JASON KAFOURY: Yes.
22 THE COURT: Yes, you may.
23 BY MR. JASON KAFOURY: (Continuing)
24 Q. I showed this to you a couple weeks ago. These are the
25 *Brady* policies that you are supposed to follow; right?

1 A. Correct.

2 Q. Okay. Can we go down to 612.4? Disclosure of personal
3 information. The lieutenant of professional standards and
4 training --
5 That would be you; right?

6 A. That was.

7 Q. -- should periodically examine the personnel files and/or
8 internal affairs files of all officers who may be material
9 witnesses in criminal cases to determine whether they contain
10 information as potential *Brady* information. The obligation to
11 provide *Brady* information is ongoing. Correct?

12 A. Correct.

13 Q. Well, let's talk about what you did. Would you agree that
14 making a fraudulent parking pass involves dishonesty?

15 A. I would say so.

16 Q. Would you agree stealing money from parking meters, as
17 Officer McIntyre was accused of doing and fired for, you agree
18 that involved dishonesty; right?

19 A. It would sound like it.

20 Q. What about an officer caught cheating on a test? Would
21 that be an act of dishonesty?

22 A. I would agree.

23 Q. Isn't it a fact that in your files at that time you had
24 evidence that all three of those things had happened for people
25 that had been dismissed from the department?

1 A. I don't know if there's evidence of that or not. I didn't
2 look in the drawers. I researched stuff, actually, from the
3 internal affairs investigation from when we became a police
4 department.

5 Q. Okay. You didn't find -- didn't go dig up any other folks
6 that had been involved with stealing parking passes?
7 I can show you the documents if it would help you refresh
8 your memory.

9 A. I can believe you. That's before I was there. Like I
10 said, I researched the internal affairs investigations that
11 occurred while we were a police department.

12 Q. But you don't dispute, in front of this jury, that in your
13 files were documents of someone admitting to cheating on a
14 test, someone stealing money from parking meters, and someone
15 creating a fraudulent parking pass?

16 A. Possible they were there. I never saw them.

17 Q. So you disagree with the chief when she testified a couple
18 weeks ago that she didn't know that fraud and theft involved
19 dishonesty?

20 A. I don't disagree with what she said, because, I mean, it's
21 listed in the thing from Alex Gardner. That's one of the
22 things that was somewhere down on the page. I will admit,
23 myself, I didn't know it involved fraud or theft up until I
24 read that memo.

25 Q. Okay. Memo from March 31, 2014?

1 A. Whenever it was from Alex Gardner, yeah.

2 Q. The one that the first sentence of your *Brady* materials is
3 based on supposedly the March 31, 2014, guidelines?
4 MR. JASON KAFOURY: Can you bring up Exhibit 150?
5 BY MR. JASON KAFOURY: (Continuing)

6 Q. This is what you're talking about? March 31, 2014,
7 guidelines?

8 A. Most likely.

9 Q. This is guidelines put out 21 days after you guys are
10 emailing about *Brady*-listing my client?

11 A. I believe that we had received that twice.

12 Q. Okay. Do you have any evidence you put before this jury
13 that you received it? Any piece of paper?

14 A. Not that I'm aware of. And I was basing his on
15 dishonesty.

16 Q. Okay. And you learned in this, from March 31, 2014, that
17 fraud and theft involved dishonesty. Is that what you're
18 telling this jury?

19 A. Yeah, I believe that now. Correct.

20 Q. From this guideline, that's where you learned it? That's
21 what you just testified to?

22 A. Yeah. I later read it and saw in there that it did say
23 that.

24 Q. Have you gone back over the last year, since you learned
25 that, to possibly submit *Brady*-listing on anybody else?

1 A. No. Because I haven't been in that position anymore.

2 Q. Do you know if the chief has?

3 A. I wouldn't be the one to ask.

4 Q. Well, let's look at what you did submit to the district
5 attorney. Now, this is important. When you first went and met
6 with the district attorney, you did not give them the internal
7 affairs document, did you?

8 A. They had the entire thing when I met with them.

9 Q. You gave them that in July after they asked for it, isn't
10 that right?

11 A. No. I brought two binders with me and gave it to him, and
12 Pete Deshpande was with me. I had two binders that they were
13 handed at the same time.

14 Q. Well, let's look at what you gave them.
15 MR. JASON KAFOURY: Mr. Hess, can we bring up 321 and
16 150? Let's start with example number one. I want to
17 compare -- before we do that, Mr. Hess --
18 BY MR. JASON KAFOURY: (Continuing)

19 Q. Your goal in writing that material for the district
20 attorney was to be fair and impartial for my client; right?

21 A. My goal was to submit it to have it reviewed as potential
22 disqualifying material.

23 Q. But your goal was to be fair and impartial to
24 Mr. Cleavenger; isn't that right?

25 A. All I can say is I put together the information the best I

1 could.
 2 Q. Okay. Well, let's look at what you did.
 3 MR. JASON KAFOURY: Let's start with example number
 4 one, Mr. Hess.
 5 MR. HESS: This will be Exhibit 331, page 11.
 6 THE COURT: 331. Thank you.
 7 BY MR. JASON KAFOURY: (Continuing)
 8 Q. We're going to compare what's in the IA to what you ended
 9 up putting in your report. Okay?
 10 Okay. This is for: I queried the Watch Guard Library
 11 Explorer for stored ICV video and audio for the April 1, 2012,
 12 traffic stop by Officer Cleavenger of the Honda sedan. I
 13 located the video and made a recording of it and video --
 14 THE COURT: We'll strike that. Slower. I can't get
 15 a record. Start over again and read it slowly.
 16 MR. JASON KAFOURY: All right.
 17 THE COURT: Okay.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. This is from officer -- or Lieutenant Morrow's IA report;
 20 correct?
 21 A. Okay.
 22 Q. June 4, 2012. I queried the Watch Guard Library Explorer
 23 for stored ICV video and audio for the April 1, 2012, traffic
 24 stop by Officer Cleavenger of the Honda sedan. I located the
 25 video and made a recording of it. A review of the recording

1 disclosed the following observation: The vehicle was occupied
 2 by a driver and one passenger seated in the front seat. The
 3 gender or race of the sedan's occupants were not observable
 4 from the recording and unknown whether Cleavenger could discern
 5 this information from his viewpoint.
 6 This was the opinion regarding whether the race or gender
 7 were observable that Lieutenant Morrow put into his report;
 8 correct?
 9 A. Yeah. I don't know whether he went out to that location
 10 like I did, but that is what he wrote.
 11 Q. Okay. Well, let's look at what you wrote.
 12 In regards to a traffic stop Cleavenger had conducted on
 13 4/1/2012, he claimed during the IA investigation, quote, I did
 14 not stop the driver due to her race or gender. I could not see
 15 into the vehicle when I first observed it to determine a race
 16 or gender. As I explained earlier, I stopped the vehicle due
 17 to the suspicious nature of the vehicle, expired tags appearing
 18 to have been tampered with, left signal, then making several
 19 right turns and accelerating away quickly.
 20 A review of the video from Cleavenger's Watch Guard --
 21 this is what you're writing, correct, to the DA?
 22 A. Correct.
 23 Q. A review of the video from Cleavenger's Watch Guard and
 24 in-car camera system shows the vehicle driving past the front
 25 of Cleavenger's vehicle.

1 I'll start that paragraph again.
 2 A review of the video from Cleavenger's Watch Guard in-car
 3 camera system shows the vehicle driving past the front of
 4 Cleavenger's vehicle, which was stopped and in close proximity.
 5 It is difficult to imagine that anyone else in a similar
 6 circumstance would not see the driver as the vehicle approached
 7 and then passed by the way Cleavenger's vehicle was positioned.
 8 The video also did not indicate that the vehicle quickly
 9 accelerated away as Cleavenger claimed.
 10 Okay. Officer Morrow wrote -- Lieutenant Morrow wrote you
 11 couldn't tell the race or gender. You just wrote it would be
 12 impossible --
 13 MR. JASON KAFOURY: What does the line say, Mr. Hess,
 14 before that?
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. You wrote, calling my client a liar, that it is difficult
 17 to imagine that anyone else in a similar circumstance would not
 18 see the driver and the -- as the vehicle approached and then
 19 passed by the way Cleavenger's vehicle was positioned.
 20 Isn't that in direct disagreement with what
 21 Lieutenant Morrow said in the IA report?
 22 A. Not necessarily. He was commenting on you couldn't tell
 23 by the video. But, like I said, I have been out there, and you
 24 can see the race and gender of people as they drive by.
 25 Q. Okay. You didn't put that in this report, did you?

1 A. Nope.
 2 Q. All right. Let's go to number two. Okay. Let's look at
 3 what Morrow said about the car quickly accelerating and then we
 4 will look at what you said saying that my client was lying.
 5 At the next intersection, Kincaid Street, the sedan
 6 briefly signaled for a left turn, then changed to a right
 7 signal, and made a right turn, traveling southbound on Kincaid.
 8 The officer followed the sedan through the intersection. After
 9 making the right turn, the sedan quickly accelerated, and then
 10 made the signal for a right turn on East 14th Avenue.
 11 Let's look at what you wrote.
 12 You wrote: The video also did not indicate that the
 13 vehicle quickly accelerated away, as Cleavenger claimed.
 14 So you're putting into this report for the *Brady* materials
 15 that my client is lying about this when Lieutenant Morrow and
 16 the IA said the exact opposite; that the sedan quickly
 17 accelerated.
 18 A. I'm aware what they put, but I watched the video and I did
 19 not see it accelerate quickly at all.
 20 Q. So this isn't really based on Lieutenant Morrow. This is
 21 based on Lieutenant Lebrecht's interpretation of these videos
 22 and your take on whether my client was being honest or not. Is
 23 that what you're telling us?
 24 A. The IA submitted, and it does have some of my opinion in
 25 this as well.

1 Q. Your opinion about my client's honesty, that's what this
2 is all about, isn't it?
3 A. In some of these things, that's what it is.
4 Q. All of it is -- the whole point of the *Brady* materials is
5 that you're calling him dishonest; right?
6 A. No. The whole point of the *Brady* material is for the DA
7 to review that and make that determination.
8 Q. You were here when the DA testified last week; right?
9 A. I was.
10 Q. And didn't the DA testify that the moment those materials
11 got handed over to him he had to turn that stuff over to the
12 criminal defense lawyer? That's what he said?
13 A. He may have said that.
14 Q. So not pointing out in your report that Morrow disagreed
15 with your opinion, is that being fair and impartial?
16 A. I submitted the entire report. I was under the
17 understanding they would review the entire IA before making a
18 determination.
19 Q. But you read it all and you are the one who selected what
20 to put in the seven-page cover letter that went with these
21 hundreds and hundreds of pages; right?
22 A. Yeah. I selected what went in there.
23 MR. JASON KAFOURY: Let's look at the third example.
24 Top example is IA. Is that correct, Mr. Hess?
25 MR. HESS: Both are IA.

1 MR. JASON KAFOURY: Both are IA, okay.
2 BY MR. JASON KAFOURY: (Continuing)
3 Q. Let's look at what Lieutenant Morrow said. Due to the
4 apparent widespread use of traffic stops or the campus version
5 of a traffic stop, it would be unreasonable to single out
6 Officer Cleavenger for engaging in an enforcement activity
7 appearing to be in use by most of the department officers.
8 Stops of bicycles are an accepted practice by the department
9 and encouraged by watch commanders.
10 Again, it is unclear from this data as to how many of the
11 243 stops were associated with bicycles or vehicles and whether
12 traffic stops or the campus version of traffic stops were
13 conducted by the officers.
14 Based upon the lack of departmental documentation in
15 policy, procedure, or directive, clearly defining what
16 constituted a traffic stop and the instructions and/or
17 restrictions to effect a traffic stop and the numerous traffic
18 stops conducted within the past year by most of the officers,
19 the allegation Officer Cleavenger violated this department
20 procedure is determined to be not sustained.
21 That's what he said about traffic stops; right? That's
22 what the IA report says?
23 A. That's what it shows.
24 Q. Let's look at what you wrote about traffic stops in the
25 *Brady* materials.

1 On a traffic stop that Cleavenger had conducted on 4/2/11,
2 he claimed during the IA investigation that he did not activate
3 his patrol vehicle's lighting equipment prior to the vehicle
4 stopping.
5 Doing so would indicate that he had conducted a traffic
6 stop at the -- traffic stop of a vehicle, which unarmed
7 University of Oregon public safety officers were not to do. At
8 the time there were various forms of contact that was deemed
9 acceptable. It was widely known that officers were not to
10 conduct actual traffic stops, which would be to activate their
11 emergency lighting equipment before a driver had stopped. The
12 most accepted variation was for officers to contact a driver
13 who had stopped and already exited their vehicle.
14 So when you wrote it was widely known that officers were
15 not to conduct actual traffic stops, that's directly in
16 contradiction with what Lieutenant Morrow put in his IA report,
17 isn't it?
18 A. He was talking about campus versions of traffic stops. It
19 was widely known you're not supposed to do a full traffic stop.
20 Q. Well, why didn't -- if you wanted to be fair and
21 impartial, why didn't you include in your summary: Here is
22 what Lieutenant Morrow found about my client and his traffic
23 stop?
24 A. His findings are in the internal affair investigation,
25 which was provided. The entire thing.

1 Q. This is what Lieutenant Morrow wrote: Due to the apparent
2 widespread use of traffic stops or the campus version of a
3 traffic stop.
4 He wasn't saying only campus traffic stops is what he's
5 talking about. He's said widespread use of traffic stops or
6 the campus version of a traffic stop; right?
7 A. Sure. That's what it appears.
8 Q. Is the reason you put in your *Brady* list materials that it
9 was obvious my client could have seen the race or gender of the
10 dean at the dean stop, is the reason you put that in there so
11 that people would know that he was targeting someone who was
12 African-American?
13 A. No. I am not saying he racially profiled anybody. My
14 thing is, having been at that intersection, from the
15 drive-through, that I can see race or gender.
16 Q. Are you aware that in the IA investigative reports the
17 dean, Commissiong, was interviewed by Mike Morrow; correct?
18 A. Correct.
19 Q. And in that it states: She -- being the dean -- didn't
20 perceive the officer being or acting in a racist manner.
21 That's what it says in here?
22 A. And, again, I said I didn't say he was doing racial
23 profiling.
24 Q. Well, you said he's lying when he says he can't say
25 race -- when he can't see race. That's what you're saying by

1 saying in the *Brady* material -- that's why you submitted it;
 2 right?
 3 A. No. I said it a different way than that. But I said that
 4 it would be reasonable that anyone else would be able to see
 5 the race or gender.
 6 Q. Now, we talked a couple weeks ago about why you didn't
 7 include the arbitrator's decision when the arbitrator made
 8 various findings regarding my client and honesty; right?
 9 A. Correct.
 10 Q. And it sounds like today your testimony is that the chief
 11 thought it would be too many pieces of paper to include the
 12 arbitrator's decision and told you to cut it down. Is that
 13 right?
 14 A. I don't remember if the arbitrator's decision was in the
 15 initial or not. I said we had a discussion about it and didn't
 16 know if we could release it. She told me to cut things down,
 17 so I cut stuff down.
 18 Q. In opening statement, counsel said that there was an
 19 initial draft and that the arbitrator's opinion was in there.
 20 Are you now telling this jury that you don't remember whether
 21 the arbitrator's decision was in there or not?
 22 A. I don't recall whether it was or not.
 23 Q. Well, you would have sent an email if there was an initial
 24 draft that included the arbitrator's decision, wouldn't you?
 25 A. No.

1 Q. Let's talk about this retraining proposal that we heard
 2 the audio of this morning.
 3 A. Okay.
 4 Q. Prior to doing this investigation of my client for illegal
 5 recordings, had you ever done an investigation like this on
 6 anybody else?
 7 A. In another department. I wrote a crime report for illegal
 8 recording.
 9 Q. Okay. So you knew, from your prior experience, how to
 10 conduct an investigation involving recording violations?
 11 A. I did conduct an investigation of illegal recording prior
 12 to coming here.
 13 Q. Okay. And now we heard a lot of talk in that audio of you
 14 and Wardlow saying, "The goal of the department at this point
 15 is to retrain you." Right? We heard you say that?
 16 A. Correct.
 17 Q. We heard you say in the audio, "We value you as an
 18 officer." Isn't that what Wardlow said?
 19 A. I don't recall what he said. It's possible.
 20 Q. Wardlow said, "We value your ability to do your job." Did
 21 you hear him say that in the audio?
 22 A. I'm going to take your word that he did. I don't recall
 23 specifically.
 24 Q. Was that your opinion at the time, in August of 2013, that
 25 you valued my client as an officer and that you valued his

1 ability to do his job?
 2 A. I felt that he needed retraining, because he was unable to
 3 accept that he had done anything wrong.
 4 Q. So those statements by Randy Wardlow, "value you as an
 5 officer; value you -- value your ability to do your job," was
 6 that your thought process back then, in August of 2012, or not?
 7 A. All I remember about my thought process is we were
 8 basically going along the lines of retraining, and he wouldn't
 9 accept that he had done anything wrong. So it would be
 10 difficult to retrain him at that point.
 11 Q. Well, out of that meeting, you put together this
 12 retraining plan, dated September 13th. We saw that and that
 13 never got -- that was never given to my client; right?
 14 A. I don't believe it was.
 15 Q. You had nothing but good intentions when you were drafting
 16 that retraining plan, trying get my client back to work; right?
 17 That was your goal?
 18 A. At the time the goal was to get him retrained.
 19 Q. That was your goal; right? You wrote this document up to
 20 get him retrained; right?
 21 A. That was the goal of the department and HR combined.
 22 Q. And you testified a couple weeks ago that it was sometime
 23 after the retraining plan that you got an email from the chief
 24 saying she was leaning towards termination at that point and
 25 you chimed in that you agreed; right?

1 A. Yeah. There was more than one discussion about
 2 termination.
 3 Q. Well, that's what you testified to happening in September
 4 of 2012; right?
 5 A. I believe there was other ones in April or May, as well.
 6 Q. Well, let's talk about those. We talked about those with
 7 Lieutenant Morrow yesterday. When you went to meet with the
 8 district attorney, you testified that Chief McDermed asked you
 9 whether my client could be criminally prosecuted; right?
 10 That's what she -- she wanted you to ask that of the DA?
 11 A. That's correct.
 12 Q. Did you, in June of 2014, think my client should be
 13 criminally prosecuted?
 14 A. You know, I think it had been too long, in my opinion, and
 15 I had to ask. I remember there was a -- there was a series of
 16 emails where I think I even had written in one of them that --
 17 I had written a crime report on someone else for illegal
 18 recording, and, after submitting it, the person was terminated,
 19 the DA's office proceeded to not file charges.
 20 Q. Yeah. Let's talk about that email. Let's bring up 279.
 21 This is the email we were talking with Lieutenant Morrow
 22 about yesterday, conducting a good faith IA investigation; not
 23 jumping to conclusions before you do it.
 24 MR. HESS: Permission to publish 279?
 25 THE COURT: You may.

1 MR. JASON KAFOURY: Can you blow up the chief's email
 2 first and the date? Go to the last page.
 3 BY MR. JASON KAFOURY: (Continuing)
 4 Q. So May 17, 2012, the day before my client is reassigned;
 5 correct?
 6 A. Correct.
 7 Q. This is between you, Morrow, and the chief. From the
 8 chief: I have been discussing this with chief via email.
 9 That would be Chief Tripp; correct?
 10 A. That's correct.
 11 Q. "Go {sic} either of you think criminal charges should be
 12 considered, question mark. Doug wants documents stating the
 13 reason for admin leave and for it to be reviewed by Randy W.
 14 We need to connect with Randy regarding if we can do admin duty
 15 leave as quickly as tomorrow. Doug and I are leaning towards
 16 dismissal for cause rather than fitness for duty. What do you
 17 think?"
 18 Let's look at your response.
 19 So as of May 17th, before you are having these meetings,
 20 before you're talking about retraining my client, let's look at
 21 what you wrote. "I agree with dismissal. We should talk to
 22 the DA office about whether they would pursue charges."
 23 Criminal charges. That's what you are talking about back
 24 in May; right?
 25 A. Yeah. If you see here that I did say I did a report of

1 PC632 illegal recording -- that's California -- on an officer I
 2 conducted an IA on. They dropped the case once they found out
 3 the officer was terminated, so I was not for criminal charges.
 4 Instead of preparing a report, I said we should talk to the DA
 5 first. That's what I was talking about here.
 6 Q. Okay. But the chief is asking you about criminal charge s,
 7 and you point out that you've done an investigation for
 8 somebody in your IA past for illegal recording. You knew how
 9 to do that; right?
 10 A. Yeah. And you're interpreting it completely wrong. I am
 11 against filing the criminal charges here. So that's why I'm
 12 saying we should check with the DA to see if they would even do
 13 it.
 14 Q. Well, you don't say that in here, do you? You don't say,
 15 "I'm against trying to ask the DA about criminal charges."
 16 That's not what it says. That's not what your email says, does
 17 it?
 18 A. No. You're interpreting it completely different from what
 19 I put.
 20 Q. Go to the next response from Mr. Morrow . Mike Morrow ,
 21 Thursday, May 17th. I believe moving forward with dismissal
 22 for cause is appropriate. I suggest not pursuing criminal
 23 charges, in that the actions are minor compared to what
 24 generally is pursued against LEOs and what DAs prefer to
 25 present to a jury. Egregious misconduct. Plus, it will likely

1 open the door for counter-allegations against other PSOs who
 2 may have also failed to advise someone of a recording or
 3 numerous allegations of similar activities and expected to open
 4 and investigate all for consistency and fairness. I can see
 5 him making false allegations against others as a misdirection
 6 and deflection defense.
 7 The product Brandon put together, we can format into an IA
 8 format with supporting exhibits and make a strong presentation
 9 for HR. I can assist Brandon with the editing and formatting.
 10 We can also work into it the conversation with Dr. Corey. I
 11 believe it will be appropriate and relevant. If Cleavenger was
 12 to challenge Dr. Corey's opinion, it would open the door for
 13 his further involvement and possibly an assessment or
 14 disclosure of the psych evaluation.
 15 Let's talk about this bottom paragraph for a moment.
 16 A. Okay.
 17 Q. So as of May 17, 2012, you had already put together
 18 something that Mike Morrow was offering to put into an IA
 19 format; isn't that right?
 20 A. I had the videos and then basic little summaries of some
 21 videos. That's all there was.
 22 Q. Okay. And you guys were preparing -- Mike Morrow and you
 23 and the chief were preparing that you could pull that material
 24 together to make a strong presentation to ask for my client to
 25 be terminated; right? That's what that's referencing?

1 A. I couldn't speak to what other people's mindsets are, but
 2 that's what it appears.
 3 Q. Well, you just chimed in you agree with dismissal, right,
 4 before that; right?
 5 A. Yeah, I did put that. I also said, "Sounds very
 6 reasonable to me, Mike," when he said he was -- he was saying
 7 he doesn't suggest pursuing criminal charges. "Sounds very
 8 reasonable to me, Mike." That's the next thing.
 9 Q. Let me ask you: Did you bring up this concept that Morrow
 10 puts out in May of 2012 about the difficulty of criminal
 11 prosecutions because all the officers were doing it and there
 12 would be lots of them involved, did you bring that concept up
 13 two years later when the chief asked you to go to the DA and
 14 talk about criminal charges?
 15 A. Not that I recall.
 16 Q. Let's talk about a document you prepared for Dr. Corey.
 17 Dr. Corey does psychological fitness evaluations of officers;
 18 right?
 19 A. As does his associate, Dr. Stewart.
 20 Q. It's page -- let's show the email. So this is
 21 Exhibit 280. Can we show the first email from Mike Morrow?
 22 A. Thank you.
 23 Q. No problem.
 24 MR. HESS: Permission to publish 280, Your Honor?
 25 THE COURT: You may.

1 MR. JASON KAFOURY: Let's blow up the first email
 2 there from Mike Morrow.
 3 MR. HESS: Page 2.
 4 MR. JASON KAFOURY: Yeah -- no page 1. Page 1.
 5 First email from Mike Morrow. April 17. 1:15.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. All right. Now, before we go through this, my client had
 8 passed an exam with Dr. Corey back in February of 2011 before
 9 he was hired with your department; right?
 10 A. I would assume so.
 11 Q. That's standard practice?
 12 A. That's correct.
 13 Q. So a year later you are on an email chain with Dr. Corey
 14 April 27, 2012; correct?
 15 A. That is what it says.
 16 Q. 10 days before this loaded gun incident; right?
 17 A. Approximately.
 18 Q. Okay. "Hello, Dr. Corey. Attached is a completed
 19 evaluation regarding" --
 20 THE COURT: Counsel, slower.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. "Attached is a completed evaluation regarding the employee
 23 we recently discussed with you. It was completed with the
 24 assistance of the employee's watch commander, Lieutenant
 25 Brandon Lebrecht. We certainly appreciate your prompt response

1 to our inquiry. And, as always, grateful for your support.
 2 Enjoy your weekend."
 3 Let's look at page 3, which is the actual survey that you
 4 filled out; right?
 5 A. Well, I don't recall myself filling it out. I recall
 6 Lieutenant Morrow asking me to come into the office and then he
 7 asked me questions and put in check boxes or whatever he did.
 8 Q. Okay. Well, let's look at whose name is on here. Under
 9 number seven, name of rater and contact phone and/or email
 10 address, Lieutenant Lebrecht. That's you. Name of the rater?
 11 A. That's correct. As I said, he asked me the questions.
 12 Q. Okay. So you didn't physically fill it out, but the
 13 answers on here are yours. Is that what you're saying?
 14 A. That's correct.
 15 MR. JASON KAFOURY: Mr. Hess, can you blow up the
 16 bottom section, starting with 11, all the way up?
 17 BY MR. JASON KAFOURY: (Continuing)
 18 Q. So back on April 27, 2012, you gave information to Morrow,
 19 who then sent it to a doctor, a psychologist, and in there you
 20 said my client has academic learning problems; right?
 21 A. It appears so.
 22 Q. Interpersonal problems?
 23 A. Okay.
 24 Q. Failure to control conflict. Report writing problems.
 25 Failure to engage subjects as necessary. Integrity violation.

1 Unlawful activity. Failure to accept feedback. Misconduct,
 2 nonsexual. Excessive tardiness, absenteeism. Uncooperative
 3 toward peers.
 4 Next. Uncooperative towards supervisors. Uses position
 5 for personal advantage. Conduct unbecoming. Abuses authority.
 6 Deceptiveness. Does not take responsibility for mistakes.
 7 Fails to exercise appropriate discretion, and odd behavior;
 8 right?
 9 18 out of 26 categories you said my client has problems
 10 with, to a psychologist, on April 27, 2012; right?
 11 A. Yeah. That sounds accurate.
 12 Q. Okay. Let's go to page 2. Can you proceed up the box
 13 decision-making through multi-tasking.
 14 For these you marked him on every single category. Some
 15 problems under normal stress and some problems under stress.
 16 Decision-making. Restraint and control. Assertiveness
 17 control. Interpersonal skill. Learning. Tactical skills.
 18 Multi-tasking.
 19 Let's go to the bottom. 19 through 23. Initiative and
 20 drive. Commitment. Integrity. Contentiousness. Teamwork.
 21 Go to the very bottom. Overall rating.
 22 Rate the employee's overall performance. Poor.
 23 Would you like to have -- would you like to have other
 24 employees like this one? Absolutely not.
 25 Okay. Now, I want to -- before you wrote this, about

1 three weeks earlier, you had gotten Sergeant Cameron's first
 2 draft of the annual evaluation of my client; right?
 3 A. Three, four weeks before, I think.
 4 Q. Okay. And you had been working with HR on editing this
 5 annual evaluation, hadn't you?
 6 A. I know it had been sent to them, and they were looking it
 7 over at least.
 8 MR. JASON KAFOURY: Mr. Hess, can you bring up
 9 Exhibit 166, please.
 10 THE COURT: 166. And that's been received, Counsel?
 11 MR. JASON KAFOURY: Yes.
 12 THE COURT: Thank you.
 13 MR. HESS: Permission to publish, Your Honor?
 14 THE COURT: You may.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. So three weeks earlier, I want to ask you when you wrote
 17 all that to the psychologist if you took these into account.
 18 Okay?
 19 MR. JASON KAFOURY: Can we go to page 3, Mr. Hess?
 20 It's the customer service -- yes, show the date on it.
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. So this is an email to you on April 1, 2012. Three weeks
 23 before you sent this to the psychologist; right?
 24 A. Correct.
 25 Q. Under customer service.

1 Page -- I think it's -- is it page 4? No, it's the third
 2 page. Okay. Under customer service. Considerate attitude.
 3 Helpfulness, knowledge, and communication skills towards those
 4 and the university and the department. Scott Cameron said he
 5 was positive and supporting department mission. Gives accurate
 6 information. Exhibits patience with customers.
 7 MR. JASON KAFOURY: Can you blow up the narrative
 8 comments or highlight them?
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. Throughout this rating period -- this is for a whole year;
 11 right, this is an annual evaluation for a whole year?
 12 Officer Cleavenger has consistently shown that his
 13 communication skills are satisfactory. He's treated his
 14 contacts with mutual respect and he has a good officer
 15 presence. He makes himself available to the public for
 16 questions and makes a lot of community-oriented contacts.
 17 Right?
 18 Three weeks earlier, while you're working on this, did you
 19 take this information from Sergeant Cameron into account when
 20 you sent all that information to the psychologist?
 21 A. One thing, I didn't send it. Again, Lieutenant Morrow
 22 sent it. He asked me questions about my opinion. Those were
 23 my opinions at the time, and I stand by them.
 24 Q. Okay. So you did take this into account when you told all
 25 that stuff to the psychologist three weeks later?

1 A. I didn't take any performance evaluation into account. It
 2 was my personal opinion of him.
 3 Q. Next page. When Officer Cleavenger contacts the public,
 4 he has a very professional demeanor and a good command
 5 presence. Right? That's what Sergeant Cameron said in the
 6 first draft in the annual evaluation, didn't he?
 7 A. That's what it shows.
 8 Q. Okay. Drop down to the next one. Work relationship with
 9 supervisors, co-workers, and others. Maintains courteous and
 10 cooperative relationships with supervisors and co-workers.
 11 Accepts supervision, change, and feedback.
 12 Narrative comments: Officer Cleavenger is enthusiastic
 13 when asked to help on investigations or when cooperating with
 14 other officers on cases.
 15 MR. JASON KAFOURY: That's all I have for that.
 16 BY MR. JASON KAFOURY: (Continuing)
 17 Q. Now, on a day-to-day basis, over that last year,
 18 Sergeant Cameron is actually in the field with my client,
 19 seeing him in action a lot more than you are; right?
 20 A. I don't know if it's lot more than I am or not. We both
 21 worked five days a week.
 22 Q. Well, to expedite things -- I won't go through your
 23 six-month evaluation and your weekly summary done at the end of
 24 2011, but would you generally agree with me that these -- there
 25 are 12 through 25 -- 13 categories on the one side and 26

1 categories on the other side? So my quick math is out of 37
 2 categories you were asked about, you said my client had
 3 problems with 31 of them; isn't that right?
 4 A. That's what it shows. That was my opinion at that time.
 5 Q. I want to talk to you -- can you give me -- you were here
 6 in court with Kent Abbott when he testified; right?
 7 A. That's correct.
 8 Q. Now, do you recall that I asked Kent Abbott some questions
 9 about statements he made back in 2012 to a union steward? Do
 10 you remember I asked him questions about that?
 11 A. Yeah, I remember you asked him something about that.
 12 Q. Remember I asked him how he described the culture of the
 13 department back in 2012? Do you remember that?
 14 A. I don't remember his answer, but I remember you asked him.
 15 Q. Well, he described it as conservative, age discrimination,
 16 gender discrimination, philosophical discrimination, not much
 17 respect for women officers.
 18 Do you remember me going through that with him?
 19 A. Yes.
 20 Q. In relation to Officer Cameron, back in 2012, Kent Abbott
 21 told the investigator he's, quote, just an ass, condescending
 22 gender discriminative, belittles women officers, and Kent just
 23 doesn't trust him. Do you remember that?
 24 A. I remember that being discussed.
 25 Q. Well, you heard Kent Abbott didn't deny he said all these

1 things back in 2012; right?
 2 A. Yeah, I don't believe he did.
 3 Q. How about traffic stops? So many places where changes
 4 take place.
 5 MS. COIT: Your Honor, I object to this. He's just
 6 reading Mr. Abbott's testimony again and having Lebrecht
 7 confirm that he heard it. I don't see how it's relevant.
 8 MR. JASON KAFOURY: I'm going to ask if he agrees
 9 with Abbott's interpretation of the investigator back in 2012.
 10 THE COURT: And how is that effective with the *Brady*
 11 listing?
 12 MR. JASON KAFOURY: It shows Kent Abbott is still
 13 working there, and his testimony was a lot different in court
 14 than what he said back in 2012. That's my point that I'm
 15 getting at.
 16 THE COURT: The jury has had a chance to see
 17 Mr. Abbott. I agree. Sustained, Counsel.
 18 BY MR. JASON KAFOURY: (Continuing)
 19 Q. Okay. Let's talk about Spencer View. Now, you testified
 20 a couple of weeks ago that you agreed pulling right up to the
 21 front door versus parking down the street is more of an officer
 22 safety issue than driving past the apartment and parking out of
 23 view. You agree with that; right?
 24 A. Agree.
 25 Q. Okay. In fact, you said "absolutely."

1 Now, let's talk about this February 2012 incident. You
 2 testified yesterday that -- was that you that counseled
 3 Officer Hermens about pulling right up in front of the house at
 4 the Spencer View incident.
 5 A. Yes. I verbally counseled him regarding that.
 6 Q. No discipline for Hermens because -- you testified that
 7 was the first time, so you had no reason to discipline him for
 8 pulling right up; right?
 9 A. Yeah. I don't recall having a talk with him about officer
 10 safety prior to that.
 11 Q. Now, Officer Hermens was with Officer Phillips that day,
 12 wasn't he?
 13 A. I saw Officer Phillips come into the picture at some
 14 point. From the right, I believe, is where he came from.
 15 Q. Okay. They both walked up right to the door, though,
 16 didn't they? They were in the same car?
 17 A. I don't know that they were in the same car. That
 18 probably could have been asked of them.
 19 Q. We can play it again.
 20 MR. JASON KAFOURY: Mr. Hess, Spencer View, 2/24.
 21 The date is 2/24.
 22 MR. HESS: I think it's Exhibit 71.
 23 THE WITNESS: Our officers don't usually double up.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Okay. Let's watch what happens in the video.

1 THE COURT: 221.
 2 MR. HESS: This is Exhibit 71.
 3 THE COURT: 71. Thank you.
 4 MR. JASON KAFOURY: The date of the visit is 2/24/12 .
 5 (Video played for the jury.)
 6 DEPUTY COURTROOM CLERK: Counsel, this looks
 7 familiar, but I don't show it on my exhibit list.
 8 MR. HESS: Exhibit 71?
 9 DEPUTY COURTROOM CLERK: Yes.
 10 THE COURT: This has been played before.
 11 MR. JASON KAFOURY: It was played before. I'll offer
 12 71 if it's not on the list.
 13 THE COURT: It's probably double-marked. We'll sort
 14 it out. Right now it's marked as 71. We'll get that
 15 straightened out at a recess. Go ahead and play it, please.
 16 (Video played for the jury.)
 17 BY MR. JASON KAFOURY: (Continuing)
 18 Q. Can we back it up a little bit?
 19 MR. HESS: Yeah.
 20 (Video played for the jury.)
 21 BY MR. JASON KAFOURY: (Continuing)
 22 Q. Okay. No one -- you heard Officer Phillips, no one has
 23 ever talked to him about this incident to this day?
 24 A. Yeah. I still don't see where he was in the car. He
 25 could have come from anywhere.

1 Q. Well, we can watch the video again. Did you see any --
 2 did you see a -- any image of Mr. Phillips -- Mr. Phillips
 3 there waiting around as the car pulls up?
 4 A. He could have been hiding around the corner somewhere. I
 5 don't know. Without someone asking him if he was in the car, I
 6 can't answer that.
 7 Q. But you didn't do any investigation to find out if
 8 Officer Phillips was in that car and whether he was just as
 9 unsafe by pulling right up to that front door as
 10 Officer Hermens was; right?
 11 A. I talked to Officer Hermens about this. I never had an
 12 impression that Phillips showed up with him in the same car , so
 13 I didn't find it necessary to talk to him.
 14 MR. JASON KAFOURY: All right. Exhibit 421,
 15 Mr. Hess, page 2.
 16 MR. HESS: I don't know if 421 has been received .
 17 MR. JASON KAFOURY: I'm sure it has.
 18 THE COURT: 421.
 19 MR. JASON KAFOURY: Defense Exhibit 421.
 20 THE COURT: I don't know. Christy, 421?
 21 MR. JASON KAFOURY: It was shown to the jurors
 22 yesterday.
 23 DEPUTY COURTROOM CLERK: 421 has been received .
 24 MR. JASON KAFOURY: Go to page 2 and blow up the
 25 first paragraph.

1 BY MR. JASON KAFOURY: (Continuing)
 2 Q. So these -- this is the Spencer View incident related to
 3 my client that you testified about yesterday in relation to --
 4 these are the notes that Cameron allegedly took afterward and
 5 talked to my client about; is that correct?
 6 A. Yeah. They appear to be the notes attached to that email.
 7 Q. I want to make sure we're a hundred percent clear for the
 8 jury on one point. This document says: Officer Hermens
 9 advised him -- being my client -- that he had taken a report in
 10 the area and that one of the neighbors had mental issues.
 11 Now, we've all listened to this audio. You agree with me
 12 that that phone call where Zach Hermens says the woman is
 13 crazy, that happens on a separate channel?
 14 A. That was a separate call, too.
 15 Q. Separate call, right. My client wouldn't have any of that
 16 knowledge driving up to that incident at Spencer View; right?
 17 A. That's completely incorrect. Because, as you heard in
 18 that other audio, Whitney Harder, the girl-with-the-gun video,
 19 Mr. Cleavenger was talking about going to channel three to get
 20 a secure channel. Either him or Officer Hermens. That channel
 21 is not recorded. Officer Hermens had advised me around that
 22 time frame of -- of April 2012 that he had told Mr. Cleavenger
 23 the stuff about the mental issues on channel three, which is
 24 nonrecorded.
 25 Q. Well, let's play it again. Make sure we're a hundred

1 percent clear on this.
 2 A. Okay.
 3 Q. While they're pulling that up, small point, but yesterday
 4 you testified there were many days, something along that line,
 5 of different incidents of my client not grooming. You only
 6 list three days that he didn't shave in the letter of
 7 clarification; right. Three days?
 8 A. Okay. So there's three days.
 9 MR. JASON KAFOURY: Number 9 -- 10.
 10 MR. HESS: Okay.
 11 MR. JASON KAFOURY: Go ahead.
 12 MR. HESS: This would be audio number 10.
 13 THE COURT: All right. Number 10.
 14 (Audio played for the jury.)
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. Well, the phone call that Hermens has with a woman --
 17 where he says the woman is crazy and had the back and forth,
 18 that all happened on his personal phone to dispatch; correct?
 19 A. That was the phone call, but I was referring to the
 20 Whitney Harder one where you heard either Mr. Hermens or
 21 Mr. Cleavenger say: I want to talk to Cameron on a secure
 22 line. Channel three.
 23 Q. Right. That doesn't happen in that call. Hermens doesn't
 24 say: Ocean 29, go to three so I can have this call and I can
 25 tell you this woman is crazy. That doesn't happen on that

1 radio right there.
 2 A. That correct. It doesn't. Because channel three is
 3 preset in all the vehicles. So sometimes when officers say "go
 4 to three," they don't have to change the channels because it's
 5 the same call. So there's three radios --
 6 Q. You're assuming that my client heard that because you're
 7 assuming that it was preset to three and therefore he must have
 8 heard it. That's what you're saying; right?
 9 A. I'm not assuming your client heard it. I'm just saying
 10 what was related to me. I wasn't there for the incident. And
 11 my take is Officer Hermens said it was on channel three. You
 12 would say stuff about someone's mental capacity on a
 13 nonrecorded line. That's why I think it was possible he would
 14 have set it on channel three, which is nonrecorded.
 15 Q. But he doesn't say, "Go to channel three?"
 16 A. No. It's preset in the car. It scans with the Eugene
 17 Police Department channel. At the time we had three different
 18 radios in the car.
 19 Q. So I don't want to belabor this, but if it's preset at
 20 channel three, why, in the Whitney Harder loaded-gun incident,
 21 does he then say "Go to channel three?"
 22 A. That's what I'm saying. Sometimes officers will say it
 23 anyway because it doesn't show channel three when you're
 24 looking at he radio. It's a scanning channel, so it will click
 25 up to whatever you're talking on. It's preset to Eugene PD,

1 but then if you click on the radio it switches to three,
 2 because we don't talk on the Eugene PD channel because that's
 3 how it was set up.
 4 Q. I'm moving on. I just want to hit a couple of more things
 5 quickly.
 6 A. Okay.
 7 Q. First, this whole recording policy and this massive
 8 investigation you conduct on my client, listening to 50 videos,
 9 the policy that you used on somebody back in California, was --
 10 what was it called? 63?
 11 A. PO Code 632.
 12 Q. 632 okay. That's a totally different code than
 13 ORS 165.540; right?
 14 A. That's correct.
 15 Q. And 165.540, that's this warning people about recordings
 16 that my client, the dean -- or the chief asked whether he could
 17 be criminally prosecuted for misdemeanors on; right? That's
 18 that statute?
 19 A. That's correct, because the California version one -- at
 20 the time I was there, if you were an officer, you didn't have
 21 to advise people you were recording them.
 22 Q. Okay. Well, I have these manuals, but I think you'll
 23 agree with me nowhere is this law 165.540 -- nowhere in the
 24 84-page field training manual in Junction City is this
 25 ORS 165.540 covered; correct? It's not in there?

1 A. I've never seen the Junction City training manual, but
 2 I'll take your word for it.
 3 Q. Well, it's not in your department's 243-page policies and
 4 procedures manual from that time period, is it?
 5 A. No, it's not.
 6 Q. And it's not in the thousand-plus pages of the 2010
 7 reserve police academy notebook, is it?
 8 A. I don't know. I never reviewed that.
 9 Q. And just to be clear, you claim that my client attended
 10 some trainings about this recording that you provided, but
 11 there's no piece of paper that he signed that he was ever given
 12 that training; right? That's correct?
 13 A. They're not trainings. It was briefing discussions. So
 14 we don't have people sign rosters for briefing discussions.
 15 Q. So let's talk about Sergeant Cameron for a moment. You --
 16 when you were running IA, you never did an internal affairs
 17 investigation into the sexual harassment complaints against
 18 him; correct?
 19 A. That's correct.
 20 Q. And there are four former female officers that have all
 21 claimed sexual harassment, made direct complaints against him;
 22 isn't that correct?
 23 A. I have no idea.
 24 Q. Well, Crystal Bowes, Jen Park, Amanda Williams, and
 25 Allison Hart. Aren't those all the four names of all the

1 people?
 2 MS. COIT: Object to the foundation.
 3 THE COURT: Overruled. You can answer the question.
 4 THE WITNESS: I believe Allison Hart did not file a
 5 formal complaint.
 6 BY MR. JASON KAFOURY: (Continuing)
 7 Q. Well, she alleged to people within the department that she
 8 felt sexually harassed by Sergeant Cameron.
 9 MS. COIT: Object to the foundation.
 10 THE COURT: Counsel, the foundation for this?
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. Well, you're the head of IA; correct?
 13 A. I wasn't at that time. Lieutenant Bechdolt was.
 14 Q. When did Ms. Hart come forth with her allegations?
 15 A. She didn't. Sergeant Cameron came forth with it himself
 16 and self-disclosed what he had said to me.
 17 Q. Okay. When was that?
 18 A. I don't recall.
 19 Q. Well, was it within the last year?
 20 A. Possibly.
 21 Q. In fact, you wrote a letter of reprimand to
 22 Sergeant Cameron about this, didn't you?
 23 A. I did not write that. I gave it to him. It had my name
 24 on it.
 25 Q. Who wrote it?

1 A. Lieutenant Bechdolt.
 2 Q. Why is your name on it if you didn't write it?
 3 A. Because the primary supervisor is supposed to give the
 4 discipline.
 5 Q. Did you review it?
 6 A. Yes, I did.
 7 Q. When you reviewed it and saw that it was the fourth
 8 allegation of sexual harassment, did you decide to open up an
 9 internal affairs investigation to go interview all these other
 10 women and find out what had happened?
 11 A. No. There was an internal investigation that preceded
 12 that letter of reprimand.
 13 Q. Okay. Who did that internal affairs investigation?
 14 A. Lieutenant Bechdolt.
 15 Q. There's only one woman in the whole department left?
 16 A. Who are you including? Are you including police officers
 17 or other employees? I don't know who you're including.
 18 Q. Officers.
 19 A. I don't know if we have a female officer anymore.
 20 MR. JASON KAFOURY: That's all I have.
 21 THE COURT: Redirect?
 22
 23 ///
 24 ///
 25 ///

1 REDIRECT EXAMINATION
 2 BY MS. COIT:
 3 Q. Lieutenant Bechdolt -- I'm sorry. Lieutenant Lebrecht.
 4 A. People always do that.
 5 Q. We looked at Exhibit 33. Plaintiff's Exhibit 33.
 6 MS. COIT: Permission to publish, Your Honor?
 7 THE COURT: You may.
 8 BY MS. COIT: (Continuing)
 9 Q. Had you seen this document before today?
 10 A. I don't believe so. I don't recall seeing it.
 11 Q. This is a document created by Mr. Cleavenger; correct?
 12 A. I believe that's what Mr. Kafoury said.
 13 Q. Is there any way to verify that these numbers he has in
 14 here are correct?
 15 A. Not without someone from the department verifying it.
 16 Q. Did --
 17 MR. JASON KAFOURY: He has the document. The
 18 document has -- it's 50, 60 pages of backup documentation.
 19 THE COURT: Counsel, your question?
 20 THE WITNESS: Can you repeat that? It was
 21 interrupted.
 22 BY MS. COIT: (Continuing)
 23 Q. Sorry. The documents that Mr. Kafoury gave you, have you
 24 had a chance to review those to see if this -- this chart
 25 created here is accurate?

1 A. No.
 2 Q. Were you asked to do that by Mr. Kafoury prior to coming
 3 here today?
 4 A. Not that I recall.
 5 Q. Do you know what documents he pulled to compile that
 6 exhibit you have up there?
 7 A. If you give me a moment to look at it, this looks like
 8 Computer-Aided Dispatch records, probably based on our system
 9 that's called ARMS, A-R-M-S.
 10 Q. But flipping through those documents there, can you tell
 11 all the relevant documents have been pulled?
 12 A. I wouldn't be able to tell unless I looked it up myself.
 13 It has his name on it. It has dates. It's possible it is
 14 correct. I wouldn't be available to verify it without going
 15 through the whole thing myself.
 16 Q. Who has access to this information?
 17 A. Employees of the department.
 18 Q. Do you know how Mr. Cleavenger got this information?
 19 A. Didn't it have a date on here pretty recent somewhere?
 20 Yeah, I don't know -- I mean, he could have pulled it himself
 21 or he could have had someone else do it for him. He could have
 22 asked us for it. I don't remember. There's been so many
 23 documents.
 24 Q. Okay. So let's look at another exhibit. You were
 25 talked -- you were questioned about an email that you sent out

1 when the arbitration decision was forwarded to you. And I want
 2 to show you the previous email that you were not shown --
 3 A. Okay.
 4 Q. -- to give context to your response.
 5 MS. COIT: Permission to publish?
 6 THE COURT: You may.
 7 MS. COIT: Thank you.
 8 BY MS. COIT: (Continuing)
 9 Q. All right. So I want to look at the email from Doug Park.
 10 MR. JASON KAFOURY: Your Honor, I do have a sidebar
 11 issue on this that I objected to earlier.
 12 THE COURT: Just a moment. Let me look at my notes
 13 for one second.
 14 THE WITNESS: I'm not in that email.
 15 THE COURT: Just a minute.
 16 THE WITNESS: Sorry. Sorry.
 17 THE COURT: I'll be right with you.
 18 Has this been received in evidence?
 19 DEPUTY COURTROOM CLERK: Yes, Judge.
 20 THE COURT: It has?
 21 MR. JASON KAFOURY: I -- I discussed with counsel
 22 about this and we had not reached an agreement on it. That's
 23 where the record stood.
 24 THE COURT: Was this pending by the Court on one of
 25 our night sessions? I don't have this listed on my list of

1 exhibits.
 2 MR. JASON KAFOURY: Yes. I believe this came up
 3 yesterday.
 4 THE COURT: So it's one of the issues in dispute that
 5 I examined during the evening with both counsel? That just
 6 requires a yes or no.
 7 MR. JASON KAFOURY: I don't recall.
 8 THE COURT: Okay. Counsel, just a moment.
 9 Why don't you take that down off the screen for a moment.
 10 Let me see the exhibit, the hard copy, for just a minute.
 11 Either Christy or --
 12 MS. COIT: Your Honor, to speed things along, I can
 13 go over this with Chief McDermed in her testimony, and we can
 14 discuss this with her.
 15 THE COURT: It's up to you. I'm not trying to
 16 foreclose you. I just don't know what it is.
 17 MS. COIT: We can take it up later. I'll go over it
 18 with Chief McDermed.
 19 THE COURT: All right.
 20 BY MS. COIT: (Continuing)
 21 Q. You were questioned about your role as the internal
 22 affairs lieutenant and whether or not you had taken any action
 23 with regard to an employee who had been terminated for theft,
 24 and I believe that was Mr. McIntyre; correct?
 25 A. I'm not familiar with that person.

1 Q. Okay. And then another person who forged a parking pass,
 2 and that's Ms. Bowes; correct? If you know.
 3 A. I wasn't familiar with her either.
 4 Q. So I guess that was the answer to my question. Do you
 5 have any knowledge -- did you have any knowledge, when you were
 6 the internal affairs lieutenant, that those three officers who
 7 had been fired for alleged dishonesty continued on as police
 8 officers after their employment?
 9 A. No. I never heard about the facts of any of this stuff
 10 until this case.
 11 Q. And you did go back and look through the internal affairs
 12 investigations from 2012 forward, when you became a police
 13 department, to see if there were any documents that needed to
 14 be turned over from other employees; correct?
 15 A. That's correct. I even sent an email about it.
 16 MS. COIT: That's all I have. Thank you.
 17 THE COURT: Recross?
 18
 19 RECCROSS-EXAMINATION
 20 BY MR. JASON KAFOURY:
 21 Q. Document 33 there --
 22 A. This one?
 23 Q. Yes. That has all my client's statistics. Isn't it a
 24 fact that my client gave that document to Sergeant Cameron
 25 and -- during their discussions over his annual evaluation and

1 his scores?
 2 A. I won't be able to answer that, but luckily
 3 Sergeant Cameron is next, I believe.
 4 MR. JASON KAFOURY: Luckily, for us.
 5 THE COURT: Thank you very much, sir. You may step
 6 down.
 7 THE WITNESS: Thank you, Your Honor.
 8 THE COURT: And, Counsel, your next witness, please.
 9 MS. COIT: Defense calls Nicole Commissiong. We're
 10 checking to make sure she's here.
 11 THE COURT: While you're getting the next witness,
 12 the jury asked counsel -- both of you, Counsel. Counsel?
 13 MR. JASON KAFOURY: Yes.
 14 THE COURT: Counsel, pay attention. The jury asked
 15 this morning how much longer, and I said I didn't really know.
 16 It depended upon the morning session. But I think there are
 17 three witnesses left for the defense; is that correct?
 18 MS. COIT: There is Scott Cameron, Chief McDermed,
 19 Ms. Commissiong, Mark Chase very briefly, and we'll read some
 20 deposition testimony from Chelsea Brandenburg.
 21 THE COURT: Gives us an idea anyway. Please step
 22 forward.
 23 ///
 24 ///
 25 ///

1 NICOLE COMMISSIONG,
 2 called as a witness in behalf of the Defendants, being first
 3 duly sworn, is examined and testified as follows:
 4 THE WITNESS: I do.
 5 THE COURT: Thank you. Please be seated here in the
 6 witness box. The entrance to the -- the entrance is closest to
 7 the wall. And after you're seated, would you pull a chair
 8 closest to the microphone so I'm certain the jury can hear you,
 9 and face the jury.
 10 THE WITNESS: My name is Nicole Commissiong,
 11 C-O-M-M-I-S-S-I-O-N-G.
 12 THE COURT: Thank you. Direct examination.
 13
 14 DIRECT EXAMINATION
 15 BY MS. COIT:
 16 Q. Ms. Commissiong, thank you for coming today. Can you tell
 17 us who your current employer is and what your position is?
 18 A. I'm the Assistant Dean for Student Affairs at the
 19 University of Oregon School of Law.
 20 Q. And before this position were you in private practice?
 21 A. I was.
 22 Q. Can you tell the jury our connection?
 23 A. You and I worked at the same law firm -- I believe it was
 24 2005 to 2009 -- in Eugene, Oregon.
 25 Q. And you left that firm to take the job at University of

1 Oregon; correct?
 2 A. That's correct.
 3 Q. Now, do you know Mr. Cleavenger?
 4 A. Other than the traffic stop and related to this case, no.
 5 Q. Do you recall an interaction that you had with
 6 Mr. Cleavenger in April -- April 1st of 2012?
 7 A. Yes.
 8 Q. And do you recall who you were with that day and what you
 9 were doing, where you were going, prior to this stop?
 10 A. Yes.
 11 Q. Can you tell us?
 12 A. So I believe it was a weekend. I remember that because I
 13 saw the video, and I was wearing yoga pants. I don't do that
 14 during the week. And I was in my car driving with
 15 Michael Vergamini, and we were probably going to get breakfast
 16 or coffee or something like that.
 17 Q. Tell us what you recall happening when Mr. Cleavenger --
 18 tell us when you first noticed him behind you.
 19 A. I was driving down 13th Avenue in Eugene. 13th Avenue is
 20 a one-way street. I drove down 13th Avenue. It -- it
 21 dead-ends into the university. And a few blocks from the
 22 university, I noticed that a UOPD, University of Oregon Police
 23 Department, SUV pulled out from a parking lot. I was driving
 24 down 13th and it pulled out from the right and got behind me,
 25 from my right and got behind me, and was following me. I felt

1 as if the vehicle was following me.
 2 I continued to drive in a straight line, and then I turned
 3 and parked. And after I turned into the -- after I turned
 4 into -- it was a parking lot, a University of Oregon parking
 5 lot, he blocked my car in.
 6 Q. Do you recall carelessly driving as you were approaching
 7 this parking lot?
 8 A. No. I was driving a straight line, and I indicated and
 9 turned, and then turned into the lot, and when Mr. Cleavenger
 10 approached me -- I didn't know his name at the time -- when he
 11 approached me, he didn't say anything about careless driving.
 12 Q. Where did -- did Mr. Cleavenger turn his lights on before
 13 he parked his car behind you?
 14 A. I do not believe his lights were on when he was following
 15 me on the city street. I do believe he turned his lights on
 16 after pulling into the lot.
 17 Q. Did he block your car in?
 18 A. Yes. It would have been impossible for me to back out,
 19 given the way he parked behind me.
 20 Q. Did you feel that you were free to go while he was parked
 21 there?
 22 A. No.
 23 Q. What did Mr. Cleavenger say to you when he got out of the
 24 car?
 25 A. He said that my -- the tags on my vehicle were expired. I

1 explained to him that my vehicle was registered, which it was,
 2 and that I had -- was having problems getting -- I had -- the
 3 tags were starting to peel off my car, and I had been trying to
 4 get them off, unsuccessfully, but I was trying to get them off
 5 so I could put the tags so that they would lay flat and not
 6 peel off the license plate.
 7 Q. Were there a few layers of tags on your car at that time?
 8 A. Yeah. I got the car -- it's the only car I've ever had.
 9 I got it in the fall of 1995. It's a '96 Civic. I named it
 10 Warrior, and all those -- all of those tags are stacked up, so
 11 it was peeling off.
 12 Q. All right. Do you recall questioning Mr. Cleavenger about
 13 his jurisdiction?
 14 A. I did, yes.
 15 Q. Tell us about that.
 16 A. I told him I didn't think he had the right to follow me on
 17 a city street or stop me and I believe that he didn't have --
 18 he didn't have jurisdiction to do what he was doing.
 19 Q. What was Mr. Cleavenger's response to you?
 20 A. He said that he did. That's what I remember. The gist of
 21 it.
 22 Q. Did he ever tell you he was pulling you over because he
 23 thought your driving was problematic?
 24 A. No.
 25 Q. Do you recall Mr. Cleavenger telling you that he was a

1 lawyer?
 2 A. Yes.
 3 Q. Did you get any impression of what he was trying to tell
 4 you when he made that statement?
 5 A. No.
 6 Q. Do you recall telling Chief McDermid that you thought he
 7 was mocking you?
 8 A. He seemed a little bit that way. He seemed a little bit
 9 dismissive of my objection to his stop.
 10 Q. Overall, how would you describe the encounter with
 11 Mr. Cleavenger, how it made you feel?
 12 A. I was annoyed. I didn't find it particularly pleasant. I
 13 didn't think he had the right to be doing it.
 14 Q. Did he at one point tell you that he could cite you for
 15 tags?
 16 A. I'm not positive. He may have. I certainly was left with
 17 that impression, given that that's why he said he stopped me.
 18 Q. At some point did Mr. Cleavenger confirm to you that your
 19 tags were, in fact, current?
 20 A. Yes.
 21 Q. And at that point did you feel he let you go?
 22 A. I don't know if he let me go. I left.
 23 Q. Okay. All right. After this incident, did you receive a
 24 call from Chief McDermid?
 25 A. I did. I couldn't tell you exactly when, but it felt like

1 it was within a month of that.
 2 Q. Prior to that phone call that you received from
 3 Chief McDermid, did you know her or have any relationship with
 4 her?
 5 A. I may have interacted with her related to parking and the
 6 Olympic trials, but I -- at the time I would not have
 7 recognized her if I passed her on the street.
 8 Q. From the discussion you had with Chief McDermid, what did
 9 you understand to be the purpose of the call?
 10 A. To find out what happened with the vehicle stop.
 11 Q. Did she seem concerned?
 12 A. She seemed like she wanted to know and find out what my
 13 experience was.
 14 Q. What did you tell her?
 15 A. Basically what I told you, that I was driving down the
 16 street in a straight line, I turned and turned, and he -- he
 17 seemed to be following me. At one point I accelerated a little
 18 bit to test my theory, and he -- he also did, and so I felt he
 19 was following me. I didn't think he had the right to do that.
 20 And I explained what I said here today; that he blocked my car
 21 in and we had a conversation and I expressed my objection to
 22 what he was doing.
 23 Q. Do you recall telling her anything else?
 24 A. I may have. I don't remember all of the details of the
 25 conversation. It was, you know, quite some time, but, in

1 general, I expressed to her what I expressed to you; that --
 2 that I objected -- I guess one other thing I mentioned was that
 3 I was concerned more on behalf of the university that if they
 4 had officers engaging in that kind of behavior, because I
 5 didn't think it was a legal stop, that that could be
 6 problematic. And particularly folks who look like me, members
 7 of minority groups, sometimes feel that's the reason for the
 8 stop. I didn't say I was accusing him of that, but sometimes
 9 people have that feeling.
 10 Q. And you raised that --
 11 A. I did.
 12 Q. -- with Chief McDermid?
 13 A. I did.
 14 MS. COIT: All right. Thank you, Ms. Commissiong.
 15 THE COURT: Cross-examination.
 16
 17 CROSS-EXAMINATION
 18 BY MR. MCDUGAL:
 19 Q. Good morning. I'm Mark McDougal.
 20 A. Good morning.
 21 Q. I just wanted to check something. So you accelerated to
 22 test the theory?
 23 A. Yeah. I sped up just a little bit. Not a lot. You can't
 24 go very fast on that road.
 25 Q. Okay. You used to work for the defensive law firm; right?

1 A. Yes. I testified to that.
 2 Q. Okay. Did a union steward try to talk to you on behalf of
 3 James Cleavenger?
 4 A. Yes.
 5 Q. And did you agree to talk with them initially?
 6 A. Yes, but I didn't realize who it was.
 7 Q. Once you realize it was someone asking questions on behalf
 8 of James Cleavenger, you refused to speak to them; correct?
 9 A. That's correct.
 10 Q. With regard to pulling somebody over who don't have
 11 current tags displayed, you realize that is a traffic offense,
 12 not having current tags displayed?
 13 A. Well, my opinion is that he did not have the jurisdiction
 14 as a UOPD officer to be following me on a city street, and my
 15 opinion is unchanged.
 16 Q. That was not my question. You're a lawyer. Let me do it
 17 again.
 18 Do you have the understanding that driving not displaying
 19 current tags is a violation for which you can be pulled over
 20 for?
 21 A. Not by a UOPD officer, but otherwise, yes.
 22 Q. Okay. And do you know whether or not somebody from the
 23 UOPD has testified in this trial that they have the
 24 jurisdiction?
 25 A. I have no idea what anyone testified in this trial. I

1 haven't been here.
 2 Q. So you're giving your opinion just based on your gut
 3 feeling?
 4 A. No. I'm giving my opinion based on information I had at
 5 the time. My opinion remains unchanged.
 6 Q. What information did you have at the time?
 7 A. It was around the time UOPD was just transitioning to
 8 being a police department. I did not believe he had the right
 9 to stop me.
 10 Q. Okay. So it was a belief?
 11 A. That's what I said.
 12 Q. Okay. Now, who first brought up being lawyers?
 13 A. I believe it was Mike Vergamini.
 14 Q. Okay. Did he say something to the gist of, "We're both
 15 lawyers"?
 16 A. He may have. I don't remember exactly what he said.
 17 Q. And did Mr. Cleavenger say, "I'm a lawyer also"?
 18 A. Yeah.
 19 Q. And that's when you guys thought he was mocking you, by
 20 saying that, because you didn't believe he was an attorney;
 21 correct?
 22 A. I have no idea what Mr. Vergamini thought. I felt he was
 23 being mocking.
 24 Q. Why did you think that the way that he said he was an
 25 attorney was mocking you?

1 A. It just felt that way.
 2 Q. What about it? Help me.
 3 A. The expression on his face, he seemed to be grinning when
 4 he said it.
 5 Q. True statement he was an attorney?
 6 A. I don't know whether he is admitted to the Bar.
 7 Apparently he graduated from law school.
 8 Q. Okay. Did Chief McDermid tell you she had a videotape of
 9 the event, a dash cam?
 10 A. I don't remember.
 11 Q. Did Mike Morrow tell you that he had a dash cam, the IA
 12 gentleman that interviewed you?
 13 A. Who?
 14 Q. Mike Morrow.
 15 A. I don't remember speaking to Mike Morrow.
 16 Q. You never spoke to Mike Morrow?
 17 A. I didn't say that. I said I don't remember speaking to
 18 him.
 19 Q. Okay. Do you know, in fact, if there's a dash cam that
 20 shows the entire interaction?
 21 A. I do know there is.
 22 Q. And is there one?
 23 A. There is.
 24 Q. Do you have any understanding of why Chief McDermid would
 25 need to call you if there's a dash cam of the whole

1 interaction?
 2 A. I didn't ask her.
 3 Q. Did she call you to give you Mr. Cleavenger's or the
 4 department's perspective on the stop?
 5 A. She called me and asked me my perception of what occurred
 6 and I told her.
 7 Q. Did she call you, asking you to file a complaint?
 8 A. I already told you what she asked me, what occurred, and I
 9 told her.
 10 Q. Okay. So you're saying she did not ask if you wanted to
 11 file a complaint?
 12 A. That's not my recollection. She asked me what happened.
 13 Q. And you never did file a complaint; is that correct?
 14 A. I did not file a formal complaint. That's correct.
 15 Q. What did you file?
 16 A. I didn't file anything. I answered her questions. I
 17 assumed she wrote down some of what I said.
 18 Q. Just give me one second to check something. Do you recall
 19 signaling left and then turning right?
 20 A. Yes. That is perfectly -- no, sorry. I remember
 21 signaling left and then changing my mind and signaling right
 22 and then turning right.
 23 Q. That happened very quickly; right?
 24 A. I was driving at the corner. It didn't take five minutes,
 25 but I signaled, changed my mind, and changed the direction of

1 my signal, and then turned, which is the prudent thing to do.
 2 Q. Is that when you accelerated?
 3 A. I did not accelerate into a turn, no.
 4 Q. You said you accelerated to test something. When was
 5 that?
 6 A. After I noticed he was following me. I sped up my car a
 7 little bit to see whether or not I was correct, and he
 8 continued to follow me.
 9 Q. Let's -- did he follow you or was he simply the car behind
 10 you on a one-way street?
 11 A. I have expressed that I felt he was following me.
 12 Q. How could he have driven differently if he was just going
 13 to be going down a one-way street because he had turned out of
 14 a parking lot? What could he have done for you to think he
 15 wasn't following you?
 16 A. I don't know. But what I can tell you was I felt he was
 17 following me. And that feeling was confirmed when I turned and
 18 he turned after me and I turned again and he turned after my
 19 car and I turn again and he followed me again.
 20 Q. How many turns did you make?
 21 A. Well, I turned off -- I turned off 13th, which is a
 22 one-way street. I turned right onto -- I don't know that it's
 23 Kincaid, but there's a street between the parking lot and a
 24 building called PLC. So I turned right off of 13th onto that
 25 street, but I made another right onto what would have been

1 14th, and then I made another right and turned into the parking
 2 lot, and at every turn he followed me.
 3 Q. And you were going to the campus. Do you know where he
 4 was going anyway?
 5 A. I assumed that when he started driving his car that day,
 6 it was not his intention to end up behind my car and block my
 7 car in. So, no.
 8 MR. MCDUGAL: Nothing further.
 9 THE COURT: Redirect.
 10
 11 REDIRECT EXAMINATION
 12 BY MS. COIT:
 13 Q. Prior to me contacting you in this case to arrange for
 14 your deposition, had we had any substantive discussions about
 15 your involvement with Mr. Cleavenger and the stop?
 16 A. No. I had no idea the law firm was -- that Harrang Law
 17 was involved in the case, no.
 18 MS. COIT: Thank you. No more questions.
 19 THE COURT: Recross.
 20
 21 RECROSS-EXAMINATION
 22 BY MR. MCDUGAL:
 23 Q. Had Jens Schmidt talked with you?
 24 A. Have I had a conversation with Jens Schmidt?
 25 Q. No.

1 fact, an exhibit is missing, no new trial. If it's not in the
 2 proper form or condition -- like sometimes I get a six-pack
 3 photo lineup on a criminal case and the flap is undone with
 4 tape on the back and it says been convicted of whatever 15
 5 times and not supposed to go to the jury, no new trial.
 6 Completely your responsibility.
 7 So although you've had your associates work on it, your
 8 signature means missing item, content, no new trial.
 9 Understood?
 10 MR. MCDUGAL: Yes.
 11 MR. JASON KAFOURY: Yes.
 12 THE COURT: Any questions? I'm happy to respond to
 13 them.
 14 MR. MCDUGAL: One question. We had Your Honor's
 15 ruling where right now two exhibits are being redacted to
 16 reflect that ruling, so --
 17 THE COURT: And that is going to have to be done by
 18 tonight.
 19 MR. MCDUGAL: It will be. They're going to bring
 20 them back today.
 21 THE COURT: Midnight?
 22 MR. MCDUGAL: I thought you wanted us to sign now.
 23 THE COURT: No. I -- I want you to sign now. In
 24 other words, I've got the numbers.
 25 MR. MCDUGAL: All right. I am just trying to make

1 THE COURT: Now, may the witness be excused?
 2 MS. COIT: Yes.
 3 MR. MCDUGAL: Yes.
 4 THE COURT: Thank you very much.
 5 Counsel, your next witness, please.
 6 MS. COIT: I would call Scott Cameron.
 7 THE COURT: Now, that's going to take a little while,
 8 I assume, for the parties. I'm going to send you to lunch at
 9 11:45 and bring you back at 12:45, okay? Please don't discuss
 10 this matter amongst yourselves or form or express any opinions
 11 concerning the case. We'll see you at 12:45.
 12 (Jury not present.)
 13 THE COURT: Counsel, have a seat. And, Christy, if
 14 you would come back for a moment. Have a seat. I think --
 15 stick around, but stop your fingers moving. Just rest.
 16 (Off-the-record discussion.)
 17 THE COURT: On the record. Will you be signing on
 18 behalf of plaintiffs, the exhibit list?
 19 MR. MCDUGAL: I can do that.
 20 THE COURT: Here's my rule. Lead counsel signs
 21 and -- if you're satisfied, and that means the following: The
 22 exhibits are complete. I know that we're current as of today.
 23 If there are any arguments, we want to raise those now about
 24 the form or the content, the number of exhibits, or the
 25 condition. But your signature means the following: If, in

1 clear that my signing is subject to the redaction Your Honor
 2 ordered.
 3 THE COURT: Are we having difficulties over
 4 redactions?
 5 MR. MCDUGAL: No. I think it was resolved. They're
 6 just being redacted at the office.
 7 THE COURT: I'll give you one more opportunity, then,
 8 but -- and you can show me those in question tonight, but I
 9 would like to get Christy caught up with her logs.
 10 (Off-record-discussion.)
 11 THE COURT: Counsel, are you ready to sign?
 12 MS. COIT: Yes.
 13 MR. JASON KAFOURY: Yes.
 14 THE COURT: Now we're on the record and -- the record
 15 should reflect the signature of counsel is saying that the
 16 content is appropriate, that all the items are included, but
 17 counsel raised with me there are certain redactions being made
 18 to certain items that are taking place now, and we go over that
 19 again this evening.
 20 MR. MCDUGAL: Yes.
 21 THE COURT: But at least we have the correct
 22 exhibits; is that correct?
 23 MR. MCDUGAL: Yes, Your Honor.
 24 THE COURT: All right. We can minimally, then, sign
 25 off on that, but we'll take the redactions this evening. And

1 what that means, once more, for the record, is if a document is
2 missing, the Court will not grant a new trial. Okay?

3 Then, now, Christy, will you be so kind? Thank you.

4 (Jury present.)

5 THE COURT: The jury is present, all counsel and the
6 parties are present.

7 Counsel, if you would like to call your next witness.

8 MS. COIT: We call Rebecca Tobias, who will be
9 reading the deposition transcript portions of Chelsea
10 Brandenburg.

11 THE COURT: Okay. Would you step forward, please,
12 into the well, and would you be kind enough to raise your right
13 hand.

14 REBECCA TOBIAS,
15 called as a witness to read testimony on behalf of the
16 defendant, being first duly sworn, reads testimony as follows:

17 THE WITNESS: I do.

18 THE COURT: Thank you. If you would please be seated
19 in the witness box and then would you state your true name and
20 spell your last name?

21 THE WITNESS: My name is Rebecca Tobias, T-O-B-I-A-S.

22 THE COURT: Let me explain to the ladies and
23 gentlemen of the jury. You, of course, heard of depositions.
24 It's a discovery vehicle where a person is deposed before trial
25 under oath. Both counsel have stipulated that the testimony of

1 Chelsea Brandenburg may be read into the record from the
2 deposition, and that's stipulated to by the defense and by the
3 plaintiff; is that correct?

4 MS. COIT: Yes.

5 MR. JASON KAFOURY: That's correct, Your Honor.

6 THE COURT: And, Ms. Tobias --

7 THE WITNESS: Tobias.

8 THE COURT: With an S?

9 THE WITNESS: Yes.

10 THE COURT: -- is going to play the role of
11 Chelsea Brandenburg, but she's not Chelsea Brandenburg. She is
12 Rebecca Tobias, and she's reading from a deposition. She'll
13 read question/answer, question/answer, and counsel have
14 stipulated to these various sections, although the deposition
15 must be -- may be -- or may be much larger. So if you would
16 like to begin reading.

17 MS. COIT: Your Honor --

18 THE COURT: Are you going to ask questions and she's
19 going to respond?

20 MS. COIT: Yes. She doesn't --

21 THE COURT: Is that acceptable, Counsel?

22 MR. JASON KAFOURY: That is. I'm going to do it too.

23 THE COURT: Counsel is going to ask a question and
24 then Ms. Tobias, playing the role of Chelsea Brandenburg, will
25 respond. Counsel?

1 MS. COIT: Thank you. For the record, this is the
2 deposition of Chelsea Brandenburg, taken March 20, 2015, in
3 Eugene, Oregon.

4 Reading from page 5, line 8, statement from Mr. Kafoury:
5 The parties were officially married July 20, 2011, and I
6 believe that the divorce was finalized May 29th of 2014.

7 Can you go to page 10, please? We're starting on line 19.

8 (Read by Ms. Coit.)

9 CHELSEA BRANDENBURG
10 was called as a witness, via deposition testimony, and
11 testified as follows:

13 EXAMINATION

14 BY MS. COIT:

15 Q. Can you tell me when you met Mr. Cleavenger?

16 A. I met him in 2008.

17 Q. Where did you meet?

18 A. At a soccer viewing. Soccer club.

19 Q. Was that a soccer club that he was kind of the head of?

20 A. Yes.

21 Q. Was that when he was a student at the university?

22 A. Yes.

23 Q. Were you a student as well?

24 A. Yes.

25 Q. Did you join the soccer club?

1 A. I think I did, but I don't remember. Yes. I think.

2 Q. Was -- strike that.

3 So did you begin dating in 2008?

4 A. Yes.

5 Q. Did you live with Mr. Cleavenger before you were married?

6 A. Yes.

7 Q. When did you move -- or when did you two move in together?

8 A. 2009. July 2009.

9 MS. COIT: Now please go to page 13, starting at line
10 24, and we're going to continue through page 19. Excuse me.
11 Starting at line 22.

12 BY MS. COIT: (Continuing)

13 Q. He never talked to you about why he gave a speech about
14 Tasers?

15 A. I think he just didn't believe in them. That's what he
16 told -- I mean, that's all I know.

17 Q. Did Mr. Cleavenger talk to you -- around 2008, 2009, talk
18 to you about the University of Oregon Department of Public
19 Safety and his thoughts about it?

20 A. 2008 and 2009? Not in 2008 and 2009.

21 Q. Okay. How about at any point before he actually became a
22 public safety officer, did he talk to you about his thoughts
23 about the department?

24 A. Yeah.

25 Q. What did he tell you?

- 1 A. I remember him not wanting to work there because he
2 thought it wasn't -- you know, not as good of a department as
3 being in a real police department. "A Mickey Mouse operation"
4 is what he called it.
5 Q. Were you surprised when he applied to become an officer at
6 the Mickey Mouse operation?
7 A. No. Because he needed a job.
8 Q. Had he applied for any police jobs?
9 A. Yes.
10 Q. Had he already failed the bar at this time?
11 A. He failed the bar. I think he had already -- he passed it
12 by the time he was applying.
13 Q. He had passed the Oregon Bar?
14 A. The Washington Bar.
15 Q. The Washington Bar, okay.
16 Do you know why Mr. Cleavenger didn't go into the practice
17 of law after law school?
18 A. I thought it was because he couldn't find a job as a
19 lawyer.
20 Q. Do you know the approximate date of when Mr. Cleavenger
21 decided that he wanted to go to work for the University of
22 Oregon Police Department?
23 A. Gosh. It must have been in 2011 sometime or -- I can't
24 remember. I don't remember.
25 Q. Was it before or after you got married?

- 1 A. I think it was before.
2 Q. Okay. So, again, I'm not asking you anything about
3 discussions you had with James during your marriage, but before
4 your marriage did you -- did he talk to you about why he had
5 made the decision to go to the University Department of Public
6 Safety?
7 A. Because he was trying to get into police departments and
8 it was the job that -- that's where he got hired.
9 Q. Okay. Do you know by the time he started work as a public
10 safety officer, had his opinion of the department changed?
11 A. No.
12 Q. No. Did you get the impression he felt he was a better
13 police officer than those that were working at the Department
14 of Public Safety?
15 A. Yes.
16 Q. What made you think that?
17 A. He just spoke derogatorily about the other people.
18 Q. While he was working there?
19 A. Yes.
20 Q. Can you remember who he spoke about? Let me give you some
21 names. Brandon Lebrecht?
22 A. I'm just trying to think if it was before we were married.
23 Q. Okay. Can I -- just to help her, the date he started as a
24 public safety officer, do you know that date?
25 MS. COIT: Mr. Cleavenger then says full time was

- 1 March of 2010.
2 BY MS. COIT: (Continuing)
3 Q. Okay. So he started there in March 2011 so there was a
4 period of five months --
5 A. Okay.
6 Q. -- before you were married.
7 A. Not Lebrecht, then.
8 Q. Okay. Who would it have been during that early part of
9 his career?
10 A. I don't remember. I don't remember the names of people.
11 Q. Okay. What was your impression about what he thought was
12 deficient about the department?
13 A. I'm trying to think. What did he think was deficient
14 about the department? I think he just doubted the capability
15 of the people he was working with and their intelligence.
16 Q. Does James tend to think that he's smarter than most
17 people?
18 A. I don't know about most people. Some people, probably.
19 Q. Were you surprised --
20 I asked you that.
21 So when you met James -- I apologize for calling him
22 "James." It seems odd to call him "Mr. Cleavenger." When you
23 met him, did he express to you a desire to be a police officer
24 for his life's career?
25 A. When I -- not when I met him.

- 1 Q. Okay. When you met him, did he want to do something else?
2 A. He wanted to be a lawyer.
3 Q. Okay. At some point, did you understand that his desire
4 to be a police officer became paramount for him?
5 A. Yes.
6 Q. Do you know what the shift was -- why he went from wanting
7 to be a lawyer to wanting to be a police officer?
8 A. I'm not extremely -- I'm not completely clear about that.
9 I just think he was trying a different avenue --
10 Q. Okay.
11 A. -- for work.
12 Q. Did he seem frustrated with his inability to get work as a
13 lawyer?
14 A. Yes.
15 Q. Did he apply for jobs?
16 A. As far as I know, he applied for many.
17 Q. In Washington?
18 A. Yeah. Yes.
19 Q. Were you two going to move if he got a job in Washington?
20 A. Yes.
21 Q. Did he ever talk to you about taking the Oregon Bar again?
22 A. No.
23 Q. Was he upset when he failed it?
24 A. Yeah. Yes.
25 Q. Do you know why he didn't want to take it again?

1 A. I think he just decided to take the Washington one because
 2 it was easier and he decided to just take one instead of two.
 3 Q. Were you supportive of his decision to be a police
 4 officer?
 5 A. Yes.
 6 MS. COIT: No more questions for Ms. Brandenburg.
 7 MR. JASON KAFOURY: Just the highlighted portions. A
 8 couple of them have been read already, but --
 9 THE COURT: Counsel, will you be asking questions?
 10 MR. JASON KAFOURY: Yes, I will, Your Honor.
 11 THE COURT: Questions by the defense.
 12 (Questions read by Mr. Jason Kafoury.)
 13 EXAMINATION
 14 BY MR. JASON KAFOURY:
 15 Q. (By Ms. Coit) So before the deposition today, did you
 16 speak with Jason Kafoury?
 17 A. No.
 18 MR. JASON KAFOURY: Just for the record, that would
 19 be Ms. Coit asking that.
 20 Q. Did you speak with Mr. Cleavenger about your deposition ?
 21 A. No, I did not speak with him about the deposition.
 22 MR. JASON KAFOURY: This is what you've read before.
 23 All right. So moving on to page 12.
 24 BY MR. JASON KAFOURY: (Continuing)
 25 Q. Were you present for any speeches Mr. Cleavenger made

1 about the University of Oregon Police Department or Department
 2 of Public Safety?
 3 A. No.
 4 Q. Sitting here today, do you know that he made any speeches
 5 about the University of Oregon Department of Public Safety
 6 before he joined the department?
 7 A. I think he talked about -- I just think he talked about
 8 the Tase issuer -- excuse me -- the Taser issue or something,
 9 but I don't -- I wasn't around for that, so --
 10 MR. JASON KAFOURY: Page 23, line 15.
 11 BY MR. JASON KAFOURY: (Continuing)
 12 Q. Do you know why he skis in a leisure suit?
 13 A. For fun.
 14 Q. For fun?
 15 A. Yep.
 16 MR. JASON KAFOURY: Page 26.
 17 BY MR. JASON KAFOURY: (Continuing)
 18 Q. Okay. So you wouldn't have observed his reaction to
 19 getting the letter?
 20 A. Let me think. I remember when he got the letter, some
 21 letter of conduct, but I'm guessing that's not the same. And I
 22 think he -- I'm trying to remember. I never saw the letter
 23 about the shaving or the behavior. I think he told me about
 24 those instances.
 25 Q. Okay. And I'm not asking what he told you about it, but

1 when he told you about that, did he appear -- did he appear --
 2 how did he appear? Did he appear angry? Did he appear upset?
 3 A. Yeah, upset. Frustrated.
 4 Q. Did you get the impression he felt the letter was
 5 warranted -- unwarranted -- was not warranted?
 6 A. Yes.
 7 MR. JASON KAFOURY: Okay. Page 33.
 8 BY MR. JASON KAFOURY: (Continuing)
 9 Q. (By Ms. Coit) When he first started working at the
 10 University of Oregon Department of Public Safety -- so I'm
 11 trying to focus on the period before you got married.
 12 A. Okay.
 13 Q. So the first five months he was working there, do you
 14 recall him coming to you with any complaints about how he was
 15 being treated at work?
 16 MR. JASON KAFOURY: Then I said, "Sorry. What was
 17 the time frame on that, Counsel?
 18 Ms. Coit: March until July of 2011.
 19 Okay. Before the marriage.
 20 THE WITNESS: Not that I recall in that time frame.
 21 MR. JASON KAFOURY: Page 35.
 22 BY MR. JASON KAFOURY: (Continuing)
 23 Q. Okay. Did you ever become aware that he had a long
 24 emotional sort of tell -everything meeting with Chief McDermed ?
 25 A. That sounds familiar.

1 Q. Would you have learned that from a conversation with
 2 Mr. Cleavenger?
 3 A. Yeah. Yes.
 4 Q. Did Mr. Cleavenger think that Brandon Lebrecht was out to
 5 get him?
 6 A. Yes.
 7 Q. Did he think that Scott Cameron was out to get him?
 8 A. Yes.
 9 Q. Did he think the chief was out to get him?
 10 A. I don't think so.
 11 Q. Did he think Mike Morrow was out to get him?
 12 A. Yeah.
 13 MR. JASON KAFOURY: Page 39.
 14 BY MR. JASON KAFOURY: (Continuing)
 15 Q. Can you put any sort of time frame on when you started to
 16 observe him being not content with his job? Was it a month
 17 after he started? Six months?
 18 A. When did he start again? I'm sorry.
 19 Q. March of 2011 full time.
 20 A. Well, I think he started becoming more discontent that
 21 winter.
 22 Q. Do you know why he was more discontent that winter?
 23 A. I know he got switched to a different shift. I can't
 24 remember if it was night shift or swing shift or something.
 25 Q. What about that shift didn't he like?

1 A. And then I think he started working with Lebrecht or
 2 Cameron.
 3 Q. What -- you know Mr. Cleavenger. Do you believe he would
 4 be receptive to a supervisor correcting how he's performing his
 5 job?
 6 A. I don't know. I think he would be.
 7 Q. Okay.
 8 A. I don't know. I don't know how to answer that.
 9 Q. Well, let's make it more specific. At the Department of
 10 Public Safety, where you've already testified he didn't have
 11 that great of respect for the officers there at that
 12 department, from what you know of him, do you believe he would
 13 have been receptive to criticism of his performance by those
 14 officers?
 15 A. Maybe. It depends on the officer.
 16 Q. Why would it depend on the officer?
 17 A. Well, I think there were officers there he did respect and
 18 thought were good at their job and then others that he didn't
 19 respect.
 20 Q. Do you know who he didn't respect?
 21 A. I would say Cameron and Lebrecht. I don't know. I
 22 can't -- I don't know who else would be on that list.
 23 Q. How would you describe Mr. Cleavenger's personality back
 24 when you guys were married and on good terms?
 25 A. Energetic, quirky, fun-loving.

1 Q. Could he be condescending?
 2 A. I wouldn't say he was condescending.
 3 Q. Arrogant?
 4 A. I wouldn't -- I wouldn't call him arrogant either.
 5 Confident maybe.
 6 Q. Confident?
 7 A. Confident.
 8 MR. JASON KAFOURY: Page 44.
 9 BY MR. JASON KAFOURY: (Continuing)
 10 Q. How did Mr. Cleavenger react to being terminated?
 11 A. Well, he was really angry.
 12 Q. Did he think it was not justified?
 13 A. Yes.
 14 MR. JASON KAFOURY: Page 47.
 15 BY MR. JASON KAFOURY: (Continuing)
 16 Q. Okay. Is it fair to say that after Mr. Cleavenger started
 17 having the problems at the University of Oregon Department of
 18 Public Safety that he went through many, many nights of
 19 sleeplessness?
 20 A. Yes.
 21 Q. Did you try to help him with exercises to help him try to
 22 sleep?
 23 A. Exercises? I tried to help him.
 24 Q. Would he just toss and turn all night because he was sort
 25 of preoccupied about what was going on with his work?

1 A. Sometimes he tosses and turns and sometimes he would get
 2 up and just stay up.
 3 Q. In a given course -- just so I have a sense, in a given
 4 course of a week or a month, can you try to help quantify for
 5 me how often all this caused him problems with sleep?
 6 A. Maybe two nights a week.
 7 Q. On a number of occasions, is it fair to say, without
 8 getting any -- into any of the details of the conversations,
 9 that there were, in Mr. Cleavenger's mind, a few people within
 10 the department, including Lieutenant Lebrecht and Sergeant
 11 Cameron, that he thought were targeting him because they didn't
 12 like him?
 13 A. He would -- I think he would say that.
 14 Q. I mean, is it fair to say he was a pretty outgoing, fun
 15 person before he ever started working at the University of
 16 Oregon Department of Public Safety?
 17 A. He was.
 18 Q. He wasn't, before all of this, argumentative, was he?
 19 A. Not -- no -- not particularly.
 20 Q. Did he, generally, before all of this, get along with
 21 other people very well?
 22 A. Seemed like it.
 23 Q. Do you remember him taking 20 -plus people on an annual
 24 basis to Mt. Adams for camping trips?
 25 A. Yes.

1 Q. Before he ever went to the University of Oregon Department
 2 of Public Safety, did he have any issues about being paranoid
 3 about supervisors or anything like that?
 4 A. Not that I know of -- or, sorry -- no, not that I know.
 5 Q. And I think I just forgot to ask this: What was
 6 Mr. Cleavenger's long-term career plan when he was working at
 7 the University of Oregon?
 8 A. At one time he wanted to be a chief.
 9 MR. JASON KAFOURY: That's all I have.
 10 MS. COIT: Thank you.
 11 THE COURT: Any other reading? Thank you very much.
 12 Counsel, your next witness, please.
 13 MS. COIT: Defense calls Scott Cameron.
 14 THE COURT: All right. Mr. Cameron, once again,
 15 would you raise your right hand.
 16 SCOTT CAMERON,
 17 called as a witness in behalf of the Defendants, being first
 18 duly sworn, is examined and testified as follows:
 19 THE WITNESS: I do.
 20 THE COURT: Thank you, sir. Be seated in the witness
 21 box. And, once again, the entrance is just to my right, sir.
 22 And, once again, it's been a while since you testified. Would
 23 you be seated, and, after you're seated, would you face the
 24 jury, state your full name again, and please spell your last
 25 name.

1 THE WITNESS: Scott Michael Cameron, C-A-M-E-R-O-N.
 2 THE COURT: Thank you. Direct examination, please.
 3
 4 DIRECT EXAMINATION
 5 BY MS. COIT:
 6 Q. Mr. Cameron, where are you from?
 7 A. A small town outside of Eugene. Oakridge.
 8 Q. And did you go to high school and graduate in Oakridge?
 9 A. Yes.
 10 Q. Can you tell us about your employment history prior to the
 11 University of Oregon?
 12 A. I worked for the Oregon Department of Forestry for a
 13 number of years. I started out as a basic firefighter and then
 14 became a fire warden, a forest officer. It became a seasonal
 15 position, so I've had a couple part-time jobs in between. I
 16 worked for Armored Transport as an armed security officer and
 17 some various security outfits around town.
 18 Q. Do you have military experience?
 19 A. Yes.
 20 Q. Can you tell us about that?
 21 A. I was in the Navy Reserve for a number of years. The Air
 22 Force National Guard for a couple of years and the Army
 23 National Guard for a couple of years.
 24 Q. During your military deployments, did you ever work in law
 25 enforcement?

1 A. Yes. After September 11th, I was elected to attend a 9545
 2 School, which is a general law enforcement officer for the
 3 U.S. Navy. When I left the Navy, I went to the Air Force
 4 National Guard as a police officer with the subduties of
 5 teaching weapons instruction.
 6 Q. And where was that deployment?
 7 A. I was here. I was stationed here in town. I was never
 8 deployed out of the states with the Air Force.
 9 Q. Okay. Sorry. I might be using the wrong words. Where
 10 did you do that? Was it in Portland?
 11 A. Yes. Here at the National Guard. Air National Guard
 12 station here in Portland.
 13 Q. When did you start with the University of Oregon?
 14 A. 1999.
 15 Q. What was your position when you started?
 16 A. Security officer.
 17 Q. Can you tell us what the department looked like in 1999?
 18 A. It was a very small department, very few support staff.
 19 Parking and security division were merged together, so security
 20 officers did a lot of parking enforcement as well. There were
 21 generally two officers on any given shift. Sometimes there was
 22 a sergeant. Sometimes not. We didn't have a sergeant 24/7 at
 23 that time. We mostly did security and parking enforcement.
 24 Q. Tell us about the positions that you held at the
 25 University of Oregon.

1 A. I started out as a security officer and then we became a
 2 commissioned department where we had semi-quasi law enforcement
 3 responsibilities. We could make probable cause arrests. And
 4 then a little bit later, we got the authority, through the
 5 Eugene City Council, to write citations into their muni court.
 6 I became a corporal sometime thereafter and was a corporal
 7 for a number of years as a -- as a commissioned public safety
 8 officer. I became a sergeant as a commissioned public safety
 9 officer. And then when the department became a police
 10 department, I became a police sergeant.
 11 Q. As a public safety officer, did you go through any sort of
 12 training school, training program?
 13 A. Yes. At that time they were offering a six-week academy
 14 through the Department of Public Safety and Standards Training
 15 in Salem. It dealt mostly with criminal law and defensive
 16 tactics.
 17 Q. When the department transitioned to a police department,
 18 did you attend the police academy?
 19 A. Yes. The 16-week police academy in Salem at DPSST as
 20 well.
 21 Q. When did you graduate from that?
 22 A. Oh, it would have been -- forgive me on the dates. I
 23 would say 2013. February of 2013, I believe.
 24 Q. Now, as the sergeant in the police department, you are not
 25 a member of the union; correct?

1 A. Correct.
 2 Q. Rather, you are what's called an officer of
 3 administration; is that correct?
 4 A. Correct.
 5 Q. And those are all one-year contracts with the university?
 6 A. Correct.
 7 Q. Those can be nonrenewed at any point for no reason; is
 8 that correct?
 9 A. Correct.
 10 Q. Were you told your contract would not be renewed for 2015 ?
 11 A. Yes.
 12 Q. Were you told why that decision was made?
 13 A. No.
 14 Q. Have you since learned why that decision was made?
 15 A. No.
 16 Q. Has anyone ever told you that that decision had anything
 17 to do with your involvement with Mr. Cleavenger?
 18 A. Speculation. People speculated, but no one has ever come
 19 out and told me that that was the reason.
 20 Q. Sitting here today, do you believe that any of the
 21 decisions that you've ever made with regard to Mr. Cleavenger
 22 have been unfair?
 23 A. No.
 24 Q. So I want to talk about your experience with
 25 Mr. Cleavenger. Did you know who Mr. Cleavenger was before he

1 became an auxiliary public safety officer?
 2 A. No.
 3 Q. Do you recall having interactions with him at the time he
 4 was hired as an auxiliary public safety officer?
 5 A. Minimal, yes.
 6 Q. What would those interactions have entailed?
 7 A. I would have seen him at football games or anything the
 8 auxiliary public safety officers were tasked with at that time.
 9 At some point in time, he did start doing shifts at the
 10 library, and I believe I came in contact with him from time to
 11 time as well there.
 12 Q. At some point before you became Mr. Cleavenger's
 13 supervisor, did you become aware that Mr. Cleavenger had some
 14 prior involvement in this Taser issue that went on with the
 15 student government?
 16 A. I don't remember quite when it was told, whether I was his
 17 supervisor at the time or before I became his supervisor, but
 18 someone reminded me that he was the one that was doing that and
 19 that there were some articles in the paper that was evidence of
 20 that.
 21 Q. All right. So let's go back for a minute to 2008. Tell
 22 me what you remember about the whole Taser issue that was going
 23 on on campus.
 24 A. I -- it was -- it was a long-scale issue that lasted for
 25 several months, I believe. The then-director Kevin Williams

1 broached the idea of arming the officers with Tasers but hadn't
 2 implemented anything, and there was an outcry from some of the
 3 students, especially the OHSU, the student organization on
 4 campus. I only remember attending one speech where
 5 Kevin Williams spoke about Tasers. It was my understanding
 6 later that Mr. Cleavenger talked at that speech, but I did not
 7 recall who he was.
 8 Q. So when Mr. Cleavenger was initially hired at the
 9 department, did you make the connection between him being the
 10 one that gave a speech at the meeting you attended and the
 11 person who was now working at the department?
 12 A. I don't believe so. I know I did by the time he became a
 13 full sworn -- or full-time public safety officer, but not as an
 14 auxiliary, no.
 15 Q. And is it your recollection he was hired as an auxiliary
 16 sometime in 2010?
 17 A. Sure.
 18 Q. All right. So tell us what you recall about learning that
 19 Mr. Cleavenger was the person involved with the Taser issue.
 20 A. I remember reading the articles in the paper, and that was
 21 about it. I remember it was odd that he would want to work at
 22 the department because he was obviously not pro. He was
 23 obviously against it. I don't -- I don't remember much about
 24 it.
 25 Q. Do you recall how you became aware of the articles?

1 A. I -- one of the officers told me that he applied for, I
 2 believe, that he was applying for a full-time position and that
 3 he was the one that was involved in that prior to him applying
 4 for the department.
 5 Q. All right. So at that point did you read some old
 6 articles or were they current articles in the paper?
 7 A. No. They were older articles.
 8 Q. What paper do you recall these were in?
 9 A. It was *The Emerald*. It was the student-run paper on the
 10 campus.
 11 Q. Did you have any involvement in Mr. Cleavenger's hiring as
 12 a public safety officer?
 13 A. No.
 14 Q. Did you speak to anyone who was involved in that hiring to
 15 voice an opposition to him being hired?
 16 A. Yes. Several officers had come to me about some odd
 17 behavior, they thought, of Mr. Cleavenger specifically speaking
 18 in an English accent. One officer said that they heard him
 19 while he was in uniform at the library do it to someone and
 20 then another officer advised me that they heard him when he was
 21 playing soccer or cricket or something of that. And I took
 22 those concerns to Mike Morrow.
 23 Q. Why was this a concern to you that you would take to
 24 Mike Morrow?
 25 A. Well, I believe it's a little disingenuous of who he is,

1 and I know that there's been some talk about whether that was
 2 inappropriate or not, and I discussed it with my wife, who was
 3 of English descent, and she --
 4 MR. MCDOUGAL: Objection.
 5 THE COURT: Goes to state of mind. Overruled.
 6 THE WITNESS: I discussed it with my wife, who was of
 7 English descent, and she advised me that she did feel it was
 8 inappropriate and offensive.
 9 BY MS. COIT: (Continuing)
 10 Q. So you took that information to Mike Morrow?
 11 A. Correct.
 12 Q. Was that the extent of your involvement at that point with
 13 Mr. Cleavenger's hiring?
 14 A. Correct.
 15 Q. All right. So after you reviewed these -- this article in
 16 *The Emerald* about Mr. Cleavenger's involvement in the Taser
 17 issue, do you recall saying to anyone that you didn't
 18 understand why he wanted to work at the department?
 19 A. I did, yes.
 20 Q. Tell us what you recall saying.
 21 A. I recall saying that it seemed a little odd that someone
 22 who was so against the department would want to be a part of
 23 it.
 24 Q. So Mr. Cleavenger started at the department in March 2011
 25 and do you recall when you took over as his supervisor?

1 A. No.
 2 Q. Would October of 2011 seem about right?
 3 A. It was in the fall, yes. I do remember that. I remember
 4 there were football games going on so September or October.
 5 Q. So between his start date in March and when you became his
 6 supervisor in September or October, did you take any sort of
 7 disciplinary action against Mr. Cleavenger?
 8 A. No. I had no need to. I didn't supervise him.
 9 Q. Did you, during that time period, speak to his supervisor
 10 to try to get him in trouble in any way?
 11 A. No. I had very limited contact with Mr. Cleavenger at the
 12 time.
 13 Q. Tell us what sort of a supervisor you are.
 14 A. Well, I -- I like to think I'm firm but fair, but,
 15 obviously, in -- given the climate of the department at the
 16 time that I became a supervisor, I was fairly hard on them. I
 17 was, and I freely admit that.
 18 When you're talking about officers that have limited
 19 training, limited knowledge on what they're doing, I was going
 20 to critique them hard every time, especially after learning
 21 that two of them were almost drowned in the Mill Race in a
 22 fight with someone. It's a very serious job, so I was hard on
 23 them from time to time.
 24 But I think, as time went on, as Officer Hermens stated in
 25 his testimony, yeah, I was hard on them.

1 MR. MCDUGAL: Objection.
 2 MS. COIT: He's just explaining his answer.
 3 THE COURT: I didn't hear.
 4 MR. MCDUGAL: Too late now, Your Honor.
 5 THE COURT: I couldn't hear.
 6 MR. MCDUGAL: I said, "Objection." He was
 7 testifying about what somebody else testified to.
 8 THE COURT: Put that microphone closer. You leaned
 9 back in the chair. I heard you, but I didn't hear. Now, what
 10 was your objection?
 11 MR. MCDUGAL: That he was testifying about what
 12 somebody else testified to earlier in this courtroom.
 13 THE COURT: Overruled. State of mind.
 14 Continue on.
 15 THE WITNESS: Again, I'm sorry. I forgot where I was
 16 at. I think it goes to show, yes, I was hard on them, but they
 17 became better officers for it and safer officers.
 18 BY MS. COIT: (Continuing)
 19 Q. Do you feel that you were harder on Mr. Cleavenger than
 20 the other officers?
 21 A. I don't believe I was harder on Mr. Cleavenger than anyone
 22 else; however, I will say that as the new officer, it is
 23 obvious and common that he's going to make more mistakes than
 24 people that have been there 5, 10 years, 20 years.
 25 Q. Were you hard on these officers because you were trying to

1 help them?
 2 A. Yes.
 3 Q. Is it your practice to debrief after calls?
 4 A. Yes.
 5 Q. Tell us what the purpose is of a debrief for you.
 6 A. Well, given any situation, obviously, there's more than
 7 one way to do everything. So it was common for me at the time
 8 to get everyone together and discuss the call; talk about what
 9 they thought they did right; talk about what they thought they
 10 did wrong.
 11 Coming from the military, that was a big thing for us.
 12 One of my commanders always said, "I want to hear three things
 13 you did right and ten things you did wrong." So that was
 14 always my mindset; that we always do something -- we can always
 15 do something better.
 16 The whole idea of debriefing was for an honest critique
 17 from the officer and from all their peers saying that, "Hey, we
 18 can do this different. We can do it this way." Or, "Did you
 19 think about it this way?"
 20 Q. Do you recall having debriefings with Mr. Cleavenger?
 21 A. Yes.
 22 Q. In your opinion, was he receptive to the criticism that
 23 was given during these debriefings of him?
 24 A. No.
 25 Q. Explain.

1 A. Well, I think he was receptive from some people but not
 2 all. And a lot of times when we would debrief and people were
 3 critiquing his performance, there was a lot of -- well, you're
 4 just picking on me. And I know at first we said, well, of
 5 course we're picking on you. You're the new guy. You're going
 6 to make more mistakes than everyone else, but that didn't seem
 7 to register with Mr. Cleavenger.
 8 Q. Tell us, in late 2011, when you were supervising
 9 Mr. Cleavenger, what sort of officer was he?
 10 A. He -- he was very energetic. I will give him that. And
 11 he was very polite to people. And I agree that a lot of the
 12 things that were in my performance appraisal I believe were
 13 right on. However, he had no humility whatsoever, in my
 14 opinion, and, as time went on, he got worse and worse and
 15 wouldn't accept critique or feedback from anyone.
 16 Q. Did Mr. Cleavenger appear to respect you as his
 17 supervisor?
 18 A. No.
 19 Q. Tell me why you say that.
 20 A. Again, when we were doing honest critiques, it was always,
 21 "Well, you're picking on me," or excuses for why he did what he
 22 did, as opposed to just coming out and saying, "Yeah, I messed
 23 that up," and having a little humility, and going down that
 24 path; "We'll try to do it better." It was always an excuse for
 25 why he did something the way he did.

1 Q. Why is that -- that conduct, that response a concern for
2 you?
3 A. You know, law enforcement is an eclectic field, to say the
4 least; and that's not an exact science. It's also a position
5 where doing the right thing is not always popular. You've got
6 to have a lot of humility and a lot of ability to shrug things
7 off in this line of work because not everyone is going to agree
8 with what you did even when it's the right thing.
9 I didn't feel that Mr. Cleavenger had that. He would not
10 be able to come up and say, "I made a mistake. I messed up.
11 We'll try to do it better next time." There was always an
12 excuse of why we did things the way we did and not enough of
13 taking responsibility for his own actions.
14 Q. Did you ever pick on Mr. Cleavenger because you didn't
15 like him?
16 A. No.
17 Q. Did you like Mr. Cleavenger?
18 A. I found him funny a lot of times, to be honest with you.
19 My concern was channeling that funniness to appropriate times.
20 Obviously, walking around with a thousand people with
21 angel wings and beer was not going to be an appropriate time.
22 But a lot of his comments were fairly funny.
23 Q. Do you believe that any of your actions taken against
24 Mr. Cleavenger were influenced by your opinions about his
25 positions on Tasers?

1 A. No. And, again, I -- I can't stress enough that my
2 opinion was really irrelevant. What the chief said is we were
3 going -- we hired this person. We're going to train this
4 person. We're going to retain this person. So I'm at the whim
5 of the chief. How I felt about it is irrelevant.
6 In a paramilitary organization, we take orders as long as
7 they're legal.
8 Q. There's been some -- well, we heard an audio today which
9 Mr. Cleavenger said that you had trained him that he had to --
10 he couldn't disarm people and that's why he had to transport
11 that woman with the loaded gun. Tell me your thoughts on that
12 statement.
13 A. I think he's mixing apples with oranges. At the time the
14 climate there was a lot of open carry protests around the
15 country and on campuses and in Eugene. The conversation was
16 steered about the idea of if a person has a side arm in plain
17 view and they're open carrying it, there's no violation of law.
18 There may be a violation of campus policy, but let's use some
19 common sense. Why would we send unarmed people to deal with
20 armed people?
21 So the idea there was -- as I'm explaining it to them was,
22 "We have no legal reason to stop these people if they're open
23 carrying." That wasn't in any way for me to insinuate that
24 we're going to take an armed person we're dealing with and not
25 disarm them or take them on a ride in our patrol car.

1 So I believe he's mixing two conversations up. The
2 training about what is the open carry laws and the training
3 about officer safety.
4 Q. The incident when Mr. Cleavenger transported the woman
5 with the gun, did you give him permission to do that transport
6 knowing that the woman was armed with a loaded weapon in the
7 car?
8 A. No. I gave him permission to take her -- the safety
9 escort without the knowledge that she was armed. I didn't know
10 she was armed.
11 Q. Would you ever have allowed him to do a safety -- courtesy
12 transport of an armed person?
13 A. No.
14 Q. Why not?
15 A. It's too dangerous. It's dangerous even when you have an
16 armed officer. You've got someone in the back seat who we
17 don't know. We don't know their mental state. We don't know
18 what's going on. They're in the back seat, so we can't see
19 them as well, and they're armed. And there are all kinds of
20 other things we could have done. We could have removed the
21 weapon from the young lady. We could have called a taxi. We
22 could have called the Eugene police at that time.
23 Things are a little different now that it's an armed
24 agency and the situation would dictate the totality of the
25 circumstances, but I would still have a hard time justifying,

1 in my mind, why we would transport someone who's armed when
2 there are simple steps we can do to alleviate that problem.
3 Q. After you became Mr. Cleavenger's supervisor in late 2011,
4 did you begin discussing some of the concerns you had with his
5 behavior with Lieutenant Lebrecht?
6 A. Yes. My first concern was when he was assigned to
7 investigate a reckless burn and the lieutenant asked
8 Mr. Cleavenger, over the radio, "Hey, are you going to take
9 pictures of that?" And Mr. Cleavenger's response over the
10 radio is, "I will as soon as you stop bothering me about it,"
11 and I felt that that was a little disrespectful.
12 I talked to the lieutenant about it then and there and
13 said, "Hey, we need to take control of this before it gets out
14 of control."
15 Q. Was Lieutenant Lebrecht your supervisor at that point?
16 A. Yes.
17 Q. From your conversations with Lieutenant Lebrecht, did you
18 get the impression he also had concerns with Mr. Cleavenger's
19 performance?
20 A. In the long-run. I don't remember exactly every
21 conversation we had about it. In the beginning, I felt it was
22 just issues we needed to address as we went along. There was
23 no long-term plan or an idea that we're going to have continued
24 problems with this person. It was our idea that, "Hey, he's
25 brand new. He's making simple mistakes. Let's correct them in

1 the field and let's move on."
 2 Q. Do you recall at some point speaking to Officer Chris
 3 Phillips about trying to help Mr. Cleavenger in the field?
 4 A. Yes. This was later on, I believe, in the spring or the
 5 summer, when we continued to have problems with Mr. Cleavenger
 6 and his officer safety stuff, and I started to feel like he
 7 wasn't taking direction from me well and he seemed to respect
 8 Chris Phillips, and Chris Phillips has been around for a while,
 9 and he's very savvy about officer safety stuff. So I asked
 10 Chris to -- to kind of baker up, buddy up, run together with
 11 Mr. Cleavenger and fix any deficiencies he saw and give him
 12 some advice on how to become a better officer.
 13 Q. Did Officer Phillips agree to do that?
 14 A. Yes.
 15 Q. I just want to ask you a couple of specific things. We
 16 heard testimony earlier today about an email that
 17 Lieutenant Morrow sent to you and Lieutenant Lebrecht regarding
 18 Mr. Cleavenger's training requests. Do you recall receiving
 19 that email from Lieutenant Morrow?
 20 A. Yes.
 21 Q. From that email, what did you understand Lieutenant Morrow
 22 wanted you to do?
 23 A. I don't believe he wanted us to stop Mr. Cleavenger from
 24 submitting training requests. I believe he wanted us -- wanted
 25 Mr. Cleavenger to not circumvent the chain of command; that

1 they needed to go through the proper routing.
 2 Q. Did Lieutenant Morrow want you to speak to Mr. Cleavenger
 3 about that?
 4 A. Yes.
 5 Q. And did you speak with him about that?
 6 A. Yes.
 7 Q. Tell us about that meeting. Who was there and what was
 8 said, that you recall?
 9 A. I believe it was me and Lieutenant Lebrecht and
 10 Mr. Cleavenger, and we advised him of this, and I -- forgive
 11 me, I forget what Mr. Morrow's email specifically said, but it
 12 was something along the lines of, "I don't understand where
 13 James thinks that these need to come to me. Can you please
 14 advise him of the appropriate chain of command?"
 15 And we had a -- a short discussion with that, and James
 16 denied ever sending Mr. Morrow an email on it.
 17 Q. Do you recall Lieutenant Lebrecht making any sort of
 18 threat during that meeting to Mr. Cleavenger about not being
 19 able to take complaints to Lieutenant Morrow?
 20 A. No.
 21 Q. Did Mr. Cleavenger get upset during that meeting?
 22 A. I would say he was agitated.
 23 Q. All right. And there's also been discussion about a
 24 briefing where the Occupy Movement was discussed. Were you at
 25 a briefing when somebody made a comment about rape and the

1 Occupy Movement?
 2 A. Yes.
 3 Q. Tell us what you recall.
 4 A. I -- it was an officer's frustration. It wasn't a joke.
 5 The officer was frustrated. We had been dealing with the
 6 Occupy for at least a week now, and there was a rumor, if not a
 7 news report, that a 16-year-old girl was raped in a tent at the
 8 Occupy. The officer was very upset about it, and he made the
 9 comment somewhere along the lines of, "Oh, that's great. If
 10 you're a parent, you just send your kid to Occupy, and they'll
 11 be raped."
 12 It wasn't meant as a joke. It was out of frustration, and
 13 he was upset.
 14 Q. In your opinion -- well, as you listened to that, was
 15 there any way to misunderstand that as being a joke?
 16 A. I don't believe so. I believe the officer was frustrated.
 17 Q. All right. So I don't -- I don't know if this was the
 18 same briefing or if it was a different one, but at some point
 19 do you recall Mr. Cleavenger getting upset that someone had
 20 referred to Occupy as District 9?
 21 A. I believe he was upset and we surmised that we -- or we
 22 believed that that was why he was upset. But, again, after
 23 that briefing, we brought him into the office to discuss it.
 24 Q. All right. Let me back you up just a little bit.
 25 Do you recall Mr. Cleavenger getting up and leaving that

1 briefing before everyone else?
 2 A. Yes.
 3 Q. And when you -- did you stay until the end of the
 4 briefing?
 5 A. Yes. But I don't -- I don't -- it was close to the end of
 6 it as it was. It wasn't like he got up in the middle of it and
 7 walked out. I believe we were winding down, and he left before
 8 everyone else. Several minutes, at best.
 9 Q. When you left the briefing, was Lieutenant Lebrecht with
 10 you?
 11 A. Yes.
 12 Q. Did you go with Lieutenant Lebrecht to your office -- to
 13 his office directly from that briefing?
 14 A. Yes.
 15 Q. Did you ever see Lieutenant Lebrecht stop and corner
 16 Mr. Cleavenger in the hallway and poke him in the chest?
 17 A. No.
 18 Q. Tell us what happened in the office.
 19 A. So we stopped and we talked to James and said, "Hey, it
 20 looks like you're upset in this meeting. Tell us what's going
 21 on." He told us that he wasn't upset about anything that was
 22 said. He was upset about his assignment; that he was assigned
 23 to a static post to keep an eye on the Occupy for part of the
 24 shift and that he didn't want to do that.
 25 Q. Do you recall where Lieutenant Lebrecht was sitting in

1 relation to Mr. Cleavenger?
 2 A. Yes. He was behind his desk.
 3 Q. Do you recall any physical contact between the two?
 4 A. No.
 5 Q. Did Mr. Cleavenger raise his voice during that meeting?
 6 A. I believe he was agitated and the voices were raised, yes.
 7 Q. I want to talk about the Spencer View incident again.
 8 Do you recall responding to a call at the Spencer View
 9 Apartments on April 1, 2012?
 10 A. If it's the one we've been watching numerous videos on,
 11 then, yes, I do. I'm sorry. I don't have the date memorized.
 12 Q. So you responded to that call?
 13 A. Yes.
 14 Q. Do you recall why you responded?
 15 A. From the way it sounded on the radio, it sounded to me
 16 like it was a dispute that had just got over. There was a
 17 possibility that it could be re-flamed. I thought it best to
 18 have all the officers that we had available, which was only
 19 four at the time, including myself, respond to make sure that
 20 things didn't get out of hand when we got there.
 21 Q. Do you recall what -- how you approached the apartment;
 22 what entrance you took?
 23 A. I believe -- and, I'm sorry, it's been a number of years,
 24 but I believe I came in from the north -- the north entrance.
 25 There's two on Patterson there. There's a north and a south,

1 and I came in from the north.
 2 Q. And the apartment that you were responding to was in the
 3 southwest; correct?
 4 A. Yeah. I'm sorry. I don't have a map in front of me, so I
 5 believe so, yes.
 6 Q. Do you recall seeing Officer Davis approach the apartment
 7 that day?
 8 A. I believe I was behind Officer Davis, but I may be
 9 mistaken.
 10 Q. Was Mr. Cleavenger the lead officer dispatched to that
 11 call?
 12 A. Yes.
 13 Q. Did the three -- well, Officer Hermens also responded;
 14 correct?
 15 A. Correct.
 16 Q. Do you recall if the three of you arrived before
 17 Officer Cleavenger?
 18 A. Yes.
 19 Q. Did you wait for Mr. Cleavenger to arrive before taking
 20 any action?
 21 A. Yes.
 22 Q. And why is that?
 23 A. He was the lead. And being the junior officer, it's good
 24 experience for him to go in, so -- and he was assigned it. So
 25 we were waiting to support him.

1 Q. So tell us what you recall about Mr. Cleavenger's approach
 2 to the apartment.
 3 A. I remember myself and Officer Davis and Officer Hermens
 4 standing down the street from the apartment. Mr. Cleavenger
 5 came in from the southwest side there. It appeared to me,
 6 while we were standing there, that he was going to park in
 7 front of the building but then saw us or -- or decided not to,
 8 and then came and parked next to us.
 9 Q. Tell me what concerns you about that conduct.
 10 A. Well, again, we're driving in front of an apartment. It's
 11 interesting that, to this day, there's a video that DPSST
 12 still -- still plays that's incidents all across the northwest
 13 and California of officers responding to domestic disputes or
 14 incidents at a house.
 15 MR. MCDUGAL: Objection. Nonresponsive.
 16 THE COURT: Overruled.
 17 THE WITNESS: The video shows the dangers of driving
 18 right up to a place where an incident or a call is taking place
 19 and what could happen based on scenario -- or actual incidents
 20 that have happened throughout the northwest.
 21 So couple that with -- that training and then personal
 22 knowledge of what the officers that responded to in the past,
 23 there are all kinds of things that can happen when you pull up
 24 to the front of a house. It alerts everyone in the house to
 25 our presence. If there's any contraband or evidence that can

1 be destroyed while -- while they know we're coming. A lot of
 2 the instances that were shown in the video or in the training
 3 that we've had are of officers just walking up and then being
 4 shot as they approach the house.
 5 There's a myriad of things that should go through
 6 someone's mind when they're responding to these calls. Even
 7 cold calls.
 8 However, it's something that everyone does from time to
 9 time. It happens. It's an accident. Someone says, "You need
 10 to go to 1965 Onyx." Sometimes it takes you a while to find
 11 where 1965 is because not every house has the numbers on it.
 12 So it was a mistake, a tactical mistake.
 13 BY MS. COIT: (Continuing)
 14 Q. Okay. Did you speak with Mr. Cleavenger about his
 15 approach at the scene?
 16 A. When he came in to write the report, I talked to him at my
 17 desk.
 18 Q. So you waited until you got back to the station?
 19 A. I was back to the station long before he had completed the
 20 call. They were obviously there completing their
 21 investigation. So it was probably an hour or so by the time I
 22 talked to him.
 23 Q. What was your intent at that point?
 24 A. Just to correct the poor decision.
 25 Q. In your mind, before you were going in to talk with

1 Mr. Cleavenger about him driving in front of the apartment,
 2 were you anticipating any sort of discipline arising out of
 3 this?
 4 A. No. I -- it's a mistake that even veteran officers have
 5 made from time to time. I just wanted to remind him of it and
 6 try to correct the action. Try -- at our best, try not to do
 7 it.
 8 Q. All right. So, tell us, did you speak with Mr. Cleavenger
 9 about it that evening?
 10 A. Yes.
 11 Q. Tell us what happened.
 12 A. I -- I advised him, "Hey, is there some reason you drove
 13 to the front of the house?" And he says, "Well, I didn't see
 14 there was any danger in it. It was a cold call." That was
 15 when we had a short conversation about, "Hey, you can't do
 16 that. These are the reasons why it's not a good idea." He
 17 said, "Well, I just didn't see where it was that big of a
 18 deal."
 19 And that was when I took note and concern that -- not that
 20 he made the -- the poor decision to drive in front, but that he
 21 refused to accept responsibility for -- or refused to accept
 22 that it's a bad idea. And, in my mind, he wasn't going to
 23 correct the action for -- for another time.
 24 Q. So what did you do after you spoke to Mr. Cleavenger?
 25 A. I wrote an email to Lieutenant Lebrecht explaining to him

1 what transpired in that conversation.
 2 MS. COIT: Your Honor, permission to publish 421?
 3 THE COURT: You may.
 4 Just a moment. Has that been received into evidence?
 5 MS. COIT: It has, Your Honor.
 6 THE COURT: All right. You may.
 7 BY MS. COIT: (Continuing)
 8 Q. Do you recognize Exhibit 421? That's just the top page.
 9 A. I'm sorry. Sorry. Getting older is --
 10 Q. Aren't we all?
 11 A. Well, this appears to be an email from me, but I -- I
 12 don't know what the --
 13 Q. Here you go.
 14 A. Yeah, this appears to be my notes that I sent to
 15 Lieutenant Lebrecht.
 16 Q. Why did you type these notes up and send them to
 17 Lieutenant Lebrecht?
 18 A. It was a -- it was a safety concern.
 19 And, again, in my mind, it merited more conversation with
 20 Lieutenant Lebrecht about how we were going to correct this.
 21 Not so much the incident, but the behavior associated with it.
 22 Q. So did you have a discussion with Lieutenant Lebrecht
 23 following this email and notes that you sent to him?
 24 A. Yes.
 25 Q. What was decided after you -- well, was anything decide

1 after your discussion with Lieutenant Lebrecht?
 2 A. Yeah. We just needed to bring him in and talk about it
 3 and find out what was going on and what he was thinking.
 4 Q. Do you recall preparing -- do you recall -- excuse me --
 5 preparing a document, a written reprimand, before you met with
 6 Mr. Cleavenger?
 7 A. No.
 8 Q. Let me show you --
 9 All right. I'll move on. So did you have a meeting with
 10 Mr. Cleavenger to discuss the Spencer View incident?
 11 A. Yes.
 12 Q. Do you recall who else was at that meeting?
 13 A. The first one I recall was just me, Lieutenant Lebrecht,
 14 and Mr. Cleavenger.
 15 Q. And what was -- in your mind, what was the purpose of that
 16 meeting?
 17 A. Just to discuss more the incident and find out if we could
 18 correct this action. I remember leaving that with a --
 19 Mr. Cleavenger saying, "Hey, this is the reason why I did this.
 20 I -- Hermens was already in view. It was a cold call, so I
 21 just went in there," and it seemed reasonable at the time.
 22 Q. So tell me a little more specific. What was discussed at
 23 the meeting? What was Mr. Cleavenger's response?
 24 A. Again, we were discussing about, hey, this is the reason
 25 why we can't do this, why we can't pull to the front of an

1 apartment, and his response was, "Well, Hermens was already
 2 there. His car was in view. They could obviously see his car,
 3 so I figured I would just go in and back up Hermens, and it was
 4 a cold call so it was no big deal."
 5 And I -- you know, we left feeling that that makes sense.
 6 It was until he walked out and said, "If anyone should be in
 7 trouble, it should be Hermens," and that's what kind of started
 8 the next chain of events.
 9 Q. Tell me what the next chain of events were.
 10 A. And I -- forgive me if this may be a Mr. -- or
 11 Lieutenant Lebrecht's purview, but I -- I don't believe I saw
 12 it -- was that we pulled the video from Officer Hermens' car
 13 and looked at where his positioning was and how he responded to
 14 the incident.
 15 Q. Do you recall actually reviewing the video from
 16 Officer Hermens' car?
 17 A. At some point in time I did, yes.
 18 Q. Okay. Based on your -- well, did you also review the
 19 video from Mr. Cleavenger's car?
 20 A. At some point in time I did, yes.
 21 Q. Based on your review of those videos, did you reach a
 22 conclusion on whether or not Mr. Cleavenger had been telling
 23 you the truth in the meeting?
 24 A. My -- my concern was is -- I didn't necessarily jump to
 25 that he was lying. My concern was is that he was either making

1 excuses for what happened and playing with the facts a little
 2 bit or that his perception of what happened was so far asked
 3 that we would have a problem later on in court.
 4 Q. Tell me what you mean by that, that last comment.
 5 A. Well, he told us that, "Hey, the car was clearly in view
 6 of the apartment." And, just by looking at both videos, it
 7 clearly was not. It was a block away.
 8 Q. Explain to me your statement that you would have a problem
 9 later in court.
 10 A. Well, you know, as we have demonstrated here and where,
 11 you know, the officer needs to remember certain facts, and it's
 12 hard enough just trying to remember what happened step by step,
 13 I was a little concerned that if he went to court and he said,
 14 "The house was approximately 50 feet from where I stood," and
 15 the house was, in fact, 150 feet, that there is a problem with
 16 perception.
 17 Q. All right. Do you recall preparing a written reprimand
 18 after you and Lieutenant Lebrecht had reviewed the dash cam
 19 videos?
 20 A. I believe there were several discussions before I wrote
 21 the reprimand.
 22 Q. Tell me what those discussions were.
 23 A. Yeah. There was a discussion with Randy Wardlow at human
 24 resources. There were several discussions between myself and
 25 Lieutenant Lebrecht.

1 Q. Did you actually prepare the written reprimand that was
 2 ultimately given to Mr. Cleavenger?
 3 A. Yes, I did. However, I voiced a concern that I didn't
 4 think it was the sergeant's place to do that; that it should
 5 come from a lieutenant, specifically the IA lieutenant, when
 6 there's an allegation of misconduct or not telling the truth.
 7 Q. All right. Was the document that you prepared reviewed
 8 and edited by Randy Wardlow?
 9 A. I -- I don't know. I assume it was. After I wrote it, I
 10 sent it up the chain of command.
 11 Q. Okay. So once you wrote it and sent it up the chain of
 12 command, when was your next dealing with the written reprimand?
 13 A. I couldn't tell you date specific, but at some point in
 14 time I believe I had gotten corrections for it and I made some
 15 corrections to it. I was told to stay factual and not put in
 16 any opinions. I remember that conversation, so I changed the
 17 narrative to reflect that, I believe.
 18 A JUROR: (Sneezing.)
 19 THE WITNESS: Bless you. There's always time for
 20 manners. Sorry.
 21 BY MS. COIT: (Continuing)
 22 Q. All right. So did you sign the written reprimand?
 23 A. Yes.
 24 Q. And did you agree with the statements that were contained
 25 in that written reprimand?

1 A. Again, the statements were fairly factual, based on what I
 2 saw. I don't think there were any opinions in the -- in the
 3 written reprimand. So, yes.
 4 Q. Did you believe the written reprimand was warranted?
 5 A. I do. But, again, my concern was not so much with the
 6 idea that he had committed this officer safety violation. My
 7 concern was with that he failed to recognize that and failed to
 8 admit it, failed to be able to correct it in the future.
 9 I looked at it as more of a wake-up call to what he was
 10 doing out there. Not so much that he was making mistakes, but
 11 that he was failing to correct those mistakes or acknowledge
 12 them.
 13 Q. Was your decision to support and issue this written
 14 reprimand in any way motivated by an intent to retaliate
 15 against Mr. Cleavenger for his position on Tasers?
 16 A. No. Once the chief said we're going to hire
 17 Mr. Cleavenger, it's actually in my best interest to train him
 18 the best we can and to keep him. And I -- I know that there
 19 was some discussion earlier that I -- I was, quote/unquote,
 20 "baffled" when we hired him. I think that's a fairly accurate
 21 statement; however, I did see the good in having an officer
 22 that has a law degree.
 23 Q. So let's talk about the performance evaluation that you
 24 were also involved in in this case. Why is it that you issued
 25 Mr. Cleavenger a performance evaluation?

1 A. I -- the employees are issued a performance evaluation
 2 yearly, and it came time for his performance evaluation to be
 3 done based on his anniversary, and I was his sergeant at the
 4 time.
 5 Q. What information did you use as your basis of knowledge
 6 for preparing the performance evaluation?
 7 A. Mostly review in memory of the calls I had went on with
 8 him. It is subject to peer review, so we did -- I did have
 9 other sergeants look at it and the lieutenant and so forth.
 10 Q. Do you recall completing a first draft of a review and
 11 sending that to Lieutenant Lebrecht for review?
 12 A. I -- I actually don't recall doing that until someone
 13 handed it to me and said that I did, so I'm assuming I did.
 14 Q. Okay.
 15 MS. COIT: Permission to approach, Your Honor?
 16 THE COURT: You may. And what exhibit, please?
 17 MS. COIT: This is Defendants' 435.
 18 THE COURT: 435. Has that been received?
 19 MS. COIT: No.
 20 THE COURT: All right.
 21 THE WITNESS: Thank you.
 22 MS. COIT: Uh-huh.
 23 MR. JASON KAFOURY: What is 435?
 24 BY MS. COIT: (Continuing)
 25 Q. All right. Take a minute and look at that and let me know

1 if you recognize that.
 2 A. I'm sorry. This is a fairly lengthy document, but it
 3 appears to be the rough draft of the performance appraisal I
 4 completed for Mr. Cleavenger.
 5 Q. There's a cover email on top. What is the date on that?
 6 A. April 2, 2012.
 7 Q. And who is the email from and to?
 8 A. It's from me to Brandon Lebrecht.
 9 Q. And is -- you've attached to this email your draft of the
 10 performance evaluation?
 11 A. Correct.
 12 Q. Why did you send the draft to Lieutenant Lebrecht?
 13 A. Again, it's subject to peer review. Obviously, I wasn't
 14 with Mr. Cleavenger for the entire year. Other sergeants had
 15 knowledge of his skill-set. And the correct chain of command
 16 would be, after I completed it, to send it to the lieutenant.
 17 MS. COIT: Your Honor, I offer 435.
 18 THE COURT: Received.
 19 BY MS. COIT: (Continuing)
 20 Q. Do you recall getting calls from Lieutenant Lebrecht about
 21 your performance evaluation?
 22 A. Yes.
 23 Q. Did you incorporate some of the comments into another
 24 draft of the review?
 25 A. Yes.

1 MS. COIT: Permission to approach, Your Honor?
 2 THE COURT: You may.
 3 MS. COIT: This is Defendants' 322.
 4 THE COURT: Has that been received?
 5 MS. COIT: I believe so, but I'll offer it again.
 6 THE COURT: Christy, has 322 been received?
 7 DEPUTY COURTROOM CLERK: I'm sorry. I didn't hear
 8 the number.
 9 MS. COIT: 322.
 10 THE COURT: 322.
 11 DEPUTY COURTROOM CLERK: It has not been offered yet.
 12 BY MS. COIT: (Continuing)
 13 Q. Do you recognize Exhibit 322?
 14 A. Yes.
 15 Q. What is 322?
 16 A. Well, it appears to be my corrected rough draft for
 17 Mr. Cleavenger's performance appraisal.
 18 Q. And on the back page there's some signatures. Do you see
 19 those?
 20 A. Yes.
 21 Q. And what are the dates of those signatures?
 22 A. 5/31/12.
 23 Q. Did you sign on here?
 24 A. No.
 25 Q. Can you tell whose signatures those are?

1 A. No. It appears to be James Cleavenger, but I couldn't --
 2 I couldn't testify to that, and I don't know who the second
 3 signature is.
 4 Q. All right. But do you recognize the document yourself as
 5 the document that was given to Mr. Cleavenger?
 6 A. Yes.
 7 MS. COIT: Your Honor, I offer 322.
 8 THE COURT: Received.
 9 MS. COIT: Permission to publish?
 10 THE COURT: You may.
 11 BY MS. COIT: (Continuing)
 12 Q. Now, after Mr. Cleavenger was given his performance
 13 evaluation, did he -- did you and he have a meeting to discuss
 14 it?
 15 A. Yes.
 16 Q. And is that something he's entitled to under the union
 17 contract?
 18 A. Yes.
 19 Q. Was that meeting in person?
 20 A. Yes.
 21 Q. And do you recall who else was there?
 22 A. For the first meeting, I believe it was just me and James.
 23 Q. All right. Do you recall a longer meeting when
 24 Lieutenant Bechdolt sat in?
 25 A. Yes. I believe that that was the -- the last meeting.

1 There were several drafts that went -- we went through before
 2 we decided on a -- a final performance appraisal.
 3 Q. What was the purpose of these meetings?
 4 A. To review the performance appraisal with James. I'm
 5 sorry. Mr. Cleavenger.
 6 Q. During these meetings that you had with Mr. Cleavenger,
 7 did he make suggestions or explanations for some of the things
 8 that were in the performance review that he wanted changed?
 9 A. Yes.
 10 Q. And how would you describe your reaction to those
 11 comments?
 12 A. I had no problem making some of the changes that he
 13 requested. They seemed -- some of them were superfluous, so I
 14 didn't really mind all that much. At one point in time I wrote
 15 something that he convinced me otherwise on and I said, "Okay.
 16 I'll change that," or "I'll take that out."
 17 MS. COIT: So, Your Honor, this is when I'm going to
 18 play some of the audio. Is this a good time?
 19 THE COURT: Is this going to be the audio that was
 20 discussed before that may take a little while?
 21 MS. COIT: Yes.
 22 THE COURT: Okay. There's going to be an audiotape
 23 played.
 24 And, Counsel, you decide when the recess should take
 25 place; when an appropriate place is, just depending on how long

1 that is. Okay?
 2 MS. COIT: Okay.
 3 THE COURT: The audio is going to be played to you.
 4 It's marked as Exhibit No. --
 5 MS. COIT: It's Plaintiff's 72.
 6 THE COURT: Plaintiff's. Plaintiff's?
 7 MS. COIT: Yeah. They marked it as well.
 8 THE COURT: But it's really a defense exhibit, isn't
 9 it?
 10 MS. COIT: Yeah.
 11 THE COURT: This hasn't been received yet, has it?
 12 MS. COIT: No.
 13 THE COURT: You can put a defense exhibit number on
 14 it.
 15 Now, remember, different items that the plaintiff may have
 16 presented could have a defense marking on it and different
 17 items that the defense may have presented could have a
 18 plaintiff's number on it. Don't take that to be, you know,
 19 parochialism, in a sense; just as one party can call an adverse
 20 party or a hostile witness, they could mark exhibits in
 21 different ways. So many of these exhibits are dual marked. I
 22 just like to get one marking on it so you don't have two
 23 numbers that you're calling out.
 24 Well, Counsel, if you're satisfied, I can make that -- I
 25 can keep that a plaintiff's exhibit number if you want.

1 MS. COIT: Okay. I -- we found it. It's Defendant's
 2 323.
 3 THE COURT: All right. This would be Defendant's
 4 323. You may -- and you're requesting it be received?
 5 MS. COIT: Yes, Your Honor.
 6 THE COURT: Any objection?
 7 MR. MCDUGAL: Yes?
 8 THE COURT: Objection?
 9 MR. MCDUGAL: No objection.
 10 THE COURT: Received.
 11 Then you can play 323.
 12 MS. COIT: Thank you.
 13 BY MS. COIT: (Continuing)
 14 Q. Do you recall there being a meeting with Mr. Cleavenger
 15 that was audio-taped?
 16 A. Yes. Sorry. Yes, I believe it was the final meeting when
 17 we were going to issue the -- the performance appraisal.
 18 MS. COIT: All right. We're going to play some of
 19 the audio, so I'll ask you to stay on the stand when we do so.
 20 MR. JASON KAFOURY: What was the date?
 21 MS. COIT: June 29, 2012.
 22 BY MS. COIT: (Continuing)
 23 Q. So can you tell the jury whose voices we're going to be
 24 hearing on the audio?
 25 A. It would be mine, Mr. Cleavenger's, and maybe

1 Lieutenant Bechdolt.
 2 MS. COIT: All right. Christy, we need to switch
 3 back the audio.
 4 (Exhibit No. 323 was played for the jury.)
 5 MS. COIT: Your Honor, this might be a good time for
 6 a break.
 7 THE COURT: Is this a good time for a break?
 8 MS. COIT: Yes.
 9 THE COURT: Don't discuss this matter amongst
 10 yourselves. Don't form or express any opinion about the case.
 11 We'll come and get you in about 20 minutes. Have a nice break.
 12 (Jury not present.)
 13 THE COURT: You may step down. Go take a break. For
 14 the rest of you, go use the restroom. About how much longer do
 15 you think?
 16 MS. COIT: I think I'm going to do just 20 minutes
 17 after the break.
 18 THE COURT: You don't have to.
 19 MS. COIT: I'm watching.
 20 THE COURT: I'm asking you a question. I don't want
 21 to have a chilling effect, okay. That's fine.
 22 MS. COIT: I'm thinking about 20 minutes more.
 23 THE COURT: How much longer do you think with the
 24 sergeant?
 25 MS. COIT: It will be probably 15 minutes after that.

1 THE COURT: Or half hour, okay. That gives you some
 2 kind of indication that you'll probably be starting your
 3 cross-examination this evening.
 4 Depending upon how long you take, I may try to hold the
 5 jury to complete the sergeant in one block of time. Okay? I
 6 may not. So I'll look to you for wisdom at that time.
 7 Now go take a restroom break.
 8 (Recess taken.)
 9 (Jury present.)
 10 THE COURT: Jury present. Counsel present. Parties,
 11 thank you for your courtesy. Be seated.
 12 Sergeant Cameron, can you retake the stand, please?
 13 Counsel, if you would like to continue with your
 14 examination.
 15 MS. COIT: Thank you.
 16 BY MS. COIT: (Continuing)
 17 Q. Sergeant Cameron, we're going to play a little more of
 18 this audio and I'll have a few follow-up questions.
 19 A. Okay.
 20 (Exhibit 323 was continued for the jury.)
 21 MS. COIT: All right. I think we'll stop there.
 22 BY MS. COIT: (Continuing)
 23 Q. So after this meeting with Mr. Cleavenger concluded -- and
 24 it was about another hour; correct?
 25 A. I believe so, yes.

1 Q. Did you make some revisions to the performance evaluation ?
 2 A. Yes.
 3 Q. Do you recall how many times the drafts went back and
 4 forth?
 5 A. I believe there were a total of three drafts before a
 6 final was drafted.
 7 Q. After listening to this audio, does that refresh your
 8 memory on which meeting this was with Mr. Cleavenger?
 9 A. Yes. This was not the third one. I believe this was the
 10 first one, the first draft, that we went through.
 11 Q. So this was the first time you guys sat down and talked?
 12 A. Correct.
 13 MS. COIT: Your Honor, permission to approach with
 14 Plaintiff's Exhibit 6? It's already been received.
 15 THE COURT: You may. 6.
 16 MS. COIT: Permission to publish?
 17 THE COURT: You may.
 18 BY MS. COIT: (Continuing)
 19 Q. All right. Do you recognize Exhibit 6?
 20 A. Yes. It appears to be the third and final draft.
 21 Q. On page 3, on page 4, page 5, do you recognize those
 22 signatures?
 23 A. Well, I don't recognize the one. I believe it's
 24 Mr. Cleavenger and the other one, I believe, appears to be
 25 Andy Bechdolt.

1 Q. And on the last page, is that your signature?
 2 A. Yes.
 3 Q. All right. The date on there is August 3, 2012, at least
 4 on page 5. Do you know why it took so long from the date of
 5 May 31st, on this first draft, to August of 2012 to get a final
 6 to Mr. Cleavenger?
 7 A. Again, because there were so many revisions. I believe
 8 every time there was a revision, it'd be reviewed. And every
 9 time it was reviewed and we talked about it, it would start the
 10 process again. Just because of the revisions and probably
 11 vacations and whatnot in between where we couldn't have time.
 12 He also requested a neutral observer be there for all the
 13 meetings, and that takes time to set up for a department as
 14 small as we are.
 15 Q. At one point did Mr. Cleavenger also request to review the
 16 audio that we just heard?
 17 A. I believe so, yes.
 18 Q. And you gave him the audio; correct?
 19 A. Yes.
 20 Q. In your opinion, is the performance evaluation that was
 21 ultimately decided upon and issued, Plaintiff's Exhibit 6, is
 22 that a negative performance evaluation?
 23 A. I don't believe so. I believe there are parts of it that
 24 he needs improvement on, but I would expect any junior officer
 25 to get something similar.

1 Q. All right. Now, we talked earlier about whether or not
 2 you had completed a first draft of a written reprimand. And
 3 you didn't recall doing so. I just want to show you a document
 4 and see if it refreshes your memory.
 5 MS. COIT: Permission to approach, Your Honor?
 6 THE COURT: You may.
 7 MS. COIT: It's Plaintiff's Exhibit 229.
 8 THE COURT: 229. Thank you. Has that already been
 9 received, Counsel?
 10 MR. MCDUGAL: No.
 11 MS. COIT: No.
 12 MR. MCDUGAL: Not to my knowledge, Your Honor.
 13 BY MS. COIT: (Continuing)
 14 Q. So reviewing that document, does that refresh your memory
 15 at all of whether or not there was a first draft of the
 16 reprimand?
 17 A. It appears there was, yes.
 18 Q. Do you recall writing it?
 19 A. I do. I don't recall it being this lengthy, but
 20 apparently it is.
 21 Q. Is it your recollection that this draft was not given to
 22 Mr. Cleavenger?
 23 A. I don't believe it was, no.
 24 MS. COIT: Defense offers Plaintiff's 229.
 25 THE COURT: Received.

1 BY MS. COIT: (Continuing)
 2 Q. Do you recall in September of 2012 being asked to talk to
 3 Mr. Cleavenger about his calling out things over the radio?
 4 A. Yes.
 5 Q. Tell us what you recall about the instruction you were
 6 given.
 7 A. I believe I was told by Lieutenant Bechdolt that I needed
 8 to talk to Cleavenger about it. I was given very little
 9 information on it, but the gist of it was that he needed to
 10 only call out felonies and major crimes over the radio.
 11 Q. All right. And did you meet with Mr. Cleavenger to give
 12 him that instruction?
 13 A. Yes.
 14 Q. Was anyone else there?
 15 A. Lieutenant Lebrecht.
 16 Q. Why was Lieutenant Lebrecht there?
 17 A. I wanted a witness.
 18 Q. Tell us what you recall telling Mr. Cleavenger.
 19 A. Basically, that -- again, I didn't have a lot of
 20 information at the time on why we were doing what we were
 21 doing. I wasn't privy to that investigation. It was coming
 22 down from the chief's office that he needed to refrain from
 23 using the radio to call out anything unless it was a felony or
 24 a major crime or any officer safety issues.
 25 Q. Did you tell -- did you ever tell Mr. Cleavenger, during

1 that meeting, that he could no longer report, in other ways,
 2 crimes that he witnessed on campus?
 3 A. I don't believe so.
 4 Q. Do you recall Mr. Cleavenger making a complaint to you at
 5 that meeting that he felt that that order violated federal law?
 6 A. I don't believe we ever talked about that.
 7 Q. Do you know who Brian Smith is?
 8 A. Yes.
 9 Q. All right. Did Brian Smith or anyone on his behalf ever
 10 talk to you about a meeting that he had with Mr. Cleavenger on
 11 October 2, 2012?
 12 A. No. I've never talked to Brian Smith.
 13 Q. Have you ever -- well, how about Linda King? Do you know
 14 who she is?
 15 A. Yes.
 16 Q. Did Linda King, or anyone on her behalf, talk to you about
 17 issues that were discussed during Mr. Cleavenger's predissmissal
 18 hearing?
 19 A. No.
 20 MS. COIT: Thank you, sir. I have no more questions.
 21 THE COURT: Cross-examination.
 22
 23 ///
 24 ///
 25 ///

1 CROSS-EXAMINATION
 2 BY MR. MCDUGAL:
 3 Q. Good afternoon. How many drafts of the -- let me start
 4 off differently.
 5 Spencer View. I thought I heard you -- when your counsel
 6 was first questioning you, you said, very clearly, that you
 7 thought the Spencer View incident was a matter for IA. It was
 8 about dishonesty, the way it responded, and that you would not
 9 write something up on Spencer View; is that correct?
 10 A. I don't remember saying that.
 11 Q. That you thought it was something for IA to do because it
 12 was about dishonesty, not about the fact that he merely drove
 13 up?
 14 A. I don't remember saying that.
 15 Q. You don't? Okay.
 16 Well, maybe you can help me. Maybe my notes are wrong.
 17 What did you say about IA in relation to Spencer View?
 18 A. I felt that IA needed to write a letter of reprimand if
 19 that's what they were going to do or investigate it. If there
 20 was an allegation of dishonesty, that it wasn't my place to
 21 write the letter of reprimand.
 22 Q. Okay. And did you ever review your dash cam?
 23 A. No.
 24 Q. Did you ever review Jared Davis' dash cam? And we're
 25 talking about Spencer View.

1 A. No.
 2 Q. When is your recollection of when you first talked to
 3 Mr. Cleavenger about Spencer View?
 4 A. That day.
 5 Q. That evening, you mean?
 6 A. Yes.
 7 Q. Okay. When you got back to the office?
 8 A. Again, I got back to the office long before he or
 9 Officer Hermens did. It was later in the afternoon, when
 10 Officer Cleavenger came into the office, that I talked to him.
 11 Q. I -- my time frame references might be different than
 12 yours because you work on the night shift. My understanding is
 13 that Spencer View cleared at around 6:43.
 14 A. Okay. I don't know.
 15 Q. Let me be fair to you and let me show you a document to
 16 see if you can identify it. Again, the highlighting is mine.
 17 A. Sure.
 18 Q. It's not part of the original.
 19 A. Well, I'm not sure why it would show me clear at 1900 when
 20 everyone else cleared at 1843.
 21 Q. Okay.
 22 A. That shows that I cleared long after everyone else did.
 23 Q. All right. Did you go back to your office after that?
 24 A. Yes.
 25 Q. And did you counsel Mr. Cleavenger sometime after that?

1 A. Yes.
 2 Q. Okay. Thank you. Just wanted to refresh your
 3 recollection.
 4 And you said 19. That would be 7:00 at night?
 5 A. Correct.
 6 Q. What's your normal routine if you go back to your office,
 7 if you have one?
 8 A. I don't understand.
 9 Q. Do you check emails or just go sit and -- sometimes
 10 people, when they return to their office, have a routine.
 11 A. It's law enforcement. We're not exactly a
 12 routine-oriented business. I couldn't tell you what I did when
 13 I went back to the office.
 14 Q. Okay. Fair enough.
 15 Do you remember last time you testified I made that board
 16 over there?
 17 A. Yes.
 18 Q. Okay. And now we've got something to add to that board, I
 19 believe. Do you still have your exhibits in front of you?
 20 A. Yes.
 21 Q. Okay. Now, you've got an email dated April 2, 2012;
 22 right?
 23 A. Yes.
 24 Q. And that's another draft of the appraisal report?
 25 A. No. The -- oh, okay. Yeah. I have two documents dated

1 April 2nd.
 2 Q. I can help you out. I don't want you to agree with me if
 3 there's any doubt.
 4 I'm handing you a -- Plaintiff's Exhibit 166. That's been
 5 previously entered?
 6 THE COURT: 166.
 7 MR. MCDUGAL: Yes.
 8 THE COURT: Thank you.
 9 MR. MCDUGAL: And Defendants' 435.
 10 THE COURT: 235. Thank you.
 11 MR. MCDUGAL: 435.
 12 THE COURT: 435?
 13 MR. MCDUGAL: Yes.
 14 THE COURT: Thank you.
 15 THE WITNESS: Okay.
 16 BY MR. MCDUGAL: (Continuing)
 17 Q. Fair enough to say another draft -- the heading of the
 18 email might help you, but you can certainly look at the
 19 documents. It's mailed on April 2nd?
 20 A. Sure. It appears -- well, let me take a look first.
 21 Q. Okay.
 22 A. So the -- I believe this is the April 2nd one. It appears
 23 to have more information put into it.
 24 Q. Okay. So fair enough there's another version of the
 25 April 2 email, at least; right?

1 A. Correct.
 2 Q. Do you remember getting an email from Brandon Lebrecht in
 3 between the April 1 and April 2 drafts?
 4 A. No. I'm sure I did.
 5 MR. MCDUGAL: Okay. Let me approach him with
 6 Defendants' Exhibit 419.
 7 THE COURT: 419?
 8 MR. MCDUGAL: Yes.
 9 THE COURT: Thank you.
 10 BY MR. MCDUGAL: (Continuing)
 11 Q. Can you identify that exhibit?
 12 A. Well, it appears to be an email to me from
 13 Brandon Lebrecht.
 14 MR. MCDUGAL: Plaintiffs offer 419.
 15 MS. COIT: No objection.
 16 THE COURT: Received.
 17 MR. MCDUGAL: Permission to publish?
 18 THE COURT: You may.
 19 BY MR. MCDUGAL: (Continuing)
 20 Q. What time of day do you get that?
 21 A. It looks like 6:40 p.m.
 22 Q. Okay. And is that about when you're out at Spencer View
 23 or right before or --
 24 A. I don't have the Spencer View time.
 25 Q. I'm sorry. Let me give it back to you.

1 A. It could very well be.
 2 Q. I'll give it back to you.
 3 So what time are you at Spencer View?
 4 A. Well, according to this, 1812, which is 6:12 in the
 5 evening.
 6 Q. And you leave later. So this comes in while you're at
 7 Spencer View. Fair enough?
 8 A. Correct.
 9 Q. Let's look at the topic of it. It's asking for -- let me
 10 give you -- have you had a chance to read it?
 11 A. Yes.
 12 Q. Fair enough. It wants specific examples about
 13 Mr. Cleavenger for the performance evaluation? Fair enough?
 14 A. Fair enough. I'm sorry. I didn't know that was a
 15 question. I apologize.
 16 Q. Yeah. I just wanted to make sure I wasn't
 17 mischaracterizing it.
 18 On that night, on April 1, do you then send -- well, do
 19 you remember sending anything about Mr. Cleavenger back to
 20 Brandon Lebrecht that day?
 21 A. I don't remember any of it, but evidently I did.
 22 Q. Let me hand you what's been marked as Defendants'
 23 Exhibit 421. Do you recognize that email?
 24 A. Yes.
 25 MR. MCDUGAL: And plaintiffs move to offer it into

1 evidence.
 2 THE COURT: Received. 421.
 3 MR. MCDUGAL: Publish 421, please, Mr. Hess.
 4 THE COURT: You may.
 5 BY MR. MCDUGAL: (Continuing)
 6 Q. It says -- you write back, "Cleavenger's latest: He has
 7 been counseled and my notes are attached." So this is after
 8 you're back from Spencer View, after you may have seen an email
 9 saying "I want details on Cleavenger"; right?
 10 A. Sure. It doesn't state when I read the email.
 11 Q. Right. But it's possible?
 12 A. It's possible. Anything is possible.
 13 Q. Sure. Sure. And you immediately -- and you send back a
 14 writeup about Spencer View?
 15 A. Uh-huh.
 16 Q. That you talked to him.
 17 Now, you've got before you Exhibit 229. What date is that
 18 drafted?
 19 A. April 2nd.
 20 Q. 2012. Do you have that in front of you?
 21 A. Sure.
 22 Q. And that's a draft of a reprimand; correct?
 23 A. Correct.
 24 Q. Okay. Can you count how many different things he's being
 25 reprimanded in that?

1 THE COURT: Is that Exhibit 412?
 2 MR. MCDUGAL: That's 229.
 3 THE COURT: 229. I'm sorry. I'm sorry.
 4 THE WITNESS: Three, sir.
 5 BY MR. MCDUGAL: (Continuing)
 6 Q. Let's look at the dates of each of them. August 27th.
 7 You're writing him up for something that happened on
 8 August 27th?
 9 A. No. I am showing an incident that happened on
 10 August 27th.
 11 Q. Okay. Did you ever put anything in writing to him before
 12 about that?
 13 A. I don't understand the question.
 14 Q. Have you ever put anything in writing about Mr. Cleavenger
 15 and this August 27th incident before April 2nd?
 16 A. I have no idea.
 17 Q. Okay. But it's there now; correct?
 18 A. Sure.
 19 Q. In something called "written reprimand"; right?
 20 A. A rough draft of a written reprimand.
 21 Q. True enough. And August 27th is some seven months
 22 earlier -- six to seven months earlier; correct?
 23 A. Okay.
 24 Q. This is a day after you've gotten an email from Lebrecht
 25 saying, "We need to get detailed info"?

1 A. For the performance appraisal. I -- he didn't say
 2 anything about the written reprimand in his --
 3 Q. I know, but that's what results the next day; right?
 4 A. He wasn't issued this reprimand.
 5 Q. No. It's drafted in this time frame. I'm looking at
 6 what's going on between April 1 and April 2. Just to be fair.
 7 I'm not surprising you. That's what's going on.
 8 MS. COIT: Your Honor, I object to arguing with the
 9 witness when he's trying to answer.
 10 THE COURT: Just restate the question.
 11 BY MR. MCDUGAL: (Continuing)
 12 Q. As of April 2nd, had you also written about an event that
 13 happened on October 29, 2011?
 14 A. Yes.
 15 Q. And an event that happened on October 30, 2011?
 16 A. Yes.
 17 Q. And an event that happened on March 3, 2012?
 18 A. Yes.
 19 Q. And an event that happened on April 1, 2012?
 20 A. Yes.
 21 Q. Now, you got, on April 2nd -- and I acknowledge that you
 22 didn't give him that at that time, but it's being written up,
 23 all these incidents that happened long in the past, being
 24 written up, and we've heard so much about this lady who
 25 concealed -- had the concealed weapon -- who had the weapon

1 with the concealed weapons permit. Does pen ever touch paper
 2 about that incident?
 3 A. I don't know.
 4 Q. You didn't. Did you ever write anything?
 5 A. No. I wasn't aware of it until later.
 6 Q. Right. When you became aware, did you write anything?
 7 A. No.
 8 Q. You're -- one of the reasons for the low performance --
 9 one of the reasons for -- well, strike that.
 10 Are you saying that it's your memory that Chief McDermid
 11 is the one that gave the order that relates to the Clery Act?
 12 A. I can neither confirm nor deny that. I surmised that by
 13 the conversation I had when I was told to advise him that he
 14 couldn't do that.
 15 Q. It's your belief, though?
 16 A. It is my belief, yeah -- or it was at the time.
 17 Q. You said Mr. Cleavenger testified against the
 18 department -- or spoke in his Taser speech against the
 19 department. What did he say against the department?
 20 A. I have no idea. I don't recall when I was there.
 21 Q. Do you know whether or not Chris Phillips -- you said --
 22 you cited, "Well, we brought Chris Phillips in to try to help
 23 him out." Do you know whether or not a month before
 24 Mr. Cleavenger's traffic stops Chris Phillips,
 25 Officer Phillips, had, in fact, done a traffic stop?

1 A. No.
 2 Q. Had handcuffed somebody?
 3 A. I'm assuming he probably did. We handcuff a lot of
 4 people.
 5 Q. Had Mr. Cleavenger moved that person's car?
 6 A. I don't know.
 7 Q. And that obviously Mr. Cleavenger would have been there
 8 and saw that if that happened; right?
 9 A. Okay.
 10 Q. What about the videotape makes it appear to you that
 11 Mr. Cleavenger is going to park right in front of that
 12 apartment building?
 13 A. Well, I'm not going completely off the videotape. I was
 14 there and witnessed it.
 15 Q. You witnessed what?
 16 A. I --
 17 Q. The camera didn't capture it?
 18 A. Are we talking about the Spencer View incident?
 19 Q. Yeah.
 20 A. Well, I -- I think it's a pretty known fact that cameras
 21 don't capture everything. If they did, my wife would never
 22 want to look at a picture that she's taken of me.
 23 Q. Well, I guess an indication that a car is going to park
 24 somewhere, it would turn a little bit; right?
 25 A. Yeah. It appears that it does that in the video. I'm

1 more than happy to watch it again.
 2 Q. No. There's a speed bump. Do you remember testifying
 3 that before the Spencer View reprimand there were several
 4 discussions?
 5 A. Yeah. I believe that that was incorrect when I testified
 6 to that.
 7 I'm sorry. Can you -- can you reask the question? I'm
 8 getting confused on which incident we're talking about here.
 9 Q. We're talking about reprimanding Mr. Cleavenger for
 10 Spencer View.
 11 A. Okay.
 12 Q. Do you recall testifying that before the Spencer View
 13 reprimand there were several discussions?
 14 A. That's what I remembered, yes. I'm being told that that
 15 did not necessarily happen.
 16 Q. One of the first few questions that you were asked on
 17 direct was whether or not you were fired.
 18 A. Yes.
 19 Q. And you answered something about there was speculation
 20 about why you were fired?
 21 A. Sure.
 22 Q. Well, first, how many times have you testified?
 23 A. In -- in -- on this case?
 24 Q. No. In courts.
 25 A. Oh, I don't know.

1 Q. Yeah. You -- you're pretty aware, generally, that people
 2 are not looking for speculation when they ask a question;
 3 right?
 4 A. Sure.
 5 Q. But it was brought up by your counsel that you speculated?
 6 A. No. I didn't speculate. I asked someone, and they
 7 speculated.
 8 Q. Oh, so it was speculative hearsay?
 9 A. Correct.
 10 Q. What's your opinion on why you were fired?
 11 A. I don't know if my opinion is relevant.
 12 Q. Well, if you're going to get into speculative hearsay,
 13 maybe we can get something a little better?
 14 A. I'm sorry. Is there a question?
 15 Q. Yeah. What's your opinion for why you were fired?
 16 A. Well, I'm guessing I didn't fit in with the department.
 17 Q. Anything specific they accused you of?
 18 A. Again, I don't understand the question.
 19 Q. Well, maybe an exhibit will help.
 20 A. Okay.
 21 Q. I'm handing you what's been marked as Plaintiff's Exhibit
 22 238.
 23 A. Yes.
 24 Q. Okay. Have you had a chance to look at it?
 25 A. Yes.

1 Q. Okay.
 2 MR. MCDOUGAL: Plaintiff offers --
 3 BY MR. MCDOUGAL: (Continuing)
 4 Q. Oh, what is it? I'm sorry.
 5 A. It appears to be some formal grievances and personnel file
 6 -- from my personnel file.
 7 Q. Items that you were involved in?
 8 A. Sure.
 9 Q. Documents that you received?
 10 A. Sure.
 11 MR. MCDOUGAL: Plaintiff offers Exhibit 238. Oh,
 12 it's in. It's in. Okay.
 13 THE COURT: Any objection? Received.
 14 MR. MCDOUGAL: Permission to publish?
 15 THE COURT: You may.
 16 BY MR. MCDOUGAL: (Continuing)
 17 Q. To save some time here -- and if you want to go into
 18 detail, we can, but the first few pages of that are initial
 19 complaints of sexual harassment against you; correct?
 20 A. Sure.
 21 Q. Now, let's look at the last two pages.
 22 MR. MCDOUGAL: Mr. Hess, can you go to the
 23 second-to-last page. I'm not sure. Is that on ours showing up
 24 everywhere?
 25 ///

1 BY MR. MCDOUGAL: (Continuing)
 2 Q. Is this a letter that you received?
 3 A. Yes.
 4 Q. What does it tell you?
 5 A. That my contract is not being renewed.
 6 Q. Okay. Laypeople would call it being fired; right?
 7 MS. COIT: Object. Argumentative.
 8 BY MR. MCDOUGAL: (Continuing)
 9 Q. Were you here when defense counsel was saying Casey Boyd
 10 was fired?
 11 A. No.
 12 MS. COIT: Objection.
 13 THE COURT: Overruled.
 14 BY MR. MCDOUGAL: (Continuing)
 15 Q. How many years had you had your contract renewed?
 16 A. Four, five.
 17 Q. Now, did you send anything in response to this letter?
 18 A. Yes.
 19 Q. What was that?
 20 A. Oh, this? Which letter? The letter from -- that you just
 21 handed me from Jamie Moffitt?
 22 Q. Let me ask you a little differently. After you got this
 23 letter, did you send the department anything?
 24 A. Yes.
 25 Q. And what did you send them?

Cameron - X

1 A. A rebuttal to my last reprimand.
 2 Q. Okay. So here you're not being reviewed and you sent them
 3 a rebuttal to your last reprimand. What was that about? Let's
 4 go to the next page.
 5 A. Is there a specific question you want me to answer?
 6 Q. Yeah. Is this next page what you sent?
 7 A. Yeah. It appears to be, yes.
 8 Q. Okay. And you're writing this in 2015?
 9 A. Uh-huh.
 10 Q. It says at the bottom, just to be fair, "Received," it
 11 looks like --
 12 Do you see the handwriting?
 13 A. Yes.
 14 Q. -- "3/31/14."
 15 A. Okay. I don't know whose that is.
 16 Q. But you're not disputing that this was sent after the
 17 other letter, the nonrenewal?
 18 A. Right.
 19 Q. Looks like somebody got the year wrong. Obviously, it's
 20 2015?
 21 A. Sure.
 22 Q. So March 31, 2015. And you're disputing whether or not
 23 you actually engaged in harassment?
 24 A. That's an oversimplification, but I think that's correct.
 25 Q. Sitting here today, do you stand by the fact that you

1 THE COURT: Is Chief Chase here?
 2 MS. COIT: No. I'm sorry.
 3 THE COURT: How long do you have on direct with
 4 Chief McDermed?
 5 MS. COIT: Two hours.
 6 THE COURT: I don't want to split it. I'll send you
 7 home tonight. I think the case is going to you tomorrow. I'm
 8 taking an hour or less of court time today, but I'm trying not
 9 to split some of the witnesses like Mr. Cleavenger,
 10 Sergeant Cameron, Lieutenant Lebrecht, and the chief. I just
 11 don't like that split where somebody is doing direct and cross
 12 on opposite ends.
 13 You asked this morning when the case is going to you. I
 14 think it's going to you tomorrow afternoon about 1:30. Now,
 15 cross your fingers. I'm just kidding you. I think about 1:30.
 16 We're going to work hard tonight and make certain everything is
 17 in order for you tomorrow.
 18 Don't hold that against me if it's the following morning,
 19 but I think there's a really good possibility that this case
 20 will be argued to you tomorrow afternoon.
 21 Has anybody talked to anybody about the case so I get to
 22 start all over again? Please don't do that. We're almost at
 23 the end where you can start your deliberations.
 24 So my hope is this: In a perfect world, without pushing
 25 either side, so they have a full presentation, you'd get the

2566

2568

Cameron - X

1 don't know why you were fired?
 2 A. Well, first off, I don't know if we determined that I was
 3 fired or not. My contract wasn't renewed.
 4 Q. Okay.
 5 A. And, second off, until someone tells me why I was, I'll
 6 have to speculate.
 7 Q. Do you know whether or not people were after
 8 Mr. Cleavenger as of the time he was sitting in that June 29,
 9 2012, meeting?
 10 A. I don't know which meeting that is, sir.
 11 Q. It's the meeting where we just heard the tape.
 12 A. What do you mean "after him"?
 13 Q. Well, whether or not there were some documents or emails
 14 floating around the department saying that he should be fired.
 15 A. Not to my knowledge, no.
 16 Q. Sorry to keep you paused for a second.
 17 A. No. That's okay.
 18 MR. MCDOUGAL: Nothing further.
 19 THE COURT: Redirect?
 20 MS. COIT: No questions.
 21 THE COURT: Sir, thank you. You may step down. How
 22 many witnesses do you have left?
 23 MS. COIT: I have Chief Chase and Chief McDermed.
 24 THE COURT: Chief McDermed and who else?
 25 MS. COIT: Chief Chase.

1 case tomorrow afternoon, but I probably will just send you
 2 home. You wouldn't be in deliberations very long because
 3 they've got an hour and a half apiece and then with a 20-minute
 4 recess, that's going to take the afternoon.
 5 I'm going to read the instructions to you at one time, and
 6 it takes about 22 minutes and 30 seconds. I'm just kidding
 7 you. But it takes about 20 to 25 minutes to read the law to
 8 you. I'll give you a packet.
 9 So, in a perfect world, you would really come back on
 10 Thursday morning to start the deliberations. How long that
 11 takes, I have no idea and you have no idea. But you were
 12 asking this morning, you know, roughly. That's -- that's our
 13 grand plan.
 14 The worst case scenario, in terms of your timing, is
 15 argument on Thursday morning instead of Wednesday afternoon.
 16 Let's see how we do without pressing either side so they have a
 17 full presentation.
 18 Okay. We'll see you tomorrow morning at 8:00, and I want
 19 to thank you.
 20 (Jury not present.)
 21 THE COURT: Well, Counsel, have a seat for just a
 22 moment. I hope that that's the right decision on both of your
 23 parts. Both on your direct examination and on your
 24 cross-examination so it's not split.
 25 MR. JASON KAFOURY: Sure.

1 THE COURT: I'm not certain, but to split that up and
2 to get halfway through the direct examination and have you
3 resume tomorrow, I don't think it's productive or necessarily
4 fair for saving an hour's worth of time.

5 There is a good possibility, though, the case will be
6 argued tomorrow afternoon, and so what I want to ask is how you
7 want me to proceed. One of the unfairnesses would be that if I
8 handed down absolute rulings tonight about public concern,
9 without hearing a full presentation by the defense -- and I
10 think I alluded to that earlier during the recess.

11 By the same token, you're not going to have time to a djust
12 or focus your arguments tomorrow, and I don't want to put you
13 in an unfair position of arguing, not knowing what tentative
14 thoughts are. So I could do a couple of things. I could hand
15 down final rulings, which I prefer not to do until the
16 conclusion of the defense case. I could hand down tentative
17 thoughts and not rulings, but you could see that we've already
18 shaped last evening after I left you at whatever time -- what
19 time?

20 MR. JASON KAFOURY: It was about 11:30.

21 THE COURT: 11:30. Whatever time I left you last
22 night. We did a lot more work last evening, and we -- we
23 reconstructed your jury instructions and reconstructed some
24 tentative instructions also that much of won't change based
25 upon the agreement that you've already reached in four

1 the way we put together the jury instructions last evening, and
2 see if you can improve upon those. See if they're consistent
3 with the instructions. But many of the categories are the
4 same. In other words --

5 MR. MCDUGAL: Right.

6 THE COURT: All right. Let's just take a couple of
7 minutes, then, and we'll be right back with you. We might
8 prepare another set of instructions for you tonight to look at
9 also.

10 MS. COIT: Can the clients go, Your Honor?

11 THE COURT: Pardon me?

12 MS. COIT: Can the clients go?

13 THE COURT: This is really stimulating. You might
14 want to stay, but if you don't, you don't have to stay here.

15 (Recess taken.)

16 THE COURT: We're on the record. The parties are
17 present -- strike that. Counsel are present. Some of the
18 parties have been excused for the evening. Last night the
19 parties met and conferred about the public concern instruction
20 regard plaintiff's speech and specifically how the Court should
21 address the matters of public concern, and I would like to
22 thank each of you for your efforts.

23 Last evening plaintiff arrived at 11 separate proposals
24 for protected speech, which is Docket 156. I'm going to give
25 you some tentative thoughts and address those items now, but

1 categories. You'll just see what's laid out. And, therefore,
2 to get that this evening, you can be in a position of
3 criticizing, making it better, but those areas were really
4 stipulated to.

5 I can give you my thoughts about what I don't think belong
6 in what I'm going to call the public domain and I can give you
7 tentative thoughts about what I do, and I can leave those final
8 thoughts until tomorrow, but I leave that to each of you.

9 Also, we reconstructed your jury instructions. I just
10 don't want you to -- I don't want to be in the position, quite
11 frankly, of making these final decisions until you finished
12 your caution. I'm uncomfortable about that, quite frankly.

13 So why don't you two get together, as lead counsel, and
14 discuss what you want me to do. I can certainly do this
15 tomorrow, but what I'm afraid of is what does your preparation
16 time look like tonight because you'll be arguing tomorrow.

17 What are your thoughts, Counsel? How would you like me to
18 proceed?

19 MR. MCDUGAL: Tentative rulings.

20 THE COURT: You understand it's tentative?

21 MR. MCDUGAL: Yes.

22 THE COURT: People can push back. You can argue it
23 tonight. You can give me some time to reflect.

24 MR. MCDUGAL: Yes.

25 THE COURT: You can also look at the construction,

1 these are not final rulings. That means you can argue and push
2 back on these tentative thoughts.

3 First: Address the plaintiff's argument that simply
4 filing grievances or complaints is constitutionally protected
5 under First Amendment retaliation jurisprudence. The Ninth
6 Circuit has held that, quote, "in order to be constitutionally
7 protected under either the speech clause or the petition
8 clause, a public employee's actions must involve a matter of
9 public concern," end of quote. And the Court cites *Rendish v.*
10 *City of Tacoma*, 123 F.3d 1216. That language is found on
11 page 122. Ninth Circuit, 1997.

12 The contents, not simply the act, must relate to a matter
13 of public concern. Plaintiff's argument that simply
14 petitioning or grieving or filing a lawsuit is protected is not
15 appropriate and items two and nine, I believe, would
16 tentatively not be given to the jury.

17 Item two submitted to the Court last night was, quote, "By
18 stating his intent to file a grievance on May 18, 2012, and
19 exercising his right to file a grievance on June 18, 2012, and
20 exercising his right of grieving the letter of reprimand and
21 his termination." And number nine I referred to is the filing
22 of this lawsuit itself in October 2013.

23 Second: This Court would tentatively -- or tentatively
24 believes that plaintiff's speech with Lieutenant Lebrecht and
25 Sergeant Cameron and surrounding emails in September 2012 did

1 not involve a matter of public concern. Although, plaintiff
2 asserts that his -- this instruction was illegal, the context
3 of the speech with these individuals makes it clear that the
4 speech to Lebrecht and to Cameron related to a personal dispute
5 between Mr. Cleavenger and his superior officers, not the
6 broader illegality of the alleged instruction.

7 At that time any concerns about the illegality of the
8 speech was incidental to the personal nature of the exchange.
9 This was not speech regarding a matter of public concern. This
10 would address items five and six, which I'll now, once again,
11 read into the record for appellate purposes.

12 Number five was the request by plaintiff, quote, "By
13 conversations with Lieutenant Lebrecht and Sergeant Cameron on
14 September 7, 2012, concerning the legality of his order to only
15 report felonies in September of 2012."

16 And number six, quote, "By emails with Lieutenant Lebrecht
17 and Sergeant Cameron, Chief McDermid, and Randy Wardlow on
18 September 10, 2012, concerning the legality of his order to
19 only report felonies in September of 2012."

20 As to the list or bowl of dicks list, with regards to the
21 alleged reporting of this speech to individuals and in court
22 filings, the Court finds that this speech, if it indeed
23 occurred, did relate to a matter of public concern. And I
24 should say instead of find, I would offer that as a tentative.

25 The topic alleged waste of time would touch on a matter of

1 speech would be protected speech on the matter of public
2 concern because in this different context the topic would be of
3 interest to the public.

4 So what we did all last evening, after we met with you and
5 this morning, was took -- was to take the liberty of trying to
6 set out an instruction, which is subject to great revision,
7 depending upon your arguments, but to get the format out there
8 at least and to try to match up the verdicts with these
9 tentative thoughts.

10 So I'm going to give you as much time as you want to read
11 the tentative verdict form. Take as much time as you want with
12 instructions. And if you want to argue this this evening and
13 give me food for thought tonight, that's fine. If you want to
14 wait until tomorrow, that's fine.

15 MR. MCDUGAL: I was going to ask defense counsel.

16 THE COURT: Sure. Have a conversation. See how you
17 want to proceed. Be kind to yourselves because you're going to
18 be really stressed tomorrow. Trust me.

19 MR. MCDUGAL: Your Honor, the parties agree that
20 their response to the proposed jury instructions will be by the
21 parties, if it's acceptable to Your Honor, submitting you with
22 one or two paragraphs as to each particular thing that they
23 object to or want to have changed, giving that to you in
24 writing so that tomorrow we're not wasting a lot of time
25 arguing.

1 concern to the public. As to the reporting of the
2 disparagement of the people in the Occupy Movement, for
3 example, the District 9 comment and rape comment, this Court
4 believes that this does not relate to a matter of public
5 concern. As a matter of law, this speech can be construed as
6 reporting potential misconduct towards a group of people who
7 are expressing themselves on a matter of concern to the public.
8 This can be considered a matter of public concern.

9 Did I say "does not"?

10 MR. MCDUGAL: Yes.

11 THE COURT: If I did, I apologize. This Court does
12 find this relates to a matter of public concern. My apology.

13 As to defendants' concerns that certain speech did not
14 occur or that certain defendants did not find out about it, the
15 former issue will be addressed in the construction of the jury
16 instruction, and the plaintiff must establish factually that it
17 occurred, and this will involve a credibility determination in
18 some instances.

19 As to the second point, this is a causation issue and does
20 not touch on whether the speech itself was a matter of public
21 concern.

22 Now, just one moment. My apologies. Yeah, when I went
23 back to addressing items five and six, I want to add that,
24 however, in the context of reporting this alleged illegal
25 instruction and subsequent meetings and, in the lawsuit, the

1 THE COURT: That would be great. Can I get that
2 tonight?

3 MR. MCDUGAL: Yes. At least from us.

4 THE COURT: What time? 11:00? 12:00?

5 MR. JASON KAFOURY: I would like to get it to you by
6 2:00 a.m. I would like meet at my office on the record.

7 THE COURT: You don't believe this, but we can
8 verify --

9 MR. JASON KAFOURY: No, it's a joke.

10 MR. MCDUGAL: I'm not invited to that party. I
11 haven't read all of them. If it's just on this section --

12 THE COURT: Do you want to take some time with them
13 and then set a time that you want me to visit and pick up your
14 response? Are you going to work together like you did last
15 night?

16 MS. COIT: No.

17 MR. MCDUGAL: I think there's --

18 THE COURT: You don't like each other anymore? You
19 have to work separately?

20 MS. COIT: No comment.

21 THE COURT: You guide me, though. I'll be where you
22 need me to get these or you can email it to us, but I would
23 like to get it simultaneously. I don't want to get one group.

24 MR. MCDUGAL: If we both submit it by 8:00, is that
25 doable?

1 MS. COIT: That's fine with me.
 2 THE COURT: 8:00?
 3 MR. JASON KAFOURY: 8:00 p.m.
 4 MR. MCDUGAL: 8:00 p.m.
 5 MR. JASON KAFOURY: Which email would you like us to
 6 submit it to?
 7 THE COURT: Marie's because I'm going to work with
 8 her. That gives me some time to actually have dinner tonight.
 9 Now, my next issue is take a look at the verdict form for
 10 a moment. We haven't reached final decisions on this, but I
 11 want to make certain that -- not that you're going to agree
 12 with the Court's drafting, necessarily, but if you could
 13 improve upon it, if you're pushing back on it, that verdict
 14 form, of course, changes concerning my decision about public
 15 concern. And if I switch these tentative thoughts, the verdict
 16 form changes. But I think I like the format that the defendant
 17 proposed last evening, which I basically followed. Although,
 18 each of you will be displeased with the individual portions.
 19 MR. MCDUGAL: Just a -- initial comment on the
 20 verdict form. The number one change is we take out the
 21 categories of speech is where damages --
 22 THE COURT: Use that microphone. I can't hear you.
 23 I apologize.
 24 MR. MCDUGAL: The initial comment on the verdict
 25 form, the number one change, after we get past the categories

1 any grounds of appeal on that basis.
 2 Is that a fair statement?
 3 THE COURT: But you need to consult your clients,
 4 don't you?
 5 MS. COIT: I need to consult general counsel, but --
 6 THE COURT: Well, call them. We're right here. Go
 7 out in the hallway and talk about it. Let's get this resolved
 8 tonight.
 9 Here's the problem we find: Unless we resolve that
 10 tonight, Counsel -- listen carefully -- all I'm required to do
 11 is give you the law. I'm not required to give you a verdict
 12 form. Not before your argument. So you just have to know what
 13 the law is. So you go in with a verdict form that's still in
 14 transition.
 15 MS. COIT: Can I talk to you for just a second?
 16 MR. JASON KAFOURY: Sure.
 17 THE COURT: We're just adjusting. We'll also mail
 18 these out in electronic form for you, so you'll have more than
 19 one copy.
 20 MR. MCDUGAL: Thank you.
 21 Your Honor, we have a resolution on the verdict form on
 22 damages.
 23 THE COURT: Why don't you just state that on the
 24 record and then I'll redraft it tonight.
 25 MR. MCDUGAL: Number seven should be reworded,

2578

2580

1 of speech, is the way the damages are set forth.
 2 THE COURT: The way the what?
 3 MR. MCDUGAL: The way the damages are set forth.
 4 THE COURT: Okay.
 5 MR. MCDUGAL: My verdict form had damages per
 6 defendant. This one has them all lumped together.
 7 THE COURT: Okay.
 8 MR. MCDUGAL: I don't mind if defense counsel is
 9 agreeable to that; however, if we seek punitive damages, if
 10 they award punitive damages, I don't think proportionality is
 11 the appropriate test in a First Amendment case, but it's
 12 perhaps gray issues.
 13 THE COURT: That's something you can draft right now
 14 for me between the two of you. That's something we can do
 15 immediately.
 16 So why don't you sit down with counsel. Give them your
 17 proposal. Let's see what their thoughts are.
 18 (Pause-in-proceedings.)
 19 MR. MCDUGAL: Let me make a real clear record. I
 20 think we've reached an agreement, but plaintiffs and defendants
 21 agree that all the damages may be lumped together. Defendant,
 22 having been advised by plaintiff counsel that that might take
 23 away arguments on appeal, including proportionality or the
 24 argument that punitive damages have to be individualized to
 25 each individual's conduct, has agreed to stipulate and waive

1 "Should the plaintiff be awarded punitive damages against" --
 2 and then --
 3 THE COURT: "Should the punitive damages against."
 4 MR. MCDUGAL: Colon. And then I'll hand you this
 5 right when I'm done.
 6 THE COURT: Okay.
 7 MR. MCDUGAL: A: Carolyn McDermed? Yes? No? If
 8 yes, in what amount? Dollar sign. B: Brandon Lebrecht, same
 9 repeat. C: Scott Cameron, same repeat. But at the intro,
 10 after question six, it should say you only -- answer subpart A,
 11 B, or C if you found the defendant liable above.
 12 THE COURT: Is that acceptable?
 13 MR. MCDUGAL: That's acceptable to the plaintiff.
 14 THE COURT: Is that acceptable to the defendants?
 15 MS. COIT: Yes.
 16 THE COURT: If you'd just hand us a copy, then why
 17 don't we just word process that tonight. That will save you
 18 having to do it.
 19 THE LAW CLERK: They have the electronic version.
 20 THE COURT: You have the electronic version? Can you
 21 draft it for us?
 22 MR. MCDUGAL: I can certainly make those changes.
 23 I'll email it to you.
 24 THE COURT: Email it by 8:00.
 25 MR. MCDUGAL: These are the redactions that have

1 been approved by counsel.
 2 THE COURT: Okay. Then we're back on the record and
 3 there were a number of exhibits that counsel represented --
 4 called to the Court's attention that were being redacted and
 5 were going to be resubmitted this evening. It's signed a
 6 document, but that document is not exactly accurate yet.
 7 Do you have those redactions?
 8 MR. MCDUGAL: I do. Exhibit 276.
 9 THE COURT: 276.
 10 MR. MCDUGAL: This one should be exchanged for the
 11 existing one; this is the redacted one.
 12 THE COURT: We will do that right now. I want you to
 13 verify that that's being done so we have the right one.
 14 Right, Christy? Okay. And?
 15 MR. MCDUGAL: And Defendants' Exhibit 412.
 16 THE COURT: 412.
 17 MR. MCDUGAL: Does the Court mind that it's got a
 18 photocopied number on it instead of a yellow sticker? Because
 19 I don't have defendants' stickers.
 20 THE COURT: That's fine. We'll put a yellow sticker
 21 on it so it's uniform.
 22 MR. MCDUGAL: Thank you, Your Honor.
 23 THE COURT: Now, does that bring your record accurate
 24 with your signature?
 25 MR. MCDUGAL: Yes.

1 it, though.
 2 THE COURT: Why don't you talk to your opposition so
 3 they're prepared to argue whether this is appropriate or not.
 4 And you said very short amount?
 5 MR. JASON KAFOURY: Ten minutes, max.
 6 THE COURT: I must have misheard. Did you say two
 7 hours and 10 minutes?
 8 MR. JASON KAFOURY: Three hours, Your Honor.
 9 THE COURT: For the record, we're, of course, just
 10 joking.
 11 MR. JASON KAFOURY: Defense doesn't have any
 12 objection.
 13 THE COURT: Okay.
 14 MR. JASON KAFOURY: This was the Sergeant Salsbury's
 15 reference by Chief Chase.
 16 THE COURT: So Chuck Salsbury was a sergeant at the
 17 Junction City Police Department before he resigned to become
 18 sergeant at the Eugene Police Department. Salsbury was
 19 plaintiff's sergeant while plaintiff was employed by JCPD.
 20 So Salsbury will be a rebuttal witness, you would recall?
 21 MR. MCDUGAL: Yes.
 22 MR. JASON KAFOURY: Correct.
 23 THE COURT: Okay. So we'll have Chief Chase
 24 tomorrow.
 25 MR. JASON KAFOURY: No.

1 THE COURT: Does that bring the record accurate with
 2 your signature on behalf of the defendant also?
 3 MS. COIT: Yes.
 4 MR. HESS: We can also swap out 168 because this has
 5 the yellow sticker.
 6 THE COURT: We're on the record now, so we're doing
 7 it.
 8 MR. MCDUGAL: Here's a 168 with a yellow sticker on
 9 it. The current 168 has a gray sticker on it.
 10 THE COURT: We'll take out the old 168 and put in the
 11 new 168.
 12 MR. MCDUGAL: Okay.
 13 THE COURT: Then, unless I'm surprised by additional
 14 exhibits with the chief tomorrow, we're in pretty good shape as
 15 far as our evidence is concerned, and we won't have to take a
 16 lot of time on that.
 17 MR. MCDUGAL: Correct.
 18 MR. JASON KAFOURY: I conferred with defense counsel.
 19 I think we have only about -- a very short amount of rebuttal
 20 and it's --
 21 THE COURT: I need to see that in writing.
 22 MR. JASON KAFOURY: I know. It's coming over.
 23 THE COURT: Unless there's an agreement between the
 24 two of you.
 25 MR. JASON KAFOURY: No. I just talked to her about

1 THE COURT: Sorry. Chief Chase tomorrow for the
 2 defendant. We will have Chief McDermid for the defendant. And
 3 you've got some -- well, you accomplished your reading.
 4 MS. COIT: Right. I think we -- we're discussing
 5 whether or not plaintiffs will stipulate to the exhibits that I
 6 was going to have Chief Chase come testify about.
 7 MR. JASON KAFOURY: We're close. I'm just looking at
 8 them.
 9 THE COURT: Okay.
 10 MS. COIT: If they stipulate to the stipulation I
 11 want read --
 12 THE COURT: Do you want to stipulate to Salsbury?
 13 MS. COIT: No.
 14 MR. JASON KAFOURY: No. We need him. Well, we need
 15 Salsbury live.
 16 THE COURT: Do you want to stipulate to the chief?
 17 Just joking with you.
 18 MR. JASON KAFOURY: What we are willing to do is --
 19 THE COURT: You talk about it and tell me.
 20 (Pause in proceedings.)
 21 THE COURT: Okay. We're back on the record.
 22 MS. COIT: We've reached an agreement with
 23 plaintiff's counsel about the additional documents we wanted
 24 Chief Chase to come authenticate.
 25 THE COURT: Okay. So there will be a stipulation

1 between the parties tomorrow?
 2 MS. COIT: Yes. And we would like the Court to read
 3 the stipulation to the jury and identify the exhibit numbers
 4 that are being introduced.
 5 THE COURT: Okay.
 6 MS. COIT: Do you want me to read the stipulation?
 7 THE COURT: Yes. If you would, please.
 8 MS. COIT: The parties stipulate that after Junction
 9 City Police Department Officer Corey Mertz testified,
 10 Chief Chase ordered a search of -- should be -- sorry --
 11 Officer Mertz's email and discovered these documents there.
 12 THE COURT: Can I read that tomorrow? Is it legible?
 13 MS. COIT: I can rewrite it to make it legible.
 14 THE COURT: Okay. And then I'm going to get some
 15 exhibits numbers?
 16 MS. COIT: Yes. 432, 433, and 434.
 17 THE COURT: Okay. Okay. Is that stipulated to by
 18 plaintiff's counsel?
 19 MR. JASON KAFOURY: It is, yes.
 20 THE COURT: And by defense counsel?
 21 MS. COIT: Yes.
 22 THE COURT: So Chief McDermed will be the chief
 23 testifying tomorrow?
 24 MS. COIT: Yes.
 25 THE COURT: Chief Chase will come to us by way of

1 C E R T I F I C A T E
 2
 3 Cleavenger v. McDermed, et al.
 4 6:13-cv-01908-DOC
 5 TRIAL DAY 9
 6 September 22, 2015
 7
 8 I certify, by signing below, that the foregoing is a true
 9 and correct transcript of the record, taken by stenographic
 10 means, of the proceedings in the above-entitled cause. A
 11 transcript without an original signature, conformed signature,
 12 or digitally signed signature is not certified.
 13
 14 /s/Jill L. Jessup, CSR, RMR, RDR, CRR
 15 _____
 16 Official Court Reporter Signature Date: 12/28/15
 Oregon CSR No. 98-0346 CSR Expiration Date: 9/30/17
 17
 18
 19
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1 stipulation. And then you will be resting; is that correct?
 2 MS. COIT: Yes.
 3 THE COURT: Well, then is there anything else until
 4 8:00 tonight when you submit your objections? And it gives me
 5 a chance to make rulings at the end of the defense case
 6 tomorrow. You are satisfied with the exhibits. And so there's
 7 no reason to keep you. Go home and get some rest and get your
 8 arguments to me tonight and prepare for your final argument
 9 tomorrow. Goodnight.
 10 (Trial Day 9 adjourned.)
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

A JUROR: [1] 2534/17
DEPUTY COURTROOM CLERK: [8]
2378/24 2417/10 2458/5 2458/8
2459/22 2469/18 2538/6 2538/10
MR. HESS: [23] 2411/12 2411/16
2411/18 2411/20 2412/12 2416/10
2423/13 2425/2 2428/18 2433/4
2437/24 2444/23 2448/23 2449/2
2452/12 2457/21 2458/1 2458/7
2458/18 2459/15 2461/9 2461/11
2582/3
MR. JASON KAFOURY: [96] 2380/1
2395/2 2403/2 2408/22 2409/13
2409/17 2411/9 2411/14 2412/7
2416/12 2417/4 2417/7 2420/15
2423/5 2423/11 2423/15 2424/25
2425/4 2428/15 2428/17 2428/20
2431/3 2432/14 2433/2 2433/15
2435/12 2437/22 2437/25 2444/25
2448/25 2449/3 2450/14 2452/7
2452/10 2452/18 2453/6 2454/14
2456/7 2456/11 2457/19 2458/3
2458/10 2459/13 2459/16 2459/18
2459/20 2459/23 2461/8 2461/10
2466/19 2467/16 2469/9 2469/20
2470/1 2470/6 2472/3 2472/12
2487/10 2488/12 2490/4 2490/21
2497/6 2497/9 2497/17 2497/21
2498/9 2498/15 2499/6 2499/15
2499/20 2500/12 2502/7 2502/13
2504/8 2536/22 2542/19 2568/24
2569/19 2576/4 2576/8 2577/2 2577/4
2579/15 2582/17 2582/21 2582/24
2583/4 2583/7 2583/10 2583/13
2583/21 2583/24 2584/6 2584/13
2584/17 2585/18
MR. MCDUGAL: [72] 2485/7 2486/2
2486/18 2487/9 2487/13 2487/18
2487/21 2487/24 2488/4 2488/19
2488/22 2512/3 2513/25 2514/3
2514/5 2514/10 2527/14 2542/6
2542/8 2547/9 2547/11 2553/6 2553/8
2553/10 2553/12 2554/4 2554/7
2554/13 2554/16 2555/24 2556/2
2557/1 2563/1 2563/10 2563/13
2563/21 2566/17 2570/18 2570/20
2570/23 2571/4 2574/9 2575/14
2575/18 2576/2 2576/9 2576/16
2576/23 2577/3 2577/18 2577/23
2578/2 2578/4 2578/7 2578/18
2579/19 2579/24 2580/3 2580/6
2580/12 2580/21 2580/24 2581/7
2581/9 2581/14 2581/16 2581/21
2581/24 2582/7 2582/11 2582/16
2583/20
MS. COIT: [127]
THE COURT: [261]
THE LAW CLERK: [1] 2580/18
THE WITNESS: [27] 2395/8 2409/1
2417/6 2420/2 2420/16 2457/22
2465/3 2467/19 2469/13 2469/15
2472/6 2473/3 2473/9 2489/16
2489/20 2490/6 2490/8 2499/19
2504/18 2504/25 2512/5 2514/14
2527/16 2534/18 2536/20 2553/14
2557/3

'96 [1] 2476/9
/
/s/Jill [1] 2587/14
0
0346 [1] 2587/16
1
1,711 [1] 2417/14
10 [17] 2378/5 2378/6 2378/7 2378/9
2389/2 2389/2 2390/21 2415/20
2415/24 2449/16 2461/9 2461/12
2461/13 2491/7 2514/24 2573/18
2583/7
100 [2] 2389/20 2415/20
1000 [1] 2374/21
104 [1] 2418/2
10th [1] 2374/8
11 [5] 2418/12 2433/5 2439/1 2450/16
2571/23
11:00 [1] 2576/4
11:00 a.m [1] 2377/5
11:30 [2] 2569/20 2569/21
11:35 a.m [1] 2425/10
11:43 a.m [1] 2425/24
11:45 [1] 2486/9
11th [1] 2506/1
12 [6] 2385/18 2416/22 2454/25
2458/4 2497/23 2538/22
12/28/15 [1] 2587/15
1216 [1] 2572/10
122 [1] 2572/11
123 [1] 2572/10
12:00 [1] 2576/4
12:45 [2] 2486/9 2486/11
13 [7] 2376/23 2379/21 2381/18
2381/21 2422/23 2454/25 2492/9
130 [1] 2411/13
136 [2] 2418/3 2418/4
138 [1] 2412/9
13th [7] 2443/12 2474/19 2474/19
2474/20 2474/24 2484/21 2484/24
14 [1] 2565/14
147 [1] 2419/14
14th [2] 2436/10 2485/1
15 [8] 2409/20 2409/22 2411/18
2418/12 2487/4 2498/10 2543/25
2587/15
150 [4] 2395/16 2395/23 2431/4
2432/16
150 feet [1] 2533/15
156 [1] 2571/24
158 [3] 2428/16 2428/17 2428/18
15th [1] 2404/9
16-week [1] 2507/19
16-year-old [1] 2523/7
164 [1] 2419/19
165.540 [4] 2463/13 2463/15 2463/23
2463/25
166 [4] 2452/9 2452/10 2553/4 2553/6
168 [7] 2423/1 2423/6 2582/4 2582/8
2582/9 2582/10 2582/11
17 [4] 2445/4 2447/17 2449/5 2587/16
17th [2] 2445/19 2446/21
18 [4] 2385/19 2451/9 2572/18

2572/19
1812 [1] 2555/4
1843 [1] 2551/20
18th [2] 2418/24 2419/12
19 [5] 2423/13 2451/19 2491/7
2492/10 2552/4
1900 [1] 2551/19
1965 [2] 2528/10 2528/11
1995 [1] 2476/9
1997 [1] 2572/11
1999 [2] 2506/14 2506/17
1:15 [1] 2449/5
1:30 [2] 2567/14 2567/15
1st [1] 2474/6
2
2/24 [2] 2457/20 2457/21
2/24/12 [1] 2458/4
20 [9] 2381/17 2427/14 2491/2 2491/5
2514/24 2543/11 2543/16 2543/22
2568/7
20-minute [1] 2568/3
20-plus [1] 2503/23
200 [1] 2374/5
2005 [1] 2473/24
2008 [6] 2491/16 2492/3 2492/17
2492/20 2492/20 2509/21
2009 [6] 2473/24 2492/8 2492/8
2492/17 2492/20 2492/20
2010 [4] 2389/1 2464/6 2495/1
2510/16
2011 [17] 2389/6 2416/22 2417/17
2417/18 2449/8 2454/24 2491/5
2493/23 2495/3 2499/18 2500/19
2512/24 2513/2 2516/8 2520/3
2558/13 2558/15
2012 [52] 2376/23 2379/21 2385/19
2389/5 2389/6 2390/22 2401/20
2401/21 2402/4 2419/11 2433/11
2433/22 2433/23 2434/13 2443/6
2444/4 2445/4 2447/17 2448/10
2449/14 2450/18 2451/10 2452/22
2455/9 2455/13 2455/20 2456/1
2456/9 2456/14 2457/1 2460/22
2471/12 2474/6 2525/9 2537/6
2542/21 2546/3 2546/5 2548/2
2549/11 2552/21 2556/20 2558/17
2558/19 2566/9 2572/18 2572/19
2572/25 2573/14 2573/15 2573/18
2573/19
2013 [4] 2442/24 2507/23 2507/23
2572/22
2014 [11] 2391/8 2391/11 2392/4
2392/17 2402/6 2430/25 2431/3
2431/6 2431/16 2444/12 2491/6
2015 [8] 2373/7 2389/2 2491/2
2508/10 2565/8 2565/20 2565/22
2587/6
21 [3] 2378/7 2378/9 2431/9
22 [5] 2373/7 2416/22 2492/11 2568/6
2587/6
221 [1] 2458/1
224 [2] 2418/1 2418/4
228 [2] 2419/19 2419/20
229 [6] 2547/7 2547/8 2547/24
2556/17 2557/2 2557/3
23 [2] 2451/19 2498/10

2
230 [1] 2382/8
235 [1] 2553/10
238 [2] 2562/22 2563/11
24 [3] 2457/20 2457/21 2492/10
24/7 [1] 2506/22
243 [1] 2438/11
243-page policies [1] 2464/3
2467 [1] 2375/6
25 [4] 2398/15 2423/13 2454/25 2568/7
2550 [1] 2375/19
26 [3] 2451/9 2454/25 2498/16
27 [3] 2449/14 2450/18 2451/10
276 [3] 2425/2 2581/8 2581/9
279 [2] 2444/20 2444/24
27th [5] 2557/6 2557/8 2557/10 2557/15 2557/21
28 [1] 2400/6
280 [2] 2448/21 2448/24
29 [5] 2400/6 2461/24 2542/21 2558/13 2566/8
29th [1] 2491/6
2:00 a.m [1] 2576/6
2nd [7] 2553/1 2553/19 2553/22 2556/19 2557/15 2558/12 2558/21

3
3/31/14 [1] 2565/14
3/5/12 [1] 2416/22
30 [3] 2411/21 2558/15 2568/6
30 yards [1] 2404/10
300 [1] 2374/9
301 [1] 2374/21
31 [6] 2430/25 2431/3 2431/6 2431/16 2455/3 2565/22
31st [1] 2546/5
321 [1] 2432/15
322 [7] 2538/3 2538/6 2538/9 2538/10 2538/13 2538/15 2539/7
323 [5] 2542/2 2542/4 2542/11 2543/4 2544/20
326-8191 [1] 2374/22
33 [7] 2381/11 2416/9 2416/13 2467/5 2467/15 2471/21 2499/7
331 [2] 2433/5 2433/6
34 [2] 2378/11 2378/12
35 [2] 2406/6 2499/21
350 [4] 2379/13 2379/17 2379/25 2380/17
351 [2] 2420/12 2421/2
351B [2] 2414/4 2414/10
351H [1] 2420/15
351I [1] 2377/20
360 [1] 2374/8
37 [1] 2455/1
39 [1] 2500/13

4
4/1/2012 [1] 2434/13
4/2/11 [1] 2439/1
40 [1] 2427/25
411 [1] 2374/4
412 [3] 2557/1 2581/15 2581/16
414 [3] 2388/18 2388/19 2389/13
419 [3] 2554/6 2554/7 2554/14
421 [11] 2459/14 2459/16 2459/18

2459/19 2459/20 2459/23 2530/2 2530/8 2555/23 2556/2 2556/3
43 [2] 2378/16 2418/14
432 [1] 2585/16
433 [1] 2585/16
434 [1] 2585/16
435 [7] 2536/17 2536/18 2536/23 2537/17 2553/9 2553/11 2553/12
44 [1] 2502/8
47 [1] 2502/14

5
5/18/12 [1] 2385/18
5/31/12 [1] 2538/22
50 [10] 2378/13 2378/16 2378/18 2411/17 2411/19 2413/11 2427/25 2463/8 2467/18 2533/14
503 [1] 2374/22
52 [2] 2378/5 2378/6
58 [3] 2378/5 2378/6 2378/13

6
60 [2] 2419/20 2467/18
60-year-old [1] 2414/19
612.4 [2] 2428/18 2429/2
62 [1] 2418/14
63 [1] 2463/10
632 [2] 2463/11 2463/12
6:12 in [1] 2555/4
6:13-cv-01908-DOC [2] 2373/5 2587/4
6:40 p.m [1] 2554/21
6:43 [1] 2551/13

7
71 [6] 2457/22 2458/2 2458/3 2458/8 2458/12 2458/14
711 [1] 2417/22
72 [1] 2541/5
7:00 at [1] 2552/4

8
8191 [1] 2374/22
84-page field [1] 2463/24
8:00 [5] 2568/18 2576/24 2577/2 2577/3 2580/24
8:00 p.m [1] 2577/4
8:00 tonight [1] 2586/4

9
9/30/17 [1] 2587/16
9545 [1] 2506/1
97204 [2] 2374/5 2374/21
97401 [1] 2374/9
98-0346 [1] 2587/16

A
a lawyer [1] 2496/2
A-R-M-S [1] 2468/9
a.m [4] 2377/5 2425/10 2425/24 2576/6
Abbott [6] 2455/6 2455/8 2455/20 2455/25 2456/12 2456/17
Abbott's [2] 2456/6 2456/9
ability [6] 2406/7 2421/5 2442/20 2443/1 2443/5 2517/6
able [8] 2412/6 2427/18 2441/4 2468/12 2472/2 2517/10 2522/19 2535/8

about [281]
above [2] 2580/11 2587/10
above-entitled [1] 2587/10
absenteeism [1] 2451/2
absolute [1] 2569/8
absolutely [5] 2384/8 2399/8 2407/14 2451/24 2456/25
Abuses [1] 2451/5
academic [1] 2450/20
academy [4] 2464/7 2507/13 2507/18 2507/19
accelerate [2] 2436/19 2484/3
accelerated [8] 2435/9 2436/9 2436/13 2436/17 2478/17 2479/21 2484/2 2484/4
accelerating [2] 2434/19 2436/3
accent [1] 2511/18
accept [7] 2425/15 2443/3 2443/9 2451/1 2516/15 2529/21 2529/21
acceptable [6] 2439/9 2490/21 2575/21 2580/12 2580/13 2580/14
accepted [2] 2438/8 2439/12
accepting [1] 2381/11
Accepts [1] 2454/11
access [4] 2401/1 2428/6 2428/9 2468/16
accident [1] 2528/9
accomplished [1] 2584/3
according [1] 2555/4
account [5] 2402/16 2452/17 2453/19 2453/24 2454/1
accuracy [2] 2398/23 2404/3
accurate [20] 2381/13 2389/3 2394/22 2397/19 2398/18 2399/7 2400/23 2402/23 2405/20 2406/9 2419/13 2419/22 2420/10 2451/11 2453/5 2467/25 2535/20 2581/6 2581/23 2582/1
accused [3] 2407/22 2429/17 2562/17
accusing [1] 2479/8
acknowledge [2] 2535/11 2558/21
across [2] 2408/7 2527/12
act [4] 2413/12 2429/21 2559/11 2572/12
acted [1] 2402/21
acting [1] 2440/20
action [7] 2454/19 2470/22 2513/7 2526/20 2529/6 2529/23 2531/18
actions [7] 2386/18 2404/19 2404/21 2446/23 2517/13 2517/23 2572/8
activate [3] 2405/2 2439/2 2439/10
activated [2] 2404/6 2404/6
active [3] 2388/22 2418/17 2418/20
activities [4] 2386/21 2417/14 2417/23 2447/3
activity [5] 2389/1 2389/19 2419/25 2438/6 2451/1
acts [1] 2401/10
actual [6] 2393/22 2396/4 2439/10 2439/15 2450/3 2527/19
actually [22] 2383/6 2383/13 2384/15 2391/23 2395/12 2400/7 2403/24 2404/12 2407/20 2408/18 2421/16 2422/24 2424/23 2430/2 2454/18 2492/21 2532/15 2534/1 2535/17 2536/12 2565/23 2577/8
ADAM [2] 2374/3 2407/18

A

Adams [1] 2503/24
add [2] 2552/18 2574/23
additional [2] 2582/13 2584/23
address [6] 2450/10 2520/22 2571/21
 2571/25 2572/3 2573/10
addressed [1] 2574/15
addressing [1] 2574/23
adjourned [1] 2586/10
adjust [1] 2569/11
adjusting [1] 2579/17
admin [2] 2445/13 2445/14
administration [1] 2508/3
admit [3] 2430/22 2513/17 2535/8
admitted [1] 2482/6
admitting [1] 2430/13
advantage [1] 2451/5
adverse [1] 2541/19
advice [1] 2521/12
advise [7] 2398/13 2399/25 2400/7
 2447/2 2463/21 2522/14 2559/13
advised [8] 2400/5 2460/9 2460/21
 2511/20 2512/7 2522/10 2529/12
 2578/22
affair [1] 2439/24
affairs [29] 2384/4 2396/9 2396/18
 2396/20 2397/4 2397/14 2398/11
 2399/18 2399/21 2400/12 2400/20
 2401/10 2404/13 2406/20 2428/4
 2428/6 2428/12 2428/14 2429/8
 2430/3 2430/10 2432/7 2464/16
 2466/9 2466/13 2470/22 2471/6
 2471/11 2473/18
afraid [1] 2570/15
African [1] 2440/12
African-American [1] 2440/12
after [65] 2381/18 2384/14 2385/15
 2385/21 2391/18 2392/9 2393/18
 2396/17 2405/14 2405/19 2406/1
 2418/24 2421/18 2425/24 2431/9
 2432/9 2436/8 2443/23 2444/18
 2471/8 2473/7 2475/3 2475/3 2475/16
 2477/23 2484/6 2484/18 2484/18
 2493/17 2493/25 2500/17 2502/16
 2504/23 2506/1 2512/15 2513/20
 2515/3 2520/3 2523/22 2529/24
 2530/25 2531/1 2533/18 2534/9
 2537/16 2539/12 2543/17 2543/25
 2544/23 2545/7 2551/22 2551/23
 2551/25 2556/7 2556/8 2557/24
 2564/22 2565/16 2566/7 2566/12
 2569/18 2575/4 2577/25 2580/10
 2585/8
afternoon [8] 2550/3 2551/9 2567/14
 2567/20 2568/1 2568/4 2568/15
 2569/6
afterward [1] 2460/4
again [54] 2378/2 2378/24 2380/14
 2384/5 2393/12 2398/7 2404/13
 2404/17 2413/2 2414/5 2422/7
 2433/15 2435/1 2438/10 2440/22
 2453/21 2456/6 2457/19 2459/1
 2460/25 2480/17 2484/18 2484/19
 2484/19 2488/19 2494/2 2496/21
 2496/25 2500/18 2504/14 2504/21
 2504/22 2504/24 2514/15 2516/20
 2518/1 2523/22 2525/7 2527/10

2530/19 2531/24 2535/1 2535/5
 2537/13 2538/5 2546/7 2546/10
 2548/19 2551/8 2551/16 2561/1
 2562/18 2567/22 2573/10
against [21] 2395/2 2407/13 2446/11
 2446/15 2446/24 2447/1 2447/5
 2464/17 2464/21 2510/23 2512/22
 2513/7 2517/23 2535/15 2559/17
 2559/18 2559/19 2563/19 2567/18
 2580/1 2580/3
age [2] 2414/25 2455/15
agency [1] 2519/24
agitated [2] 2522/22 2525/6
ago [8] 2423/2 2424/19 2425/23
 2428/24 2430/18 2441/6 2443/22
 2456/20
agree [27] 2412/17 2412/20 2418/16
 2418/20 2422/2 2427/16 2429/13
 2429/16 2429/17 2429/22 2445/21
 2448/3 2454/24 2456/17 2456/23
 2456/24 2460/11 2463/23 2480/5
 2516/11 2517/7 2521/13 2534/24
 2553/2 2575/19 2577/11 2578/21
agreeable [1] 2578/9
agreed [3] 2443/25 2456/20 2578/25
agreement [5] 2469/22 2569/25
 2578/20 2582/23 2584/22
agrees [1] 2456/8
ahead [3] 2391/7 2458/15 2461/11
Aided [1] 2468/8
Air [4] 2505/21 2506/3 2506/8 2506/11
ai [1] 2587/3
Alder [1] 2408/19
alerts [1] 2527/24
Alex [4] 2392/9 2393/3 2430/21 2431/1
all [151]
allegation [4] 2438/19 2466/8 2534/6
 2550/20
allegations [4] 2447/1 2447/3 2447/5
 2465/14
alleged [7] 2405/17 2465/7 2471/7
 2573/6 2573/21 2573/25 2574/24
allegedly [2] 2420/14 2460/4
alleviate [1] 2520/2
Allison [2] 2464/25 2465/4
allowed [3] 2394/12 2417/21 2519/11
alluded [1] 2569/10
almost [2] 2513/21 2567/22
along [12] 2388/13 2392/15 2396/8
 2402/15 2420/10 2443/8 2461/4
 2470/12 2503/20 2520/22 2522/12
 2523/9
alphabetical [1] 2390/12
already [15] 2411/14 2422/13 2439/13
 2447/17 2483/8 2493/10 2493/11
 2497/8 2501/10 2531/20 2532/1
 2545/14 2547/8 2569/17 2569/25
also [32] 2386/25 2393/11 2396/9
 2397/10 2401/15 2406/19 2420/19
 2425/15 2425/19 2435/8 2436/12
 2447/2 2447/10 2448/5 2478/18
 2481/17 2517/4 2520/18 2522/23
 2526/13 2532/18 2535/24 2546/12
 2546/15 2558/12 2569/24 2570/9
 2570/25 2571/9 2579/17 2582/2
 2582/4
altercation [2] 2414/13 2415/1

although [4] 2487/7 2490/14 2573/1
 2577/17
always [13] 2401/10 2402/21 2450/1
 2467/4 2515/12 2515/14 2515/14
 2515/14 2516/20 2516/24 2517/5
 2517/11 2534/19
am [5] 2440/13 2446/10 2454/20
 2487/25 2557/9
Amanda [1] 2464/24
Amendment [3] 2426/17 2572/5
 2578/11
American [1] 2440/12
amongst [2] 2486/10 2543/9
amount [3] 2580/8 2582/19 2583/4
and/or [5] 2381/12 2399/1 2429/7
 2438/16 2450/9
ANDREA [1] 2374/7
Andy [2] 2425/19 2545/25
Andy Bechdolt [1] 2545/25
angel [1] 2517/21
angry [2] 2499/2 2502/11
anniversary [1] 2536/3
annoyed [1] 2477/12
annual [7] 2417/2 2452/2 2452/5
 2453/11 2454/6 2471/25 2503/23
another [13] 2442/7 2468/24 2471/1
 2484/25 2485/1 2511/20 2529/23
 2537/23 2544/24 2552/24 2553/17
 2553/24 2571/8
answer [14] 2395/8 2424/10 2455/14
 2459/6 2465/3 2471/4 2472/2 2490/13
 2490/13 2501/8 2514/2 2558/9 2565/5
 2580/10
answered [2] 2483/16 2561/19
answers [1] 2450/13
anticipating [1] 2529/2
any [79] 2378/20 2382/16 2383/6
 2384/1 2385/8 2386/18 2387/15
 2393/25 2394/16 2396/11 2399/18
 2410/15 2413/18 2417/18 2419/6
 2422/16 2422/20 2430/5 2431/12
 2431/13 2454/1 2459/1 2459/2 2459/7
 2460/15 2467/13 2470/22 2471/5
 2471/5 2471/9 2471/13 2477/3 2478/3
 2482/24 2485/14 2486/10 2486/23
 2487/12 2492/21 2493/8 2497/25
 2498/4 2499/14 2500/15 2503/8
 2503/8 2504/2 2504/11 2506/21
 2507/11 2508/7 2508/20 2511/11
 2513/6 2513/10 2515/6 2517/23
 2518/23 2521/11 2522/17 2523/15
 2525/3 2526/20 2527/25 2529/2
 2529/14 2534/16 2535/2 2535/14
 2542/6 2543/10 2546/24 2548/24
 2553/3 2555/21 2563/13 2573/7
 2579/1 2583/11
anybody [5] 2431/25 2440/13 2442/6
 2567/21 2567/21
anymore [3] 2432/1 2466/19 2576/18
anyone [14] 2422/5 2435/5 2435/17
 2441/4 2480/25 2508/16 2511/14
 2512/17 2514/21 2516/15 2532/6
 2548/14 2549/9 2549/16
anything [30] 2384/10 2390/13 2407/7
 2419/23 2420/3 2420/22 2443/3
 2443/9 2475/11 2478/23 2483/16
 2494/2 2504/3 2508/16 2509/7 2510/2

A

anything... [14] 2524/21 2530/25
2548/23 2555/19 2556/12 2557/11
2557/14 2558/2 2559/4 2559/6
2562/17 2564/17 2564/23 2586/3
anyway [3] 2462/23 2472/21 2485/4
anywhere [2] 2419/12 2458/25
apartment [11] 2456/22 2525/21
2526/2 2526/6 2527/2 2527/4 2527/10
2529/1 2532/1 2533/6 2560/12
Apartments [1] 2525/9
apiece [1] 2568/3
apologies [2] 2417/12 2574/22
apologize [4] 2495/21 2555/15
2574/11 2577/23
apology [1] 2574/12
apparent [2] 2438/4 2440/1
apparently [2] 2482/7 2547/20
appeal [3] 2385/3 2578/23 2579/1
appear [10] 2406/13 2421/11 2460/6
2499/1 2499/1 2499/2 2499/2 2499/2
2516/16 2560/10
APPEARANCES [1] 2374/1
appeared [1] 2527/5
appearing [2] 2434/17 2438/7
appears [18] 2389/20 2440/7 2448/2
2450/21 2530/11 2530/14 2537/3
2538/16 2539/1 2545/20 2545/24
2547/17 2553/20 2553/22 2554/12
2560/25 2563/5 2565/7
appellate [1] 2573/11
apples [1] 2518/13
applied [4] 2493/5 2493/8 2496/16
2511/1
apply [3] 2382/1 2383/19 2496/15
applying [3] 2493/12 2511/2 2511/3
appraisal [8] 2516/12 2537/3 2538/17
2540/2 2540/4 2542/17 2552/24
2558/1
appreciate [1] 2449/25
approach [13] 2379/11 2388/16
2395/14 2423/21 2526/6 2527/1
2528/4 2528/15 2536/15 2538/1
2545/13 2547/5 2554/5
approached [5] 2435/6 2435/18
2475/10 2475/11 2525/21
approaching [1] 2475/6
appropriate [12] 2425/14 2446/22
2447/11 2451/7 2488/16 2517/19
2517/21 2522/14 2540/25 2572/15
2578/11 2583/3
approved [1] 2581/1
approximate [1] 2493/20
approximately [3] 2380/8 2449/17
2533/14
April [30] 2391/24 2401/21 2433/11
2433/23 2444/5 2449/5 2449/14
2450/18 2451/10 2452/22 2460/22
2474/6 2474/6 2525/9 2537/6 2552/21
2553/1 2553/19 2553/22 2553/25
2554/3 2554/3 2555/18 2556/19
2557/15 2558/6 2558/6 2558/12
2558/19 2558/21
April 1 [8] 2433/11 2433/23 2452/22
2525/9 2554/3 2555/18 2558/6
2558/19
April 17 [1] 2449/5

April 1st [1] 2474/6
April 2 [5] 2537/6 2552/21 2553/25
2554/3 2558/6
April 27 [3] 2449/14 2450/18 2451/10
April 2nd [5] 2553/1 2553/22 2557/15
2558/12 2558/21
arbitration [9] 2391/12 2391/19
2393/2 2394/12 2394/17 2397/9
2402/18 2424/8 2469/1
arbitrator [4] 2397/3 2425/11 2425/13
2441/7
arbitrator's [8] 2397/17 2397/19
2441/7 2441/12 2441/14 2441/19
2441/21 2441/24
are [96] 2376/3 2378/3 2378/6 2380/14
2392/15 2393/7 2393/22 2396/14
2396/24 2399/9 2400/10 2406/25
2410/2 2414/24 2418/18 2419/14
2425/19 2428/10 2428/14 2428/24
2428/25 2431/9 2437/19 2437/25
2438/1 2438/8 2439/24 2440/16
2441/20 2445/15 2445/19 2445/23
2446/23 2448/1 2449/13 2450/13
2453/13 2454/19 2454/25 2460/4
2464/20 2466/16 2466/16 2467/14
2472/16 2476/10 2486/22 2486/23
2487/15 2488/3 2488/11 2488/16
2488/17 2488/18 2489/6 2490/18
2505/6 2507/24 2508/2 2508/5
2513/13 2519/19 2519/23 2520/2
2520/8 2527/23 2528/3 2529/16
2536/1 2538/21 2538/25 2541/21
2546/14 2546/23 2550/16 2555/3
2556/7 2559/10 2560/18 2562/2
2563/18 2569/14 2570/17 2571/3
2571/16 2571/17 2572/1 2574/7
2576/14 2578/1 2578/3 2578/17
2580/25 2584/18 2585/4 2586/6
area [5] 2378/20 2390/25 2421/12
2422/4 2460/10
areas [2] 2391/1 2570/3
aren't [3] 2427/8 2464/25 2530/10
argue [4] 2570/22 2572/1 2575/12
2583/3
argued [2] 2567/20 2569/6
arguing [5] 2417/1 2558/8 2569/13
2570/16 2575/25
argument [6] 2568/15 2572/3 2572/13
2578/24 2579/12 2586/8
argumentative [2] 2503/18 2564/7
arguments [5] 2486/23 2569/12
2575/7 2578/23 2586/8
arising [1] 2529/2
arm [1] 2518/16
armed [13] 2412/19 2413/5 2505/16
2518/20 2518/24 2519/6 2519/9
2519/10 2519/12 2519/16 2519/19
2519/23 2520/1
arming [1] 2510/1
Armored [1] 2505/16
ARMS [1] 2468/9
Army [1] 2505/22
around [16] 2413/1 2413/6 2414/13
2459/3 2459/4 2460/21 2481/7
2486/15 2492/17 2498/9 2505/17
2517/20 2518/14 2521/8 2551/13
2566/14

arrange [1] 2485/13
arrest [1] 2390/13
arrests [8] 2390/9 2390/9 2390/15
2390/17 2418/7 2418/7 2418/8 2507/3
arrive [1] 2526/19
arrived [2] 2526/16 2571/23
arrogant [2] 2502/3 2502/4
article [1] 2512/15
articles [6] 2509/19 2510/20 2510/25
2511/6 2511/6 2511/7
as [151]
aside [1] 2382/18
ask [21] 2378/20 2402/1 2432/3
2444/10 2444/15 2446/15 2447/24
2448/9 2452/16 2456/8 2483/2
2483/10 2490/18 2490/23 2504/5
2521/15 2542/19 2562/2 2564/22
2569/6 2575/15
asked [39] 2384/11 2387/5 2387/13
2392/25 2407/8 2413/8 2415/15
2423/9 2424/7 2424/14 2432/9 2444/8
2448/13 2450/7 2450/11 2453/22
2454/13 2455/2 2455/8 2455/10
2455/11 2455/12 2455/14 2457/18
2463/16 2468/2 2468/22 2472/12
2472/14 2483/5 2483/8 2483/12
2495/20 2520/7 2521/9 2548/2
2561/16 2562/6 2567/13
askew [1] 2533/2
asking [16] 2382/16 2387/19 2399/14
2423/3 2446/6 2450/6 2459/5 2480/7
2483/7 2494/2 2497/9 2497/19
2498/25 2543/20 2555/9 2568/12
aspects [2] 2397/3 2397/11
ass [1] 2455/21
Assertiveness [1] 2451/16
asserts [1] 2573/2
assessment [1] 2447/13
assigned [5] 2386/24 2401/24 2520/6
2524/22 2526/24
assignment [5] 2384/14 2385/15
2385/17 2385/21 2524/22
assignments [1] 2386/14
assist [1] 2447/9
assistance [1] 2449/24
Assistant [1] 2473/18
associate [1] 2448/19
associated [3] 2413/16 2438/11
2530/21
associates [1] 2487/7
assume [4] 2426/20 2449/10 2486/8
2534/9
assumed [2] 2483/17 2485/5
assuming [6] 2412/22 2462/6 2462/7
2462/9 2536/13 2560/3
assumption [1] 2412/24
ate [1] 2408/18
attached [5] 2449/18 2449/22 2460/6
2537/9 2556/7
attachments [1] 2396/11
attempt [1] 2404/18
attend [2] 2506/1 2507/18
attended [2] 2464/9 2510/10
attending [1] 2510/4
attention [2] 2472/14 2581/4
attitude [1] 2453/2
attorney [18] 2391/17 2392/19

A

attorney... [16] 2392/22 2397/22 2401/8 2402/7 2403/20 2405/25 2407/3 2407/9 2407/12 2432/5 2432/6 2432/20 2444/8 2481/20 2481/25 2482/5

attorney's [1] 2394/2

audio [34] 2376/20 2378/3 2378/24 2379/2 2380/7 2400/10 2400/21 2410/13 2410/17 2411/10 2411/22 2412/12 2433/11 2433/23 2442/2 2442/13 2442/17 2442/21 2460/11 2460/18 2461/12 2461/14 2518/8 2540/18 2540/19 2541/3 2542/15 2542/19 2542/24 2543/3 2544/18 2545/7 2546/16 2546/18

audio-taped [1] 2542/15

audiotape [1] 2540/22

August [12] 2376/23 2416/22 2422/23 2442/24 2443/6 2546/3 2546/5 2557/6 2557/8 2557/10 2557/15 2557/21

August 13 [2] 2376/23 2422/23

August 22 [1] 2416/22

August 27th [5] 2557/6 2557/8 2557/10 2557/15 2557/21

authenticate [1] 2584/24

authority [2] 2451/5 2507/4

auxillary [5] 2509/1 2509/4 2509/8 2510/14 2510/15

available [3] 2453/15 2468/14 2525/18

avenue [8] 2374/4 2374/8 2374/21 2436/10 2474/19 2474/19 2474/20 2496/9

award [3] 2424/8 2425/10 2578/10

awarded [2] 2397/16 2580/1

aware [14] 2380/19 2386/13 2386/17 2393/25 2401/14 2431/14 2436/18 2440/16 2499/23 2509/13 2510/25 2559/5 2559/6 2562/1

away [6] 2414/14 2434/19 2435/9 2436/13 2533/7 2578/23

B

back [66] 2376/2 2378/20 2382/25 2383/8 2390/7 2391/22 2392/4 2392/17 2399/17 2409/4 2422/4 2422/6 2425/16 2427/4 2431/24 2443/6 2443/16 2445/23 2449/8 2450/18 2455/9 2455/13 2455/20 2456/1 2456/9 2456/14 2458/18 2461/17 2463/9 2471/11 2475/18 2486/9 2486/14 2487/4 2487/20 2501/23 2509/21 2514/9 2519/16 2519/18 2523/24 2528/18 2528/19 2532/3 2538/18 2543/3 2545/3 2551/7 2551/8 2551/23 2552/6 2552/13 2554/25 2555/2 2555/19 2556/6 2556/8 2556/13 2568/9 2570/22 2571/7 2572/2 2574/23 2577/13 2581/2 2584/21

background [3] 2398/7 2398/8 2399/12

backpack [1] 2412/18

backpay [1] 2397/17

backup [1] 2467/18

bad [1] 2529/22

baffled [1] 2535/20

baker [1] 2521/10

bar [7] 2482/6 2493/10 2493/11 2493/13 2493/14 2493/15 2496/21

based [24] 2393/6 2393/8 2395/5 2396/16 2398/14 2399/22 2400/3 2401/9 2401/16 2406/1 2413/21 2431/3 2436/20 2436/21 2438/14 2468/8 2481/2 2481/4 2527/19 2532/18 2532/21 2535/1 2536/3 2569/24

basic [2] 2447/20 2505/13

basically [11] 2387/25 2389/1 2389/4 2397/9 2399/20 2404/3 2422/2 2443/8 2478/15 2548/19 2577/17

basing [2] 2418/10 2431/14

basis [4] 2454/17 2503/24 2536/5 2579/1

baton [1] 2412/20

be [189]

became [24] 2384/21 2385/2 2392/24 2430/3 2471/12 2492/21 2496/4 2505/14 2505/14 2507/1 2507/6 2507/8 2507/9 2507/10 2509/1 2509/12 2509/17 2510/12 2510/25 2513/5 2513/16 2514/17 2520/3 2559/6

because [75] 2380/11 2381/16 2382/25 2383/14 2383/17 2384/9 2384/9 2384/10 2385/13 2386/15 2387/7 2387/10 2388/3 2389/25 2390/12 2391/19 2393/1 2393/3 2395/10 2397/12 2399/20 2400/8 2402/8 2404/22 2404/25 2405/2 2405/17 2406/14 2407/8 2413/9 2417/18 2420/20 2427/7 2430/20 2432/1 2443/2 2448/11 2457/6 2460/17 2462/2 2462/4 2462/6 2462/23 2463/2 2463/2 2463/19 2466/3 2474/12 2476/22 2479/4 2481/20 2484/13 2493/1 2493/7 2493/18 2494/7 2497/1 2502/24 2503/11 2510/22 2514/25 2517/7 2517/14 2528/11 2546/7 2546/10 2550/11 2551/12 2568/2 2570/16 2575/2 2575/17 2577/7 2581/18 2582/4

Becholdt [10] 2387/12 2414/1 2465/13 2466/1 2466/14 2467/3 2539/24 2543/1 2545/25 2548/7

Bechtold [1] 2425/19

become [5] 2493/5 2499/23 2509/13 2521/12 2583/17

becoming [1] 2500/20

been [75] 2381/6 2382/10 2386/25 2388/21 2391/11 2393/1 2393/9 2395/16 2396/17 2404/9 2406/6 2406/10 2411/14 2422/22 2424/20 2425/4 2428/20 2429/25 2430/6 2432/1 2434/18 2435/23 2440/14 2444/14 2445/8 2452/4 2452/6 2452/10 2457/18 2458/10 2459/4 2459/16 2459/23 2468/11 2468/22 2469/18 2470/23 2471/7 2475/18 2476/3 2481/1 2484/25 2487/4 2493/23 2495/8 2497/8 2501/13 2504/22 2507/22 2508/22 2512/1 2514/24 2518/8 2521/8 2522/23

2523/5 2525/10 2525/23 2530/4 2532/22 2536/18 2538/4 2538/6 2538/11 2541/11 2545/14 2547/8 2553/4 2555/22 2556/7 2560/7 2562/21 2571/18 2578/22 2581/1

beer [2] 2386/11 2517/21

before [74] 2373/15 2392/2 2404/10 2410/19 2411/11 2419/24 2422/4 2422/14 2422/16 2427/4 2430/9 2431/12 2432/17 2435/14 2437/17 2439/11 2444/23 2445/4 2445/19 2445/20 2448/4 2449/7 2449/8 2449/16 2451/25 2452/3 2452/23 2458/10 2458/11 2467/9 2473/20 2475/12 2489/24 2492/5 2492/21 2493/25 2494/1 2494/3 2494/22 2495/6 2497/15 2497/22 2498/6 2499/11 2499/19 2503/15 2503/18 2503/20 2504/1 2508/25 2509/12 2509/17 2520/13 2524/1 2524/7 2526/16 2526/19 2528/19 2528/25 2531/5 2533/20 2540/1 2540/20 2545/5 2551/8 2554/23 2556/17 2557/11 2557/15 2559/23 2561/3 2561/12 2579/12 2583/17

began [1] 2377/5

begin [4] 2409/20 2490/16 2492/3 2520/4

beginning [3] 2422/15 2424/3 2520/21

behalf [11] 2376/9 2473/2 2479/3 2480/2 2480/7 2486/18 2489/15 2504/17 2549/9 2549/16 2582/2

behavior [6] 2451/7 2479/4 2498/23 2511/17 2520/5 2530/21

behind [13] 2382/25 2403/25 2404/12 2409/4 2474/18 2474/24 2474/25 2475/13 2475/19 2484/9 2485/6 2525/2 2526/8

being [45] 2376/9 2407/22 2410/15 2415/23 2421/16 2427/17 2436/22 2437/15 2440/19 2440/20 2455/24 2460/9 2473/2 2481/8 2481/12 2481/23 2487/15 2488/6 2488/17 2489/16 2493/3 2499/15 2500/16 2502/10 2504/2 2504/17 2510/9 2511/15 2522/18 2523/15 2526/23 2528/3 2542/14 2547/19 2548/2 2556/24 2558/22 2558/23 2561/14 2564/5 2564/6 2565/2 2581/4 2581/13 2585/4

belabor [1] 2462/19

belief [3] 2481/10 2559/15 2559/16

believe [113]

believed [3] 2386/15 2407/5 2523/22

believes [2] 2572/24 2574/4

belittles [1] 2455/22

belong [1] 2570/5

below [2] 2399/9 2587/8

best [10] 2394/1 2401/25 2406/9 2407/9 2432/25 2524/8 2525/17 2529/6 2535/17 2535/18

better [8] 2494/12 2514/17 2515/15 2516/24 2517/11 2521/12 2562/13 2570/3

between [17] 2419/12 2424/9 2424/20 2445/7 2484/23 2505/15 2510/9 2513/5 2525/3 2533/24 2546/11

B

between... [6] 2554/3 2558/6 2573/5 2578/14 2582/23 2585/1
Beyond [1] 2395/3
bicycles [2] 2438/8 2438/11
big [4] 2419/3 2515/11 2529/17 2532/4
bike [9] 2389/19 2390/18 2391/5 2402/10 2414/15 2418/23 2419/2 2419/10 2419/17
bikes [3] 2418/21 2419/19 2419/20
binders [2] 2432/11 2432/12
bit [13] 2376/20 2386/2 2399/12 2458/18 2477/8 2477/8 2478/18 2479/23 2484/7 2507/4 2523/24 2533/2 2560/24
Bless [1] 2534/19
block [4] 2475/17 2485/6 2533/7 2544/5
blocked [2] 2475/5 2478/20
blocks [1] 2474/21
blow [5] 2445/1 2449/1 2450/15 2453/7 2459/24
board [2] 2552/15 2552/18
bogus [1] 2386/7
both [16] 2382/14 2383/17 2384/13 2398/21 2437/25 2438/1 2454/20 2457/15 2470/5 2472/12 2481/14 2489/25 2533/6 2568/22 2568/23 2576/24
bothering [1] 2520/10
bottom [9] 2380/6 2404/5 2407/8 2425/8 2447/15 2450/16 2451/19 2451/21 2565/10
Bowes [2] 2464/24 2471/2
bowl [1] 2573/20
box [5] 2381/19 2451/12 2473/6 2489/19 2504/21
boxes [1] 2450/7
Boyd [1] 2564/9
Brady [33] 2391/24 2392/1 2392/6 2392/25 2393/24 2396/1 2423/1 2423/3 2425/20 2425/24 2426/3 2426/5 2426/7 2426/10 2426/24 2427/2 2427/12 2427/13 2427/15 2427/20 2428/25 2429/10 2429/11 2431/2 2431/10 2431/25 2436/14 2437/4 2437/6 2438/25 2440/8 2441/1 2456/10
Brady material [2] 2437/6 2441/1
Brady-list [1] 2426/10
Brady-listing [5] 2426/3 2426/24 2427/2 2431/10 2431/25
brand [1] 2520/25
Brandenburg [9] 2472/20 2489/10 2490/1 2490/11 2490/11 2490/24 2491/2 2491/9 2497/6
BRANDON [12] 2373/7 2376/8 2447/7 2447/9 2449/25 2494/21 2500/4 2537/8 2554/2 2554/13 2555/20 2580/8
Brandon Lebrecht [1] 2554/13
Brathwaite [1] 2380/9
break [7] 2409/14 2543/6 2543/7 2543/11 2543/13 2543/17 2544/7
breakfast [1] 2474/15
Brian [3] 2549/7 2549/9 2549/12
brief [1] 2409/18

briefing [10] 2464/13 2464/14 2522/24 2522/25 2523/18 2523/23 2524/1 2524/4 2524/9 2524/13
briefly [3] 2396/20 2436/6 2472/19
bring [16] 2407/16 2407/19 2423/6 2423/12 2425/1 2431/4 2432/15 2444/20 2448/9 2448/12 2452/8 2486/9 2487/19 2531/2 2581/23 2582/1
bringing [2] 2407/22 2423/15
broached [1] 2510/1
broader [1] 2573/6
broken [2] 2401/3 2406/4
brought [8] 2382/21 2407/23 2410/24 2432/11 2481/12 2523/23 2559/22 2562/5
buddy [1] 2521/10
building [4] 2381/18 2484/24 2527/7 2560/12
bump [1] 2561/2
bunch [1] 2410/10
burn [1] 2520/7
business [2] 2389/8 2552/12
Buy [1] 2401/25

C

C-A-M-E-R-O-N [1] 2505/1
C-O-M-M-I-S-S-I-O-N-G [1] 2473/11
California [4] 2446/1 2463/9 2463/19 2527/13
call [39] 2386/20 2387/9 2411/11 2411/24 2460/12 2460/14 2460/15 2461/16 2461/19 2461/23 2461/24 2462/5 2477/24 2478/2 2478/9 2482/25 2483/3 2483/7 2486/6 2489/7 2489/8 2495/22 2502/4 2515/8 2525/8 2525/12 2526/11 2527/18 2528/20 2529/14 2531/20 2532/4 2535/9 2541/19 2548/10 2548/23 2564/6 2570/6 2579/6
called [15] 2376/9 2463/10 2468/9 2473/2 2483/5 2484/24 2489/15 2491/10 2493/4 2504/17 2508/2 2519/21 2519/22 2557/19 2581/4
calling [7] 2385/25 2386/6 2435/16 2437/5 2495/21 2541/23 2548/3
callout [3] 2388/5 2411/13 2413/24
callouts [2] 2387/1 2387/8
calls [8] 2386/7 2472/9 2504/13 2515/3 2528/6 2528/7 2536/7 2537/20
cam [9] 2400/3 2404/4 2482/9 2482/11 2482/19 2482/25 2533/18 2550/22 2550/24
came [16] 2392/24 2393/4 2404/13 2419/24 2428/1 2457/14 2465/15 2470/2 2509/10 2525/24 2526/1 2527/5 2527/8 2528/16 2536/2 2551/10
camera [4] 2421/5 2434/24 2435/3 2560/17
cameras [1] 2560/20
CAMERON [52] 2373/8 2382/15 2382/17 2382/21 2383/16 2384/7 2384/11 2384/20 2385/11 2387/5 2387/10 2387/13 2387/16 2408/20 2408/22 2409/3 2411/2 2417/1 2418/2 2426/21 2453/4 2453/19 2454/5 2454/18 2455/20 2460/4 2461/21 2464/15 2465/8 2465/15 2465/22 2471/24 2472/3 2472/18 2486/6 2500/7 2501/2 2501/21 2503/11 2504/13 2504/14 2504/16 2505/1 2505/6 2544/12 2544/17 2567/10 2572/25 2573/4 2573/13 2573/17 2580/9
Cameron's [1] 2452/1
camping [1] 2503/24
campus [13] 2405/1 2438/4 2438/12 2439/18 2440/2 2440/4 2440/6 2485/3 2509/23 2510/4 2511/10 2518/18 2549/2
campuses [1] 2518/15
can [131]
can't [20] 2384/8 2385/24 2390/12 2393/15 2394/11 2413/13 2433/14 2440/24 2440/25 2459/6 2479/23 2493/23 2500/23 2501/22 2518/1 2519/18 2529/15 2531/25 2531/25 2577/22
cans [5] 2420/14 2421/12 2421/15 2421/17 2422/13
capability [1] 2495/14
capacity [1] 2462/12
capture [2] 2560/17 2560/21
car [40] 2400/21 2421/6 2434/24 2435/2 2436/3 2457/16 2457/17 2458/24 2459/3 2459/5 2459/8 2459/12 2462/16 2462/18 2474/14 2475/5 2475/13 2475/17 2475/24 2476/3 2476/7 2476/8 2476/8 2478/20 2484/6 2484/9 2484/19 2485/5 2485/6 2485/7 2518/25 2519/7 2532/2 2532/2 2532/12 2532/16 2532/19 2533/5 2560/5 2560/23
career [5] 2381/25 2427/14 2495/9 2495/24 2504/6
carefully [1] 2579/10
careless [1] 2475/11
carelessly [1] 2475/6
CAROLYN [3] 2373/7 2425/9 2580/7
carry [2] 2518/14 2519/2
carrying [2] 2518/17 2518/23
CARTER [1] 2373/15
case [25] 2373/5 2388/21 2395/17 2424/21 2426/18 2446/2 2471/10 2474/4 2485/13 2485/17 2486/11 2487/3 2535/24 2543/10 2561/23 2567/7 2567/13 2567/19 2567/21 2568/1 2568/14 2569/5 2569/16 2578/11 2586/5
case is [1] 2567/13
cases [4] 2419/19 2419/19 2429/9 2454/14
Casey [1] 2564/9
casually [1] 2426/3
catch [2] 2414/5 2414/6
categories [8] 2451/9 2454/25 2455/1 2455/2 2570/1 2571/3 2577/21 2577/25
category [2] 2389/22 2451/14
caught [3] 2387/13 2429/20 2488/9
causation [1] 2574/19
cause [4] 2445/16 2446/22 2507/3 2587/10

C

caused [1] 2503/5
caution [1] 2570/12
cc'd [2] 2423/10 2424/16
center [2] 2404/8 2421/17
certain [11] 2387/9 2392/15 2473/8 2488/17 2488/18 2533/11 2567/16 2569/1 2574/13 2574/14 2577/11
certainly [5] 2449/25 2477/16 2553/18 2570/14 2580/22
certified [1] 2587/12
certify [1] 2587/8
chain [21] 2382/19 2382/23 2382/23 2382/25 2383/7 2383/11 2383/13 2383/18 2411/1 2424/8 2424/11 2424/24 2426/2 2449/13 2521/25 2522/14 2532/8 2532/9 2534/10 2534/11 2537/15
chair [2] 2473/7 2514/9
challenge [1] 2447/12
chance [6] 2423/19 2456/16 2467/24 2555/10 2562/24 2586/5
change [6] 2454/11 2462/4 2540/16 2569/24 2577/20 2577/25
changed [7] 2436/6 2483/25 2483/25 2494/10 2534/16 2540/8 2575/23
changes [5] 2456/3 2540/12 2577/14 2577/16 2580/22
changing [1] 2483/21
channel [16] 2460/13 2460/19 2460/20 2460/20 2460/23 2461/22 2462/2 2462/11 2462/14 2462/15 2462/17 2462/20 2462/21 2462/23 2462/24 2463/2
channeling [1] 2517/19
channels [1] 2462/4
characterization [2] 2405/5 2405/20
charges [11] 2444/19 2445/11 2445/22 2445/23 2446/3 2446/6 2446/11 2446/15 2446/23 2448/7 2448/14
chart [1] 2467/24
Chase [16] 2400/15 2400/22 2401/4 2406/2 2406/4 2472/19 2566/23 2566/25 2567/1 2583/15 2583/23 2584/1 2584/6 2584/24 2585/10 2585/25
chasing [1] 2413/6
cheating [2] 2429/20 2430/13
check [6] 2417/9 2446/12 2450/7 2479/21 2483/18 2552/9
checked [2] 2397/24 2402/2
checking [1] 2472/10
Chelsea [8] 2472/20 2489/9 2490/1 2490/11 2490/11 2490/24 2491/2 2491/9
Chelsea Brandenburg [1] 2490/11
chest [1] 2524/16
Chicago [1] 2402/14
chief [68] 2382/4 2385/6 2386/13 2391/15 2392/10 2392/25 2393/14 2393/18 2394/6 2395/1 2395/6 2398/2 2400/15 2400/22 2401/4 2406/2 2406/4 2426/21 2430/17 2432/2 2441/10 2443/23 2444/8 2445/7 2445/8 2445/8 2445/9 2446/6 2447/23 2448/13 2463/16 2470/13 2470/18

2472/18 2477/6 2477/24 2478/3 2478/8 2479/12 2482/8 2482/24 2499/24 2500/9 2504/8 2518/2 2518/5 2535/16 2559/10 2566/23 2566/23 2566/24 2566/25 2567/1 2567/4 2567/10 2573/17 2582/14 2583/15 2583/23 2584/1 2584/2 2584/6 2584/16 2584/24 2585/10 2585/22 2585/22 2585/25
Chief Chase [11] 2400/15 2400/22 2401/4 2406/4 2567/1 2583/23 2584/1 2584/6 2584/24 2585/10 2585/25
Chief McDermed [22] 2386/13 2391/15 2394/6 2395/1 2444/8 2470/13 2470/18 2472/18 2477/24 2478/3 2478/8 2479/12 2482/8 2482/24 2499/24 2559/10 2566/23 2566/24 2567/4 2573/17 2584/2 2585/22
chief's [2] 2445/1 2548/22
chilling [1] 2543/21
chimed [2] 2443/25 2448/3
choose [1] 2380/10
Chris [8] 2386/12 2521/2 2521/8 2521/8 2521/10 2559/21 2559/22 2559/24
Christy [10] 2378/24 2417/10 2459/20 2470/11 2486/13 2488/9 2489/3 2538/6 2543/2 2581/14
Christy or [1] 2470/11
Chuck [1] 2583/16
cigarette [1] 2414/15
Circuit [2] 2572/6 2572/11
circumstance [2] 2435/6 2435/17
circumstances [2] 2413/21 2519/25
circumvent [1] 2521/25
circumventing [1] 2382/25
citations [1] 2507/5
cite [1] 2477/14
cited [1] 2559/22
cites [1] 2572/9
citizen [1] 2415/10
city [11] 2401/2 2406/2 2463/24 2464/1 2475/15 2476/17 2480/14 2507/5 2572/10 2583/17 2585/9
City's [1] 2400/15
Civic [1] 2476/9
claim [2] 2426/25 2464/9
claimed [5] 2434/13 2435/9 2436/13 2439/2 2464/21
clarification [6] 2388/2 2405/6 2405/10 2405/18 2405/20 2461/7
clarify [1] 2387/19
clause [2] 2572/7 2572/8
clear [12] 2421/14 2422/10 2422/12 2427/5 2460/7 2461/1 2464/9 2488/1 2496/8 2551/19 2573/3 2578/19
cleared [3] 2551/13 2551/20 2551/22
clearly [4] 2438/15 2533/5 2533/7 2550/6
CLEAVENGER [198]
Cleavenger's [32] 2394/24 2396/25 2404/14 2405/5 2434/20 2434/23 2434/25 2435/2 2435/4 2435/7 2435/19 2476/19 2483/3 2501/23 2503/9 2504/6 2509/12 2511/11 2512/13 2512/16 2520/3 2520/9

2520/18 2521/18 2527/1 2531/23 2532/19 2538/17 2542/25 2549/17 2556/6 2559/24
Clery [1] 2559/11
click [2] 2462/24 2463/1
client [62] 2410/14 2410/19 2411/2 2412/3 2413/12 2413/22 2414/4 2414/17 2414/23 2415/5 2416/8 2416/25 2417/15 2417/23 2418/4 2418/17 2420/7 2420/13 2420/20 2421/5 2421/9 2422/2 2422/21 2426/4 2426/16 2427/21 2428/3 2431/10 2432/20 2435/16 2436/4 2436/15 2436/22 2439/22 2440/9 2441/8 2442/4 2442/25 2443/13 2443/16 2444/9 2444/12 2445/4 2445/20 2447/24 2449/7 2450/20 2451/9 2452/2 2454/18 2455/2 2460/3 2460/5 2460/9 2460/15 2461/5 2462/6 2462/9 2463/8 2463/16 2464/9 2471/24
client's [5] 2416/16 2419/25 2424/8 2437/1 2471/23
clients [3] 2571/10 2571/12 2579/3
climate [2] 2513/15 2518/14
close [3] 2435/4 2524/5 2584/7
closer [1] 2514/8
closest [2] 2473/6 2473/8
club [3] 2491/18 2491/19 2491/25
co [2] 2454/9 2454/10
co-workers [2] 2454/9 2454/10
Coburg [1] 2398/5
code [3] 2408/5 2463/11 2463/12
coffee [1] 2474/16
COIT [12] 2374/7 2376/13 2467/2 2473/15 2485/12 2491/8 2491/14 2497/15 2497/19 2499/9 2499/18 2505/5
cold [4] 2528/7 2529/14 2531/20 2532/4
Colon [1] 2580/4
combined [2] 2382/3 2443/21
come [21] 2386/4 2388/2 2391/22 2401/15 2409/19 2423/18 2450/6 2457/13 2458/25 2465/14 2486/14 2508/18 2511/16 2517/10 2522/13 2534/5 2543/11 2568/9 2584/6 2584/24 2585/25
comes [1] 2555/6
coming [11] 2401/22 2427/4 2442/12 2468/2 2473/16 2499/14 2515/11 2516/22 2528/1 2548/21 2582/22
command [15] 2382/19 2382/23 2382/24 2383/1 2383/7 2383/19 2391/15 2411/1 2424/9 2454/4 2521/25 2522/14 2534/10 2534/12 2537/15
commander [1] 2449/24
commanders [2] 2438/9 2515/12
comment [9] 2424/10 2522/25 2523/9 2533/4 2574/3 2574/3 2576/20 2577/19 2577/24
commenting [4] 2402/14 2404/2 2424/15 2435/22
comments [8] 2394/8 2404/14 2421/23 2453/8 2454/12 2517/22 2537/23 2540/11
commissioned [4] 2398/6 2507/2

C

commissioned... [2] 2507/7 2507/8
Commissiong [7] 2440/17 2472/9
 2472/19 2473/1 2473/10 2473/16
 2479/14
Commitment [1] 2451/20
committed [3] 2392/15 2425/13
 2535/6
common [3] 2514/23 2515/7 2518/19
communication [2] 2453/3 2453/13
community [1] 2453/16
community-oriented [1] 2453/16
compare [4] 2416/17 2416/18 2432/17
 2433/8
compared [1] 2446/23
comparing [1] 2416/16
compile [1] 2468/5
complain [2] 2386/8 2388/7
complaining [2] 2383/2 2383/3
complaint [9] 2384/5 2384/6 2402/1
 2465/5 2483/7 2483/11 2483/13
 2483/14 2549/4
complaints [9] 2384/3 2386/3 2401/17
 2464/17 2464/21 2499/14 2522/19
 2563/19 2572/4
complete [2] 2486/22 2544/5
completed [7] 2449/18 2449/22
 2449/23 2528/19 2537/4 2537/16
 2547/2
completely [8] 2381/12 2400/10
 2446/10 2446/18 2460/17 2487/6
 2496/8 2560/13
completing [2] 2528/20 2536/10
computer [4] 2401/24 2408/11
 2408/14 2468/8
Computer-Aided [1] 2468/8
concealed [3] 2558/25 2558/25
 2559/1
concept [2] 2448/9 2448/12
concern [31] 2393/1 2394/18 2403/6
 2403/10 2511/23 2517/1 2517/19
 2520/6 2529/19 2530/18 2532/24
 2532/25 2534/3 2535/5 2535/7 2569/8
 2571/19 2571/21 2572/9 2572/13
 2573/1 2573/9 2573/23 2574/1 2574/5
 2574/7 2574/8 2574/12 2574/21
 2575/2 2577/15
concerned [6] 2393/7 2403/17
 2478/11 2479/3 2533/13 2582/15
concerning [4] 2486/11 2573/14
 2573/18 2577/14
concerns [9] 2384/3 2394/16 2420/7
 2511/22 2520/4 2520/18 2527/9
 2573/7 2574/13
concluded [1] 2544/23
conclusion [2] 2532/22 2569/16
conclusions [1] 2444/23
condescending [3] 2455/21 2502/1
 2502/2
condition [2] 2486/25 2487/2
conduct [10] 2439/10 2439/15
 2442/10 2442/11 2451/5 2463/8
 2498/21 2517/1 2527/9 2578/25
conducted [6] 2434/12 2438/13
 2438/18 2439/1 2439/5 2446/2
conducting [1] 2444/22
conference [1] 2377/12

conferred [2] 2571/19 2582/18
Confident [3] 2502/5 2502/6 2502/7
confirm [3] 2456/7 2477/18 2559/12
confirmed [1] 2484/17
conflict [1] 2450/24
conformed [1] 2587/11
confrontational [1] 2385/2
confused [1] 2561/8
connect [1] 2445/14
connection [2] 2473/22 2510/9
conservative [1] 2455/15
consider [1] 2425/20
Considerate [1] 2453/2
considered [2] 2445/12 2574/8
consistency [1] 2447/4
consistent [2] 2400/11 2571/2
consistently [1] 2453/12
constituted [1] 2438/16
constitutionally [2] 2572/4 2572/6
construction [2] 2570/25 2574/15
construed [1] 2574/5
consult [2] 2579/3 2579/5
contact [6] 2439/8 2439/12 2450/9
 2509/10 2513/11 2525/3
contacted [2] 2397/22 2418/1
contacting [1] 2485/13
contacts [5] 2400/15 2418/4 2453/14
 2453/16 2454/3
contain [1] 2429/9
contained [2] 2398/17 2534/24
content [4] 2486/24 2487/8 2488/16
 2500/16
Contentiousness [1] 2451/20
contents [2] 2424/15 2572/12
context [5] 2396/25 2469/4 2573/2
 2574/24 2575/2
continue [4] 2376/6 2492/10 2514/14
 2544/13
continued [7] 2401/15 2471/7 2475/2
 2484/8 2520/23 2521/5 2544/20
continues [1] 2396/23
continuing [2] 2385/22 2386/20
continuous [1] 2398/25
contraband [1] 2527/25
contract [5] 2508/10 2539/17 2564/5
 2564/15 2566/3
contracts [1] 2508/5
contradicted [1] 2406/4
contradiction [1] 2439/16
contributing [1] 2426/4
control [5] 2450/24 2451/16 2451/17
 2520/13 2520/14
conversation [16] 2387/15 2408/1
 2424/16 2447/10 2478/21 2478/25
 2485/24 2500/1 2518/15 2520/21
 2529/15 2530/1 2530/19 2534/16
 2559/13 2575/16
conversations [4] 2503/8 2519/1
 2520/17 2573/13
convey [1] 2401/8
convicted [1] 2487/4
convinced [1] 2540/15
cooperating [1] 2454/13
cooperative [1] 2454/10
copy [4] 2385/14 2470/10 2579/19
 2580/16
Corey [7] 2447/10 2448/16 2448/17

2449/8 2449/13 2449/18 2585/9
Corey's [1] 2447/12
corner [4] 2404/5 2459/4 2483/24
 2524/15
corporal [2] 2507/6 2507/6
correct [133]
corrected [1] 2538/16
correcting [1] 2501/4
corrections [2] 2534/14 2534/15
correctly [1] 2405/11
could [55] 2383/14 2384/2 2384/23
 2386/7 2387/9 2388/2 2390/25
 2393/13 2394/18 2397/25 2402/10
 2404/9 2406/9 2426/4 2426/15 2428/2
 2433/1 2434/4 2434/14 2440/9
 2441/16 2444/9 2447/23 2457/18
 2458/25 2459/4 2463/16 2468/20
 2468/21 2468/21 2476/5 2477/14
 2479/5 2484/12 2484/14 2502/1
 2507/3 2519/20 2519/20 2519/21
 2519/22 2525/17 2527/19 2531/17
 2532/2 2541/16 2541/17 2541/20
 2549/1 2555/1 2569/14 2569/14
 2569/16 2569/17 2577/12
couldn't [15] 2410/21 2415/15
 2435/11 2435/22 2448/1 2477/25
 2493/18 2514/5 2518/10 2534/13
 2539/1 2539/2 2546/11 2552/12
 2559/14
Council [1] 2507/5
counsel [67] 2376/6 2377/19 2378/5
 2397/11 2397/24 2403/4 2409/22
 2410/1 2410/2 2412/12 2423/15
 2441/18 2449/20 2452/10 2456/17
 2458/6 2465/10 2467/19 2469/21
 2470/5 2470/8 2472/8 2472/12
 2472/12 2472/12 2472/14 2486/5
 2486/13 2486/20 2488/11 2488/15
 2488/17 2489/5 2489/7 2489/25
 2490/13 2490/21 2490/23 2490/25
 2497/9 2499/17 2504/12 2540/24
 2541/24 2544/10 2544/13 2547/9
 2550/5 2551/25 2562/5 2564/9
 2568/21 2570/13 2570/17 2571/17
 2575/15 2578/8 2578/16 2578/22
 2579/5 2579/10 2581/1 2581/3
 2582/18 2584/23 2585/18 2585/20
counseled [4] 2399/1 2457/2 2457/5
 2556/7
count [1] 2556/24
counter [1] 2447/1
counter-allegations [1] 2447/1
country [1] 2518/15
couple [23] 2389/20 2390/17 2392/20
 2393/1 2406/24 2407/15 2410/11
 2414/3 2423/2 2428/24 2430/17
 2441/6 2443/22 2456/20 2463/4
 2497/8 2505/15 2505/22 2505/23
 2521/15 2527/21 2569/14 2571/6
course [9] 2389/8 2398/21 2399/2
 2489/23 2503/3 2503/4 2516/5
 2577/14 2583/9
court [25] 2373/1 2373/16 2374/20
 2415/23 2427/18 2455/6 2456/13
 2469/24 2489/2 2507/5 2533/3 2533/9
 2533/13 2567/8 2571/20 2572/9
 2572/17 2572/23 2573/21 2573/22

C

court... [5] 2574/3 2574/11 2581/17 2585/2 2587/15
Court's [2] 2577/12 2581/4
courteous [1] 2454/9
courtesy [2] 2519/11 2544/11
Courthouse [1] 2374/20
courtroom [3] 2411/8 2424/7 2514/12
courts [1] 2561/24
cover [5] 2396/1 2396/3 2396/8 2437/20 2537/5
covered [1] 2463/25
crazy [3] 2460/13 2461/17 2461/25
create [1] 2379/22
created [4] 2381/4 2427/12 2467/11 2467/25
creating [2] 2379/23 2430/15
credibility [2] 2394/24 2574/17
cricket [1] 2511/21
crime [3] 2442/7 2444/17 2548/24
crimes [4] 2392/15 2425/13 2548/10 2549/2
criminal [15] 2389/24 2429/9 2437/12 2445/11 2445/23 2446/3 2446/6 2446/11 2446/15 2446/22 2448/7 2448/10 2448/14 2487/3 2507/15
criminally [3] 2444/9 2444/13 2463/17
criticism [2] 2501/13 2515/22
criticizing [1] 2570/3
critique [3] 2513/20 2515/16 2516/15
critiques [1] 2516/20
critiquing [1] 2516/3
cross [15] 2375/5 2375/10 2375/16 2375/19 2409/20 2410/3 2410/5 2479/15 2479/17 2544/3 2549/21 2550/1 2567/11 2567/15 2568/24
cross-examination [13] 2375/5 2375/10 2375/16 2375/19 2409/20 2410/3 2410/5 2479/15 2479/17 2544/3 2549/21 2550/1 2568/24
CRR [2] 2374/20 2587/14
Crystal [1] 2464/24
CSR [4] 2374/20 2587/14 2587/16 2587/16
culture [1] 2455/12
current [8] 2473/17 2477/19 2480/11 2480/12 2480/19 2486/22 2511/6 2582/9
currently [1] 2398/4
customer [3] 2452/20 2452/25 2453/2
customers [1] 2453/6
cut [3] 2441/12 2441/16 2441/17
cv [2] 2373/5 2587/4

D

DA [18] 2394/17 2396/25 2398/4 2399/11 2399/14 2403/1 2403/8 2406/17 2434/21 2437/6 2437/8 2437/10 2444/10 2445/22 2446/4 2446/12 2446/15 2448/13
DA's [1] 2444/19
damage [1] 2389/22
damages [11] 2577/21 2578/1 2578/3 2578/5 2578/9 2578/10 2578/21 2578/24 2579/22 2580/1 2580/3
danger [1] 2529/14
dangerous [2] 2519/15 2519/15

dangers [1] 2527/17
DAs [1] 2446/24
dash [9] 2400/3 2404/4 2482/9 2482/11 2482/19 2482/25 2533/18 2550/22 2550/24
data [1] 2438/10
date [23] 2385/16 2385/18 2389/3 2397/1 2416/22 2445/2 2452/20 2457/21 2458/4 2468/19 2493/20 2494/23 2494/24 2513/5 2525/11 2534/13 2537/5 2542/20 2546/3 2546/4 2556/17 2587/15 2587/16
dated [4] 2379/21 2443/12 2552/21 2552/25
dates [4] 2468/13 2507/22 2538/21 2557/6
dating [1] 2492/3
DAVID [1] 2373/15
Davis [3] 2526/6 2526/8 2527/3
Davis' [1] 2550/24
day [19] 2373/13 2387/12 2425/14 2445/4 2454/17 2454/17 2457/11 2458/23 2474/8 2485/5 2526/7 2527/11 2551/4 2554/20 2555/20 2557/24 2558/3 2586/10 2587/5
day-to-day [1] 2454/17
days [7] 2431/9 2449/16 2454/21 2461/4 2461/6 2461/7 2461/8
dead [1] 2474/21
dead-ends [1] 2474/21
deal [3] 2518/19 2529/18 2532/4
dealing [5] 2403/21 2405/12 2518/24 2523/5 2534/12
deals [1] 2399/25
dealt [2] 2410/12 2507/15
dean [6] 2440/10 2440/10 2440/17 2440/19 2463/16 2473/18
debrief [3] 2515/3 2515/5 2516/2
debriefing [1] 2515/16
debriefings [2] 2515/20 2515/23
deceptive [2] 2398/22 2399/10
Deceptiveness [1] 2451/6
decide [2] 2466/8 2540/24
decided [8] 2493/21 2497/1 2497/2 2527/7 2530/25 2530/25 2540/2 2546/21
decision [25] 2391/19 2394/12 2394/17 2397/10 2397/18 2397/20 2397/23 2441/7 2441/12 2441/14 2441/21 2441/24 2451/13 2451/16 2469/1 2494/5 2497/3 2508/12 2508/14 2508/16 2528/24 2529/20 2535/13 2568/22 2577/14
decision-making [2] 2451/13 2451/16
decisions [3] 2508/21 2570/11 2577/10
decline [1] 2380/22
deemed [2] 2413/20 2439/8
defendant [10] 2376/9 2393/9 2489/16 2577/16 2578/6 2578/21 2580/11 2582/2 2584/2 2584/2
DEFENDANT'S [3] 2375/2 2542/1 2542/3
defendants [10] 2373/9 2374/7 2379/25 2389/13 2426/22 2473/2 2504/17 2574/14 2578/20 2580/14
defendants' [9] 2388/18 2536/17

2538/3 2553/9 2554/6 2555/22 2574/13 2581/15 2581/19
defense [22] 2437/12 2447/6 2459/19 2472/9 2472/17 2490/2 2497/11 2504/13 2541/8 2541/13 2541/16 2541/17 2547/24 2564/9 2569/9 2569/16 2575/15 2578/8 2582/18 2583/11 2585/20 2586/5
defensive [4] 2384/21 2384/25 2479/25 2507/15
deficiencies [1] 2521/11
deficient [2] 2495/12 2495/13
defining [1] 2438/15
definitely [3] 2382/9 2393/5 2403/9
deflection [1] 2447/6
degree [1] 2535/22
delayed [1] 2412/13
deliberately [3] 2401/11 2402/22 2403/11
deliberations [3] 2567/23 2568/2 2568/10
demeanor [1] 2454/4
demonstrated [1] 2533/10
denied [4] 2381/10 2381/11 2383/15 2522/16
deny [2] 2455/25 2559/12
department [83] 2389/9 2390/15 2391/23 2392/18 2394/23 2398/5 2401/12 2402/19 2416/3 2416/17 2425/15 2427/4 2428/13 2429/25 2430/4 2430/11 2438/7 2438/8 2438/19 2442/7 2442/14 2443/21 2449/9 2453/4 2453/5 2455/13 2462/17 2465/7 2466/15 2467/15 2468/17 2471/13 2474/23 2481/8 2492/18 2492/23 2493/2 2493/3 2493/22 2494/5 2494/10 2494/13 2495/12 2495/14 2498/1 2498/1 2498/5 2498/6 2499/10 2501/9 2501/12 2502/17 2503/10 2503/16 2504/1 2505/12 2506/17 2506/18 2507/2 2507/9 2507/10 2507/14 2507/17 2507/17 2507/24 2510/9 2510/11 2510/22 2511/4 2512/18 2512/22 2512/24 2513/15 2546/13 2559/18 2559/19 2559/19 2562/16 2564/23 2566/14 2583/17 2583/18 2585/9
department's [3] 2392/5 2464/3 2483/4
departmental [1] 2438/14
departments [2] 2393/7 2494/7
depend [2] 2417/20 2501/16
depended [1] 2472/16
depending [3] 2540/25 2544/4 2575/7
depends [2] 2413/20 2501/15
deployed [1] 2506/8
deployment [1] 2506/6
deployments [1] 2505/24
deploys [1] 2415/2
deposed [1] 2489/24
deposition [15] 2375/14 2415/17 2415/22 2415/24 2472/20 2485/14 2489/9 2490/2 2490/12 2490/14 2491/2 2491/10 2497/15 2497/20 2497/21
depositions [1] 2489/23

<p>D</p> <p>depravation [1] 2406/10</p> <p>derogatorily [1] 2494/17</p> <p>descent [2] 2512/3 2512/7</p> <p>describe [4] 2403/19 2477/10 2501/23 2540/10</p> <p>described [2] 2455/12 2455/15</p> <p>description [3] 2411/25 2412/3 2412/7</p> <p>Deshpande [1] 2432/12</p> <p>desire [2] 2495/23 2496/3</p> <p>desk [2] 2525/2 2528/17</p> <p>despite [1] 2403/11</p> <p>destroyed [1] 2528/1</p> <p>detail [1] 2563/18</p> <p>detailed [1] 2557/25</p> <p>details [4] 2388/5 2478/24 2503/8 2556/9</p> <p>determination [3] 2437/7 2437/18 2574/17</p> <p>determine [3] 2407/6 2429/9 2434/15</p> <p>determined [5] 2382/4 2393/5 2425/14 2438/20 2566/2</p> <p>dicks [1] 2573/20</p> <p>dictate [1] 2519/24</p> <p>did [291]</p> <p>didn't [116]</p> <p>different [25] 2391/1 2391/1 2391/3 2391/3 2400/6 2400/10 2402/13 2404/25 2441/3 2446/18 2456/13 2461/5 2462/17 2463/12 2496/9 2500/23 2515/18 2519/23 2523/18 2541/15 2541/16 2541/21 2551/11 2556/24 2575/2</p> <p>differently [3] 2484/12 2550/4 2564/22</p> <p>difficult [3] 2435/5 2435/16 2443/10</p> <p>difficulties [1] 2488/3</p> <p>difficulty [1] 2448/10</p> <p>dig [1] 2430/5</p> <p>digging [1] 2420/14</p> <p>digital [1] 2400/10</p> <p>digitally [1] 2587/12</p> <p>dinner [1] 2577/8</p> <p>direct [18] 2375/4 2375/9 2375/15 2375/18 2376/6 2376/12 2411/3 2435/20 2464/21 2473/12 2473/14 2505/2 2505/4 2561/17 2567/3 2567/11 2568/23 2569/2</p> <p>direction [2] 2483/25 2521/7</p> <p>directive [1] 2438/15</p> <p>directly [3] 2400/9 2439/15 2524/13</p> <p>director [1] 2509/25</p> <p>disagree [2] 2430/17 2430/20</p> <p>disagreed [1] 2437/14</p> <p>disagreement [1] 2435/20</p> <p>disarm [2] 2518/10 2518/25</p> <p>discern [1] 2434/4</p> <p>disciplinary [1] 2513/7</p> <p>discipline [6] 2425/15 2428/7 2457/6 2457/7 2466/4 2529/2</p> <p>disclaimer [1] 2406/11</p> <p>disclosed [2] 2434/1 2465/16</p> <p>disclosure [3] 2402/7 2429/2 2447/14</p> <p>discontent [2] 2500/20 2500/22</p> <p>discovered [1] 2585/11</p> <p>discovery [1] 2489/24</p> <p>discretion [1] 2451/7</p>	<p>discrimination [3] 2455/15 2455/16 2455/16</p> <p>discriminative [1] 2455/22</p> <p>discuss [12] 2384/3 2400/14 2401/13 2470/14 2486/9 2515/8 2523/23 2531/10 2531/17 2539/13 2543/9 2570/14</p> <p>discussed [13] 2376/17 2376/22 2393/3 2410/19 2449/23 2455/24 2469/21 2512/2 2512/6 2522/24 2531/22 2540/20 2549/17</p> <p>discussing [10] 2384/7 2385/4 2391/15 2392/10 2426/3 2427/3 2445/8 2520/4 2531/24 2584/4</p> <p>discussion [17] 2379/5 2382/10 2385/8 2386/25 2394/10 2422/23 2441/15 2444/1 2478/8 2486/16 2488/10 2522/15 2522/23 2530/22 2531/1 2533/23 2535/19</p> <p>discussions [16] 2377/10 2380/24 2380/25 2387/8 2395/5 2410/21 2464/13 2464/14 2471/25 2485/14 2494/3 2533/20 2533/22 2533/24 2561/4 2561/13</p> <p>dishonest [2] 2400/2 2437/5</p> <p>dishonesty [10] 2429/14 2429/18 2429/21 2430/19 2431/15 2431/17 2471/7 2550/8 2550/12 2550/20</p> <p>disingenuous [1] 2511/25</p> <p>dismissal [4] 2445/16 2445/21 2446/21 2448/3</p> <p>dismissed [1] 2429/25</p> <p>dismissive [1] 2477/9</p> <p>disobey [2] 2393/14 2393/15</p> <p>disparagement [1] 2574/2</p> <p>dispatch [3] 2420/8 2461/18 2468/8</p> <p>dispatched [1] 2526/10</p> <p>displayed [3] 2398/25 2480/11 2480/12</p> <p>displaying [1] 2480/18</p> <p>displeased [1] 2577/18</p> <p>dispute [4] 2430/12 2470/4 2525/16 2573/4</p> <p>disputes [1] 2527/13</p> <p>disputing [2] 2565/16 2565/22</p> <p>disqualifier [2] 2392/13 2396/1</p> <p>disqualifying [2] 2407/6 2432/22</p> <p>disregarded [1] 2402/22</p> <p>disregards [1] 2401/11</p> <p>disrespectful [1] 2520/11</p> <p>district [22] 2373/1 2373/2 2373/16 2374/20 2391/16 2392/19 2392/22 2394/2 2397/22 2401/8 2402/7 2403/20 2405/25 2407/3 2407/9 2407/12 2432/4 2432/6 2432/19 2444/8 2523/20 2574/3</p> <p>division [2] 2373/3 2506/19</p> <p>divorce [1] 2491/6</p> <p>do [231]</p> <p>doable [1] 2576/25</p> <p>DOC [2] 2373/5 2587/4</p> <p>Docket [1] 2571/24</p> <p>Docket 156 [1] 2571/24</p> <p>doctor [1] 2450/19</p> <p>document [24] 2379/22 2416/25 2420/1 2432/7 2443/19 2448/16 2460/8 2467/9 2467/11 2467/17</p>	<p>2467/18 2471/21 2471/24 2489/1 2531/5 2534/7 2537/2 2539/4 2539/5 2547/3 2547/14 2551/15 2581/6 2581/6</p> <p>documentation [2] 2438/14 2467/18</p> <p>documents [19] 2396/8 2406/19 2424/20 2424/23 2430/7 2430/13 2445/12 2467/23 2468/5 2468/10 2468/11 2468/23 2471/13 2552/25 2553/19 2563/9 2566/13 2584/23 2585/11</p> <p>does [24] 2422/3 2426/17 2435/13 2436/24 2446/16 2448/17 2448/19 2451/6 2462/21 2495/16 2528/8 2545/7 2547/14 2559/1 2560/25 2564/4 2570/15 2574/4 2574/9 2574/11 2574/19 2581/17 2581/23 2582/1</p> <p>doesn't [18] 2397/13 2417/18 2419/11 2421/11 2423/17 2423/18 2426/19 2448/7 2455/23 2461/23 2461/23 2461/25 2462/2 2462/15 2462/23 2490/20 2556/10 2583/11</p> <p>doing [26] 2386/7 2416/18 2419/6 2419/8 2422/21 2429/17 2439/5 2440/22 2442/4 2448/11 2474/9 2476/18 2477/13 2478/22 2509/9 2509/18 2513/19 2516/20 2517/5 2535/10 2536/12 2547/3 2548/20 2548/21 2567/11 2582/6</p> <p>Dollar [1] 2580/8</p> <p>domain [1] 2570/6</p> <p>domestic [1] 2527/13</p> <p>don't [185]</p> <p>done [15] 2385/4 2409/12 2413/15 2442/5 2443/3 2443/9 2446/7 2454/23 2484/14 2487/17 2519/20 2536/3 2559/25 2580/5 2581/13</p> <p>door [5] 2447/1 2447/12 2456/21 2457/15 2459/9</p> <p>double [3] 2417/9 2457/23 2458/13</p> <p>double-marked [1] 2458/13</p> <p>doubt [1] 2553/3</p> <p>doubted [1] 2495/14</p> <p>Doug [4] 2425/11 2445/12 2445/15 2469/9</p> <p>down [29] 2419/15 2424/4 2425/8 2429/2 2430/22 2441/12 2441/16 2441/17 2454/8 2456/21 2470/9 2472/6 2474/19 2474/20 2474/24 2478/15 2483/17 2484/13 2516/23 2524/7 2527/4 2543/13 2545/11 2548/22 2566/21 2569/8 2569/15 2569/16 2578/16</p> <p>downloading [1] 2402/16</p> <p>DPSST [2] 2507/19 2527/11</p> <p>Dr. [8] 2447/10 2447/12 2448/16 2448/17 2448/19 2449/8 2449/13 2449/18</p> <p>Dr. Corey [6] 2447/10 2448/16 2448/17 2449/8 2449/13 2449/18</p> <p>Dr. Corey's [1] 2447/12</p> <p>Dr. Stewart [1] 2448/19</p> <p>draft [23] 2396/6 2441/19 2441/24 2452/2 2454/6 2536/10 2537/3 2537/9 2537/12 2537/24 2538/16 2545/10 2545/20 2546/5 2547/2 2547/15</p>
--	--	--

D
draft... [7] 2547/21 2552/24 2553/17
2556/22 2557/20 2578/13 2580/21
drafted [5] 2379/6 2396/13 2545/6
2556/18 2558/5
drafting [2] 2443/15 2577/12
drafts [5] 2540/1 2545/3 2545/5
2550/3 2554/3
dragged [1] 2415/3
Drake [2] 2420/7 2420/11
drawers [1] 2430/2
drive [5] 2435/24 2440/15 2451/20
2475/2 2529/20
drive-through [1] 2440/15
driven [1] 2484/12
driver [6] 2434/2 2434/14 2435/6
2435/18 2439/11 2439/12
driving [18] 2434/24 2435/3 2456/22
2460/16 2474/14 2474/19 2474/23
2475/6 2475/8 2475/11 2476/23
2478/15 2480/18 2483/24 2485/5
2527/10 2527/17 2529/1
Drop [1] 2454/8
dropped [1] 2446/2
dropping [2] 2410/15 2410/23
drove [3] 2474/20 2529/12 2550/12
drowned [1] 2513/21
Drug [1] 2418/12
dual [1] 2541/21
due [4] 2434/14 2434/16 2438/3
2440/1
duly [4] 2376/10 2473/3 2489/16
2504/18
during [20] 2398/21 2399/2 2418/9
2434/13 2439/2 2470/5 2471/25
2474/14 2494/3 2495/8 2505/24
2513/9 2515/23 2522/18 2522/21
2525/5 2540/6 2548/25 2549/17
2569/10
duties [2] 2392/14 2418/19
duty [7] 2386/24 2418/25 2419/2
2419/7 2427/17 2445/14 2445/16

E
each [10] 2390/22 2391/3 2391/5
2557/6 2570/8 2571/22 2575/22
2576/18 2577/18 2578/25
Eagan [1] 2403/22
earlier [17] 2377/13 2408/21 2420/24
2422/21 2427/16 2434/16 2452/1
2452/16 2453/18 2469/11 2514/12
2521/16 2535/19 2547/1 2557/22
2557/22 2569/10
early [2] 2389/6 2495/8
easier [1] 2497/2
East [3] 2374/8 2404/9 2436/10
eat [3] 2408/9 2408/16 2409/10
eating [2] 2408/2 2409/8
eclectic [1] 2517/3
edited [1] 2534/8
editing [2] 2447/9 2452/4
effect [3] 2388/1 2438/17 2543/21
effective [1] 2456/10
efforts [1] 2571/22
Egregious [1] 2446/25
eight [5] 2380/8 2416/23 2417/15
2417/24 2418/16

eight-month [4] 2416/23 2417/15
2417/24 2418/16
either [13] 2380/24 2383/23 2387/16
2445/11 2460/20 2461/20 2470/11
2471/3 2502/4 2532/25 2567/25
2568/16 2572/7
elected [1] 2506/1
electronic [3] 2579/18 2580/19
2580/20
else [28] 2390/13 2391/20 2407/7
2417/19 2426/4 2431/25 2435/5
2435/17 2441/4 2442/6 2444/17
2468/21 2478/23 2496/1 2501/22
2514/7 2514/12 2514/22 2516/6
2524/1 2524/8 2531/12 2539/21
2548/14 2551/20 2551/22 2566/24
2586/3
email [71] 2382/14 2382/15 2382/18
2382/20 2383/3 2383/5 2383/6 2383/9
2383/11 2383/14 2383/17 2384/13
2387/18 2388/1 2388/4 2401/20
2402/16 2423/17 2424/7 2424/11
2424/16 2424/24 2425/9 2425/11
2425/18 2426/2 2441/23 2443/23
2444/20 2444/21 2445/1 2445/8
2446/16 2448/20 2448/21 2449/1
2449/5 2449/13 2450/9 2452/22
2460/6 2468/25 2469/2 2469/9
2469/14 2471/15 2521/16 2521/19
2521/21 2522/11 2522/16 2529/25
2530/11 2530/23 2537/5 2537/7
2537/9 2552/21 2553/18 2553/25
2554/2 2554/12 2555/23 2556/8
2556/10 2557/24 2576/22 2577/5
2580/23 2580/24 2585/11
emailing [1] 2431/10
emails [6] 2423/10 2444/16 2552/9
2566/13 2572/25 2573/16
Emerald [2] 2511/9 2512/16
emergency [1] 2439/11
emotional [1] 2499/24
employed [1] 2583/19
employee [4] 2396/17 2396/19
2449/22 2470/23
employee's [3] 2449/24 2451/22
2572/8
employees [5] 2451/24 2466/17
2468/17 2471/14 2536/1
employer [1] 2473/17
employment [5] 2396/25 2399/2
2402/13 2471/8 2505/10
encounter [1] 2477/10
encouraged [1] 2438/9
end [8] 2379/4 2454/23 2485/6 2524/3
2524/5 2567/23 2572/9 2586/5
ended [2] 2383/18 2433/8
ends [2] 2474/21 2567/12
energetic [2] 2501/25 2516/10
enforcement [11] 2386/18 2419/8
2427/14 2438/6 2505/25 2506/2
2506/20 2506/23 2507/2 2517/3
2552/11
enforcement-related [1] 2419/8
engage [3] 2385/22 2387/25 2450/25
engaged [1] 2565/23
engaging [4] 2386/17 2386/21 2438/6
2479/4

English [3] 2511/18 2512/3 2512/7
Enjoy [1] 2450/2
enough [12] 2489/12 2517/12 2518/1
2533/12 2552/14 2553/17 2553/24
2555/7 2555/12 2555/13 2555/14
2557/21
entailed [1] 2509/6
entered [1] 2553/5
Enters [1] 2419/15
enthusiastic [1] 2454/12
entire [11] 2390/14 2396/9 2396/11
2396/22 2406/20 2432/8 2437/16
2437/17 2439/25 2482/20 2537/14
entirety [1] 2406/16
entitled [2] 2539/16 2587/10
entrance [5] 2473/6 2473/6 2504/21
2525/22 2525/24
EPD [1] 2411/25
equipment [3] 2404/3 2439/3 2439/11
equipped [3] 2400/21 2401/2 2406/3
escort [1] 2519/9
especially [2] 2510/3 2513/20
essential [1] 2427/17
essentially [2] 2389/5 2404/24
establish [1] 2574/16
estimate [2] 2404/10 2428/1
estimated [1] 2380/8
et [1] 2587/3
EUGENE [15] 2373/3 2374/9 2408/8
2409/4 2462/16 2462/25 2463/2
2473/24 2474/19 2491/3 2505/7
2507/5 2518/15 2519/22 2583/18
evaluation [23] 2417/2 2447/14
2449/19 2449/22 2452/2 2452/5
2453/11 2454/1 2454/6 2454/23
2471/25 2535/23 2535/25 2536/1
2536/2 2536/6 2537/10 2537/21
2539/13 2545/1 2546/20 2546/22
2555/13
evaluations [1] 2448/17
evasive [1] 2405/10
even [13] 2384/5 2384/10 2387/7
2401/14 2406/12 2406/13 2444/16
2446/12 2471/15 2517/8 2519/15
2528/6 2529/4
evening [17] 2470/5 2488/19 2488/25
2529/9 2544/3 2551/5 2555/5 2569/18
2569/22 2570/2 2571/1 2571/18
2571/23 2575/4 2575/12 2577/17
2581/5
event [5] 2482/9 2558/12 2558/15
2558/17 2558/19
events [2] 2532/8 2532/9
ever [38] 2380/17 2381/20 2381/21
2383/21 2388/7 2388/10 2392/1
2407/16 2416/2 2416/4 2416/6 2442/5
2458/23 2464/11 2476/8 2476/22
2496/21 2499/23 2503/15 2504/1
2505/24 2508/16 2508/18 2508/21
2517/14 2519/11 2522/16 2524/15
2548/25 2549/6 2549/9 2549/13
2550/22 2550/24 2557/11 2557/14
2559/1 2559/4
every [10] 2413/11 2413/12 2418/17
2451/14 2485/2 2513/20 2520/20
2528/11 2546/8 2546/8
everyone [9] 2515/8 2516/6 2517/7

E

everyone... [6] 2524/1 2524/8 2527/24
2528/8 2551/20 2551/22
everyplace [1] 2563/24
everything [5] 2407/10 2499/24
2515/7 2560/21 2567/16
everywhere [1] 2413/6
evidence [15] 2398/23 2416/9 2416/10
2417/4 2417/5 2417/10 2429/24
2430/1 2431/12 2469/18 2509/19
2527/25 2530/4 2556/1 2582/15
evidently [1] 2555/21
Evites [1] 2402/14
exact [6] 2383/12 2386/9 2388/5
2412/22 2436/16 2517/4
exactly [6] 2419/18 2477/25 2481/16
2520/20 2552/11 2581/6
exam [1] 2449/8
examination [36] 2375/4 2375/5
2375/6 2375/7 2375/9 2375/10
2375/11 2375/12 2375/15 2375/16
2375/18 2375/19 2376/7 2376/12
2409/20 2410/3 2410/5 2467/1
2471/19 2473/12 2473/14 2479/15
2479/17 2485/11 2485/21 2491/13
2497/13 2505/2 2505/4 2544/3
2544/14 2549/21 2550/1 2568/23
2568/24 2569/2
examine [1] 2429/7
examined [4] 2376/10 2470/5 2473/3
2504/18
example [7] 2386/11 2390/18 2432/16
2433/3 2437/23 2437/24 2574/3
examples [4] 2399/9 2399/11 2399/18
2555/12
excerpts [1] 2406/21
Excessive [1] 2451/2
exchange [1] 2573/8
exchanged [1] 2581/10
Exclamation [1] 2425/16
excuse [5] 2492/10 2498/8 2516/24
2517/12 2531/4
excused [2] 2486/1 2571/18
excuses [2] 2516/21 2533/1
exercise [1] 2451/7
exercises [2] 2502/21 2502/23
exercising [2] 2572/19 2572/20
exhibit [55] 2379/13 2379/17 2380/17
2382/8 2388/18 2395/16 2395/23
2411/12 2411/13 2416/9 2417/3
2425/2 2428/16 2431/4 2433/5
2448/21 2452/9 2457/22 2458/2
2458/7 2458/8 2459/14 2459/19
2467/5 2467/5 2468/6 2468/24
2470/10 2486/18 2487/1 2530/8
2536/16 2538/13 2541/4 2541/8
2541/13 2541/25 2543/4 2544/20
2545/14 2545/19 2546/21 2547/7
2553/4 2554/6 2554/11 2555/23
2556/17 2557/1 2562/19 2562/21
2563/11 2581/8 2581/15 2585/3
Exhibit 130 [1] 2411/13
Exhibit 150 [3] 2395/16 2395/23
2431/4
Exhibit 158 [1] 2428/16
Exhibit 166 [1] 2452/9
Exhibit 229 [1] 2556/17

Exhibit 230 [1] 2382/8
Exhibit 238 [1] 2563/11
Exhibit 276 [2] 2425/2 2581/8
Exhibit 280 [1] 2448/21
Exhibit 322 [1] 2538/13
Exhibit 33 [2] 2416/9 2467/5
Exhibit 331 [1] 2433/5
Exhibit 350 [3] 2379/13 2379/17
2380/17
Exhibit 412 [2] 2557/1 2581/15
Exhibit 414 [1] 2388/18
Exhibit 419 [1] 2554/6
Exhibit 421 [4] 2459/14 2459/19
2530/8 2555/23
Exhibit 6 [1] 2545/19
Exhibit 71 [3] 2457/22 2458/2 2458/8
exhibits [15] 2447/8 2453/6 2470/1
2486/22 2486/24 2487/15 2488/22
2541/20 2541/21 2552/19 2581/3
2582/14 2584/5 2585/15 2586/6
existing [1] 2581/11
exited [1] 2439/13
expect [1] 2546/24
expected [1] 2447/3
expedite [1] 2454/22
experience [6] 2380/12 2442/9
2478/13 2505/18 2508/24 2526/24
expertise [1] 2425/12
Expiration [1] 2587/16
expired [2] 2434/17 2475/25
explain [5] 2400/18 2419/10 2489/22
2515/25 2533/8
explained [3] 2434/16 2476/1 2478/20
explaining [3] 2514/2 2518/21
2529/25
explanations [1] 2540/7
Explorer [2] 2433/11 2433/22
express [3] 2486/10 2495/23 2543/10
expressed [5] 2393/1 2478/21 2479/1
2479/1 2484/11
expressing [1] 2574/7
expression [1] 2482/3
extent [1] 2512/12
extremely [1] 2496/8
eye [2] 2421/8 2524/23

F

F.3d [1] 2572/10
face [4] 2406/18 2473/9 2482/3
2504/23
fact [22] 2382/5 2384/24 2396/16
2400/23 2402/25 2403/11 2406/6
2415/5 2415/20 2421/14 2429/23
2456/25 2465/21 2471/24 2477/19
2482/19 2487/1 2533/15 2550/12
2559/25 2560/20 2565/25
facts [4] 2414/24 2471/9 2533/1
2533/11
factual [2] 2534/15 2535/1
factually [1] 2574/16
failed [7] 2447/2 2493/10 2493/11
2496/23 2535/7 2535/7 2535/8
failing [2] 2399/25 2535/11
Fails [1] 2451/7
Failure [3] 2450/24 2450/25 2451/1
fair [23] 2389/18 2416/17 2427/21
2432/20 2432/23 2437/15 2439/20

2502/16 2503/7 2503/14 2513/14
2551/15 2552/14 2553/17 2553/24
2555/7 2555/12 2555/13 2555/14
2558/6 2565/10 2569/4 2579/2
fairly [5] 2513/16 2517/22 2535/1
2535/20 2537/2
fairness [1] 2447/4
faith [3] 2401/11 2402/21 2444/22
fall [2] 2476/9 2513/3
false [5] 2398/16 2398/22 2406/12
2406/13 2447/5
familiar [4] 2458/7 2470/25 2471/3
2499/25
far [9] 2380/22 2381/3 2387/8 2391/10
2391/23 2418/6 2496/16 2533/2
2582/15
fast [1] 2479/24
favor [1] 2404/1
feared [1] 2425/12
fearful [1] 2405/14
February [3] 2449/8 2457/1 2507/23
February 2012 [1] 2457/1
federal [2] 2388/8 2549/5
feedback [5] 2385/25 2386/2 2451/1
2454/11 2516/15
feel [11] 2380/11 2405/14 2405/24
2475/20 2477/11 2477/21 2479/7
2512/7 2514/19 2517/9 2521/6
feeling [4] 2479/9 2481/3 2484/17
2532/5
feet [2] 2533/14 2533/15
fellow [1] 2415/6
felonies [3] 2548/10 2573/15 2573/19
felony [1] 2548/23
felt [24] 2386/6 2388/7 2395/10 2397/5
2397/15 2400/7 2401/4 2402/23
2443/2 2465/8 2474/25 2477/25
2478/18 2481/22 2482/1 2484/11
2484/16 2494/12 2499/4 2518/5
2520/11 2520/21 2549/5 2550/18
female [2] 2464/20 2466/19
few [9] 2383/8 2407/21 2474/21
2476/7 2503/9 2506/18 2544/18
2561/16 2563/18
field [6] 2417/20 2454/18 2463/24
2517/3 2521/1 2521/3
fifty [1] 2422/7
fight [4] 2414/8 2414/18 2415/6
2513/22
figure [1] 2388/5
figured [1] 2532/3
file [14] 2385/11 2426/18 2444/19
2465/4 2483/7 2483/11 2483/13
2483/14 2483/15 2483/16 2563/5
2563/6 2572/18 2572/19
files [5] 2428/13 2429/7 2429/8
2429/23 2430/13
filing [5] 2426/17 2446/11 2572/4
2572/14 2572/21
filings [1] 2573/22
fill [1] 2450/12
filled [1] 2450/4
filling [1] 2450/5
film [1] 2386/7
final [11] 2540/2 2542/16 2545/6
2545/20 2546/5 2569/15 2570/7
2570/11 2572/1 2577/10 2586/8

F
finalized [2] 2379/9 2491/6
find [20] 2383/22 2390/24 2400/2
2400/22 2405/10 2430/5 2459/7
2459/13 2466/10 2477/12 2478/10
2478/12 2493/18 2528/10 2531/3
2531/17 2573/24 2574/12 2574/14
2579/9
finding [2] 2400/11 2402/12
findings [7] 2397/4 2397/13 2397/14
2397/14 2404/24 2439/24 2441/8
finds [1] 2573/22
fine [5] 2543/21 2575/13 2575/14
2577/1 2581/20
fingers [2] 2486/15 2567/15
fingertips [1] 2428/13
finished [1] 2570/11
fire [1] 2505/14
firearm [1] 2386/16
fired [11] 2429/17 2471/7 2561/17
2561/20 2562/10 2562/15 2564/6
2564/10 2566/1 2566/3 2566/14
firefighter [1] 2505/13
firm [5] 2473/23 2473/25 2479/25
2485/16 2513/14
first [55] 2376/21 2377/13 2380/6
2381/9 2384/15 2389/18 2390/7
2391/14 2396/14 2397/24 2399/24
2410/13 2417/9 2426/17 2431/2
2432/5 2434/15 2445/2 2446/5
2448/21 2449/1 2449/5 2452/1 2454/6
2457/7 2459/25 2463/7 2473/2
2474/18 2481/12 2489/16 2499/9
2499/13 2504/17 2516/4 2520/6
2531/13 2536/10 2539/22 2545/10
2545/10 2545/11 2546/5 2547/2
2547/15 2550/6 2551/2 2553/20
2561/16 2561/22 2563/18 2566/2
2572/3 2572/5 2578/11
fit [1] 2562/16
fitness [2] 2445/16 2448/17
five [11] 2379/14 2390/21 2425/24
2454/21 2483/24 2495/4 2499/13
2564/16 2573/10 2573/12 2574/23
fix [1] 2521/11
flamed [1] 2525/17
flap [1] 2487/3
flat [1] 2476/5
Flip [1] 2390/3
flipping [1] 2468/10
floating [1] 2566/14
focus [2] 2499/11 2569/12
focused [1] 2399/21
focuses [1] 2380/14
folks [2] 2430/5 2479/6
follow [8] 2383/7 2383/18 2387/18
2428/25 2476/16 2484/8 2484/9
2544/18
follow-up [2] 2387/18 2544/18
followed [4] 2436/8 2484/19 2485/2
2577/17
following [17] 2382/19 2382/23
2434/1 2474/25 2475/1 2475/14
2478/17 2478/19 2480/14 2484/6
2484/11 2484/15 2484/17 2486/21
2486/25 2530/23 2567/18
follows [5] 2376/10 2473/3 2489/16

2491/11 2504/18
food [1] 2575/13
football [7] 2407/16 2407/19 2407/20
2407/22 2407/23 2509/7 2513/4
force [5] 2415/9 2426/25 2505/22
2506/3 2506/8
foreclose [1] 2470/16
foregoing [1] 2587/8
forest [1] 2505/14
Forestry [1] 2505/12
forged [1] 2471/1
forget [1] 2522/11
forgive [3] 2507/22 2522/10 2532/10
forgot [2] 2504/5 2514/15
form [15] 2486/10 2486/24 2487/2
2543/10 2575/11 2577/9 2577/14
2577/16 2577/20 2577/25 2578/5
2579/12 2579/13 2579/18 2579/21
formal [3] 2465/5 2483/14 2563/5
format [5] 2447/7 2447/8 2447/19
2575/7 2577/16
formatting [1] 2447/9
former [2] 2464/20 2574/15
forms [1] 2439/8
forth [8] 2383/8 2461/17 2465/14
2465/15 2536/9 2545/4 2578/1 2578/3
forward [4] 2446/21 2471/12 2472/22
2489/11
forwarded [1] 2469/1
found [7] 2381/18 2439/22 2446/2
2517/18 2542/1 2572/10 2580/11
foundation [4] 2414/20 2465/2 2465/9
2465/10
four [15] 2377/4 2380/8 2389/18
2389/22 2390/21 2391/2 2400/24
2425/19 2425/24 2452/3 2464/20
2464/25 2525/19 2564/16 2569/25
fourth [1] 2466/7
frame [8] 2410/22 2416/23 2460/22
2499/17 2499/20 2500/15 2551/11
2558/5
Franklin [2] 2408/6 2408/19
frankly [2] 2570/11 2570/12
fraud [4] 2392/16 2430/18 2430/23
2431/17
fraudulent [2] 2429/14 2430/15
free [1] 2475/20
freely [1] 2513/17
friends [1] 2383/23
front [19] 2398/13 2430/12 2434/2
2434/24 2435/3 2456/21 2457/3
2459/9 2526/4 2527/7 2527/10
2527/24 2529/1 2529/13 2529/20
2531/25 2552/19 2556/20 2560/11
frustrated [4] 2496/12 2499/3 2523/5
2523/16
frustration [2] 2523/4 2523/12
FTEP [1] 2417/17
FTOs [1] 2380/9
full [12] 2380/8 2399/24 2439/19
2494/25 2500/19 2504/24 2510/13
2510/13 2511/2 2567/25 2568/17
2569/9
full-time [2] 2510/13 2511/2
fun [4] 2498/13 2498/14 2501/25
2503/14
fun-loving [1] 2501/25

functions [2] 2385/23 2386/22
funniness [1] 2517/19
funny [2] 2517/18 2517/22
further [3] 2447/13 2485/8 2566/18
future [1] 2535/8
G
games [2] 2509/7 2513/4
garbage [8] 2420/14 2420/21 2421/12
2421/14 2421/17 2422/5 2422/11
2422/13
Gardner [5] 2392/9 2393/3 2397/22
2430/21 2431/1
Gary [1] 2374/8
gave [18] 2401/5 2405/6 2405/21
2406/19 2412/3 2420/19 2432/9
2432/11 2432/14 2450/18 2465/23
2467/23 2471/24 2492/13 2510/10
2519/8 2546/18 2559/11
Geller [1] 2425/17
gender [11] 2434/3 2434/6 2434/14
2434/16 2435/11 2435/24 2440/9
2440/15 2441/5 2455/16 2455/22
general [5] 2397/11 2397/24 2479/1
2506/2 2579/5
generally [6] 2418/16 2446/24
2454/24 2503/20 2506/21 2562/1
gentleman [1] 2482/12
gentlemen [1] 2489/23
get [62] 2387/18 2391/22 2393/12
2397/8 2406/13 2407/18 2409/19
2417/21 2427/3 2427/7 2427/10
2433/14 2443/16 2443/18 2443/20
2458/14 2460/19 2474/15 2476/4
2476/4 2477/3 2487/2 2488/9 2494/7
2494/12 2496/12 2499/4 2500/5
2500/7 2500/9 2500/11 2503/1
2503/20 2513/10 2515/8 2520/18
2522/21 2525/20 2541/22 2543/11
2546/5 2546/25 2554/20 2557/25
2562/12 2562/13 2567/21 2567/25
2569/2 2570/2 2570/13 2575/7 2576/1
2576/5 2576/22 2576/23 2576/23
2577/25 2579/7 2585/14 2586/7
2586/7
gets [3] 2413/23 2414/12 2520/13
getting [15] 2386/3 2409/3 2420/14
2420/22 2456/15 2472/11 2476/2
2498/19 2503/8 2523/19 2523/25
2530/9 2537/20 2554/2 2561/8
girl [2] 2460/18 2523/7
girl-with-the-gun [1] 2460/18
gist [3] 2476/20 2481/14 2548/9
give [40] 2377/22 2384/1 2385/5
2389/3 2394/8 2399/11 2405/13
2405/16 2406/8 2407/9 2410/21
2415/15 2423/1 2432/6 2455/5 2466/3
2468/7 2469/4 2483/3 2483/18 2488/7
2494/20 2516/10 2519/5 2521/11
2548/11 2554/25 2555/2 2555/10
2558/22 2568/8 2570/5 2570/6
2570/23 2571/24 2575/10 2575/13
2578/16 2579/11 2579/11
give you [1] 2555/10
given [21] 2380/17 2384/15 2391/11
2397/23 2443/13 2464/11 2475/19
2477/17 2503/3 2503/3 2506/21

G

given... [10] 2513/15 2515/6 2515/23 2534/2 2539/5 2539/12 2547/21 2548/6 2548/8 2572/16
gives [5] 2453/5 2472/21 2544/1 2577/8 2586/4
giving [3] 2481/2 2481/4 2575/23
global [5] 2391/20 2426/14 2427/7 2427/9 2427/10
go [86] 2376/20 2377/10 2378/20 2382/24 2383/9 2384/2 2384/8 2384/15 2385/2 2388/3 2388/4 2390/7 2398/9 2398/20 2399/17 2403/14 2405/23 2410/10 2410/11 2412/18 2413/13 2414/3 2414/5 2414/7 2419/23 2422/6 2428/16 2429/2 2430/5 2436/2 2445/2 2445/11 2446/20 2448/13 2449/7 2451/12 2451/19 2451/21 2452/19 2454/22 2458/15 2459/24 2461/11 2461/24 2462/3 2462/15 2462/21 2466/9 2470/13 2470/17 2471/11 2475/20 2477/21 2477/22 2479/24 2487/5 2488/18 2491/7 2492/9 2493/16 2493/21 2494/5 2505/8 2507/11 2509/21 2522/1 2524/12 2526/24 2528/5 2528/10 2530/13 2532/3 2543/13 2543/14 2544/7 2551/23 2552/6 2552/9 2563/17 2563/22 2565/4 2571/10 2571/12 2579/6 2579/13 2586/7
goal [8] 2432/19 2432/21 2432/23 2442/14 2443/17 2443/18 2443/19 2443/21
goes [4] 2408/25 2422/3 2512/5 2514/16
going [97] 2379/6 2380/14 2383/8 2389/19 2402/16 2404/24 2405/15 2407/3 2411/24 2413/4 2413/11 2413/17 2414/17 2415/6 2422/22 2424/1 2433/8 2442/22 2443/8 2455/18 2456/8 2460/19 2468/14 2474/9 2474/15 2484/12 2484/13 2485/3 2485/4 2486/7 2486/8 2487/17 2487/19 2490/10 2490/18 2490/19 2490/22 2490/23 2492/10 2496/19 2502/25 2509/22 2513/4 2513/19 2514/23 2516/5 2516/23 2517/7 2517/21 2518/3 2518/3 2518/4 2518/24 2519/18 2520/8 2520/23 2524/20 2527/6 2528/25 2529/22 2530/20 2531/3 2535/16 2540/17 2540/19 2540/22 2541/3 2542/17 2542/18 2542/23 2543/16 2544/17 2550/19 2558/6 2558/7 2560/11 2560/13 2560/23 2562/12 2567/7 2567/13 2567/14 2567/16 2568/4 2568/5 2569/11 2570/6 2571/24 2575/10 2575/15 2575/17 2576/14 2577/7 2577/11 2581/5 2584/6 2585/14
gone [1] 2431/24
good [27] 2376/3 2376/14 2376/15 2401/10 2402/21 2410/7 2410/8 2413/7 2443/15 2444/22 2453/14 2454/4 2479/19 2479/20 2493/2 2501/18 2501/24 2526/23 2529/16

2535/21 2540/18 2543/5 2543/7 2550/3 2567/19 2569/5 2582/14
Goodnight [1] 2586/9
Gosh [1] 2493/23
got [46] 2383/4 2383/16 2383/17 2384/25 2391/2 2393/2 2404/10 2410/10 2422/14 2422/24 2426/18 2437/11 2443/13 2443/23 2468/18 2474/24 2474/25 2475/23 2476/8 2476/9 2487/24 2493/25 2494/8 2496/19 2498/20 2499/11 2500/23 2507/4 2516/14 2517/5 2519/16 2524/6 2525/16 2525/20 2528/18 2551/7 2551/8 2552/18 2552/21 2556/17 2558/21 2564/22 2565/19 2568/3 2581/17 2584/3
gotten [3] 2452/1 2534/14 2557/24
government [1] 2509/15
grab [1] 2412/18
grabbing [1] 2413/17
graduate [2] 2505/8 2507/21
graduated [1] 2482/7
graffiti [2] 2390/1 2390/4
graffiti-type [1] 2390/1
grand [1] 2568/13
grant [1] 2489/2
grateful [1] 2450/1
gray [2] 2578/12 2582/9
great [4] 2501/11 2523/9 2575/6 2576/1
GREGORY [1] 2374/3
grievance [5] 2385/11 2410/16 2410/24 2572/18 2572/19
grievances [2] 2563/5 2572/4
grieving [2] 2572/14 2572/20
grinning [1] 2482/3
grooming [2] 2401/13 2461/5
grounds [1] 2579/1
group [3] 2408/7 2574/6 2576/23
groups [1] 2479/7
guard [19] 2400/4 2400/8 2400/9 2400/21 2400/25 2401/2 2401/17 2401/22 2404/4 2433/10 2433/22 2434/20 2434/23 2435/2 2505/22 2505/23 2506/4 2506/11 2506/11
guess [7] 2390/21 2391/8 2391/10 2408/18 2471/4 2479/2 2560/23
guessing [2] 2498/21 2562/16
guide [1] 2576/21
guideline [1] 2431/20
guidelines [3] 2431/3 2431/7 2431/9
gun [5] 2449/16 2460/18 2462/20 2518/11 2519/5
gut [1] 2481/2
guy [4] 2411/25 2412/22 2414/14 2516/5
guys [6] 2426/9 2431/9 2447/22 2481/19 2501/24 2545/11

H

had [172]
hadn't [3] 2402/14 2452/5 2510/1
half [2] 2544/1 2568/3
halfway [1] 2569/2
hall [1] 2387/13
hallway [3] 2387/10 2524/16 2579/7
hand [9] 2404/5 2489/13 2504/15

2525/20 2555/22 2569/14 2569/16 2580/4 2580/16
handcuff [1] 2560/3
handcuffed [1] 2560/2
handed [8] 2384/20 2385/7 2388/25 2432/13 2437/11 2536/13 2564/21 2569/8
handing [2] 2553/4 2562/21
handwriting [1] 2565/12
hanging [1] 2420/8
happen [6] 2410/18 2461/23 2461/25 2527/19 2527/23 2561/15
happened [23] 2384/19 2397/11 2422/16 2429/24 2461/18 2466/10 2478/10 2483/12 2483/23 2524/18 2527/20 2529/11 2533/1 2533/2 2533/12 2557/7 2557/9 2558/13 2558/15 2558/17 2558/19 2558/23 2560/8
happening [2] 2444/3 2474/17
happens [4] 2421/8 2457/25 2460/13 2528/9
happy [3] 2392/20 2487/12 2561/1 2465/8
harassed [1] 2465/8
harassment [5] 2464/17 2464/21 2466/8 2563/19 2565/23
hard [10] 2470/10 2513/16 2513/20 2513/22 2513/25 2514/16 2514/25 2519/25 2533/12 2567/16
harder [5] 2460/18 2461/20 2462/20 2514/19 2514/21
Harrang [2] 2374/8 2485/16
Hart [3] 2464/25 2465/4 2465/14
has [62] 2381/9 2391/11 2397/1 2405/5 2411/7 2411/14 2411/15 2412/19 2412/19 2413/18 2415/9 2417/22 2417/23 2418/8 2421/5 2423/19 2425/4 2428/20 2432/2 2450/20 2451/9 2453/12 2453/14 2454/4 2456/16 2458/10 2458/22 2459/16 2459/17 2459/23 2461/16 2467/13 2467/17 2467/18 2468/13 2468/13 2468/16 2469/18 2469/20 2471/23 2480/23 2508/16 2508/18 2518/16 2521/8 2528/11 2530/4 2530/5 2535/22 2536/18 2538/4 2538/6 2538/11 2541/11 2547/8 2556/6 2567/21 2572/6 2578/6 2578/25 2582/4 2582/9
hasn't [1] 2541/11
have [216]
haven't [5] 2424/21 2432/1 2481/1 2576/11 2577/10
having [16] 2382/12 2394/16 2440/14 2445/19 2456/6 2457/9 2476/2 2480/12 2488/3 2502/17 2509/3 2515/20 2516/23 2535/21 2578/22 2580/18
he [528]
he's [36] 2383/2 2384/15 2398/5 2400/1 2412/19 2412/25 2413/5 2414/4 2415/1 2415/14 2415/21 2415/24 2416/6 2416/17 2417/18 2419/2 2422/3 2426/18 2440/4 2440/5 2440/24 2453/13 2455/21 2456/5 2495/16 2501/4 2514/2 2514/23 2518/13 2519/1 2520/24 2520/25

H
he's... [4] 2521/9 2539/16 2556/24 2558/9
head [5] 2422/22 2428/3 2428/6 2465/12 2491/19
heading [1] 2553/17
hear [10] 2378/2 2411/24 2442/21 2473/8 2514/3 2514/5 2514/9 2515/12 2538/7 2577/22
heard [26] 2380/7 2409/8 2412/25 2442/1 2442/13 2442/15 2442/17 2455/25 2456/7 2458/22 2460/17 2461/20 2462/6 2462/8 2462/9 2471/9 2489/23 2511/18 2511/20 2514/9 2518/8 2521/16 2546/16 2550/5 2558/24 2566/11
hearing [4] 2388/9 2542/24 2549/18 2569/9
hearsay [3] 2408/23 2562/8 2562/12
held [3] 2397/12 2506/24 2572/6
Hello [1] 2449/18
help [18] 2414/7 2414/18 2415/6 2430/7 2454/13 2482/2 2494/23 2502/21 2502/21 2502/23 2503/4 2515/1 2521/3 2550/16 2553/2 2553/18 2559/22 2562/19
Helpfulness [1] 2453/3
helps [1] 2419/10
her [28] 2403/22 2404/12 2405/13 2405/17 2414/25 2434/14 2465/14 2470/13 2470/14 2471/3 2478/3 2478/4 2478/5 2478/7 2478/7 2478/14 2478/23 2479/1 2483/2 2483/6 2483/9 2483/16 2488/9 2494/23 2519/8 2549/16 2577/8 2582/25
here [56] 2377/16 2389/3 2390/10 2399/6 2400/24 2401/8 2402/8 2403/23 2404/1 2405/11 2409/6 2410/10 2413/10 2416/22 2421/8 2421/12 2421/22 2424/6 2426/12 2427/9 2437/8 2439/21 2440/21 2442/12 2445/25 2446/5 2446/11 2446/14 2450/8 2450/13 2455/5 2467/14 2467/25 2468/3 2468/19 2472/10 2473/5 2478/20 2481/1 2498/4 2506/7 2506/7 2506/11 2506/12 2508/20 2530/13 2533/10 2538/23 2561/8 2563/17 2564/9 2565/2 2565/25 2567/1 2571/14 2579/6
Here's [4] 2425/10 2486/20 2579/9 2582/8
Hermens [40] 2384/22 2386/4 2386/6 2386/9 2411/6 2411/16 2412/25 2413/4 2413/8 2414/5 2414/6 2414/7 2414/7 2414/12 2414/18 2414/18 2415/9 2417/22 2418/3 2457/3 2457/6 2457/11 2459/10 2459/11 2460/8 2460/12 2460/20 2460/21 2461/16 2461/20 2461/23 2462/11 2513/24 2526/13 2527/3 2531/20 2532/1 2532/3 2532/7 2551/9
Hermens' [4] 2384/24 2412/9 2532/12 2532/16
Hess [15] 2411/10 2423/7 2423/12 2432/15 2432/17 2433/4 2435/13 2437/24 2450/15 2452/8 2452/19

2457/20 2459/15 2556/3 2563/22
hey [11] 2426/9 2515/17 2520/8 2520/13 2520/24 2524/19 2529/12 2529/15 2531/19 2531/24 2533/5
hiding [1] 2459/4
high [1] 2505/8
highest [4] 2417/22 2418/1 2418/12 2418/14
highlight [6] 2407/16 2407/19 2407/20 2407/22 2407/23 2453/8
highlighted [3] 2423/25 2424/1 2497/7
highlighting [1] 2551/16
him [164]
himself [5] 2408/5 2408/12 2453/15 2465/15 2468/20
hire [1] 2535/16
hired [8] 2449/9 2494/8 2509/4 2510/8 2510/15 2511/15 2518/3 2535/20
hiring [3] 2511/11 2511/14 2512/13
his [146]
history [6] 2401/16 2402/2 2402/6 2402/24 2413/19 2505/10
hit [1] 2463/4
hold [2] 2544/4 2567/18
home [3] 2567/7 2568/2 2586/7
Honda [2] 2433/12 2433/24
honest [4] 2436/22 2515/16 2516/20 2517/18
honesty [2] 2437/1 2441/8
Honor [43] 2377/19 2379/11 2388/16 2389/13 2395/14 2395/19 2411/15 2417/3 2423/14 2425/3 2428/19 2448/24 2452/13 2456/5 2467/6 2469/10 2470/12 2472/7 2488/1 2488/23 2490/5 2490/17 2497/10 2514/4 2530/2 2530/5 2536/15 2537/17 2538/1 2539/7 2540/17 2542/5 2543/5 2545/13 2547/5 2547/12 2558/8 2571/10 2575/19 2575/21 2579/21 2581/22 2583/8
Honor's [1] 2487/14
HONORABLE [1] 2373/15
HOOD [1] 2374/7
hope [2] 2567/24 2568/22
hostile [1] 2541/20
hotel [1] 2408/19
hour [5] 2528/21 2544/1 2544/24 2567/8 2568/3
hour's [1] 2569/4
hours [16] 2377/4 2378/7 2378/7 2378/9 2378/9 2378/11 2378/12 2378/13 2378/16 2378/16 2378/18 2406/6 2427/25 2567/5 2583/7 2583/8
house [9] 2457/3 2527/14 2527/24 2527/24 2528/4 2528/11 2529/13 2533/14 2533/15
how [60] 2377/3 2381/9 2392/24 2392/24 2393/23 2406/15 2411/20 2412/5 2415/9 2415/14 2416/2 2416/18 2423/9 2438/10 2442/9 2446/8 2455/12 2456/3 2456/7 2456/10 2463/3 2468/18 2472/15 2477/10 2477/11 2484/12 2484/20 2492/21 2499/2 2499/14 2501/4 2501/8 2501/23 2502/10 2503/5 2510/25 2518/5 2521/12 2525/21

2530/20 2532/13 2540/10 2540/25 2543/14 2543/23 2544/4 2545/3 2549/13 2550/3 2556/24 2561/22 2564/15 2566/21 2567/3 2568/10 2568/16 2569/6 2570/17 2571/20 2575/16
however [8] 2400/22 2514/22 2516/13 2528/8 2534/3 2535/21 2574/24 2578/9
HR [5] 2379/24 2410/14 2443/21 2447/9 2452/4
huh [3] 2536/22 2556/15 2565/9
human [2] 2377/1 2533/23
humility [3] 2516/13 2516/23 2517/6
hundred [4] 2389/21 2427/5 2460/7 2460/25
hundreds [2] 2437/21 2437/21
I
I believe [1] 2545/24
I'll [26] 2377/19 2377/22 2377/22 2416/9 2435/1 2458/11 2464/2 2469/17 2470/17 2488/7 2531/9 2538/5 2540/16 2540/16 2542/19 2544/6 2544/18 2555/2 2566/5 2567/6 2568/8 2573/10 2576/21 2579/24 2580/4 2580/23
I'm [101] 2380/19 2387/16 2391/24 2393/25 2407/22 2409/12 2409/16 2424/14 2427/2 2431/14 2436/18 2442/22 2446/11 2446/15 2456/8 2456/14 2459/17 2462/9 2462/9 2462/22 2463/4 2467/3 2469/14 2470/15 2470/25 2473/8 2473/18 2477/16 2479/19 2481/4 2481/17 2486/8 2487/12 2490/22 2494/2 2494/22 2495/13 2496/8 2496/8 2498/21 2498/22 2498/25 2499/10 2500/18 2513/14 2514/15 2518/4 2518/21 2525/11 2525/23 2526/4 2530/9 2536/13 2537/2 2538/7 2540/4 2540/17 2543/16 2543/19 2543/20 2543/22 2551/19 2553/4 2554/4 2554/25 2555/14 2557/3 2557/3 2558/5 2558/7 2560/3 2560/13 2560/25 2561/7 2561/7 2561/14 2562/14 2562/16 2562/21 2563/4 2563/23 2567/2 2567/7 2567/8 2567/15 2568/5 2568/6 2569/1 2570/6 2570/12 2570/15 2571/24 2575/10 2576/10 2577/7 2579/10 2579/11 2580/5 2582/13 2584/7 2585/14
I've [9] 2406/6 2407/19 2407/25 2427/15 2464/1 2476/8 2487/24 2505/15 2549/12
IA [27] 2433/8 2433/19 2434/13 2435/21 2436/16 2436/24 2437/17 2437/24 2437/25 2438/1 2438/22 2439/2 2439/16 2440/16 2444/22 2446/2 2446/8 2447/7 2447/18 2464/16 2465/12 2482/11 2534/5 2550/7 2550/11 2550/17 2550/18
ICV [2] 2433/11 2433/23
idea [21] 2391/15 2415/11 2421/9 2464/23 2472/21 2480/25 2481/22 2485/16 2510/1 2515/16 2518/16 2518/21 2520/23 2520/24 2529/16

I
idea... [6] 2529/22 2535/6 2557/16 2559/20 2568/11 2568/11
ideas [1] 2426/4
identify [3] 2551/16 2554/11 2585/3
ignored [1] 2381/12
illegal [9] 2393/5 2442/4 2442/7 2442/11 2444/17 2446/1 2446/8 2573/2 2574/24
illegality [2] 2573/6 2573/7
image [1] 2459/2
imagine [2] 2435/5 2435/17
immediately [2] 2556/13 2578/15
immoral [1] 2393/5
impact [1] 2406/7
impacted [1] 2406/10
impartial [4] 2432/20 2432/23 2437/15 2439/21
impartially [1] 2427/23
implemented [3] 2381/4 2381/5 2510/2
important [4] 2404/20 2405/24 2424/6 2432/5
impossible [2] 2435/12 2475/18
impound [3] 2389/19 2391/5 2418/23
impounding [1] 2419/2
impounds [3] 2390/18 2419/10 2419/17
impression [8] 2386/19 2459/12 2477/3 2477/17 2494/12 2495/11 2499/4 2520/18
improve [2] 2571/2 2577/13
improvement [1] 2546/24
in-car [2] 2434/24 2435/2
inability [1] 2496/12
inaccurate [2] 2401/4 2419/24
inappropriate [2] 2512/2 2512/8
incident [27] 2387/6 2413/22 2413/25 2414/23 2415/7 2449/16 2457/1 2457/4 2458/23 2460/2 2460/16 2462/10 2462/20 2477/23 2519/4 2525/7 2527/18 2530/21 2531/10 2531/17 2532/14 2550/7 2557/9 2557/15 2559/2 2560/18 2561/8
incidental [1] 2573/8
incidents [5] 2461/5 2527/12 2527/14 2527/19 2558/23
include [5] 2405/24 2418/24 2439/21 2441/7 2441/11
included [6] 2402/8 2402/24 2403/20 2426/5 2441/24 2488/16
includes [1] 2419/17
including [9] 2396/11 2396/15 2406/20 2466/16 2466/16 2466/17 2503/10 2525/19 2578/23
inconclusive [1] 2404/24
incorporate [1] 2537/23
incorrect [2] 2460/17 2561/5
incorrectly [1] 2403/23
indeed [1] 2573/22
INDEX [1] 2375/1
indicate [3] 2435/8 2436/12 2439/5
indicated [1] 2475/8
indication [2] 2544/2 2560/23
individual [1] 2577/18
individual's [1] 2578/25
individualized [1] 2578/24

individuals [2] 2573/3 2573/21
influenced [1] 2517/24
info [1] 2557/25
inform [1] 2398/3
informal [1] 2377/12
information [53] 2391/16 2391/18 2391/22 2392/1 2392/6 2392/11 2392/12 2392/13 2392/18 2392/21 2393/4 2393/6 2393/19 2394/1 2394/5 2394/9 2394/13 2394/23 2395/2 2396/2 2396/4 2396/15 2397/8 2398/7 2398/8 2398/17 2401/5 2405/25 2406/1 2406/4 2407/4 2407/6 2407/12 2413/9 2429/3 2429/10 2429/10 2429/11 2432/25 2434/5 2450/18 2453/6 2453/19 2453/20 2468/16 2468/18 2481/4 2481/6 2512/10 2536/5 2548/9 2548/20 2553/23
initial [9] 2391/19 2394/5 2394/8 2441/15 2441/19 2441/23 2563/18 2577/19 2577/24
initially [3] 2391/19 2480/5 2510/8
initiate [1] 2403/24
initiated [2] 2417/14 2417/23
Initiative [1] 2451/19
Inn [1] 2408/19
inquiry [4] 2384/6 2394/3 2407/10 2450/1
insinuate [1] 2518/23
instances [3] 2498/24 2528/2 2574/18
instead [6] 2384/23 2446/4 2497/2 2568/15 2573/24 2581/18
instructed [1] 2395/9
instructing [1] 2395/1
instruction [11] 2388/8 2402/22 2506/5 2548/5 2548/12 2571/19 2573/2 2573/6 2574/16 2574/25 2575/6
instructions [11] 2401/11 2438/16 2568/5 2569/23 2569/24 2570/9 2571/1 2571/3 2571/8 2575/12 2575/20
Integrity [2] 2450/25 2451/20
intelligence [1] 2495/15
intended [1] 2385/11
intent [3] 2528/23 2535/14 2572/18
intention [3] 2427/10 2427/24 2485/6
intentions [1] 2443/15
interacted [1] 2478/5
interaction [3] 2474/5 2482/20 2483/1
interactions [2] 2509/3 2509/6
interest [2] 2535/17 2575/3
interesting [1] 2527/11
internal [30] 2384/3 2396/9 2396/18 2396/20 2397/4 2397/14 2398/11 2399/18 2399/21 2400/12 2400/19 2401/10 2404/13 2406/20 2428/4 2428/6 2428/12 2428/14 2429/8 2430/3 2430/10 2432/6 2439/24 2464/16 2466/9 2466/11 2466/13 2470/21 2471/6 2471/11
Internet [6] 2401/15 2402/2 2402/6 2402/24 2402/25 2403/6
Interpersonal [2] 2450/22 2451/17
interpretation [2] 2436/21 2456/9
interpreting [2] 2446/10 2446/18
interrogation [1] 2377/12

interrupt [1] 2409/17
interrupted [1] 2467/21
intersection [3] 2436/5 2436/8 2440/14
interview [1] 2466/9
interviewed [2] 2440/17 2482/12
intro [1] 2580/9
introduced [1] 2585/4
investigate [3] 2447/4 2520/7 2550/19
investigated [1] 2414/23
investigation [37] 2396/10 2396/18 2396/21 2397/5 2397/15 2398/12 2399/16 2399/18 2399/21 2400/12 2400/20 2401/10 2404/14 2406/20 2407/5 2422/16 2422/20 2425/25 2426/8 2430/3 2434/13 2439/2 2439/24 2442/4 2442/5 2442/10 2442/11 2444/22 2446/7 2459/7 2463/8 2464/17 2466/9 2466/11 2466/13 2528/21 2548/21
investigations [5] 2398/21 2428/14 2430/10 2454/13 2471/12
investigative [2] 2428/12 2440/16
investigator [2] 2455/21 2456/9
invited [1] 2576/10
involve [3] 2572/8 2573/1 2574/17
involved [16] 2387/7 2410/21 2419/20 2424/15 2429/18 2430/6 2430/18 2430/23 2431/17 2448/12 2485/17 2510/19 2511/3 2511/14 2535/24 2563/7
involvement [7] 2447/13 2485/15 2508/17 2509/14 2511/11 2512/12 2512/16
involves [1] 2429/14
involving [1] 2442/10
irrelevant [2] 2518/2 2518/5
is [325]
isn't [26] 2410/24 2412/12 2414/19 2415/20 2416/17 2419/20 2419/21 2420/8 2421/12 2421/15 2422/10 2426/5 2426/9 2429/23 2432/9 2432/24 2435/20 2436/20 2437/2 2439/17 2442/18 2447/19 2455/3 2464/22 2471/23 2541/8
issue [20] 2386/12 2400/1 2401/16 2408/21 2412/18 2415/5 2415/8 2456/22 2469/11 2498/8 2509/14 2509/22 2509/24 2510/19 2512/17 2535/13 2542/17 2574/15 2574/19 2577/9
issued [4] 2535/24 2536/1 2546/21 2558/4
issuer [1] 2498/8
issues [13] 2399/2 2401/13 2425/20 2425/25 2426/7 2460/10 2460/23 2470/4 2504/2 2520/22 2548/24 2549/17 2578/12
it [573]
it'd [1] 2546/8
it's [110]
item [2] 2487/8 2572/17
items [10] 2401/25 2488/16 2488/18 2541/15 2541/17 2563/7 2571/25 2572/15 2573/10 2574/23
itself [3] 2404/4 2572/22 2574/20

J

Jamie [2] 2425/16 2564/21
January [1] 2389/1
Jared [1] 2550/24
JASON [6] 2374/2 2410/6 2471/20
 2497/12 2497/14 2497/16
Jason Kafoury [1] 2497/16
JCPD [1] 2583/19
Jen [1] 2464/24
Jens [2] 2485/23 2485/24
Jessup [2] 2374/20 2587/14
Jill [2] 2374/20 2587/14
Jim [1] 2383/10
job [14] 2392/24 2418/18 2442/20
 2443/1 2443/5 2473/25 2493/7
 2493/18 2494/8 2496/19 2500/16
 2501/5 2501/18 2513/22
jobs [5] 2402/13 2419/3 2493/8
 2496/15 2505/15
join [1] 2491/25
joined [1] 2498/6
joke [4] 2523/4 2523/12 2523/15
 2576/9
joking [2] 2583/10 2584/17
JONATHAN [1] 2374/7
JUDGE [2] 2373/16 2469/19
July [4] 2432/9 2491/5 2492/8 2499/18
July 20 [1] 2491/5
July 2009 [1] 2492/8
jump [3] 2391/7 2391/10 2532/24
jumping [2] 2412/23 2444/23
Junction [7] 2400/15 2401/2 2406/1
 2463/24 2464/1 2583/17 2585/8
June [10] 2390/21 2391/7 2392/4
 2392/7 2392/17 2433/22 2444/12
 2542/21 2566/8 2572/19
June 10 [1] 2390/21
June 2014 [1] 2392/4
June 29 [2] 2542/21 2566/8
June 4 [1] 2433/22
junior [2] 2526/23 2546/24
jurisdiction [4] 2476/13 2476/18
 2480/13 2480/24
jurisprudence [1] 2572/5
jurors [1] 2459/21
jury [53] 2376/2 2378/2 2379/2 2401/7
 2409/21 2409/25 2410/1 2411/22
 2412/11 2412/15 2413/13 2420/19
 2421/3 2422/8 2422/14 2427/1
 2430/12 2431/12 2431/18 2441/20
 2446/25 2456/16 2458/5 2458/16
 2458/20 2460/8 2461/14 2472/12
 2472/14 2473/8 2473/9 2473/22
 2486/12 2487/5 2489/4 2489/5
 2489/23 2504/24 2542/23 2543/4
 2543/12 2544/5 2544/9 2544/10
 2544/20 2568/20 2569/23 2570/9
 2571/1 2572/16 2574/15 2575/20
 2585/3
just [142]
justified [1] 2502/12
justify [2] 2404/18 2404/21
justifying [1] 2519/25

K

KAFOURY [12] 2374/2 2374/3 2374/4
 2410/6 2467/12 2467/23 2468/2

2471/20 2491/4 2497/12 2497/14
 2497/16
keep [6] 2421/8 2524/23 2535/18
 2541/25 2566/16 2586/7
Kent [6] 2455/6 2455/8 2455/20
 2455/22 2455/25 2456/12
kept [3] 2383/7 2389/7 2428/11
Kevin [2] 2509/25 2510/5
Kevin Williams [1] 2510/5
kid [1] 2523/10
kidding [2] 2567/15 2568/6
KIEL [1] 2374/3
Kincaid [3] 2436/5 2436/7 2484/23
kind [12] 2380/7 2396/19 2402/10
 2406/11 2479/4 2489/3 2489/12
 2491/19 2521/10 2532/7 2544/2
 2575/17
kinds [2] 2519/19 2527/23
King [2] 2549/13 2549/16
knew [3] 2402/19 2442/9 2446/8
knife [8] 2411/7 2412/1 2412/4
 2412/19 2413/1 2413/3 2413/5
 2413/18
know [151]
knowing [3] 2393/18 2519/6 2569/13
knowingly [1] 2402/20
knowledge [13] 2381/17 2395/4
 2453/3 2460/16 2471/5 2471/5
 2513/19 2519/9 2527/22 2536/5
 2537/15 2547/12 2566/15
known [6] 2427/13 2427/15 2439/9
 2439/14 2439/19 2560/20
knows [1] 2412/18

L

lack [1] 2438/14
ladies [1] 2489/22
lady [2] 2519/21 2558/24
laid [1] 2570/1
language [1] 2572/10
large [2] 2425/25 2426/7
large-scale [2] 2425/25 2426/7
larger [1] 2490/15
last [29] 2396/13 2398/3 2398/3
 2404/17 2431/24 2437/8 2445/2
 2454/17 2465/19 2489/20 2504/24
 2533/4 2539/25 2546/1 2552/15
 2563/21 2563/23 2565/1 2565/3
 2569/18 2569/21 2569/22 2571/1
 2571/18 2571/23 2572/17 2575/4
 2576/14 2577/17
lasted [1] 2509/24
late [5] 2379/9 2419/12 2514/4 2516/8
 2520/3
later [19] 2402/18 2405/2 2405/23
 2410/18 2413/22 2425/19 2431/22
 2448/13 2449/13 2453/25 2470/17
 2507/4 2510/6 2521/4 2533/3 2533/9
 2551/9 2555/6 2559/5
latest [1] 2556/6
law [24] 2388/8 2427/14 2463/23
 2473/19 2473/23 2479/25 2482/7
 2485/16 2485/16 2493/17 2493/17
 2505/24 2506/2 2507/2 2507/15
 2517/3 2518/17 2535/22 2549/5
 2552/11 2568/7 2574/5 2579/11
 2579/13

lawful [3] 2393/15 2393/16 2393/19
laws [1] 2519/2
lawsuit [11] 2381/10 2393/10 2402/12
 2402/18 2426/17 2426/18 2426/22
 2427/8 2572/14 2572/22 2574/25
lawyer [9] 2398/6 2437/12 2477/1
 2480/16 2481/17 2493/19 2496/2
 2496/7 2496/13
lawyers [3] 2402/11 2481/12 2481/15
lay [1] 2476/5
layers [1] 2476/7
Laypeople [1] 2564/6
lead [4] 2486/20 2526/10 2526/23
 2570/13
Leading [1] 2403/3
leaned [1] 2514/8
leaning [2] 2443/24 2445/15
learn [1] 2391/11
learned [5] 2431/16 2431/20 2431/24
 2500/1 2508/14
learning [4] 2450/20 2451/17 2510/18
 2513/20
least [9] 2390/17 2452/7 2488/21
 2517/4 2523/6 2546/3 2553/25 2575/8
 2576/3
leave [5] 2445/13 2445/15 2555/6
 2570/7 2570/8
leaving [2] 2523/25 2531/18
LEBRECHT [53] 2373/8 2376/8
 2376/14 2379/4 2395/22 2409/13
 2412/17 2426/2 2449/25 2450/10
 2456/6 2467/3 2494/21 2495/7 2500/4
 2501/1 2501/21 2503/10 2520/5
 2520/15 2520/17 2521/17 2522/9
 2522/17 2524/9 2524/12 2524/15
 2524/25 2529/25 2530/15 2530/17
 2530/20 2530/22 2531/1 2531/13
 2533/18 2533/25 2536/11 2537/8
 2537/12 2537/20 2548/15 2548/16
 2554/2 2554/13 2555/20 2557/24
 2567/10 2572/24 2573/4 2573/13
 2573/16 2580/8
Lebrecht's [3] 2423/13 2436/21
 2532/11
led [1] 2382/12
left [22] 2376/16 2385/13 2397/16
 2421/13 2422/10 2422/11 2434/18
 2436/6 2466/15 2472/17 2473/25
 2477/16 2477/22 2483/19 2483/21
 2506/3 2524/7 2524/9 2532/5 2566/22
 2569/18 2569/21
legal [4] 2421/24 2479/5 2518/7
 2518/22
legality [2] 2573/14 2573/18
legible [2] 2585/12 2585/13
leisure [1] 2498/12
lengthy [2] 2537/2 2547/19
LEOs [1] 2446/24
less [1] 2567/8
let [24] 2390/10 2401/18 2448/9
 2469/12 2470/10 2477/21 2477/22
 2480/16 2489/22 2494/20 2498/20
 2523/24 2531/8 2536/25 2550/3
 2551/15 2551/15 2553/20 2554/5
 2554/25 2555/9 2555/22 2564/22
 2578/19
let's [81] 2384/15 2389/18 2390/7

L

let's... [78] 2390/19 2395/12 2396/13 2398/9 2398/20 2399/17 2401/6 2403/14 2405/4 2405/23 2406/24 2411/5 2412/8 2414/3 2416/8 2416/21 2416/21 2417/9 2417/14 2420/12 2420/24 2422/6 2423/1 2423/12 2424/6 2425/8 2425/22 2426/16 2427/5 2428/16 2429/13 2432/4 2432/14 2432/16 2433/2 2433/3 2434/11 2436/2 2436/2 2436/11 2437/23 2438/3 2438/24 2442/1 2444/6 2444/20 2444/20 2445/18 2445/20 2447/15 2448/16 2448/20 2449/1 2450/3 2450/8 2451/12 2451/19 2456/19 2457/1 2457/25 2460/25 2464/15 2468/24 2484/9 2501/9 2509/21 2518/18 2520/25 2521/1 2535/23 2555/9 2557/6 2563/21 2565/3 2568/16 2571/6 2578/17 2579/7

letter [21] 2385/18 2405/6 2405/9 2437/20 2461/6 2465/21 2466/12 2498/19 2498/20 2498/21 2498/22 2499/4 2550/18 2550/21 2564/2 2564/17 2564/20 2564/20 2564/23 2565/17 2572/20

letters [3] 2428/7 2428/9 2428/10

level [1] 2419/25

liable [1] 2580/11

liar [1] 2435/16

liberty [1] 2575/5

library [4] 2433/10 2433/22 2509/10 2511/19

license [1] 2476/6

lieutenant [82] 2376/4 2376/14 2379/4 2382/3 2387/11 2387/12 2393/13 2395/22 2405/6 2409/13 2410/9 2414/1 2426/2 2429/3 2433/19 2434/7 2435/10 2435/21 2436/15 2436/20 2436/21 2438/3 2439/16 2439/22 2440/1 2444/7 2444/21 2449/24 2450/6 2450/10 2453/21 2465/13 2466/1 2466/14 2467/3 2467/3 2470/22 2471/6 2503/10 2520/5 2520/7 2520/12 2520/15 2520/17 2521/17 2521/17 2521/19 2521/21 2522/2 2522/9 2522/17 2522/19 2524/9 2524/12 2524/15 2524/25 2529/25 2530/15 2530/17 2530/20 2530/22 2531/1 2531/13 2532/11 2533/18 2533/25 2534/5 2534/5 2536/9 2536/11 2537/12 2537/16 2537/20 2539/24 2543/1 2548/7 2548/15 2548/16 2567/10 2572/24 2573/13 2573/16

Lieutenant Bechdolt [2] 2539/24 2543/1

Lieutenant Lebrecht [36] 2376/14 2379/4 2395/22 2409/13 2426/2 2450/10 2467/3 2503/10 2520/5 2520/15 2520/17 2521/17 2522/9 2522/17 2524/9 2524/12 2524/15 2524/25 2529/25 2530/15 2530/17 2530/20 2530/22 2531/1 2531/13 2531/13 2533/18 2533/25 2536/11 2537/12 2537/20 2548/15 2548/16 2567/10 2572/24 2573/13 2573/16

2572/24 2573/13 2573/16

Lieutenant Lebrecht's [2] 2436/21 2532/11

Lieutenant Morrow [17] 2405/6 2434/7 2435/10 2435/21 2436/15 2439/16 2439/22 2440/1 2444/7 2444/21 2450/6 2453/21 2521/17 2521/19 2521/21 2522/2 2522/19

life's [1] 2495/24

lighting [2] 2439/3 2439/11

lights [9] 2402/10 2403/24 2404/5 2404/6 2404/11 2405/2 2475/12 2475/14 2475/15

like [61] 2376/4 2376/6 2382/8 2383/11 2388/15 2390/12 2393/8 2412/2 2412/7 2415/17 2418/10 2420/19 2426/10 2429/19 2430/9 2434/10 2435/23 2441/10 2442/5 2451/23 2451/23 2451/24 2468/7 2474/16 2477/25 2478/12 2479/6 2487/2 2488/9 2489/7 2490/16 2500/25 2503/12 2503/22 2504/3 2506/17 2513/14 2517/15 2517/17 2521/6 2524/6 2524/20 2525/16 2541/22 2544/13 2554/21 2565/11 2565/19 2567/9 2567/11 2570/16 2570/17 2571/21 2576/5 2576/6 2576/14 2576/18 2576/23 2577/5 2577/16 2585/2

likely [3] 2389/24 2431/8 2446/25

Lillengreen [2] 2380/9 2407/18

limited [4] 2413/9 2513/11 2513/18 2513/19

Linda [2] 2549/13 2549/16

line [14] 2423/13 2435/13 2461/4 2461/22 2462/13 2475/2 2475/8 2478/16 2491/4 2491/7 2492/9 2492/11 2498/10 2517/7

lines [7] 2388/14 2392/16 2402/15 2420/11 2443/8 2522/12 2523/9

lineup [1] 2487/3

list [12] 2381/23 2426/5 2426/10 2440/8 2458/7 2458/12 2461/6 2469/25 2486/18 2501/22 2573/20 2573/20

listed [2] 2430/21 2469/25

listen [1] 2579/10

listened [4] 2410/13 2413/15 2460/11 2523/14

listening [2] 2463/8 2545/7

listing [6] 2426/3 2426/24 2427/2 2431/10 2431/25 2456/11

little [27] 2386/2 2399/12 2406/22 2447/20 2458/18 2477/8 2477/8 2478/17 2479/23 2484/7 2486/7 2507/4 2511/25 2512/21 2516/23 2519/23 2520/11 2523/24 2531/22 2533/1 2533/13 2540/20 2544/17 2548/8 2560/24 2562/13 2564/22

live [2] 2492/5 2584/15

loaded [5] 2386/16 2449/16 2462/20 2518/11 2519/6

loaded-gun [1] 2462/20

located [2] 2433/13 2433/24

location [2] 2391/2 2434/9

log [1] 2390/16

logs [1] 2488/9

Lois [2] 2377/1 2378/4

long [22] 2374/8 2377/3 2411/20 2411/21 2428/2 2444/14 2499/23 2504/6 2509/24 2518/6 2520/20 2520/23 2528/19 2540/25 2544/4 2546/4 2551/8 2551/22 2558/23 2567/3 2568/2 2568/10

long-run [1] 2520/20

long-scale [1] 2509/24

long-term [2] 2504/6 2520/23

longer [10] 2381/18 2386/17 2389/4 2396/16 2396/19 2472/15 2539/23 2543/14 2543/23 2549/1

look [51] 2389/18 2390/10 2390/19 2393/8 2395/12 2396/13 2396/24 2401/6 2405/4 2406/12 2406/24 2416/21 2417/14 2419/23 2425/22 2426/10 2430/2 2432/4 2432/14 2433/2 2434/11 2436/2 2436/4 2436/11 2437/23 2438/3 2438/24 2445/18 2445/20 2450/3 2450/8 2468/7 2468/24 2469/9 2469/12 2471/11 2479/6 2536/9 2536/25 2544/6 2553/18 2553/20 2555/9 2557/6 2560/22 2562/24 2563/21 2570/16 2570/25 2571/8 2577/9

looked [10] 2406/25 2412/6 2414/1 2415/12 2420/19 2467/5 2468/12 2506/17 2532/13 2535/9

looking [10] 2418/16 2421/9 2422/5 2422/20 2452/6 2462/24 2533/6 2558/5 2562/2 2584/7

looks [8] 2390/12 2418/10 2458/6 2468/7 2524/20 2554/21 2565/11 2565/19

lot [45] 2377/10 2382/1 2382/5 2388/21 2389/19 2389/25 2390/4 2390/5 2390/18 2402/15 2409/4 2413/23 2418/21 2421/19 2422/3 2442/13 2453/16 2454/19 2454/20 2456/13 2474/23 2475/4 2475/5 2475/7 2475/9 2475/16 2479/23 2484/14 2484/23 2485/2 2506/20 2516/2 2516/3 2516/11 2517/6 2517/6 2517/18 2517/22 2518/14 2528/1 2548/19 2560/3 2569/22 2575/24 2582/16

lots [1] 2448/12

loud [1] 2403/18

loving [1] 2501/25

low [1] 2559/8

luckily [2] 2472/2 2472/4

lumped [2] 2578/6 2578/21

lunch [3] 2408/2 2409/9 2486/8

lying [5] 2383/10 2436/4 2436/15 2440/24 2532/25

M

made [34] 2381/7 2397/24 2399/22 2400/12 2401/9 2401/17 2403/22 2422/14 2433/13 2433/25 2436/7 2436/10 2441/7 2455/9 2464/21 2477/4 2477/11 2484/25 2485/1 2488/17 2494/5 2494/16 2497/25 2498/4 2508/12 2508/14 2508/21 2517/10 2522/25 2523/8 2529/5 2529/20 2534/14 2552/15

M

Madeline [1] 2403/22
mail [1] 2579/17
mailed [1] 2553/19
main [1] 2396/18
mainly [1] 2399/21
Maintains [1] 2454/9
major [2] 2548/10 2548/24
majority [1] 2390/2
make [28] 2384/7 2385/13 2394/20
 2405/13 2437/7 2447/8 2447/24
 2460/7 2460/25 2472/10 2484/20
 2487/25 2501/9 2507/3 2510/9
 2514/23 2516/6 2525/19 2540/7
 2541/24 2545/1 2555/16 2567/16
 2577/11 2578/19 2580/22 2585/13
 2586/5
makes [5] 2453/15 2453/16 2532/5
 2560/10 2573/3
making [18] 2387/1 2390/15 2404/20
 2429/14 2434/18 2436/9 2437/17
 2447/5 2451/13 2451/16 2520/25
 2522/17 2532/25 2535/10 2540/12
 2549/4 2570/3 2570/11
man's [1] 2412/18
manner [1] 2440/20
manners [1] 2534/20
manual [3] 2463/24 2464/1 2464/4
manuals [1] 2463/22
many [23] 2381/9 2415/9 2415/14
 2416/2 2419/10 2438/10 2441/11
 2456/3 2461/4 2468/22 2484/20
 2496/16 2502/18 2502/18 2541/21
 2545/3 2546/7 2550/3 2556/24
 2561/22 2564/15 2566/22 2571/3
map [1] 2526/4
March [16] 2391/10 2391/10 2417/17
 2430/25 2431/3 2431/6 2431/16
 2491/2 2495/1 2495/3 2499/18
 2500/19 2512/24 2513/5 2558/17
 2565/22
March 20 [1] 2491/2
March 2011 [2] 2417/17 2512/24
March 3 [1] 2558/17
March 31 [5] 2430/25 2431/3 2431/6
 2431/16 2565/22
Marie's [1] 2577/7
mark [6] 2374/2 2406/2 2445/12
 2472/19 2479/19 2541/20
Mark Chase [1] 2472/19
marked [8] 2451/14 2458/13 2458/14
 2541/4 2541/7 2541/21 2555/22
 2562/21
marking [2] 2541/16 2541/22
marks [2] 2424/2 2424/4
marriage [3] 2494/3 2494/4 2499/19
married [7] 2491/5 2492/5 2493/25
 2494/22 2495/6 2499/11 2501/24
Maryland [1] 2427/15
massive [1] 2463/7
match [1] 2575/8
matching [1] 2411/25
material [9] 2394/14 2395/12 2426/5
 2429/8 2432/19 2432/22 2437/6
 2441/1 2447/23
materials [11] 2403/20 2423/1 2423/3
 2427/12 2427/20 2431/2 2436/14

2437/4 2437/10 2438/25 2440/8
math [1] 2455/1
matter [16] 2486/10 2543/9 2550/7
 2572/8 2572/12 2573/1 2573/9
 2573/23 2573/25 2574/4 2574/5
 2574/7 2574/8 2574/12 2574/20
 2575/1
matters [2] 2418/18 2571/21
max [1] 2583/5
may [74] 2379/12 2380/4 2385/19
 2388/17 2389/16 2391/8 2391/24
 2392/4 2392/7 2392/17 2395/15
 2395/20 2401/21 2402/25 2403/6
 2416/11 2416/12 2416/13 2416/14
 2418/24 2419/12 2425/4 2428/22
 2429/8 2437/13 2444/5 2444/25
 2445/4 2445/19 2445/24 2446/21
 2447/2 2447/17 2448/10 2448/25
 2452/14 2467/7 2469/6 2472/5
 2477/16 2478/5 2478/24 2481/16
 2486/1 2490/1 2490/15 2490/15
 2491/6 2518/18 2526/8 2530/3 2530/6
 2532/10 2536/16 2538/2 2539/10
 2540/20 2541/15 2541/17 2542/4
 2543/13 2544/4 2544/6 2545/15
 2545/17 2546/5 2547/6 2554/18
 2556/4 2556/8 2563/15 2566/21
 2572/18 2578/21
May 17 [1] 2445/4
May 17th [1] 2446/21
May 18 [2] 2385/19 2572/18
May 18th [2] 2418/24 2419/12
May 2012 [1] 2401/21
May 29th [1] 2491/6
maybe [13] 2377/4 2389/20 2393/22
 2400/24 2401/21 2501/15 2502/5
 2503/6 2542/25 2550/16 2550/16
 2562/13 2562/19
McDERMED [26] 2373/7 2386/13
 2391/15 2394/6 2395/1 2444/8
 2470/13 2470/18 2472/18 2477/6
 2477/24 2478/3 2478/8 2479/12
 2482/8 2482/24 2499/24 2559/10
 2566/23 2566/24 2567/4 2573/17
 2580/7 2584/2 2585/22 2587/3
McDermed's [1] 2425/9
McDOUGAL [6] 2374/2 2374/4
 2479/18 2479/19 2485/22 2550/2
McIntyre [2] 2429/17 2470/24
me [183]
meal [1] 2408/6
mean [11] 2390/24 2397/13 2402/8
 2402/9 2430/20 2468/20 2492/16
 2503/14 2533/4 2551/5 2566/12
means [8] 2397/12 2397/14 2486/21
 2486/25 2487/8 2489/1 2572/1
 2587/10
meant [1] 2523/12
meet [6] 2388/2 2388/15 2444/7
 2491/17 2548/11 2576/6
meeting [51] 2376/21 2376/21
 2376/24 2377/3 2377/6 2377/9
 2377/14 2377/16 2382/10 2382/12
 2383/21 2383/24 2384/1 2384/15
 2385/3 2385/10 2386/25 2387/20
 2388/8 2388/9 2410/19 2410/23
 2422/23 2443/11 2499/24 2510/10

2522/7 2522/18 2522/21 2524/20
 2525/5 2531/9 2531/12 2531/16
 2531/23 2532/23 2539/13 2539/19
 2539/22 2539/23 2539/25 2542/14
 2542/16 2544/23 2545/8 2549/1
 2549/5 2549/10 2566/9 2566/10
 2566/11
meetings [5] 2445/19 2540/3 2540/6
 2546/13 2574/25
member [1] 2507/25
members [2] 2424/9 2479/6
memo [10] 2396/3 2396/6 2396/8
 2396/13 2396/15 2406/16 2406/18
 2407/8 2430/24 2430/25
memorized [1] 2525/11
memory [8] 2401/7 2403/19 2430/8
 2536/7 2545/8 2547/4 2547/14
 2559/10
mental [4] 2460/10 2460/23 2462/12
 2519/17
mentioned [2] 2385/14 2479/2
merely [2] 2409/3 2550/12
merged [1] 2506/19
merited [1] 2530/19
Mertz [1] 2585/9
Mertz's [1] 2585/11
messed [2] 2516/22 2517/10
met [11] 2432/5 2432/8 2491/15
 2491/16 2495/21 2495/23 2495/25
 2496/1 2531/5 2571/19 2575/4
meters [2] 2429/16 2430/14
Michael [2] 2474/15 2505/1
Michael Vergamini [1] 2474/15
Mickey [2] 2493/3 2493/6
microphone [3] 2473/8 2514/8
 2577/22
middle [2] 2404/7 2524/6
Midnight [1] 2487/21
might [13] 2382/24 2406/12 2406/13
 2406/14 2422/21 2426/10 2506/9
 2543/5 2551/11 2553/18 2571/7
 2571/13 2578/22
Mike [35] 2382/14 2382/18 2383/5
 2383/9 2383/22 2384/2 2384/6 2384/9
 2384/11 2388/4 2396/10 2398/12
 2400/11 2403/12 2404/14 2405/1
 2405/12 2440/17 2446/20 2447/18
 2447/22 2448/6 2448/8 2448/21
 2449/2 2449/5 2481/13 2482/11
 2482/14 2482/15 2482/16 2500/11
 2511/22 2511/24 2512/10
Mike Morrow [30] 2382/14 2382/18
 2383/5 2383/9 2383/22 2384/2 2384/6
 2384/9 2384/11 2388/4 2396/10
 2398/12 2400/11 2403/12 2405/1
 2440/17 2446/20 2447/18 2447/22
 2448/21 2449/2 2449/5 2482/11
 2482/14 2482/15 2482/16 2500/11
 2511/22 2511/24 2512/10
Mike Morrow's [1] 2404/14
military [3] 2505/18 2505/24 2515/11
Mill [1] 2513/21
mind [17] 2406/14 2408/25 2413/4
 2483/21 2483/25 2503/9 2512/5
 2514/13 2520/1 2528/6 2528/25
 2529/22 2530/19 2531/15 2540/14
 2578/8 2581/17

M

mindset [1] 2515/14
mindsets [1] 2448/1
mine [3] 2400/5 2542/25 2551/16
Minimal [1] 2509/5
minimally [1] 2488/24
minor [1] 2446/23
minority [1] 2479/7
minus [1] 2419/19
minute [9] 2401/6 2421/9 2422/6
 2425/24 2469/15 2470/10 2509/21
 2536/25 2568/3
minutes [31] 2378/7 2378/9 2378/11
 2378/12 2378/13 2378/16 2378/17
 2378/18 2407/21 2409/20 2409/22
 2411/17 2411/18 2411/19 2412/13
 2414/13 2420/24 2422/21 2425/19
 2425/24 2483/24 2524/8 2543/11
 2543/16 2543/22 2543/25 2568/6
 2568/7 2571/7 2583/5 2583/7
mischaracterizing [1] 2555/17
mischievous [1] 2389/24
misconduct [4] 2446/25 2451/1
 2534/6 2574/6
Misdemeanor [1] 2418/14
misdemeanors [1] 2463/17
misdirection [1] 2447/5
misheard [1] 2583/6
misidentified [1] 2413/23
misleading [1] 2398/22
missing [3] 2487/1 2487/8 2489/2
mission [1] 2453/5
mistake [4] 2517/10 2528/12 2528/12
 2529/4
mistaken [1] 2526/9
mistakes [6] 2451/6 2514/23 2516/6
 2520/25 2535/10 2535/11
misunderstand [1] 2523/15
mixing [2] 2518/13 2519/1
mobile [1] 2400/21
mocking [4] 2477/7 2481/19 2481/23
 2481/25
Moffitt [1] 2564/21
moment [14] 2413/5 2426/16 2437/10
 2447/15 2464/15 2468/7 2469/12
 2470/8 2470/9 2486/14 2530/4
 2568/22 2574/22 2577/10
money [2] 2429/16 2430/14
month [9] 2416/23 2417/15 2417/24
 2418/16 2454/23 2478/1 2500/16
 2503/4 2559/23
months [7] 2427/13 2495/4 2499/13
 2500/17 2509/25 2557/21 2557/22
more [41] 2379/1 2381/18 2382/7
 2392/15 2401/14 2404/1 2407/15
 2413/15 2416/17 2417/24 2418/8
 2418/17 2420/10 2420/12 2444/1
 2454/19 2454/20 2456/21 2463/4
 2479/3 2485/18 2488/7 2489/1 2497/6
 2500/20 2500/22 2501/9 2514/23
 2515/6 2516/6 2530/19 2531/17
 2531/22 2535/9 2543/22 2544/17
 2549/20 2553/23 2561/1 2569/22
 2579/18
morning [18] 2376/3 2376/14 2376/15
 2410/7 2410/8 2410/12 2442/2
 2472/15 2472/16 2479/19 2479/20

2567/13 2567/18 2568/10 2568/12
 2568/15 2568/18 2575/5
Morrow [59] 2382/14 2382/18 2383/5
 2383/9 2383/22 2384/2 2384/6 2384/9
 2384/11 2388/4 2396/10 2398/12
 2400/11 2403/12 2405/1 2405/6
 2405/9 2405/12 2434/7 2435/10
 2435/10 2435/21 2436/3 2436/15
 2436/20 2437/14 2438/3 2439/16
 2439/22 2440/1 2440/17 2444/7
 2444/21 2445/7 2446/20 2446/20
 2447/18 2447/22 2448/9 2448/21
 2449/2 2449/5 2450/6 2450/18
 2453/21 2482/11 2482/14 2482/15
 2482/16 2500/11 2511/22 2511/24
 2512/10 2521/17 2521/19 2521/21
 2522/2 2522/16 2522/19
Morrow's [3] 2404/14 2433/19
 2522/11
most [9] 2380/11 2388/22 2389/24
 2431/8 2438/7 2438/18 2439/12
 2495/16 2495/18
mostly [3] 2506/23 2507/15 2536/7
motivated [1] 2535/14
Mouse [2] 2493/3 2493/6
move [7] 2421/5 2492/7 2492/7
 2496/19 2521/1 2531/9 2555/25
moved [1] 2560/5
Movement [3] 2522/24 2523/1 2574/2
moving [4] 2446/21 2463/4 2486/15
 2497/23
MR [11] 2410/6 2410/14 2426/15
 2471/20 2479/18 2485/22 2497/12
 2497/14 2532/10 2548/11 2550/2
Mr. [223]
Mr. Abbott [1] 2456/17
Mr. Abbott's [1] 2456/6
Mr. Cameron [2] 2504/14 2505/6
Mr. Cleavenger [167]
Mr. Cleavenger's [24] 2394/24
 2396/25 2404/14 2405/5 2476/19
 2483/3 2501/23 2503/9 2504/6
 2509/12 2511/11 2512/13 2512/16
 2520/3 2520/9 2520/18 2521/18
 2527/1 2531/23 2532/19 2538/17
 2542/25 2549/17 2559/24
Mr. Hermens [1] 2461/20
Mr. Hess [15] 2411/10 2423/7 2423/12
 2432/15 2432/17 2433/4 2435/13
 2437/24 2450/15 2452/8 2452/19
 2457/20 2459/15 2556/3 2563/22
Mr. Kafoury [4] 2467/12 2467/23
 2468/2 2491/4
Mr. Lebrecht's [1] 2423/13
Mr. McIntyre [1] 2470/24
Mr. Morrow [2] 2446/20 2522/16
Mr. Morrow's [1] 2522/11
Mr. Phillips [2] 2459/2 2459/2
Mr. Vergamini [1] 2481/22
MS [11] 2376/13 2467/2 2473/15
 2485/12 2491/8 2491/14 2497/15
 2497/19 2499/9 2499/18 2505/5
Ms. [8] 2465/14 2471/2 2472/19
 2473/16 2479/14 2490/6 2490/24
 2497/6
Ms. Bowes [1] 2471/2
Ms. Brandenburg [1] 2497/6

Ms. Commissiong [3] 2472/19
 2473/16 2479/14
Ms. Hart [1] 2465/14
Ms. Tobias [2] 2490/6 2490/24
Mt [1] 2503/24
much [22] 2387/7 2394/9 2405/19
 2406/14 2418/17 2455/16 2472/5
 2472/15 2486/4 2490/15 2504/11
 2510/23 2530/21 2535/5 2535/10
 2540/14 2543/14 2543/23 2558/24
 2569/24 2575/10 2575/11
multi [2] 2451/13 2451/18
multi-tasking [2] 2451/13 2451/18
multiple [1] 2414/13
muni [1] 2507/5
must [8] 2408/14 2462/7 2490/15
 2493/23 2572/8 2572/12 2574/16
 2583/6
mutual [1] 2453/14
my [182]
myriad [1] 2528/5
myself [12] 2379/24 2382/21 2397/12
 2407/20 2407/25 2430/23 2450/5
 2468/12 2468/15 2525/19 2527/3
 2533/24

N

name [15] 2403/22 2424/10 2450/8
 2450/9 2450/10 2465/23 2466/2
 2468/13 2473/10 2475/10 2489/19
 2489/20 2489/21 2504/24 2504/25
named [4] 2393/9 2402/18 2426/21
 2476/9
names [3] 2464/25 2494/21 2495/10
narrative [3] 2453/7 2454/12 2534/17
National [5] 2505/22 2505/23 2506/4
 2506/11 2506/11
nature [2] 2434/17 2573/8
Navy [3] 2505/21 2506/3 2506/3
near [2] 2421/12 2421/17
necessarily [5] 2435/22 2532/24
 2561/15 2569/3 2577/12
necessary [2] 2450/25 2459/13
need [18] 2381/25 2383/7 2383/18
 2388/15 2445/14 2482/25 2513/8
 2520/13 2522/13 2528/9 2543/2
 2557/25 2576/22 2579/3 2579/5
 2582/21 2584/14 2584/14
needed [16] 2382/7 2384/3 2392/19
 2394/13 2394/14 2407/7 2443/2
 2471/13 2493/7 2520/22 2522/1
 2531/2 2548/7 2548/9 2548/22
 2550/18
needs [2] 2533/11 2546/24
negative [1] 2546/22
negotiate [1] 2426/15
Negotiation [1] 2418/1
neighbors [1] 2460/10
neither [1] 2559/12
neutral [1] 2546/12
never [31] 2381/4 2381/5 2383/5
 2383/8 2384/22 2384/23 2385/14
 2401/11 2402/21 2403/12 2407/19
 2407/23 2407/25 2412/6 2415/12
 2415/22 2430/16 2443/13 2443/13
 2459/11 2464/1 2464/8 2464/16
 2471/9 2482/16 2483/13 2492/13

N

never... [4] 2498/22 2506/7 2549/12 2560/21
new [11] 2380/14 2382/2 2424/20 2487/1 2487/5 2487/8 2489/2 2514/22 2516/5 2520/25 2582/11
news [1] 2523/7
next [33] 2396/23 2398/20 2400/14 2403/14 2405/23 2406/24 2414/17 2417/22 2418/12 2418/14 2424/4 2425/18 2436/5 2446/20 2448/8 2451/4 2454/3 2454/8 2472/3 2472/8 2472/11 2486/5 2489/7 2504/12 2517/11 2527/8 2532/8 2532/9 2534/12 2558/3 2565/4 2565/6 2577/9
nice [1] 2543/11
Nicole [3] 2472/9 2473/1 2473/10
night [10] 2469/25 2500/24 2502/24 2551/12 2552/4 2555/18 2569/22 2571/18 2572/17 2576/15
nights [2] 2502/18 2503/6
nine [2] 2572/15 2572/21
Ninth [2] 2572/5 2572/11
no [168]
nonrecorded [3] 2460/24 2462/13 2462/14
nonrenewal [1] 2565/17
nonrenewed [1] 2508/7
Nonresponsive [1] 2527/15
nonsexual [1] 2451/2
noodles [1] 2409/10
Nope [1] 2436/1
normal [3] 2389/7 2451/15 2552/6
north [4] 2525/24 2525/24 2525/25 2526/1
north entrance [1] 2525/24
northwest [2] 2527/12 2527/20
not [219]
note [1] 2529/19
notebook [1] 2464/7
notes [9] 2417/10 2460/4 2460/6 2469/12 2530/14 2530/16 2530/23 2550/16 2556/7
nothing [5] 2400/9 2400/25 2443/15 2485/8 2566/18
notice [3] 2384/16 2385/5 2385/8
noticed [3] 2474/18 2474/22 2484/6
now [71] 2381/9 2382/10 2391/7 2405/4 2406/19 2409/14 2409/18 2409/19 2412/3 2412/17 2414/17 2416/8 2416/16 2421/5 2421/8 2421/16 2424/20 2426/2 2426/24 2431/19 2432/5 2441/6 2441/20 2442/13 2449/7 2451/25 2454/17 2455/8 2456/19 2457/1 2457/11 2458/14 2460/11 2474/3 2481/12 2486/1 2486/7 2486/23 2487/15 2487/22 2487/23 2488/14 2488/18 2489/3 2492/9 2507/24 2510/11 2514/4 2514/9 2519/23 2523/6 2539/12 2541/15 2544/7 2547/1 2552/18 2552/21 2556/17 2557/17 2558/21 2563/21 2564/17 2567/14 2571/25 2573/10 2574/22 2577/9 2578/13 2581/12 2581/23 2582/6
nowhere [3] 2410/13 2463/23 2463/23
number [29] 2381/13 2381/16 2411/12

2415/16 2432/16 2433/3 2436/2 2450/9 2461/9 2461/12 2461/13 2486/24 2503/7 2505/13 2505/21 2507/7 2525/23 2538/8 2541/13 2541/18 2541/25 2572/21 2573/12 2573/16 2577/20 2577/25 2579/25 2581/3 2581/18
numbers [8] 2381/19 2384/23 2467/13 2487/24 2528/11 2541/23 2585/3 2585/15
numerous [3] 2438/17 2447/3 2525/10

O

Oakridge [2] 2505/7 2505/8
oath [1] 2489/25
object [8] 2414/20 2417/3 2456/5 2465/2 2465/9 2558/8 2564/7 2575/23
objected [2] 2469/11 2479/2
objection [19] 2380/2 2395/3 2403/3 2408/23 2420/1 2477/9 2478/21 2512/4 2514/1 2514/6 2514/10 2527/15 2542/6 2542/8 2542/9 2554/15 2563/13 2564/12 2583/12
objections [1] 2586/4
obligated [3] 2392/10 2393/7 2395/10
obligation [1] 2429/10
obligations [1] 2427/13
observable [2] 2434/3 2434/7
observation [1] 2434/1
observe [2] 2385/21 2500/16
observed [3] 2385/24 2434/15 2498/18
observer [2] 2387/17 2546/12
obvious [2] 2440/9 2514/23
obviously [12] 2402/11 2402/17 2510/22 2510/23 2513/15 2515/6 2517/20 2528/20 2532/2 2537/13 2560/7 2565/19
occasions [3] 2398/15 2400/6 2503/7
occupants [1] 2434/3
occupied [1] 2434/1
Occupy [13] 2408/2 2408/7 2408/7 2409/4 2409/9 2522/24 2523/1 2523/6 2523/8 2523/10 2523/20 2524/23 2574/2
occur [2] 2401/19 2574/14
occurred [5] 2430/11 2483/5 2483/8 2573/23 2574/17
Ocean [1] 2461/24
October [7] 2513/2 2513/4 2513/6 2549/11 2558/13 2558/15 2572/22
October 2013 [1] 2572/22
October 29 [1] 2558/13
odd [5] 2451/7 2495/22 2510/21 2511/16 2512/21
off [20] 2376/16 2381/9 2387/12 2470/9 2476/3 2476/4 2476/4 2476/6 2476/11 2484/21 2484/21 2484/24 2486/16 2488/10 2488/25 2517/7 2550/4 2560/13 2566/2 2566/5
Off-record-discussion [1] 2488/10
Off-the-record [1] 2486/16
offense [1] 2480/11
offensive [1] 2512/8
offer [11] 2379/25 2380/23 2388/10 2389/13 2458/11 2537/17 2538/5 2539/7 2554/14 2555/25 2573/24

offered [3] 2381/2 2395/16 2538/11
offering [2] 2447/18 2507/13
offers [3] 2547/24 2563/2 2563/11
offhand [1] 2414/25
office [19] 2382/22 2407/17 2444/19 2445/22 2450/6 2488/6 2523/23 2524/12 2524/13 2524/18 2548/22 2551/7 2551/8 2551/10 2551/23 2552/6 2552/10 2552/13 2576/6
officer [135]
Officer Cleavenger [2] 2453/12 2526/17
Officer Hermens [3] 2457/3 2459/10 2551/9
Officer Hermens' [1] 2532/16
Officer Phillips [7] 2409/6 2457/11 2457/13 2458/22 2459/8 2521/13 2559/25
officer's [1] 2523/4
officer-initiated [2] 2417/14 2417/23
officers [46] 2380/9 2380/10 2382/2 2416/19 2429/8 2438/7 2438/13 2438/18 2439/7 2439/9 2439/12 2439/14 2448/11 2448/17 2454/14 2455/17 2455/22 2457/23 2462/3 2462/22 2464/20 2466/16 2466/18 2471/6 2471/8 2479/4 2501/11 2501/14 2501/17 2506/20 2506/21 2509/8 2510/1 2511/1 2511/16 2513/18 2514/17 2514/17 2514/20 2514/25 2525/18 2527/13 2527/22 2528/3 2529/4 2573/5
Official [1] 2587/15
officially [1] 2491/5
often [2] 2406/3 2503/5
oh [9] 2408/18 2507/22 2523/9 2552/25 2561/25 2562/8 2563/4 2563/11 2564/20
OHSU [1] 2510/3
okay [190]
old [4] 2414/19 2511/5 2523/7 2582/10
older [2] 2511/7 2530/9
Olympic [1] 2478/6
once [10] 2401/14 2446/2 2480/7 2489/1 2504/14 2504/21 2504/22 2534/11 2535/16 2573/10
one [106] 2376/22 2376/23 2378/25 2379/8 2383/9 2386/4 2386/10 2390/25 2391/2 2394/10 2397/10 2400/21 2401/2 2403/21 2406/3 2407/20 2407/21 2407/25 2414/15 2418/8 2419/3 2419/3 2420/6 2420/13 2421/8 2422/6 2422/24 2430/21 2431/2 2432/3 2432/16 2433/4 2434/2 2437/19 2444/1 2444/16 2451/24 2453/21 2454/8 2454/25 2458/22 2458/22 2460/8 2460/10 2461/20 2463/19 2466/15 2469/13 2469/24 2470/4 2471/22 2474/20 2477/14 2478/17 2479/2 2482/22 2483/18 2484/10 2484/13 2484/22 2487/14 2488/7 2497/1 2497/2 2504/8 2508/5 2508/18 2509/18 2510/4 2510/10 2511/1 2511/3 2511/18 2515/7 2515/12 2523/18 2525/10 2531/13 2540/14 2541/19 2541/22 2544/5 2545/9 2545/10 2545/23 2545/24

O

one... [20] 2546/15 2552/7 2553/22 2559/8 2559/9 2559/11 2561/16 2568/5 2569/7 2574/22 2575/22 2576/23 2577/20 2577/25 2578/6 2579/19 2581/10 2581/11 2581/11 2581/13

one-way [4] 2474/20 2484/10 2484/13 2484/22

one-year [1] 2508/5

ones [1] 2444/5

ongoing [1] 2429/11

only [23] 2387/9 2390/9 2394/18 2400/20 2401/2 2406/3 2411/21 2418/8 2418/25 2419/2 2419/9 2419/20 2440/4 2461/5 2466/15 2476/8 2510/4 2525/18 2548/10 2573/14 2573/19 2580/10 2582/19

Onyx [3] 2404/8 2408/6 2528/10

open [8] 2447/1 2447/3 2447/12 2466/8 2518/14 2518/17 2518/22 2519/2

opening [1] 2441/18

operation [2] 2493/3 2493/6

opinion [36] 2381/24 2382/7 2386/20 2393/18 2394/22 2395/6 2399/4 2405/16 2406/12 2425/10 2434/6 2436/24 2437/1 2437/15 2441/19 2442/24 2444/14 2447/12 2453/22 2454/2 2455/4 2480/13 2480/15 2481/2 2481/4 2481/5 2494/10 2515/22 2516/14 2518/2 2523/14 2543/10 2546/20 2562/10 2562/11 2562/15

opinions [7] 2420/19 2422/14 2453/23 2486/10 2517/24 2534/16 2535/2

opportunity [1] 2488/7

opposed [1] 2516/22

opposite [2] 2436/16 2567/12

opposition [2] 2511/15 2583/2

or something [1] 2500/24

oranges [1] 2518/13

order [10] 2390/12 2393/14 2393/15 2393/20 2549/5 2559/11 2567/17 2572/6 2573/14 2573/18

ordered [2] 2488/2 2585/10

orders [1] 2518/6

OREGON [31] 2373/2 2373/9 2389/8 2390/14 2392/18 2393/23 2394/23 2397/11 2439/7 2473/19 2473/24 2474/1 2474/22 2475/4 2491/3 2492/18 2493/13 2493/22 2496/21 2498/1 2498/5 2499/10 2502/17 2503/16 2504/1 2504/7 2505/11 2505/12 2506/13 2506/25 2587/16

organization [2] 2510/3 2518/6

oriented [2] 2453/16 2552/12

original [2] 2551/18 2587/11

ORS [2] 2463/13 2463/25

ORS 165.540 [2] 2463/13 2463/25

other [41] 2391/15 2398/15 2399/23 2400/4 2401/5 2402/13 2402/15 2412/20 2414/3 2416/18 2418/8 2418/17 2419/6 2425/25 2426/7 2430/5 2444/5 2447/1 2448/1 2451/23 2454/14 2455/1 2460/18 2466/9 2466/17 2471/14 2474/4 2479/2

2487/24 2494/17 2503/21 2504/11 2514/20 2519/20 2536/9 2537/14 2545/24 2549/1 2565/17 2571/4 2576/18

others [3] 2447/5 2454/9 2501/18

otherwise [2] 2480/21 2540/15

our [14] 2381/18 2400/4 2450/1 2457/23 2468/8 2469/25 2473/22 2518/25 2520/24 2527/25 2529/6 2532/21 2568/12 2582/15

ours [1] 2563/23

out [77] 2383/22 2386/20 2387/9 2388/5 2397/16 2400/22 2403/18 2406/11 2408/5 2408/12 2412/5 2418/21 2419/15 2420/8 2427/6 2431/9 2434/9 2435/23 2437/14 2438/5 2443/11 2446/2 2446/7 2448/10 2450/4 2450/5 2450/12 2451/9 2455/1 2456/22 2458/14 2458/15 2459/7 2466/10 2468/25 2474/23 2474/24 2475/18 2475/23 2478/10 2478/12 2484/13 2500/4 2500/7 2500/9 2500/11 2505/13 2506/8 2507/1 2508/19 2516/22 2520/13 2523/12 2524/7 2525/20 2529/2 2531/3 2531/17 2532/6 2535/10 2540/16 2541/23 2548/3 2548/10 2548/23 2553/2 2554/22 2559/23 2570/1 2574/14 2575/6 2575/7 2577/20 2579/7 2579/18 2582/4 2582/10

outcry [1] 2510/2

outfits [1] 2505/17

outgoing [1] 2503/14

outside [3] 2382/19 2386/23 2505/7

over [41] 2377/10 2385/3 2386/20 2388/1 2389/20 2392/19 2403/1 2403/7 2404/8 2415/20 2415/24 2417/15 2417/24 2419/19 2419/23 2421/13 2427/12 2431/24 2433/15 2437/11 2437/11 2452/7 2454/17 2470/13 2470/17 2471/14 2471/25 2476/22 2480/10 2480/19 2488/3 2488/18 2512/25 2520/8 2520/9 2525/16 2548/3 2548/10 2552/16 2567/22 2582/22

overall [3] 2451/21 2451/22 2477/10

Overruled [10] 2395/7 2409/1 2414/21 2417/6 2420/2 2465/3 2512/5 2514/13 2527/16 2564/13

oversimplification [1] 2565/24

own [5] 2398/24 2399/15 2407/5 2407/21 2517/13

owned [2] 2407/19 2407/25

P

P.C [1] 2374/8

p.m [3] 2554/21 2577/3 2577/4

pack [1] 2487/2

package [1] 2396/12

packet [5] 2392/21 2394/5 2394/8 2394/20 2568/8

page [62] 2389/22 2390/3 2390/7 2390/19 2396/14 2396/23 2398/9 2399/17 2399/17 2399/24 2401/6 2403/14 2405/23 2406/25 2415/20 2423/13 2424/1 2424/1 2424/1 2425/9

2430/22 2433/5 2437/20 2445/2 2448/20 2449/3 2449/4 2449/4 2450/3 2451/12 2452/19 2453/1 2453/1 2453/2 2454/3 2459/15 2459/24 2463/24 2464/3 2491/4 2491/7 2492/9 2492/10 2497/23 2498/10 2498/16 2499/7 2499/21 2500/13 2502/8 2502/14 2530/8 2538/18 2545/21 2545/21 2545/21 2546/1 2546/4 2563/23 2565/4 2565/6 2572/11

page 1 [1] 2449/4

page 10 [1] 2491/7

Page 100 [1] 2415/20

page 11 [1] 2433/5

page 12 [1] 2497/23

page 122 [1] 2572/11

page 13 [1] 2492/9

page 19 [1] 2492/10

page 2 [8] 2390/19 2398/9 2399/17 2424/1 2449/3 2451/12 2459/15 2459/24

Page 23 [1] 2498/10

page 25 [1] 2423/13

Page 26 [1] 2498/16

page 3 [5] 2399/17 2399/24 2450/3 2452/19 2545/21

Page 33 [1] 2499/7

Page 35 [1] 2499/21

Page 39 [1] 2500/13

page 4 [3] 2401/6 2453/1 2545/21

Page 44 [1] 2502/8

Page 47 [1] 2502/14

page 5 [3] 2491/4 2545/21 2546/4

page and [1] 2403/14

page four [1] 2389/22

page on [1] 2424/1

page there's [1] 2538/18

page what [1] 2565/6

pages [7] 2389/18 2406/24 2437/21 2464/6 2467/18 2563/18 2563/21

pants [1] 2474/13

paper [9] 2431/13 2441/11 2464/11 2509/19 2510/20 2511/6 2511/8 2511/9 2559/1

paperwork [1] 2409/3

paragraph [15] 2380/6 2396/14 2396/14 2396/22 2398/9 2398/10 2398/17 2398/20 2399/24 2403/15 2403/17 2405/4 2435/1 2447/15 2459/25

paragraph 7 [1] 2405/4

paragraph six [1] 2403/15

paragraphs [2] 2400/14 2575/22

paramilitary [1] 2518/6

paramount [1] 2496/4

paranoid [1] 2504/2

Pardon [1] 2571/11

parent [1] 2523/10

park [5] 2464/24 2469/9 2527/6 2560/11 2560/23

Park's [1] 2425/11

parked [5] 2475/3 2475/13 2475/19 2475/20 2527/8

parking [34] 2384/14 2385/15 2385/16 2385/21 2386/14 2386/23 2401/23 2409/4 2413/23 2418/25 2419/2 2419/7 2419/8 2421/18 2422/3

P

parking... [19] 2429/14 2429/16 2430/6 2430/14 2430/15 2456/21 2456/22 2471/1 2474/23 2475/4 2475/4 2475/7 2478/5 2484/14 2484/23 2485/1 2506/19 2506/20 2506/23

parochialism [1] 2541/19

part [15] 2376/17 2379/23 2388/3 2400/19 2410/18 2418/18 2418/21 2425/25 2426/8 2426/13 2495/8 2505/15 2512/22 2524/23 2551/18

part-time [1] 2505/15

participated [1] 2392/1

particular [2] 2378/20 2575/22

particularly [3] 2477/12 2479/6 2503/19

parties [13] 2376/3 2410/2 2486/8 2489/6 2491/5 2544/10 2571/16 2571/18 2571/19 2575/19 2575/21 2585/1 2585/8

partners [1] 2426/3

parts [3] 2397/12 2546/23 2568/23

party [3] 2541/19 2541/20 2576/10

pass [3] 2429/14 2430/15 2471/1

passed [7] 2384/24 2435/7 2435/19 2449/8 2478/7 2493/11 2493/13

passenger [1] 2434/2

passes [1] 2430/6

past [9] 2421/19 2434/24 2435/3 2438/18 2446/8 2456/22 2527/22 2558/23 2577/25

path [1] 2516/24

patience [1] 2453/6

patrol [6] 2379/20 2398/24 2404/5 2427/17 2439/3 2518/25

pattern [1] 2398/25

Patterson [1] 2525/25

Patty [1] 2396/2

Pause [2] 2578/18 2584/20

Pause-in-proceedings [1] 2578/18

paused [1] 2566/16

pay [1] 2472/14

PC632 [1] 2446/1

PD [3] 2401/2 2462/25 2463/2

peel [2] 2476/3 2476/6

peeling [1] 2476/11

peer [2] 2536/8 2537/13

peers [2] 2451/3 2515/17

pen [1] 2559/1

pending [1] 2469/24

people [43] 2380/13 2386/7 2398/13 2399/25 2400/5 2400/8 2404/25 2429/24 2435/24 2440/11 2463/15 2463/21 2464/14 2465/1 2465/7 2467/4 2479/9 2494/17 2495/10 2495/15 2495/17 2495/18 2495/18 2503/9 2503/21 2503/23 2508/18 2514/24 2516/1 2516/2 2516/11 2517/20 2518/10 2518/19 2518/20 2518/22 2552/10 2560/4 2562/1 2566/7 2570/22 2574/2 2574/6

people's [1] 2448/1

pepper [12] 2412/20 2413/6 2414/14 2415/2 2415/14 2415/21 2415/25 2416/3 2416/4 2416/7 2418/5 2418/6

pepper-spraying [2] 2413/6 2414/14

per [3] 2390/16 2397/17 2578/5

perceive [1] 2440/20

percent [3] 2427/5 2460/7 2461/1

perception [3] 2483/5 2533/2 2533/16

perfect [2] 2567/24 2568/9

perfectly [1] 2483/20

performance [32] 2376/17 2388/1 2398/14 2399/2 2406/21 2406/22 2451/22 2454/1 2501/13 2516/3 2516/12 2520/19 2535/23 2535/25 2536/1 2536/2 2536/6 2537/3 2537/10 2537/21 2538/17 2539/12 2540/2 2540/4 2540/8 2542/17 2545/1 2546/20 2546/22 2555/13 2558/1 2559/8

performance-related [1] 2399/2

performing [1] 2501/4

perhaps [1] 2578/12

period [10] 2392/17 2408/6 2417/15 2418/9 2419/20 2453/10 2464/4 2495/4 2499/11 2513/9

periodically [1] 2429/7

Perlow [1] 2396/2

permission [25] 2379/11 2380/3 2388/16 2389/15 2395/14 2395/19 2423/14 2425/3 2428/19 2444/24 2448/24 2452/13 2467/6 2469/5 2519/5 2519/8 2530/2 2536/15 2538/1 2539/9 2545/13 2545/16 2547/5 2554/17 2563/14

permit [1] 2559/1

person [26] 2388/11 2405/15 2412/4 2412/4 2413/5 2413/23 2414/13 2418/14 2420/20 2420/21 2422/4 2444/18 2470/25 2471/1 2489/24 2503/15 2510/11 2510/19 2518/3 2518/4 2518/4 2518/16 2518/24 2519/12 2520/24 2539/19

person's [1] 2560/5

personal [14] 2386/5 2395/3 2395/5 2401/24 2402/16 2403/1 2403/7 2429/2 2451/5 2454/2 2461/18 2527/21 2573/4 2573/8

personality [1] 2501/23

personally [2] 2385/24 2394/16

personnel [3] 2429/7 2563/5 2563/6

personnel file [1] 2563/5

perspective [1] 2483/4

Pete [1] 2432/12

petition [1] 2572/7

petitioning [1] 2572/14

Phillips [16] 2409/6 2457/11 2457/13 2458/22 2459/2 2459/2 2459/8 2459/12 2521/3 2521/8 2521/8 2521/13 2559/21 2559/22 2559/24 2559/25

philosophical [1] 2455/16

Phoenix [1] 2408/19

phone [6] 2450/9 2460/12 2461/16 2461/18 2461/19 2478/2

photo [1] 2487/3

photocopied [1] 2581/18

phrased [1] 2400/22

physical [4] 2414/18 2415/1 2415/6 2525/3

physically [1] 2450/12

pick [2] 2517/14 2576/13

picking [3] 2516/4 2516/5 2516/21

picture [2] 2457/13 2560/22

pictures [2] 2402/17 2520/9

piece [2] 2431/13 2464/11

pieces [1] 2441/11

pizza [1] 2402/14

place [8] 2456/4 2488/18 2527/18 2527/18 2534/4 2540/25 2540/25 2550/20

places [1] 2456/3

plain [1] 2518/16

plaintiff [14] 2373/5 2374/2 2490/3 2541/15 2563/2 2563/11 2571/23 2573/1 2573/12 2574/16 2578/22 2580/1 2580/13 2583/19

plaintiff's [20] 2395/17 2467/5 2541/5 2541/6 2541/6 2541/18 2541/25 2545/14 2546/21 2547/7 2547/24 2553/4 2562/21 2571/20 2572/3 2572/13 2572/24 2583/19 2584/23 2585/18

plaintiffs [5] 2486/18 2554/14 2555/25 2578/20 2584/5

plan [11] 2377/11 2379/5 2379/20 2380/15 2381/3 2443/12 2443/16 2443/23 2504/6 2520/23 2568/13

plate [2] 2409/10 2476/6

play [12] 2377/19 2377/22 2378/19 2411/10 2457/19 2458/15 2460/25 2490/10 2540/18 2542/11 2542/18 2544/17

played [17] 2377/13 2379/2 2407/20 2411/22 2412/11 2412/15 2421/3 2422/8 2458/5 2458/10 2458/11 2458/16 2458/20 2461/14 2540/23 2541/3 2543/4

playing [3] 2490/24 2511/21 2533/1

plays [1] 2527/12

PLC [1] 2484/24

pleasant [1] 2477/12

please [24] 2376/5 2423/6 2423/25 2425/1 2452/9 2458/15 2472/8 2472/21 2473/5 2486/5 2486/9 2489/11 2489/18 2491/7 2492/9 2504/12 2504/24 2505/2 2522/13 2536/16 2544/12 2556/3 2567/22 2585/7

plus [3] 2446/25 2464/6 2503/23

PO [1] 2463/11

point [46] 2381/25 2383/9 2385/2 2389/5 2392/4 2393/9 2394/10 2398/10 2398/11 2407/21 2412/4 2421/10 2421/20 2425/16 2426/10 2437/4 2437/6 2442/14 2443/10 2443/24 2446/7 2456/14 2457/14 2460/8 2461/3 2477/14 2477/18 2477/21 2478/17 2492/21 2496/3 2508/7 2509/9 2509/12 2511/5 2512/12 2520/15 2521/2 2523/18 2528/23 2532/17 2532/20 2534/13 2540/14 2546/15 2574/19

pointed [1] 2418/21

pointing [1] 2437/14

poke [1] 2524/16

police [39] 2389/8 2390/15 2392/18 2394/23 2398/4 2398/5 2406/2 2419/14 2425/15 2430/3 2430/11

P
police... [28] 2462/17 2464/7 2466/16
2471/7 2471/12 2474/22 2481/8
2493/3 2493/8 2493/22 2494/7
2494/13 2495/23 2496/4 2496/7
2497/3 2498/1 2506/4 2507/9 2507/10
2507/17 2507/18 2507/19 2507/24
2519/22 2583/17 2583/18 2585/9
policies [5] 2393/23 2400/16 2401/12
2428/25 2464/3
policy [10] 2391/6 2401/14 2402/19
2402/22 2403/10 2403/11 2438/15
2463/7 2463/9 2518/18
polite [1] 2516/11
poor [3] 2451/22 2528/24 2529/20
popular [1] 2517/5
portion [5] 2377/13 2377/13 2411/11
2420/21 2424/4
portions [4] 2377/22 2489/9 2497/7
2577/18
Portland [5] 2373/9 2374/5 2374/21
2506/10 2506/12
portrayal [2] 2394/22 2397/19
position [13] 2383/20 2432/1 2451/4
2473/17 2473/20 2505/15 2506/15
2511/2 2517/4 2535/15 2569/13
2570/2 2570/10
positioned [2] 2435/7 2435/19
positioning [1] 2532/13
positions [2] 2506/24 2517/25
positive [2] 2453/5 2477/16
possibility [3] 2525/17 2567/19
2569/5
possible [8] 2392/6 2430/16 2442/19
2462/13 2468/13 2556/11 2556/12
2556/12
possibly [4] 2428/8 2431/25 2447/13
2465/20
post [1] 2524/23
potential [6] 2392/13 2407/6 2427/3
2429/10 2432/21 2574/6
practice [5] 2438/8 2449/11 2473/20
2493/16 2515/3
prearranged [1] 2377/6
preceded [1] 2466/11
precedent [1] 2425/12
predissmissal [1] 2549/17
prefer [2] 2446/24 2569/15
preference [1] 2409/16
preoccupied [1] 2502/25
preparation [1] 2570/15
prepare [6] 2392/21 2392/25 2393/23
2534/1 2571/8 2586/8
prepared [6] 2406/17 2421/23 2422/1
2448/16 2534/7 2583/3
preparing [7] 2446/4 2447/22 2447/23
2531/4 2531/5 2533/17 2536/6
presence [3] 2453/15 2454/5 2527/25
present [20] 2376/3 2376/3 2387/4
2409/21 2409/25 2410/1 2410/2
2446/25 2486/12 2489/4 2489/5
2489/6 2497/25 2543/12 2544/9
2544/10 2544/10 2568/20 2571/17
2571/17
presentation [5] 2447/8 2447/24
2567/25 2568/17 2569/9
presented [2] 2541/16 2541/17

preset [5] 2462/3 2462/7 2462/16
2462/19 2462/25
pressing [1] 2568/16
pressure [1] 2427/8
pretty [8] 2384/25 2405/19 2412/21
2468/19 2503/14 2560/20 2562/1
2582/14
prevailing [1] 2424/8
previous [2] 2401/16 2469/2
previously [3] 2376/10 2398/25
2553/5
primary [1] 2466/3
prior [12] 2439/3 2442/4 2442/9
2442/11 2457/10 2468/2 2474/9
2478/2 2485/13 2505/10 2509/14
2511/3
priors [1] 2412/19
private [1] 2473/20
privy [1] 2548/21
pro [1] 2510/22
probable [1] 2507/3
probably [14] 2390/2 2402/12 2413/8
2457/18 2458/13 2468/8 2474/15
2495/18 2528/21 2543/25 2544/2
2546/10 2560/3 2568/1
problem [7] 2448/23 2520/2 2533/3
2533/8 2533/15 2540/12 2579/9
problematic [3] 2413/24 2476/23
2479/6
problems [12] 2450/20 2450/22
2450/24 2451/9 2451/15 2451/15
2455/3 2476/2 2502/17 2503/5
2520/24 2521/5
procedure [4] 2388/5 2398/13
2438/15 2438/20
procedures [3] 2401/12 2402/22
2464/4
proceed [4] 2451/12 2569/7 2570/18
2575/17
proceeded [1] 2444/19
proceedings [5] 2373/14 2376/1
2578/18 2584/20 2587/10
process [4] 2443/6 2443/7 2546/10
2580/17
produced [1] 2424/21
product [1] 2447/7
productive [1] 2569/3
professional [3] 2382/3 2429/3
2454/4
proficient [1] 2380/12
profiled [1] 2440/13
profiling [1] 2440/23
program [2] 2382/7 2507/12
project [1] 2428/3
prompt [1] 2449/25
proper [3] 2382/23 2487/2 2522/1
proportionality [2] 2578/10 2578/23
proposal [2] 2442/1 2578/17
proposals [1] 2571/23
proposed [2] 2575/20 2577/17
prosecuted [3] 2444/9 2444/13
2463/17
prosecutions [1] 2448/11
protected [6] 2426/17 2571/24 2572/4
2572/7 2572/14 2575/1
protests [1] 2518/14
provide [8] 2392/10 2393/7 2394/5

2394/11 2396/9 2397/25 2399/12
2429/11
provided [6] 2395/12 2396/2 2398/22
2404/18 2439/25 2464/10
providing [1] 2396/24
proximity [1] 2435/4
prudent [1] 2484/1
PSO [1] 2385/22
PSOs [1] 2447/1
psych [1] 2447/14
psychological [1] 2448/17
psychologist [6] 2450/19 2451/10
2452/17 2452/23 2453/20 2453/25
public [48] 2382/1 2385/22 2386/1
2386/21 2439/7 2453/15 2454/3
2492/18 2492/22 2494/5 2494/9
2494/14 2494/24 2498/2 2498/5
2499/10 2501/10 2502/18 2503/16
2504/2 2507/7 2507/8 2507/11
2507/14 2509/1 2509/4 2509/8
2510/13 2511/12 2569/8 2570/6
2571/19 2571/21 2572/8 2572/9
2572/13 2573/1 2573/9 2573/23
2574/1 2574/4 2574/7 2574/8 2574/12
2574/20 2575/1 2575/3 2577/14
publish [19] 2380/3 2389/15 2395/19
2416/11 2416/13 2423/14 2425/3
2428/19 2444/24 2448/24 2452/13
2467/6 2469/5 2530/2 2539/9 2545/16
2554/17 2556/3 2563/14
pull [7] 2402/6 2403/14 2408/12
2447/23 2473/7 2527/23 2531/25
pulled [8] 2404/12 2468/5 2468/11
2468/20 2474/23 2474/24 2480/19
2532/12
pulling [8] 2456/20 2457/3 2457/8
2459/9 2461/3 2475/16 2476/22
2480/10
pulls [1] 2459/3
PUMA [1] 2400/10
punishment [2] 2397/5 2397/15
punitive [5] 2578/9 2578/10 2578/24
2580/1 2580/3
purchasing [1] 2401/25
purpose [5] 2377/9 2478/9 2515/5
2531/15 2540/3
purposes [1] 2573/11
pursue [1] 2445/22
pursued [1] 2446/24
pursuing [2] 2446/22 2448/7
purview [1] 2532/11
push [2] 2570/22 2572/1
pushing [2] 2567/24 2577/13
put [53] 2379/8 2384/14 2385/15
2385/21 2386/13 2388/3 2394/1
2394/5 2396/3 2396/22 2398/14
2402/23 2403/23 2404/1 2407/8
2408/5 2408/11 2416/25 2417/2
2417/7 2420/3 2421/23 2427/7
2427/20 2431/9 2431/12 2432/25
2434/7 2435/25 2436/18 2437/20
2439/16 2440/8 2440/10 2443/11
2446/19 2447/7 2447/17 2447/18
2448/5 2450/7 2476/5 2500/15 2514/8
2534/15 2541/13 2553/23 2557/11
2557/14 2569/12 2571/1 2581/20
2582/10

P
puts [2] 2404/4 2448/10
putting [5] 2406/11 2427/6 2427/25
2433/9 2436/14

Q
quad [2] 2421/14 2422/10
quantity [1] 2503/4
quasi [1] 2507/2
queried [2] 2433/10 2433/22
question [22] 2403/4 2422/19 2445/12
2465/3 2467/19 2471/4 2480/16
2487/14 2488/8 2490/13 2490/13
2490/23 2543/20 2555/15 2557/13
2558/10 2561/7 2562/2 2562/14
2562/18 2565/5 2580/10
question/answer [2] 2490/13 2490/13
questioned [4] 2398/23 2399/1
2468/25 2470/21
questioning [4] 2404/3 2405/12
2476/12 2550/6
questions [24] 2378/20 2398/23
2413/9 2423/3 2423/9 2450/7 2450/11
2453/16 2453/22 2455/8 2455/10
2480/7 2483/16 2485/18 2487/12
2490/18 2497/6 2497/9 2497/11
2497/12 2544/18 2549/20 2561/16
2566/20
quick [2] 2390/10 2455/1
quickly [12] 2410/11 2410/12 2434/19
2435/8 2436/3 2436/9 2436/13
2436/16 2436/19 2445/15 2463/5
2483/23
quirky [1] 2501/25
quite [5] 2391/25 2478/25 2509/16
2570/10 2570/12
quote [8] 2434/13 2455/21 2535/19
2572/6 2572/9 2572/17 2573/12
2573/16
quote/unquote [1] 2535/19

R
race [12] 2434/3 2434/6 2434/14
2434/15 2435/11 2435/24 2440/9
2440/15 2440/25 2440/25 2441/5
2513/21
racial [1] 2440/22
racially [1] 2440/13
racist [1] 2440/20
radio [15] 2386/21 2408/5 2408/9
2408/12 2411/13 2413/16 2462/1
2462/24 2463/1 2520/8 2520/10
2525/15 2548/3 2548/10 2548/23
radios [2] 2462/5 2462/18
raise [5] 2383/24 2486/23 2489/12
2504/15 2525/5
raised [3] 2479/10 2488/17 2525/6
Randy [10] 2376/25 2378/4 2380/24
2425/17 2443/4 2445/13 2445/14
2533/23 2534/8 2573/17
range [1] 2416/22
rape [2] 2522/25 2574/3
raped [2] 2523/7 2523/11
Rate [1] 2451/22
rater [2] 2450/9 2450/10
rather [2] 2445/16 2508/2
rating [2] 2451/21 2453/10

RDR [2] 2374/20 2587/14
re [1] 2525/17
re-flamed [1] 2525/17
reach [1] 2532/21
reached [5] 2469/22 2569/25 2577/10
2578/20 2584/22
react [1] 2502/10
reaction [2] 2498/18 2540/10
read [34] 2375/14 2384/21 2384/23
2385/9 2397/9 2397/23 2400/19
2403/18 2423/22 2423/25 2430/24
2431/22 2433/15 2437/19 2472/19
2489/15 2490/1 2490/13 2491/8
2497/8 2497/12 2497/22 2511/5
2555/10 2556/10 2568/5 2568/7
2573/11 2575/10 2576/11 2584/11
2585/2 2585/6 2585/12
reading [11] 2392/9 2394/17 2404/13
2456/6 2489/9 2490/12 2490/16
2491/4 2504/11 2510/20 2584/3
reads [1] 2489/16
ready [1] 2488/11
Reagan [1] 2402/17
real [3] 2390/10 2493/3 2578/19
realize [3] 2480/6 2480/7 2480/11
really [13] 2401/21 2423/11 2436/20
2472/15 2502/11 2518/2 2540/14
2541/8 2567/19 2568/9 2570/3
2571/13 2575/18
reask [2] 2403/4 2561/7
reason [16] 2384/1 2390/22 2399/19
2427/6 2440/8 2440/10 2445/13
2457/7 2479/7 2508/7 2508/19
2518/22 2529/12 2531/19 2531/24
2586/7
reasonable [4] 2441/4 2448/6 2448/8
2531/21
reasons [3] 2529/16 2559/8 2559/9
reassigned [1] 2445/4
reassignment [2] 2384/16 2385/5
Rebecca [4] 2489/8 2489/14 2489/21
2490/12
rebuttal [4] 2565/1 2565/3 2582/19
2583/20
recall [97] 2376/18 2377/3 2377/14
2381/2 2381/7 2385/9 2385/10
2385/16 2387/2 2387/6 2388/23
2391/14 2391/14 2392/16 2394/16
2396/5 2404/7 2405/11 2406/9
2408/21 2415/3 2416/4 2422/23
2423/2 2423/11 2423/17 2441/22
2442/19 2442/22 2448/15 2450/5
2450/5 2455/8 2457/9 2465/18
2467/10 2468/4 2470/7 2474/5 2474/8
2474/17 2475/6 2476/12 2476/25
2477/6 2478/23 2483/18 2499/14
2499/20 2509/3 2510/7 2510/18
2510/25 2511/8 2512/17 2512/20
2512/21 2512/25 2515/20 2521/2
2521/18 2522/8 2522/17 2523/3
2523/19 2523/25 2524/25 2525/3
2525/8 2525/14 2525/21 2526/6
2526/16 2527/1 2531/4 2531/4
2531/12 2531/13 2532/15 2533/17
2536/10 2536/12 2537/20 2539/21
2539/23 2542/14 2545/3 2547/3
2547/18 2547/19 2548/2 2548/5

2548/18 2549/4 2559/20 2561/12
2583/20
recalled [2] 2424/13 2424/18
recalls [1] 2423/22
receive [1] 2477/23
received [34] 2380/1 2382/4 2382/16
2389/14 2395/17 2405/18 2411/14
2425/4 2428/20 2431/11 2431/13
2452/10 2459/16 2459/23 2469/18
2478/2 2530/4 2536/18 2537/18
2538/4 2538/6 2539/8 2541/11 2542/4
2542/10 2545/14 2547/9 2547/25
2554/16 2556/2 2563/9 2563/13
2564/2 2565/10
receiving [2] 2385/25 2521/18
recent [1] 2468/19
recently [1] 2449/23
receptive [4] 2501/4 2501/13 2515/22
2516/1
recess [9] 2409/18 2409/19 2409/24
2458/15 2540/24 2544/8 2568/4
2569/10 2571/15
reckless [1] 2520/7
recognize [12] 2379/17 2388/25
2395/22 2530/8 2535/7 2537/1
2538/13 2539/4 2545/19 2545/21
2545/23 2555/23
recognized [1] 2478/7
recollection [11] 2381/14 2406/9
2415/13 2420/4 2422/25 2423/19
2483/12 2510/15 2547/21 2551/2
2552/3
reconstructed [3] 2569/23 2569/23
2570/9
record [27] 2385/1 2389/7 2390/15
2423/23 2433/15 2469/23 2486/16
2486/17 2488/10 2488/14 2488/14
2489/1 2490/1 2491/1 2497/18
2571/16 2573/11 2576/6 2578/19
2579/24 2581/2 2581/23 2582/1
2582/6 2583/9 2584/21 2587/9
recorded [1] 2460/21
recorder [1] 2386/5
recording [18] 2398/13 2400/1 2400/8
2400/10 2433/13 2433/25 2433/25
2434/4 2442/8 2442/10 2442/11
2444/18 2446/1 2446/8 2447/2 2463/7
2463/21 2464/10
recordings [3] 2399/25 2442/5
2463/15
records [1] 2468/8
recreation [2] 2404/8 2421/17
Recross [6] 2375/7 2375/12 2471/17
2471/19 2485/19 2485/21
Recross-Examination [4] 2375/7
2375/12 2471/19 2485/21
red [2] 2424/2 2424/4
redacted [4] 2487/15 2488/6 2581/4
2581/11
redaction [1] 2488/1
redactions [5] 2488/4 2488/17
2488/25 2580/25 2581/7
Redirect [7] 2375/6 2375/11 2466/21
2467/1 2485/9 2485/11 2566/19
redraft [1] 2579/24
reference [2] 2410/15 2583/15
references [1] 2551/11

R

referencing [1] 2447/25
referred [3] 2412/23 2523/20 2572/21
referring [2] 2415/22 2461/19
reflect [4] 2487/16 2488/15 2534/17 2570/23
refrain [1] 2548/22
refresh [7] 2401/7 2403/19 2423/19 2430/7 2545/7 2547/14 2552/2
refreshes [1] 2547/4
refreshing [1] 2423/19
refused [3] 2480/8 2529/21 2529/21
regard [5] 2392/6 2470/23 2480/10 2508/21 2571/20
regarding [12] 2394/24 2400/15 2405/9 2407/7 2434/6 2441/8 2445/14 2449/19 2449/22 2457/5 2521/17 2573/9
regards [2] 2434/12 2573/20
register [1] 2516/7
registered [1] 2476/1
reinstatement [3] 2391/12 2393/2 2397/17
relate [3] 2572/12 2573/23 2574/4
related [10] 2386/1 2399/2 2400/9 2402/9 2419/8 2460/2 2462/10 2474/4 2478/5 2573/4
relates [3] 2424/8 2559/11 2574/12
relation [4] 2455/20 2460/3 2525/1 2550/17
relationship [2] 2454/8 2478/3
relationships [1] 2454/10
release [1] 2441/16
relevant [6] 2394/2 2407/10 2447/11 2456/7 2468/11 2562/11
remains [1] 2481/5
remedial [1] 2382/7
remember [76] 2379/24 2383/4 2383/12 2383/16 2384/20 2386/9 2387/15 2387/15 2388/9 2390/4 2394/9 2394/10 2394/11 2394/13 2394/18 2400/19 2401/21 2406/23 2416/6 2423/9 2423/10 2441/14 2441/20 2443/7 2444/15 2455/10 2455/11 2455/12 2455/13 2455/14 2455/14 2455/18 2455/23 2455/24 2468/22 2474/12 2476/20 2478/24 2481/16 2482/10 2482/15 2482/17 2483/20 2492/1 2493/1 2493/24 2493/24 2494/20 2495/10 2495/10 2498/20 2498/22 2500/24 2503/23 2509/16 2509/22 2510/4 2510/20 2510/21 2510/23 2513/3 2513/3 2520/20 2527/3 2531/18 2533/11 2533/12 2534/16 2541/15 2550/10 2550/14 2552/15 2554/2 2555/19 2555/21 2561/2
remembered [1] 2561/14
remind [1] 2529/5
reminded [1] 2509/18
removed [1] 2519/20
rendered [1] 2398/15
Rendish [1] 2572/9
renewed [4] 2508/10 2564/5 2564/15 2566/3
rep [1] 2380/25
repeat [3] 2467/20 2580/9 2580/9

replay [1] 2378/21
report [26] 2390/25 2391/3 2391/5 2392/25 2433/9 2433/19 2434/7 2435/21 2435/25 2436/14 2437/14 2437/16 2438/22 2439/16 2442/7 2444/17 2445/25 2446/4 2450/24 2460/9 2523/7 2528/16 2549/1 2552/24 2573/15 2573/19
REPORTER [2] 2374/20 2587/15
reporting [4] 2573/21 2574/1 2574/6 2574/24
reports [12] 2383/2 2389/24 2389/25 2390/1 2390/4 2390/5 2390/22 2391/1 2418/14 2419/14 2419/14 2440/16
represented [1] 2581/3
representing [1] 2377/2
reprimand [32] 2384/16 2384/21 2385/12 2397/4 2397/13 2425/14 2465/21 2466/12 2531/5 2533/17 2533/21 2534/1 2534/12 2534/22 2534/25 2535/3 2535/4 2535/14 2547/2 2547/16 2550/18 2550/21 2556/22 2557/19 2557/20 2558/2 2558/4 2561/3 2561/13 2565/1 2565/3 2572/20
reprimanded [1] 2556/25
reprimanding [1] 2561/9
request [2] 2546/15 2573/12
requested [2] 2540/13 2546/12
requesting [1] 2542/4
requests [11] 2381/7 2381/9 2381/23 2382/11 2382/16 2382/24 2383/19 2411/1 2411/2 2521/18 2521/24
required [2] 2579/10 2579/11
requires [1] 2470/6
research [1] 2413/15
researched [3] 2401/16 2430/2 2430/10
researching [4] 2401/24 2402/9 2402/11 2402/13
reserve [3] 2398/4 2464/7 2505/21
resigned [1] 2583/17
resolution [1] 2579/21
resolve [1] 2579/9
resolved [2] 2488/5 2579/7
resources [2] 2377/1 2533/24
respect [8] 2453/14 2455/17 2501/11 2501/17 2501/19 2501/20 2516/16 2521/7
respected [1] 2425/12
respond [7] 2387/22 2387/24 2410/11 2487/12 2490/19 2490/25 2525/19
responded [8] 2391/19 2425/11 2525/12 2525/14 2526/13 2527/22 2532/13 2550/8
responding [7] 2402/13 2424/23 2427/9 2525/8 2526/2 2527/13 2528/6
responds [1] 2425/19
response [18] 2388/13 2391/20 2391/21 2399/10 2425/22 2426/13 2445/18 2446/20 2449/25 2469/4 2476/19 2517/1 2520/9 2531/23 2532/1 2564/17 2575/20 2576/14
responses [2] 2398/22 2406/8
responsibilities [2] 2388/11 2507/3
responsibility [5] 2392/5 2451/6 2487/6 2517/13 2529/21

rest [4] 2390/10 2486/15 2543/14 2586/7
restate [1] 2558/10
resting [1] 2586/1
Restraint [1] 2451/16
restrictions [1] 2438/17
restroom [2] 2543/14 2544/7
resubmitted [1] 2581/5
result [1] 2402/1
results [1] 2558/3
resume [1] 2569/3
retain [1] 2518/4
retake [2] 2376/4 2544/12
retaliate [3] 2395/2 2407/13 2535/14
retaliation [3] 2393/8 2426/11 2572/5
retrain [2] 2442/15 2443/10
retrained [2] 2443/18 2443/20
retraining [15] 2377/11 2379/20 2380/15 2380/23 2381/1 2382/16 2410/15 2410/19 2442/1 2443/2 2443/8 2443/12 2443/16 2443/23 2445/20
return [1] 2552/10
review [27] 2376/18 2396/1 2398/14 2401/6 2406/21 2406/23 2433/25 2434/20 2434/23 2435/2 2437/7 2437/17 2466/5 2467/24 2532/18 2532/21 2536/7 2536/8 2536/10 2536/11 2537/13 2537/24 2540/4 2540/8 2546/15 2550/22 2550/24
reviewed [10] 2432/21 2445/13 2464/8 2466/7 2512/15 2533/18 2534/7 2546/8 2546/9 2565/2
reviewing [2] 2532/15 2547/14
revision [2] 2546/8 2575/6
revisions [3] 2545/1 2546/7 2546/10
reworded [1] 2579/25
rewrite [1] 2585/13
ride [1] 2518/25
right [244]
right-hand [1] 2404/5
rights [3] 2391/12 2393/2 2397/17
river [1] 2386/11
RMR [2] 2374/20 2587/14
road [2] 2415/4 2479/24
robbery [3] 2411/7 2412/19 2413/19
role [4] 2393/13 2470/21 2490/10 2490/24
roll [1] 2409/15
Ronald [1] 2402/17
room [3] 2374/21 2385/13 2420/8
rosters [1] 2464/14
rough [3] 2537/3 2538/16 2557/20
roughly [1] 2568/12
routine [3] 2552/6 2552/10 2552/12
routine-oriented [1] 2552/12
routing [1] 2522/1
Rudnick [1] 2374/8
rule [1] 2486/20
rules [1] 2393/23
ruling [2] 2487/15 2487/16
rulings [6] 2569/8 2569/15 2569/17 2570/19 2572/1 2586/5
rumor [1] 2523/6
run [6] 2389/3 2405/15 2428/13 2511/9 2520/20 2521/10
running [5] 2405/17 2405/18 2413/1

R

running... [2] 2413/6 2464/16
runs [2] 2414/13 2414/14

S

safer [1] 2514/17
safety [41] 2377/11 2382/1 2385/22
 2386/1 2386/21 2411/5 2412/18
 2413/7 2439/7 2456/22 2457/10
 2492/19 2492/22 2494/6 2494/10
 2494/14 2494/24 2498/2 2498/5
 2499/10 2501/10 2502/18 2503/16
 2504/2 2507/7 2507/8 2507/11
 2507/14 2509/1 2509/4 2509/8
 2510/13 2511/12 2519/3 2519/8
 2519/11 2521/6 2521/9 2530/18
 2535/6 2548/24
said [113]
Salem [2] 2507/15 2507/19
Salsbury [5] 2583/16 2583/18 2583/20
 2584/12 2584/15
Salsbury's [1] 2583/14
same [21] 2377/16 2384/13 2390/25
 2408/21 2412/4 2413/23 2413/24
 2424/24 2425/9 2432/13 2457/16
 2457/17 2459/12 2462/5 2473/23
 2498/21 2523/18 2569/11 2571/4
 2580/8 2580/9
sat [2] 2539/24 2545/11
satisfactory [1] 2453/13
satisfied [3] 2486/21 2541/24 2586/6
save [2] 2563/17 2580/17
saving [1] 2569/4
savvy [1] 2521/9
saw [21] 2382/8 2387/10 2397/9
 2397/10 2409/8 2409/10 2414/15
 2415/22 2420/23 2430/16 2431/22
 2443/12 2457/13 2466/7 2474/13
 2498/22 2521/11 2527/7 2532/11
 2535/2 2560/8
say [59] 2384/25 2385/13 2385/24
 2389/18 2394/14 2397/3 2402/10
 2404/5 2405/13 2408/10 2408/17
 2409/8 2416/20 2426/9 2429/15
 2431/22 2432/25 2435/13 2440/22
 2440/24 2442/15 2442/17 2442/21
 2445/25 2446/14 2446/14 2461/21
 2461/24 2462/3 2462/12 2462/15
 2462/21 2462/22 2475/11 2475/23
 2479/8 2481/14 2481/17 2482/17
 2501/21 2502/2 2502/16 2503/7
 2503/13 2503/14 2507/23 2514/22
 2516/19 2517/3 2517/10 2522/22
 2550/17 2553/17 2558/1 2559/19
 2573/24 2574/9 2580/10 2583/6
saying [38] 2383/4 2383/18 2384/25
 2385/1 2386/10 2387/15 2405/14
 2411/24 2413/1 2436/4 2440/4
 2440/13 2440/25 2441/1 2442/14
 2443/24 2446/12 2448/6 2450/13
 2462/8 2462/9 2462/22 2481/20
 2483/10 2488/15 2512/17 2512/20
 2512/21 2515/17 2516/22 2531/19
 2550/10 2550/14 2556/9 2557/25
 2559/10 2564/9 2566/14
says [25] 2383/5 2389/2 2393/7
 2398/21 2399/9 2404/17 2411/25

2416/1 2423/17 2425/21 2438/22
 2440/21 2440/24 2446/16 2446/16
 2449/15 2460/8 2460/12 2461/17
 2487/4 2494/25 2528/9 2529/13
 2556/6 2565/10
scale [3] 2425/25 2426/7 2509/24
scanning [1] 2462/24
scans [1] 2462/16
scenario [2] 2527/19 2568/14
scene [2] 2414/17 2528/15
Schmidt [2] 2485/23 2485/24
school [6] 2473/19 2482/7 2493/17
 2505/8 2506/2 2507/12
science [1] 2517/4
scope [1] 2386/23
scores [2] 2417/1 2472/1
SCOTT [10] 2373/8 2426/21 2453/4
 2472/18 2486/6 2500/7 2504/13
 2504/16 2505/1 2580/9
Scott Cameron [1] 2453/4
screen [3] 2396/24 2423/18 2470/9
search [1] 2585/10
seasonal [1] 2505/14
seat [6] 2434/2 2486/13 2486/14
 2519/16 2519/18 2568/21
seated [10] 2382/22 2410/2 2434/2
 2473/5 2473/7 2489/18 2504/20
 2504/23 2504/23 2544/11
second [15] 2374/4 2376/22 2376/23
 2390/3 2398/3 2398/9 2469/13
 2483/18 2539/2 2563/23 2566/5
 2566/16 2572/23 2574/19 2579/15
second-to-last [2] 2398/3 2563/23
seconds [6] 2378/8 2378/10 2378/14
 2411/21 2422/7 2568/6
section [2] 2450/16 2576/11
sections [1] 2490/14
secure [2] 2460/20 2461/21
security [9] 2401/17 2401/22 2505/16
 2505/17 2506/16 2506/19 2506/19
 2506/23 2507/1
sedan [6] 2433/12 2433/24 2436/5
 2436/8 2436/9 2436/16
sedan's [1] 2434/3
see [51] 2382/5 2390/13 2397/6
 2413/10 2415/18 2419/24 2420/22
 2420/24 2420/25 2422/5 2422/21
 2434/14 2435/6 2435/18 2435/24
 2436/19 2440/15 2440/25 2441/4
 2445/25 2446/12 2447/4 2456/7
 2456/16 2458/24 2459/1 2459/2
 2467/24 2470/10 2471/13 2484/7
 2486/11 2519/18 2524/15 2529/13
 2529/17 2532/2 2535/21 2538/18
 2547/4 2551/16 2565/12 2568/16
 2568/18 2569/17 2570/1 2571/2
 2571/2 2575/16 2578/17 2582/21
seeing [4] 2390/4 2454/19 2467/10
 2526/6
seek [1] 2578/9
seem [4] 2478/11 2496/12 2513/2
 2516/6
seemed [10] 2477/8 2477/8 2478/12
 2478/17 2482/3 2503/22 2512/21
 2521/7 2531/21 2540/13
seems [1] 2495/22
seen [7] 2381/23 2411/5 2440/9

2464/1 2467/9 2509/7 2556/8
SEIU [1] 2377/1
seizures [1] 2418/12
selected [2] 2437/19 2437/22
self [1] 2465/16
self-disclosed [1] 2465/16
semi [1] 2507/2
semi-quasi [1] 2507/2
send [15] 2383/11 2453/21 2486/8
 2518/19 2523/10 2530/16 2537/12
 2537/16 2555/18 2556/13 2564/17
 2564/23 2564/25 2567/6 2568/1
sending [6] 2382/15 2383/15 2391/16
 2522/16 2536/11 2555/19
sense [5] 2384/8 2503/3 2518/19
 2532/5 2541/19
sent [24] 2382/14 2383/5 2383/5
 2383/13 2383/17 2384/5 2384/13
 2388/13 2441/23 2450/19 2452/6
 2452/23 2453/20 2453/22 2468/25
 2471/15 2521/17 2530/14 2530/23
 2534/10 2534/11 2565/2 2565/6
 2565/16
sentence [6] 2397/6 2397/8 2397/16
 2398/3 2404/17 2431/2
separate [6] 2390/22 2391/5 2460/13
 2460/14 2460/15 2571/23
separately [1] 2576/19
September [22] 2373/7 2379/10
 2379/21 2389/2 2389/2 2389/5 2389/6
 2417/17 2419/11 2419/13 2443/12
 2444/3 2506/1 2513/4 2513/6 2548/2
 2572/25 2573/14 2573/15 2573/18
 2573/19 2587/6
September 10 [2] 2389/2 2573/18
September 11th [1] 2506/1
September 13 [1] 2379/21
September 13th [1] 2443/12
September 2012 [3] 2389/5 2389/6
 2572/25
sergeant [51] 2382/15 2382/17
 2382/17 2382/21 2383/2 2383/4
 2383/16 2384/7 2384/7 2384/11
 2384/20 2385/11 2387/5 2387/10
 2387/13 2387/16 2408/20 2408/22
 2409/3 2411/2 2417/1 2418/2 2452/1
 2453/19 2454/5 2454/18 2464/15
 2465/8 2465/15 2465/22 2471/24
 2472/3 2503/10 2506/22 2506/22
 2507/8 2507/10 2507/24 2536/3
 2543/24 2544/5 2544/12 2544/17
 2567/10 2572/25 2573/13 2573/17
 2583/14 2583/16 2583/18 2583/19
Sergeant Cameron [28] 2382/15
 2382/17 2382/21 2383/16 2384/7
 2384/11 2384/20 2385/11 2387/5
 2387/10 2387/13 2387/16 2408/20
 2408/22 2409/3 2411/2 2417/1 2418/2
 2453/19 2454/5 2454/18 2464/15
 2465/8 2465/15 2465/22 2471/24
 2472/3 2567/10
Sergeant Cameron's [1] 2452/1
sergeant's [1] 2534/4
sergeants [2] 2536/9 2537/14
series [1] 2444/15
serious [1] 2513/22
service [3] 2452/20 2452/25 2453/2

S

session [2] 2376/2 2472/16
sessions [1] 2469/25
set [10] 2425/13 2462/14 2463/3
 2537/15 2546/13 2571/8 2575/6
 2576/13 2578/1 2578/3
setting [1] 2377/12
settle [4] 2391/22 2426/25 2427/4
 2427/8
settlement [5] 2391/21 2426/14
 2427/7 2427/9 2427/10
seven [6] 2408/6 2437/20 2450/9
 2557/21 2557/22 2579/25
seven-page cover [1] 2437/20
several [11] 2418/23 2428/14 2434/18
 2509/25 2511/16 2524/8 2533/20
 2533/24 2540/1 2561/3 2561/13
severe [2] 2397/5 2397/15
sexual [4] 2464/17 2464/21 2466/8
 2563/19
sexually [1] 2465/8
shall [1] 2412/9
shape [1] 2582/14
shaped [1] 2569/18
share [2] 2394/12 2394/19
shave [1] 2461/6
shaving [1] 2498/23
she [41] 2386/17 2393/3 2394/8
 2394/9 2394/13 2394/14 2395/9
 2395/10 2404/8 2415/3 2425/9
 2430/17 2430/18 2430/20 2440/19
 2441/16 2443/24 2444/10 2444/10
 2465/7 2465/7 2465/15 2478/11
 2478/12 2478/12 2482/8 2483/3
 2483/5 2483/7 2483/8 2483/10
 2483/12 2483/17 2490/11 2490/20
 2512/3 2512/7 2512/7 2519/9 2519/10
 2549/14
She'll [1] 2490/12
she's [5] 2472/10 2490/11 2490/12
 2490/18 2560/22
sheet [3] 2390/16 2396/1 2406/18
shift [10] 2388/22 2418/10 2496/6
 2500/23 2500/24 2500/24 2500/25
 2506/21 2524/24 2551/12
shifts [1] 2509/9
short [5] 2405/14 2522/15 2529/15
 2582/19 2583/4
shorten [1] 2394/14
shortened [1] 2394/15
shot [1] 2528/4
should [24] 2384/22 2405/13 2413/8
 2429/7 2444/12 2445/11 2445/21
 2446/4 2446/12 2488/15 2528/5
 2532/6 2532/7 2534/4 2540/24
 2566/14 2571/20 2573/24 2579/25
 2580/1 2580/3 2580/10 2581/10
 2585/10
show [21] 2383/13 2408/11 2415/17
 2416/9 2419/21 2423/20 2423/21
 2424/23 2430/7 2448/20 2448/21
 2452/20 2458/7 2462/23 2469/2
 2488/8 2514/16 2531/8 2547/3
 2551/15 2551/19
showed [6] 2414/4 2416/8 2420/12
 2420/21 2428/24 2459/12
showing [5] 2418/24 2422/15 2426/14

2557/9 2563/23
shown [5] 2411/6 2453/12 2459/21
 2469/2 2528/2
shows [14] 2390/16 2417/16 2417/25
 2418/13 2418/20 2434/24 2435/3
 2438/23 2454/7 2455/4 2456/12
 2482/20 2527/17 2551/22
shrug [1] 2517/6
sic [1] 2445/11
side [6] 2454/25 2455/1 2518/16
 2527/5 2567/25 2568/16
sidebar [1] 2469/10
sign [8] 2464/14 2487/22 2487/23
 2488/11 2488/24 2534/22 2538/23
 2580/8
signal [4] 2434/18 2436/7 2436/10
 2484/1
signaled [2] 2436/6 2483/25
signaling [3] 2483/19 2483/21
 2483/21
signature [11] 2486/25 2487/8
 2488/15 2539/3 2546/1 2581/24
 2582/2 2587/11 2587/11 2587/12
 2587/15
signatures [4] 2538/18 2538/21
 2538/25 2545/22
signed [4] 2402/20 2464/11 2581/5
 2587/12
signing [3] 2486/17 2488/1 2587/8
signs [1] 2486/20
silently [1] 2423/25
similar [5] 2412/7 2435/5 2435/17
 2447/3 2546/25
simple [2] 2520/2 2520/25
simply [4] 2484/9 2572/3 2572/12
 2572/13
simultaneously [1] 2576/23
since [4] 2397/1 2431/24 2504/22
 2508/14
single [3] 2413/11 2438/5 2451/14
sir [7] 2472/5 2504/20 2504/21
 2549/20 2557/4 2566/10 2566/21
sit [2] 2552/9 2578/16
sit and [1] 2552/9
sits [1] 2419/15
sitting [7] 2399/6 2401/23 2498/4
 2508/20 2524/25 2565/25 2566/8
situation [4] 2413/3 2413/20 2515/6
 2519/24
six [11] 2403/15 2403/17 2454/23
 2487/2 2500/17 2507/13 2557/22
 2573/10 2573/16 2574/23 2580/10
six-month [1] 2454/23
six-pack [1] 2487/2
six-week [1] 2507/13
skill [2] 2451/17 2537/15
skill-set [1] 2537/15
skills [4] 2413/7 2451/17 2453/3
 2453/13
skis [1] 2498/12
sleep [4] 2406/10 2406/14 2502/22
 2503/5
sleeplessness [1] 2502/19
slipped [1] 2406/14
slower [2] 2433/14 2449/20
slowly [1] 2433/15
small [4] 2461/3 2505/7 2506/18

2546/14
smaller [1] 2394/20
smarter [1] 2495/16
Smith [3] 2549/7 2549/9 2549/12
smoking [1] 2414/14
Sneezing [1] 2534/18
so [264]
soccer [5] 2491/18 2491/18 2491/19
 2491/25 2511/21
some [82] 2376/16 2380/13 2381/6
 2389/4 2393/1 2396/20 2397/10
 2397/14 2399/22 2401/17 2402/8
 2402/9 2402/18 2402/20 2412/12
 2416/8 2417/1 2420/12 2421/13
 2421/17 2436/24 2437/3 2447/20
 2451/14 2451/15 2455/8 2457/13
 2464/10 2472/19 2477/18 2478/25
 2483/17 2494/20 2495/18 2496/3
 2498/20 2505/17 2509/9 2509/12
 2509/13 2509/19 2510/2 2511/5
 2511/16 2512/1 2516/1 2518/8
 2518/18 2520/4 2521/2 2521/12
 2523/18 2529/12 2532/17 2532/20
 2534/13 2534/14 2535/19 2537/23
 2538/18 2540/7 2540/12 2540/13
 2540/18 2542/18 2544/1 2545/1
 2557/21 2563/5 2563/17 2566/13
 2567/9 2569/23 2570/23 2571/17
 2571/25 2574/18 2576/12 2577/8
 2584/3 2585/14 2586/7
somebody [13] 2405/18 2413/17
 2420/13 2446/8 2463/9 2480/10
 2480/22 2514/7 2514/12 2522/25
 2560/2 2565/19 2567/11
someone [22] 2417/19 2430/13
 2430/14 2430/14 2440/11 2444/17
 2447/2 2459/5 2467/15 2468/21
 2480/7 2509/18 2511/19 2512/21
 2513/22 2519/16 2520/1 2523/19
 2528/9 2536/12 2562/6 2566/5
someone's [2] 2462/12 2528/6
something [37] 2383/13 2384/9
 2387/14 2388/1 2388/13 2388/15
 2391/20 2402/12 2447/18 2455/11
 2461/4 2474/16 2479/21 2481/14
 2483/18 2484/4 2496/1 2498/8
 2500/24 2511/21 2515/14 2515/15
 2516/25 2522/12 2528/8 2539/16
 2540/15 2546/25 2550/9 2550/11
 2552/18 2557/7 2557/19 2561/19
 2562/13 2578/13 2578/14
sometime [6] 2379/9 2443/22 2493/23
 2507/6 2510/16 2551/25
sometimes [11] 2462/3 2462/22
 2479/7 2479/8 2487/2 2503/1 2503/1
 2506/21 2506/22 2528/10 2552/9
somewhere [6] 2404/7 2430/22
 2459/4 2468/19 2523/9 2560/24
soon [1] 2520/10
sorry [33] 2399/17 2418/4 2467/3
 2467/23 2469/16 2469/16 2483/20
 2499/16 2500/18 2504/4 2506/9
 2514/15 2525/11 2525/23 2526/4
 2530/9 2530/9 2534/20 2537/2 2538/7
 2540/5 2542/16 2554/25 2555/14
 2557/3 2557/3 2561/7 2562/14 2563/4
 2566/16 2567/2 2584/1 2585/10

S

sort [14] 2381/24 2386/18 2392/12 2401/25 2458/13 2499/24 2500/15 2502/24 2507/11 2513/6 2513/13 2516/9 2522/17 2529/2

sound [1] 2429/19

sounded [3] 2412/2 2525/15 2525/15

sounds [6] 2412/7 2441/10 2448/5 2448/7 2451/11 2499/25

south [1] 2525/25

southbound [1] 2436/7

southwest [2] 2526/3 2527/5

speak [11] 2448/1 2480/8 2497/16 2497/20 2497/21 2511/14 2513/9 2522/2 2522/5 2528/14 2529/8

speaking [5] 2393/18 2482/15 2482/17 2511/17 2521/2

specific [8] 2389/11 2501/9 2521/15 2531/22 2534/13 2555/12 2562/17 2565/5

specifically [6] 2387/19 2442/23 2511/17 2522/11 2534/5 2571/20

specifics [1] 2386/9

speculate [2] 2562/6 2566/6

speculated [3] 2508/18 2562/5 2562/7

speculation [3] 2508/18 2561/19 2562/2

speculative [2] 2562/8 2562/12

sped [2] 2479/23 2484/6

speech [23] 2426/17 2492/13 2510/4 2510/6 2510/10 2559/18 2571/20 2571/24 2572/7 2572/24 2573/3 2573/4 2573/8 2573/9 2573/21 2573/22 2574/5 2574/13 2574/20 2575/1 2575/1 2577/21 2578/1

speeches [2] 2497/25 2498/4

speed [2] 2470/12 2561/2

speeding [3] 2414/5 2414/6 2414/7

spell [2] 2489/20 2504/24

Spencer [25] 2456/19 2457/4 2457/20 2460/2 2460/16 2525/7 2525/8 2531/10 2550/5 2550/7 2550/9 2550/17 2550/25 2551/3 2551/13 2554/22 2554/24 2555/3 2555/7 2556/8 2556/14 2560/18 2561/3 2561/10 2561/12

spent [2] 2413/11 2427/25

split [5] 2567/6 2567/9 2567/11 2568/24 2569/1

spoke [6] 2482/16 2494/17 2494/20 2510/5 2529/24 2559/18

spray [10] 2412/20 2415/2 2415/14 2415/21 2415/25 2416/3 2416/4 2416/7 2418/5 2418/6

spraying [2] 2413/6 2414/14

spring [1] 2521/4

stacked [1] 2476/10

staff [3] 2391/15 2424/9 2506/18

stamps [1] 2377/23

stand [8] 2376/5 2387/5 2387/14 2423/2 2453/23 2542/19 2544/12 2565/25

standard [1] 2449/11

standards [3] 2382/3 2429/3 2507/14

standing [2] 2527/4 2527/6

start [21] 2378/25 2399/17 2411/17 2416/21 2420/24 2421/21 2423/25

2425/8 2432/16 2433/3 2433/15 2435/1 2500/18 2506/13 2509/9 2513/5 2546/9 2550/3 2567/22 2567/23 2568/10

started [20] 2399/19 2421/18 2421/19 2485/5 2494/9 2494/23 2495/3 2499/9 2500/15 2500/17 2500/20 2501/1 2502/16 2503/15 2505/13 2506/15 2507/1 2512/24 2521/6 2532/7

starting [8] 2389/22 2424/3 2450/16 2476/3 2491/7 2492/9 2492/11 2544/2

starts [1] 2412/13

state [11] 2393/23 2398/6 2408/25 2423/22 2489/19 2504/24 2512/5 2514/13 2519/17 2556/10 2579/23

stated [2] 2401/12 2513/24

statement [19] 2398/16 2401/1 2401/9 2402/21 2404/18 2404/21 2405/9 2405/11 2406/7 2406/8 2423/21 2441/18 2477/4 2482/5 2491/4 2518/12 2533/8 2535/21 2579/2

statements [6] 2399/22 2404/15 2443/4 2455/9 2534/24 2535/1

states [5] 2373/1 2373/16 2374/20 2440/19 2506/8

static [1] 2524/23

stating [2] 2445/12 2572/18

station [3] 2506/12 2528/18 2528/19

stationed [1] 2506/7

statistics [9] 2416/8 2416/16 2416/18 2417/18 2417/21 2418/22 2418/24 2419/11 2471/23

stats [3] 2419/21 2419/23 2420/4

statute [1] 2463/18

stay [6] 2503/2 2524/3 2534/15 2542/19 2571/14 2571/14

stealing [3] 2429/16 2430/6 2430/14

steered [1] 2518/16

stenographic [1] 2587/9

step [7] 2472/5 2472/21 2489/11 2533/12 2533/12 2543/13 2566/21

steps [1] 2520/2

steward [4] 2377/7 2410/14 2455/9 2480/2

Stewart [1] 2448/19

stick [1] 2486/15

sticker [5] 2581/18 2581/20 2582/5 2582/8 2582/9

stickers [1] 2581/19

still [13] 2383/15 2393/22 2394/22 2399/6 2414/14 2422/5 2456/12 2458/24 2519/25 2527/12 2527/12 2552/19 2579/13

stimulating [1] 2571/13

stipulate [6] 2578/25 2584/5 2584/10 2584/12 2584/16 2585/8

stipulated [5] 2489/25 2490/2 2490/14 2570/4 2585/17

stipulation [5] 2584/10 2584/25 2585/3 2585/6 2586/1

stood [2] 2469/23 2533/14

stop [40] 2387/1 2401/18 2403/22 2405/1 2405/3 2421/24 2422/15 2422/15 2433/12 2433/24 2434/12 2434/14 2438/5 2438/16 2438/17 2439/1 2439/6 2439/6 2439/19 2439/23 2440/3 2440/6 2440/10

2474/4 2474/9 2476/17 2477/9 2478/10 2479/5 2479/8 2481/9 2483/4 2485/15 2486/15 2518/22 2520/10 2521/23 2524/15 2544/21 2559/25

stopped [11] 2403/24 2403/25 2404/8 2420/13 2421/19 2434/16 2435/4 2439/11 2439/13 2477/17 2524/19

stopping [2] 2420/20 2439/4

stops [18] 2404/23 2422/4 2438/4 2438/8 2438/11 2438/12 2438/12 2438/18 2438/21 2438/24 2439/10 2439/15 2439/18 2440/2 2440/4 2440/5 2456/3 2559/24

stored [2] 2433/11 2433/23

straight [3] 2475/2 2475/8 2478/16

straightened [1] 2458/15

street [15] 2408/7 2436/5 2456/21 2474/20 2475/15 2476/17 2478/7 2478/16 2480/14 2484/10 2484/13 2484/22 2484/23 2484/25 2527/4

stress [3] 2451/15 2451/15 2518/1

stressed [1] 2575/18

strike [4] 2433/14 2492/2 2559/9 2571/17

strong [2] 2447/8 2447/24

structured [1] 2377/11

student [9] 2403/21 2404/8 2421/17 2473/18 2491/21 2491/23 2509/15 2510/3 2511/9

student-run [1] 2511/9

students [1] 2510/3

stuff [18] 2386/7 2391/24 2392/9 2396/20 2397/10 2400/19 2406/13 2414/2 2426/15 2430/2 2437/11 2441/17 2453/25 2460/23 2462/12 2471/9 2521/6 2521/9

subduties [1] 2506/4

subject [5] 2418/18 2488/1 2536/8 2537/13 2575/6

subjects [2] 2418/1 2450/25

submission [2] 2392/2 2393/24

submit [11] 2381/16 2383/19 2395/2 2407/12 2411/2 2431/25 2432/4 2432/21 2576/24 2577/6 2586/4

submitted [12] 2381/10 2381/11 2381/20 2381/21 2382/6 2382/17 2383/8 2396/4 2436/24 2437/16 2441/1 2572/17

submitting [6] 2391/16 2391/18 2391/24 2444/18 2521/24 2575/21

subpart [1] 2580/10

subsequent [1] 2574/25

substantive [1] 2485/14

sued [1] 2393/12

suggest [2] 2446/22 2448/7

suggestions [1] 2540/7

suit [1] 2498/12

Suite [2] 2374/5 2374/9

summaries [3] 2406/22 2406/25 2447/20

summarized [1] 2397/10

summarizes [1] 2396/20

summary [2] 2439/21 2454/23

summer [1] 2521/5

superfluous [1] 2540/13

superior [1] 2573/5

supervise [1] 2513/8

S

supervising [2] 2387/11 2516/8
supervision [1] 2454/11
supervisor [14] 2411/3 2466/3 2501/4
 2509/13 2509/17 2509/17 2512/25
 2513/6 2513/9 2513/13 2513/16
 2516/17 2520/3 2520/15
supervisors [5] 2399/1 2451/4 2454/9
 2454/10 2504/3
support [4] 2450/1 2506/18 2526/25
 2535/13
supporting [3] 2406/19 2447/8 2453/5
supportive [1] 2497/3
supposed [10] 2388/12 2394/19
 2404/23 2419/4 2419/6 2419/8
 2428/25 2439/19 2466/3 2487/5
supposedly [1] 2431/3
sure [32] 2391/25 2397/25 2401/21
 2415/19 2422/5 2440/7 2459/17
 2460/7 2460/25 2472/10 2510/17
 2525/19 2551/17 2551/19 2553/20
 2554/4 2555/16 2556/10 2556/13
 2556/13 2556/21 2557/18 2561/21
 2562/4 2563/8 2563/10 2563/20
 2563/23 2565/21 2568/25 2575/16
 2579/16
surmised [2] 2523/21 2559/12
surprised [3] 2493/5 2495/19 2582/13
surprising [1] 2558/7
surrounding [1] 2572/25
survey [1] 2450/3
suspect [2] 2411/6 2411/7
suspension [1] 2425/14
suspicious [2] 2386/21 2434/17
sustained [2] 2438/20 2456/17
SUV [1] 2474/23
SW [2] 2374/4 2374/21
swap [1] 2582/4
swing [1] 2500/24
switch [2] 2543/2 2577/15
switched [1] 2500/23
switches [1] 2463/1
sworn [5] 2376/10 2473/3 2489/16
 2504/18 2510/13
system [8] 2400/4 2404/4 2404/4
 2406/3 2419/15 2434/24 2435/3
 2468/8

T

T-O-B-I-A-S [1] 2489/21
Tacoma [1] 2572/10
tactical [2] 2451/17 2528/12
tactically [1] 2380/11
tactics [1] 2507/16
tags [11] 2434/17 2475/25 2476/3
 2476/5 2476/7 2476/10 2477/15
 2477/19 2480/11 2480/12 2480/19
take [56] 2380/8 2388/10 2392/22
 2396/24 2399/14 2401/6 2409/14
 2409/18 2409/19 2425/16 2436/22
 2442/22 2451/6 2453/19 2453/24
 2454/1 2456/4 2462/11 2464/2 2470/9
 2470/17 2473/25 2483/24 2486/7
 2488/25 2496/25 2497/1 2497/2
 2511/23 2513/6 2518/6 2518/24
 2518/25 2519/8 2520/8 2520/13
 2522/19 2536/25 2540/16 2540/20

2540/24 2541/18 2543/13 2544/4
 2544/7 2553/20 2568/4 2571/6 2575/5
 2575/11 2576/12 2577/9 2577/20
 2578/22 2582/10 2582/15
taken [10] 2398/24 2409/24 2460/9
 2470/22 2491/2 2517/23 2544/8
 2560/22 2571/15 2587/9
takes [5] 2528/10 2546/13 2568/6
 2568/7 2568/11
taking [8] 2488/18 2496/21 2503/23
 2517/13 2521/7 2526/19 2527/18
 2567/8
talk [51] 2384/12 2387/14 2388/4
 2388/10 2411/5 2420/12 2422/24
 2423/1 2424/6 2426/16 2429/13
 2442/1 2442/13 2444/6 2444/20
 2445/21 2446/4 2447/15 2448/14
 2448/16 2455/5 2456/19 2457/1
 2457/9 2459/13 2461/21 2463/2
 2464/15 2480/2 2480/5 2492/17
 2492/17 2492/22 2494/4 2496/21
 2508/24 2512/1 2515/8 2515/9 2525/7
 2528/25 2531/2 2535/23 2548/2
 2548/8 2549/10 2549/16 2579/7
 2579/15 2583/2 2584/19
talked [36] 2382/18 2386/10 2394/9
 2400/22 2401/4 2406/1 2406/5 2408/8
 2408/20 2418/7 2426/14 2441/6
 2444/6 2458/23 2459/11 2460/5
 2468/25 2485/23 2492/13 2498/7
 2498/7 2510/6 2520/12 2524/19
 2528/16 2528/22 2545/11 2546/9
 2547/1 2549/6 2549/12 2551/2
 2551/10 2556/16 2567/21 2582/25
talking [23] 2376/16 2377/16 2382/22
 2384/22 2391/23 2392/7 2426/24
 2427/2 2427/2 2431/6 2439/18 2440/5
 2444/21 2445/20 2445/23 2446/5
 2460/19 2462/25 2513/18 2550/25
 2560/18 2561/8 2561/9
talks [2] 2380/6 2407/18
tampered [1] 2434/18
tape [5] 2407/16 2407/19 2407/20
 2487/4 2566/11
taped [1] 2542/15
tardiness [1] 2451/2
targeting [2] 2440/11 2503/11
Tase [1] 2498/8
Taser [6] 2498/8 2509/14 2509/22
 2510/19 2512/16 2559/18
Tasers [5] 2492/14 2510/1 2510/5
 2517/25 2535/15
tasked [1] 2509/8
tasking [2] 2451/13 2451/18
taxi [1] 2519/21
teaching [1] 2506/5
Teamwork [1] 2451/20
tell [71] 2376/21 2382/12 2383/23
 2384/8 2384/19 2386/2 2387/6
 2391/14 2392/24 2401/7 2401/18
 2403/17 2408/4 2412/6 2413/13
 2435/11 2435/22 2461/25 2468/10
 2468/12 2473/16 2473/22 2474/11
 2474/17 2474/18 2476/15 2476/22
 2477/3 2477/14 2477/25 2478/14
 2482/8 2482/11 2484/16 2491/15
 2492/25 2499/24 2505/10 2505/20

2506/17 2506/24 2509/21 2510/18
 2512/20 2513/13 2515/5 2516/8
 2516/19 2518/11 2522/7 2523/3
 2524/18 2524/20 2527/1 2527/9
 2529/8 2529/11 2531/22 2532/9
 2533/4 2533/22 2534/13 2538/25
 2542/23 2548/5 2548/18 2548/25
 2548/25 2552/12 2564/4 2584/19
tell-everything [1] 2499/24
telling [16] 2385/10 2387/1 2387/8
 2401/22 2408/22 2413/12 2426/25
 2431/18 2436/23 2441/20 2476/25
 2477/6 2478/23 2532/22 2534/6
 2548/18
tells [1] 2566/5
ten [2] 2515/13 2583/5
tend [1] 2495/16
tends [1] 2405/13
tent [1] 2523/7
tentative [12] 2569/13 2569/16
 2569/24 2570/7 2570/19 2570/20
 2571/25 2572/2 2573/24 2575/9
 2575/11 2577/15
tentatively [3] 2572/16 2572/23
 2572/23
term [2] 2504/6 2520/23
terminated [6] 2396/17 2444/18
 2446/3 2447/25 2470/23 2502/10
termination [7] 2426/1 2426/8 2428/9
 2428/10 2443/24 2444/2 2572/21
terms [3] 2381/2 2501/24 2568/14
test [6] 2429/20 2430/14 2478/18
 2479/22 2484/4 2578/11
testified [37] 2376/10 2409/6 2415/20
 2420/6 2420/9 2421/25 2422/18
 2427/6 2427/13 2427/16 2430/17
 2431/21 2437/8 2443/22 2444/3
 2444/8 2455/6 2456/19 2457/2 2457/6
 2460/3 2461/4 2473/3 2480/1 2480/23
 2480/25 2491/11 2501/10 2504/18
 2504/22 2514/7 2514/12 2552/15
 2559/17 2561/5 2561/22 2585/9
testify [5] 2419/24 2427/18 2437/10
 2539/2 2584/6
testifying [6] 2422/17 2514/7 2514/11
 2561/2 2561/12 2585/23
testimony [20] 2375/14 2381/6
 2388/21 2413/17 2421/23 2422/1
 2423/13 2423/16 2424/7 2441/10
 2456/6 2456/13 2470/13 2472/20
 2489/15 2489/16 2489/25 2491/10
 2513/25 2521/16
than [22] 2401/14 2412/20 2418/17
 2441/3 2444/1 2445/16 2454/19
 2454/20 2456/14 2456/22 2463/12
 2474/4 2494/13 2495/16 2514/19
 2514/21 2514/23 2515/6 2516/6
 2551/11 2561/1 2579/18
thank [46] 2377/21 2378/22 2388/19
 2395/18 2409/12 2409/22 2412/10
 2412/14 2425/6 2433/6 2448/22
 2452/12 2458/3 2469/7 2471/16
 2472/5 2472/7 2473/5 2473/12
 2473/16 2479/14 2485/18 2486/4
 2489/3 2489/18 2491/1 2504/10
 2504/11 2504/20 2505/2 2536/21
 2542/12 2544/11 2544/15 2547/8

<p>T</p> <p>thank... [11] 2549/20 2552/2 2553/8 2553/10 2553/14 2554/9 2566/21 2568/19 2571/22 2579/20 2581/22</p> <p>that [1116]</p> <p>that's [159]</p> <p>the Sergeant [1] 2583/14</p> <p>theft [5] 2392/16 2430/18 2430/23 2431/17 2470/23</p> <p>their [16] 2392/14 2399/15 2407/5 2439/10 2439/13 2471/8 2471/25 2495/15 2501/18 2507/5 2515/17 2519/17 2528/20 2552/10 2575/20 2578/17</p> <p>them [57] 2381/16 2381/17 2381/19 2386/8 2390/24 2400/1 2400/8 2408/16 2417/21 2418/23 2420/22 2427/17 2430/16 2432/6 2432/8 2432/9 2432/14 2444/16 2448/12 2452/6 2453/8 2453/23 2455/3 2457/18 2463/21 2476/4 2476/4 2480/5 2480/8 2487/13 2487/20 2492/15 2497/8 2513/16 2513/20 2513/21 2513/23 2513/25 2514/16 2515/1 2518/21 2518/25 2518/25 2519/19 2520/25 2530/16 2535/12 2540/13 2557/6 2564/25 2565/2 2576/11 2576/12 2578/6 2578/16 2579/6 2584/8</p> <p>themselves [1] 2574/7</p> <p>then [73] 2380/14 2381/17 2384/21 2384/24 2384/25 2388/14 2391/1 2399/9 2400/14 2400/23 2400/24 2404/2 2405/14 2405/16 2406/6 2424/14 2424/14 2434/18 2435/7 2435/18 2436/3 2436/6 2436/9 2443/6 2447/20 2450/6 2450/19 2462/21 2463/1 2471/1 2475/2 2475/9 2483/19 2483/21 2483/22 2484/1 2485/1 2488/7 2488/24 2489/3 2489/19 2490/24 2494/25 2495/7 2499/16 2501/1 2501/18 2505/13 2507/1 2507/4 2507/9 2509/25 2511/20 2520/12 2525/11 2527/7 2527/8 2527/21 2528/3 2542/11 2555/18 2568/3 2571/7 2576/13 2579/24 2580/2 2580/4 2580/16 2581/2 2582/13 2585/14 2586/1 2586/3</p> <p>then-director [1] 2509/25</p> <p>theory [2] 2478/18 2479/22</p> <p>there [167]</p> <p>there's [50] 2381/6 2382/10 2383/11 2383/11 2383/12 2386/25 2388/21 2389/18 2390/5 2390/9 2390/15 2390/21 2390/22 2419/10 2421/13 2421/14 2422/12 2422/12 2427/3 2430/1 2461/8 2462/5 2464/11 2466/15 2468/22 2482/19 2482/25 2484/23 2512/1 2515/6 2518/8 2518/17 2522/23 2525/25 2525/25 2527/11 2527/25 2528/5 2534/6 2534/19 2537/5 2538/18 2540/22 2553/3 2553/24 2561/2 2567/19 2576/17 2582/23 2586/6</p> <p>thereafter [1] 2507/6</p> <p>therefore [2] 2462/7 2570/1</p> <p>these [51] 2376/22 2380/14 2382/11</p>	<p>2387/1 2390/18 2390/23 2400/3 2406/25 2411/1 2419/6 2423/3 2423/10 2427/20 2428/24 2436/21 2437/3 2437/20 2445/19 2451/14 2452/17 2454/24 2455/25 2460/2 2460/4 2463/22 2466/9 2467/13 2490/14 2511/8 2512/15 2514/25 2515/23 2518/22 2522/13 2528/6 2529/16 2530/16 2540/3 2540/6 2541/21 2558/23 2570/11 2572/1 2572/2 2573/3 2575/8 2576/22 2577/15 2579/18 2580/25 2585/11</p> <p>they [71] 2380/11 2380/12 2381/20 2392/13 2392/14 2399/15 2404/6 2404/22 2407/5 2413/18 2417/21 2419/24 2424/21 2424/22 2424/24 2424/25 2427/18 2429/9 2430/16 2432/8 2432/9 2432/12 2435/24 2436/18 2437/17 2445/22 2446/2 2446/2 2446/12 2452/6 2457/15 2457/16 2457/16 2457/17 2460/6 2462/4 2476/5 2479/3 2480/23 2503/11 2507/13 2511/6 2511/7 2511/17 2511/18 2511/20 2514/16 2515/9 2515/9 2515/9 2515/9 2522/1 2528/1 2528/4 2528/20 2532/2 2540/13 2541/7 2541/20 2550/19 2552/10 2560/21 2562/2 2562/6 2562/17 2567/25 2568/16 2575/22 2578/10 2580/19 2584/10</p> <p>they'll [1] 2523/10</p> <p>they're [16] 2390/25 2391/3 2392/14 2461/3 2464/13 2487/19 2488/5 2513/19 2518/7 2518/17 2518/22 2519/18 2519/19 2528/6 2571/2 2583/3</p> <p>they've [1] 2568/3</p> <p>thing [19] 2386/5 2396/18 2400/7 2401/25 2402/11 2413/12 2430/21 2432/8 2439/25 2440/14 2448/8 2453/21 2468/15 2479/2 2484/1 2515/11 2517/5 2517/8 2575/22</p> <p>things [36] 2385/25 2387/9 2399/23 2401/24 2402/9 2402/10 2402/15 2402/20 2407/15 2410/12 2419/3 2419/7 2419/9 2429/24 2430/22 2437/3 2441/16 2454/22 2456/1 2463/4 2470/12 2515/12 2515/13 2516/12 2517/6 2517/12 2519/20 2519/23 2521/15 2525/20 2527/23 2528/5 2540/7 2548/3 2556/24 2569/14</p> <p>think [90] 2377/4 2381/1 2382/1 2386/23 2388/15 2392/15 2396/18 2399/20 2405/12 2406/24 2413/8 2421/13 2422/24 2444/12 2444/14 2444/16 2445/11 2445/17 2452/3 2453/1 2457/22 2462/13 2463/22 2472/16 2476/16 2477/13 2478/19 2479/5 2481/24 2484/14 2486/14 2488/5 2492/1 2492/1 2492/15 2493/11 2494/1 2494/16 2494/22 2495/13 2495/13 2495/14 2495/16 2496/9 2497/1 2498/7 2498/7 2498/20 2498/22 2498/23 2500/4 2500/7 2500/9 2500/10 2500/11 2500/20 2501/1 2501/6 2501/17 2502/12</p>	<p>2503/13 2504/5 2513/14 2513/24 2514/16 2515/19 2516/1 2518/13 2534/4 2535/2 2535/20 2543/15 2543/16 2543/23 2544/21 2560/20 2565/24 2567/7 2567/14 2567/15 2567/19 2569/3 2569/10 2570/5 2576/17 2577/16 2578/10 2578/20 2582/19 2584/4</p> <p>thinking [2] 2531/3 2543/22</p> <p>thinks [2] 2413/5 2522/13</p> <p>third [5] 2374/21 2437/23 2453/1 2545/9 2545/20</p> <p>this [344]</p> <p>those [55] 2378/19 2380/10 2381/17 2381/21 2382/5 2389/25 2390/5 2400/4 2400/18 2402/15 2410/21 2413/9 2414/24 2418/4 2419/14 2424/20 2424/23 2427/12 2428/10 2429/24 2437/10 2443/4 2444/6 2444/6 2453/3 2453/22 2464/25 2467/24 2468/10 2471/6 2476/10 2476/10 2486/23 2488/8 2494/13 2498/24 2501/13 2508/5 2508/7 2509/6 2511/22 2532/21 2533/22 2535/11 2538/19 2538/21 2538/25 2540/10 2545/21 2570/3 2570/7 2571/2 2571/25 2580/22 2581/7</p> <p>though [8] 2406/12 2406/13 2422/14 2457/15 2559/15 2569/5 2576/21 2583/1</p> <p>thought [25] 2394/2 2404/25 2407/10 2426/14 2441/11 2443/6 2443/7 2476/23 2477/6 2481/19 2481/22 2487/22 2493/2 2493/18 2495/11 2501/18 2503/11 2511/17 2515/9 2515/9 2525/17 2550/5 2550/7 2550/11 2575/13</p> <p>thoughts [14] 2492/19 2492/22 2518/11 2569/14 2569/17 2570/5 2570/7 2570/8 2570/17 2571/25 2572/2 2575/9 2577/15 2578/17</p> <p>thousand [3] 2417/24 2464/6 2517/20</p> <p>thousand-plus [1] 2464/6</p> <p>threat [1] 2522/18</p> <p>threaten [1] 2383/21</p> <p>three [38] 2379/14 2391/2 2400/5 2425/14 2429/24 2452/1 2452/3 2452/16 2452/22 2453/18 2453/25 2460/19 2460/23 2461/6 2461/7 2461/8 2461/22 2461/24 2462/2 2462/4 2462/5 2462/7 2462/11 2462/14 2462/15 2462/17 2462/20 2462/21 2462/23 2463/1 2471/6 2472/17 2515/12 2526/13 2526/16 2545/5 2557/4 2583/8</p> <p>three radios [1] 2462/5</p> <p>three-day [1] 2425/14</p> <p>Three-five-zero [1] 2379/14</p> <p>through [39] 2376/20 2378/19 2390/10 2393/4 2397/9 2398/6 2400/4 2400/8 2409/15 2410/10 2410/11 2413/4 2413/11 2413/13 2414/3 2419/11 2421/14 2422/22 2436/8 2440/15 2449/7 2451/13 2451/19 2454/22 2454/25 2455/18 2468/10 2468/15 2471/11 2492/10 2502/18 2507/4 2507/11 2507/14 2522/1</p>
--	---	--

T
through... [4] 2528/5 2540/1 2545/10 2569/2
throughout [3] 2390/14 2453/10 2527/20
Thursday [3] 2446/21 2568/10 2568/15
tied [2] 2399/22 2410/15
time [136]
timelines [1] 2402/17
times [14] 2383/8 2400/6 2415/9 2415/14 2415/20 2415/24 2416/2 2416/5 2487/5 2516/2 2517/18 2517/19 2545/3 2561/22
timing [2] 2393/8 2568/14
tired [1] 2408/18
titled [1] 2390/13
Tobias [7] 2489/8 2489/14 2489/21 2490/6 2490/7 2490/12 2490/24
today [17] 2377/17 2393/22 2399/6 2441/10 2467/9 2468/3 2473/16 2478/20 2486/22 2487/20 2497/15 2498/4 2508/20 2518/8 2521/16 2565/25 2567/8
together [24] 2379/8 2394/1 2394/6 2398/14 2409/4 2416/25 2417/2 2417/7 2427/21 2427/25 2432/25 2443/11 2447/7 2447/17 2447/24 2492/7 2506/19 2515/8 2521/10 2570/13 2571/1 2576/14 2578/6 2578/21
token [1] 2569/11
told [41] 2382/18 2384/24 2386/4 2386/6 2387/19 2387/25 2388/1 2398/12 2400/23 2400/24 2403/12 2405/1 2408/10 2408/22 2409/2 2441/12 2441/16 2453/24 2455/21 2460/22 2476/16 2478/15 2483/6 2483/8 2483/9 2492/16 2498/23 2498/25 2499/1 2508/10 2508/12 2508/16 2508/19 2509/16 2511/1 2524/21 2533/5 2534/15 2548/7 2559/13 2561/14
tomorrow [24] 2445/15 2567/7 2567/14 2567/17 2567/20 2568/1 2568/18 2569/3 2569/6 2569/12 2570/8 2570/15 2570/16 2575/14 2575/18 2575/24 2582/14 2583/24 2584/1 2585/1 2585/12 2585/23 2586/6 2586/9
tonight [17] 2487/18 2488/8 2567/7 2567/16 2569/8 2570/16 2570/23 2571/8 2575/13 2576/2 2577/8 2579/8 2579/10 2579/24 2580/17 2586/4 2586/8
too [11] 2383/17 2394/9 2397/5 2397/15 2408/13 2441/11 2444/14 2460/14 2490/22 2514/4 2519/15
took [13] 2389/25 2391/2 2392/20 2406/15 2452/17 2460/4 2511/21 2512/10 2512/25 2525/22 2529/19 2546/4 2575/5
top [5] 2390/9 2396/3 2437/24 2530/8 2537/5
topic [3] 2555/9 2573/25 2575/2
toss [1] 2502/24
tosses [1] 2503/1

total [1] 2545/5
totality [2] 2413/21 2519/24
totally [1] 2463/12
touch [4] 2407/15 2559/1 2573/25 2574/20
toward [1] 2451/3
towards [5] 2443/24 2445/15 2451/4 2453/3 2574/6
town [3] 2505/7 2505/17 2506/7
tracked [1] 2383/14
traffic [36] 2403/22 2404/23 2405/1 2405/3 2408/12 2413/16 2433/12 2433/23 2434/12 2438/4 2438/5 2438/12 2438/12 2438/16 2438/17 2438/17 2438/21 2438/24 2439/1 2439/5 2439/6 2439/10 2439/15 2439/18 2439/19 2439/22 2440/2 2440/3 2440/4 2440/5 2440/6 2456/3 2474/4 2480/11 2559/24 2559/25
train [2] 2518/3 2535/17
trained [1] 2518/9
trainee [1] 2417/21
training [29] 2379/5 2380/7 2380/13 2381/6 2381/23 2381/24 2382/3 2382/4 2382/11 2382/24 2383/19 2411/1 2411/2 2417/20 2420/11 2429/4 2463/24 2464/1 2464/12 2507/12 2507/12 2507/14 2513/19 2519/2 2519/2 2521/18 2521/24 2527/21 2528/2
trainings [2] 2464/10 2464/13
transcript [5] 2373/14 2376/1 2489/9 2587/9 2587/11
transferred [1] 2385/16
transient [1] 2414/19
transition [1] 2579/14
transitioned [1] 2507/17
transitioning [1] 2481/7
transpired [1] 2530/1
transport [5] 2505/16 2518/10 2519/5 2519/12 2520/1
transported [2] 2386/15 2519/4
traveling [1] 2436/7
treated [2] 2453/13 2499/15
trial [12] 2373/13 2423/13 2423/16 2480/23 2480/25 2487/1 2487/5 2487/8 2489/2 2489/24 2586/10 2587/5
trials [1] 2478/6
tried [1] 2502/23
Tripp [1] 2445/9
trips [1] 2503/24
trouble [2] 2513/10 2532/7
truck [1] 2401/23
true [6] 2406/8 2426/9 2482/5 2489/19 2557/21 2587/8
trust [2] 2455/23 2575/18
truth [2] 2532/23 2534/6
try [19] 2378/25 2386/7 2391/21 2410/10 2427/3 2427/10 2480/2 2502/21 2502/21 2503/4 2513/10 2516/24 2517/11 2529/6 2529/6 2529/6 2544/4 2559/22 2575/8
trying [22] 2401/8 2407/18 2409/16 2443/16 2446/15 2470/15 2476/3 2476/4 2477/3 2487/25 2494/7 2494/22 2495/13 2496/9 2498/22

2499/11 2514/25 2521/3 2533/12 2558/9 2567/8 2575/5
turn [12] 2422/3 2436/6 2436/7 2436/9 2436/10 2437/11 2475/12 2484/3 2484/19 2485/2 2502/24 2560/24
turned [22] 2392/19 2412/5 2471/14 2475/2 2475/3 2475/3 2475/9 2475/9 2475/15 2478/16 2478/16 2484/1 2484/13 2484/17 2484/18 2484/18 2484/18 2484/21 2484/21 2484/22 2484/24 2485/1
turning [4] 2403/1 2403/7 2483/19 2483/22
turns [3] 2434/19 2484/20 2503/1
twice [1] 2431/11
two [49] 2378/7 2378/7 2378/9 2378/9 2378/11 2378/12 2378/13 2378/16 2378/16 2378/18 2380/9 2380/10 2390/9 2390/15 2400/14 2411/17 2411/18 2411/19 2412/13 2420/24 2422/20 2424/19 2424/20 2425/22 2432/11 2432/12 2436/2 2448/13 2487/15 2492/7 2496/19 2497/2 2503/6 2506/21 2513/21 2519/1 2525/3 2525/25 2541/22 2552/25 2563/21 2567/5 2570/13 2572/15 2572/17 2575/22 2578/14 2582/24 2583/6
type [2] 2390/1 2530/16

U
U-turn [1] 2422/3
U.S. [1] 2506/3
U.S. Navy [1] 2506/3
Uh [3] 2536/22 2556/15 2565/9
Uh-huh [3] 2536/22 2556/15 2565/9
ultimately [3] 2379/8 2534/2 2546/21
unable [1] 2443/2
unarmed [2] 2439/6 2518/19
unbecoming [1] 2451/5
unchanged [2] 2480/15 2481/5
unclear [1] 2438/10
uncomfortable [1] 2570/12
Uncooperative [2] 2451/2 2451/4
under [10] 2437/16 2450/8 2451/15 2451/15 2452/25 2453/2 2489/25 2539/16 2572/5 2572/7
understand [9] 2478/9 2496/3 2512/18 2521/21 2522/12 2552/8 2557/13 2562/18 2570/20
understanding [8] 2388/14 2392/5 2399/15 2437/17 2480/18 2482/24 2510/5 2551/12
Understood [1] 2487/9
undone [1] 2487/3
unethical [1] 2393/6
unfair [2] 2508/22 2569/13
unfairnesses [1] 2569/7
uniform [2] 2511/19 2581/21
union [9] 2377/2 2377/7 2380/25 2410/14 2410/23 2455/9 2480/2 2507/25 2539/16
UNITED [3] 2373/1 2373/16 2374/20
university [29] 2389/8 2390/14 2392/18 2394/23 2397/11 2439/7 2453/4 2473/19 2473/25 2474/21 2474/22 2474/22 2475/4 2479/3

U

university... [15] 2491/21 2492/18 2493/21 2494/5 2498/1 2498/5 2499/10 2502/17 2503/15 2504/1 2504/7 2505/11 2506/13 2506/25 2508/5

unknown [1] 2434/4

Unlawful [1] 2451/1

unless [7] 2388/13 2388/14 2468/12 2548/23 2579/9 2582/13 2582/23

unquote [1] 2535/19

unreasonable [1] 2438/5

unsafe [6] 2412/21 2413/12 2413/14 2413/19 2413/20 2459/9

unshaven [1] 2401/15

unsuccessfully [1] 2476/4

until [19] 2389/4 2403/24 2403/25 2405/2 2410/18 2430/23 2471/10 2499/18 2524/3 2528/18 2532/6 2536/12 2559/5 2566/5 2569/15 2570/8 2570/11 2575/14 2586/3

untruthful [4] 2392/14 2404/18 2404/20 2405/10

untruthfulness [1] 2399/9

unwarranted [1] 2499/5

UOPD [6] 2399/3 2474/22 2480/14 2480/21 2480/23 2481/7

up [96] 2377/4 2383/18 2387/18 2388/10 2390/9 2391/4 2396/22 2396/24 2397/12 2398/13 2401/22 2403/14 2404/12 2406/6 2410/24 2413/24 2421/22 2422/14 2423/6 2423/12 2423/15 2423/18 2425/1 2430/5 2430/23 2431/4 2432/15 2433/9 2443/19 2444/20 2445/1 2448/9 2448/12 2449/1 2450/15 2450/16 2451/12 2452/8 2453/7 2456/20 2457/3 2457/8 2457/15 2457/23 2458/18 2459/3 2459/9 2459/12 2459/24 2460/16 2461/3 2462/25 2463/3 2466/8 2468/6 2468/12 2470/2 2470/15 2470/17 2476/10 2479/23 2481/12 2484/6 2485/6 2488/9 2503/2 2503/2 2516/23 2517/10 2517/10 2519/1 2521/10 2521/10 2523/24 2523/25 2524/6 2527/18 2527/23 2528/3 2530/16 2532/3 2534/10 2534/11 2535/9 2544/18 2546/13 2550/9 2550/13 2557/7 2558/22 2558/24 2562/5 2563/23 2569/1 2575/8 2576/13

upheld [1] 2397/3

upon [8] 2438/14 2472/16 2544/4 2546/21 2569/25 2571/2 2575/7 2577/13

upset [12] 2496/23 2499/2 2499/3 2522/21 2523/8 2523/13 2523/19 2523/21 2523/22 2524/20 2524/21 2524/22

us [54] 2376/21 2382/12 2383/17 2384/13 2384/19 2386/2 2387/6 2400/18 2401/18 2403/17 2403/19 2408/4 2414/4 2436/23 2468/22 2472/4 2472/21 2473/17 2474/11 2474/17 2474/18 2476/15 2487/22 2505/10 2505/20 2506/17 2506/24 2510/18 2512/20 2513/13 2515/5

2515/11 2516/8 2521/23 2521/24 2522/7 2523/3 2524/18 2524/20 2524/21 2527/11 2527/7 2527/8 2529/8 2529/11 2533/5 2548/5 2548/18 2576/3 2576/22 2577/5 2580/16 2580/21 2585/25

use [13] 2391/21 2403/1 2403/7 2418/6 2426/15 2438/4 2438/7 2440/2 2440/5 2518/18 2536/5 2543/14 2577/22

used [12] 2383/12 2397/12 2402/18 2402/25 2403/6 2415/9 2415/14 2415/21 2415/24 2416/2 2463/9 2479/25

Uses [1] 2451/4

using [4] 2416/4 2416/6 2506/9 2548/23

usual [2] 2398/13 2400/7

usually [4] 2382/4 2390/25 2401/3 2457/23

V

vacation [1] 2410/20

vacations [1] 2546/11

vaguely [1] 2394/11

value [5] 2442/17 2442/20 2443/4 2443/5 2443/5

valued [2] 2442/25 2442/25

vandalism [1] 2389/24

variation [1] 2439/12

variety [1] 2418/18

various [5] 2424/9 2439/8 2441/8 2490/14 2505/17

vehicle [28] 2384/24 2398/24 2403/24 2403/25 2404/1 2406/3 2434/1 2434/15 2434/16 2434/17 2434/24 2434/25 2435/3 2435/4 2435/6 2435/7 2435/8 2435/18 2435/19 2436/13 2439/3 2439/6 2439/13 2475/1 2475/25 2476/1 2478/10 2489/24

vehicle's [1] 2439/3

vehicles [4] 2400/25 2401/1 2438/11 2462/3

verbally [1] 2457/5

verdict [10] 2575/11 2577/9 2577/13 2577/15 2577/20 2577/24 2578/5 2579/11 2579/13 2579/21

verdicts [1] 2575/8

Vergamini [3] 2474/15 2481/13 2481/22

verify [4] 2467/13 2468/14 2576/8 2581/13

verifying [1] 2467/15

version [8] 2438/4 2438/12 2440/2 2440/6 2463/19 2553/24 2580/19 2580/20

versions [2] 2404/25 2439/18

versus [2] 2416/18 2456/21

very [26] 2384/21 2448/5 2448/7 2451/21 2454/4 2472/5 2472/19 2479/24 2483/23 2486/4 2503/21 2504/11 2506/18 2506/18 2513/11 2513/22 2516/10 2516/11 2521/9 2523/8 2548/8 2550/6 2555/1 2568/2 2582/19 2583/4

veteran [1] 2529/4

via [2] 2445/8 2491/10

video [52] 2386/5 2398/23 2400/21 2406/3 2407/22 2407/23 2411/6 2412/8 2412/9 2412/11 2412/15 2412/25 2413/13 2414/4 2414/12 2420/12 2420/20 2420/23 2420/24 2421/2 2421/3 2421/18 2421/21 2422/2 2422/8 2422/20 2433/11 2433/13 2433/13 2433/23 2433/25 2434/20 2434/23 2435/2 2435/8 2435/23 2436/12 2436/18 2457/25 2458/5 2458/16 2458/20 2459/1 2460/18 2474/13 2527/11 2527/17 2528/2 2532/12 2532/15 2532/19 2560/25

videos [17] 2376/16 2376/22 2377/10 2396/11 2400/4 2406/22 2413/11 2414/3 2420/12 2436/21 2447/20 2447/21 2463/8 2525/10 2532/21 2533/6 2533/19

videotape [3] 2482/8 2560/10 2560/13

view [33] 2421/14 2422/10 2422/12 2456/19 2456/23 2457/4 2457/20 2460/2 2460/16 2518/17 2525/7 2525/8 2531/10 2531/20 2532/2 2533/5 2550/5 2550/7 2550/9 2550/17 2550/25 2551/3 2551/13 2554/22 2554/24 2555/3 2555/7 2556/8 2556/14 2560/18 2561/3 2561/10 2561/12

viewed [1] 2405/3

viewing [1] 2491/18

viewpoint [1] 2434/5

violated [3] 2402/20 2438/19 2549/5

violating [2] 2403/10 2403/11

violation [6] 2388/8 2450/25 2480/19 2518/17 2518/18 2535/6

violations [1] 2442/10

visit [2] 2458/4 2576/13

voice [3] 2383/24 2511/15 2525/5

voiced [1] 2534/3

voices [3] 2378/2 2525/6 2542/23

voluntarily [1] 2406/8

W

Waggoner's [1] 2386/12

wait [2] 2526/19 2575/14

waited [1] 2528/18

waiting [2] 2459/3 2526/25

waive [1] 2578/25

wake [1] 2535/9

wake-up [1] 2535/9

walked [4] 2420/21 2457/15 2524/7 2532/6

walking [2] 2517/20 2528/3

wall [1] 2473/7

want [71] 2376/20 2378/19 2385/3 2387/25 2391/7 2393/11 2397/23 2403/18 2405/3 2407/15 2408/13 2409/14 2410/10 2410/11 2413/1 2426/10 2432/16 2451/25 2452/16 2455/5 2460/7 2461/21 2462/19 2463/4 2469/1 2469/9 2486/23 2487/23 2496/1 2496/25 2508/24 2510/21 2512/22 2515/12 2521/15 2522/2 2524/24 2525/7 2541/25 2543/20 2547/3 2553/2 2556/9 2560/22 2563/17 2565/5 2567/6

W

want... [24] 2568/18 2569/6 2569/7 2569/12 2570/10 2570/10 2570/14 2571/14 2574/23 2575/10 2575/11 2575/12 2575/13 2575/17 2575/23 2576/12 2576/13 2576/23 2577/11 2581/12 2584/11 2584/12 2584/16 2585/6

wanted [26] 2386/17 2388/2 2427/7 2427/20 2427/21 2427/23 2439/20 2444/10 2478/12 2479/21 2483/10 2487/22 2493/21 2496/2 2504/8 2512/18 2521/22 2521/23 2521/24 2521/24 2529/5 2540/8 2548/17 2552/2 2555/16 2584/23

wanting [3] 2493/1 2496/6 2496/7

wants [2] 2445/12 2555/12

warden [1] 2505/14

Wardlow [11] 2376/25 2378/4 2380/24 2410/14 2442/14 2442/18 2442/20 2443/4 2533/23 2534/8 2573/17

warning [2] 2405/16 2463/15

warnings [1] 2405/13

warrant [3] 2390/17 2418/7 2418/8

warranted [3] 2499/5 2499/5 2535/4

warrants [3] 2405/15 2405/17 2405/18

Warrior [1] 2476/10

was [670]

was took [1] 2575/5

Washington [6] 2398/6 2493/14 2493/15 2496/17 2496/19 2497/1

wasn't [39] 2383/3 2384/5 2387/7 2392/20 2400/23 2402/23 2402/25 2404/11 2410/18 2410/21 2410/24 2412/5 2419/6 2424/15 2425/25 2426/8 2440/4 2457/12 2462/10 2465/13 2471/3 2484/15 2493/2 2498/9 2503/18 2518/23 2521/7 2523/4 2523/12 2524/6 2524/21 2529/22 2537/13 2548/21 2550/20 2555/16 2558/4 2559/5 2566/3

waste [1] 2573/25

wasting [2] 2420/7 2575/24

watch [19] 2400/3 2400/8 2400/9

2400/21 2400/25 2401/2 2404/4

2412/8 2413/2 2433/10 2433/22

2434/20 2434/23 2435/2 2438/9

2449/24 2457/25 2459/1 2561/1

watched [4] 2411/7 2414/12 2421/21 2436/18

watching [3] 2426/3 2525/10 2543/19

way [32] 2378/19 2396/5 2416/17

2435/7 2435/19 2441/3 2450/16

2467/13 2474/20 2475/19 2477/8

2481/24 2482/1 2484/10 2484/13

2484/22 2513/10 2515/7 2515/18

2515/19 2516/25 2517/12 2518/23

2523/15 2525/15 2535/14 2550/8

2571/1 2578/1 2578/2 2578/3 2585/25

ways [2] 2541/21 2549/1

we [213]

we'll [19] 2378/2 2409/19 2411/17

2433/14 2458/13 2458/14 2472/19

2486/11 2488/25 2516/24 2517/11

2543/11 2544/21 2568/18 2571/7

2579/17 2581/20 2582/10 2583/23

we're [45] 2376/2 2377/16 2385/4

2392/10 2394/12 2425/8 2433/8

2460/7 2460/25 2472/9 2481/14

2486/22 2488/14 2491/7 2492/10

2516/5 2518/3 2518/4 2518/24

2518/24 2520/23 2527/10 2528/1

2535/16 2542/18 2542/23 2544/17

2550/24 2552/11 2561/8 2561/9

2567/16 2567/22 2571/16 2575/24

2579/6 2579/17 2581/2 2582/6 2582/6

2582/14 2583/9 2584/4 2584/7

2584/21

we've [9] 2381/23 2460/11 2525/10

2528/3 2552/18 2558/24 2569/17

2578/20 2584/22

weapon [5] 2412/20 2519/6 2519/21

2558/25 2558/25

weapons [3] 2413/18 2506/5 2559/1

wearing [2] 2386/5 2474/13

wedding [1] 2402/14

Wednesday [1] 2568/15

week [8] 2437/8 2454/21 2474/14

2503/4 2503/6 2507/13 2507/19

2523/6

weekend [2] 2450/2 2474/12

weekly [1] 2454/23

weeks [17] 2380/8 2380/8 2423/2

2424/19 2424/20 2425/22 2428/24

2430/18 2441/6 2443/22 2452/1

2452/3 2452/16 2452/22 2453/18

2453/25 2456/20

weighed [1] 2425/17

well [144]

went [25] 2383/21 2396/8 2410/20

2432/5 2434/9 2437/20 2437/22

2444/7 2496/6 2502/18 2504/1 2506/3

2509/14 2513/24 2516/14 2520/22

2531/21 2533/13 2536/7 2540/1

2540/1 2545/3 2545/10 2552/13

2574/22

were [178]

weren't [3] 2399/14 2402/9 2404/22

what [285]

what's [15] 2396/24 2409/16 2413/4

2433/8 2508/2 2519/18 2524/20

2552/6 2555/22 2558/6 2558/7

2562/10 2562/15 2562/21 2570/1

whatever [6] 2400/24 2450/7 2462/25

2487/4 2569/18 2569/21

whatnot [1] 2546/11

whatsoever [1] 2516/13

when [151]

Whenever [1] 2431/1

where [49] 2384/15 2397/8 2408/7

2408/11 2413/22 2414/4 2419/14

2420/13 2420/21 2428/10 2431/20

2444/16 2456/3 2457/14 2458/24

2460/12 2461/17 2461/20 2469/23

2474/9 2475/12 2485/3 2487/15

2489/24 2491/17 2494/8 2501/10

2505/6 2506/6 2506/9 2507/2 2510/4

2514/15 2517/5 2522/12 2522/24

2524/25 2527/18 2528/11 2529/17

2532/13 2533/10 2533/14 2546/11

2566/11 2567/11 2567/23 2576/21

2577/21

Where did [1] 2475/12

whether [35] 2382/16 2391/4 2394/11

2394/12 2421/24 2429/9 2434/4

2434/6 2434/9 2436/22 2438/11

2441/20 2441/22 2444/9 2445/22

2459/8 2463/16 2470/22 2480/22

2482/6 2484/7 2509/16 2512/1

2532/22 2547/1 2547/15 2559/21

2559/23 2561/17 2565/22 2566/7

2566/13 2574/20 2583/3 2584/5

which [33] 2382/17 2398/15 2400/3

2400/10 2401/16 2402/11 2408/6

2408/6 2435/4 2439/6 2439/10

2439/25 2450/3 2460/23 2462/14

2476/1 2480/19 2484/1 2484/21

2506/2 2518/8 2525/18 2545/8 2555/4

2561/8 2564/20 2566/10 2569/15

2571/24 2573/10 2575/6 2577/5

2577/17

while [24] 2405/14 2409/15 2416/3

2416/16 2419/7 2421/21 2425/11

2430/11 2453/18 2461/3 2472/11

2475/20 2486/7 2494/18 2504/22

2511/19 2521/8 2527/6 2528/1 2528/1

2528/10 2540/20 2555/6 2583/19

whim [1] 2518/4

Whitney [3] 2460/18 2461/20 2462/20

who [55] 2376/24 2376/25 2377/1

2378/3 2382/4 2383/2 2411/7 2413/17

2417/20 2429/8 2437/19 2439/13

2440/11 2447/1 2450/19 2465/25

2466/13 2466/16 2466/17 2468/16

2470/23 2471/1 2471/6 2473/17

2474/8 2479/6 2480/6 2480/10

2481/12 2482/13 2489/8 2494/20

2495/8 2501/20 2501/22 2508/25

2510/7 2510/11 2511/14 2511/25

2512/2 2512/6 2512/22 2519/16

2522/7 2531/12 2537/7 2539/2

2539/21 2549/7 2549/14 2558/24

2558/25 2566/24 2574/6

who's [1] 2520/1

whole [12] 2400/1 2418/18 2437/4

2437/6 2453/10 2453/11 2463/7

2466/15 2468/15 2482/25 2509/22

2515/16

whose [4] 2450/8 2538/25 2542/23

2565/15

why [79] 2380/10 2380/20 2381/15

2383/10 2386/13 2396/14 2399/11

2399/19 2399/22 2402/23 2403/7

2403/19 2404/20 2405/12 2405/15

2405/24 2407/21 2408/16 2417/2

2417/7 2419/10 2427/9 2439/20

2439/21 2441/1 2441/6 2446/11

2462/13 2462/20 2466/2 2470/9

2477/17 2481/24 2482/24 2492/13

2493/16 2494/4 2496/6 2496/25

2498/12 2500/22 2501/16 2508/12

2508/14 2511/23 2512/18 2516/19

2516/21 2516/25 2517/1 2517/12

2518/10 2518/19 2519/14 2520/1

2523/22 2525/14 2526/22 2529/16

2530/16 2531/19 2531/25 2531/25

2535/24 2537/12 2546/4 2548/16

2548/20 2551/19 2561/20 2562/10

2562/15 2566/1 2566/5 2570/13

2578/16 2579/23 2580/16 2583/2

widely [3] 2439/9 2439/14 2439/19

W

widespread [3] 2438/4 2440/2 2440/5
wife [3] 2512/2 2512/6 2560/21
will [40] 2404/5 2409/15 2409/22
 2410/10 2430/22 2433/5 2436/4
 2446/25 2447/11 2462/22 2462/24
 2486/17 2487/19 2489/2 2489/3
 2489/8 2490/24 2497/9 2497/10
 2514/22 2516/10 2520/10 2543/25
 2562/19 2567/20 2568/1 2569/5
 2574/15 2574/17 2575/20 2577/18
 2580/17 2581/12 2583/20 2584/2
 2584/5 2584/25 2585/22 2585/25
 2586/1
Williams [3] 2464/24 2509/25 2510/5
willing [1] 2584/18
winding [1] 2524/7
window [2] 2417/24 2418/17
wings [1] 2517/21
winter [2] 2500/21 2500/22
wisdom [1] 2544/6
within [5] 2438/18 2465/7 2465/19
 2478/1 2503/9
without [10] 2422/15 2459/5 2467/15
 2468/14 2503/7 2519/9 2567/24
 2568/16 2569/9 2587/11
witness [21] 2376/4 2376/9 2392/13
 2423/2 2472/8 2472/11 2473/2 2473/6
 2486/1 2486/5 2489/7 2489/15
 2489/19 2491/10 2504/12 2504/17
 2504/20 2541/20 2548/17 2558/9
 2583/20
witnessed [3] 2549/2 2560/14
 2560/15
witnesses [5] 2375/2 2429/9 2472/17
 2566/22 2567/9
woman [12] 2386/15 2414/19 2414/25
 2415/1 2460/12 2461/16 2461/17
 2461/25 2466/15 2518/11 2519/4
 2519/6
women [3] 2455/17 2455/22 2466/10
won [1] 2393/2
won't [5] 2391/10 2454/22 2472/2
 2569/24 2582/15
word [5] 2397/12 2399/14 2442/22
 2464/2 2580/17
words [4] 2383/12 2487/24 2506/9
 2571/4
work [25] 2402/9 2407/24 2418/20
 2443/16 2447/10 2454/8 2479/25
 2487/7 2493/1 2493/21 2494/9
 2496/11 2496/12 2499/15 2502/25
 2505/24 2510/21 2512/18 2517/7
 2551/12 2567/16 2569/22 2576/14
 2576/19 2577/7
work-related [1] 2402/9
worked [6] 2381/18 2389/4 2454/21
 2473/23 2505/12 2505/16
workers [2] 2454/9 2454/10
working [12] 2452/4 2453/18 2456/13
 2494/13 2494/18 2495/15 2499/9
 2499/13 2501/1 2503/15 2504/6
 2510/11
works [1] 2398/4
world [2] 2567/24 2568/9
worse [2] 2516/14 2516/14
worst [1] 2568/14

worth [1] 2569/4
would [154]
wouldn't [14] 2391/22 2412/6 2432/3
 2441/24 2443/8 2460/15 2468/12
 2468/14 2498/18 2502/2 2502/4
 2502/4 2516/15 2568/2
write [11] 2426/12 2465/23 2466/2
 2507/5 2528/16 2550/9 2550/18
 2550/21 2556/6 2559/4 2559/6
writes [3] 2391/4 2419/15 2425/9
writeup [1] 2556/14
writing [11] 2420/4 2432/19 2434/21
 2450/24 2547/18 2557/7 2557/11
 2557/14 2565/8 2575/24 2582/21
written [24] 2384/16 2385/12 2397/3
 2397/13 2413/24 2419/14 2444/16
 2444/17 2531/5 2533/17 2534/1
 2534/12 2534/22 2534/25 2535/3
 2535/4 2535/13 2547/2 2557/19
 2557/20 2558/2 2558/12 2558/22
 2558/24
wrong [9] 2388/14 2443/3 2443/9
 2446/10 2506/9 2515/10 2515/13
 2550/16 2565/19
wrote [24] 2434/10 2434/11 2435/10
 2435/10 2435/11 2435/16 2436/11
 2436/12 2438/24 2439/14 2440/1
 2442/7 2443/19 2445/21 2451/25
 2452/16 2465/21 2465/25 2483/17
 2529/25 2533/20 2534/9 2534/11
 2540/14

Y

yards [1] 2404/10
yeah [64] 2379/9 2386/23 2389/20
 2390/2 2391/6 2392/20 2393/11
 2400/19 2406/22 2415/8 2415/22
 2416/6 2418/10 2418/23 2424/3
 2424/10 2424/13 2431/1 2431/19
 2431/22 2434/9 2437/22 2444/1
 2444/20 2445/25 2446/10 2448/5
 2449/4 2451/11 2455/11 2456/2
 2457/9 2458/19 2458/24 2460/6
 2468/20 2476/8 2479/23 2481/18
 2492/24 2496/18 2496/24 2499/3
 2500/3 2500/12 2513/25 2516/22
 2526/4 2530/14 2531/2 2533/23
 2541/7 2541/10 2552/25 2555/16
 2559/16 2560/19 2560/25 2561/5
 2562/1 2562/15 2565/6 2565/7
 2574/22
year [12] 2414/19 2431/24 2438/18
 2449/13 2453/10 2453/11 2454/17
 2465/19 2508/5 2523/7 2537/14
 2565/19
yearly [1] 2536/2
years [16] 2392/15 2392/20 2393/1
 2402/15 2419/23 2427/14 2448/13
 2505/13 2505/21 2505/22 2505/23
 2507/7 2514/24 2514/24 2525/23
 2564/15
yellow [4] 2581/18 2581/20 2582/5
 2582/8
Yep [1] 2498/15
yes [229]
yesterday [14] 2376/16 2401/13
 2407/1 2414/4 2420/6 2420/9 2421/25

2444/7 2444/22 2457/2 2459/22
 2460/3 2461/3 2470/3
yet [5] 2401/15 2425/17 2538/11
 2541/11 2581/6
yoga [1] 2474/13
Yoshishige [2] 2377/1 2378/4
you [1192]
you'd [2] 2567/25 2580/16
you'll [5] 2463/22 2544/2 2570/1
 2570/16 2579/18
you're [67] 2383/10 2392/7 2405/15
 2412/22 2413/12 2416/16 2422/17
 2423/15 2426/2 2426/4 2426/13
 2426/24 2426/25 2427/6 2427/9
 2431/6 2431/17 2434/21 2436/14
 2436/23 2437/5 2439/19 2440/25
 2445/20 2446/10 2446/18 2450/13
 2453/18 2462/6 2462/6 2462/8
 2462/23 2462/25 2465/12 2466/17
 2472/11 2473/7 2480/16 2481/2
 2483/10 2486/21 2504/23 2513/18
 2516/3 2516/5 2516/5 2516/21
 2523/10 2524/20 2541/23 2541/24
 2542/4 2554/22 2555/6 2556/8 2557/7
 2559/8 2562/1 2562/12 2565/2 2565/8
 2565/16 2565/22 2569/11 2575/17
 2577/11 2577/13
you've [15] 2407/23 2427/13 2446/7
 2487/7 2497/22 2501/10 2508/21
 2517/5 2519/16 2537/9 2552/21
 2556/17 2557/24 2569/25 2584/3
young [1] 2519/21
your [232]
yours [2] 2450/13 2551/12
yourself [3] 2394/16 2396/6 2539/4
yourselves [3] 2486/10 2543/10
 2575/17

Z

Zach [3] 2417/22 2418/3 2460/12
zero [2] 2379/14 2416/5