

1 **IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO**

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4	UNITED STATES OF AMERICA,	:	Case No. 10-00148-N-BLW
5		:	
6	Plaintiff,	:	JURY TRIAL
7		:	
8	vs.	:	
9		:	
10	EDGAR J. STEELE,	:	
11		:	
12	Defendant.	:	
13	----- x	:	

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13 **REPORTER'S TRANSCRIPT OF PROCEEDINGS**

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before B. Lynn Winmill, Chief District Judge

15

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Volume 7

17

May 4, 2011

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Pages 1382 to 1562

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I N D E X

1	2	3	4
5	6	7	8
9	10	11	12
13	14	15	16
17	18	19	20
21	22	23	24
25	Date	Proceeding	Volume/Page
	04/26/11	Jury Trial Day 1.....	V1/1
		Jury Voir Dire/Jury Selection.....	V1/22
		Peremptory challenges exercised.....	V1/247
		Jury sworn/impaneled.....	V1/251
		Nonselected jurors excused.....	V1/252
		Preliminary jury instructions.....	V1/253
	04/27/11	Jury Trial Day 2.....	V2/273
		Opening statement by the Government.....	V2/284
		Opening statement by the Defense.....	V2/320
	04/28/11	Jury Trial Day 3.....	V3/517
	04/29/11	Jury Trial Day 4.....	V4/762
	05/02/11	Jury Trial Day 5.....	V5/1035
		Defense Rule 29 motion.....	V5/1110
		Government response to Rule 29 motion....	V5/1115
		Court's ruling on Rule 29 motion.....	V5/1121
		Government rests.....	V5/1137
	05/03/11	Jury Trial Day 6.....	V6/1322
	05/04/11	Jury Trial Day 7.....	V7/1382
		Defense rests.....	V7/1444
		Jury Instruction Conference.....	V7/1446
		Jury Instructed by the Court.....	V7/1452
		Closing argument by the Government.....	V7/1468
		Closing argument by the Defense.....	V7/1503
		Rebuttal argument by the Government.....	V7/1530
		Jury instructed by the Court.....	V7/1540
		Jury Question.....	V7/1552
	05/05/11	Jury Trial Day 8.....	V8/1563
		Jury Question.....	V8/1572
		Jury Verdict.....	V8/1578
		Closing jury instruction.....	V8/1579

U N I T E D S T A T E S W I T N E S S E S1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25**VOLUME/PAGE****CLEMENSEN, Eric**

Direct Examination by Mr. Haws..... V3/649

FAIRFAX, Lawrence

Direct Examination by Ms. Whelan..... V2/423

Continued Direct Examination by Ms. Whelan..... V3/526

Cross-Examination by Mr. McAllister..... V3/536

Redirect Examination by Ms. Whelan..... V3/572

Recross-Examination by Mr. McAllister..... V3/582

FOX, Mark

Direct Examination by Mr. Haws..... V4/927

HECKENDORN, Frank

Direct Examination by Mr. Haws..... V3/606

JERMAIN, John

Direct Examination by Mr. Haws..... V3/674

Cross-Examination by Mr. McAllister..... V3/704

KITTILSTVED, Michael

Direct Examination by Mr. Haws..... V4/947

Cross-Examination by Mr. McAllister..... V4/1002

MITCHELL, Kevin

Direct Examination by Ms. Whelan..... V4/903

PHILLIPS, Brennan

Direct Examination by Mr. Haws..... V4/1003

Cross-Examination by Mr. McAllister..... V5/1057

Redirect Examination by Mr. Haws..... V5/1063

Recross-Examination by Mr. McAllister..... V5/1067

SMITH, Brent

Direct Examination by Ms. Whelan..... V5/1069

Cross-Examination by Mr. Amendola..... V5/1101

Redirect Examination by Ms. Whelan..... V5/1103

SOTKA, Michael

Direct Examination by Ms. Whelan..... V2/335

Cross-Examination by Mr. McAllister..... V3/387

Redirect Examination by Ms. Whelan..... V3/417

Recross-Examination by Mr. McAllister..... V3/420

U N I T E D S T A T E S W I T N E S S E S

1

2

VOLUME/PAGE

3

SPIKE, Jess

4 Direct Examination by Mr. Haws..... V3/619

Cross-Examination by Mr. McAllister..... V3/645

5 Redirect Examination by Mr. Haws..... V3/647

Recross-Examination by Mr. McAllister..... V3/648

6

STEELE, Cyndi

7 Direct Examination by Ms. Whelan..... V3/715

Continued Direct Examination by Ms. Whelan..... V4/783

8 Cross-Examination by Mr. McAllister..... V4/837

Redirect Examination by Ms. Whelan..... V4/893

9

STRANGIO, Mark

10 Direct Examination by Mr. Haws..... V3/588

YOUNG, Joshua

Direct Examination by Mr. Haws..... V4/915

12

13

D E F E N S E W I T N E S S E S

14

15

VOLUME/PAGE**BANKS, Alan**

16 Direct Examination by Mr. McAllister..... V5/1178

Cross-Examination by Mr. Haws..... V5/1192

17 Redirect Examination by Mr. McAllister..... V5/1201

Recross-Examination by Mr. Haws..... V5/1205

18

COCHRAN, Billie

19 Direct Examination by Mr. McAllister..... V5/1233

Cross-Examination by Ms. Whelan..... V5/1237

20

FAIRFAX, Lawrence

21 Direct Examination by Mr. McAllister..... V7/1411

22 Cross-Examination by Ms. Whelan..... V7/1427

Redirect Examination by Mr. McAllister..... V7/1429

23

HOLLINGSWORTH, Daryl

24 Direct Examination by Mr. Amendola..... V5/1217

Cross-Examination by Ms. Whelan..... V5/1222

25 Direct Examination by Mr. Amendola..... V7/1437

Cross-Examination by Ms. Whelan..... V7/1441

DEFENSE WITNESSES

1			
2			
3			VOLUME/PAGE
4	MAHER, James		
	Direct Examination by Mr. McAllister.....	V5/1149	
	Cross-Examination by Ms. Whelan.....	V5/1175	
5			
6	MILLER, Jeff		
	Direct Examination by Mr. McAllister.....	V5/1138	
	Cross-Examination by Ms. Whelan.....	V5/1145	
7	Redirect Examination by Mr. McAllister.....	V5/1146	
8	STEELE, Cyndi		
	Direct Examination by Mr. McAllister.....	V5/1259	
9	Cross-Examination by Mr. Haws.....	V5/1288	
	Redirect Examination by Mr. McAllister.....	V5/1298	
10			
11	STEELE, Kelsie		
	Direct Examination by Mr. McAllister.....	V5/1238	
	Cross-Examination by Ms. Whelan.....	V5/1248	
12	Redirect Examination by Mr. McAllister.....	V5/1256	
13	STOLL, Robert		
	Direct Examination by Mr. McAllister.....	V5/1207	

UNITED STATES EXHIBITS

14			
15			
16			
17			ADMITTED
18	1	Audio Recording between Edgar Steele and Cyndi Steele, 06/13/2010.....	V3/714
19	2	Letters to Tatyana Vadimovna Loginova from Edgar Steele.....	V5/1090
20	2a	Letters to Tatyana Vadimovna Loginova from Edgar Steele.....	V5/1090
21	3	Audio Recording between Edgar Steele and Rex Steele, 06/13/2010.....	V3/712
22	4	CoiNutz Receipt.....	V2/443
	5	DJ Coins Receipts.....	V2/443
23	6	Coin Corner Receipts and 902 Certification.	V2/443
	7	Silver Received by Larry Fairfax from Edgar Steele.....	V2/385
24	8	Photo of Edgar Steele Residence.....	V2/430
25	9	Photo of Edgar Steele Residence.....	V2/430

U N I T E D S T A T E S E X H I B I T S**ADMITTED**

1			
2			
3	10	Photo of Edgar Steele Residence.....	V2/430
	11	Photo of Edgar Steele Residence.....	V2/430
4	12	Photo of Edgar Steele Residence.....	V2/441
	13	Photo of Edgar Steele Residence.....	V2/441
5	14	Photo of Edgar Steele Residence.....	V2/441
	15	Photo of Edgar Steele Residence.....	V2/441
6	16	Photo of Edgar Steele Residence.....	V2/441
	17	Photo of Edgar Steele Residence.....	V2/441
7	18	Photo of Edgar Steele Residence.....	V2/441
	19	Photo of Edgar Steele Residence.....	V2/441
8	20	Photo of Edgar Steele Residence.....	V2/485
	21	Audio Recording between Edgar Steele and Larry Fairfax, 6/09/2010.....	V2/492
9	21a	Transcript of Audio Recording between Edgar Steele and Larry Fairfax, 6/09/2010.....	V2/493
10	22	Audio Recording between Edgar Steele and Larry Fairfax, 6/10/2010.....	V2/510
11	22a	Transcript of Audio Recording between Edgar Steele and Larry Fairfax, 6/09/2010.....	V2/510
12	23a	Video of Larry Fairfax Entering Edgar Steele Residence.....	V3/600
13	23b	Video of Larry Fairfax Leaving Edgar Steele Residence.....	V3/600
14	24	Thrifty Car Rental, Airport Parking Receipt and 902 Certification.....	V2/459
15	27	Photo of Destructive Device Under Car (Quick Lube).....	V2/459
16	28	Photo of Quick Lube.....	V2/459
17	29	Photo of Quick Lube.....	V2/459
	30	Photo of Quick Lube.....	V2/459
18	31	Photo of Location of Destructive Device....	V2/459
	32	Photo of Location of Destructive Device....	V2/459
19	33	Photo of Location of Destructive Device....	V2/459
	34	Photo of Detonated Destructive Device.....	V3/681
20	35	Photo of Detonated Destructive Device.....	V3/683
	36	Photo of Detonated Destructive Device.....	V3/684
21	37	Photo of Detonated Destructive Device.....	V3/684
	38	Photo of Detonated Destructive Device.....	V3/684
22	39	Photo of Detonated Destructive Device.....	V3/684
	40	Photo of Detonated Destructive Device.....	V3/684
23	41	Photo of Detonated Destructive Device.....	V3/684
	42	Photo of Detonated Destructive Device.....	V3/684
24	43	Photo of Silver from Steele Residence.....	V4/783
	52	Photo of Silver from Steele Residence.....	V3/670
25	53	Photo of Silver from Steele Residence.....	V3/670

U N I T E D S T A T E S E X H I B I T S**ADMITTED**

1			
2			
3	54	Photo of Silver from Steele Residence.....	V3/670
	55	Photo of Silver from Steele Residence.....	V3/670
4	56	Photo of Silver from Steele Residence.....	V3/670
	57	Photo of Silver from Steele Residence.....	V3/670
5	58	Photo of Silver from Steele Residence.....	V3/670
	59	Photo of Silver from Steele Residence.....	V3/670
6	60	Photo of Silver from Steele Residence.....	V3/670
	61	Photo of Silver from Steele Residence.....	V3/670
7	62	Photo of Silver from Steele Residence.....	V3/670
	63	Photo of Silver from Steele Residence.....	V3/670
8	64	One Silver Round from Steele Residence.....	V3/673
	68	Video Deposition of Tatyana Vadimovna Loginova.....	V5/1080
9	76	Declarations of Nicholas Panone, Instant Message and Email Exchanges from RomanticTours.com for time periods 01/01/10 to 06/13/10; 01/01/09 to 11/01/09; 11/02/09 to 06/14/10, disclosed in Discovery on 04/12/2011.....	V4/819
10			
11			
12	77	Currency - \$400.00 - Given to Larry Fairfax from Edgar Steele June 29, 2010....	V2/352
13	79	Video of Detonating Destructive Device.....	V4/994
14	80	Disrupted Pipe with Tape and One End Cap...	V3/687
	80b	Tape removed from Exhibit 80.....	V3/691
15	81	Disrupted End Cap from Exhibit 80.....	V3/692
	82	Magnet that was Attached to Exhibit 80.....	V4/991
16	83	Small piece of hobby fuse examined in Lab from Exhibit 80.....	V3/694
17	83a	Hobby Fuse with Thermal Degradation from Exhibit 80.....	V3/695
18	83b	Hobby Fuse with Thermal Degradation from Exhibit 80.....	V3/696
19	84	Bailing Wire from Underneath Car that held Exhibit 80.....	V4/941
20	85	Second Pipe recovered from Larry Fairfax...	V3/701
	90	CoiNutz check to Edgar Steele \$10,626.....	V4/906
21	90a	CoiNutz check to Edgar Steele \$12,110.....	V4/906
	90b	CoiNutz check to Edgar Steele \$5,699.20....	V4/906
22	90c	CoiNutz check to Edgar Steele \$9,000.....	V4/906
	90d	CoiNutz check to Edgar Steele \$17,810.....	V4/906
23	91	Complaint for Divorce.....	V3/729
	98	Sample of explosive powder associated with Exhibit 80.....	V3/704
24			
	99	Transcript of interview of Larry Fairfax...	V3/573
25			

U N I T E D S T A T E S E X H I B I T S

ADMITTED

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

- 100** Profile Page of Edgar Steele from RomanticTours.com. V5/1085
- 101** Profile Page of Tatyana Vadimovna Loginova from RomanticTours.com..... V5/1090
- 102** Photo of Silver from Kevin Mitchell..... V4/911
- 103** Email from Edgar Steele to Cyndi Steele Re: The allure of marriage, 6/13/2000..... V4/800

D E F E N S E E X H I B I T S

ADMITTED

- 2000** Phone records V4/880
- 2001** Letter of Authorization 12/11/09..... V5/1270
- 2002** Letter dated 5/20/10 from Edgar Steele to mortgage company re: check..... V5/1270
- 2003** Check No. 599619666 dated 5/19/10 \$2,779.37..... V5/1270

P R O C E E D I N G S

Wednesday, May 4, 2011

(Jury absent.)

THE CLERK: The court will now hear jury trial, day seven, in Criminal Case 10-148-N-BLW, United States of America versus Edgar J. Steele.

THE COURT: Counsel -- Mr. McAllister?

MR. McALLISTER: Judge, we received the response to the juror note, and we don't see any problem with that.

THE COURT: I was going -- let me cover those issues. There are three items I wanted to cover with you briefly.

One was the juror note that I gave to you last night with a -- and my response, which we sent in. And then that juror then responded again, which we provided you with copies. And I suggested just informally advising her that what she wanted to do is fine, but she should wait until after the trial.

And I assume there is no objection to that?

MR. McALLISTER: There is not.

THE COURT: From the government?

MS. WHELAN: No.

just outside the courtroom but not out by the elevator lobby. Let them have that space to get out of the courthouse and on their way home.

And then, likewise, in the morning, as the jury is coming in, don't loiter in the parking lots or the hallways or near the elevators. Come directly up to this area just outside the courtroom and remain here.

It's just the only way we can be careful. And I think it's extremely important. I had one very unfortunate experience -- and that's why I'm so cautious about this -- that occurred on a very critical trial that lasted over three weeks, a criminal matter. And it became very close to almost having a mistrial because of that type of conduct -- or contact.

And then, finally, I was going to advise Mr. Steele, since apparently the defense is close to resting its case or will rest its case today, maybe advise Mr. Steele of his rights concerning his right to testify.

Was there anything else beyond that that you wanted me to address, Mr. McAllister?

MR. McALLISTER: Yes, Your Honor. We do plan -- and I have informed the marshals -- to

MR. HAWS: No objection.

THE COURT: Secondly, one of the jurors also commented -- and this is exactly what we want, is jurors to be very conscious of possible problems. And I appreciate this juror pointing out that she, I think, had bumped into one of the family members of Mr. Steele as she left the courthouse and made a comment about their shoes and height of heels or something to that effect.

It appears to be absolutely innocent, and I see no reason to inquire further, but I did want to bring that to counsel's attention and also point out, again, the absolute need for everyone associated with the trial to give the jurors wide berth.

I think in this instance, maybe the juror initiated the discussion unintentionally, not realizing who she was speaking to. Even to avoid that, I would ask that everyone associated with the trial not loiter in the public areas of the courthouse or the parking lot for about 15 minutes after we recess or send the jury home, so they have time to clear out, go to their car.

You, obviously, can recess here on the -- or you can linger here on the sixth floor

call Larry Fairfax in the defense case and to recall, after Mr. Fairfax's, Daryl Hollingsworth.

At that point, Judge -- actually, I can make it now. At that point, before we rest, I'm going to ask the court -- and I'll do it right now -- basically move the court to vacate or lift the no-contact order that has been entered in this case.

Mr. Steele has requested that before he makes a decision about any further witnesses testifying in the defense, that he have an opportunity to talk to Mrs. Steele.

Up until this time, because of the no-contact order based upon Count No. 4, they have never discussed the case or testimony, et cetera.

In light of the fact that Mrs. Steele has testified and her testimony has been concluded, I don't see any basis for the government to continue to have a no-contact order in effect. And I would ask the court to deem that it's been served or vacated or basically enter an order allowing Mr. and Mrs. Steele to confer.

And I would ask the court, after the testimony of Mr. Fairfax and -- Mr. Fairfax and Mr. Hollingsworth, that we have a brief recess so

1 that they can talk. And I will be present, as
2 will Mr. Amendola. And as in all the previous
3 interviews, one of us has been present.

4 But at this time, I think it's
5 appropriate that he get a chance to consult with
6 his wife about decisions in this case.

7 THE COURT: Mr. Haws or Ms. Whelan?

8 MS. WHELAN: Judge, as the court knows,
9 there was quite a bit of time spent on the
10 no-contact order, several hearings.

11 The concern is, is what the court has
12 before it at this point is evidence in the form of
13 the June 13th recording as to giving his wife
14 specific instructions.

15 Depending on if he testifies and what
16 he says, the government may need to call her as a
17 rebuttal witness. To ensure her testimony and no
18 other pressure, based upon the evidence, we would
19 object to that.

20 And I do have one other matter after
21 this.

22 THE COURT: All right. Well, the purpose of
23 the no-contact order was to ensure that there
24 would be no attempt to assert influence over
25 Mrs. Steele.

1 But I can't speak for the marshal and
2 how that can be arranged. I assume it would have
3 to take place back in the holding cell area here
4 outside the courtroom, adjacent to the courtroom.
5 Maybe I need to hear from the marshal.

6 THE MARSHAL: Your Honor, it's against our
7 policy besides attorneys. We don't like to let
8 anyone else in as far as safety precautions.
9 Again, if you order it, we will do it, but we
10 strongly discourage it of any way in our cell
11 block.

12 THE COURT: Could it be done here in the
13 courtroom? Would that be more comforting?

14 THE MARSHAL: Better than the cell blocks,
15 yes, sir.

16 THE COURT: All right. What I may do is
17 allow -- maybe 10 out of a 15-minute break, will
18 allow Mr. Steele to remain in the courtroom and
19 allow the discussion to take place.

20 THE MARSHAL: We will be --

21 THE COURT: Yes, with you present. The
22 marshals will have to remain present. Now,
23 obviously the Marshal's Service is obligated not
24 to share any of the conversations that go on.

25 Mr. McAllister, is that understood,

1 I mean, we're talking, like, five
2 minutes?

3 MR. McALLISTER: Judge, I think maybe more
4 like 15 but not that lengthy -- not very lengthy.

5 And, Judge, I just want to add, in
6 response to the government's objection, clearly,
7 if they do recall her, they could ask whether or
8 not she met with her husband. I mean --

9 THE COURT: All right.

10 MR. McALLISTER: -- or any other witness.

11 THE COURT: Subject to the marshals and the
12 marshal being able to arrange it, I think I am
13 going to allow the 15-minute visit with the caveat
14 that Mr. Amendola and Mr. McAllister be present
15 and that they be cognizant of the purpose of the
16 prior no-contact order, and that if any effort is
17 made to influence Ms. Steele, that the contact
18 immediately end.

19 The reason I'm doing this, it's quite
20 clear Mrs. Steele's interest here. She is aligned
21 with Mr. Steele. She has not accepted the
22 government's charges. It's a very unique
23 situation for that reason, and I think -- I guess
24 I just see no purpose in maintaining the
25 no-contact order.

1 then?

2 MR. McALLISTER: Yes, it is, Judge. It is
3 understood.

4 THE COURT: All right. Now, Ms. Whelan,
5 there was another matter you wanted to take up?

6 MS. WHELAN: Yes, Your Honor, just briefly.

7 I understand that Mr. McAllister
8 intends to bring Mr. Fairfax back and talk to him
9 about the notes that he made. My concern is, and
10 I spent a lot of time last night looking at
11 Federal Rule of Evidence 613. We also ordered a
12 rough copy of the transcript. It is a rough copy,
13 but -- so I've had the chance to review the
14 testimony.

15 Now, in 613 -- and I want the court to
16 know I referred back to Imwinkelried and to Mauet,
17 both, in looking at it. But one of the
18 requirements is that the matter must, in fact, be
19 impeaching, which means it has to be something
20 that he has previously testified.

21 Now, as the court knows, there is lots
22 of stuff in those notes. There is stuff about his
23 thoughts, his thoughts about the process, thoughts
24 about his attorney, his thoughts about us. Those
25 are not impeaching.

1 And because of the concern -- and I'll
2 tell the court why I have the concern -- is when
3 Mr. Hollingsworth testified, the government
4 objected several times about whether it was
5 impeaching or not. And what the court's order
6 was: Well, the jury will need to remember that
7 and decide for themselves.

8 Mr. Fairfax testified a week ago. And
9 we have reviewed his -- you know, the rough copy
10 of it and feel confident that, you know, we know
11 what was asked.

12 But Mr. McAllister was asked and he
13 agreed to provide the page numbers that he will be
14 referring to to speed things up and as an ease to
15 it.

16 But the matter must be impeaching. And
17 I think to go into other extraneous things in
18 there will serve to confuse the jury, won't serve
19 any purpose under 403 or 104.

20 THE COURT: Well, all right. Just so we're
21 clear -- in fact, let's talk about this for just a
22 moment. Impeaching testimony would be prior
23 inconsistent statements, but it can also be any
24 statement that might reflect bias or prejudice
25 against Mr. Steele. So I think that there can be

1 going to have to deal with this as it comes up. I
2 mean, I can't say right now that it's going to be
3 limited to X, Y, and Z until I know the context in
4 which X, Y, and Z is pursued.

5 MS. WHELAN: I understand that. My concern
6 is we can't unring bells, depending on how
7 questions are asked.

8 And so -- you know, Mr. McAllister was
9 very professional, as he has been, and indicated
10 he will use the page numbers, so hopefully we will
11 have an idea of where he's going before he asks
12 the question. But I just -- I don't want this to
13 take all day with continuous sidebars, so that's
14 why I brought it up.

15 THE COURT: Well, we'll just have to deal
16 with it as we deal with it.

17 Mr. McAllister?

18 MR. McALLISTER: Thank you, Your Honor.

19 Judge, I don't intend to take all day
20 with Mr. Fairfax to do this, but I think it's
21 important that I make this statement on the
22 record. Assistant United States Attorney
23 Ms. Whelan made a representation to the court that
24 there was no Brady material, there was no Giglio
25 material, that this was just -- I can't remember

1 other examples of impeachment other than prior
2 inconsistent statements.

3 But you're correct. The only reference
4 to his prior unsworn statement can only be used
5 for impeachment purposes. I think it's --
6 otherwise, it's hearsay under 801(d)(1)(A), I
7 believe. I think I've got that right.

8 So the statement itself cannot be used
9 other than for impeachment purposes, and the jury
10 would even be instructed that his prior unsworn
11 statements cannot be considered for any
12 substantive purpose except as it bears upon his
13 credibility.

14 So, if need be, I may have to give that
15 limiting instruction. But, in addition, I'm not
16 going to allow any additional examination from
17 these except by way of impeachment.

18 MS. WHELAN: I'm sorry, Judge. That goes to
19 his bias against Mr. Steele, not about the process
20 or his own prosecution or anything; correct?

21 THE COURT: Anything that would bear upon
22 his credibility in this proceeding. That's what
23 impeachment is.

24 You know, it's a little hard. I mean,
25 generally you're right, but I can't say -- we're

1 her words, but that it wasn't a book.

2 Now, I've read it, and Mr. Amendola has
3 read it and studied it. And he indicates in many
4 pages his dislike for Ms. Whelan and Agent Sotka.
5 He talks about, quote, how they "screwed" him.

6 Now, I don't want to make this
7 personal. And I have spent a good deal of time
8 designing my cross-examination not to involve them
9 because they are -- I don't want to put them -- I
10 don't want to intentionally put them in the
11 position of being a witness in this case.
12 Although, I did list AUSA Whelan as a witness in
13 this case, and the Department of Justice wrote me
14 a letter saying they wouldn't permit her to
15 testify.

16 But I'm trying to work my
17 cross-examination around those issues, because he
18 spends a good deal of time discussing her and what
19 she did.

20 THE COURT: How is that relevant?

21 MR. McALLISTER: It goes to his bias. It
22 goes to why he is testifying here today; why, in
23 fact, he made up certain things that I believe I
24 can get him to admit.

25 THE COURT: Wait, wait. How is bias against

1 the government and its agents relevant? They
2 offered his testimony. Now, if you had offered
3 his testimony and if he had expressed animus
4 towards Ms. Whelan, Mr. Haws, Agent Sotka, the
5 government in general, then, I think, absolutely.

6 And if he made statements in which he
7 expresses personal animus towards Mr. Steele, I
8 think it would be relevant.

9 But any animus that he has against the
10 government when the government has offered him as
11 their witness, I don't see how that impeaches him.

12 MR. McALLISTER: Well, Judge, as I said, I'm
13 trying to avoid those personal issues.

14 THE COURT: Well, I guess I'm --

15 MR. McALLISTER: But it goes specifically to
16 whether he is telling the truth today in court.

17 THE COURT: Okay.

18 MR. McALLISTER: And he has said or he has
19 denied that he had wanted to be the hero. And,
20 clearly, in terms of this book -- that's what he
21 calls it -- that he has written, he is the hero;
22 and the system and the government and other people
23 are the villains. And I think that goes directly
24 to his credibility and whether he can be believed.

25 THE COURT: Well, I will say now, just to

1 allow any examination about animus against the
2 government or the way he was treated by the
3 government, the fairness of the plea agreement
4 that he has received. That would be -- if
5 anything, it would tend to show why he would have
6 no reason to testify in a way favorable to the
7 government if he is angry at them.

8 So I think we have got that covered.

9 Anything else you want to take up? We
10 have got the jury waiting. I would like to --

11 MR. McALLISTER: No, Judge. I understand
12 the shot across the bow, and I anticipated it.

13 And I'm trying to conduct the
14 examination without bringing up AUSA Whelan or FBI
15 Agent Sotka. I'm trying to do it in a way to get
16 him to admit that -- in fact, to use his word, he
17 got "screwed" in this deal; he was the hero, and
18 now he is the victim. And those are basically the
19 words he uses in the book.

20 Now, I think that is legitimate
21 examination of this witness because the case is
22 built upon his credibility. He is the only person
23 that talked -- allegedly talked to Mr. Steele
24 about the murder-for-hire plot, the only person.

25 So that's where I'm going, but I'm

1 avoid the issue, that any -- I do not see as
2 impeaching his personal animus towards anybody
3 representing the government or the government
4 itself.

5 If he had been called by the defense
6 and it was the government seeking to offer that
7 evidence to show bias or prejudice against the
8 government, then I think that would be relevant.

9 But at this point, I'm just giving you,
10 I guess, the shot across the bow that I will
11 sustain objections to efforts to bring in evidence
12 of his personal dislike for anyone involved from
13 the government's side.

14 At that point, it only becomes relevant
15 to perhaps inflame the jury against the government
16 in some way, and that's not relevant to this
17 proceeding.

18 So, I mean, that's clear. I think what
19 you've said, that his desire to be the hero,
20 perhaps his desire to write a book, perhaps that's
21 relevant, because it would show that he may have a
22 reason to exaggerate in order to make the story
23 better to sell books, what have you. I can
24 understand that.

25 But I don't understand and would not

1 trying to do it in a professional way and in a
2 nonpersonal way.

3 THE COURT: All right. Well, I have
4 indicated, I think, at least in broad brush, where
5 the lines are drawn here, and then we'll have to
6 deal with it as it comes up. All right?

7 MR. McALLISTER: Thank you, Your Honor.

8 THE COURT: I think this would be a good
9 time to take up the matter with Mr. Steele, since,
10 presumably, the defense will rest today.

11 Mr. Steele, I wanted to comment -- and
12 I don't do this in every case. It just depends
13 upon the circumstances. Apparently, in the
14 District of Colorado and in the state of Colorado,
15 this is done in every case. But it's not been my
16 practice because I did not want -- and the reason
17 I don't is I don't want to invade the
18 attorney-client relationship.

19 But I did want to at least acknowledge
20 and indicate to you an understanding or make sure
21 you have an understanding of your right to testify
22 and your right not to testify.

23 And in making these comments, I take no
24 position one way or the other whether you should
25 or should not testify, obviously. That's not a

1 matter for me to have any concern with except to
2 ensure that you understand your rights in that
3 regard.

4 I would just tell you that the decision
5 whether to testify is your decision, acting with
6 the advice of your attorney or attorneys. But,
7 ultimately, their decision isn't binding. It's
8 your decision that counts, and you ultimately have
9 to make that decision. And even if your attorney
10 recommends one course of action and you feel you
11 should go the other, it is your decision. And
12 that's the important point to take away from this.

13 But, in making that decision, I need to
14 make sure that you also understand what the
15 consequences are of that decision.

16 If you choose not to testify, the court
17 will instruct the jury -- and I think I have
18 already given the instruction on the first day of
19 trial, but it will be repeated -- that if -- that
20 because you chose not to testify, the jury must
21 not and cannot draw any inference or suggestion of
22 guilt from that decision.

23 That's essentially the sum and
24 substance of what that instruction to the jury
25 would be. I don't elaborate beyond that. I don't

1 understand. Thank you for the caution.

2 THE COURT: All right. That's all I
3 would -- Mr. McAllister, is there anything else
4 you want me to cover?

5 MR. McALLISTER: No, Your Honor.

6 THE COURT: All right. Very well. Let's
7 bring the jury in, and we'll proceed.

8 THE MARSHAL: May I say one more thing --

9 THE COURT: Yes.

10 THE MARSHAL: -- just so Mr. Steele is
11 aware. Since it's not our normal practice as far
12 as his wife coming up here, that he just be aware
13 that he's not to -- no hand-holding, hugging,
14 physical contact. Just so he is aware of that,
15 and we let you know.

16 THE COURT: That's fine. It's for
17 communication only.

18 THE MARSHAL: Right.

19 THE COURT: And if you decide, with some
20 further time for reflection, you would prefer to
21 do it in the holding area, you can change your
22 mind in that regard.

23 THE MARSHAL: No. This is probably the best
24 place. I just wanted to make sure.

25 THE COURT: Okay. Very good.

1 try to draw undue attention to it. I just make
2 clear that the jury understands that it's their
3 decision -- or that their decision cannot be
4 influenced by your decision not to testify.

5 On the other hand, if you do choose to
6 testify, then you waive your privilege against
7 self-incrimination or your right not to testify.
8 You will be subject to cross-examination by
9 counsel for the government as to the subject
10 matters covered in your testimony and also
11 anything that might bear upon impeachment as we
12 have discussed here, anything that might undermine
13 your credibility, such as prior convictions,
14 things of that sort.

15 And I would instruct the jury that your
16 testimony is to be considered like that of any
17 other witness since you did choose to testify.

18 I think that covers that, except to,
19 again, reinforce that it is your decision whether
20 to testify, acting with the advice -- and it's
21 only the advice -- of your attorney. And,
22 ultimately, you have to make that call.

23 So do you have any questions,
24 Mr. Steele or -- Mr. Steele?

25 THE DEFENDANT: No, Your Honor. I

1 (Jury present.)

2 THE COURT: I'll note for the record that
3 all jurors are present.

4 Ladies and gentleman, I hope you had
5 not only a pleasant evening but had used the day
6 off to some advantage.

7 At this time, Mr. McAllister, you may
8 call your next witness.

9 MR. McALLISTER: Defense would recall Larry
10 Fairfax, Your Honor.

11 THE COURT: It will take just a moment to
12 get Mr. Fairfax.

13 Mr. Fairfax, if you'll retake the
14 witness stand. I think we did not excuse
15 Mr. Fairfax or release him, so I think he is still
16 under oath. If counsel wishes, we could reswear
17 him, because it was a week ago.

18 MR. McALLISTER: Please, Your Honor.

19 THE COURT: Let's have Mr. Fairfax resworn
20 just because I'm not sure whether I released him.

21 Mr. Fairfax, if you would raise your
22 right hand and be sworn.

23 LAWRENCE FAIRFAX,
24 having been first duly sworn to tell the whole
25 truth, testified as follows:

1 THE COURT: Go ahead and be seated.
 2 You may conduct your examination.
 3 DIRECT EXAMINATION
 4 BY MR. McALLISTER:
 5 Q. Mr. Fairfax, you testified in this
 6 court before the judge and jury last Wednesday and
 7 Thursday; correct?
 8 A. Yes.
 9 Q. And during your testimony, you
 10 disclosed that, in fact, you were writing a book;
 11 correct?
 12 A. Yes.
 13 Q. And it is true that, in your own
 14 handwriting, you have written 258 pages of that
 15 book; correct?
 16 A. Yes.
 17 Q. And while you were under oath in this
 18 court, you told -- you stated that the book was
 19 fiction; correct, sir?
 20 A. Yes. It's going to be fiction.
 21 Q. Okay. And that statement by you, sir,
 22 was a lie, is it not?
 23 A. No.
 24 MS. WHELAN: I'm going to object. Form of
 25 the question and they're leading.

1 THE COURT: Well, I think the inference is
 2 somewhat different from the testimony. I'm going
 3 to leave it to the jury to determine, and I will
 4 allow that portion to be read to the witness.
 5 Ladies and gentleman, I'm allowing some
 6 testimony, including either paraphrasing or even
 7 quoting from Mr. Fairfax's prior written
 8 statements. It is to be considered by you only as
 9 it bears upon the witness's credibility and not
 10 for the truth of the matter asserted. Because
 11 it's a prior statement, it was not made under
 12 oath; and, therefore, it can only be considered as
 13 a prior inconsistent statement that may bear upon
 14 Mr. Fairfax's credibility.
 15 So I'll allow you to go ahead, with
 16 that instruction.
 17 BY MR. McALLISTER:
 18 Q. Mr. Fairfax, you wrote, quote, "So I've
 19 decided to call this book fiction so as to
 20 eliminate any problems. It will have the usual
 21 disclaimer, any person or events that are the same
 22 are only coincidental. This book is fictional."
 23 You wrote that, did you not?
 24 A. Yes, I did.
 25 Q. And that was not true; correct?

1 THE COURT: Well, I'm going to allow -- I'm
 2 going to allow leading questions. Rephrase the
 3 question, though.
 4 BY MR. McALLISTER:
 5 Q. What you said here about the book being
 6 fiction was not true?
 7 A. No, that's not correct.
 8 Q. Okay. So it is your 253 pages;
 9 correct?
 10 A. Yes.
 11 Q. From the date of your arrest through
 12 March 3rd, 2011; correct?
 13 A. Yes.
 14 Q. And in it, you talk about how you're
 15 going to describe it as fiction; correct?
 16 A. I can't recall that. I'm sorry.
 17 Q. All right. I'd like to have you look
 18 at your handwritten page 229 and see if this
 19 refreshes your recollection about what you wrote.
 20 A. Yes, I see that.
 21 Q. All right. And you stated -- you
 22 wrote, "So I've decided to call this" --
 23 MS. WHELAN: Your Honor, I object to it
 24 being quoted from. The witness admitted that
 25 that's what he said. There is no impeachment.

1 A. No. That's true. It's -- the book is
 2 going to be fictional when I write the book.
 3 Q. Well, in these 253 pages, you write
 4 about yourself almost every day; correct?
 5 A. Yes.
 6 Q. You designed this book so that you
 7 would be the hero; correct?
 8 A. No, sir.
 9 Q. All right. Isn't it true in this book
 10 that the main character is you?
 11 A. Yes, sir.
 12 Q. It's all about you; right?
 13 A. Yes, sir.
 14 Q. And you, in this book, write about
 15 Mr. Steele; correct?
 16 A. Yes, sir.
 17 Q. And yourself?
 18 A. Yes, sir.
 19 Q. And then you write about what you eat
 20 every day, correct -- or most days?
 21 A. Yes, sir.
 22 Q. And you write about how you're feeling;
 23 correct?
 24 A. Yes.
 25 Q. And you actually describe yourself, do

1 you not, as the victim?
 2 **A.** Yes. That's possible it's in there.
 3 **Q.** And you make statements about how you
 4 should not be in jail?
 5 **A.** Yes, sir.
 6 **Q.** And you make statements about how you
 7 were going to save the life of Cyndi Steele;
 8 correct, sir?
 9 **MS. WHELAN:** Objection. Improper
 10 impeachment.
 11 **THE COURT:** Counsel, let's -- I'm going to
 12 sustain the objection. Counsel, as we discussed
 13 before the jury came in, I'm going to give some
 14 leeway, but it -- well, approach just for a
 15 moment.
 16 (Sidebar commences as follows:)
 17 **THE COURT:** Counsel, as I was trying -- as I
 18 indicated, I think it's fair impeachment to
 19 examine the witness about the book and his putting
 20 himself, making himself into a hero, because it
 21 does suggest that he may have had a reason to kind
 22 of color his testimony in terms of making himself
 23 more of a hero than he actually was. But I think
 24 getting into specifics beyond this, we're just
 25 getting far afield.

1 **Q.** All right. Isn't it a fact that you
 2 have admitted that you were the person who put
 3 this explosive device on her vehicle?
 4 **A.** Yes, sir.
 5 **Q.** And you say that you told the FBI about
 6 it only after it was discovered; correct?
 7 **A.** Yes, sir.
 8 **Q.** And, in fact, you never made any
 9 efforts to take it off her car, did you, sir?
 10 **MS. WHELAN:** Your Honor, objection as to
 11 impeachment. This isn't --
 12 **THE COURT:** Sustained.
 13 **BY MR. McALLISTER:**
 14 **Q.** In this book, you describe how this
 15 explosive device never would have worked; correct,
 16 sir?
 17 **A.** Yes, sir.
 18 **Q.** And the actual title that you selected
 19 for your book is "Act of Defiance"; correct, sir?
 20 **A.** Yes, sir.
 21 **Q.** And you asked Daryl Hollingsworth to --
 22 because he was an artist, to design the cover of
 23 your book, did you not, sir?
 24 **A.** Yes, sir.
 25 **Q.** You wanted the words on the cover to be

1 So I -- it's a tough area. I mean,
 2 impeachment can be a lot of things. It's
 3 basically anything that would cause the jury or
 4 cause any reasonable juror to question the
 5 defendant -- the witness's veracity.
 6 And I -- as I indicated, I'm not going
 7 to allow examination about his animosity towards
 8 the government or Ms. Whelan or Mr. Haws or
 9 Mr. Sotka.
 10 **MR. McALLISTER:** Judge, my next question is:
 11 Do you think that you were saving Cyndi Steele by
 12 putting that device on her car? I mean, it
 13 goes -- it's --
 14 **THE COURT:** All right. I'll allow that.
 15 Again, I'm just going to have to call it as I see
 16 it as each question comes up. All right?
 17 (Sidebar concluded.)
 18 **THE COURT:** Proceed.
 19 **BY MR. McALLISTER:**
 20 **Q.** Mr. Fairfax, in your book, you make the
 21 statement that you would be the hero by saving
 22 Cyndi Steele's life; correct?
 23 **A.** No, sir.
 24 **Q.** Okay. You never made that statement?
 25 **A.** No, sir.

1 "Built on lies and deceit from the FBI"?
 2 **MS. WHELAN:** Objection.
 3 **THE COURT:** Sustained.
 4 **MS. WHELAN:** Move to strike.
 5 **THE COURT:** I'll strike the last question of
 6 counsel.
 7 **BY MR. McALLISTER:**
 8 **Q.** Well, I'll ask it this way: The title
 9 of your book was, in part, "Built on lies and
 10 deceit"; correct?
 11 **MS. WHELAN:** Objection.
 12 **THE COURT:** Sustained.
 13 **MS. WHELAN:** Move to strike.
 14 **THE COURT:** It's simply a question. The
 15 jury has been instructed previously that the
 16 questions of counsel are not evidence, so I don't
 17 think it needs to be stricken.
 18 **MS. WHELAN:** Yes. Thank you, Your Honor.
 19 Sorry.
 20 **BY MR. McALLISTER:**
 21 **Q.** You told Daryl Hollingsworth how to
 22 draw the cover; correct?
 23 **A.** No, sir.
 24 **Q.** Did you tell him to put Edgar Steele's
 25 truck on the cover?

1 A. No, sir.
 2 Q. Is it fair to say, in your 253 pages,
 3 Mr. Fairfax, you talked more about yourself than
 4 anyone else?
 5 A. Yes, sir.
 6 Q. And is it fair to say that very little
 7 of your book is about Edgar Steele?
 8 A. Yes, sir.
 9 Q. What exactly was the act of defiance --
 10 MS. WHELAN: Objection.
 11 BY MR. McALLISTER:
 12 Q. -- that you used for your cover of your
 13 book?
 14 THE COURT: Just a moment. There is an
 15 objection.
 16 I'll allow it.
 17 THE WITNESS: Can you repeat the question,
 18 please?
 19 BY MR. McALLISTER:
 20 Q. What exactly is the act of defiance?
 21 A. Going against Edgar Steele and turning
 22 him in.
 23 Q. Okay. And in the course of the book,
 24 you say, by your act of defiance, you became the
 25 victim in this case; correct, sir?

1 MS. WHELAN: Objection. Improper
 2 impeachment.
 3 THE COURT: I'll allow it. But I'm not
 4 suggesting I'm going to allow unlimited inquiry
 5 along this line. But for this limited question,
 6 I'm going to allow the witness to answer.
 7 THE WITNESS: Can you repeat the question,
 8 please?
 9 MR. McALLISTER: Yes, sir.
 10 BY MR. McALLISTER:
 11 Q. In this case, in your book, you
 12 repeatedly state that you're the victim because
 13 you designed the device so as not to go off;
 14 correct?
 15 A. Yes, sir.
 16 Q. And it's true, as Jim Maher testified,
 17 your cousin, that you've been making fireworks or
 18 explosive since you were a teenager?
 19 MS. WHELAN: Judge, I'm going to object.
 20 First, it's about somebody else's testimony.
 21 Secondly --
 22 THE COURT: Sustained.
 23 MS. WHELAN: -- this isn't impeachment.
 24 THE COURT: I'm going to sustain the
 25 objection.

1 A. I don't understand your question.
 2 Q. Don't you describe yourself as the
 3 victim in your book?
 4 A. Yes, sir, I think I do.
 5 Q. Okay. And don't you say that your view
 6 of the situation is that, to use your words, "They
 7 screwed me over"?
 8 MS. WHELAN: Objection.
 9 THE COURT: Sustained.
 10 MS. WHELAN: Judge, I would ask for a
 11 sidebar.
 12 THE COURT: Well, I'm just going to sustain
 13 the objection. I don't see a need for a sidebar.
 14 Counsel, the court's ruling, I think, is clear.
 15 I'm sustaining the objection.
 16 BY MR. McALLISTER:
 17 Q. In your book, you state that it's wrong
 18 for you to be in jail; correct?
 19 A. Possibly, yes, sir.
 20 Q. And the reason you say it's wrong is
 21 because the explosive device that you admit you
 22 built wasn't designed to go off; correct, sir?
 23 A. That could be, yes, sir.
 24 Q. Okay. And you go through some detail,
 25 correct, about how it wouldn't work?

1 BY MR. McALLISTER:
 2 Q. Mr. Fairfax, you have been making
 3 explosive devices since you were a teenager;
 4 correct?
 5 MS. WHELAN: Objection. This is not
 6 impeachment.
 7 THE COURT: Well, we're now not talking
 8 about -- the witness can be called by the defense
 9 for other purposes other than just impeachment.
 10 MS. WHELAN: Then we would object as
 11 cumulative because this is ground we have already
 12 gone over.
 13 THE COURT: I don't recall that it was
 14 testified to. I'll allow it.
 15 Just so we're clear, I mean, we have
 16 had extensive discussions about proper
 17 impeachment, what is not proper impeachment. That
 18 applies with regard to the book, as we have
 19 discussed, or the notes, but it doesn't apply to
 20 other questions relating to other topics. That
 21 we'll have to address separately.
 22 MS. WHELAN: Yes, Your Honor.
 23 THE COURT: So I'm going to overrule the
 24 objection. Proceed.
 25 BY MR. McALLISTER:

1 Q. Mr. Fairfax, you have been making
2 explosive devices since you were a teenager;
3 correct?
4 A. No, sir. Just fireworks.
5 Q. Okay. And the fireworks that you say
6 you made were designed very similar to what you
7 placed on Cyndi Steele's car; correct?
8 A. In format only, yes.
9 Q. Okay. The difference was, with
10 Mrs. Steele's car, you used a steel pipe; correct?
11 A. Yes, sir.
12 Q. And it's what you referred to in your
13 book as a "north Idaho firecracker"; correct?
14 A. I don't know if I referred to that in
15 my book or not, sir.
16 Q. Okay. In your book, you proclaim your
17 innocence; correct?
18 A. Yes, sir.
19 Q. In your book, you say, quote --
20 MS. WHELAN: Your Honor, we had --
21 THE COURT: Counsel, we need to know what --
22 I'm going to sustain the objection.
23 MS. WHELAN: Thank you.
24 BY MR. McALLISTER:
25 Q. Do you recall in your book, at page

1 Q. Your book was designed to be your
2 version of the truth, was it not, sir?
3 A. No, sir.
4 Q. Okay. Did you -- do you recall making
5 the statement, "When I'm done, my book will tell
6 it all."
7 A. Yes, sir.
8 Q. And you made that statement at page
9 223, did you not, of your book?
10 A. If you want to pull up the page, I can
11 tell you.
12 Q. I believe it's at the bottom of the
13 page, and the page number is 223; correct, sir?
14 THE COURT: You need to slide it up so the
15 witness can see what you're referring to. You
16 said it was the bottom of the page, I believe.
17 THE WITNESS: That's what it looks like it
18 says. Part of it's cut off.
19 BY MR. McALLISTER:
20 Q. Do you recall you wrote, "When I'm
21 done, my book will tell it all"?
22 A. Yes, I think so.
23 THE COURT: Counsel, that's consistent with
24 the witness's testimony, not inconsistent. So I
25 don't think that's proper impeachment.

1 193, writing that your -- that this was a "waste
2 of an innocent life," referring to yourself?
3 A. You'll have to show me that page.
4 Q. All right.
5 THE COURT: I'll note that the jury's screen
6 is off, so only the witness can see what's being
7 shown from Mr. Fairfax's notes.
8 BY MR. McALLISTER:
9 Q. Mr. Fairfax, I'd direct your attention
10 to the highlighted paragraph that begins where I'm
11 pointing. Could you read that to yourself,
12 please.
13 A. (Witness complied.)
14 Yes, I read it.
15 Q. Does that refresh your recollection
16 about what you wrote about yourself?
17 A. Yes, sir.
18 Q. And you wrote that you being jailed was
19 such a "waste of innocent life"; correct?
20 A. Yes, sir.
21 Q. And you say that it's a waste of your
22 innocent life because you "used a dummy device,"
23 "No ignition source, but everything else was
24 legit. What's the dif?" Correct, sir?
25 A. Yes, sir.

1 MR. McALLISTER: Well, I thought he said he
2 didn't recall and he wanted to see the page.
3 THE COURT: But then you can show it to him,
4 see if it refreshes his recollection, but I don't
5 think he said he didn't recall. I think he
6 confirmed that is what he recalls writing. So I'm
7 going to, again -- proceed.
8 BY MR. McALLISTER:
9 Q. Isn't it true, Mr. Fairfax, that not
10 only did you write this book about yourself, you
11 wanted it to be made into an action movie?
12 A. Yes, sir.
13 Q. And in this movie, you would be the
14 star; correct?
15 A. Not necessarily, sir.
16 Q. You were the one who engaged, to use
17 your words, "in an act of defiance"?
18 A. Yes, sir.
19 Q. But you wouldn't be the star, in your
20 mind?
21 A. No, sir.
22 MR. McALLISTER: That's all I have,
23 Your Honor.
24 THE COURT: Cross-examination.
25 CROSS-EXAMINATION

1 BY MS. WHELAN:
 2 Q. Mr. Fairfax, are these notes that you
 3 took while you were in jail?
 4 A. Yes.
 5 Q. This is not the actual book, is it?
 6 A. No.
 7 Q. You intended to write a book at some
 8 point?
 9 A. Yes.
 10 Q. In these notes, you discuss things like
 11 your cellmates?
 12 A. Yes, I do.
 13 Q. Jail food?
 14 A. Yes.
 15 Q. Missing your family?
 16 A. Yes.
 17 Q. So this isn't your book, is it?
 18 A. No, ma'am.
 19 Q. Counsel asked you a question -- I just
 20 have a couple for you, actually. But when you
 21 write a book, you intend for it to be fictional?
 22 A. Yes, I do.
 23 Q. And you wrote about yourself and your
 24 situation while you were in jail to work out your
 25 frustrations, didn't you?

1 A. No, they would not.
 2 Q. Nobody would have been able to hear the
 3 recordings from the recorder the FBI gave you?
 4 A. That's correct.
 5 MS. WHELAN: Nothing else, Your Honor.
 6 THE COURT: Redirect.
 7 REDIRECT EXAMINATION
 8 BY MR. McALLISTER:
 9 Q. Mr. Fairfax, when you, with your
 10 lawyer, went into the meeting with FBI Agent
 11 Sotka, you left out the most important fact, did
 12 you not?
 13 MS. WHELAN: Objection. Foundation. Form
 14 of the question. No time frame.
 15 MR. McALLISTER: I established a time frame.
 16 THE COURT: You did. I'm going to overrule
 17 the objection.
 18 THE WITNESS: Can you repeat it, the
 19 question, please?
 20 BY MR. McALLISTER:
 21 Q. Yes, sir. When you went in with your
 22 lawyer to seek immunity and had a meeting with FBI
 23 Agent Sotka, you left out the most important fact
 24 of your story, did you not?
 25 A. No, sir.

1 A. Yes, I did.
 2 Q. And that's why counsel said a lot of
 3 this is about you, but this is about your
 4 experience in jail; right?
 5 A. That's what it is, yes.
 6 Q. And from your point of view, but for
 7 you telling law enforcement about the defendant's
 8 request that you kill his wife, they wouldn't
 9 know?
 10 A. Can you say that again, please?
 11 Q. From your perspective --
 12 MR. McALLISTER: I'm going to object to the
 13 form of it at this point in time, Your Honor.
 14 THE COURT: Well, I think counsel is
 15 rephrasing the question. Let's give her a chance
 16 to rephrase, and then you can interpose your
 17 objection.
 18 Go ahead, Ms. Whelan.
 19 BY MS. WHELAN:
 20 Q. Counsel talked about you being the
 21 victim and that you were -- said some things in
 22 here. But, from your point of view, if you hadn't
 23 told law enforcement about the plot, nobody would
 24 have known that Edgar Steele asked you to kill his
 25 wife, would they?

1 Q. You didn't tell them that, in fact, you
 2 had put an explosive device on Cyndi Steele's car;
 3 isn't that true, sir?
 4 A. Yes, that is true, sir.
 5 Q. And you discuss that in your book, do
 6 you not?
 7 A. You would have to show me a reference,
 8 please.
 9 Q. I'd direct your attention to page 253,
 10 and I'm pointing to the highlighted section. Are
 11 you able to read that?
 12 MS. WHELAN: Judge, based upon what appears
 13 to be highlighted, it's outside what the court has
 14 allowed.
 15 THE COURT: Well, I don't know. It doesn't
 16 appear to be impeaching in any way, but I don't
 17 know where counsel is going with it.
 18 So you've reviewed it.
 19 Let's put another question before the
 20 witness, Mr. McAllister.
 21 BY MR. McALLISTER:
 22 Q. Mr. Fairfax, did you not say that your
 23 method was unorthodox --
 24 A. Yes, sir.
 25 Q. -- in your book?

1 And it was unorthodox because of the
2 fact that you wanted to hide your work in building
3 this explosive device and putting it on Cyndi
4 Steele's car?

5 A. No, sir.

6 Q. At no time in your book do you recount
7 how you were taking a big risk in not telling them
8 about the device?

9 A. You will have to show me a reference,
10 sir.

11 Q. Mr. Fairfax, Ms. Whelan asked you about
12 the book. And I believe your response was that it
13 really wasn't a book; it was just your notes.

14 MS. WHELAN: Objection, Your Honor. That
15 mischaracterizes the testimony.

16 MR. McALLISTER: I could rephrase it.

17 THE COURT: Counsel, I thought that was the
18 testimony.

19 But if you disagree with -- that you
20 don't think that is what you testified to, you can
21 so indicate.

22 THE WITNESS: What's that? I'm sorry. Can
23 you ask that question again?

24 BY MR. McALLISTER:

25 Q. Yes. As you testified here today in

1 Call your next witness, Mr. Amendola.

2 MR. AMENDOLA: Daryl Hollingsworth,
3 Your Honor.

4 THE COURT: Who?

5 MR. AMENDOLA: Daryl Hollingsworth.

6 Your Honor, while we're waiting, could
7 I get a document marked?

8 THE COURT: Yes. Ms. Gearhart, would
9 you --

10 MR. AMENDOLA: Thank you.

11 THE COURT: Mr. Hollingsworth, I'm not sure
12 if we released you previously. I'm going to have
13 you resworn, as well. Go ahead and step to the
14 witness stand, and then Ms. Gearhart will place
15 you under oath.

16 DARYL HOLLINGSWORTH,
17 having been first duly sworn to tell the whole
18 truth, testified as follows:

19 MS. WHELAN: Your Honor, prior to the
20 commencement, I would ask to approach at sidebar.

21 THE COURT: Yes.

22 (Sidebar commences as follows:)

23 MS. WHELAN: Judge, it appears they're going
24 to seek to use this. We have not seen it before.

25 It contains language that the court did not allow

1 response to Ms. Whelan's questions, you denied
2 that this is a book; correct?

3 A. Correct.

4 Q. Then why, at page 229, did you make the
5 statement, "So I have decided to call this book
6 fiction so as to eliminate any problems"?

7 A. Because when I write the book, it is
8 going to be fiction.

9 Q. But this wasn't fiction, what you
10 wrote, was it, Mr. Fairfax?

11 A. No, sir.

12 MR. McALLISTER: That's all I have, Your
13 Honor.

14 THE COURT: Anything else?

15 MS. WHELAN: No, Your Honor.

16 THE COURT: Mr. Fairfax, you may step down.

17 MS. WHELAN: May the witness be excused,
18 Your Honor?

19 THE COURT: I assume so. Any objection to
20 having the witness excused now?

21 MR. McALLISTER: Your Honor, yes, until the
22 government --

23 THE COURT: All right. Because of the
24 potential for surrebuttal, let's have him remain
25 available.

1 with the other witness. It's not been previously
2 provided. And we would ask the court to deny it.

3 THE COURT: Well, Counsel, the whole thing
4 about the FBI, "lies and deceit from the FBI," I'm
5 not allowing it. It's -- I just don't see
6 that -- now, again, what is the purpose?

7 Step to the microphone so that --

8 MR. AMENDOLA: Your Honor --

9 THE COURT: Let me rephrase my concern --
10 actually, rephrase the question. Why is it
11 relevant that -- and I assume this was handwritten
12 notes made by Mr. Fairfax or at least something
13 like that?

14 MR. AMENDOLA: No.

15 THE COURT: All right. It was then made by
16 Mr. Hollingsworth under the direction of
17 Mr. Fairfax?

18 MR. AMENDOLA: Yes.

19 THE COURT: His animus towards the FBI, as
20 I've said earlier, is simply not relevant. To me,
21 it does absolutely nothing to show any bias
22 against Mr. Steele if he feels like the FBI did
23 not treat him fairly. And simply attacking the
24 government in some broad way to indicate an
25 individual does not like the FBI or thinks that

1 they're capable of lies and deceit, it's just not
2 relevant, and it's not proper impeachment, and it
3 has all kinds of Rule 403 potential.

4 So, now, explain to me why this is
5 relevant to something.

6 MR. AMENDOLA: Your Honor, to the extent
7 that it is a collateral attack on the government,
8 I guess I can't do anything about that, but the
9 fact is that Mr. Fairfax said that the name of the
10 book is "An Act of Defiance." And this was drawn
11 by Mr. Hollingsworth at Mr. Fairfax's direction.
12 And this is the name of the book that he told him.

13 MR. McALLISTER: And, Judge, he wanted Edgar
14 Steele's truck put on the book. And what could be
15 more --

16 THE COURT: Okay. Now, I don't allow
17 tag-team arguing. I'm sorry. I once in a while
18 allow a brief ad lib. But, again, one attorney on
19 each argument.

20 I didn't say -- I mean, you can
21 certainly have him testify to that. I don't
22 disagree that his -- the fact that he wanted to
23 put Edgar Steele's pickup or something on the
24 front of a book, that's fine, you can have at it.
25 But this reference to the FBI is not coming in.

1 And, therefore, the exhibit itself can't come in
2 unless somehow you can agree upon a redaction.
3 And I don't know what the purpose is there.

4 MR. AMENDOLA: Are you telling me I can't
5 ask him if he was told the name of the book and to
6 identify the name of the book?

7 THE COURT: Not -- you already have -- you
8 already have in evidence Mr. Fairfax's statement
9 about "built on lies and deceit." And that's
10 fine. You have that. The "from the FBI," that's
11 what I'm not allowing.

12 And then it becomes cumulative. If you
13 want to lead him and ask him whether or not the
14 title included the phrase "Built on lies and
15 deceit," you can do it, but no reference to the
16 FBI. Okay?

17 MR. AMENDOLA: I got it.

18 THE COURT: The exhibit itself is not coming
19 in.

20 MR. AMENDOLA: Gotcha. Yes, Your Honor.
21 (Sidebar concluded.)

22 THE COURT: Proceed. Where were we,
23 actually? I think the witness has been sworn.
24 Ms. Gearhart, we got that far?

25 THE CLERK: Yes, Your Honor.

1 THE COURT: All right. You may inquire of
2 the witness.

3 DIRECT EXAMINATION

4 BY MR. AMENDOLA:

5 Q. Good morning, Mr. Hollingsworth.

6 A. Good morning.

7 Q. Mr. Hollingsworth, I have a few
8 questions for you that relate to your stay in the
9 Bonner County Jail when you were in the same cell
10 area with Larry Fairfax. Okay? Do you remember
11 that period of time?

12 A. Yes, I do.

13 Q. And you recall testifying last week in
14 this court about some of the things that occurred
15 while you were in that same cell with Larry
16 Fairfax -- or same cell area?

17 A. Pretty much, yeah.

18 Q. Okay. You were aware that Mr. Fairfax
19 was talking about writing a book?

20 A. Yes.

21 Q. Did you know that he had actually
22 started writing it?

23 A. Yes.

24 Q. Okay.

25 A. He told me.

1 Q. Did you know how far along he was with
2 the book?

3 A. Not really how far he was into it.
4 Just that he was writing it.

5 Q. Okay. When he found out that you
6 were -- had artistic talents, he asked you to help
7 design a cover of the book?

8 A. Yes.

9 Q. Could you please describe what the
10 cover -- as you understood it, what the cover of
11 the book would look like?

12 THE COURT: Counsel, I indicated at sidebar
13 you may want to lead the witness. The
14 open-ended -- normally I wouldn't allow a leading
15 question here, but I think here I'm going to
16 require it to avoid the issue we discussed at
17 sidebar.

18 MR. AMENDOLA: Fair enough, Your Honor.

19 BY MR. AMENDOLA:

20 Q. Mr. Hollingsworth, did you draw a road
21 as a part of the cover of the book?

22 A. Yes.

23 Q. And at Mr. Fairfax's direction, did you
24 write a part of a title on the book?

25 A. He made up the title. I just wrote it

1 on the book.
 2 **Q.** Okay. Was the title "Built On Lies and
 3 Deceits"?
 4 **A.** No.
 5 **Q.** What was the title?
 6 **A.** The title was "An Act of Defiance."
 7 **Q.** Was not a part of the cover of the book
 8 to include the words "Built On Lies and Deceits"?
 9 **A.** Yes.
 10 **Q.** And did a part of the cover of the book
 11 include a picture of Edgar Steele's truck?
 12 **A.** Not Edgar Steele's truck. It had a
 13 picture of Larry Fairfax's logging truck running
 14 over an Aryan Nation guy.
 15 **Q.** Running over who?
 16 **A.** An Aryan Nation member.
 17 **Q.** And was it your understanding that was
 18 because it showed Larry Fairfax to be a hero?
 19 MS. WHELAN: Your Honor -- well --
 20 THE WITNESS: I don't know --
 21 THE COURT: Is there an objection?
 22 MS. WHELAN: Yes. It's speculative and --
 23 THE COURT: Sustained.
 24 BY MR. AMENDOLA:
 25 **Q.** Do you know why Larry Fairfax wanted

1 you drew on the proposed cover of his book?
 2 **A.** Yeah. And a picture of an FBI guy
 3 stabbing Larry in the back.
 4 MS. WHELAN: Your Honor, I object and move
 5 to strike.
 6 THE COURT: Sustained. I'll instruct the
 7 jury to disregard the last response.
 8 BY MR. AMENDOLA:
 9 **Q.** Did Mr. Fairfax tell you whether he was
 10 being paid to set up Edgar Steele?
 11 **A.** No.
 12 **Q.** But he did tell you that he was asked
 13 to set up Edgar Steele by the FBI, did he not?
 14 MS. WHELAN: Objection. Leading.
 15 THE COURT: I'm going to sustain the
 16 objection.
 17 MR. AMENDOLA: I have no further questions,
 18 Your Honor.
 19 THE COURT: All right. Cross-examination.
 20 CROSS-EXAMINATION
 21 BY MS. WHELAN:
 22 **Q.** Mr. Hollingsworth, you still have the
 23 three prior felony convictions, don't you?
 24 MR. AMENDOLA: Objection. Beyond the scope.
 25 THE COURT: Overruled. It's impeachment.

1 you to show his logging truck running over the
 2 Aryan Nations?
 3 THE COURT: Okay. Just yes or no. Do you
 4 know?
 5 THE WITNESS: No.
 6 BY MR. AMENDOLA:
 7 **Q.** That's just something he told you to
 8 do, and you did it?
 9 **A.** Yeah.
 10 **Q.** Okay. Were there any other objects
 11 that he asked you to put on the cover of the book?
 12 **A.** Yes. He asked me to -- you know how
 13 you see, like, mile markers on the side of the
 14 highway that say, like, 30 miles to Boise or
 15 whatever?
 16 This one, the mile marker said "40" for
 17 "murder" and "30" for "conspiracy," you know,
 18 so-and-so on the mile marker sign. And then at
 19 the end of the road, it said -- had another sign
 20 that said "To Edgar's Graybar Hotel," which stood
 21 for a jail, and I drew that.
 22 **Q.** And do you know why he asked you to put
 23 those objects on the cover?
 24 **A.** Nope.
 25 **Q.** Any other objects that you recall that

1 You may answer.
 2 THE WITNESS: Yeah.
 3 BY MS. WHELAN:
 4 **Q.** One for aggravated assault?
 5 **A.** Yep.
 6 **Q.** One for forgery?
 7 **A.** Yep.
 8 **Q.** And one for malicious mischief?
 9 **A.** Yep.
 10 MS. WHELAN: Sir -- the jury projection is
 11 off; right, Judge?
 12 THE COURT: Yes.
 13 BY MS. WHELAN:
 14 **Q.** Can you look at the screen in front of
 15 you. Do you see that?
 16 **A.** Yeah.
 17 **Q.** Is this something you provided to
 18 defense counsel?
 19 **A.** No.
 20 **Q.** It's not?
 21 **A.** Actually, it might be part of it. I
 22 didn't get a chance to do a full picture because I
 23 only had so much time. But that was kind of an
 24 idea of what the book cover was going to be like.
 25 **Q.** And nowhere on here --

1 **A.** Nothing that I drew for Larry is on
 2 that.
 3 **Q.** This is just something you made for
 4 defense counsel?
 5 **A.** Yes.
 6 **Q.** Because they asked you to?
 7 **A.** Yeah, to give an idea of what I drew.
 8 **Q.** And nowhere on this picture do you show
 9 a Graybar Motel or anything like that, do you?
 10 **A.** Not in that one.
 11 **MS. WHELAN:** Nothing else, Your Honor.
 12 **THE COURT:** Recross?
 13 **MR. AMENDOLA:** No, Your Honor.
 14 **THE COURT:** I mean, redirect.
 15 All right. You may step down.
 16 Call your next witness.
 17 **MR. McALLISTER:** Your Honor, this would be a
 18 good break. I know it's a little early.
 19 **THE COURT:** Ladies and gentleman, as we're
 20 getting closer to the end of the case -- of
 21 course, I'd better not say anything for sure, but
 22 I think there is at least some chance we'll have
 23 the evidence all submitted today. It becomes
 24 necessary to take various breaks for reasons that
 25 we need to discuss things with counsel and to give

1 **MS. WHELAN:** Yes.
 2 **THE COURT:** All right. Ladies and
 3 gentleman, the evidence now has been presented to
 4 you. I need to confer with counsel and see how
 5 quickly we can put together instructions. And we
 6 may still try to argue and instruct today. I
 7 think we probably will, but I'm going to confer
 8 with counsel.
 9 So probably within a half an hour,
 10 maybe 15 minutes, we'll be in to visit with you
 11 and advise you as to our schedule. If there are a
 12 lot of issues we still have to address, it's
 13 possible we'll have you come back tomorrow
 14 morning.
 15 But I think, more likely, it might
 16 be -- well, maybe I won't say at this point until
 17 I have a chance to confer with counsel.
 18 You are still subject to the same
 19 admonition of the court not to discuss the case
 20 among yourselves or with anyone else and not to
 21 form or express any opinions about the case until
 22 it is submitted to you.
 23 And, again, even though you've heard
 24 all the evidence, you have not had the benefit of
 25 my instructions as to the law, nor have you heard

1 counsel a chance to confer among themselves. So
 2 today will be kind of broken up in bits and
 3 pieces, so don't take anything from that.
 4 I do want to again admonish you,
 5 however, not to discuss the case among yourselves
 6 or with anyone else and not to form or express any
 7 opinion about the case until it is submitted to
 8 you. And, as always, continue to follow the
 9 court's extended admonition concerning juror
 10 contact -- excuse me -- juror conduct.
 11 We'll be in recess until -- well, for
 12 about 15 minutes.
 13 (Recess.)
 14 (Jury present.)
 15 **THE COURT:** For the record, I'll note that
 16 the jurors are present.
 17 Mr. McAllister?
 18 **MR. McALLISTER:** The defense rests,
 19 Your Honor.
 20 **DEFENSE RESTS**
 21 **THE COURT:** Ms. Whelan, are you ready with
 22 any rebuttal?
 23 **MS. WHELAN:** Your Honor, we have no other --
 24 we have no --
 25 **THE COURT:** No rebuttal evidence?

1 the closing arguments of counsel.
 2 Until the case is fully submitted to
 3 you and you're advised that you can begin your
 4 deliberations, you must continue to follow the
 5 court's admonition about not discussing the case
 6 among yourselves or with anyone else and not
 7 forming or expressing any opinions about the case
 8 until it has fully been submitted to you.
 9 So we'll be in recess until further
 10 call.
 11 (Jury absent.)
 12 **JURY INSTRUCTION CONFERENCE**
 13 **THE COURT:** For the record, this is the time
 14 for the instruction conference -- formal
 15 instruction conference.
 16 I will note that the court provided
 17 counsel with a set of proposed instructions
 18 yesterday for their review and comment. We met
 19 informally here roughly an hour ago, maybe hour
 20 and a half ago, to go over instructions. I heard
 21 objections, made some changes at the request of
 22 counsel, those that I agreed with.
 23 And this is -- Counsel, I would note
 24 this is your opportunity to state your objections
 25 for the record. Any objections that were stated

1 during our informal session will not be preserved
2 unless you restate them here during our formal
3 instruction conference.

4 I did want to make just one note. And
5 that is, with regard to Instruction No. 2, the
6 court had originally proposed giving the newer
7 model Ninth Circuit instruction; but at the
8 request of the defendant, we -- I gave, instead,
9 the older version, which reads, quote, "A
10 defendant in a criminal case has a constitutional
11 right not to testify. No presumption of guilt may
12 be raised and no inference of any kind may be
13 drawn from the fact that the defendant did not
14 testify."

15 The newer version is not remarkably
16 different, except the word "guilt" does not appear
17 in that instruction. So I just wanted to note it
18 for the record that that change was made at the
19 request of the defense.

20 So at this time, Counsel, I'll hear
21 your formal objections. Ms. Whelan?

22 MS. WHELAN: Your Honor, the court made all
23 of the concerns -- or all of the changes the
24 United States was concerned with with the
25 exception of Instruction 8. We had requested that

1 No. 2, we -- I'm sorry -- No. 3, we object to the
2 language that is basically the model Ninth Circuit
3 instruction.

4 We believe that after the first
5 sentence, which reads, "Proof beyond a reasonable
6 doubt is proof that leaves you firmly convinced
7 the defendant is guilty," it seems to us that that
8 is more of a clear and convincing standard and a
9 watered down standard of reasonable doubt than has
10 been given in years past, and we object to it.

11 I believe to help -- I believe that the
12 following language should be added after the first
13 sentence of that instruction, and that language is
14 as follows:

15 "For a juror to be firmly convinced,
16 that juror must be convinced to a degree that
17 would justify taking action in what are the
18 person's most important affairs of his or her
19 life."

20 THE COURT: All right. Any other
21 objections?

22 MR. AMENDOLA: Not to the instructions,
23 Your Honor, but to the special verdict form.
24 There are four questions which follow the four
25 counts of the indictment. And at the end, the

1 "favored treatment" be changed to "consideration."

2 That is our only objection. Thank you,
3 Your Honor.

4 THE COURT: All right. I'm going to stand
5 by -- that is the standard language from the Ninth
6 Circuit model instruction. We had discussed the
7 possibility of including what the possible favored
8 treatment was, including charging decisions,
9 recommendations at sentencing, and then the travel
10 money that was provided by the FBI, but concluded
11 that that simply complicated the instruction
12 unnecessarily and that we'd just stay with the
13 standard language and simply say "consideration."

14 I think the model instruction provides
15 for compensation in those situations in which a
16 witness is actually paid by the government, which
17 does occur primarily in drug trafficking cases
18 where confidential informants are sometimes
19 actually compensated. But that -- obviously,
20 there was none of that -- nothing like that
21 occurred here except the testimony about the
22 payment of expenses.

23 So I'll overrule that objection.

24 Mr. Amendola, your objections?

25 MR. AMENDOLA: Your Honor, Instruction

1 jury is asked to either vote guilty or not guilty.

2 The "guilty" is on the left-hand side
3 and is basically the first choice. I believe that
4 they should be reversed and "not guilty" should be
5 the first choice; "guilty," the second.

6 THE COURT: All right. I'll overrule those
7 objections. The reasonable doubt instruction that
8 I am going to give is the model Ninth Circuit
9 instruction. It has been approved by the Ninth
10 Circuit, both by way of -- well, by way of
11 committee and, I think, by way of the Judicial
12 Council of the Ninth Circuit.

13 I am a true believer that reasonable
14 doubt should be instructed once, plainly, simply,
15 and clearly; and that the more we add, the more
16 potential we create for confusion with the jury.
17 And I think, under these circumstances, simply
18 giving the model Ninth Circuit instruction is the
19 right approach.

20 With regard to the verdict form, I
21 don't think it creates any kind of presumption.
22 They're simply going to have to fill out one left
23 or right, guilty or not guilty, and I don't think
24 it creates any presumption or direction to the
25 jury. It's almost more in alphabetical order, as

1 much as anything else. And so I'm going to leave
2 that verdict form as is.

3 So, Counsel, with that, then, I think
4 we will go ahead and instruct in that fashion.

5 Mr. Haws, I understood there was a
6 concern you were waiting for something. Has that
7 arrived?

8 MR. HAWS: Yes, Your Honor. Because we just
9 finished with the jury instructions about -- I
10 don't know -- 11:30 or quarter to 12:00, we used
11 those jury instructions -- portions of those jury
12 instructions that had a change in them and had to
13 make an enlargement for use during the closing.

14 Ms. Rocca, we believe, has made that
15 and is on her way back, we hope, but we would like
16 to have those enlargements made for closing
17 argument.

18 THE COURT: All right. Have you been able
19 to contact her by phone? I'm willing to wait ten
20 minutes; but if it's much longer than that, we're
21 going to have to go to plan B.

22 MR. McALLISTER: I understand, Your Honor.
23 I appreciate the consideration.

24 THE COURT: I'm sorry. It looks like maybe
25 she is out in the hallway.

1 It is your duty to weigh and to evaluate all of
2 the evidence received in the case and, in that
3 process, to decide the facts.

4 It is also your duty to apply the law
5 as I give it to you to the facts as you find them
6 whether you agree with the law or not. You must
7 decide the case solely on the evidence and the law
8 and must not be influenced by any personal likes
9 or dislikes, opinions, prejudices, or sympathy.

10 You will recall that you took an oath
11 promising to do so at the beginning of the case.

12 You must follow all of these
13 instructions and not single out some and ignore
14 others; they are all equally important. Please do
15 not read into these instructions or into anything
16 I may have said or done any suggestion as to what
17 verdict you should return. That is a matter
18 entirely up to you.

19 A defendant in a criminal case has a
20 constitutional right not to testify. No
21 presumption of guilt may be raised and no
22 inference of any kind may be drawn from the fact
23 that the defendant did not testify.

24 Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced the

1 Let's take a very short recess, and
2 then please let Mr. Severson know the moment
3 you're ready to proceed, because the jury is ready
4 to go. And on the assumption that you're going to
5 take, roughly, an hour to 45 minutes each in your
6 closing, I didn't want the jury to be waiting too
7 long. So let's try to get started as soon as we
8 can.

9 We'll be in recess.
10 (Recess.)
11 (Jury present.)

12 THE COURT: For the record, I'll note that
13 all jurors are present. I'll further note that
14 the court has conducted an instruction conference
15 with counsel and determined how to charge the
16 jury.

17 You have been provided -- I think on
18 your seats were a set of the court's proposed --
19 not proposed -- the court's instructions. You may
20 follow along with me as I read my instructions to
21 you.

22 INSTRUCTIONS TO THE JURY
23 THE COURT: Members of the jury, now that
24 you have heard all the evidence, it is my duty to
25 instruct you on the law that applies to this case.

1 defendant is guilty. It is not required that the
2 government prove guilt beyond all possible doubt.

3 A reasonable doubt is a doubt based
4 upon reason and common sense and is not based
5 purely on speculation. It may arise from a
6 careful and impartial consideration of all the
7 evidence or from lack of evidence.

8 If, after a careful and impartial
9 consideration of all the evidence, you are not
10 convinced beyond a reasonable doubt that the
11 defendant is guilty, it is your duty to find the
12 defendant not guilty.

13 On the other hand, if, after a careful
14 and impartial consideration of all of the
15 evidence, you are convinced beyond a reasonable
16 doubt that the defendant is guilty, it is your
17 duty to find the defendant guilty.

18 The evidence you are to consider in
19 deciding what the facts are consists of: first,
20 the sworn testimony of any witness; second, the
21 exhibits received in evidence; and, third, any
22 facts to which the parties have agreed.

23 In reaching your verdict, you may
24 consider only the testimony and exhibits received
25 in evidence. The following things are not

1 evidence, and you may not consider them in
2 deciding what the facts are:
3 First: Questions, statements,
4 objections, and arguments by the lawyers are not
5 evidence. The lawyers are not witnesses.
6 Although you must consider a lawyer's questions to
7 understand the answers of a witness, the lawyers'
8 questions are not evidence.

9 Similarly, what the lawyers have said
10 in their opening statements, will say in their
11 closing arguments, and at other times is intended
12 to help you interpret the evidence, but it is not
13 evidence. If the facts as you remember them
14 differ from the way the lawyers state them, your
15 memory of them controls.

16 Second: Any testimony that I have
17 excluded, stricken, or instructed you to disregard
18 is not evidence. In addition, some evidence was
19 received only for a limited purpose. When I have
20 instructed you to consider certain evidence in a
21 limited way, you must do so.

22 Third: Anything that you may have seen
23 or heard when the court was not in session is not
24 evidence. You are to decide the case solely on
25 the evidence received at the trial.

1 witness, you may take into account: First, the
2 witness's opportunity and ability to see or hear
3 or know the things testified to; second, the
4 witness's memory; third, the witness's manner
5 while testifying; fourth, the witness's interest
6 in the outcome of the case, if any; fifth, the
7 witness's bias or prejudice, if any; sixth,
8 whether other evidence contradicted the witness's
9 testimony; seventh, the reasonableness of the
10 witness's testimony in light of all the evidence;
11 and, eighth, any other factors that bear on
12 believability.

13 The weight of the evidence as to a fact
14 does not necessarily depend on the number of
15 witnesses who testify. What is important is how
16 believable the witnesses were and how much weight
17 you think their testimony deserves.

18 You have heard testimony from Larry
19 Fairfax, a witness who admitted being an
20 accomplice to the crimes charged. An accomplice
21 is one who voluntarily and intentionally joins
22 with another person in committing a crime.

23 Larry Fairfax also pleaded guilty to a
24 crime arising out of the same events for which the
25 defendant is on trial. This guilty plea is not

1 Evidence may be direct or
2 circumstantial. Direct evidence is direct proof
3 of a fact, such as testimony by a witness about
4 what that witness personally saw or heard or did.
5 Circumstantial evidence is indirect evidence; that
6 is, it is proof of one or more facts from which
7 you could find another fact.

8 You may recall that on the first day of
9 trial, I gave you an example of the difference
10 between direct and circumstantial evidence using,
11 hypothetically, a rainfall and how that might be
12 viewed as both direct evidence or circumstantial
13 evidence.

14 You are to consider both direct and
15 circumstantial evidence. Either can be used to
16 prove any fact. The law makes no distinction
17 between the weight to be given to either direct or
18 circumstantial evidence. It is for you to decide
19 how much weight to give to any evidence.

20 In deciding the facts in this case, you
21 may have to decide which testimony to believe and
22 which testimony not to believe. You may believe
23 everything a witness says or part of it or none of
24 it.

25 In considering the testimony of any

1 evidence against the defendant, and you may
2 consider it only in determining this witness's
3 believability.

4 Larry Fairfax also received favored
5 treatment from the government in connection with
6 this case.

7 For these reasons, in evaluating the
8 testimony of Larry Fairfax, you should consider
9 the extent to which or whether his testimony may
10 have been influenced by any of these factors. In
11 addition, you should examine the testimony of
12 Larry Fairfax with greater caution than that of
13 other witnesses.

14 You have heard testimony from persons
15 who, because of education or experience, were
16 permitted to state opinions and reasons for their
17 opinions. Such testimony should be judged just
18 like any other testimony. You may accept it or
19 reject it and give it as much weight as you think
20 it deserves, considering the witness's education
21 and experience, the reasons given for the opinion,
22 and all the other evidence in the case.

23 The defendant is charged in Count 1 of
24 the indictment with use of interstate commerce
25 facilities in the commission of murder for hire in

1 violation of 18 U.S. Code, Section 1958.

2 In order for the defendant to be found
3 guilty of that charge, the government must prove
4 each of the following elements beyond a reasonable
5 doubt:

6 First, beginning on or about December
7 2009 and continuing to on or about June 11th,
8 2010, the defendant, with intent that a murder be
9 committed, caused another to travel in interstate
10 commerce; and, second, the defendant intended that
11 the murder be committed as consideration for
12 receipt of or promise to pay anything of pecuniary
13 value.

14 The crime is complete if the above
15 elements are met, regardless of whether actual
16 murder occurred.

17 Anything of pecuniary value means
18 anything of value if the form of money, a
19 negotiable instrument, a commercial interest, or
20 anything else the primary significance of which is
21 economic advantage.

22 In Idaho, murder is defined as the
23 unlawful killing of a human being with malice
24 aforethought. In Oregon, murder is defined as
25 intentionally causing the death of another human

1 show beyond a reasonable doubt that the defendant
2 acted with the knowledge and intention of helping
3 Larry Fairfax use an explosive to commit the crime
4 of use of interstate commerce facilities in the
5 commission of murder for hire.

6 The term "explosive" means gunpowders,
7 powders used for blasting, all forms of high
8 explosives, blasting materials, fuses other than
9 electric circuit breakers, detonators, and other
10 detonating agents, smokeless powders, other
11 explosives or incendiary devices and any chemical
12 compounds, mechanical mixture, or device that
13 contains any oxidizing and combustible units or
14 other ingredients in such proportions, quantities,
15 or packing that ignition by fire, by friction, by
16 concussion, by percussion, or by detonation of the
17 compound, mixture, or device or any part thereof
18 may cause an explosion.

19 The defendant is charged in Count 3 of
20 the indictment with aiding and abetting possession
21 of a destructive device in relation to a crime of
22 violence in violation of 18 U.S. Code Section
23 924(c)(1)(B)(ii).

24 In order for the defendant to be found
25 guilty of that charge, the government must prove

1 being.

2 The defendant is charged in Count 2 of
3 the indictment with aiding and abetting the use of
4 an explosive to commit a federal felony, in
5 violation of 18 U.S. Code Section 844(h).

6 In order for the defendant to be found
7 guilty of that charge, the government must prove
8 each of the following elements beyond a reasonable
9 doubt:

10 First, the defendant committed the
11 crime of use of interstate commerce facilities in
12 the commission of murder for hire as described in
13 Count 1; and, second, the defendant knowingly and
14 intentionally counseled, commanded, induced or
15 procured Larry Fairfax to knowingly use an
16 explosive between on or about May 27th, 2010, and
17 May 31st, 2010, to commit that felony.

18 I instruct you, as a matter of law,
19 that the crime of use of interstate commerce
20 facilities in the commission of a murder for hire
21 is a federal felony.

22 It is not enough that the defendant
23 merely associated with Larry Fairfax or
24 unknowingly or unintentionally did things that
25 were helpful to Larry Fairfax. The evidence must

1 each of the following elements beyond a reasonable
2 doubt:

3 First, the defendant committed the
4 crime of use of interstate commerce facilities in
5 the commission of murder for hire as described in
6 Count 1; and, second, the defendant knowingly and
7 intentionally counseled, commanded, induced, or
8 procured Larry Fairfax to possess a destructive
9 device between on or about May 27th, 2010, and May
10 31st, 2010, in relation to the crime of use of
11 interstate commerce facilities in the commission
12 of murder for hire.

13 I -- that's actually a typo. It should
14 be: I instruct you, as a matter of law, that the
15 crime of use of interstate commerce facilities in
16 the commission of murder for hire is a crime of
17 violence.

18 It is not enough that the defendant
19 merely associated with Larry Fairfax or
20 unknowingly or unintentionally did things that
21 were helpful to Larry Fairfax. The evidence must
22 show beyond a reasonable doubt that the defendant
23 acted with the knowledge and intention of helping
24 Larry Fairfax possess a destructive device in
25 relation to the crime of use of interstate

1 commerce facilities in the commission of murder
2 for hire.

3 The term "destructive device" means the
4 following: First, any explosive, incendiary, or
5 poison gas, including a bomb, grenade, rocket,
6 having a propellant charge of more than four
7 ounces, missile having an explosive or incendiary
8 charge of more than one quarter ounce, mine, or a
9 device similar to any of these devices; or,
10 second, any type of weapon other than a shotgun or
11 a shotgun shell which the attorney general finds
12 is generally recognized as particularly suitable
13 for sporting purposes, by whatever name
14 known -- by whatever name known which will or
15 which may be readily converted to expel a
16 projectile by the action of an explosive or other
17 propellant which has any barrel with a bore of
18 more than one-half inch in diameter; or, third,
19 any combination of parts either designed or
20 intended for use in converting any device into any
21 destructive device described in paragraph 1 or 2
22 above and from which a destructive device may be
23 readily assembled.

24 The term "destructive device" does not
25 include the following: First, any device which is

1 attempted to intimidate or corruptly persuade
2 Cyndi Steele to engage in misleading conduct
3 regarding the identity of a voice on a recording;
4 and, second, the defendant acted with intent to
5 hinder, delay, or prevent Cyndi Steele from
6 communicating to law enforcement authorities
7 information relating to the commission or possible
8 commission of a federal offense.

9 An act is done knowingly if the
10 defendant is aware of the act and does not act
11 through ignorance, mistake, or accident. The
12 government is not required to prove that the
13 defendant knew that his acts or omissions were
14 unlawful.

15 You may consider evidence of the
16 defendant's words, acts, or omissions along with
17 all the other evidence in deciding whether the
18 defendant acted knowingly.

19 The term "corruptly" means to reflect
20 some consciousness of wrongdoing.

21 You will note that the indictment
22 charges that the offense or offenses were
23 committed on or about specified dates. The
24 government does not have to prove that the crimes
25 were committed on an exact date so long as the

1 neither designed nor redesigned for use as a
2 weapon; second, any device although originally
3 designed for use as a weapon which is redesigned
4 for use as a signaling, pyrotechnic, line
5 throwing, safety, or similar device; third,
6 surplus ordnance sold, loaned, or given by the
7 Secretary of the Army pursuant to the provisions
8 of Section 4684(2), 4685, or 4686 of Title 10; or,
9 fourth, any other device which the attorney
10 general finds is not likely to be used as a
11 weapon, is an antique, or is a rifle which the
12 owner intends to use solely for sporting,
13 recreational, or cultural purposes.

14 A person possesses something if the
15 person knows of its presence and has physical
16 control of it or knows of its presence and has the
17 power and intention to control it.

18 The defendant is charged in Count 4 of
19 the indictment with tampering with a victim in
20 violation of 18 U.S. Code Section 1512(b)(3).

21 In order for the defendant to be found
22 guilty of that charge, the government must prove
23 each of the following elements beyond a reasonable
24 doubt:

25 First, the defendant knowingly

1 government proves beyond a reasonable doubt that
2 the defendant committed the crimes on a date
3 reasonably near the date stated.

4 A separate crime is charged against the
5 defendant in each count. You must decide each
6 count separately. Your verdict on one count
7 should not control your verdict on any other
8 count.

9 A verdict form has been prepared for
10 your convenience. The instruction says that the
11 bailiff will hand that out to you. It's actually
12 on the next page.

13 LAW CLERK: They have that.

14 THE COURT: Yeah. So just turn to the next
15 page, and I'm going to read the verdict form and
16 go through it very briefly.

17 The verdict form reads as follows:
18 "In the United States District Court
19 for the District of Idaho, United States America,
20 plaintiff, versus Edgar J. Steele, defendant,
21 Special Verdict Form. We, the jury, find
22 unanimously as follows:
23 "Question 1: As to Count 1 of the
24 indictment charging the defendant, Edgar J.
25 Steele, with use of interstate commerce facilities

1 in commission of murder for hire in violation of
2 18 U.S. Code Section 1958, between on or about
3 December 2009 and June 11th, 2010, the defendant
4 is" -- and the jury's choices are either guilty or
5 not guilty.

6 "Question 2: As to Count 2 of the
7 indictment charging the defendant, Edgar J.
8 Steele, with aiding and abetting use of explosive
9 material to commit a federal felony, in violation
10 of 18 U.S. Code Section 844(h), between on or
11 about May 27th, 2010, and May 31st, 2010, the
12 defendant is guilty or not guilty?"

13 "Question 3: As to Count 3 of the
14 indictment charging the defendant, Edgar J.
15 Steele, with aiding and abetting possession of a
16 destructive device in relation to a crime of
17 violence, in violation of 18 U.S. Code Section
18 924(c)(1)(B)(ii), between on or about May 27th,
19 2010, and May 31st, 2010, the defendant is guilty
20 or not guilty?"

21 "Question 4: As to Count 4 of the
22 indictment charging the defendant, Edgar J.
23 Steele, with tampering with a victim, in violation
24 of 18 U.S. Code Section 1512(b)(3), between on or
25 about June 11th, 2010, and June 16th, 2010, the

1 this trial, I told you this is a very simple case.
2 This is the case of a man who wanted to murder his
3 wife. He hired somebody else to do it.
4 Fortunately, it failed.

5 Now that you've heard all of the
6 evidence, you know the facts. Edgar Steele, the
7 defendant, hired Larry Fairfax to build a bomb to
8 kill his wife, Cyndi. Fortunately, it didn't
9 succeed. When it didn't succeed the first time,
10 then there was a backup plan.

11 But Larry Fairfax -- before the backup
12 plan could be put into effect, Larry Fairfax had
13 second thoughts. Because Larry Fairfax had second
14 thoughts, he went to law enforcement, and he
15 reported that the -- Edgar Steele was insisting
16 that he go to Oregon to carry out this act.

17 Unfortunately, in one last effort to
18 give Mr. Steele a chance to change his mind, in a
19 conversation recorded on June the 10th, Thursday
20 night, before the murder was to be committed on
21 Friday, the 11th -- in a conversation that was
22 recorded, Mr. Steele had an opportunity to change
23 his mind.

24 And if you go to that tape, you will
25 see his words. "There ain't no second thoughts,

1 defendant is guilty or not guilty?"

2 And then there is a date line and a
3 signature line for the foreperson.

4 You will take this verdict form with
5 you to the jury room. And when you have reached a
6 unanimous agreement as to your verdict, you will
7 have your foreperson fill in, date, and sign the
8 verdict form which sets forth the verdict upon
9 which you agreed. You will then return with your
10 verdict to the courtroom.

11 We will now hear the closing arguments
12 of counsel, after which I will give you a few
13 brief closing instructions.

14 Mr. Haws, are you ready to make your
15 closing argument to the jury?

16 MR. HAWS: Thank you, Your Honor.

17 THE COURT: I would indicate, ladies and
18 gentleman, that I permit counsel to get into the
19 well area in front of you as long as they don't
20 invade your space.

21 But I think, Mr. Haws, you're wired up
22 with a lavalier mic.

23 CLOSING ARGUMENT BY THE GOVERNMENT

24 MR. HAWS: Thank you, Your Honor.

25 Members of the jury, at the opening of

1 pal."

2 "There ain't no second thoughts."
3 That's where this case stood just prior to his
4 arrest. "There ain't no second thoughts, pal."

5 Well, now that you have all the
6 evidence and you've heard many, many witnesses,
7 you're probably saying to yourself: "There is so
8 much. We've heard so much. We've seen so much.
9 Where do we begin?"

10 It's a natural question. If I could
11 make, respectfully, one suggestion to you, it
12 would be that you go to the judge's instructions.
13 That's your guidance.

14 And, in particular, I would recommend
15 that you go to Instruction No. 10, because that
16 tells you specifically what you must find with
17 regard to the first charge.

18 I recommend that you go to Instruction
19 No. 11, which are the elements that must be proven
20 for the second charge.

21 I recommend that you go to Instruction
22 No. 13, because those are the elements for the
23 Count 3.

24 And I recommend that you go to
25 Instruction No. 16, because that's where the judge

1 sets out the elements that you must find with
2 regard to the fourth count.
3 So start with those. Let me help you
4 out.

5 The first count against Edgar Steele is
6 contained in Instruction No. 10. "Use of
7 interstate commerce facilities," what does that
8 mean? It means use of the highways. Somebody got
9 on the highway and traveled across state lines
10 from Idaho to Oregon.

11 "Use of interstate commerce facilities
12 in the commission of murder for hire." And then
13 there are two parts to it. There are two parts to
14 it. And it charges a date. There is some
15 evidence going back even into the latter part of
16 2009 that there was talk between Mr. Fairfax and
17 Mr. Steele about this crime. But, certainly, by
18 June the 11th; that's when this crime was intended
19 to be committed by the defendant.

20 And the second element that you must
21 find is that murder for hire was in exchange for a
22 promise to pay.

23 Now let's talk about the facts about
24 this element. Do you remember when I made my
25 opening statement, I said to you, "There are two

1 going to happen on the 28th. Cyndi Steele was
2 going to get up. Her plans were to drive to
3 Oregon to be with her mother in Oregon City; and
4 when she did, she would be carrying that pipe bomb
5 along with her on the bottom of that Mitsubishi
6 Endeavor.

7 The evidence is corroborated. The
8 evidence is corroborated. Mr. Fairfax has
9 testified about that. Nobody else has
10 contradicted him. And so we rely upon the
11 evidence of Mr. Fairfax, but his testimony is
12 corroborated.

13 His Honor has rightfully instructed you
14 that you should look at Mr. Fairfax's testimony
15 with some skepticism. He was an accomplice to
16 Mr. Steele. And, as an accomplice, you should
17 look at his testimony with some skepticism and see
18 whether it sounds real, whether it is real,
19 whether it corresponds with the facts, whether
20 there is corroboration for it.

21 Mr. Fairfax took the stand. He told
22 you exactly how that happened. Mr. Steele gave
23 him authorization to get into the house -- into
24 garage and place that pipe bomb underneath Cyndi
25 Steele's car.

1 important dates here to circle"? One was May 27
2 and 28. Why? Because that's when the first
3 attempt was to kill Cyndi Steele. And I said the
4 second date was June the 11th, because that was
5 the target date for the follow-up plan.

6 So let's go back to those -- those
7 dates and those events, and let's talk about the
8 evidence.

9 You know, it's interesting in this
10 case, we have talked about people who are
11 characters in this case. It almost feels like as
12 though Cyndi Steele's little black 2004 Mitsubishi
13 Endeavor that you have heard so much, it's almost
14 like it has its own personality and is a character
15 in this case.

16 Because on May the 27th -- on May the
17 27th, the defendant, Edgar Steele, pursuant to a
18 plan with Larry Fairfax, took Cyndi with him and
19 went away from Sagle to run some errands. Why?
20 Larry Fairfax told you. So that Larry Fairfax
21 would have access to their garage and their cars
22 to put pipe bombs on the cars.

23 And so Mr. Fairfax placed a pipe bomb
24 on Cyndi Steele's Mitsubishi on May the 27th.

25 Now, Mr. Steele knew exactly what was

1 Do you remember the testimony of the
2 bomb experts? As they testified about Exhibit No.
3 80, the device that was placed under Cyndi
4 Steele's car, they told you that this was a large
5 pipe bomb. They have seen a lot of pipe bombs.
6 This was a large one.

7 Do you remember Mike Kittilstved, who
8 was in charge of the bomb squad? Do you remember
9 what he said? He said this was the largest pipe
10 bomb he had seen.

11 The intent with this pipe bomb was to
12 commit murder. It was to -- a very destructive
13 act. This wasn't an Idaho firecracker. This
14 wasn't a joke. This was intended to do great
15 damage to Cyndi Steele's car and kill her in the
16 process.

17 Do you remember the other evidence?
18 This end cap was blown off during the process of
19 rendering it safe, but this was a fully loaded
20 device. The testimony was that perhaps it was
21 three-quarters full. Nobody knew exactly. You
22 would have to have taken it apart. There is a lot
23 of danger in that.

24 The testimony from Mr. Fairfax was that
25 it was about three-quarters full. And the

1 testimony from the bomb squad as they -- as they
2 used the robot to blow the end off and scattered
3 powder -- some of that explosive powder around was
4 that it was quite full and left a lot of powder in
5 a pile on the ground. That explosive powder says
6 "intent to kill."

7 Do you remember what the testimony was
8 with regard to removing the pipe bomb from the
9 car? Do you remember what it took? The lube
10 technician had tied the two pieces of fuse to the
11 emergency brake cable.

12 And the robot -- after Mark Fox risked
13 his life to get under it and undo the wire and set
14 it on the ground, the robot got into a tug of war
15 with the car and the pipe bomb. This pipe bomb
16 lifted off the ground trying to break the fuse.
17 And the fuse broke.

18 Here are the two little pieces of fuse
19 that were attached in the end cap, and the end cap
20 had been wrapped with tape to hold the fuse in
21 place.

22 I submit to you that every wrap of that
23 tape was an intentional act that said "intent to
24 kill."

25 Do you remember what the bomb expert

1 the first time Larry Fairfax went to law
2 enforcement, he omitted that. He doesn't get a
3 pass. He omitted that.

4 But I'll submit to you that when it was
5 clear that he was responsible for that pipe bomb,
6 do you remember what he did? He volunteered that
7 he had built another one. He had built this one
8 right here. He had volunteered it, and he went to
9 his house, and he got the pieces.

10 And what's the corroboration that he is
11 telling the truth? On that, you have black powder
12 found in both of these devices, identical black
13 powder. Not "black powder"; that's a misnomer.
14 It's explosive powder. It's double-base powder.
15 It's black in color, and sometimes we get in the
16 habit of saying "black powder." But you remember
17 the testimony? It was explosive powder, the same
18 powder used in both.

19 Now, Mr. Fairfax has testified about
20 these devices and about the intent. It doesn't
21 really matter what Mr. Fairfax thought about those
22 bombs and whether they were going to explode or
23 not. They were intended to kill.

24 Today Mr. Fairfax kind of says, "Well,
25 I didn't think it would go off."

1 said? This device had redundancy. Redundancy
2 means it had a backup plan. They intended it to
3 go off because they had a fuse attached to the
4 tailpipe, right behind the muffler. They had
5 another fuse attached in front.

6 Two fuses. Why? To make sure it
7 works. What does "make sure it works" mean? What
8 does "redundancy" mean? It means intent to kill.

9 Do you remember Officer -- Corporal Fox
10 climbed under the car? Leaning under the car, he
11 undid the wires that held the pipe bomb on. Look
12 at those wires. Some of the wires were helping to
13 hold the pipe bomb in place along with that large
14 magnet. Redundancy again, to make sure it doesn't
15 fall off. And some of these wires were used to
16 hold the fuses in place where they would get hot.

17 I submit to you that every twist of
18 this wire was a knowing act. The person who put
19 it on there and intended it to be put on there
20 knew what they were doing. And that was an
21 intentional act to say, "We intend to kill."

22 But think of the corroboration for
23 Larry Fairfax. Larry Fairfax told you what
24 happened here. Now, the pipe bomb wasn't
25 discovered until it went to the Jiffy Lube. And

1 Well, the bomb experts, you remember,
2 have examined the fuses that were attached. Do
3 you remember the discoloration on the fuses? The
4 discoloration on the two fuses that extended from
5 the pipe bomb on Cyndi's car to the tailpipe, they
6 simply didn't get quite hot enough to actually
7 ignite, but there is the discoloration. They were
8 on the way.

9 All of this corroborates the fact that
10 Edgar Steele had an intent to kill. Mr. Fairfax
11 has testified about that.

12 Now, you may ask yourself -- because
13 I'm sure you're going to hear in a moment
14 Mr. Steele's fingerprints are not on these pipe
15 bombs. His physical fingerprints are not on
16 there, but his legal fingerprints are, because his
17 own words talk about pipe bombs.

18 I'm going to ask Ms. Rocca to play clip
19 No. 1. This is a part of Mr. Fairfax's and
20 Mr. Steele's conversation on the 9th. So,
21 Wednesday, the 9th. Listen carefully for the word
22 "pipe bomb" out of this man's mouth.

23 (Audio clip published.)

24 MR. HAWS: Now do you understand why I say
25 that Mr. Steele's legal fingerprints are all over

1 this? He was the instigator behind it.
 2 Why would he even bring up the word
 3 "car bomb" in his conversation with Larry Fairfax
 4 on the 9th of June? They had already concluded
 5 the pipe bomb was gone; it had fallen off.
 6 Because it was the first failed attempt.

7 You will see other references when you
 8 listen to those tapes, those recordings, where
 9 Mr. Steele makes reference to the prior failures
 10 to kill Cyndi Steele, and the prior failures are
 11 the pipe bombs.

12 Where is the other -- where is the
 13 other corroboration? Corroboration; in other
 14 words, independent facts that corroborate Larry
 15 Fairfax. Let me show you some corroboration.

16 When FBI Agent Sotka sent Mr. Fairfax
 17 with a microphone to record a conversation with
 18 Edgar Steele on the 9th of June, remember what he
 19 said? He is the only one who could program in
 20 those -- the digits that would turn on that
 21 microphone, and he was the only one who could turn
 22 them off.

23 That microphone was running from the
 24 minute Larry Fairfax left Mr. Sotka until he went
 25 to meet with Mr. Steele and came back.

1 lines? The vehicle crossed state lines.

2 Mr. Fairfax, he was told, "Go down and
 3 check on that pipe bomb." And Mr. Steele was
 4 insistent. On May the 31st: "Get down there.
 5 What happened? Why didn't it go off? Besides
 6 that, Cyndi is talking about having her car heater
 7 looked at. If she takes it into the shop, they
 8 discover that, our plot -- we are -- we're going
 9 to be suspects."

10 Mr. Fairfax made the trip down there.
 11 Where is the corroboration? May 31st, Thrifty Car
 12 Rental receipt, when he went down there and
 13 checked on the pipe bomb.

14 Now, you know, there has been some
 15 question about whether or not this pipe bomb was
 16 really on the car because -- because Jim Maher
 17 looked under there and couldn't see it.

18 Well, he looked under there from 25 or
 19 30 feet away, and he looked under there without a
 20 good look. He couldn't see what he was looking
 21 for, and he said there was nothing hanging down.

22 Well, there wouldn't be anything
 23 hanging down, because this is the photo which was
 24 shot at the Jiffy Lube on June 15th. You wouldn't
 25 see that pipe bomb hanging down underneath the

1 Do you remember what else they did?
 2 They searched him. Why? They want to know --
 3 standard procedure -- what this person is taking
 4 into the interview.

5 He had no money on him. A half-hour
 6 later, when he returns from his talk with
 7 Mr. Steele and this conversation is recorded, four
 8 brand new \$100 bills are found on Mr. Fairfax.
 9 This is corroboration. This says Mr. Fairfax was
 10 telling you the truth.

11 The pipe bomb failed. Let's go to the
 12 next one, the second event. Once it failed and
 13 they concluded erroneously it had fallen off, they
 14 concluded that it would be necessary for
 15 Mr. Fairfax to go down -- not "they" -- Mr. Steele
 16 concluded that it would be necessary for
 17 Mr. Fairfax to go down to Oregon and do the job
 18 himself.

19 Let's go back and talk about places.
 20 These conversations were taking place where? In
 21 Sagle, Idaho. Where did the black Mitsubishi go?
 22 Oregon City, Oregon, down by Portland.

23 Eventually, it would come back into the
 24 state of Idaho with a pipe bomb on it, and it
 25 would go to the Jiffy Lube. Did it cross state

1 car. It's attached to the frame of the vehicle.
 2 And from a distance, from 30 feet looking under
 3 it, you wouldn't see it.

4 There is the corroboration. There is
 5 corroboration for Larry Fairfax, his trip down
 6 there. The conclusion that was drawn was that the
 7 pipe bomb had fallen off, and so that required the
 8 second plan.

9 The second plan is a little bit
 10 amorphous. Mr. Steele is leaving it up to Larry
 11 Fairfax how to do it, but the options are -- you
 12 see it in the recordings -- guns ablazing, or else
 13 make it look like a car wreck that's an accident.
 14 Why? To be able to recover uninsured motorist
 15 coverage.

16 Let's have Mrs. Rocca play clip No. 3
 17 for us.

18 (Audio clip published.)

19 MR. HAWS: "No, no second thoughts, pal."
 20 You notice the last comment on there, "Otherwise,
 21 you only get our basic agreement." That
 22 corroborates. Mr. Steele's recording corroborates
 23 what Larry Fairfax told you. The original
 24 agreement was \$10,000 to kill Cyndi Steele,
 25 \$10,000 to kill Mrs. Kunzman, and \$5,000 to drive

1 down to Oregon to do it in Oregon, far away from
2 Sagle, Idaho. "You only get your basic agreement.
3 But if you can make it look like an uninsured
4 motorist, there may be \$100,000 in play there."

5 Who is the driving force behind this
6 crime? Is it the man who sat up here with -- in
7 the orange jumpsuit? Is it Larry Fairfax? No.
8 The driving force behind this crime is Edgar
9 Steele. It was his idea, and it was his direction
10 and his authorization.

11 If you go to those recordings -- let me
12 just -- let me just give you a couple of samples
13 of his insistence. These are the words from Edgar
14 Steele on June 9th: "Get this job done, Larry."
15 Another one: "I want to give you a powerful
16 incentive."

17 Who is driving this train? It's
18 Mr. Steele. His legal fingerprints are on this
19 case.

20 Another one: "Larry, can I count on
21 you?" Another one: "Make sure it happens."
22 Another one: "How can you be sure it's going to
23 do the job?" In other words, it didn't do it last
24 time. How can you sure that your plan is going to
25 work this time?

1 back to Portland to actually do the job, get it
2 done. That's been shown.

3 What about "defendant intended the
4 murder be committed as part of a murder for hire"?
5 We have already talked about the \$100,000
6 insurance policy. We have shown you the silver.
7 Here is the money to go take the trip. This,
8 ladies and gentleman, was a murder for hire.

9 Let's go to element No. -- Count No. 2,
10 which is found in Instruction No. 11. And this
11 one has to do with aiding and abetting Larry
12 Fairfax in the use of an explosive to commit a
13 federal felony.

14 The evidence that pertains to this --
15 let me write it up here -- is the pipe bomb on
16 Edgar Steele's Cadillac.

17 This is a lesser count than Count 3.
18 And why has it been charged that way? Because we
19 don't know much about this bomb. We got it after
20 it was disassembled. We never saw the end cap.
21 We never saw the fuses.

22 We have the corroboration that there is
23 explosive in here. We have Mr. Fairfax's
24 testimony that he took that explosive, dumped it
25 out on the ground and burned it, and that he put

1 "Okay. I'm counting on it." "I mean,
2 Larry, I'm up against it. It has to happen right
3 now." You just heard those words.

4 And on June the 10th, what words do we
5 have from this man's mouth showing that he is the
6 one who is instigating this and he is driving it?
7 He says, "I am counting on you." "You've got me a
8 little worried about this one."

9 Why worried about this one? Because
10 the pipe bomb didn't go off, the first one didn't
11 go off. "You've got me worried about this one."

12 Another one: "I want to be able to
13 assume that you're delivering the freight this
14 time." Why "this time"? Because the last time,
15 it didn't deliver the freight; the bomb didn't go
16 off.

17 And then he says, "I would like to see
18 it happen."

19 Ladies and gentleman, look, we have
20 just talked about the evidence there. This
21 element has been proven beyond a reasonable doubt.
22 He caused another person to travel to Oregon,
23 across state lines, to check on that pipe bomb.
24 And then -- that was on May 31st. And on June the
25 11th, it was his intention to send Mr. Fairfax

1 it on Edgar Steele's car. But, unfortunately, we
2 don't have a lot of other information about this
3 one, and so it's been charged as a lesser crime of
4 use. He procured Larry Fairfax to knowingly use
5 an explosive.

6 This was an explosive device. It had
7 the powder in it, the very same powder. It's an
8 explosive device, and it was used on Mr. Steele's
9 car.

10 Well, you might ask yourself, "Well,
11 doesn't that point to Larry Fairfax, then, as the
12 person who is behind all this?" No, it doesn't.
13 What it points to is that Mr. Steele has thought
14 this all out.

15 This pipe bomb right here that was
16 placed on his car with his permission and
17 encouragement and direction, this was just a
18 decoy.

19 A decoy from what? Well, when Cyndi
20 got killed and the pipe bomb explosion under her
21 car, they would come and start asking questions.
22 And if that pipe bomb was found under his car --
23 and he is not going to drive it -- found under his
24 car, then law enforcement would say, "Ah, looks
25 like some enemies of yours have targeted you."

1 It was a decoy. But was it used? Yes,
2 this pipe bomb was used in order to work the plan.

3 So if Count 1 of the indictment that we
4 have just talked about a moment ago that we just
5 checked off, if that has been satisfied beyond a
6 reasonable doubt, you just have to ask yourself
7 the question whether the defendant knowingly and
8 intentionally counseled, commanded, induced, or
9 procured. He did all of those. He was the
10 driving force behind this.

11 Ask yourself this question: What
12 motive would Larry Fairfax have to kill
13 Mrs. Steele? When he was cross-examined, not a
14 single motive came up. Did you make note of that?
15 No motive was shown as to why he would want to
16 kill her. In fact, he said what? "She is a very
17 nice lady."

18 Why did he do it? Well, I'm not going
19 to defend Larry Fairfax. He was hurting for
20 money. Is it despicable to exchange money -- to
21 accept money to go kill somebody? Absolutely.

22 Is it more despicable to be the brains
23 behind it, the one paying the money and directing
24 that somebody go kill your wife? Yes, that's more
25 despicable. That's the count Mr. Steele is

1 We already talked about this pipe bomb.
2 This is the pipe bomb it charges. This is the one
3 that was on Cyndi's car. This is the one that had
4 the redundancy that says "intent to kill."

5 When Larry Fairfax possessed this bomb
6 in furtherance of the plan to murder, of Edgar
7 Steele's plan to murder, and Edgar Steele made the
8 garage available for Mr. Fairfax to get underneath
9 it and attach this pipe bomb, Mr. Fairfax had
10 possession of this in furtherance of a felony
11 crime, murder for hire.

12 When he possessed this with his
13 knowledge and encouragement because he is the one
14 who was directing this plot, when that was
15 attached underneath Cyndi's car by Larry Fairfax,
16 that crime was committed.

17 When it drove across state lines and
18 then when Mr. Fairfax went across state lines to
19 find out what happened to it, that crime is --
20 that crime is proven beyond a reasonable doubt as
21 charged. Check that one off.

22 The fourth count in this indictment has
23 to do with the intimidation of his wife. Right
24 after Mr. Steele was arrested, it was very urgent
25 for him to get in touch with his wife. He

1 charged with. So the knowing use of this device
2 for what purpose? To advance the plot of
3 murdering Cyndi Steele.

4 So is this count -- this count is also
5 satisfied. You find guilty on the first one that
6 we talked about a moment ago, that's automatically
7 taken care of.

8 And if the evidence satisfies you
9 beyond a reasonable doubt that the defendant
10 knowingly and intentionally counseled and procured
11 it, directed it, you check that one, too. That's
12 the pipe bomb on Edgar Steele's car.

13 Let's go to Count No. 3, the other bomb
14 count found in Instruction No. 13 as given to you
15 by His Honor. This is slightly different. It's a
16 more serious charge. And the -- and this
17 evidence, the evidence that pertains to Count 3,
18 is the pipe bomb on Cyndi Steele's car, the little
19 black Mitsubishi, the one that we have already
20 been talking about.

21 So if you find that the crime of murder
22 for hire using interstate transportation has been
23 met, you check that one. And then you ask
24 yourself the question: Well, what other knowledge
25 do we have about the pipe bomb on Cyndi's car?

1 couldn't get in touch with her, so he called his
2 son.

3 And he said to his son -- I'm not going
4 to play that recording for you, but the operative
5 words he says to his son, Rex, he says, "Rex,
6 listen. This may be the most -- the single most
7 important call I've made in my life. I need you
8 to call your mother. I need you to talk to her.
9 She is going to be played the tape that supposedly
10 I'm recorded on hiring the guy or something. She
11 has to say the following, no matter what she
12 hears -- she has to say the following when it's
13 done, no matter what she thinks, no matter what
14 she feels, no matter what she hears, she has to
15 say, 'That is not my husband's voice.' Say it
16 back to me so I know you heard me."

17 Mr. Steele didn't even know anything
18 about these recordings from law enforcement. He
19 knew about them because he was a participant in
20 them. There is your corroboration. He knew all
21 along what was happening. And that's why he knew
22 it was urgent that he get in touch with his wife
23 to keep her from cooperating with law enforcement
24 during the investigation.

25 Those are pretty strong words. "No

1 matter what she thinks, no matter what she feels,
 2 no matter what she hears, she has to say --"
 3 that's a directive. Somebody is ordering somebody
 4 to do something. When you order somebody to give
 5 a testimony a certain way that affects you, you
 6 are trying to corruptly and wrongfully persuade
 7 that person. That's against the law. When he
 8 told his son that, Mr. Steele completed the crime
 9 of intimidation of a witness because Mr. --
 10 because Rex went and told his mom.

11 But there is something better. Let's
 12 go to clip No. 3. Would you -- or clip No. 2,
 13 please. Would you play that for us, Ms. Rocca.
 14 The one from Cyndi Steele. Listen to this
 15 jailhouse recording.

16 (Audio clip published.)

17 MR. HAWS: You just heard a crime committed.
 18 You just heard a crime committed right there.
 19 "You have to say -- no matter what you think, no
 20 matter what you hear, no matter what you feel, you
 21 must say --"

22 What is a rhinoceros in the road? What
 23 does that image conjure to you? What does that
 24 image conjure up in your mind when somebody says,
 25 "You must stand like a rhinoceros in the road and

1 are contained in that recording -- those
 2 recordings.

3 Mr. Sotka has testified about how that
 4 device worked. There is no evidence in this case
 5 that those recordings were in any way manipulated,
 6 changed, altered, affected in any way. There is
 7 no evidence to that effect.

8 Mr. Steele would like to have you think
 9 that that's happened; that somehow some "Mission
 10 Impossible" plot has been worked by the federal
 11 government to change things around and add words
 12 and so on.

13 So I ask you to listen carefully to the
 14 recordings themselves. The recordings themselves
 15 tell you that they are accurate and they have not
 16 been tampered with.

17 Why do I say that? Listen to the
 18 natural flow of the conversations. One answers
 19 the other. Listen to the context. They talk and
 20 reply in context.

21 Notice how you have background noises,
 22 like the train going by, the evening train.
 23 Notice how it carries through his statements and
 24 Mr. Fairfax's statements. These things have not
 25 been cobbled together from some kind of extraneous

1 say nothing more"? It means be obstinate and get
 2 in the way and say nothing more.

3 He is telling her what to say. That
 4 crime -- that crime was committed in that one
 5 phone call.

6 You know what his intent was. It's
 7 clear there in his words. You know what he said.
 8 You know the -- you know who he was talking to.
 9 There is no dispute about that. You know who his
 10 voice is. That crime has been committed right
 11 there.

12 Ladies and gentleman of the jury, I
 13 want to comment on two other things before I
 14 close. Those are the elements. Go through the
 15 evidence, check them off.

16 But I want to comment on one other
 17 thing. In the recording of June the 9th between
 18 Mr. Fairfax and Mr. Steele -- that law enforcement
 19 recording that Mr. Fairfax couldn't turn on or
 20 couldn't turn off that arrived back and was
 21 downloaded immediately by Mr. Sotka -- that
 22 recording and the one on the 10th are the keys to
 23 this case. Those recordings are the keys to this
 24 case. Because everything necessary to convict
 25 this man of the crimes he has been charged with

1 conversation. The background noises themselves
 2 tell you this.

3 This is not a studio recording. You
 4 know, people are pretty careful in studio
 5 recordings to make sure that this person speaks
 6 and then this person speaks.

7 Listen to the overlap. That's how your
 8 conversations take place -- mine, too; everybody's
 9 conversations. I talk. You stall a little bit,
 10 just like I just did, and you jump in and finish
 11 my sentence because you think you know what I'm
 12 talking about.

13 It's that interruption back and forth,
 14 give and take that takes place in conversations;
 15 that's what you see in those recordings.

16 Do you find it interesting that those
 17 background noises are real? They are right there.
 18 They go along with the chores they're talking
 19 about.

20 So they're talking about the horses.
 21 You can hear the gates opening. You can hear the
 22 horses moving. They talk about the water, and you
 23 can hear the water running.

24 These are not fabricated tapes. These
 25 are law enforcement tapes that have not been in

1 any way altered. There is no evidence to that.
 2 And that is all because a law
 3 enforcement officer from the FBI assured that a
 4 secure device that he, himself, couldn't alter has
 5 been programmed to turn on and programmed to turn
 6 off beginning when Mr. Sotka places the device on
 7 Mr. Fairfax and sends him on his way and when he
 8 returns.

9 Mr. Fairfax is never -- never out of
 10 sight of the investigators except the time that he
 11 is with Mr. Steele.

12 Imagine to yourself this man who came
 13 up here as a witness having the sophistication and
 14 the tools to be able to put together some kind of
 15 a recording like this and then bring it back all
 16 within a half an hour. That can't happen. That
 17 can't happen.

18 These recordings are true. You can
 19 rely upon them, and this case hinges upon those
 20 recordings because Mr. Steele's guilt is on those
 21 recordings.

22 In the recording of June 9th -- listen
 23 very carefully to it -- Mr. Steele says that if
 24 the trail comes back to him because Larry Fairfax
 25 messes up and gets caught -- if the trail comes

1 Which also corroborates the recordings -- tells
 2 him leave the truck and trailer hitched up on
 3 Friday night when he comes back because on
 4 Saturday -- pardon me -- on Thursday night, when
 5 he comes back. Because on Friday morning, when
 6 the murder is supposed to take place, he is going
 7 to take that truck and trailer, and he is going to
 8 go to Spokane to a lumberyard.

9 He tells you what his alibi is going to
 10 be. And, to make it even more believable, he is
 11 going to take a friend with him who can say,
 12 "Yeah, I was riding along with Mr. Steele at the
 13 time his wife was being murdered down in Oregon
 14 City."

15 It was Al Banks who came in here and
 16 testified, one of his friends. He was setting him
 17 up as a witness for his falsehood, his alibi.

18 And then he says he is going to go
 19 someplace, like to the post office or to the bank,
 20 to get a stamped receipt that shows time and
 21 place. What's that for? "To establish my alibi:
 22 I wasn't in Oregon City."

23 And then he says he is going to have
 24 lunch, and he is going to make himself memorable.
 25 Remember all of that? That's an alibi. That's

1 back to him, he says, quote, "I will lie myself
 2 out of it."

3 "I will lie myself out of it." That is
 4 what's happening in this case. I submit to you
 5 that the evidence in this case shows that that's
 6 exactly what Edgar Steele has been doing from
 7 clear back the end of May.

8 Let's talk about that. Why do I make
 9 that statement? His actions are lies.

10 First of all, notice he gets somebody
 11 else to do the job; right? So the trail doesn't
 12 come back to him. Notice that from the very
 13 beginning, in these tapes, at least -- that's the
 14 first time we have his audio beginnings of this --
 15 he starts to make an alibi.

16 Why do you make an alibi? Why do you
 17 make an alibi? Because you want to be able to
 18 prove you're not involved.

19 And this is a false alibi. Notice what
 20 he says. He says that -- he tells you what his
 21 alibi is going to be. On this Friday morning,
 22 when this murder is supposed to be committed in
 23 Portland -- in Oregon City, Oregon, he is going to
 24 take his truck and trailer, which he tells Larry
 25 Fairfax to leave hitched up -- do you remember?

1 lying your way out of this. That's what it is.
 2 He was already lying his way out of this, or
 3 trying to.

4 Did you notice the evidence about the
 5 time of his arrest? The officers gave him a
 6 chance to show whether or not he was going to
 7 stand by his alibi.

8 That morning, he got up, and he went to
 9 pick up Al Banks. Al Banks said that. They
 10 had -- they were going to get together to go to
 11 the lumberyard. He got up, he got in his truck
 12 with his trailer, and he drove out to meet Al
 13 Banks. He didn't get very far before they asked
 14 him to come back. And they discussed his wife's
 15 death, pretended that his wife had died, been
 16 killed.

17 Did you notice what the officer said,
 18 the ISP officer, Idaho State Police officer, who
 19 gave him the death notification? He said he had a
 20 flat affect. It was not a natural reaction. He
 21 has handed out death notices. It was not a
 22 natural reaction. It was a falsehood. It was a
 23 lie.

24 He was more concerned about the time
 25 when he was arrested -- that's when he got

1 upset -- than he was about hearing about his wife
2 dying. It's not natural, simply not natural.

3 If you listen to those recordings, in
4 there he tells Larry Fairfax, "When the black and
5 white comes into my yard and tells me," he's
6 gone -- he says, "I'm going to say, 'You've got to
7 be shitting me.'"

8 Excuse me for using that language.

9 Did you hear what the officers
10 testified about what he said when they came and
11 gave him the death notice? "You've got to be
12 shitting me."

13 This is all a lie. This whole alibi is
14 a lie. I would submit that his body reacted and
15 told more truth than his mouth did.

16 This was a false alibi, ladies and
17 gentleman. And let me tell you a little bit more
18 about why it's false, why he was telling a lie:

19 He was going to lie his way out of this.

20 It's possible that he was motivated by
21 goodwill when he paid to bring his mother-in-law's
22 home out of arrears, \$2,800, something like that.
23 Do you remember that testimony?

24 What a great cover. What a great
25 cover. Just like it was used in court here today

1 this little Russian girl? "I'm divorced." "I'm
2 divorced." That was a lie. He was covering up
3 all the time.

4 He uses other people. He manipulates
5 other people to do what he doesn't want done
6 himself or to get them to do what he does want
7 done. That's more evidence of it.

8 "Make sure the trail doesn't lead back
9 to me," that's what he is saying.

10 Ladies and gentleman of the jury, the
11 evidence here is overwhelming. It's way beyond a
12 reasonable doubt as to what this man intended.
13 It's way beyond a reasonable doubt as to his
14 actions.

15 No, his fingerprints aren't on the
16 bombs. His fingerprints aren't a lot of places
17 because he uses other people to cover it up. But
18 his legal fingerprints are. And those tapes from
19 June 9th and June 10th are conclusive evidence of
20 his involvement.

21 And his tape recording where he tells
22 his wife she must lie for him -- because that's
23 his voice on there. We all know it's his voice on
24 there. And he says, "You must say it's not."
25 When he tells his wife, "You must lie for me,"

1 or during this week: "Why would I do that? I
2 just paid off her -- I just brought her arrears
3 up. I mean, I'm a nice guy. I love my
4 mother-in-law." Maybe he does, but maybe he is
5 taking advantage of a great cover.

6 What about the Russian girlfriends?
7 Can we talk about that for a second? That's
8 another cover. Notice how he covers that up from
9 his family. He says, "I'm working on a case."

10 Did we ever hear anything about a case?
11 Did anybody give you a case name or a case number
12 or where it was filed or anything else? A case?
13 No, there was no case.

14 Then it's, "Well, I'm researching for a
15 book." Did we ever hear anything about a book or
16 a draft? Everybody said that because that's what
17 he led them to believe, and it was all a lie.

18 The young Russian gal, Tatyana
19 Loginova, she was the one that he was writing to.
20 And here is the letter that he had taken out of
21 the jail under the return address of the Federal
22 Defender's Office as legal mail to send to her.

23 See the coverup? See the lies? Legal
24 mail to send the love letters to Tatyana Loginova.
25 And what did he tell Tatyana Loginova,

1 that's a completed crime.

2 The evidence here has been shown beyond
3 a reasonable doubt, and we will ask you to return
4 a verdict of guilty as to all four charges.

5 Thank you very much.

6 THE COURT: Thank you, Mr. Haws.

7 Ladies and gentleman, as I advised you
8 earlier, we're going to take a short break now,
9 just to break up the afternoon, before you hear
10 the closing arguments from the defense.

11 I'll again admonish you -- and it's,
12 perhaps, even more important now -- that you keep
13 an open mind and not form any opinions about the
14 case. Because you have just heard the closing
15 arguments of the U.S. attorneys and have not
16 had -- have not heard the closing arguments of the
17 defense. So it's critical that you keep an open
18 mind and not form or express any opinions about
19 the case until it is fully submitted to you. And
20 do not discuss the case among yourselves.

21 We'll be in recess for 15 minutes.

22 (Recess.)

23 (Jury present.)

24 THE COURT: I'll note for the record that
25 the jury is present.

1 Mr. McAllister, you may make your
2 closing argument to the jury.

3 CLOSING ARGUMENT BY DEFENSE

4 MR. McALLISTER: May it please the court,
5 counsel for the prosecution, ladies and gentleman
6 of the jury.

7 Mr. Haws is an eloquent speaker and a
8 fine lawyer. And he says to you: This is a very
9 simple case about a man named Edgar Steele who is
10 alleged to have hired a hit man named Larry
11 Fairfax to kill his wife, his wife of 25 years.

12 He says it's simple. Is it?

13 The question is: Why would he do it?
14 Why would he use somebody like Larry Fairfax, who
15 has been sort of the worker at his home, a
16 handyman to fix it up? Why? That's the
17 interesting question in this case.

18 There is no doubt in this case that the
19 government has evidence. This is evidence. These
20 are disgusting. For whatever purpose Mr. Fairfax
21 used them for, he put people -- not just Cyndi
22 Steele, but people in harm's way.

23 But, you know, when Mr. Haws stands
24 here and says every twist of the wire was an
25 intentional act by Edgar Steele, there is no proof

1 guilt for all possible doubt. A reasonable doubt
2 is doubt based on reason and common sense. It's
3 not based purely on speculation. It may arise
4 from careful and impartial consideration of all of
5 the evidence and from the lack of evidence."

6 There is nothing to show in this case
7 that Edgar Steele possessed any explosive device,
8 used any explosive device, made any explosive
9 device. The only connection comes from one man:
10 Larry Fairfax.

11 Now, Mr. Haws says in his summation to
12 you, "No one has contradicted Larry Fairfax." Is
13 that accurate? Didn't he contradict himself
14 before you? Didn't he misstate what he was really
15 doing?

16 You know what the biggest lie of Larry
17 Fairfax was? It was going into the FBI on June
18 9th and saying, "Oh, Edgar Steele hired me to kill
19 his wife, and I want to be a confidential
20 informant. I want immunity from prosecution, and
21 I want you to use me to get Edgar Steele." And he
22 gives them information.

23 But can you believe it? He doesn't
24 tell them that on May 27th or 28th, he put a bomb
25 on Cyndi Steele's car. Doesn't tell them. Why?

1 of that.

2 The most amazing thing about this case
3 is what's not here. What hasn't been proved is
4 greater than what has.

5 Larry Fairfax is/was a criminal. And
6 in this case, those devices are his "Act of
7 Defiance," the title of his book, supposedly
8 fiction but written all about himself.

9 And it's taking this physical evidence
10 from this table and putting it over here. He
11 says -- Mr. Haws said that Edgar Steele has legal
12 fingerprints because there are no fingerprints of
13 Edgar Steele on the explosive device. And there
14 is no proof that Edgar Steele designed it, built
15 it, touched it, put it on anyone's car. Every
16 piece of evidence in this case comes back to Larry
17 Fairfax and the recordings.

18 This is not so much about a case where
19 the government has allegedly produced overwhelming
20 evidence. It's about what has not been proved.

21 Instruction No. 3 that the court
22 provided a copy to each juror, I believe, says,
23 "Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced the defendant is
25 guilty. It is not required the government prove

1 I guess, through his own answers, he wanted to be
2 the hero. He wanted to go take it off the car.
3 He wanted to save Cyndi Steele.

4 But do you know what would have
5 happened if he told the truth and the whole truth
6 on June 9th? Clearly, any law enforcement person
7 would go to Cyndi Steele and say, "Let's check
8 your car. Let's see if it's really there. Let's
9 see if he is making this up. But, please, let's
10 check the car, give her fair warning."

11 But they can't do it. The FBI doesn't
12 know about it. It's the missing link. It's what
13 this case is all about. It would never, ever be
14 this serious or this difficult if there was no
15 explosive device, if it was all talk, like around
16 those recordings.

17 And, again, Mr. Haws played the
18 recordings and the jury has them in evidence, and
19 you have testimony specifically about them from
20 Cyndi Steele, from Kelsie Steele, people who have
21 known him for collectively, I guess, about 46
22 years.

23 And they asked from the very
24 beginning -- Cyndi Steele -- "I want to listen to
25 the recordings." And she did.

1 And her testimony is there are problems
2 with the recordings. "It doesn't sound like the
3 way my husband talks." There are breaks in the
4 discussion. There are problems with what we call
5 the "syntax." What is the meaning of this?

6 And, you know, there is one conclusion
7 about those recordings: That they are nothing but
8 talk. Nothing but talk. Because Edgar Steele and
9 the FBI, no one knows that, in fact, this man,
10 Larry Fairfax, has made an explosive device and
11 attached it to Cyndi Steele's car.

12 No one knows that until June 15th, when
13 it's found by Cyndi Steele taking her car in for
14 an oil change. No one knows that except Larry
15 Fairfax.

16 And why does he keep this secret? Why
17 does he go back? Why does he go over to Oregon
18 City? Well, according to him, Edgar told him to
19 do everything. "Edgar told me to go and
20 allegedly" -- and the ridiculousness of this
21 stands out -- "He told me to go run her off the
22 road, or I suggested I would run her off the road.
23 I would hide in the back seat, and I would do
24 something to her."

25 Ladies and gentleman, to say that

1 And you say: Well, what difference
2 does it make? A bomb is a bomb. And most people
3 would say: Right.

4 But it doesn't say that Mr. Fairfax had
5 actually done anything. It's fantasy talk. It's
6 fiction. It's Larry Fairfax talking and trying to
7 set up Edgar Steele.

8 But unfortunately, in real life, this
9 is more than just trying to write a book. It's
10 putting people's lives in danger. And not just
11 Cyndi Steele. If you believe Edgar Steele --
12 excuse me. If you believe Larry Fairfax and his
13 testimony in this case, "Well, the device fell
14 off. Somehow, it didn't go off. And somehow, it
15 fell off. So there is no problem."

16 Well, what if it did go off? And what
17 if it did fall off and did go off and harmed other
18 people? He had no concern whatsoever about that.

19 And, you know, there is a conflict in
20 the evidence. Larry Fairfax says, "It won't go
21 off. It didn't have an ignition. It wasn't
22 designed to go off." And the government's
23 witnesses say, "Oh, no. It was a real bomb, and
24 it would have gone off. It's just the way he did
25 it, the fuse didn't ignite. It didn't get hot

1 Mr. Fairfax's testimony is far-fetched is perhaps
2 charitable. Those discussions, even if you
3 believe that they are accurate and even if you
4 believe it's Edgar Steele's voice, where is the
5 proof of that? Where is the proof of that?

6 But even making the assumption, it's
7 like fantasy. It is like reading a novel or
8 listening to a novel being played to you. That's
9 what's on those recordings.

10 Evidence in a criminal case can be
11 direct or circumstantial. And is there any direct
12 evidence whatsoever that Edgar Steele knew,
13 approved, condoned, ordered Larry Fairfax to put a
14 device on his wife's car? And the answer is no.
15 No, there is not.

16 Because, as far as we know, Larry
17 Fairfax didn't tell anybody what he was doing.
18 There is no discussion, as Mr. Haws says, in those
19 recordings or anyplace else about redundancy,
20 double wrapping the tape, designing it to go off
21 or to not go off. There is nothing there.

22 Mr. Haws told you that there is a
23 reference to a "pipe bomb." That's not right,
24 either. If you listen to the recording, there is
25 a reference to a "car bomb."

1 enough. It just got discolored."

2 We don't even know, based upon the
3 evidence presented by the government, whether, in
4 fact, he put the device on the car May 27th or
5 whether he never did it then and he waited until
6 after Edgar Steele was arrested on June 11th and
7 put it on the vehicle then.

8 MR. HAWS: Objection. Assumes facts not in
9 evidence.

10 THE COURT: Ladies and gentleman, counsel
11 must restrict their arguments just to the evidence
12 and inferences that can be drawn from the
13 evidence. I'm assuming that counsel is simply
14 suggesting an inference that can be drawn from the
15 evidence, which is fair closing argument, but it
16 has to be based upon evidence actually presented.

17 With that, I'll allow you to go ahead
18 and proceed.

19 MR. McALLISTER: And I'm talking about
20 evidence that was not presented here, evidence
21 that doesn't exist. We -- the jury does not know
22 when the device was placed on the car, whether it
23 ever went to Oregon or not, whether it crossed
24 state lines, whether it was used in interstate
25 commerce, as the law requires in order to prove

1 guilt.

2 Now, this is a case where the defendant
3 is presumed innocent, where the defendant does not
4 have to present any evidence, where the defendant
5 doesn't have to answer. The burden is on the
6 government.

7 And, yet, throughout Mr. Haws'
8 argument, he kept saying: "Where is this?"
9 "Where is that?"

10 Why? Why would Edgar Steele do this?
11 Because he was in love with a picture of a Russian
12 girl that he saw in the Internet? Hard to believe
13 that a man would hire somebody like Larry Fairfax,
14 first of all; and, second of all, want his wife
15 murdered when he could simply, if he really, truly
16 was in love with some woman in Russia, walk away,
17 go there.

18 You can read the evidence. You can
19 read the letter that is in evidence. And you can
20 decide whether this is the writings of a murderer
21 or a man who would hire somebody to murder
22 somebody; or whether, as it's been said here
23 repeatedly, the whole Russian bride scam was, you
24 know, a case or something to work on and something
25 that his family laughed about because it was so

1 as to eliminate any problems." Well, his 257
2 pages is a real problem for him. Because he
3 admits that, in all of this, he wanted to set up
4 Edgar Steele. He wanted to be the hero. He
5 wanted to be somebody he wasn't.

6 The trip, the first trip to Portland
7 with his cousin, Jim Maher, who testified here,
8 Larry Fairfax says, "Yeah, I brought my cousin
9 along. We went over there, and we were going to
10 take -- I was going to take the device off or we
11 were going to take the device off."

12 Does Larry Fairfax go to Cyndi Steele's
13 car? No. The testimony is he tells Jim Maher to
14 go take it off or go see if it's even on. And, in
15 fact, Mr. Maher testified he never got out of the
16 car. He never really looked. But do we -- do you
17 know -- based upon this evidence, do you know
18 whether or not it was even on the vehicle?

19 The second trip to Portland on the
20 night and into early morning hours of June 11th,
21 he again goes with Mr. Maher back to the Portland
22 area. And the evidence is, as we lawyers like to
23 say, undisputed. Nobody can test this.

24 Jim Maher says, "Well, this time we
25 went back, and for sure I was going to take the

1 fake.

2 You know, they played -- they played
3 the deposition testimony or the testimony of
4 Tatyana from Russia. She didn't speak a word of
5 English, not a word. And, of course, there is no
6 proof and he does not speak Russian, Edgar Steele.

7 This is like, you know, computer
8 cyberspace fantasy, writing letters that are
9 interpret -- that go to an interpreter, who
10 supposedly interprets them to the Russian woman,
11 and then she sends something back.

12 It's fantasy on both sides. It's not a
13 motive to commit murder. It's not a reason to
14 commit murder.

15 Larry Fairfax, "An Act of Defiance,"
16 the title of his book. I suppose it's not a bad
17 title, but it tells you a lot about Larry Fairfax.
18 What was he doing here? What was he really doing
19 besides building a bomb, which is undisputed? He
20 wanted to be the hero, but now he claims he is the
21 victim. He is surprised by the fact that he was
22 arrested and put in jail when the device was
23 found. Of course, he never told anybody about the
24 device.

25 "I decided to call this book fiction so

1 device off of Cyndi Steele's car when she was in a
2 public -- when the car was in a public place and I
3 could get to it without really being noticed."

4 That's undisputed testimony. That was
5 the purpose in making the second trip. And what
6 happens? They get there in the early morning,
7 stop for breakfast. Larry Fairfax is sleeping in
8 the truck, and Maher is in having breakfast. And
9 as he said, someone from the feds -- didn't know
10 if it was an FBI agent, a U.S. marshal -- tells
11 him to go back home.

12 You know, if there was a device on the
13 car, as Larry Fairfax said, at that point, Edgar
14 Steele is under arrest. Why didn't they go check?
15 Why didn't he let Mr. Maher remove the device?
16 Because he didn't want to get caught. He didn't
17 want anybody to know. That's why.

18 Everything that the government has in
19 this case revolves around Larry Fairfax.

20 What do you really know about Edgar
21 Steele in this case? We know that he was arrested
22 on June 11th. And, in fact, at that time, there
23 was a ruse prepared to tell him that, not only was
24 his wife dead, that his mother-in-law had been
25 shot, and to get him to confess that he was using

1 Larry Fairfax as a hit man to kill his
2 mother -- kill his wife and mother-in-law.

3 And what happens on June 11th? Edgar
4 Steele does not confess. Edgar Steele, when
5 confronted, tells the truth. And he's
6 nevertheless arrested.

7 What happens on June 15th when the
8 device is found? Larry Fairfax confesses. And he
9 said, "Yeah, I did it all. I made it. I put it
10 on there. But I didn't think it would harm
11 anybody. I didn't think it would work. I didn't
12 think it would go off. I didn't think, based upon
13 my first trip to Portland, it was even there, but
14 I didn't do anything to warn anyone else."

15 He confesses. He admits his conduct in
16 this case.

17 The evidence in this case about Edgar
18 Steele's arrest shows his state of mind. He is in
19 shock on getting this news, and then he is placed
20 under arrest.

21 There are statements on the recordings
22 that seem, at first blush, to be convincing. And
23 there is an old phrase attributed to a lot of
24 lawyers: "Talk is cheap, but where does the
25 rubber meet the road?"

1 you're supposedly going to kill? It doesn't make
2 any sense.

3 We also know a lot about Edgar Steele
4 from his cell phone records. You know, in this
5 day and age, cell phones can tell you a lot. And
6 you will have this in evidence, and you can
7 examine it yourself. This copy is difficult to
8 read, I admit it. But when you see it, you can
9 look at what calls were made to Edgar Steele and
10 what calls did he make on June the 10th. And it
11 stands out above everything else that on the night
12 before he was supposedly going to kill his wife or
13 have a hit man kill his wife, he spends 43 minutes
14 talking to Cyndi Steele.

15 And she was here, and she testified.
16 And she said, "Yeah. We talked about my mom and
17 her health problems and her money problems."
18 Forty-three minutes? That tells you a lot about
19 Edgar Steele's state of mind on the night before
20 he is supposedly or allegedly was going to have
21 Larry Fairfax harm her in some way.

22 Phone records don't lie. The telephone
23 company doesn't make them up other than for the
24 purpose to bill you. It's not an alibi. It's not
25 something created. It's the fact that he did talk

1 And in this particular case, we have
2 some indications about Edgar Steele. What do we
3 know about Edgar Steele?

4 We know, on June 10th, that he was
5 visited by the old country veterinarian, Dr. Bob
6 Stoll. We know from their conversation, which is
7 undisputed, that they were talking about life and
8 God and his recent surgery. Was this the talk of
9 a man who was at that moment planning to murder
10 his wife?

11 Now, I know the government will say,
12 "Well, it's all a front." But, you know, you look
13 at Exhibit No. 202, which is the May 20th, 2010,
14 letter to Wachovia Mortgage. And it is -- the
15 original was signed by Edgar Steele. It's on his
16 stationary. And he said, "Also enclosed is a
17 Wells Fargo cashier's check in the amount of
18 \$2,779.37.

19 Now, Mr. Haws says, "Oh, this was part
20 of the plan. This was part of the alibi."

21 Why, on May 19th, would he spend his
22 own money and his wife's money to help his
23 mother-in-law? Why would somebody do that? If
24 there is really a plot or a plan, do you go take
25 that kind of money and give it to someone else who

1 to her. Why? Because the evidence in this case
2 is that he loved Cyndi Steele, that he spent 25
3 years -- now 26 -- married to her with three
4 children.

5 And the government, when Cyndi Steele
6 testifies, wants to examine her about a divorce
7 petition she filed some ten years previously, a
8 complaint or a petition that was dismissed. There
9 was no divorce. Yes, there was a separation.
10 Yes, they were having problems ten years ago.

11 But what's the evidence before you?
12 The evidence is, in the next ten years, they
13 raised their family. They lived in north Idaho.
14 They cared for each other.

15 You know, you can't just make up
16 witnesses like Jeff Miller and Al Banks who came
17 in here and said, "Well, I've known him for 40
18 years. I've known Cyndi for 26 years. I've known
19 the children." Al Banks for a different period of
20 time. And they said never, never did Edgar Steele
21 ever show anything except love for his family;
22 never, ever did he attempt to harm anyone.

23 That is the evidence in this record.
24 That is the evidence that was presented at trial.
25 And you just can't -- you can't just find somebody

1 out on the street. These are people that have
2 known him for many, many years.
3 Cyndi Steele testified in this case,
4 and she was asked about why she wanted to file a
5 divorce petition, why she wanted money from Edgar
6 Steele, why she wanted custody of the children.
7 And none of that mattered because there was no
8 divorce. But it was done in an attempt to
9 convince, I guess, a jury that ten years ago he
10 wanted to, quote, "get rid of his wife."

11 But, on the other hand, ten years went
12 by. The testimony was that this type of act, of
13 hiring somebody like Larry Fairfax to commit
14 murder, was so out of character to be
15 unbelievable.

16 And ladies and gentleman, in this case,
17 you always get to bring your life's experiences
18 and your common sense with you into deliberations.

19 Fairfax's story not only makes no
20 sense, it defies common sense. And without Larry
21 Fairfax, this case makes no sense because it's
22 built around him. He is the person who made the
23 bomb, who designed it, who attached it, who failed
24 to retrieve it, who put not only Cyndi Steele but
25 everyone else in harm's way.

1 legal words, and those are the elements. But is
2 there evidence here that he intentionally
3 commanded?

4 It goes back to the recordings. And
5 when you look at those recordings, when you listen
6 to them, you may just reach the conclusion none of
7 this makes sense. This is talk, like somebody is
8 writing a novel, like somebody is -- somebody is
9 making it up for some other purpose.

10 Count 4 is what's called tampering with
11 a victim. And there is no doubt in this case that
12 Cyndi Steele is the victim.

13 And what is that evidence? It is one
14 phone call on June 13th, 2010, that Mr. Haws said
15 he never knew he was being recorded. And then
16 they played the recording, and the voice that
17 comes on says, "This call is being monitored and
18 recorded," to Cyndi Steele and Edgar Steele. He
19 knows it's being recorded. He talks about the
20 fact that it's being recorded.

21 What does he ask his wife to do? He
22 says -- and you can listen to it for yourself --
23 he says, "Stand like a rhinoceros in the road.
24 Tell them it's not my voice on the tapes," which
25 we all know are the recordings.

1 The charges in this case have been
2 presented by Mr. Haws. And you do have, I
3 believe, copies of the actual instructions. And,
4 as you will see, the law requires you to examine
5 what we call the elements of the crime and see if
6 they have been proven.

7 Mr. Haws says, you know, "Just check
8 the box." Where, ladies and gentleman -- in the
9 evidence before you, where is the evidence that
10 Edgar Steele intended that the murder be committed
11 for money? Where is that evidence? Larry Fairfax
12 is the only one to present any of that evidence.

13 Where is the evidence that Edgar Steele
14 caused another person to travel in interstate
15 commerce for the purpose of murdering his wife?
16 The evidence before you is that Mr. Fairfax and
17 Mr. Maher went twice to the Portland area to do
18 what? To remove the device that they couldn't
19 find, because Larry Fairfax never really looked
20 for it.

21 In this case, again, there must be
22 proof beyond a reasonable doubt that the defendant
23 knowingly and intentionally counseled, commanded,
24 induced, or procured Larry Fairfax to possess a
25 destructive device. And, you know, those are

1 And he has never listened to the tapes.
2 He doesn't know whether it's his voice or someone
3 else's voice. But he believes, as he says in that
4 conversation, "Larry Fairfax has set me up." But
5 he doesn't even know -- they don't talk about what
6 tapes or recordings.

7 And what does Cyndi Steele say that is
8 important, that is so important? She says,
9 "They" -- meaning the FBI or other government
10 folks -- "They don't want me to listen to the
11 tapes. I want to listen to the tapes." That's
12 her response.

13 And Mr. Haws says that's a crime to ask
14 for your wife's help about something he has never
15 listened to. He says it's a crime.

16 Well, was Cyndi Steele induced in any
17 way? Was she tampered with in any way? No. She
18 goes and spends a month living with her friend
19 Billie Cochran.

20 Why? Because she doesn't know the
21 facts. Because she is in fear for her life and
22 her safety. Yes, she doesn't believe her husband
23 is trying to harm her, but she doesn't know about
24 what Mr. Fairfax or what Mr. Maher or what other
25 unknown person might want to do. All she knows is

1 a bomb is found under her car.

2 And she spends that month, afraid to
3 live in her own home, investigating the facts of
4 the case. She goes and listens to the recordings,
5 and she makes her own determination about the
6 facts of this case.

7 She says, "The recordings are difficult
8 to understand. They don't sound like the way my
9 husband talks. It may be his voice. It may be
10 somebody's done something to them." She just
11 doesn't know, but she doesn't believe it.

12 And then she investigates what
13 Mr. Fairfax has been doing and saying. She does
14 her own investigation. She looks at the records.
15 She looks -- she finds the telephone records. She
16 finds pieces of evidence. She is given everything
17 that she's asked for, and she reaches the
18 conclusion, which she tells you here, that her
19 husband is not guilty.

20 Now, I'm sure the government will say,
21 "She's in denial. She's wrong." But the fact is
22 this is the victim of the offense coming before a
23 jury and saying, "I don't believe it."

24 But, under our system of justice, it's
25 not whether she believes it or doesn't believe it

1 Sotka comes on and says, "This is being made at
2 6:02 on June 9th," and sends in Larry Fairfax.

3 The agent can't see him anymore. No
4 one can see him. Nobody knows. They're not
5 listening to it at the time he is at the Steele
6 residence.

7 And on June 10th, Agent Sotka comes on
8 again on the recordings, and he says, "This
9 recording is being made at 6:02 on June 10th."

10 Now, maybe it's a coincidence, maybe
11 it's not. But it's in evidence. And, amazingly,
12 on June 9th, you hear the train whistle nine
13 times. And on June 10th, you don't hear it at
14 all.

15 That's the proof that's been presented
16 here. That's what's being used. And maybe it's a
17 small point, but then there is the birds singing,
18 and that happens seven times. And the testimony
19 is they're in a barn where, yes, Kelsie Steele
20 said, "I grew up in, and there were birds
21 occasionally in the barn." But you can't hear the
22 train whistle in the barn, and you can't hear the
23 birds singing at 6:02.

24 There are what can be described as
25 anomalies, inconsistencies, issues with those

1 or whether FBI Agent Sotka believes it or not;
2 it's what can be proven beyond a reasonable doubt
3 in a court of law. And in this case, what's been
4 proven is all tied to Larry Fairfax, an admitted
5 liar who writes a book. And maybe it's not a
6 book. Maybe it's just his diary or his musings.
7 Maybe it's his thoughts.

8 But there is 253 pages handwritten,
9 both sides, with tremendous detail about himself
10 and his life. Not about Edgar Steele, but about
11 him. Where he says, "This was all designed -- I
12 cooperated and set up Edgar Steele so I could be
13 the hero."

14 That is what the evidence in this case
15 consists of -- that and the recordings. And the
16 recordings are subject to what we call "human
17 interpretation." What did they really mean? What
18 context was it said in?

19 And you've heard the evidence from
20 people who know him well. He doesn't talk like
21 that. He doesn't act like that.

22 You know, when you listen to the
23 recordings, when you listen to June 9th, there are
24 nine places where you can hear the whistle sound.
25 And, interestingly enough, both recordings, Agent

1 recordings. And that is, in part, why the
2 government is required to produce for you more
3 than just talk. Talk is cheap. Talk is what
4 people do. In this case, the real proof all comes
5 from Larry Fairfax, made by Larry Fairfax, through
6 Larry Fairfax.

7 Ladies and gentleman, I have to
8 represent my client to the best of my ability.
9 I'm also, though, a part in a system of justice
10 where it's my job to, in essence, challenge what
11 the government is presenting.

12 And it's my job -- so that everyone
13 understands, the burden of proof is on the
14 government to prove it beyond a reasonable doubt.
15 And you may, at this point -- you may be sick of
16 hearing that, but that's what the law is, and
17 that's what the law requires.

18 And why does it? Because in our
19 history, there wasn't always a jury system. There
20 has been in America since the Declaration of
21 Independence and the writing of the Constitution,
22 but before that, there was no such thing as a jury
23 system.

24 There was a man in England in the 14th
25 century named Sir Thomas More. He was the

1 archbishop of England, and he was basically the
2 head of the Catholic church. As I'm told, he
3 worked right there at Westminster Abbey -- which
4 we all saw with the royal wedding; at some point
5 or another, most people have seen it -- in that
6 same building way back, hundreds of years ago.

7 And what happened to him was that the
8 king of England, who he was loyal to, came to him
9 and said, "Sir Thomas, I am married right now, but
10 my wife is unable to provide me, to bear for me a
11 son, a male heir to the throne. So I want a
12 divorce. I want to marry a woman named Anne
13 Boleyn."

14 And Sir Thomas More said to the king,
15 to King Henry, "That is difficult for me because
16 of the fact that, under my personal beliefs and my
17 religious beliefs, we don't agree that you should
18 divorce."

19 And King Henry thought, "Well, I'll get
20 around this by putting out a proclamation and
21 making everyone who was a subject in England, a
22 citizen of England, pledge an allegiance to the
23 king."

24 And it was written up and taken out to
25 the people. And most people signed. Who cares?

1 this case and each element of the case has not
2 been proven beyond a reasonable doubt, it's very
3 important for you to stand up for that, to stand
4 up for that principle.

5 As you will see in the instructions, in
6 order for a person in America to be found guilty
7 of a criminal offense, it must be a majority. It
8 must be every one of you.

9 If this case has not been proven beyond
10 a reasonable doubt, don't go along for fellowship,
11 don't go along with other people. Stand up, not
12 for the defendant, not for me, but for our system
13 of justice.

14 As I said at the outset, this is more a
15 case about what has not been proven as opposed to
16 what has been proven about Larry Fairfax.

17 Why would Edgar Steele do this? Where
18 is the proof that he intended to do this? It's
19 not in the recordings. The recordings are like
20 fantasy, like fiction, like somebody writing a
21 book, like Mr. Fairfax.

22 Ladies and gentleman, I ask you to
23 return not guilty verdicts as to all four counts
24 in this case because the evidence does not
25 substantiate or prove the crime based upon what

1 The king is the king. I don't care what he does.
2 But it came around to Thomas More. And they said,
3 "Will you sign this and declare your loyalty to
4 the king?" And he said, "No. I cannot do that."

5 And he was put in the dungeon. He was
6 put under arrest. He was held there for quite a
7 while. His friend, the Duke of Burberry, came to
8 him one day with the scroll. And he said,
9 "Thomas, look at all the people. Look at all the
10 people who have signed this, including me. Look
11 at all the people. Please sign it. It's the key
12 to your freedom. Come along with the rest of us
13 for fellowship. It doesn't really matter."

14 And Sir Thomas More said, "If I go
15 along with you, will you come with me to hell if
16 I'm damned for all eternity because I didn't
17 follow my conscience?" And the duke realized this
18 was a matter of principle. And Sir Thomas More
19 was put to death for standing up for his beliefs.

20 Based upon that experience, we don't
21 have kings decide anything in America. We have
22 juries. We have people. We have our jury of our
23 peers.

24 And in this particular case, it is
25 important that -- if any one of you believes that

1 the court has given to you as the elements in the
2 written instructions. And because it hasn't been
3 proven, I ask that you return those verdicts.

4 Thank you.

5 THE COURT: Thank you, Mr. McAllister.

6 Mr. Haws, your rebuttal argument?

7 REBUTTAL BY THE GOVERNMENT

8 MR. HAWS: Members of the jury, counsel just
9 suggested that you might be getting tired of
10 hearing the words "proof beyond a reasonable
11 doubt." I hope you're not getting tired of
12 hearing that.

13 Proof beyond a reasonable doubt is the
14 cornerstone of our justice system. It's a heavy
15 burden to come into court and prove all of the
16 elements beyond a reasonable doubt. But I want to
17 assure you that that is a burden which my
18 co-counsel and I and the case agent here willingly
19 accept.

20 We expect you to hold us to that
21 burden. But I expect you not to hold us to the
22 impossible burden of proof beyond all doubt. That
23 is not required by law.

24 In order to find a doubt in this
25 evidence, it must be a reasonable doubt. It must

1 be a doubt in the evidence, not because of some
2 suspicions or because of some imaginations. There
3 must be suspicion -- there must be lack in the
4 evidence. There must be a reason for it. And if
5 there is no reason for it and you are convinced
6 beyond a reasonable doubt, we accept that high
7 burden and ask you to return guilty verdicts.

8 Let me make a couple of other comments.

9 Counsel has asked the question: Where is the
10 involvement of my client? We hear a lot -- he
11 talks a lot about Larry Fairfax. But where is the
12 involvement of my client? His fingerprints aren't
13 on the bombs. There is no direct evidence of him
14 traveling himself over to Oregon.

15 The key concept there, ladies and
16 gentleman, is a legal concept called "aiding and
17 abetting." And if he's the one who originated the
18 idea, counseled, abetted, commanded, paid for, he
19 is responsible for the actions of Larry Fairfax in
20 furtherance of that crime. If Larry Fairfax's
21 fingerprints are on those bombs because he
22 commanded it, he paid for it, he asked for it, he
23 aided and abetted. He is responsible for that.
24 He can't hide behind that.

25 This case reminds me a little bit of

1 He didn't say anything about the bomb. He told
2 you. He admitted that.

3 But look at all the corroboration for
4 him since, since that time and since he accepted
5 the responsibility. The corroboration is there.

6 Let me give you one illustration of
7 that corroboration. Exhibit No. 2000. That's
8 Defense Exhibit No. 2000. Go to the last page of
9 Defense Exhibit No. 2000, to the phone call that
10 counsel was just referring to; that at 9:23 p.m.
11 on June 10th, the night before these murders were
12 supposed to happen, Mr. Steele had a 43-minute
13 conversation with his wife.

14 Well, that goes along with the
15 evidence, doesn't it? Because he was going to
16 call her that evening and see whether any plans
17 had changed. What did they talk about? They
18 talked about the doctor's appointments, her
19 health. Okay. That corroborates exactly what's
20 said in the tapes, in the recordings, as well as
21 Larry Fairfax.

22 But notice the call just before that.
23 When you go to Exhibit No. 2000, if you look at
24 the call just before that at -- on 6/10, June
25 10th, it's a call at 6:00 received on Edgar

1 those cardboard cutout figures. Have you ever
2 gone to Washington, D.C., or someplace and there
3 is a picture of Ronald Reagan or there is a
4 picture of President Obama or somebody, and it's
5 life-size, and it looks just like them? And you
6 walk up, and you have your picture taken there.
7 It looks like you're standing right there next to
8 President Obama.

9 The argument you just heard is a
10 cardboard cutout of Larry Fairfax propped up in
11 front of Edgar Steele. That's what that entire
12 argument was. It's: "Don't look at Edgar Steele;
13 look at Larry Fairfax."

14 No. Larry Fairfax has pled guilty and
15 accepted responsibility. Now it's time for you to
16 examine the evidence and to hold Edgar Steele
17 accountable for his actions.

18 Larry Fairfax -- let's talk about Larry
19 Fairfax just a moment longer. He is an
20 interesting, interesting character. His testimony
21 on this stand was straightforward. He came in
22 here in an orange jumpsuit, overweight, and calmly
23 told you what he knew. He accepted responsibility
24 for the fact that he was not completely honest
25 with law enforcement the first time he reported.

1 Steele's phone. 6:00 -- 6:00, that's when --
2 that's when Larry Fairfax was driving over to meet
3 with Edgar Steele. Do you remember? It's on the
4 tape itself.

5 Here is a call, 6:00. Who is it from?
6 Larry Fairfax. This record right here establishes
7 the date, the time that he calls him on 6/10 on
8 the recordings. Check it out. This corroborates
9 Larry Fairfax.

10 If you think Larry Fairfax had the
11 sophistication to drive through the gate at 1569
12 Talache Road out of sight of law enforcement
13 officers and, within less than a half an hour,
14 fabricate a tape of this kind with the background
15 noises, the natural conversations, all of those
16 things, it is -- it is speculation, and it is not
17 a reasonable doubt. That is not a reasonable
18 doubt.

19 That could not have happened and come
20 back out a half-hour later, less than a half-hour
21 later, and have that completed tape with the
22 voices in place and have made it up. It's just
23 not possible. It defies -- that is not a
24 reasonable -- that's a perfect example of what is
25 not a reasonable doubt.

1 These tape recordings themselves are
2 the evidence. These recordings are the evidence
3 in this case.

4 Let me point to a couple of other
5 things. I found it interesting -- while we're
6 still talking about Larry Fairfax and the
7 cardboard cutout Larry Fairfax that he has got
8 propped right there in front of Edgar Steele so
9 you can't see Edgar Steele -- let's talk about
10 that Larry Fairfax just a little bit more.

11 Why would -- why would Larry Fairfax do
12 this? That question has never been answered.
13 And there is absolutely no evidence in this record
14 to say why Larry Fairfax would do it. Larry
15 Fairfax was doing it for somebody else, and the
16 evidence is clear as to where the motive is.

17 Now, ladies and gentleman, we don't
18 have to prove motive. It is not part of the
19 elements. We have to prove what, why, when,
20 where -- or pardon me -- how, when, where, but not
21 why. We don't have to say why Edgar Steele would
22 do these things. It's not required under the law.

23 But this case doesn't make sense unless
24 you do ask the question "Why?" What were his
25 motives?

1 marriage in June of 2010.

2 There are lots of motives for why this
3 man did what he did. Not a single shred of
4 evidence has suggested why Larry Fairfax would do
5 what he did except for one reason. It's the
6 reason I told you in my opening statement. He
7 needed money, and he was willing to pay money.
8 That's, purely and simply, Larry Fairfax's motive.
9 That's all that's shown from the evidence.

10 Let's talk about going across lines --
11 state lines for just a second. This fantasy or
12 unreasonable doubt has been presented here as
13 though somebody later on put a pipe bomb
14 underneath Cyndi's car after it had arrived in
15 Oregon.

16 That's not the evidence. Larry Fairfax
17 told you himself he wired it to the bottom of the
18 car, Cyndi's car, on May 27th. And it was seen --
19 her car was seen in Oregon by the FBI agent, Frank
20 Heckendorn, when he went to the house on June
21 11th. Her car was there. It had moved from
22 Idaho -- from Sagle, Idaho, to Oregon City,
23 Oregon, after Larry Fairfax put the bomb on it.

24 Was there travel? Yes, there was.
25 Larry Fairfax traveled with Jim Maher over to

1 Counsel refers to love of family,
2 long-term marriage. Conceded. I am not going to
3 quibble with Mrs. Steele's characterization that
4 the marriage had been good for a long, long time.

5 That's not the evidence, though, in the
6 last six months before June, when Mrs. Steele was
7 going over to visit her mother regularly, and he
8 resented it. When the family was gone and he felt
9 alone, things had started to change in the family.
10 Things had started to change dramatically.

11 There was -- the evidence would suggest
12 there was a lot of self-pity going on, a lot of
13 fantasy about searching for that one love, some
14 young woman that would be his second half, that he
15 would raise children with. That's a lot of
16 fantasy. That's the teenage -- lovesick-teenager
17 syndrome that was discussed in the evidence.
18 That's what's going on here.

19 What else? What other motives? There
20 is an insurance payout if we can -- if this can be
21 made to look like an automobile accident.

22 He learned in 2000 you don't go through
23 a divorce. A divorce is not an economically good
24 proposition. He learned that, and that's why he
25 didn't just go seek a divorce and get out of this

1 Oregon City, Oregon, to what? Either check on the
2 bomb or remove the bomb.

3 Now, you can't say, "Well, they were
4 going to remove the bomb; therefore, there is no
5 crime." Oh, no. Their going to Oregon to either
6 check on it or remove it is part of the crime
7 because removing it -- removing it is still part
8 of the transaction of attempt -- of intent to
9 commit murder. It's part of the game. It's, if
10 you will, get this bomb off so that we cover up
11 what we have done.

12 It's still part of the intent, the
13 overall intent of this act. When that trip was
14 made over to Oregon, that fulfilled the terms of
15 interstate commerce.

16 The tampering case baffled me as to --
17 counsel said that I made the representation he
18 didn't know he was being recorded in that
19 jailhouse conversation. Oh, he knew he was being
20 recorded. He misunderstood me.

21 In my argument, I told you that he also
22 knew exactly why he was calling his wife. Because
23 there were recordings that had his voice on it,
24 and those recordings with his voice on it were
25 incriminating.

1 He didn't know it from having listened
2 to the tapes, because he hadn't listened to them.
3 He knew it because he was a participant in those
4 tapes. That's why he knew that he had to get to
5 his wife and try to deter her from talking to the
6 FBI. He knew exactly that he was being recorded,
7 and he went ahead and spoke to his wife about
8 those tapes anyway.

9 I want to play one last brief clip to
10 you, and then I'll close with one thought after
11 that.

12 Would you play clip 2, please?

13 (Audio clip published.)

14 MR. HAWS: Right there, you have his own
15 words, talking about his false alibi. "And if
16 that black thing leaves, she's in it." "Go get
17 the job done." Edgar Steele's words.

18 Ladies and gentleman, let me share with
19 you a quote from President Theodore Roosevelt:
20 "No man is above the law, and no man is below the
21 law. And we ask no man's permission when we
22 require him to obey the law."

23 The time has come to hold Mr. Edgar
24 Steele accountable for not obeying the law and for
25 these crimes which the evidence has shown that he

1 guilty, must be unanimous. Each of you must
2 decide the case for yourself, but you should do so
3 only after you have considered all the evidence,
4 discussed it fully with the other jurors, and
5 listened to the views of your fellow jurors.

6 Do not be afraid to change your opinion
7 if the discussion persuades you that you should,
8 but do not come to a decision simply because the
9 other jurors think it is right.

10 It is important that you attempt to
11 reach a unanimous verdict. But, of course, only
12 if each of you can do so after having made your
13 own conscientious decision. Do not change an
14 honest belief about the weight and effect of the
15 evidence simply to reach a verdict.

16 Because you must base your verdict only
17 on the evidence received in the case and on these
18 instructions, I remind you that you must not be
19 exposed to any other information about the case or
20 to the issues it involves.

21 Except for discussing the case with
22 your fellow jurors during your deliberations, you
23 should continue to follow in general the court's
24 admonition, which includes do not communicate with
25 anyone in any way and do not let anyone else

1 has committed.

2 Thank you very much.

3 THE COURT: Thank you, Mr. Haws.

4 INSTRUCTIONS TO THE JURY

5 THE COURT: Ladies and gentleman, I have
6 just a few follow-up instructions. These are
7 fairly short, but it's intended to get you
8 started, I think, in your deliberations.

9 I'll remind you that the arguments and
10 statements by lawyers are not evidence. What
11 they -- the lawyers are not witnesses. What they
12 have said in their opening statements, closing
13 arguments and throughout the trial was intended to
14 help you interpret the evidence, but their
15 statements are not evidence.

16 If the facts as you remember them
17 differ from the way the lawyers have stated them,
18 your memory must control.

19 When you begin your deliberations,
20 elect one member of the jury as your foreperson
21 who will preside over the deliberations and speak
22 for you here in court. You will then discuss the
23 case with your fellow jurors to reach agreement if
24 you can do so.

25 Your verdict, whether guilty or not

1 communicate with you in any way about the merits
2 of the case or anything to do with it.

3 This, again, includes discussing the
4 case in person, in writing, by phone, or by
5 electronic means, which can include email, text
6 messaging, visiting any Internet chatroom, blog,
7 website, or other feature.

8 This applies to communicating with your
9 family members, your employer, the media or press,
10 and the people involved in the trial.

11 If you are asked or approached in any
12 way about your jury service or anything about this
13 case, you must respond that you have been ordered
14 not to discuss the matter and to report this
15 contact to the court.

16 Likewise, do not read, watch, or listen
17 to any news or media accounts or commentary about
18 the case or anything to do with it. Do not do any
19 research, such as consulting dictionaries,
20 searching the Internet or using any other
21 reference materials, and do not make any
22 investigation or in any other way try to learn
23 about the case on your own.

24 The law requires these instructions to
25 be followed to ensure that the parties receive a

1 fair trial based upon the same evidence that each
2 party has had an opportunity to address. A juror
3 who violates these restrictions jeopardizes the
4 fairness of these proceedings, and a mistrial
5 could result that would require that the entire
6 trial process start over.

7 If any juror is exposed to any outside
8 information, please notify the court immediately.

9 The punishment provided by law for this
10 crime is for the court to decide. You may not
11 consider punishment in deciding whether the
12 government has proved its case against the
13 defendant beyond a reasonable doubt.

14 After you have reached unanimous
15 agreement on a verdict, your foreperson should
16 complete the verdict form according to your
17 deliberations, sign and date it, and advise the
18 bailiff that you're ready to return to the
19 courtroom.

20 If it becomes necessary during your
21 deliberations to communicate with me, you may send
22 a note through the bailiff signed by any one or
23 more of you. No member of the jury should ever
24 attempt to communicate with me except by a signed
25 writing, and I will respond to the jury concerning

1 were determined on the first day of trial based
2 upon where you were seated during jury selection,
3 would include -- Ms. Overgard, you're an
4 alternate. And, also, Ms. Johnson, you're also an
5 alternate.

6 So you will need to gather your
7 belongings out of the jury room. And after you've
8 left, then the other jurors will be allowed to
9 begin their deliberation.

10 I would ask Ms. Overgard and
11 Ms. Johnson to continue to follow the court's
12 admonition concerning juror conduct. Do not -- it
13 is possible that if one of the jurors becomes ill
14 and cannot continue with deliberations, you may be
15 summoned back and asked to replace the excused
16 juror. If that does occur and you've had any
17 contact with the attorneys, the witnesses, the
18 parties, in the parking lot or otherwise, or
19 you've otherwise not been able to follow the
20 court's admonition, you will not be allowed then
21 to replace the excused juror.

22 If you want to know the jury's
23 verdicts -- and at that point, you will be free to
24 discuss the case, after the jury has reached a
25 verdict -- you can leave your telephone number,

1 the case only in writing or here in open court.
2 If you send out a question, I will
3 consult with the lawyers before answering it,
4 which may take some time. You may continue your
5 deliberations while waiting for an answer to any
6 question.

7 Remember that you are not to tell
8 anyone, including me, how the jury stands,
9 numerically or otherwise, on the guilt -- or on
10 the question of the guilt of the defendant until
11 after you have reached a unanimous verdict or have
12 been discharged.

13 You will now retire to the jury room,
14 and your first duty will be to select your
15 foreperson. You may then start your
16 deliberations. The bailiff will shortly bring in
17 the original exhibits admitted into evidence.

18 Let me inquire: Are there any jurors
19 who feel that you could not proceed with
20 deliberations for any reason? Health concerns or
21 for any reason feel you could not proceed with
22 deliberations?

23 All right. I see no response.

24 Unfortunately, I will have to excuse
25 two of you as alternates. The alternates, which

1 and one of my staff will call you and let you know
2 when the jury has reached a verdict so you will
3 know that you are free then to discuss the case
4 with others if you wish to.

5 Likewise, I'm again going to admonish
6 anyone in the courtroom to avoid any contact with
7 these two jurors as they leave the courthouse for
8 the reasons that I've described.

9 At this time, I'm going to swear the
10 court bailiff. I think we'll have both
11 Ms. Tetrick and Mr. Severson sworn to serve as
12 bailiffs.

13 (Bailiffs sworn.)

14 THE COURT: All right. At this time, ladies
15 and gentleman, you will be allowed to retire to
16 the jury room and begin your deliberations after
17 the two alternates have exited the jury room. The
18 exhibits will be brought in momentarily. We need
19 to go through those and make sure they're in
20 proper form. You can begin your deliberations,
21 but we'll have those to you just momentarily.

22 At this time, ladies and gentleman, you
23 may retire to the jury room and begin your
24 deliberations.

25 (Jury commences deliberations.)

1 (Jury absent.)

2 THE COURT: Counsel, a couple of
3 housekeeping matters.

4 First, with regard to the trial
5 exhibits, it is your responsibility to go through
6 the exhibits to make sure they're in proper form
7 and where redactions have been ordered by the
8 court -- I don't recall that there were any --
9 but, if there were, that those redactions have, in
10 fact, been made.

11 Also, with regard to the recordings,
12 there is Ninth Circuit authority to the effect
13 that it is improper to send -- allow the jury to
14 play the recordings in the jury room while they're
15 deliberating because of the defendant's right --
16 it's regarded as a critical stage of the
17 proceedings, and the defendant has the right to be
18 present while those are being played.

19 I'm not sure I agree with that
20 authority, but it is the only case -- I think it's
21 still the extant law of the circuit; and,
22 therefore, I intend to follow it.

23 That right, I suppose, can be waived by
24 the defendant if the defendant is willing to waive
25 presence during the playing of the recordings. If

1 than bring them here into open court.

2 I'm not absolutely sure that there is
3 any requirement that they -- that those responses
4 be otherwise in open court, but I always run this
5 by counsel to see if you have any objection to
6 that method of responding to jury questions.

7 From the government, is there any
8 objection?

9 MR. HAWS: No objection, Your Honor.

10 THE COURT: Mr. McAllister, any objection?

11 MR. McALLISTER: No, Your Honor.

12 THE COURT: Excuse me?

13 MR. McALLISTER: No, Your Honor.

14 THE COURT: All right. That's the first
15 time I haven't heard you all through the trial.
16 Your voice resonates, shall we say.

17 With that, is there anything else,
18 counsel, before --

19 MR. McALLISTER: Yes, Your Honor.

20 THE COURT: Yes?

21 MR. McALLISTER: Your Honor, at this time, I
22 would like to, I guess, give back or tender back
23 the pages I received from the court staff that I
24 have described as "the Fairfax book" or his
25 writings, et cetera, which I think Your Honor

1 that is waived, then we can send a recorder, I
2 assume. I don't know what the format is of the
3 recording, but if it's in a simple format where it
4 can be played with a simple CD player, that might
5 be the other alternative.

6 So we'll send the -- unless, again,
7 there is a waiver by the defendant, we'll send the
8 recordings into the jury room. But if they
9 request a recorder, we'll advise them that they
10 need to return to the -- we'll return them to the
11 courtroom and have them play the recordings here
12 in open court.

13 Also, please remain within 15-minute
14 driving distance of the courthouse. If the jury
15 reaches a verdict, I do -- I do not want to delay
16 the taking of that verdict.

17 Finally, as to jury notes, my practice
18 is not to respond to jury notes in open court, but
19 simply to respond in writing. And the process I
20 normally follow would be to take the note, prepare
21 a proposed response, circulate it to counsel, then
22 go on the record to allow you to state your
23 objections to my proposed response to the jury.
24 I'll then consider those objections and then
25 respond to the jury question in writing rather

1 entered a protective order. So I'd like to do
2 that.

3 I did use one of the original exhibits,
4 and I'll talk with the staff about the exhibits.

5 One final matter, Your Honor. I have
6 been asked --

7 THE COURT: Let me note just very quickly
8 that, with regard to that, a sealed copy of the
9 original with the redactions which the court made
10 based upon privilege, primarily, has been made
11 part of the record, and it has -- the pagination
12 is there so that anything that was mentioned or
13 cross-referenced in the cross-examination of
14 Mr. Fairfax earlier today has been preserved for
15 the record.

16 So we will just destroy the copy that
17 you're returning to the court pursuant to the
18 protective order. And, likewise, the copy given
19 to the government will need to be returned and
20 destroyed, as well.

21 Now, Mr. Fairfax [sic].

22 MR. McALLISTER: Mr. McAllister, Your Honor.

23 THE COURT: Sorry.

24 MR. McALLISTER: It's all right. We have
25 had a long day.

1 THE COURT: That's the first mistake I think
2 I've made in the entire trial, except for two that
3 I was able to remedy.

4 MR. McALLISTER: No problem, Judge.
5 Cyndi Steele's counsel has asked me --
6 and he can speak to this, Judge. But Cyndi Steele
7 would like to visit her husband. I don't believe
8 that the no-contact order should remain in effect.

9 I think the purpose of that order has been
10 fulfilled, and at this time, there is no reason
11 why she shouldn't be allowed to visit with him
12 whenever the authorities at the jail permit it.
13 THE COURT: I will allow the government to
14 be heard, but --

15 MS. WHELAN: We have no objection to that,
16 Your Honor.

17 THE COURT: I would allow the -- I have
18 already allowed, I guess, a noncontact visit
19 earlier today, and I see no reason at all to
20 maintain the no-contact order in place.

21 When, where, and under what
22 circumstances that contact will take place I leave
23 to the marshal's service, though, and the jail.
24 But, beyond that, I'll leave that up to them.

25 MR. McALLISTER: Thank you, Your Honor.

1 that was read -- given to them when it was played
2 during the trial.

3 But since it is under the rule and that
4 rule is waivable, my view is that if the defendant
5 would prefer to simply have a means of listening
6 to the recording in the jury room and is willing
7 to waive his right to be present during the
8 playing of those recordings, then the other
9 alternative is to simply give them a means by
10 which they can listen to the CD without coming
11 into the courtroom and, obviously, without the
12 transcript, as well. Because I don't think -- I
13 would be very uncomfortable giving them a
14 transcript in the jury room even if the defendant
15 waives his right to be present.

16 The problem may be one of technology.
17 I don't know what the format is, but if it can
18 only be played on a laptop, then that is a little
19 bit problematic. I mean, we might have to
20 sanitize the laptop. I don't know what's on the
21 laptop, but I'm not sure I trust sending just any
22 laptop into the jury room, not knowing what they
23 might do. We can turn off the WiFi capability.
24 There are just a lot of issues we have to think
25 about.

1 THE COURT: Anything else from the
2 government?

3 MR. HAWS: Nothing further, Your Honor.

4 THE COURT: All right. We'll be in recess.
5 (Recess.)
6 (Jury absent.)

7 JURY QUESTION

8 THE COURT: The court has received a note
9 from the jury requesting that the recordings be
10 played. I'm not sure what the note says. You
11 have read it. I just know that it says, "We would
12 like to listen to" -- we need to tell the jury to
13 send their notes out on something other than
14 Post-It notes. "We would like to listen to all
15 the audio recordings. Can we please have a laptop
16 or another device for the -- for this purpose."

17 I need to get my reading glasses, too.

18 As I noted before we took a break,
19 Ninth Circuit authority says that the playing of
20 recordings by the jury is a critical phase of the
21 trial, and Rules 41 and 43 require that the
22 defendant be present. And based upon that, the
23 process would be to bring them into the courtroom.
24 It is possible for them to see the transcripts
25 that have been prepared with the same instruction

1 The other alternative is to have one of
2 the jury bailiffs who have been sworn to go in,
3 play it, and either stay there or just turn it on
4 and then leave. I would prefer not to have even
5 the bailiffs go into the jury room because they
6 may be discussing or want to discuss it.

7 If there is a way technologically that
8 we can just send it in and the defendant is
9 willing to waive his presence, then they can just
10 play it themselves. I think that is, far and
11 away, the better way to go. But it requires
12 Mr. Steele's concurrence and his willingness to
13 waive his right to be present during the jury's
14 listening to the recordings, and technologically,
15 that we have the ability to allow them to listen
16 to it. I just don't know if we can arrange that.

17 So, with that, let me hear first, I
18 guess, from the defense.

19 MR. McALLISTER: Judge, we have discussed it
20 with Mr. Steele. And we'll waive -- he will waive
21 or we will waive his presence to be in the
22 courtroom for any playing of the audio.

23 And as to how it's done, we don't have
24 any objection if one of the court staff is there
25 or at least maybe walks into the room, turns it

1 on, walks back in. That would be fine. Or if we
 2 can find a -- I guess what we would call a blank
 3 device or laptop, that would be fine, too.
 4 THE COURT: Mr. Steele, you concur? You
 5 understand you have the right to be present while
 6 the jury listens to the recording?
 7 THE DEFENDANT: I understand. I concur.
 8 THE COURT: You're willing to waive that
 9 right?
 10 THE DEFENDANT: Yes, I am.
 11 THE COURT: Then I think the next question
 12 is just one of whether it's technically possible.
 13 Does the government disagree?
 14 LAW CLERK TETRICK: Just in terms of what's
 15 technically possible, I sent a message to Doug,
 16 and he says they might have one that is brand new
 17 that we could use or --
 18 THE COURT: A brand new laptop?
 19 LAW CLERK TETRICK: Yeah. Or they could
 20 build one. So we could get them a clean --
 21 THE COURT: I don't think physically --
 22 format it, not start from a pile of plastic.
 23 Counsel, I would almost prefer to do it
 24 that way and isolate my staff from the jury. And
 25 with counsel's concurrence, then, we will figure

1 past 10:00. I think that clearly is past any
 2 point of their being able to do anything
 3 meaningful. So that's generally my guidelines.
 4 But if they want to stay until 8:00 or so, I think
 5 sometimes it's usually because they think they're
 6 making progress, or they just want a free meal
 7 from the government, or both. Okay?
 8 MR. AMENDOLA: Yes, sir.
 9 MR. HAWS: You want these back, Your Honor?
 10 THE COURT: Yes.
 11 (Recess.)
 12 (Jury present.)
 13 THE COURT: Okay. You don't even need to
 14 get into your seats. This is going to be very
 15 short.
 16 We're going to send you home for the
 17 evening. There are just some things I want to
 18 cover with you.
 19 When you leave the courthouse, you're
 20 under the same admonition you were throughout the
 21 trial about not discussing the case with anyone
 22 and not discussing the case among yourselves. So
 23 no contact with other jurors during the evening
 24 hours.
 25 When you come back tomorrow morning,

1 out a way to either give them a laptop which has
 2 nothing else on it and simply go in long enough
 3 just to instruct them on how to play it; and then
 4 once that's done, we'll leave, and then they can
 5 listen to it as many times as they want to.
 6 Is that agreeable, Mr. McAllister?
 7 MR. McALLISTER: Yes, it is.
 8 MR. HAWS: Yes.
 9 THE COURT: All right. Then I think that
 10 solves the problem. Thank you.
 11 I'm sorry, Mr. Steele, we had to drag
 12 you back up.
 13 MR. AMENDOLA: Your Honor, could we address
 14 one other thing?
 15 THE COURT: Yes.
 16 MR. AMENDOLA: It may be more housekeeping.
 17 But I understand that the jury expressed some
 18 interest in staying until 7:00 or 8:00 tonight,
 19 which, you know, I guess they have that choice.
 20 But if all of a sudden, the jury said, "We would
 21 like to stay until midnight," I think -- we would
 22 like to express our concern about that.
 23 THE COURT: I generally tell the jury
 24 anytime we get past 8:00, we're at a point of
 25 diminishing return. And I never let a jury stay

1 don't start discussing the case until everyone is
 2 present. Deliberation requires all 12 jurors to
 3 be present. Really, until Mr. Severson or
 4 Ms. Tetrick bring in the trial exhibits, don't
 5 start deliberating.
 6 Once all the jurors are here, then
 7 we'll bring in the exhibits, and then you can
 8 resume your deliberation. And then, obviously,
 9 everything else I've told you throughout the trial
 10 still applies about not going on the Internet,
 11 visiting any websites, engaging in any chatroom
 12 discussions, blogging, anything of that sort.
 13 The other issue is we're still trying
 14 to be very careful that you not have any contact
 15 with anyone leaving the courthouse or returning
 16 tomorrow morning. I think we may even kind of
 17 escort you out, kind of at least walk out to the
 18 parking lot with you as a group as best we can.
 19 Although the elevator is not that big, so we may
 20 have to do it in shifts. Or maybe I can even go
 21 with a group, if need be.
 22 And then tomorrow -- some of you have
 23 been arriving early, and I think that's
 24 commendable. I'm an early -- usually I'm here
 25 pretty early, working out or doing something. But

1 I would ask during deliberations, is it possible
2 that we could all agree to arrive here between,
3 say, 8:15 and 8:30, rather than earlier?

4 Now, if you have a need to be here
5 earlier, say, you're riding with a spouse or
6 significant other and they need to drop you off
7 and it has to be done earlier, tell us, and we can
8 make arrangements for it. But, otherwise, we
9 would like, if possible, for you to be here no
10 sooner than about 8:15 and no later than 8:30 so
11 we can have court security officers lined up and
12 can kind of bring you in and make sure that,
13 again, you don't have any contact with anyone
14 else.

15 Is there anyone for whom that's a
16 problem?

17 JUROR: I'm just coming from the west side
18 of the valley. It's just kind of hard to gauge
19 what traffic is going to be like on the connector.

20 THE COURT: Yeah. That is a problem if
21 you're out in the Meridian, Nampa area at all.

22 LAW CLERK SEVERSON: I mean, I think we
23 could open that window to 8:00 to 8:30.

24 THE COURT: All right. Let's say 8:00 to
25 8:30. But try -- you know, now we'd almost rather

1 could gather up those exhibits tonight or if that
2 would cause a problem.

3 THE COURT: Yeah. Let me just ask that.

4 Your notes are there. We won't touch
5 your notes. We'll just leave your notes there.
6 But the trial exhibits we need to retrieve. Are
7 they in a position where we could just --

8 JUROR: I think we have been putting them
9 all back, so that makes it easier.

10 The laptop has some information.

11 LAW CLERK SEVERSON: Yeah. We'll take the
12 laptop, too. That's not a problem.

13 THE COURT: All right. Any other questions?

14 If not --

15 JUROR: Do you want us to come to the front
16 door tomorrow?

17 THE COURT: Yes.

18 JUROR: Do you want us to keep coming in the
19 front door?

20 THE COURT: Yes, I think so.

21 JUROR: (Inaudible.)

22 THE COURT: I'm sorry?

23 JUROR: Where do we go once we get here,
24 then?

25 THE COURT: I'm sorry?

1 have you be just a little bit late than too early.
2 Because let's just say 8:00 to 8:30. Can we do
3 that?

4 But I don't want you coming and just
5 sitting in the parking lot. You know, find
6 somewhere else to loiter for a little while but
7 not in the parking lot. Okay? The Boise Rescue
8 Mission or -- no. Whatever.

9 LAW CLERK SEVERSON: One other thing. And
10 maybe you can inquire of the jury. But I'm not
11 sure if their exhibits are spread out in a certain
12 way, but we were thinking we could just lock the
13 jury room.

14 THE COURT: Yeah. We're just going to lock
15 the door. That's part of the reason we want you
16 coming back -- well, except we can't put them in
17 there with the exhibits until --

18 LAW CLERK SEVERSON: That was my question.

19 THE COURT: Just come between 8:00 and 8:30.

20 We may need to gather -- we want to just lock the
21 door and not have to worry about it.

22 What time is the jury -- when they are
23 using the jury assembly room?

24 LAW CLERK SEVERSON: I don't know that. But
25 maybe the question you could pose is whether we

1 JUROR: We're going to go straight --

2 THE COURT: Oh, come up here, yeah. And
3 then just --

4 LAW CLERK SEVERSON: We'll have someone
5 there.

6 THE COURT: We should have someone there to
7 let you in. That's the other reason. We have to
8 have court security officers lined up, and we
9 can't have them here any earlier than about 8:00
10 without it being kind of a major production.

11 So we'll see you, then, tomorrow
12 morning.

13 (Court recessed at 7:20 p.m.)

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1 R E P O R T E R ' S C E R T I F I C A T E

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I, T a m a r a I. H o h e n l e i t n e r, O f f i c i a l
C o u r t R e p o r t e r, S t a t e o f I d a h o, d o e s h e r e b y
c e r t i f y :

T h a t I a m t h e r e p o r t e r w h o t r a n s c r i b e d
t h e p r o c e e d i n g s h a d i n t h e a b o v e - e n t i t l e d a c t i o n
i n m a c h i n e s h o r t h a n d a n d t h e r e a f t e r t h e s a m e w a s
r e d u c e d i n t o t y p e w r i t i n g u n d e r m y d i r e c t
s u p e r v i s i o n ; a n d

T h a t t h e f o r e g o i n g t r a n s c r i p t c o n t a i n s a
f u l l, t r u e, a n d a c c u r a t e r e c o r d o f t h e p r o c e e d i n g s
h a d i n t h e a b o v e a n d f o r e g o i n g c a u s e .

I N W I T N E S S W H E R E O F, I h a v e h e r e u n t o s e t
m y h a n d J u n e 2 4, 2 0 1 1 .

_____ - s - _____

T a m a r a I. H o h e n l e i t n e r
O f f i c i a l C o u r t R e p o r t e r
C S R N o . 6 1 9

\$	1464:20 1569 [1] - 1534:11 15th [3] - 1481:24, 1507:12, 1515:7 16 [1] - 1470:25 16th [1] - 1467:25 18 [8] - 1459:1, 1460:5, 1461:22, 1464:20, 1467:2, 1467:10, 1467:17, 1467:24 193 [1] - 1424:1 1958 [2] - 1459:1, 1467:2 19th [1] - 1516:21	28th [2] - 1473:1, 1505:24	844(h) [1] - 1460:5 8:00 [8] - 1556:18, 1556:24, 1557:4, 1559:23, 1559:24, 1560:2, 1560:19, 1562:9 8:15 [2] - 1559:3, 1559:10 8:30 [6] - 1559:3, 1559:10, 1559:23, 1559:25, 1560:2, 1560:19	1532:23, 1533:4 access [1] - 1472:21 accident [3] - 1465:11, 1482:13, 1536:21 accomplice [4] - 1457:20, 1473:15, 1473:16 according [2] - 1507:18, 1543:16 account [1] - 1457:1 accountable [2] - 1532:17, 1539:24 accounts [1] - 1542:17 accurate [3] - 1493:15, 1505:13, 1508:3 acknowledge [1] - 1406:19 Act [5] - 1417:19, 1435:10, 1439:6, 1504:6, 1512:15 act [16] - 1419:9, 1419:20, 1419:24, 1426:17, 1465:9, 1465:10, 1469:16, 1474:13, 1475:23, 1476:18, 1476:21, 1503:25, 1519:12, 1524:21, 1538:13 acted [4] - 1461:2, 1462:23, 1465:4, 1465:18 acting [2] - 1407:5, 1408:20 action [4] - 1407:10, 1426:11, 1449:17, 1463:16 actions [4] - 1496:9, 1501:14, 1531:19, 1532:17 acts [2] - 1465:13, 1465:16 actual [4] - 1417:18, 1427:5, 1459:15, 1520:3 ad [1] - 1435:18 add [3] - 1396:5, 1450:15, 1493:11 added [1] - 1449:12 addition [3] - 1400:15, 1455:18, 1458:11 additional [1] - 1400:16 address [6] - 1393:23, 1422:21, 1445:12, 1500:21, 1543:2, 1556:13 adjacent [1] - 1397:4
'That [1] - 1490:15 'You've [1] - 1499:6		3	9	
1	2	3 [11] - 1449:1, 1461:19, 1467:13, 1470:23, 1482:16, 1485:17, 1488:13, 1488:17, 1491:12, 1504:21 30 [4] - 1440:14, 1440:17, 1481:19, 1482:2 31st [7] - 1460:17, 1462:10, 1467:11, 1467:19, 1481:4, 1481:11, 1484:24 3rd [1] - 1412:12	924(c)(1)(B)(ii) [1] - 1467:18 924(c)(1)(B)(ii) [1] - 1461:23 9:23 [1] - 1533:10 9th [13] - 1478:20, 1478:21, 1479:4, 1479:18, 1483:14, 1492:17, 1495:22, 1501:19, 1505:18, 1506:6, 1524:23, 1525:2, 1525:12	
1 [8] - 1458:23, 1460:13, 1462:6, 1463:21, 1466:23, 1478:19, 1487:3 10 [4] - 1397:17, 1464:8, 1470:15, 1471:6 10-148-N-BLW [1] - 1391:5 104 [1] - 1399:19 10:00 [1] - 1557:1 10th [11] - 1469:19, 1484:4, 1492:22, 1501:19, 1516:4, 1517:10, 1525:7, 1525:9, 1525:13, 1533:11, 1533:25 11 [2] - 1470:19, 1485:10 11:30 [1] - 1451:10 11th [12] - 1459:7, 1467:3, 1467:25, 1469:21, 1471:18, 1472:4, 1484:25, 1510:6, 1513:20, 1514:22, 1515:3, 1537:21 12 [1] - 1558:2 12:00 [1] - 1451:10 13 [2] - 1470:22, 1488:14 13th [2] - 1395:13, 1521:14 14th [1] - 1526:24 15 [5] - 1392:21, 1396:4, 1444:12, 1445:10, 1502:21 15-minute [3] - 1396:13, 1397:17, 1548:13 1512(b)(3) [1] - 1467:24 1512(b)(3) [1] -	2 [9] - 1447:5, 1449:1, 1460:2, 1463:21, 1467:6, 1485:9, 1491:12, 1539:12 2000 [5] - 1533:7, 1533:8, 1533:9, 1533:23, 1536:22 2004 [1] - 1472:12 2009 [3] - 1459:7, 1467:3, 1471:16 2010 [15] - 1459:8, 1460:16, 1460:17, 1462:9, 1462:10, 1467:3, 1467:11, 1467:19, 1467:25, 1516:13, 1521:14, 1537:1 2011 [2] - 1391:2, 1412:12 202 [1] - 1516:13 20th [1] - 1516:13 223 [2] - 1425:9, 1425:13 229 [2] - 1412:18, 1432:4 25 [3] - 1481:18, 1503:11, 1518:2 253 [5] - 1412:8, 1414:3, 1419:2, 1430:9, 1524:8 257 [1] - 1513:1 258 [1] - 1411:14 26 [2] - 1518:3, 1518:18 27 [1] - 1472:1 27th [10] - 1460:16, 1462:9, 1467:11, 1467:18, 1472:16, 1472:17, 1472:24, 1505:24, 1510:4, 1537:18 28 [1] - 1472:2	4	A	
		4 [6] - 1391:2, 1394:14, 1464:18, 1467:21, 1521:10 40 [2] - 1440:16, 1518:17 403 [2] - 1399:19, 1435:3 41 [1] - 1552:21 43 [2] - 1517:13, 1552:21 43-minute [1] - 1533:12 45 [1] - 1452:5 46 [1] - 1506:21 4684(2) [1] - 1464:8 4685 [1] - 1464:8 4686 [1] - 1464:8	Abbey [1] - 1527:3 abetted [2] - 1531:18, 1531:23 abetting [6] - 1460:3, 1461:20, 1467:8, 1467:15, 1485:11, 1531:17 ability [3] - 1457:2, 1526:8, 1554:15 ablazing [1] - 1482:12 able [11] - 1396:12, 1429:2, 1430:11, 1451:18, 1482:14, 1484:12, 1495:14, 1496:17, 1545:19, 1551:3, 1557:2 absent [4] - 1391:3, 1446:11, 1547:1, 1552:6 absolute [1] - 1392:13 Absolutely [1] - 1487:21 absolutely [5] - 1392:10, 1403:5, 1434:21, 1535:13, 1549:2 accept [4] - 1458:18, 1487:21, 1530:19, 1531:6 accepted [4] - 1396:21, 1532:15,	
		6		
		6/10 [2] - 1533:24, 1534:7 613 [2] - 1398:11, 1398:15 6:00 [4] - 1533:25, 1534:1, 1534:5 6:02 [3] - 1525:2, 1525:9, 1525:23		
		7		
		7:00 [1] - 1556:18 7:20 [1] - 1562:13		
		8		
		8 [1] - 1447:25 80 [1] - 1474:3 801(d)(1)(A) [1] - 1400:6 844(h) [1] - 1467:10		

<p>admit [4] - 1402:24, 1405:16, 1420:21, 1517:8</p> <p>admits [2] - 1513:3, 1515:15</p> <p>admitted [6] - 1412:24, 1417:2, 1457:19, 1524:4, 1533:2, 1544:17</p> <p>admonish [3] - 1444:4, 1502:11, 1546:5</p> <p>admonition [7] - 1444:9, 1445:19, 1446:5, 1541:24, 1545:12, 1545:20, 1557:20</p> <p>advance [1] - 1488:2</p> <p>advantage [3] - 1410:6, 1459:21, 1500:5</p> <p>advice [3] - 1407:6, 1408:20, 1408:21</p> <p>advise [5] - 1393:18, 1393:20, 1445:11, 1543:17, 1548:9</p> <p>advised [2] - 1446:3, 1502:7</p> <p>advising [1] - 1391:18</p> <p>affairs [1] - 1449:18</p> <p>affect [1] - 1498:20</p> <p>affected [1] - 1493:6</p> <p>affects [1] - 1491:5</p> <p>afield [1] - 1415:25</p> <p>aforethought [1] - 1459:24</p> <p>afraid [2] - 1523:2, 1541:6</p> <p>afternoon [1] - 1502:9</p> <p>age [1] - 1517:5</p> <p>agent [4] - 1514:10, 1525:3, 1530:18, 1537:19</p> <p>Agent [9] - 1402:4, 1403:4, 1405:15, 1429:10, 1429:23, 1479:16, 1524:1, 1524:25, 1525:7</p> <p>agents [2] - 1403:1, 1461:10</p> <p>aggravated [1] - 1442:4</p> <p>ago [9] - 1399:8, 1410:17, 1446:19, 1446:20, 1487:4, 1488:6, 1518:10, 1519:9, 1527:6</p> <p>agree [5] - 1436:2, 1453:6, 1527:17, 1547:19, 1559:2</p>	<p>agreeable [1] - 1556:6</p> <p>agreed [4] - 1399:13, 1446:22, 1454:22, 1468:9</p> <p>agreement [7] - 1405:3, 1468:6, 1482:21, 1482:24, 1483:2, 1540:23, 1543:15</p> <p>ahead [7] - 1411:1, 1413:15, 1428:18, 1433:13, 1451:4, 1510:17, 1539:7</p> <p>aided [1] - 1531:23</p> <p>aiding [6] - 1460:3, 1461:20, 1467:8, 1467:15, 1485:11, 1531:16</p> <p>ain't [3] - 1469:25, 1470:2, 1470:4</p> <p>Al [6] - 1497:15, 1498:9, 1498:12, 1518:16, 1518:19</p> <p>alibi [15] - 1496:15, 1496:16, 1496:17, 1496:19, 1496:21, 1497:9, 1497:17, 1497:21, 1497:25, 1498:7, 1499:13, 1499:16, 1516:20, 1517:24, 1539:15</p> <p>aligned [1] - 1396:20</p> <p>alleged [1] - 1503:10</p> <p>allegedly [4] - 1405:23, 1504:19, 1507:20, 1517:20</p> <p>allegiance [1] - 1527:22</p> <p>allow [27] - 1396:13, 1397:17, 1397:18, 1397:19, 1400:16, 1405:1, 1412:1, 1412:2, 1413:4, 1413:15, 1416:7, 1416:14, 1419:16, 1421:3, 1421:4, 1421:6, 1422:14, 1433:25, 1435:16, 1435:18, 1438:14, 1510:17, 1547:13, 1548:22, 1551:13, 1551:17, 1554:15</p> <p>allowed [6] - 1430:14, 1545:8, 1545:20, 1546:15, 1551:11, 1551:18</p> <p>allowing [4] - 1394:22, 1413:5, 1434:5, 1436:11</p> <p>almost [7] - 1393:15,</p>	<p>1414:4, 1450:25, 1472:11, 1472:13, 1555:23, 1559:25</p> <p>alone [1] - 1536:9</p> <p>alphabetical [1] - 1450:25</p> <p>alter [1] - 1495:4</p> <p>altered [2] - 1493:6, 1495:1</p> <p>alternate [2] - 1545:4, 1545:5</p> <p>alternates [3] - 1544:25, 1546:17</p> <p>alternative [3] - 1548:5, 1553:9, 1554:1</p> <p>amazing [1] - 1504:2</p> <p>amazingly [1] - 1525:11</p> <p>AMENDOLA [24] - 1433:2, 1433:5, 1433:10, 1434:8, 1434:14, 1434:18, 1435:6, 1436:4, 1436:17, 1436:20, 1437:4, 1438:18, 1438:19, 1439:24, 1440:6, 1441:8, 1441:17, 1441:24, 1443:13, 1448:25, 1449:22, 1556:13, 1556:16, 1557:8</p> <p>Amendola [5] - 1395:2, 1396:14, 1402:2, 1433:1, 1448:24</p> <p>America [5] - 1391:6, 1466:19, 1526:20, 1528:21, 1529:6</p> <p>amorphous [1] - 1482:10</p> <p>amount [1] - 1516:17</p> <p>angry [1] - 1405:7</p> <p>animosity [1] - 1416:7</p> <p>animus [6] - 1403:3, 1403:7, 1403:9, 1404:2, 1405:1, 1434:19</p> <p>Anne [1] - 1527:12</p> <p>anomalies [1] - 1525:25</p> <p>answer [5] - 1421:6, 1442:1, 1508:14, 1511:5, 1544:5</p> <p>answered [1] - 1535:12</p> <p>answering [1] - 1544:3</p> <p>answers [3] - 1455:7, 1493:18, 1506:1</p>	<p>anticipated [1] - 1405:12</p> <p>antique [1] - 1464:11</p> <p>anyplace [1] - 1508:19</p> <p>anytime [1] - 1556:24</p> <p>anyway [1] - 1539:8</p> <p>apart [1] - 1474:22</p> <p>appear [2] - 1430:16, 1447:16</p> <p>applies [4] - 1422:18, 1452:25, 1542:8, 1558:10</p> <p>apply [2] - 1422:19, 1453:4</p> <p>appointments [1] - 1533:18</p> <p>appreciate [2] - 1392:5, 1451:23</p> <p>approach [3] - 1415:14, 1433:20, 1450:19</p> <p>approached [1] - 1542:11</p> <p>appropriate [1] - 1395:5</p> <p>approved [2] - 1450:9, 1508:13</p> <p>archbishop [1] - 1527:1</p> <p>area [10] - 1393:7, 1397:3, 1409:21, 1416:1, 1437:10, 1437:16, 1468:19, 1513:22, 1520:17, 1559:21</p> <p>areas [1] - 1392:20</p> <p>argue [1] - 1445:6</p> <p>arguing [1] - 1435:17</p> <p>ARGUMENT [2] - 1468:23, 1503:3</p> <p>argument [10] - 1435:19, 1451:17, 1468:15, 1503:2, 1510:15, 1511:8, 1530:6, 1532:9, 1532:12, 1538:21</p> <p>arguments [10] - 1446:1, 1455:4, 1455:11, 1468:11, 1502:10, 1502:15, 1502:16, 1510:11, 1540:9, 1540:13</p> <p>arise [2] - 1454:5, 1505:3</p> <p>arising [1] - 1457:24</p> <p>Army [1] - 1464:7</p> <p>arrange [2] - 1396:12, 1554:16</p> <p>arranged [1] - 1397:2</p> <p>arrangements [1] -</p>	<p>1559:8</p> <p>arrears [2] - 1499:22, 1500:2</p> <p>arrest [7] - 1412:11, 1470:4, 1498:5, 1514:14, 1515:18, 1515:20, 1528:6</p> <p>arrested [6] - 1489:24, 1498:25, 1510:6, 1512:22, 1514:21, 1515:6</p> <p>arrive [1] - 1559:2</p> <p>arrived [3] - 1451:7, 1492:20, 1537:14</p> <p>arriving [1] - 1558:23</p> <p>artist [1] - 1417:22</p> <p>artistic [1] - 1438:6</p> <p>Aryan [3] - 1439:14, 1439:16, 1440:2</p> <p>assault [1] - 1442:4</p> <p>assembled [1] - 1463:23</p> <p>assembly [1] - 1560:23</p> <p>assert [1] - 1395:24</p> <p>asserted [1] - 1413:10</p> <p>Assistant [1] - 1401:22</p> <p>associated [4] - 1392:14, 1392:19, 1460:23, 1462:19</p> <p>assume [6] - 1391:21, 1397:2, 1432:19, 1434:11, 1484:13, 1548:2</p> <p>Assumes [1] - 1510:8</p> <p>assuming [1] - 1510:13</p> <p>assumption [2] - 1452:4, 1508:6</p> <p>assure [1] - 1530:17</p> <p>assured [1] - 1495:3</p> <p>attach [1] - 1489:9</p> <p>attached [8] - 1475:19, 1476:3, 1476:5, 1478:2, 1482:1, 1489:15, 1507:11, 1519:23</p> <p>attack [1] - 1435:7</p> <p>attacking [1] - 1434:23</p> <p>attempt [8] - 1395:24, 1472:3, 1479:6, 1518:22, 1519:8, 1538:8, 1541:10, 1543:24</p> <p>attempted [1] - 1465:1</p> <p>attention [4] - 1392:12, 1408:1, 1424:9, 1430:9</p>
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<p>Attorney ^[1] - 1401:22 attorney ^[8] - 1398:24, 1406:18, 1407:6, 1407:9, 1408:21, 1435:18, 1463:11, 1464:9 attorney-client ^[1] - 1406:18 attorneys ^[4] - 1397:7, 1407:6, 1502:15, 1545:17 attributed ^[1] - 1515:23 Audio ^[4] - 1478:23, 1482:18, 1491:16, 1539:13 audio ^[3] - 1496:14, 1552:15, 1554:22 AUSA ^[2] - 1402:12, 1405:14 authorities ^[2] - 1465:6, 1551:12 authority ^[3] - 1547:12, 1547:20, 1552:19 authorization ^[2] - 1473:23, 1483:10 automatically ^[1] - 1488:6 automobile ^[1] - 1536:21 available ^[2] - 1432:25, 1489:8 avoid ^[5] - 1392:19, 1403:13, 1404:1, 1438:16, 1546:6 aware ^[5] - 1409:11, 1409:12, 1409:14, 1437:18, 1465:10</p>	<p>barrel ^[1] - 1463:17 base ^[2] - 1477:14, 1541:16 Based ^[1] - 1528:20 based ^[16] - 1394:14, 1395:18, 1430:12, 1454:3, 1454:4, 1505:2, 1505:3, 1510:2, 1510:16, 1513:17, 1515:12, 1529:25, 1543:1, 1545:1, 1550:10, 1552:22 basic ^[2] - 1482:21, 1483:2 basis ^[1] - 1394:18 bear ^[5] - 1400:21, 1408:11, 1413:13, 1457:11, 1527:10 bears ^[2] - 1400:12, 1413:9 became ^[2] - 1393:14, 1419:24 becomes ^[5] - 1404:14, 1436:12, 1443:23, 1543:20, 1545:13 begin ^[7] - 1446:3, 1470:9, 1540:19, 1545:9, 1546:16, 1546:20, 1546:23 beginning ^[5] - 1453:11, 1459:6, 1495:6, 1496:13, 1506:24 beginnings ^[1] - 1496:14 begins ^[1] - 1424:10 behind ^[8] - 1476:4, 1479:1, 1483:5, 1483:8, 1486:12, 1487:10, 1487:23, 1531:24 belief ^[1] - 1541:14 beliefs ^[3] - 1527:16, 1527:17, 1528:19 believability ^[2] - 1457:12, 1458:3 believable ^[2] - 1457:16, 1497:10 believer ^[1] - 1450:13 believes ^[4] - 1522:3, 1523:25, 1524:1, 1528:25 bells ^[1] - 1401:6 belongings ^[1] - 1545:7 below ^[1] - 1539:20 benefit ^[1] - 1445:24 berth ^[1] - 1392:15</p>	<p>best ^[3] - 1409:23, 1526:8, 1558:18 Better ^[1] - 1397:14 better ^[4] - 1404:23, 1443:21, 1491:11, 1554:11 between ^[12] - 1456:10, 1456:17, 1460:16, 1462:9, 1467:2, 1467:10, 1467:18, 1467:24, 1471:16, 1492:17, 1559:2, 1560:19 Beyond ^[1] - 1441:24 beyond ^[35] - 1393:22, 1407:25, 1415:24, 1449:5, 1453:24, 1454:2, 1454:10, 1454:15, 1459:4, 1460:8, 1461:1, 1462:1, 1462:22, 1464:23, 1466:1, 1484:21, 1487:5, 1488:9, 1489:20, 1501:11, 1501:13, 1502:2, 1504:23, 1520:22, 1524:2, 1526:14, 1529:2, 1529:9, 1530:10, 1530:13, 1530:16, 1530:22, 1531:6, 1543:13, 1551:24 bias ^[7] - 1399:24, 1400:19, 1402:21, 1402:25, 1404:7, 1434:21, 1457:7 big ^[2] - 1431:7, 1558:19 biggest ^[1] - 1505:16 bill ^[1] - 1517:24 Billie ^[1] - 1522:19 bills ^[1] - 1480:8 binding ^[1] - 1407:7 birds ^[3] - 1525:17, 1525:20, 1525:23 bit ^[8] - 1395:9, 1482:9, 1494:9, 1499:17, 1531:25, 1535:10, 1553:19, 1560:1 bits ^[1] - 1444:2 black ^[10] - 1472:12, 1477:11, 1477:12, 1477:13, 1477:15, 1477:16, 1480:21, 1488:19, 1499:4, 1539:16 blank ^[1] - 1555:2 blasting ^[2] - 1461:7, 1461:8</p>	<p>block ^[1] - 1397:11 blocks ^[1] - 1397:14 blog ^[1] - 1542:6 blogging ^[1] - 1558:12 blow ^[1] - 1475:2 blown ^[1] - 1474:18 blush ^[1] - 1515:22 Bob ^[1] - 1516:5 body ^[1] - 1499:14 Boise ^[2] - 1440:14, 1560:7 Boleyn ^[1] - 1527:13 bomb ^[64] - 1463:5, 1469:7, 1472:23, 1473:4, 1473:24, 1474:2, 1474:5, 1474:8, 1474:10, 1474:11, 1475:1, 1475:8, 1475:15, 1475:25, 1476:11, 1476:13, 1476:24, 1477:5, 1478:1, 1478:5, 1478:22, 1479:3, 1479:5, 1480:11, 1480:24, 1481:3, 1481:13, 1481:15, 1481:25, 1482:7, 1484:10, 1484:15, 1484:23, 1485:15, 1485:19, 1486:15, 1486:20, 1486:22, 1487:2, 1488:12, 1488:13, 1488:18, 1488:25, 1489:1, 1489:2, 1489:5, 1489:9, 1505:24, 1508:23, 1508:25, 1509:2, 1509:23, 1512:19, 1519:23, 1523:1, 1533:1, 1537:13, 1537:23, 1538:2, 1538:4, 1538:10 bombs ^[9] - 1472:22, 1474:5, 1477:22, 1478:15, 1478:17, 1479:11, 1501:16, 1531:13, 1531:21 Bonner ^[1] - 1437:9 book ^[78] - 1402:1, 1403:20, 1404:20, 1405:19, 1411:10, 1411:15, 1411:18, 1412:5, 1413:19, 1413:22, 1414:1, 1414:2, 1414:6, 1414:9, 1414:14, 1415:19, 1416:20, 1417:14, 1417:19, 1417:23, 1418:9, 1419:7, 1419:13, 1419:23, 1420:3, 1420:17, 1421:11, 1422:18, 1423:13, 1423:15, 1423:16, 1423:19, 1423:25, 1425:1, 1425:5, 1425:9, 1425:21, 1426:10, 1427:5, 1427:7, 1427:17, 1427:21, 1430:5, 1430:25, 1431:6, 1431:12, 1431:13, 1432:2, 1432:5, 1432:7, 1435:10, 1435:12, 1435:14, 1435:24, 1436:5, 1436:6, 1437:19, 1438:2, 1438:7, 1438:11, 1438:21, 1438:24, 1439:1, 1439:7, 1439:10, 1440:11, 1441:1, 1442:24, 1500:15, 1504:7, 1509:9, 1512:16, 1512:25, 1524:5, 1524:6, 1529:21, 1549:24 books ^[1] - 1404:23 bore ^[1] - 1463:17 bottom ^[4] - 1425:12, 1425:16, 1473:5, 1537:17 bow ^[2] - 1404:10, 1405:12 box ^[1] - 1520:8 Brady ^[1] - 1401:24 brains ^[1] - 1487:22 brake ^[1] - 1475:11 brand ^[3] - 1480:8, 1555:16, 1555:18 break ^[6] - 1397:17, 1443:18, 1475:16, 1502:8, 1502:9, 1552:18 breakers ^[1] - 1461:9 breakfast ^[2] - 1514:7, 1514:8 breaks ^[2] - 1443:24, 1507:3 bride ^[1] - 1511:23 brief ^[4] - 1394:25, 1435:18, 1468:13, 1539:9 briefly ^[3] - 1391:13, 1398:6, 1466:16 bring ^[14] - 1392:12, 1398:8, 1404:11, 1409:7, 1479:2, 1495:15, 1499:21,</p>	
B				
<p>background ^[4] - 1493:21, 1494:1, 1494:17, 1534:14 backup ^[3] - 1469:10, 1469:11, 1476:2 bad ^[1] - 1512:16 baffled ^[1] - 1538:16 bailiff ^[5] - 1466:11, 1543:18, 1543:22, 1544:16, 1546:10 bailiffs ^[3] - 1546:12, 1554:2, 1554:5 Bailiffs ^[1] - 1546:13 bank ^[1] - 1497:19 Banks ^[6] - 1497:15, 1498:9, 1498:13, 1518:16, 1518:19 barn ^[3] - 1525:19, 1525:21, 1525:22</p>				

<p>1519:17, 1544:16, 1549:1, 1552:23, 1558:4, 1558:7, 1559:12 bringing [1] - 1405:14 broad [2] - 1406:4, 1434:24 broke [1] - 1475:17 broken [1] - 1444:2 brought [4] - 1401:14, 1500:2, 1513:8, 1546:18 brush [1] - 1406:4 build [2] - 1469:7, 1555:20 building [3] - 1431:2, 1512:19, 1527:6 built [7] - 1405:22, 1420:22, 1436:9, 1477:7, 1504:14, 1519:22 Built [5] - 1418:1, 1418:9, 1436:14, 1439:2, 1439:8 bumped [1] - 1392:6 Burberry [1] - 1528:7 burden [7] - 1511:5, 1526:13, 1530:15, 1530:17, 1530:21, 1530:22, 1531:7 burned [1] - 1485:25</p>	<p>1488:25, 1489:3, 1489:15, 1504:15, 1505:25, 1506:2, 1506:8, 1506:10, 1507:11, 1507:13, 1508:14, 1508:25, 1510:4, 1510:22, 1513:13, 1513:16, 1514:1, 1514:2, 1514:13, 1523:1, 1537:14, 1537:18, 1537:19, 1537:21 cardboard [3] - 1532:1, 1532:10, 1535:7 care [2] - 1488:7, 1528:1 cares [1] - 1518:14 careful [7] - 1393:10, 1454:6, 1454:8, 1454:13, 1494:4, 1505:4, 1558:14 carefully [3] - 1478:21, 1493:13, 1495:23 cares [1] - 1527:25 carries [1] - 1493:23 carry [1] - 1469:16 carrying [1] - 1473:4 cars [2] - 1472:21, 1472:22 Case [1] - 1391:5 case [113] - 1393:19, 1394:1, 1394:8, 1394:15, 1395:6, 1402:11, 1402:13, 1405:21, 1406:12, 1406:15, 1419:25, 1421:11, 1443:20, 1444:5, 1444:7, 1445:19, 1445:21, 1446:2, 1446:5, 1446:7, 1447:10, 1452:25, 1453:2, 1453:7, 1453:11, 1453:19, 1455:24, 1456:20, 1457:6, 1458:6, 1458:22, 1469:1, 1469:2, 1470:3, 1472:10, 1472:11, 1472:15, 1483:19, 1492:23, 1492:24, 1493:4, 1495:19, 1496:4, 1496:5, 1500:9, 1500:10, 1500:11, 1500:12, 1500:13, 1502:14, 1502:19, 1502:20, 1503:9, 1503:17, 1503:18,</p>	<p>1504:2, 1504:6, 1504:16, 1504:18, 1505:6, 1506:13, 1508:10, 1509:13, 1511:2, 1511:24, 1514:19, 1514:21, 1515:16, 1515:17, 1516:1, 1518:1, 1519:3, 1519:16, 1519:21, 1520:1, 1520:21, 1521:11, 1523:4, 1523:6, 1524:3, 1524:14, 1526:4, 1528:24, 1529:1, 1529:9, 1529:15, 1529:24, 1530:18, 1531:25, 1535:3, 1535:23, 1538:16, 1540:23, 1541:2, 1541:17, 1541:19, 1541:21, 1542:2, 1542:4, 1542:13, 1542:18, 1542:23, 1543:12, 1544:1, 1545:24, 1546:3, 1547:20, 1557:21, 1557:22, 1558:1 cases [1] - 1448:17 cashier's [1] - 1516:17 Catholic [1] - 1527:2 caught [2] - 1495:25, 1514:16 caused [3] - 1459:9, 1484:22, 1520:14 causing [1] - 1459:25 caution [2] - 1409:1, 1458:12 cautious [1] - 1393:12 caveat [1] - 1396:13 CD [2] - 1548:4, 1553:10 cell [8] - 1397:3, 1397:10, 1397:14, 1437:9, 1437:15, 1437:16, 1517:4, 1517:5 cellmates [1] - 1427:11 century [1] - 1526:25 certain [4] - 1402:23, 1455:20, 1491:5, 1560:11 certainly [2] - 1435:21, 1471:17 cetera [2] - 1394:15, 1549:25 challenge [1] - 1526:10 chance [9] - 1395:5,</p>	<p>1398:13, 1428:15, 1442:22, 1443:22, 1444:1, 1445:17, 1469:18, 1498:6 change [11] - 1409:21, 1447:18, 1451:12, 1469:18, 1469:22, 1493:11, 1507:14, 1536:9, 1536:10, 1541:6, 1541:13 changed [3] - 1448:1, 1493:6, 1533:17 changes [2] - 1446:21, 1447:23 character [4] - 1414:10, 1472:14, 1519:14, 1532:20 characterization [1] - 1536:3 characters [1] - 1472:11 charge [11] - 1452:15, 1459:3, 1460:7, 1461:25, 1463:6, 1463:8, 1464:22, 1470:17, 1470:20, 1474:8, 1488:16 charged [11] - 1457:20, 1458:23, 1460:2, 1461:19, 1464:18, 1466:4, 1485:18, 1486:3, 1488:1, 1489:21, 1492:25 charges [6] - 1396:22, 1465:22, 1471:14, 1489:2, 1502:4, 1520:1 charging [5] - 1448:8, 1466:24, 1467:7, 1467:14, 1467:22 charitable [1] - 1508:2 chatroom [2] - 1542:6, 1558:11 cheap [2] - 1515:24, 1526:3 Check [2] - 1489:21, 1534:8 check [12] - 1481:3, 1484:23, 1488:11, 1488:23, 1492:15, 1506:7, 1506:10, 1514:14, 1516:17, 1520:7, 1538:1, 1538:6 checked [2] - 1481:13, 1487:5 chemical [1] - 1461:11 children [4] - 1518:4, 1518:19, 1519:6,</p>	<p>1536:15 choice [3] - 1450:3, 1450:5, 1556:19 choices [1] - 1467:4 choose [3] - 1407:16, 1408:5, 1408:17 chores [1] - 1494:18 chose [1] - 1407:20 church [1] - 1527:2 circle [1] - 1472:1 circuit [2] - 1461:9, 1547:21 Circuit [9] - 1447:7, 1448:6, 1449:2, 1450:8, 1450:10, 1450:12, 1450:18, 1547:12, 1552:19 circulate [1] - 1548:21 circumstances [3] - 1406:13, 1450:17, 1551:22 circumstantial [6] - 1456:2, 1456:10, 1456:12, 1456:15, 1456:18, 1508:11 Circumstantial [1] - 1456:5 citizen [1] - 1527:22 City [8] - 1473:3, 1480:22, 1496:23, 1497:14, 1497:22, 1507:18, 1537:22, 1538:1 claims [1] - 1512:20 clean [1] - 1555:20 clear [12] - 1392:23, 1396:20, 1399:21, 1404:18, 1408:2, 1420:14, 1422:15, 1449:8, 1477:5, 1492:7, 1496:7, 1535:16 Clearly [1] - 1506:6 clearly [4] - 1396:6, 1403:20, 1450:15, 1557:1 CLERK [11] - 1391:4, 1436:25, 1466:13, 1555:14, 1555:19, 1559:22, 1560:9, 1560:18, 1560:24, 1561:11, 1562:4 client [4] - 1406:18, 1526:8, 1531:10, 1531:12 climbed [1] - 1476:10 clip [10] - 1478:18, 1478:23, 1482:16, 1482:18, 1491:12, 1491:16, 1539:9,</p>
C				
<p>cable [1] - 1475:11 Cadillac [1] - 1485:16 calmly [1] - 1532:22 cannot [6] - 1400:8, 1400:11, 1407:21, 1408:3, 1528:4, 1545:14 cap [4] - 1474:18, 1475:19, 1485:20 capability [1] - 1553:23 capable [1] - 1435:1 Car [1] - 1481:11 car [53] - 1392:23, 1416:12, 1417:9, 1423:7, 1423:10, 1430:2, 1431:4, 1473:25, 1474:4, 1474:15, 1475:9, 1475:15, 1476:10, 1478:5, 1479:3, 1481:6, 1481:16, 1482:1, 1482:13, 1486:1, 1486:9, 1486:16, 1486:21, 1486:22, 1486:24, 1488:12, 1488:18,</p>				

<p>1539:12, 1539:13 close [4] - 1393:15, 1393:19, 1492:14, 1539:10 closer [1] - 1443:20 closing [14] - 1446:1, 1451:13, 1451:16, 1452:6, 1455:11, 1468:11, 1468:13, 1468:15, 1502:10, 1502:14, 1502:16, 1503:2, 1510:15, 1540:12 CLOSING [2] - 1468:23, 1503:3 co [1] - 1530:18 co-counsel [1] - 1530:18 cobbled [1] - 1493:25 Cochran [1] - 1522:19 Code [8] - 1459:1, 1460:5, 1461:22, 1464:20, 1467:2, 1467:10, 1467:17, 1467:24 cognizant [1] - 1396:15 coincidence [1] - 1525:10 coincidental [1] - 1413:22 collateral [1] - 1435:7 collectively [1] - 1506:21 color [2] - 1415:22, 1477:15 Colorado [2] - 1406:14 combination [1] - 1463:19 combustible [1] - 1461:13 comforting [1] - 1397:13 coming [10] - 1393:5, 1409:12, 1435:25, 1436:18, 1523:22, 1553:10, 1559:17, 1560:4, 1560:16, 1561:18 commanded [7] - 1460:14, 1462:7, 1487:8, 1520:23, 1521:3, 1531:18, 1531:22 commencement [1] - 1433:20 commences [3] - 1415:16, 1433:22, 1546:25</p>	<p>commendable [1] - 1558:24 comment [6] - 1392:8, 1406:11, 1446:18, 1482:20, 1492:13, 1492:16 commentary [1] - 1542:17 commented [1] - 1392:3 comments [2] - 1406:23, 1531:8 commerce [15] - 1458:24, 1459:10, 1460:11, 1460:19, 1461:4, 1462:4, 1462:11, 1462:15, 1463:1, 1466:25, 1471:7, 1471:11, 1510:25, 1520:15, 1538:15 commercial [1] - 1459:19 commission [12] - 1458:25, 1460:12, 1460:20, 1461:5, 1462:5, 1462:11, 1462:16, 1463:1, 1465:7, 1465:8, 1467:1, 1471:12 commit [10] - 1460:4, 1460:17, 1461:3, 1467:9, 1474:12, 1485:12, 1512:13, 1512:14, 1519:13, 1538:9 committed [18] - 1459:9, 1459:11, 1460:10, 1462:3, 1465:23, 1465:25, 1466:2, 1469:20, 1471:19, 1485:4, 1489:16, 1491:17, 1491:18, 1492:4, 1492:10, 1496:22, 1520:10, 1540:1 committee [1] - 1450:11 committing [1] - 1457:22 common [4] - 1454:4, 1505:2, 1519:18, 1519:20 communicate [4] - 1541:24, 1542:1, 1543:21, 1543:24 communicating [2] - 1465:6, 1542:8 communication [1] - 1409:17</p>	<p>company [1] - 1517:23 compensated [1] - 1448:19 compensation [1] - 1448:15 complaint [1] - 1518:8 complete [2] - 1459:14, 1543:16 completed [3] - 1491:8, 1502:1, 1534:21 completely [1] - 1532:24 complicated [1] - 1448:11 complied [1] - 1424:13 compound [1] - 1461:17 compounds [1] - 1461:12 computer [1] - 1512:7 Conceded [1] - 1536:2 concept [2] - 1531:15, 1531:16 concern [10] - 1395:11, 1398:9, 1399:1, 1399:2, 1401:5, 1407:1, 1434:9, 1451:6, 1509:18, 1556:22 concerned [2] - 1447:24, 1498:24 concerning [4] - 1393:21, 1444:9, 1543:25, 1545:12 concerns [2] - 1447:23, 1544:20 concluded [8] - 1394:18, 1416:17, 1436:21, 1448:10, 1479:4, 1480:13, 1480:14, 1480:16 conclusion [4] - 1482:6, 1507:6, 1521:6, 1523:18 conclusive [1] - 1501:19 concur [2] - 1555:4, 1555:7 concurrence [2] - 1554:12, 1555:25 concussion [1] - 1461:16 condoned [1] - 1508:13 conduct [7] - 1393:16, 1405:13, 1411:2, 1444:10, 1465:2,</p>	<p>1515:15, 1545:12 conducted [1] - 1452:14 confer [5] - 1394:22, 1444:1, 1445:4, 1445:7, 1445:17 CONFERENCE [1] - 1446:12 conference [4] - 1446:14, 1446:15, 1447:3, 1452:14 confess [2] - 1514:25, 1515:4 confesses [2] - 1515:8, 1515:15 confident [1] - 1399:10 confidential [2] - 1448:18, 1505:19 confirmed [1] - 1426:6 conflict [1] - 1509:19 confronted [1] - 1515:5 confuse [1] - 1399:18 confusion [1] - 1450:16 conjure [2] - 1491:23, 1491:24 connection [2] - 1458:5, 1505:9 connector [1] - 1559:19 conscience [1] - 1528:17 conscientious [1] - 1541:13 conscious [1] - 1392:4 consciousness [1] - 1465:20 consequences [1] - 1407:15 consider [11] - 1454:18, 1454:24, 1455:1, 1455:6, 1455:20, 1456:14, 1458:2, 1458:8, 1465:15, 1543:11, 1548:24 consideration [8] - 1448:1, 1448:13, 1451:23, 1454:6, 1454:9, 1454:14, 1459:11, 1505:4 considered [5] - 1400:11, 1408:16, 1413:8, 1413:12, 1541:3 considering [2] - 1456:25, 1458:20</p>	<p>consistent [1] - 1425:23 consists [2] - 1454:19, 1524:15 conspiracy [1] - 1440:17 Constitution [1] - 1526:21 constitutional [2] - 1447:10, 1453:20 consult [2] - 1395:5, 1544:3 consulting [1] - 1542:19 contact [21] - 1393:16, 1394:7, 1394:14, 1394:19, 1395:10, 1395:23, 1396:16, 1396:17, 1396:25, 1409:14, 1444:10, 1451:19, 1542:15, 1545:17, 1546:6, 1551:8, 1551:20, 1551:22, 1557:23, 1558:14, 1559:13 contained [2] - 1471:6, 1493:1 contains [2] - 1433:25, 1461:13 context [4] - 1401:3, 1493:19, 1493:20, 1524:18 continue [7] - 1394:19, 1444:8, 1446:4, 1541:23, 1544:4, 1545:11, 1545:14 continuing [1] - 1459:7 continuous [1] - 1401:13 contradict [1] - 1505:13 contradicted [3] - 1457:8, 1473:10, 1505:12 control [4] - 1464:16, 1464:17, 1466:7, 1540:18 controls [1] - 1455:15 convenience [1] - 1466:10 conversation [11] - 1469:19, 1469:21, 1478:20, 1479:3, 1479:17, 1480:7, 1494:1, 1516:6, 1522:4, 1533:13, 1538:19 conversations [7] -</p>
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<p>1397:24, 1480:20, 1493:18, 1494:8, 1494:9, 1494:14, 1534:15</p> <p>converted [1] - 1463:15</p> <p>converting [1] - 1463:20</p> <p>convict [1] - 1492:24</p> <p>convictions [2] - 1408:13, 1441:23</p> <p>convince [1] - 1519:9</p> <p>convinced [8] - 1449:6, 1449:15, 1449:16, 1453:25, 1454:10, 1454:15, 1504:24, 1531:5</p> <p>convincing [2] - 1449:8, 1515:22</p> <p>cooperated [1] - 1524:12</p> <p>cooperating [1] - 1490:23</p> <p>copies [2] - 1391:17, 1520:3</p> <p>copy [8] - 1398:12, 1399:9, 1504:22, 1517:7, 1550:8, 1550:16, 1550:18</p> <p>cornerstone [1] - 1530:14</p> <p>Corporal [1] - 1476:9</p> <p>Correct [2] - 1424:24, 1432:3</p> <p>correct [39] - 1400:3, 1400:20, 1411:7, 1411:11, 1411:15, 1411:19, 1412:7, 1412:9, 1412:12, 1412:15, 1413:25, 1414:4, 1414:7, 1414:15, 1414:20, 1414:23, 1415:8, 1416:22, 1417:6, 1417:15, 1417:19, 1418:10, 1418:22, 1419:25, 1420:18, 1420:22, 1420:25, 1421:14, 1422:4, 1423:3, 1423:7, 1423:10, 1423:13, 1423:17, 1424:19, 1425:13, 1426:14, 1429:4, 1432:2</p> <p>corresponds [1] - 1473:19</p> <p>corroborate [1] - 1479:14</p> <p>corroborated [3] - 1473:7, 1473:8,</p>	<p>1473:12</p> <p>corroborates [6] - 1478:9, 1482:22, 1497:1, 1533:19, 1534:8</p> <p>corroboration [14] - 1473:20, 1476:22, 1477:10, 1479:13, 1479:15, 1480:9, 1481:11, 1482:4, 1482:5, 1485:22, 1490:20, 1533:3, 1533:5, 1533:7</p> <p>Corroboration [1] - 1479:13</p> <p>corruptly [3] - 1465:1, 1465:19, 1491:6</p> <p>Council [1] - 1450:12</p> <p>counsel [31] - 1408:9, 1410:16, 1418:6, 1418:16, 1428:2, 1428:14, 1430:17, 1442:18, 1443:4, 1443:25, 1444:1, 1445:4, 1445:8, 1445:17, 1446:1, 1446:17, 1446:22, 1452:15, 1468:12, 1468:18, 1503:5, 1510:10, 1510:13, 1530:8, 1530:18, 1533:10, 1538:17, 1548:21, 1549:5, 1549:18, 1551:5</p> <p>Counsel [19] - 1391:7, 1415:11, 1415:12, 1415:17, 1420:14, 1423:21, 1425:23, 1427:19, 1428:20, 1431:17, 1434:3, 1438:12, 1446:23, 1447:20, 1451:3, 1531:9, 1536:1, 1547:2, 1555:23</p> <p>counsel's [2] - 1392:12, 1555:25</p> <p>counseled [6] - 1460:14, 1462:7, 1487:8, 1488:10, 1520:23, 1531:18</p> <p>count [13] - 1466:5, 1466:6, 1466:8, 1471:2, 1471:5, 1483:20, 1485:17, 1487:25, 1488:4, 1488:14, 1489:22</p> <p>Count [18] - 1394:14, 1458:23, 1460:2, 1460:13, 1461:19, 1462:6, 1464:18,</p>	<p>1466:23, 1467:6, 1467:13, 1467:21, 1470:23, 1485:9, 1485:17, 1487:3, 1488:13, 1488:17, 1521:10</p> <p>counting [2] - 1484:1, 1484:7</p> <p>country [1] - 1516:5</p> <p>counts [3] - 1407:8, 1449:25, 1529:23</p> <p>County [1] - 1437:9</p> <p>couple [5] - 1427:20, 1483:12, 1531:8, 1535:4, 1547:2</p> <p>course [6] - 1407:10, 1419:23, 1443:21, 1512:5, 1512:23, 1541:11</p> <p>Court [2] - 1466:18, 1562:13</p> <p>court [49] - 1391:4, 1394:5, 1394:6, 1394:20, 1394:23, 1395:8, 1395:11, 1398:15, 1398:21, 1399:2, 1401:23, 1403:16, 1407:16, 1411:6, 1411:18, 1430:13, 1433:25, 1434:2, 1437:14, 1445:19, 1446:16, 1447:6, 1447:22, 1452:14, 1455:23, 1499:25, 1503:4, 1504:21, 1524:3, 1530:1, 1530:15, 1540:22, 1542:15, 1543:8, 1543:10, 1544:1, 1546:10, 1547:8, 1548:12, 1548:18, 1549:1, 1549:4, 1549:23, 1550:9, 1550:17, 1552:8, 1554:24, 1559:11, 1562:8</p> <p>court's [9] - 1399:5, 1420:14, 1444:9, 1446:5, 1452:18, 1452:19, 1541:23, 1545:11, 1545:20</p> <p>courthouse [7] - 1392:7, 1392:21, 1393:3, 1546:7, 1548:14, 1557:19, 1558:15</p> <p>courtroom [13] - 1393:1, 1393:8, 1397:4, 1397:13, 1397:18, 1468:10,</p>	<p>1543:19, 1546:6, 1548:11, 1552:23, 1553:11, 1554:22</p> <p>cousin [3] - 1421:17, 1513:7, 1513:8</p> <p>cover [25] - 1391:11, 1391:13, 1409:4, 1417:22, 1417:25, 1418:22, 1418:25, 1419:12, 1438:7, 1438:10, 1438:21, 1439:7, 1439:10, 1440:11, 1440:23, 1441:1, 1442:24, 1499:24, 1499:25, 1500:5, 1500:8, 1501:17, 1538:10, 1557:18</p> <p>coverage [1] - 1482:15</p> <p>covered [2] - 1405:8, 1408:10</p> <p>covering [1] - 1501:2</p> <p>covers [2] - 1408:18, 1500:8</p> <p>coverup [1] - 1500:23</p> <p>create [1] - 1450:16</p> <p>created [1] - 1517:25</p> <p>creates [2] - 1450:21, 1450:24</p> <p>credibility [7] - 1400:13, 1400:22, 1403:24, 1405:22, 1408:13, 1413:9, 1413:14</p> <p>crime [39] - 1457:22, 1457:24, 1459:14, 1460:11, 1460:19, 1461:3, 1461:21, 1462:4, 1462:10, 1462:15, 1462:16, 1462:25, 1466:4, 1467:16, 1471:17, 1471:18, 1483:6, 1483:8, 1486:3, 1488:21, 1489:11, 1489:16, 1489:19, 1489:20, 1491:8, 1491:17, 1491:18, 1492:4, 1492:10, 1502:1, 1520:5, 1522:13, 1522:15, 1529:25, 1531:20, 1538:5, 1538:6, 1543:10</p> <p>crimes [5] - 1457:20, 1465:24, 1466:2, 1492:25, 1539:25</p> <p>Criminal [1] - 1391:5</p> <p>criminal [6] - 1393:14,</p>	<p>1447:10, 1453:19, 1504:5, 1508:10, 1529:7</p> <p>critical [4] - 1393:13, 1502:17, 1547:16, 1552:20</p> <p>cross [7] - 1402:8, 1402:17, 1408:8, 1480:25, 1487:13, 1550:13</p> <p>Cross [2] - 1426:24, 1441:19</p> <p>CROSS [2] - 1426:25, 1441:20</p> <p>cross-examination [4] - 1402:8, 1402:17, 1408:8, 1550:13</p> <p>Cross-examination [2] - 1426:24, 1441:19</p> <p>CROSS- EXAMINATION [2] - 1426:25, 1441:20</p> <p>cross-examined [1] - 1487:13</p> <p>cross-referenced [1] - 1550:13</p> <p>crossed [2] - 1481:1, 1510:23</p> <p>cultural [1] - 1464:13</p> <p>cumulative [2] - 1422:11, 1436:12</p> <p>custody [1] - 1519:6</p> <p>cut [1] - 1425:18</p> <p>cutout [3] - 1532:1, 1532:10, 1535:7</p> <p>cyberspace [1] - 1512:8</p> <p>Cyndi [47] - 1415:7, 1416:11, 1416:22, 1423:7, 1430:2, 1431:3, 1465:2, 1465:5, 1469:8, 1472:3, 1472:12, 1472:18, 1472:24, 1473:1, 1473:24, 1474:3, 1474:15, 1479:10, 1481:6, 1482:24, 1486:19, 1488:3, 1488:18, 1491:14, 1503:21, 1505:25, 1506:3, 1506:7, 1506:20, 1506:24, 1507:11, 1507:13, 1509:11, 1513:12, 1514:1, 1517:14, 1518:2, 1518:5, 1518:18, 1519:3, 1519:24, 1521:12, 1521:18,</p>
---	---	---	--	--

<p>1522:7, 1522:16, 1551:5, 1551:6 Cyndi's [6] - 1478:5, 1488:25, 1489:3, 1489:15, 1537:14, 1537:18</p>	<p>1407:8, 1407:9, 1407:11, 1407:13, 1407:15, 1407:22, 1408:3, 1408:4, 1408:19, 1541:8, 1541:13 decisions [2] - 1395:6, 1448:8 Declaration [1] - 1526:20 declare [1] - 1528:3 decoy [3] - 1486:18, 1486:19, 1487:1 deem [1] - 1394:20 defend [1] - 1487:19 defendant [70] - 1416:5, 1447:8, 1447:10, 1447:13, 1449:7, 1453:19, 1453:23, 1454:1, 1454:11, 1454:12, 1454:16, 1454:17, 1457:25, 1458:1, 1458:23, 1459:2, 1459:8, 1459:10, 1460:2, 1460:6, 1460:10, 1460:13, 1460:22, 1461:1, 1461:19, 1461:24, 1462:3, 1462:6, 1462:18, 1462:22, 1464:18, 1464:21, 1464:25, 1465:4, 1465:10, 1465:13, 1465:18, 1466:2, 1466:5, 1466:20, 1466:24, 1467:3, 1467:7, 1467:12, 1467:14, 1467:19, 1467:22, 1468:1, 1469:7, 1471:19, 1472:17, 1485:3, 1487:7, 1488:9, 1504:24, 1511:2, 1511:3, 1511:4, 1520:22, 1529:12, 1543:13, 1544:10, 1547:17, 1547:24, 1548:7, 1552:22, 1553:4, 1553:14, 1554:8 DEFENDANT [3] - 1408:25, 1555:7, 1555:10 defendant's [3] - 1428:7, 1465:16, 1547:15 Defender's [1] - 1500:22 defense [13] -</p>	<p>1393:18, 1394:1, 1394:11, 1404:5, 1406:10, 1422:8, 1442:18, 1443:4, 1444:18, 1447:19, 1502:10, 1502:17, 1554:18 Defense [3] - 1410:9, 1533:8, 1533:9 DEFENSE [2] - 1444:20, 1503:3 Defiance [5] - 1417:19, 1435:10, 1439:6, 1504:7, 1512:15 defiance [4] - 1419:9, 1419:20, 1419:24, 1426:17 defies [2] - 1519:20, 1534:23 defined [2] - 1459:22, 1459:24 degree [1] - 1449:16 delay [2] - 1465:5, 1548:15 deliberating [2] - 1547:15, 1558:5 Deliberation [1] - 1558:2 deliberation [2] - 1545:9, 1558:8 deliberations [18] - 1446:4, 1519:18, 1540:8, 1540:19, 1540:21, 1541:22, 1543:17, 1543:21, 1544:5, 1544:16, 1544:20, 1544:22, 1545:14, 1546:16, 1546:20, 1546:24, 1546:25, 1559:1 deliver [1] - 1484:15 delivering [1] - 1484:13 denial [1] - 1523:21 denied [2] - 1403:19, 1432:1 deny [1] - 1434:2 Department [1] - 1402:13 deposition [1] - 1512:3 describe [5] - 1412:15, 1414:25, 1417:14, 1420:2, 1438:9 described [6] - 1460:12, 1462:5, 1463:21, 1525:24, 1546:8, 1549:24</p>	<p>deserves [2] - 1457:17, 1458:20 design [2] - 1417:22, 1438:7 designed [12] - 1414:6, 1420:22, 1421:13, 1423:6, 1425:1, 1463:19, 1464:1, 1464:3, 1504:14, 1509:22, 1519:23, 1524:11 designing [2] - 1402:8, 1508:20 desire [2] - 1404:19, 1404:20 despicable [3] - 1487:20, 1487:22, 1487:25 destroy [1] - 1550:16 destroyed [1] - 1550:20 destructive [10] - 1461:21, 1462:8, 1462:24, 1463:3, 1463:21, 1463:22, 1463:24, 1467:16, 1474:12, 1520:25 detail [2] - 1420:24, 1524:9 deter [1] - 1539:5 determination [1] - 1523:5 determine [1] - 1413:3 determined [2] - 1452:15, 1545:1 determining [1] - 1458:2 detonating [1] - 1461:10 detonation [1] - 1461:16 detonators [1] - 1461:9 device [56] - 1416:12, 1417:3, 1417:15, 1420:21, 1421:13, 1424:22, 1430:2, 1431:3, 1431:8, 1461:12, 1461:17, 1461:21, 1462:9, 1462:24, 1463:3, 1463:9, 1463:20, 1463:21, 1463:22, 1463:24, 1463:25, 1464:2, 1464:5, 1464:9, 1467:16, 1474:3, 1474:20, 1476:1, 1486:6, 1486:8, 1488:1, 1493:4, 1495:4,</p>	<p>1495:6, 1504:13, 1505:7, 1505:8, 1505:9, 1506:15, 1507:10, 1508:14, 1509:13, 1510:4, 1510:22, 1512:22, 1512:24, 1513:10, 1513:11, 1514:1, 1514:12, 1514:15, 1515:8, 1520:18, 1520:25, 1552:16, 1555:3 devices [7] - 1422:3, 1423:2, 1461:11, 1463:9, 1477:12, 1477:20, 1504:6 diameter [1] - 1463:18 diary [1] - 1524:6 dictionaries [1] - 1542:19 died [1] - 1498:15 dif [1] - 1424:24 differ [2] - 1455:14, 1540:17 difference [3] - 1423:9, 1456:9, 1509:1 different [4] - 1413:2, 1447:16, 1488:15, 1518:19 difficult [4] - 1506:14, 1517:7, 1523:7, 1527:15 digits [1] - 1479:20 diminishing [1] - 1556:25 Direct [1] - 1456:2 DIRECT [2] - 1411:3, 1437:3 direct [11] - 1424:9, 1430:9, 1456:1, 1456:2, 1456:10, 1456:12, 1456:14, 1456:17, 1508:11, 1531:13 directed [1] - 1488:11 directing [2] - 1487:23, 1489:14 direction [6] - 1434:16, 1435:11, 1438:23, 1450:24, 1483:9, 1486:17 directive [1] - 1491:3 directly [2] - 1393:7, 1403:23 disagree [3] - 1431:19, 1435:22, 1555:13 disassembled [1] - 1485:20</p>
--	--	---	---	---

<p>discharged [1] - 1544:12</p> <p>disclaimer [1] - 1413:21</p> <p>disclosed [1] - 1411:10</p> <p>discoloration [3] - 1478:3, 1478:4, 1478:7</p> <p>discolored [1] - 1510:1</p> <p>discourage [1] - 1397:10</p> <p>discover [1] - 1481:8</p> <p>discovered [2] - 1417:6, 1476:25</p> <p>discuss [11] - 1427:10, 1430:5, 1443:25, 1444:5, 1445:19, 1502:20, 1540:22, 1542:14, 1545:24, 1546:3, 1554:6</p> <p>discussed [10] - 1394:15, 1408:12, 1415:12, 1422:19, 1438:16, 1448:6, 1498:14, 1536:17, 1541:4, 1554:19</p> <p>discussing [8] - 1402:18, 1446:5, 1541:21, 1542:3, 1554:6, 1557:21, 1557:22, 1558:1</p> <p>discussion [5] - 1392:17, 1397:19, 1507:4, 1508:18, 1541:7</p> <p>discussions [3] - 1422:16, 1508:2, 1558:12</p> <p>disgusting [1] - 1503:20</p> <p>dislike [2] - 1402:4, 1404:12</p> <p>dislikes [1] - 1453:9</p> <p>dismissed [1] - 1518:8</p> <p>dispute [1] - 1492:9</p> <p>disregard [2] - 1441:7, 1455:17</p> <p>distance [2] - 1482:2, 1548:14</p> <p>distinction [1] - 1456:16</p> <p>District [3] - 1406:14, 1466:18, 1466:19</p> <p>divorce [9] - 1518:6, 1518:9, 1519:5, 1519:8, 1527:12,</p>	<p>1527:18, 1536:23, 1536:25</p> <p>divorced [2] - 1501:1, 1501:2</p> <p>doctor's [1] - 1533:18</p> <p>document [1] - 1433:7</p> <p>done [19] - 1397:12, 1406:15, 1425:5, 1425:21, 1453:16, 1465:9, 1483:14, 1485:2, 1490:13, 1501:5, 1501:7, 1509:5, 1519:8, 1523:10, 1538:11, 1539:17, 1554:23, 1556:4, 1559:7</p> <p>door [4] - 1560:15, 1560:21, 1561:16, 1561:19</p> <p>double [2] - 1477:14, 1508:20</p> <p>double-base [1] - 1477:14</p> <p>doubt [48] - 1449:6, 1449:9, 1450:7, 1450:14, 1453:24, 1454:2, 1454:3, 1454:10, 1454:16, 1459:5, 1460:9, 1461:1, 1462:2, 1462:22, 1464:24, 1466:1, 1484:21, 1487:6, 1488:9, 1489:20, 1501:12, 1501:13, 1502:3, 1503:18, 1504:23, 1505:1, 1505:2, 1520:22, 1521:11, 1524:2, 1526:14, 1529:2, 1529:10, 1530:11, 1530:13, 1530:16, 1530:22, 1530:24, 1530:25, 1531:1, 1531:6, 1534:17, 1534:18, 1534:25, 1537:12, 1543:13</p> <p>Doug [1] - 1555:15</p> <p>down [16] - 1432:16, 1443:15, 1449:9, 1480:15, 1480:17, 1480:22, 1481:2, 1481:4, 1481:10, 1481:12, 1481:21, 1481:23, 1481:25, 1482:5, 1483:1, 1497:13</p> <p>downloaded [1] - 1492:21</p> <p>Dr [1] - 1516:5</p>	<p>draft [1] - 1500:16</p> <p>drag [1] - 1556:11</p> <p>dramatically [1] - 1536:10</p> <p>draw [4] - 1407:21, 1408:1, 1418:22, 1438:20</p> <p>drawn [7] - 1406:5, 1435:10, 1447:13, 1453:22, 1482:6, 1510:12, 1510:14</p> <p>drew [4] - 1440:21, 1441:1, 1443:1, 1443:7</p> <p>drive [4] - 1473:2, 1482:25, 1486:23, 1534:11</p> <p>driving [7] - 1483:5, 1483:8, 1483:17, 1484:6, 1487:10, 1534:2, 1548:14</p> <p>drop [1] - 1559:6</p> <p>drove [2] - 1489:17, 1498:12</p> <p>drug [1] - 1448:17</p> <p>Duke [1] - 1528:7</p> <p>duke [1] - 1528:17</p> <p>duly [2] - 1410:24, 1433:17</p> <p>dummy [1] - 1424:22</p> <p>dumped [1] - 1485:24</p> <p>dungeon [1] - 1528:5</p> <p>during [16] - 1411:9, 1447:1, 1447:2, 1451:13, 1474:18, 1490:24, 1500:1, 1541:22, 1543:20, 1545:2, 1547:25, 1553:2, 1553:7, 1554:13, 1557:23, 1559:1</p> <p>duty [6] - 1452:24, 1453:1, 1453:4, 1454:11, 1454:17, 1544:14</p> <p>dying [1] - 1499:2</p>	<p>Edgar [78] - 1391:6, 1418:24, 1419:7, 1419:21, 1428:24, 1435:13, 1435:23, 1439:11, 1439:12, 1441:10, 1441:13, 1466:20, 1466:24, 1467:7, 1467:14, 1467:22, 1469:6, 1469:15, 1471:5, 1472:17, 1478:10, 1479:18, 1483:8, 1483:13, 1485:16, 1486:1, 1488:12, 1489:6, 1489:7, 1496:6, 1503:9, 1503:25, 1504:11, 1504:13, 1504:14, 1505:7, 1505:18, 1505:21, 1507:8, 1507:18, 1507:19, 1508:4, 1508:12, 1509:7, 1509:11, 1510:6, 1511:10, 1512:6, 1513:4, 1514:13, 1514:20, 1515:3, 1515:4, 1515:17, 1516:2, 1516:3, 1516:15, 1517:3, 1517:9, 1517:19, 1518:20, 1519:5, 1520:10, 1520:13, 1521:18, 1524:10, 1524:12, 1529:17, 1532:11, 1532:12, 1532:16, 1533:25, 1534:3, 1535:8, 1535:9, 1535:21, 1539:17, 1539:23</p> <p>Edgar's [1] - 1440:20</p> <p>education [2] - 1458:15, 1458:20</p> <p>effect [7] - 1392:9, 1394:20, 1469:12, 1493:7, 1541:14, 1547:12, 1551:8</p> <p>effort [2] - 1396:16, 1469:17</p> <p>efforts [2] - 1404:11, 1417:9</p> <p>eighth [1] - 1457:11</p> <p>either [9] - 1413:6, 1450:1, 1456:17, 1463:19, 1467:4, 1508:24, 1538:5, 1554:3, 1556:1</p> <p>Either [2] - 1456:15, 1538:1</p> <p>elaborate [1] -</p>	<p>1407:25</p> <p>elect [1] - 1540:20</p> <p>electric [1] - 1461:9</p> <p>electronic [1] - 1542:5</p> <p>element [5] - 1471:20, 1471:24, 1484:21, 1485:9, 1529:1</p> <p>elements [14] - 1459:4, 1459:15, 1460:8, 1462:1, 1464:23, 1470:19, 1470:22, 1471:1, 1492:14, 1520:5, 1521:1, 1530:1, 1530:16, 1535:19</p> <p>elevator [2] - 1393:2, 1558:19</p> <p>elevators [1] - 1393:6</p> <p>eliminate [3] - 1413:20, 1432:6, 1513:1</p> <p>eloquent [1] - 1503:7</p> <p>email [1] - 1542:5</p> <p>emergency [1] - 1475:11</p> <p>employer [1] - 1542:9</p> <p>enclosed [1] - 1516:16</p> <p>encouragement [2] - 1486:17, 1489:13</p> <p>end [10] - 1396:18, 1440:19, 1443:20, 1449:25, 1474:18, 1475:2, 1475:19, 1485:20, 1496:7</p> <p>Endeavor [2] - 1472:13, 1473:6</p> <p>ended [1] - 1438:14</p> <p>enemies [1] - 1486:25</p> <p>enforcement [14] - 1428:7, 1428:23, 1465:6, 1469:14, 1477:2, 1486:24, 1490:18, 1490:23, 1492:18, 1494:25, 1495:3, 1506:6, 1532:25, 1534:12</p> <p>engage [1] - 1465:2</p> <p>engaged [1] - 1426:16</p> <p>engaging [1] - 1558:11</p> <p>England [5] - 1526:24, 1527:1, 1527:8, 1527:21, 1527:22</p> <p>English [1] - 1512:5</p> <p>enlargement [1] - 1451:13</p> <p>enlargements [1] - 1451:16</p> <p>ensure [4] - 1395:17,</p>
		<p>E</p> <p>early [7] - 1443:18, 1513:20, 1514:6, 1558:23, 1558:24, 1558:25, 1560:1</p> <p>ease [1] - 1399:14</p> <p>easier [1] - 1561:9</p> <p>eat [1] - 1414:19</p> <p>economic [1] - 1459:21</p> <p>economically [1] - 1536:23</p>		

<p>1395:23, 1407:2, 1542:25 enter [1] - 1394:21 entered [2] - 1394:7, 1550:1 entire [3] - 1532:11, 1543:5, 1551:2 entirely [1] - 1453:18 equally [1] - 1453:14 errands [1] - 1472:19 erroneously [1] - 1480:13 escort [1] - 1558:17 essence [1] - 1526:10 essentially [1] - 1407:23 establish [1] - 1497:21 established [1] - 1429:15 establishes [1] - 1534:6 et [2] - 1394:15, 1549:25 eternity [1] - 1528:16 evaluate [1] - 1453:1 evaluating [1] - 1458:7 evening [5] - 1410:5, 1493:22, 1533:16, 1557:17, 1557:23 event [1] - 1480:12 events [3] - 1413:21, 1457:24, 1472:7 Eventually [1] - 1480:23 Evidence [3] - 1398:11, 1456:1, 1508:10 evidence [139] - 1395:12, 1395:18, 1404:7, 1404:11, 1418:16, 1436:8, 1443:23, 1444:25, 1445:3, 1445:24, 1452:24, 1453:2, 1453:7, 1454:7, 1454:9, 1454:15, 1454:18, 1454:21, 1454:25, 1455:1, 1455:5, 1455:8, 1455:12, 1455:13, 1455:18, 1455:20, 1455:24, 1455:25, 1456:2, 1456:5, 1456:10, 1456:12, 1456:13, 1456:15, 1456:18, 1456:19, 1457:8, 1457:10, 1457:13, 1458:1,</p>	<p>1458:22, 1460:25, 1462:21, 1465:15, 1465:17, 1469:6, 1470:6, 1471:15, 1472:8, 1473:7, 1473:8, 1473:11, 1474:17, 1484:20, 1485:14, 1488:8, 1488:17, 1492:15, 1493:4, 1493:7, 1495:1, 1496:5, 1498:4, 1501:7, 1501:11, 1501:19, 1502:2, 1503:19, 1504:9, 1504:16, 1504:20, 1505:5, 1506:18, 1508:12, 1509:20, 1510:3, 1510:9, 1510:11, 1510:13, 1510:15, 1510:16, 1510:20, 1511:4, 1511:18, 1511:19, 1513:17, 1513:22, 1515:17, 1517:6, 1518:1, 1518:11, 1518:12, 1518:23, 1518:24, 1520:9, 1520:11, 1520:12, 1520:13, 1520:16, 1521:2, 1521:13, 1523:16, 1524:14, 1524:19, 1525:11, 1529:24, 1530:25, 1531:1, 1531:4, 1531:13, 1532:16, 1533:15, 1535:2, 1535:13, 1535:16, 1536:5, 1536:11, 1536:17, 1537:4, 1537:9, 1537:16, 1539:25, 1540:10, 1540:14, 1540:15, 1541:3, 1541:15, 1541:17, 1543:1, 1544:17 exact [1] - 1465:25 exactly [10] - 1392:3, 1419:9, 1419:20, 1472:25, 1473:22, 1474:21, 1496:6, 1533:19, 1538:22, 1539:6 exaggerate [1] - 1404:22 examination [12] - 1400:16, 1402:8, 1402:17, 1405:1, 1405:14, 1405:21, 1408:8, 1411:2, 1416:7, 1426:24, 1441:19, 1550:13</p>	<p>EXAMINATION [5] - 1411:3, 1426:25, 1429:7, 1437:3, 1441:20 examine [6] - 1415:19, 1458:11, 1517:7, 1518:6, 1520:4, 1532:16 examined [2] - 1478:2, 1487:13 example [2] - 1456:9, 1534:24 examples [1] - 1400:1 Except [1] - 1541:21 except [13] - 1400:12, 1400:17, 1407:1, 1408:18, 1447:16, 1448:21, 1495:10, 1507:14, 1518:21, 1537:5, 1543:24, 1551:2, 1560:16 exception [1] - 1447:25 exchange [2] - 1471:21, 1487:20 excluded [1] - 1455:17 Excuse [2] - 1499:8, 1549:12 excuse [4] - 1410:14, 1444:10, 1509:12, 1544:24 excused [4] - 1432:17, 1432:20, 1545:15, 1545:21 exhibits [14] - 1454:21, 1454:24, 1544:17, 1546:18, 1547:5, 1547:6, 1550:3, 1550:4, 1558:4, 1558:7, 1560:11, 1560:17, 1561:1, 1561:6 exist [1] - 1510:21 exited [1] - 1546:17 expect [2] - 1530:20, 1530:21 expel [1] - 1463:15 expenses [1] - 1448:22 experience [5] - 1393:11, 1428:4, 1458:15, 1458:21, 1528:20 experiences [1] - 1519:17 expert [1] - 1475:25 experts [2] - 1474:2, 1478:1 explain [1] - 1435:4</p>	<p>explode [1] - 1477:22 explosion [2] - 1461:18, 1486:20 explosive [32] - 1417:3, 1417:15, 1420:21, 1421:18, 1422:3, 1423:2, 1430:2, 1431:3, 1460:4, 1460:16, 1461:3, 1461:6, 1463:4, 1463:7, 1463:16, 1467:8, 1475:3, 1475:5, 1477:14, 1477:17, 1485:12, 1485:23, 1485:24, 1486:5, 1486:6, 1486:8, 1504:13, 1505:7, 1505:8, 1506:15, 1507:10 explosives [2] - 1461:8, 1461:11 exposed [2] - 1541:19, 1543:7 express [4] - 1444:6, 1445:21, 1502:18, 1556:22 expressed [2] - 1403:3, 1556:17 expresses [1] - 1403:7 expressing [1] - 1446:7 extant [1] - 1547:21 extended [2] - 1444:9, 1478:4 extensive [1] - 1422:16 extent [2] - 1435:6, 1458:9 extraneous [2] - 1399:17, 1493:25 extremely [1] - 1393:10</p> <p style="text-align: center;">F</p> <p>fabricate [1] - 1534:14 fabricated [1] - 1494:24 facilities [11] - 1458:25, 1460:11, 1460:20, 1461:4, 1462:4, 1462:11, 1462:15, 1463:1, 1466:25, 1471:7, 1471:11 fact [33] - 1394:16, 1398:18, 1399:21, 1402:23, 1405:16, 1411:10, 1417:1, 1417:8, 1429:11,</p>	<p>1429:23, 1430:1, 1431:2, 1435:9, 1435:22, 1447:13, 1453:22, 1456:3, 1456:7, 1456:16, 1457:13, 1478:9, 1487:16, 1507:9, 1510:4, 1512:21, 1513:15, 1514:22, 1517:25, 1521:20, 1523:21, 1527:16, 1532:24, 1547:10 factors [2] - 1457:11, 1458:10 facts [17] - 1453:3, 1453:5, 1454:19, 1454:22, 1455:2, 1455:13, 1456:6, 1456:20, 1469:6, 1471:23, 1473:19, 1479:14, 1510:8, 1522:21, 1523:3, 1523:6, 1540:16 failed [5] - 1469:4, 1479:6, 1480:11, 1480:12, 1519:23 failures [2] - 1479:9, 1479:10 Fair [1] - 1438:18 fair [6] - 1415:18, 1419:2, 1419:6, 1506:10, 1510:15, 1543:1 Fairfax [168] - 1394:1, 1394:24, 1398:8, 1399:8, 1401:20, 1410:10, 1410:12, 1410:13, 1410:15, 1410:19, 1410:21, 1411:5, 1413:18, 1416:20, 1419:3, 1422:2, 1423:1, 1424:9, 1426:9, 1427:2, 1429:9, 1430:22, 1431:11, 1432:10, 1432:16, 1434:12, 1434:17, 1435:9, 1437:10, 1437:16, 1437:18, 1439:18, 1439:25, 1441:9, 1457:19, 1457:23, 1458:4, 1458:8, 1458:12, 1460:15, 1460:23, 1460:25, 1461:3, 1462:8, 1462:19, 1462:21, 1462:24, 1469:7, 1469:11, 1469:12, 1469:13, 1471:16, 1472:18,</p>
--	---	--	--	--

<p>1472:20, 1472:23, 1473:8, 1473:11, 1473:21, 1474:24, 1476:23, 1477:1, 1477:19, 1477:21, 1477:24, 1478:10, 1479:3, 1479:15, 1479:16, 1479:24, 1480:8, 1480:9, 1480:15, 1480:17, 1481:2, 1481:10, 1482:5, 1482:11, 1482:23, 1483:7, 1484:25, 1485:12, 1486:4, 1486:11, 1487:12, 1487:19, 1489:5, 1489:8, 1489:9, 1489:15, 1489:18, 1492:18, 1492:19, 1495:7, 1495:9, 1495:24, 1496:25, 1499:4, 1503:11, 1503:14, 1503:20, 1504:5, 1504:17, 1505:10, 1505:12, 1505:17, 1507:10, 1507:15, 1508:13, 1508:17, 1509:4, 1509:6, 1509:12, 1509:20, 1511:13, 1512:15, 1512:17, 1513:8, 1513:12, 1514:7, 1514:13, 1514:19, 1515:1, 1515:8, 1517:21, 1519:13, 1519:21, 1520:11, 1520:16, 1520:19, 1520:24, 1522:4, 1522:24, 1523:13, 1524:4, 1525:2, 1526:5, 1526:6, 1529:16, 1529:21, 1531:11, 1531:19, 1532:10, 1532:13, 1532:14, 1532:18, 1532:19, 1533:21, 1534:2, 1534:6, 1534:9, 1534:10, 1535:6, 1535:7, 1535:10, 1535:11, 1535:14, 1535:15, 1537:4, 1537:16, 1537:23, 1537:25, 1549:24, 1550:14, 1550:21</p> <p>FAIRFAX [1] - 1410:23 Fairfax's [16] - 1394:2, 1413:7, 1413:14, 1424:7, 1435:11, 1436:8, 1438:23,</p>	<p>1439:13, 1473:14, 1478:19, 1485:23, 1493:24, 1508:1, 1519:19, 1531:20, 1537:8</p> <p>fairly [2] - 1434:23, 1540:7</p> <p>fairness [2] - 1405:3, 1543:4</p> <p>fake [1] - 1512:1</p> <p>fall [2] - 1476:15, 1509:17</p> <p>fallen [3] - 1479:5, 1480:13, 1482:7</p> <p>false [4] - 1496:19, 1499:16, 1499:18, 1539:15</p> <p>falsehood [2] - 1497:17, 1498:22</p> <p>family [10] - 1392:6, 1427:15, 1500:9, 1511:25, 1518:13, 1518:21, 1536:1, 1536:8, 1536:9, 1542:9</p> <p>fantasy [8] - 1508:7, 1509:5, 1512:8, 1512:12, 1529:20, 1536:13, 1536:16, 1537:11</p> <p>far [11] - 1397:8, 1409:11, 1415:25, 1436:24, 1438:1, 1438:3, 1483:1, 1498:13, 1508:1, 1508:16, 1554:10</p> <p>far-fetched [1] - 1508:1</p> <p>Fargo [1] - 1516:17</p> <p>fashion [1] - 1451:4</p> <p>favorable [1] - 1405:6</p> <p>avored [3] - 1448:1, 1448:7, 1458:4</p> <p>FBI [27] - 1405:14, 1417:5, 1418:1, 1429:3, 1429:10, 1429:22, 1434:4, 1434:19, 1434:22, 1434:25, 1435:25, 1436:10, 1436:16, 1441:2, 1441:13, 1448:10, 1479:16, 1495:3, 1505:17, 1506:11, 1507:9, 1514:10, 1522:9, 1524:1, 1537:19, 1539:6</p> <p>fear [1] - 1522:21</p> <p>feature [1] - 1542:7</p> <p>federal [6] - 1460:4,</p>	<p>1460:21, 1465:8, 1467:9, 1485:13, 1493:10</p> <p>Federal [2] - 1398:11, 1500:21</p> <p>feds [1] - 1514:9</p> <p>feet [2] - 1481:19, 1482:2</p> <p>fell [2] - 1509:13, 1509:15</p> <p>fellow [3] - 1540:23, 1541:5, 1541:22</p> <p>fellowship [2] - 1528:13, 1529:10</p> <p>felony [7] - 1441:23, 1460:4, 1460:17, 1460:21, 1467:9, 1485:13, 1489:10</p> <p>felt [1] - 1536:8</p> <p>fetchd [1] - 1508:1</p> <p>few [3] - 1437:7, 1468:12, 1540:6</p> <p>fiction [12] - 1411:19, 1411:20, 1412:6, 1412:15, 1413:19, 1432:6, 1432:8, 1432:9, 1504:8, 1509:6, 1512:25, 1529:20</p> <p>fictional [3] - 1413:22, 1414:2, 1427:21</p> <p>fifth [1] - 1457:6</p> <p>figure [1] - 1555:25</p> <p>figures [1] - 1532:1</p> <p>file [1] - 1519:4</p> <p>filed [2] - 1500:12, 1518:7</p> <p>fill [2] - 1450:22, 1468:7</p> <p>final [1] - 1550:5</p> <p>finally [1] - 1393:17</p> <p>Finally [1] - 1548:17</p> <p>fine [7] - 1391:19, 1409:16, 1435:24, 1436:10, 1503:8, 1555:1, 1555:3</p> <p>fingerprints [12] - 1478:14, 1478:15, 1478:16, 1478:25, 1483:18, 1501:15, 1501:16, 1501:18, 1504:12, 1531:12, 1531:21</p> <p>finish [1] - 1494:10</p> <p>finished [1] - 1451:9</p> <p>fire [1] - 1461:15</p> <p>firecracker [2] - 1423:13, 1474:13</p> <p>fireworks [3] - 1421:17, 1423:4,</p>	<p>1423:5</p> <p>firmly [4] - 1449:6, 1449:15, 1453:25, 1504:24</p> <p>First [11] - 1421:20, 1455:3, 1457:1, 1459:6, 1460:10, 1462:3, 1463:4, 1463:25, 1464:25, 1496:10, 1547:4</p> <p>first [28] - 1407:18, 1410:24, 1433:17, 1449:4, 1449:12, 1450:3, 1450:5, 1454:19, 1456:8, 1469:9, 1470:17, 1471:5, 1472:2, 1477:1, 1479:6, 1484:10, 1488:5, 1496:14, 1511:14, 1513:6, 1515:13, 1515:22, 1532:25, 1544:14, 1545:1, 1549:14, 1551:1, 1554:17</p> <p>five [1] - 1396:1</p> <p>fix [1] - 1503:16</p> <p>flat [1] - 1498:20</p> <p>floor [1] - 1392:25</p> <p>flow [1] - 1493:18</p> <p>folks [1] - 1522:10</p> <p>follow [13] - 1444:8, 1446:4, 1449:24, 1452:20, 1453:12, 1472:5, 1528:17, 1540:6, 1541:23, 1545:11, 1545:19, 1547:22, 1548:20</p> <p>follow-up [2] - 1472:5, 1540:6</p> <p>followed [1] - 1542:25</p> <p>following [10] - 1449:12, 1454:25, 1459:4, 1460:8, 1462:1, 1463:4, 1463:25, 1464:23, 1490:11, 1490:12</p> <p>follows [7] - 1410:25, 1415:16, 1433:18, 1433:22, 1449:14, 1466:17, 1466:22</p> <p>food [1] - 1427:13</p> <p>force [3] - 1483:5, 1483:8, 1487:10</p> <p>foreperson [5] - 1468:3, 1468:7, 1540:20, 1543:15, 1544:15</p> <p>forgery [1] - 1442:6</p> <p>form [18] - 1395:12,</p>	<p>1428:13, 1444:6, 1445:21, 1449:23, 1450:20, 1451:2, 1459:18, 1466:9, 1466:15, 1466:17, 1468:4, 1468:8, 1502:13, 1502:18, 1543:16, 1546:20, 1547:6</p> <p>Form [3] - 1411:24, 1429:13, 1466:21</p> <p>formal [3] - 1446:14, 1447:2, 1447:21</p> <p>format [5] - 1423:8, 1548:2, 1548:3, 1553:17, 1555:22</p> <p>forming [1] - 1446:7</p> <p>forms [1] - 1461:7</p> <p>forth [2] - 1468:8, 1494:13</p> <p>Fortunately [2] - 1469:4, 1469:8</p> <p>Forty [1] - 1517:18</p> <p>Forty-three [1] - 1517:18</p> <p>Foundation [1] - 1429:13</p> <p>four [6] - 1449:24, 1463:6, 1480:7, 1502:4, 1529:23</p> <p>fourth [4] - 1457:5, 1464:9, 1471:2, 1489:22</p> <p>Fox [2] - 1475:12, 1476:9</p> <p>frame [3] - 1429:14, 1429:15, 1482:1</p> <p>Frank [1] - 1537:19</p> <p>free [3] - 1545:23, 1546:3, 1557:6</p> <p>freedom [1] - 1528:12</p> <p>freight [2] - 1484:13, 1484:15</p> <p>friction [1] - 1461:15</p> <p>Friday [4] - 1469:21, 1496:21, 1497:3, 1497:5</p> <p>friend [3] - 1497:11, 1522:18, 1528:7</p> <p>friends [1] - 1497:16</p> <p>front [9] - 1435:24, 1442:14, 1468:19, 1476:5, 1516:12, 1532:11, 1535:8, 1561:15, 1561:19</p> <p>frustrations [1] - 1427:25</p> <p>fulfilled [2] - 1538:14, 1551:10</p> <p>full [4] - 1442:22,</p>
--	--	---	--	--

<p>1474:21, 1474:25, 1475:4 fully [5] - 1446:2, 1446:8, 1474:19, 1502:19, 1541:4 furtherance [3] - 1489:6, 1489:10, 1531:20 fuse [8] - 1475:10, 1475:16, 1475:17, 1475:18, 1475:20, 1476:3, 1476:5, 1509:25 fuses [7] - 1461:8, 1476:6, 1476:16, 1478:2, 1478:3, 1478:4, 1485:21</p>	<p>1553:1 glasses [1] - 1552:17 God [1] - 1516:8 goodwill [1] - 1499:21 Gotcha [1] - 1436:20 GOVERNMENT [2] - 1468:23, 1530:7 government [53] - 1391:24, 1394:19, 1395:16, 1399:3, 1403:1, 1403:5, 1403:10, 1403:22, 1404:3, 1404:6, 1404:8, 1404:15, 1405:2, 1405:3, 1405:7, 1408:9, 1416:8, 1432:22, 1434:24, 1435:7, 1448:16, 1454:2, 1458:5, 1459:3, 1460:7, 1461:25, 1464:22, 1465:12, 1465:24, 1466:1, 1493:11, 1503:19, 1504:19, 1504:25, 1510:3, 1511:6, 1514:18, 1516:11, 1518:5, 1522:9, 1523:20, 1526:2, 1526:11, 1526:14, 1543:12, 1549:7, 1550:19, 1551:13, 1552:2, 1555:13, 1557:7 government's [4] - 1396:6, 1396:22, 1404:13, 1509:22 Graybar [2] - 1440:20, 1443:9 great [4] - 1474:14, 1499:24, 1500:5 greater [2] - 1458:12, 1504:4 grenade [1] - 1463:5 grew [1] - 1525:20 ground [5] - 1422:11, 1475:5, 1475:14, 1475:16, 1485:25 group [2] - 1558:18, 1558:21 guess [12] - 1396:23, 1403:14, 1404:10, 1435:8, 1506:1, 1506:21, 1519:9, 1549:22, 1551:18, 1554:18, 1555:2, 1556:19 guidance [1] - 1470:13 guidelines [1] -</p>	<p>1557:3 guilt [10] - 1407:22, 1447:11, 1447:16, 1453:21, 1454:2, 1495:20, 1505:1, 1511:1, 1544:9, 1544:10 guilty [37] - 1449:7, 1450:1, 1450:2, 1450:4, 1450:5, 1450:23, 1454:1, 1454:11, 1454:12, 1454:16, 1454:17, 1457:23, 1457:25, 1459:3, 1460:7, 1461:25, 1464:22, 1467:4, 1467:5, 1467:12, 1467:19, 1467:20, 1468:1, 1488:5, 1502:4, 1504:25, 1523:19, 1529:6, 1529:23, 1531:7, 1532:14, 1540:25, 1541:1 gunpowders [1] - 1461:6 guns [1] - 1482:12 guy [4] - 1439:14, 1441:2, 1490:10, 1500:3</p>	<p>1559:18 harm [4] - 1515:10, 1517:21, 1518:22, 1522:23 harm's [2] - 1503:22, 1519:25 harmed [1] - 1509:17 Haws [21] - 1395:7, 1403:4, 1416:8, 1451:5, 1468:14, 1468:21, 1502:6, 1503:7, 1503:23, 1504:11, 1505:11, 1506:17, 1508:18, 1508:22, 1516:19, 1520:2, 1520:7, 1521:14, 1522:13, 1530:6, 1540:3 Haws' [1] - 1511:7 head [1] - 1527:2 health [2] - 1517:17, 1533:19 Health [1] - 1544:20 hear [22] - 1391:4, 1397:5, 1429:2, 1447:20, 1457:2, 1468:11, 1478:13, 1491:20, 1494:21, 1494:23, 1499:9, 1500:10, 1500:15, 1502:9, 1524:24, 1525:12, 1525:13, 1525:21, 1525:22, 1531:10, 1554:17 heard [22] - 1445:23, 1445:25, 1446:20, 1452:24, 1455:23, 1456:4, 1457:18, 1458:14, 1469:5, 1470:6, 1470:8, 1472:13, 1484:3, 1490:16, 1491:17, 1491:18, 1502:14, 1502:16, 1524:19, 1532:9, 1549:15, 1551:14 hearing [4] - 1499:1, 1526:16, 1530:10, 1530:12 hearings [1] - 1395:10 hears [3] - 1490:12, 1490:14, 1491:2 hearsay [1] - 1400:6 heater [1] - 1481:6 heavy [1] - 1530:14 Heckendorn [1] - 1537:20 heels [1] - 1392:8 height [1] - 1392:8 heir [1] - 1527:11</p>	<p>held [2] - 1476:11, 1528:6 hell [1] - 1528:15 help [7] - 1438:6, 1449:11, 1455:12, 1471:3, 1516:22, 1522:14, 1540:14 helpful [2] - 1460:25, 1462:21 helping [3] - 1461:2, 1462:23, 1476:12 Henry [2] - 1527:15, 1527:19 hero [13] - 1403:19, 1403:21, 1404:19, 1405:17, 1414:7, 1415:20, 1415:23, 1416:21, 1439:18, 1506:2, 1512:20, 1513:4, 1524:13 hide [3] - 1431:2, 1507:23, 1531:24 high [2] - 1461:7, 1531:6 highlighted [3] - 1424:10, 1430:10, 1430:13 highway [2] - 1440:14, 1471:9 highways [1] - 1471:8 himself [12] - 1415:20, 1415:22, 1480:18, 1495:4, 1497:24, 1501:6, 1504:8, 1505:13, 1524:9, 1531:14, 1537:17 hinder [1] - 1465:5 hinges [1] - 1495:19 hire [18] - 1405:24, 1458:25, 1460:12, 1460:20, 1461:5, 1462:5, 1462:12, 1462:16, 1463:2, 1467:1, 1471:12, 1471:21, 1485:4, 1485:8, 1488:22, 1489:11, 1511:13, 1511:21 hired [4] - 1469:3, 1469:7, 1503:10, 1505:18 hiring [2] - 1490:10, 1519:13 history [1] - 1526:19 hit [3] - 1503:10, 1515:1, 1517:13 hitched [2] - 1496:25, 1497:2 hold [7] - 1475:20, 1476:13, 1476:16,</p>
G		H		
<p>gal [1] - 1500:18 game [1] - 1538:9 garage [3] - 1472:21, 1473:24, 1489:8 gas [1] - 1463:5 gate [1] - 1534:11 gates [1] - 1494:21 gather [3] - 1545:6, 1560:20, 1561:1 gauge [1] - 1559:18 Gearhart [3] - 1433:8, 1433:14, 1436:24 general [4] - 1403:5, 1463:11, 1464:10, 1541:23 generally [4] - 1400:25, 1463:12, 1556:23, 1557:3 gentleman [24] - 1410:4, 1413:5, 1443:19, 1445:3, 1468:18, 1484:19, 1485:8, 1492:12, 1499:17, 1501:10, 1502:7, 1503:5, 1507:25, 1510:10, 1519:16, 1520:8, 1526:7, 1529:22, 1531:16, 1535:17, 1539:18, 1540:5, 1546:15, 1546:22 Giglio [1] - 1401:24 girl [2] - 1501:1, 1511:12 girlfriends [1] - 1500:6 given [10] - 1407:18, 1449:10, 1456:17, 1458:21, 1464:6, 1488:14, 1523:16, 1530:1, 1550:18,</p>	<p>habit [1] - 1477:16 half [9] - 1445:9, 1446:20, 1463:18, 1480:5, 1495:16, 1534:13, 1534:20, 1536:14 half-hour [3] - 1480:5, 1534:20 hallway [1] - 1451:25 hallways [1] - 1393:6 hand [7] - 1408:5, 1409:13, 1410:22, 1450:2, 1454:13, 1466:11, 1519:11 hand-holding [1] - 1409:13 handed [1] - 1498:21 handwriting [1] - 1411:14 handwritten [3] - 1412:18, 1434:11, 1524:8 handyman [1] - 1503:16 hanging [3] - 1481:21, 1481:23, 1481:25 Hard [1] - 1511:12 hard [2] - 1400:24,</p>	<p>1557:3 1447:11, 1447:16, 1453:21, 1454:2, 1495:20, 1505:1, 1511:1, 1544:9, 1544:10 1449:7, 1450:1, 1450:2, 1450:4, 1450:5, 1450:23, 1454:1, 1454:11, 1454:12, 1454:16, 1454:17, 1457:23, 1457:25, 1459:3, 1460:7, 1461:25, 1464:22, 1467:4, 1467:5, 1467:12, 1467:19, 1467:20, 1468:1, 1488:5, 1502:4, 1504:25, 1523:19, 1529:6, 1529:23, 1531:7, 1532:14, 1540:25, 1541:1 1461:6 1482:12 1439:14, 1441:2, 1490:10, 1500:3</p>	<p>1559:18 1515:10, 1517:21, 1518:22, 1522:23 1503:22, 1519:25 1509:17 1395:7, 1403:4, 1416:8, 1451:5, 1468:14, 1468:21, 1502:6, 1503:7, 1503:23, 1504:11, 1505:11, 1506:17, 1508:18, 1508:22, 1516:19, 1520:2, 1520:7, 1521:14, 1522:13, 1530:6, 1540:3 1511:7 1527:2 1517:17, 1533:19 1544:20 1391:4, 1397:5, 1429:2, 1447:20, 1457:2, 1468:11, 1478:13, 1491:20, 1494:21, 1494:23, 1499:9, 1500:10, 1500:15, 1502:9, 1524:24, 1525:12, 1525:13, 1525:21, 1525:22, 1531:10, 1554:17 1445:23, 1445:25, 1446:20, 1452:24, 1455:23, 1456:4, 1457:18, 1458:14, 1469:5, 1470:6, 1470:8, 1472:13, 1484:3, 1490:16, 1491:17, 1491:18, 1502:14, 1502:16, 1524:19, 1532:9, 1549:15, 1551:14 1499:1, 1526:16, 1530:10, 1530:12 1395:10 1490:12, 1490:14, 1491:2 1400:6 1481:6 1530:14 1537:20 1392:8 1392:8 1527:11</p>	<p>1476:11, 1528:6 1528:15 1438:6, 1449:11, 1455:12, 1471:3, 1516:22, 1522:14, 1540:14 1460:25, 1462:21 1461:2, 1462:23, 1476:12 1527:15, 1527:19 1403:19, 1403:21, 1404:19, 1405:17, 1414:7, 1415:20, 1415:23, 1416:21, 1439:18, 1506:2, 1512:20, 1513:4, 1524:13 1431:2, 1507:23, 1531:24 1461:7, 1531:6 1424:10, 1430:10, 1430:13 1440:14, 1471:9 1471:8 1415:20, 1415:22, 1480:18, 1495:4, 1497:24, 1501:6, 1504:8, 1505:13, 1524:9, 1531:14, 1537:17 1465:5 1495:19 1405:24, 1458:25, 1460:12, 1460:20, 1461:5, 1462:5, 1462:12, 1462:16, 1463:2, 1467:1, 1471:12, 1471:21, 1485:4, 1485:8, 1488:22, 1489:11, 1511:13, 1511:21 1469:3, 1469:7, 1503:10, 1505:18 1490:10, 1519:13 1526:19 1503:10, 1515:1, 1517:13 1496:25, 1497:2 1475:20, 1476:13, 1476:16,</p>

<p>1530:20, 1530:21, 1532:16, 1539:23 holding [3] - 1397:3, 1409:13, 1409:21 HOLLINGSWORTH [1] - 1433:16 Hollingsworth [14] - 1394:2, 1394:25, 1399:3, 1417:21, 1418:21, 1433:2, 1433:5, 1433:11, 1434:16, 1435:11, 1437:5, 1437:7, 1438:20, 1441:22 home [7] - 1392:22, 1393:3, 1499:22, 1503:15, 1514:11, 1523:3, 1557:16 honest [2] - 1532:24, 1541:14 hope [3] - 1410:4, 1451:15, 1530:11 hopefully [1] - 1401:10 horses [2] - 1494:20, 1494:22 hot [3] - 1476:16, 1478:6, 1509:25 Hotel [1] - 1440:20 hour [9] - 1445:9, 1446:19, 1452:5, 1480:5, 1495:16, 1534:13, 1534:20 hours [2] - 1513:20, 1557:24 house [3] - 1473:23, 1477:9, 1537:20 housekeeping [2] - 1547:3, 1556:16 hugging [1] - 1409:13 human [3] - 1459:23, 1459:25, 1524:16 hundreds [1] - 1527:6 hurting [1] - 1487:19 husband [6] - 1396:8, 1507:3, 1522:22, 1523:9, 1523:19, 1551:7 husband's [1] - 1490:15 hypothetically [1] - 1456:11</p>	<p>idea [5] - 1401:11, 1442:24, 1443:7, 1483:9, 1531:18 identical [1] - 1477:12 identify [1] - 1436:6 identity [1] - 1465:3 ignite [2] - 1478:7, 1509:25 ignition [3] - 1424:23, 1461:15, 1509:21 ignorance [1] - 1465:11 ignore [1] - 1453:13 ill [1] - 1545:13 illustration [1] - 1533:6 image [2] - 1491:23, 1491:24 imaginations [1] - 1531:2 Imagine [1] - 1495:12 immediately [3] - 1396:18, 1492:21, 1543:8 immunity [2] - 1429:22, 1505:20 impartial [4] - 1454:6, 1454:8, 1454:14, 1505:4 impeaches [1] - 1403:11 Impeaching [1] - 1399:22 impeaching [6] - 1398:19, 1398:25, 1399:5, 1399:16, 1404:2, 1430:16 impeachment [20] - 1400:1, 1400:5, 1400:9, 1400:17, 1400:23, 1408:11, 1412:25, 1415:10, 1415:18, 1416:2, 1417:11, 1421:2, 1421:23, 1422:6, 1422:9, 1422:17, 1425:25, 1435:2, 1441:25 important [16] - 1393:10, 1401:21, 1407:12, 1429:11, 1429:23, 1449:18, 1453:14, 1457:15, 1472:1, 1490:7, 1502:12, 1522:8, 1528:25, 1529:3, 1541:10 impossible [1] - 1530:22 Impossible [1] -</p>	<p>1493:10 Improper [2] - 1415:9, 1421:1 improper [1] - 1547:13 Imwinkelried [1] - 1398:16 Inaudible [1] - 1561:21 incendiary [3] - 1461:11, 1463:4, 1463:7 incentive [1] - 1483:16 inch [1] - 1463:18 include [5] - 1439:8, 1439:11, 1463:25, 1542:5, 1545:3 included [1] - 1436:14 includes [2] - 1541:24, 1542:3 including [6] - 1413:6, 1448:7, 1448:8, 1463:5, 1528:10, 1544:8 inconsistencies [1] - 1525:25 inconsistent [4] - 1399:23, 1400:2, 1413:13, 1425:24 incriminating [1] - 1538:25 incrimination [1] - 1408:7 Independence [1] - 1526:21 independent [1] - 1479:14 indicate [4] - 1406:20, 1431:21, 1434:24, 1468:17 indicated [5] - 1401:9, 1406:4, 1415:18, 1416:6, 1438:12 indicates [1] - 1402:3 indications [1] - 1516:2 indictment [12] - 1449:25, 1458:24, 1460:3, 1461:20, 1464:19, 1465:21, 1466:24, 1467:7, 1467:14, 1467:22, 1487:3, 1489:22 indirect [1] - 1456:5 individual [1] - 1434:25 induced [5] - 1460:14, 1462:7, 1487:8, 1520:24, 1522:16 inference [5] - 1407:21, 1413:1,</p>	<p>1447:12, 1453:22, 1510:14 inferences [1] - 1510:12 inflare [1] - 1404:15 influence [2] - 1395:24, 1396:17 influenced [3] - 1408:4, 1453:8, 1458:10 informal [1] - 1447:1 informally [2] - 1391:18, 1446:19 informant [1] - 1505:20 informants [1] - 1448:18 information [6] - 1465:7, 1486:2, 1505:22, 1541:19, 1543:8, 1561:10 informed [1] - 1393:25 ingredients [1] - 1461:14 initiated [1] - 1392:17 innocence [1] - 1423:17 innocent [5] - 1392:10, 1424:2, 1424:19, 1424:22, 1511:3 inquire [4] - 1392:11, 1437:1, 1544:18, 1560:10 inquiry [1] - 1421:4 insistence [1] - 1483:13 insistent [1] - 1481:4 insisting [1] - 1469:15 instance [1] - 1392:16 instead [1] - 1447:8 instigating [1] - 1484:6 instigator [1] - 1479:1 instruct [9] - 1407:17, 1408:15, 1441:6, 1445:6, 1451:4, 1452:25, 1460:18, 1462:14, 1556:3 instructed [6] - 1400:10, 1418:15, 1450:14, 1455:17, 1455:20, 1473:13 INSTRUCTION [1] - 1446:12 instruction [20] - 1400:15, 1407:18, 1407:24, 1413:16, 1446:14, 1446:15, 1447:3, 1447:7,</p>	<p>1447:17, 1448:6, 1448:11, 1448:14, 1449:3, 1449:13, 1450:7, 1450:9, 1450:18, 1452:14, 1466:10, 1552:25 Instruction [11] - 1447:5, 1447:25, 1448:25, 1470:15, 1470:18, 1470:21, 1470:25, 1471:6, 1485:10, 1488:14, 1504:21 instructions [21] - 1395:14, 1445:5, 1445:25, 1446:17, 1446:20, 1449:22, 1451:9, 1451:11, 1451:12, 1452:19, 1452:20, 1453:13, 1453:15, 1468:13, 1470:12, 1520:3, 1529:5, 1530:2, 1540:6, 1541:18, 1542:24 INSTRUCTIONS [2] - 1452:22, 1540:4 instrument [1] - 1459:19 insurance [2] - 1485:6, 1536:20 intend [4] - 1401:19, 1427:21, 1476:21, 1547:22 intended [15] - 1427:7, 1455:11, 1459:10, 1463:20, 1471:18, 1474:14, 1476:2, 1476:19, 1477:23, 1485:3, 1501:12, 1520:10, 1529:18, 1540:7, 1540:13 intends [2] - 1398:8, 1464:12 intent [13] - 1459:8, 1465:4, 1474:11, 1475:6, 1475:23, 1476:8, 1477:20, 1478:10, 1489:4, 1492:6, 1538:8, 1538:12, 1538:13 intention [4] - 1461:2, 1462:23, 1464:17, 1484:25 intentional [3] - 1475:23, 1476:21, 1503:25 intentionally [9] - 1402:10, 1457:21, 1459:25, 1460:14,</p>
I				
<p>Idaho [12] - 1423:13, 1459:22, 1466:19, 1471:10, 1474:13, 1480:21, 1480:24, 1483:2, 1498:18, 1518:13, 1537:22</p>				

<p>1462:7, 1487:8, 1488:10, 1520:23, 1521:2 interest [4] - 1396:20, 1457:5, 1459:19, 1556:18 interesting [6] - 1472:9, 1494:16, 1503:17, 1532:20, 1535:5 interestingly [1] - 1524:25 Internet [4] - 1511:12, 1542:6, 1542:20, 1558:10 interpose [1] - 1428:16 interpret [3] - 1455:12, 1512:9, 1540:14 interpretation [1] - 1524:17 interpreter [1] - 1512:9 interprets [1] - 1512:10 interruption [1] - 1494:13 interstate [16] - 1458:24, 1459:9, 1460:11, 1460:19, 1461:4, 1462:4, 1462:11, 1462:15, 1462:25, 1466:25, 1471:7, 1471:11, 1488:22, 1510:24, 1520:14, 1538:15 interview [1] - 1480:4 interviews [1] - 1395:3 intimidate [1] - 1465:1 intimidation [2] - 1489:23, 1491:9 invade [2] - 1406:17, 1468:20 investigates [1] - 1523:12 investigating [1] - 1523:3 investigation [3] - 1490:24, 1523:14, 1542:22 investigators [1] - 1495:10 involve [1] - 1402:8 involved [3] - 1404:12, 1496:18, 1542:10 involvement [3] - 1501:20, 1531:10, 1531:12 involves [1] - 1541:20 is/was [1] - 1504:5</p>	<p>isolate [1] - 1555:24 ISP [1] - 1498:18 issue [3] - 1404:1, 1438:16, 1558:13 issues [7] - 1391:12, 1402:17, 1403:13, 1445:12, 1525:25, 1541:20, 1553:24 items [1] - 1391:12 itself [5] - 1400:8, 1404:4, 1436:1, 1436:18, 1534:4</p>	<p>umpsuit [2] - 1483:7, 1532:22 June [40] - 1395:13, 1459:7, 1467:3, 1467:25, 1469:19, 1471:18, 1472:4, 1479:4, 1479:18, 1481:24, 1483:14, 1484:4, 1484:24, 1492:17, 1495:22, 1501:19, 1505:17, 1506:6, 1507:12, 1510:6, 1513:20, 1514:22, 1515:3, 1515:7, 1516:4, 1517:10, 1521:14, 1524:23, 1525:2, 1525:7, 1525:9, 1525:12, 1525:13, 1533:11, 1533:24, 1536:6, 1537:1, 1537:20 juries [1] - 1528:22 juror [16] - 1391:9, 1391:14, 1391:16, 1392:5, 1392:17, 1416:4, 1444:9, 1444:10, 1449:15, 1449:16, 1504:22, 1543:2, 1543:7, 1545:12, 1545:16, 1545:21 jurors [18] - 1392:2, 1392:4, 1392:14, 1410:3, 1444:16, 1452:13, 1540:23, 1541:4, 1541:5, 1541:9, 1541:22, 1544:18, 1545:8, 1545:13, 1546:7, 1557:23, 1558:2, 1558:6 JURY [4] - 1446:12, 1452:22, 1540:4, 1552:7 Jury [10] - 1391:3, 1410:1, 1444:14, 1446:11, 1452:11, 1502:23, 1546:25, 1547:1, 1552:6, 1557:12 jury [88] - 1391:4, 1392:22, 1393:5, 1399:6, 1399:18, 1400:9, 1404:15, 1405:10, 1407:17, 1407:20, 1407:24, 1408:2, 1408:15, 1409:7, 1411:6, 1413:3, 1415:13,</p>	<p>1416:3, 1418:15, 1441:7, 1442:10, 1450:1, 1450:16, 1450:25, 1451:9, 1451:11, 1452:3, 1452:6, 1452:16, 1452:23, 1466:21, 1468:5, 1468:15, 1468:25, 1492:12, 1501:10, 1502:25, 1503:2, 1503:6, 1506:18, 1510:21, 1519:9, 1523:23, 1526:19, 1526:22, 1528:22, 1530:8, 1540:20, 1542:12, 1543:23, 1543:25, 1544:8, 1544:13, 1545:2, 1545:7, 1545:24, 1546:2, 1546:16, 1546:17, 1546:23, 1547:13, 1547:14, 1548:8, 1548:14, 1548:17, 1548:18, 1548:23, 1548:25, 1549:6, 1552:9, 1552:12, 1552:20, 1553:6, 1553:14, 1553:22, 1554:2, 1554:5, 1555:6, 1555:24, 1556:17, 1556:20, 1556:23, 1556:25, 1560:10, 1560:13, 1560:22, 1560:23 jury's [4] - 1424:5, 1467:4, 1545:22, 1554:13 Justice [1] - 1402:13 justice [4] - 1523:24, 1526:9, 1529:13, 1530:14 justify [1] - 1449:17</p>	<p>1477:23, 1478:10, 1479:10, 1482:24, 1482:25, 1487:12, 1487:16, 1487:21, 1487:24, 1489:4, 1503:11, 1505:18, 1515:1, 1515:2, 1517:1, 1517:12, 1517:13 killed [2] - 1486:20, 1498:16 killing [1] - 1459:23 kind [16] - 1415:21, 1442:23, 1444:2, 1447:12, 1450:21, 1453:22, 1477:24, 1493:25, 1495:14, 1516:25, 1534:14, 1558:16, 1558:17, 1559:12, 1559:18, 1562:10 kinds [1] - 1435:3 king [6] - 1527:8, 1527:14, 1527:23, 1528:1, 1528:4 King [2] - 1527:15, 1527:19 kings [1] - 1528:21 Kittilstved [1] - 1474:7 knowing [3] - 1476:18, 1488:1, 1553:22 knowingly [10] - 1460:13, 1460:15, 1462:6, 1464:25, 1465:9, 1465:18, 1486:4, 1487:7, 1488:10, 1520:23 knowledge [4] - 1461:2, 1462:23, 1488:24, 1489:13 known [8] - 1428:24, 1463:14, 1506:21, 1518:17, 1518:18, 1519:2 knows [10] - 1395:8, 1398:21, 1464:15, 1464:16, 1507:9, 1507:12, 1507:14, 1521:19, 1522:25, 1525:4 Kunzman [1] - 1482:25</p>			
J							
<p>Jail [2] - 1427:13, 1437:9 jail [10] - 1415:4, 1420:18, 1427:3, 1427:24, 1428:4, 1440:21, 1500:21, 1512:22, 1551:12, 1551:23 jailed [1] - 1424:18 jailhouse [2] - 1491:15, 1538:19 Jeff [1] - 1518:16 jeopardizes [1] - 1543:3 Jiffy [3] - 1476:25, 1480:25, 1481:24 Jim [6] - 1421:16, 1481:16, 1513:7, 1513:13, 1513:24, 1537:25 job [8] - 1480:17, 1483:14, 1483:23, 1485:1, 1496:11, 1526:10, 1526:12, 1539:17 Johnson [2] - 1545:4, 1545:11 joins [1] - 1457:21 joke [1] - 1474:14 judge [2] - 1411:6, 1470:25 Judge [20] - 1391:8, 1394:3, 1395:8, 1396:3, 1396:5, 1398:2, 1400:18, 1401:19, 1403:12, 1405:11, 1416:10, 1420:10, 1421:19, 1430:12, 1433:23, 1435:13, 1442:11, 1551:4, 1551:6, 1554:19 judge's [1] - 1470:12 judged [1] - 1458:17 Judicial [1] - 1450:11 jump [1] - 1494:10</p>							
				K			
			<p>keep [5] - 1490:23, 1502:12, 1502:17, 1507:16, 1561:18 Kelsie [2] - 1506:20, 1525:19 kept [1] - 1511:8 key [2] - 1528:11, 1531:15 keys [2] - 1492:22, 1492:23 kill [26] - 1428:8, 1428:24, 1469:8, 1472:3, 1474:15, 1475:6, 1475:24, 1476:8, 1476:21,</p>			L	
				<p>lack [3] - 1454:7, 1505:5, 1531:3 ladies [10] - 1468:17, 1485:8, 1499:16, 1503:5, 1519:16,</p>			

<p>1520:8, 1531:15, 1535:17, 1546:14, 1546:22</p> <p>Ladies [14] - 1410:4, 1413:5, 1443:19, 1445:2, 1484:19, 1492:12, 1501:10, 1502:7, 1507:25, 1510:10, 1526:7, 1529:22, 1539:18, 1540:5</p> <p>lady [1] - 1487:17</p> <p>language [7] - 1433:25, 1448:5, 1448:13, 1449:2, 1449:12, 1449:13, 1499:8</p> <p>laptop [10] - 1552:15, 1553:18, 1553:20, 1553:21, 1553:22, 1555:3, 1555:18, 1556:1, 1561:10, 1561:12</p> <p>large [3] - 1474:4, 1474:6, 1476:13</p> <p>largest [1] - 1474:9</p> <p>Larry [113] - 1394:1, 1410:9, 1437:10, 1437:15, 1439:13, 1439:18, 1439:25, 1441:3, 1443:1, 1457:18, 1457:23, 1458:4, 1458:8, 1458:12, 1460:15, 1460:23, 1460:25, 1461:3, 1462:8, 1462:19, 1462:21, 1462:24, 1469:7, 1469:11, 1469:12, 1469:13, 1472:18, 1472:20, 1476:23, 1477:1, 1479:3, 1479:14, 1479:24, 1482:5, 1482:10, 1482:23, 1483:7, 1483:14, 1483:20, 1484:2, 1485:11, 1486:4, 1486:11, 1487:12, 1487:19, 1489:5, 1489:15, 1495:24, 1496:24, 1499:4, 1503:10, 1503:14, 1504:5, 1504:16, 1505:10, 1505:12, 1505:16, 1507:10, 1507:14, 1508:13, 1508:16, 1509:6, 1509:12, 1509:20, 1511:13, 1512:15, 1512:17,</p>	<p>1513:8, 1513:12, 1514:7, 1514:13, 1514:19, 1515:1, 1515:8, 1517:21, 1519:13, 1519:20, 1520:11, 1520:19, 1520:24, 1522:4, 1524:4, 1525:2, 1526:5, 1526:6, 1529:16, 1531:11, 1531:19, 1531:20, 1532:10, 1532:13, 1532:14, 1532:18, 1533:21, 1534:2, 1534:6, 1534:9, 1534:10, 1535:6, 1535:7, 1535:10, 1535:11, 1535:14, 1537:4, 1537:8, 1537:16, 1537:23, 1537:25</p> <p>last [13] - 1391:15, 1398:10, 1411:6, 1418:5, 1437:13, 1441:7, 1469:17, 1482:20, 1483:23, 1484:14, 1533:8, 1536:6, 1539:9</p> <p>lasted [1] - 1393:13</p> <p>late [1] - 1560:1</p> <p>latter [1] - 1471:15</p> <p>laughed [1] - 1511:25</p> <p>lavalier [1] - 1468:22</p> <p>law [41] - 1428:7, 1428:23, 1445:25, 1452:25, 1453:4, 1453:6, 1453:7, 1456:16, 1460:18, 1462:14, 1465:6, 1469:14, 1477:1, 1486:24, 1490:18, 1490:23, 1491:7, 1492:18, 1494:25, 1495:2, 1500:4, 1506:6, 1510:25, 1514:24, 1515:2, 1516:23, 1520:4, 1524:3, 1526:16, 1526:17, 1530:23, 1532:25, 1534:12, 1535:22, 1539:20, 1539:21, 1539:22, 1539:24, 1542:24, 1543:9, 1547:21</p> <p>LAW [9] - 1466:13, 1555:14, 1555:19, 1559:22, 1560:9, 1560:18, 1560:24, 1561:11, 1562:4</p> <p>law's [1] - 1499:21</p>	<p>LAWRENCE [1] - 1410:23</p> <p>lawyer [3] - 1429:10, 1429:22, 1503:8</p> <p>lawyer's [1] - 1455:6</p> <p>lawyers [10] - 1455:4, 1455:5, 1455:9, 1455:14, 1513:22, 1515:24, 1540:10, 1540:11, 1540:17, 1544:3</p> <p>lawyers' [1] - 1455:7</p> <p>lead [3] - 1436:13, 1438:13, 1501:8</p> <p>leading [3] - 1411:25, 1412:2, 1438:14</p> <p>Leading [1] - 1441:14</p> <p>Leaning [1] - 1476:10</p> <p>learn [1] - 1542:22</p> <p>learned [2] - 1536:22, 1536:24</p> <p>least [7] - 1406:4, 1406:19, 1434:12, 1443:22, 1496:13, 1554:25, 1558:17</p> <p>leave [12] - 1413:3, 1451:1, 1496:25, 1497:2, 1545:25, 1546:7, 1551:22, 1551:24, 1554:4, 1556:4, 1557:19, 1561:5</p> <p>leaves [4] - 1449:6, 1453:25, 1504:24, 1539:16</p> <p>leaving [2] - 1482:10, 1558:15</p> <p>led [1] - 1500:17</p> <p>leeway [1] - 1415:14</p> <p>left [8] - 1392:7, 1429:11, 1429:23, 1450:2, 1450:22, 1475:4, 1479:24, 1545:8</p> <p>left-hand [1] - 1450:2</p> <p>legal [8] - 1478:16, 1478:25, 1483:18, 1500:22, 1501:18, 1504:11, 1521:1, 1531:16</p> <p>Legal [1] - 1500:23</p> <p>legit [1] - 1424:24</p> <p>legitimate [1] - 1405:20</p> <p>lengthy [2] - 1396:4</p> <p>less [2] - 1534:13, 1534:20</p> <p>lesser [2] - 1485:17, 1486:3</p> <p>letter [4] - 1402:14,</p>	<p>1500:20, 1511:19, 1516:14</p> <p>letters [2] - 1500:24, 1512:8</p> <p>liar [1] - 1524:5</p> <p>lib [1] - 1435:18</p> <p>lie [14] - 1411:22, 1496:1, 1496:3, 1498:23, 1499:13, 1499:14, 1499:18, 1499:19, 1500:17, 1501:2, 1501:22, 1501:25, 1505:16, 1517:22</p> <p>lies [8] - 1418:1, 1418:9, 1434:4, 1435:1, 1436:9, 1436:14, 1496:9, 1500:23</p> <p>Lies [2] - 1439:2, 1439:8</p> <p>life [13] - 1415:7, 1416:22, 1424:2, 1424:19, 1424:22, 1449:19, 1475:13, 1490:7, 1509:8, 1516:7, 1522:21, 1524:10, 1532:5</p> <p>life's [1] - 1519:17</p> <p>life-size [1] - 1532:5</p> <p>lift [1] - 1394:6</p> <p>lifted [1] - 1475:16</p> <p>light [2] - 1394:16, 1457:10</p> <p>likely [2] - 1445:15, 1464:10</p> <p>Likewise [2] - 1542:16, 1546:5</p> <p>likewise [2] - 1393:4, 1550:18</p> <p>limited [4] - 1401:3, 1421:5, 1455:19, 1455:21</p> <p>limiting [1] - 1400:15</p> <p>line [4] - 1421:5, 1464:4, 1468:2, 1468:3</p> <p>lined [2] - 1559:11, 1562:8</p> <p>lines [10] - 1406:5, 1471:9, 1481:1, 1484:23, 1489:17, 1489:18, 1510:24, 1537:10, 1537:11</p> <p>linger [1] - 1392:25</p> <p>link [1] - 1506:12</p> <p>list [1] - 1402:12</p> <p>Listen [5] - 1478:21, 1491:14, 1493:17, 1493:19, 1494:7</p>	<p>listen [19] - 1479:8, 1490:6, 1493:13, 1495:22, 1499:3, 1506:24, 1508:24, 1521:5, 1521:22, 1522:10, 1522:11, 1524:22, 1524:23, 1542:16, 1552:12, 1552:14, 1553:10, 1554:15, 1556:5</p> <p>listened [5] - 1522:1, 1522:15, 1539:1, 1539:2, 1541:5</p> <p>listening [4] - 1508:8, 1525:5, 1553:5, 1554:14</p> <p>listens [2] - 1523:4, 1555:6</p> <p>live [1] - 1523:3</p> <p>lived [1] - 1518:13</p> <p>lives [1] - 1509:10</p> <p>living [1] - 1522:18</p> <p>loaded [1] - 1474:19</p> <p>loaned [1] - 1464:6</p> <p>lobby [1] - 1393:2</p> <p>lock [3] - 1560:12, 1560:14, 1560:20</p> <p>logging [2] - 1439:13, 1440:1</p> <p>Loginova [3] - 1500:19, 1500:24, 1500:25</p> <p>loiter [3] - 1392:20, 1393:5, 1560:6</p> <p>long-term [1] - 1536:2</p> <p>look [18] - 1412:17, 1438:11, 1442:14, 1473:14, 1473:17, 1481:20, 1482:13, 1483:3, 1484:19, 1516:12, 1517:9, 1521:5, 1528:9, 1532:12, 1532:13, 1533:3, 1533:23, 1536:21</p> <p>Look [3] - 1476:11, 1528:9, 1528:10</p> <p>looked [6] - 1481:7, 1481:17, 1481:18, 1481:19, 1513:16, 1520:19</p> <p>looking [4] - 1398:10, 1398:17, 1481:20, 1482:2</p> <p>looks [7] - 1425:17, 1451:24, 1486:24, 1523:14, 1523:15, 1532:5, 1532:7</p> <p>love [7] - 1500:3, 1500:24, 1511:11,</p>
---	--	---	--	---

<p>1511:16, 1518:21, 1536:1, 1536:13 loved [1] - 1518:2 lovesick [1] - 1536:16 lovesick-teenager [1] - 1536:16 loyal [1] - 1527:8 loyalty [1] - 1528:3 lube [1] - 1475:9 Lube [3] - 1476:25, 1480:25, 1481:24 lumberyard [2] - 1497:8, 1498:11 lunch [1] - 1497:24 lying [2] - 1498:1, 1498:2</p>	<p>markers [1] - 1440:13 marriage [3] - 1536:2, 1536:4, 1537:1 married [2] - 1518:3, 1527:9 marry [1] - 1527:12 MARSHAL [7] - 1397:6, 1397:14, 1397:20, 1409:8, 1409:10, 1409:18, 1409:23 marshal [4] - 1396:12, 1397:1, 1397:5, 1514:10 marshal's [1] - 1551:23 Marshal's [1] - 1397:23 marshals [3] - 1393:25, 1396:11, 1397:22 material [3] - 1401:24, 1401:25, 1467:9 materials [2] - 1461:8, 1542:21 matter [26] - 1393:14, 1395:20, 1398:5, 1398:18, 1399:16, 1406:9, 1407:1, 1413:10, 1453:17, 1460:18, 1462:14, 1477:21, 1490:11, 1490:13, 1490:14, 1491:1, 1491:2, 1491:19, 1491:20, 1528:13, 1528:18, 1542:14, 1550:5 mattered [1] - 1519:7 matters [2] - 1408:10, 1547:3 Mauet [1] - 1398:16 meal [1] - 1557:6 mean [18] - 1396:1, 1396:8, 1400:24, 1401:2, 1404:18, 1416:1, 1416:12, 1422:15, 1435:20, 1443:14, 1471:8, 1476:7, 1476:8, 1484:1, 1500:3, 1524:17, 1553:19, 1559:22 meaning [2] - 1507:5, 1522:9 meaningful [1] - 1557:3 means [12] - 1398:19, 1459:17, 1461:6, 1463:3, 1465:19, 1471:8, 1476:2,</p>	<p>1476:8, 1492:1, 1542:5, 1553:5, 1553:9 mechanical [1] - 1461:12 media [2] - 1542:9, 1542:17 meet [4] - 1479:25, 1498:12, 1515:25, 1534:2 meeting [2] - 1429:10, 1429:22 member [3] - 1439:16, 1540:20, 1543:23 members [2] - 1392:6, 1542:9 Members [3] - 1452:23, 1468:25, 1530:8 memorable [1] - 1497:24 memory [3] - 1455:15, 1457:4, 1540:18 mentioned [1] - 1550:12 merely [2] - 1460:23, 1462:19 Meridian [1] - 1559:21 merits [1] - 1542:1 message [1] - 1555:15 messaging [1] - 1542:6 messes [1] - 1495:25 met [4] - 1396:8, 1446:18, 1459:15, 1488:23 method [2] - 1430:23, 1549:6 mic [1] - 1468:22 microphone [4] - 1434:7, 1479:17, 1479:21, 1479:23 midnight [1] - 1556:21 might [13] - 1399:24, 1408:11, 1408:12, 1442:21, 1445:15, 1456:11, 1486:10, 1522:25, 1530:9, 1548:4, 1553:19, 1553:23, 1555:16 Mike [1] - 1474:7 mile [3] - 1440:13, 1440:16, 1440:18 miles [1] - 1440:14 Miller [1] - 1518:16 mind [9] - 1409:22, 1426:20, 1469:18, 1469:23, 1491:24, 1502:13, 1502:18, 1515:18, 1517:19</p>	<p>mine [2] - 1463:8, 1494:8 minute [1] - 1479:24 minutes [9] - 1392:22, 1396:2, 1444:12, 1445:10, 1451:20, 1452:5, 1502:21, 1517:13, 1517:18 mischaracterizes [1] - 1431:15 mischief [1] - 1442:8 misleading [1] - 1465:2 misnomer [1] - 1477:13 missile [1] - 1463:7 missing [1] - 1506:12 Missing [1] - 1427:15 Mission [2] - 1493:9, 1560:8 misstate [1] - 1505:14 mistake [2] - 1465:11, 1551:1 mistrial [2] - 1393:15, 1543:4 misunderstood [1] - 1538:20 Mitsubishi [5] - 1472:12, 1472:24, 1473:5, 1480:21, 1488:19 mixture [2] - 1461:12, 1461:17 model [6] - 1447:7, 1448:6, 1448:14, 1449:2, 1450:8, 1450:18 mom [2] - 1491:10, 1517:16 moment [10] - 1399:22, 1410:11, 1415:15, 1419:14, 1452:2, 1478:13, 1487:4, 1488:6, 1516:9, 1532:19 momentarily [2] - 1546:18, 1546:21 money [16] - 1448:10, 1459:18, 1480:5, 1485:7, 1487:20, 1487:21, 1487:23, 1516:22, 1516:25, 1517:17, 1519:5, 1520:11, 1537:7 monitored [1] - 1521:17 month [2] - 1522:18, 1523:2 months [1] - 1536:6 morning [12] - 1393:4,</p>	<p>1437:5, 1437:6, 1445:14, 1496:21, 1497:5, 1498:8, 1513:20, 1514:6, 1557:25, 1558:16, 1562:12 Mortgage [1] - 1516:14 most [10] - 1414:20, 1429:11, 1429:23, 1449:18, 1490:6, 1504:2, 1509:2, 1527:5, 1527:25 Motel [1] - 1443:9 mother [9] - 1473:3, 1490:8, 1499:21, 1500:4, 1514:24, 1515:2, 1516:23, 1536:7 mother-in-law [4] - 1500:4, 1514:24, 1515:2, 1516:23 mother-in-law's [1] - 1499:21 motivated [1] - 1499:20 motive [7] - 1487:12, 1487:14, 1487:15, 1512:13, 1535:16, 1535:18, 1537:8 motives [3] - 1535:25, 1536:19, 1537:2 motorist [2] - 1482:14, 1483:4 mouth [3] - 1478:22, 1484:5, 1499:15 Move [2] - 1418:4, 1418:13 move [2] - 1394:6, 1441:4 moved [1] - 1537:21 movie [2] - 1426:11, 1426:13 moving [1] - 1494:22 MR [100] - 1391:8, 1391:23, 1392:1, 1393:24, 1396:3, 1396:10, 1398:2, 1401:18, 1402:21, 1403:12, 1403:15, 1403:18, 1405:11, 1406:7, 1409:5, 1410:9, 1410:18, 1411:4, 1412:4, 1413:17, 1416:10, 1416:19, 1417:13, 1418:7, 1418:20, 1419:11, 1419:19, 1420:16, 1421:9, 1421:10, 1422:1,</p>
M				
<p>ma'am [1] - 1427:18 magnet [1] - 1476:14 Maher [12] - 1421:16, 1481:16, 1513:7, 1513:13, 1513:15, 1513:21, 1513:24, 1514:8, 1514:15, 1520:17, 1522:24, 1537:25 mail [2] - 1500:22, 1500:24 main [1] - 1414:10 maintain [1] - 1551:20 maintaining [1] - 1396:24 major [1] - 1562:10 majority [1] - 1529:7 male [1] - 1527:11 malice [1] - 1459:23 malicious [1] - 1442:8 man [18] - 1469:2, 1483:6, 1492:25, 1495:12, 1501:12, 1503:9, 1503:10, 1505:9, 1507:9, 1511:13, 1511:21, 1515:1, 1516:9, 1517:13, 1526:24, 1537:3, 1539:20 man's [3] - 1478:22, 1484:5, 1539:21 manipulated [1] - 1493:5 manipulates [1] - 1501:4 manner [1] - 1457:4 March [1] - 1412:12 Mark [1] - 1475:12 marked [1] - 1433:7 marker [2] - 1440:16, 1440:18</p>				

<p>1422:25, 1423:24, 1424:8, 1425:19, 1426:1, 1426:8, 1426:22, 1428:12, 1429:8, 1429:15, 1429:20, 1430:21, 1431:16, 1431:24, 1432:12, 1432:21, 1433:2, 1433:5, 1433:10, 1434:8, 1434:14, 1434:18, 1435:6, 1435:13, 1436:4, 1436:17, 1436:20, 1437:4, 1438:18, 1438:19, 1439:24, 1440:6, 1441:8, 1441:17, 1441:24, 1443:13, 1443:17, 1444:18, 1448:25, 1449:22, 1451:8, 1451:22, 1468:16, 1468:24, 1478:24, 1482:19, 1491:17, 1503:4, 1510:8, 1510:19, 1530:8, 1539:14, 1549:9, 1549:11, 1549:13, 1549:19, 1549:21, 1550:22, 1550:24, 1551:4, 1551:25, 1552:3, 1554:19, 1556:7, 1556:8, 1556:13, 1556:16, 1557:8, 1557:9</p> <p>muffler [1] - 1476:4 murder [37] - 1405:24, 1440:17, 1458:25, 1459:8, 1459:11, 1459:16, 1459:22, 1459:24, 1460:12, 1460:20, 1461:5, 1462:5, 1462:12, 1462:16, 1463:1, 1467:1, 1469:2, 1469:20, 1471:12, 1471:21, 1474:12, 1485:4, 1485:8, 1488:21, 1489:6, 1489:7, 1489:11, 1496:22, 1497:6, 1511:21, 1512:13, 1512:14, 1516:9, 1519:14, 1520:10, 1538:9 murder-for-hire [1] - 1405:24 murdered [2] - 1497:13, 1511:15 murderer [1] -</p>	<p>1511:20 murdering [2] - 1488:3, 1520:15 murders [1] - 1533:11 musings [1] - 1524:6 must [41] - 1398:18, 1399:16, 1407:20, 1446:4, 1449:16, 1453:6, 1453:8, 1453:12, 1455:6, 1455:21, 1459:3, 1460:7, 1460:25, 1461:25, 1462:21, 1464:22, 1466:5, 1470:16, 1470:19, 1471:1, 1471:20, 1491:21, 1491:25, 1501:22, 1501:24, 1501:25, 1510:11, 1520:21, 1529:7, 1529:8, 1530:25, 1531:3, 1531:4, 1540:18, 1541:1, 1541:16, 1541:18, 1542:13</p>	<p>1557:13, 1558:21, 1559:4, 1559:6, 1560:20, 1561:6 needed [1] - 1537:7 needs [1] - 1418:17 negotiable [1] - 1459:19 never [22] - 1394:15, 1416:24, 1417:8, 1417:15, 1485:20, 1485:21, 1495:9, 1506:13, 1510:5, 1512:23, 1513:15, 1513:16, 1518:20, 1518:22, 1520:19, 1521:15, 1522:1, 1522:14, 1535:12, 1556:25 nevertheless [1] - 1515:6 new [3] - 1480:8, 1555:16, 1555:18 newer [2] - 1447:6, 1447:15 news [2] - 1515:19, 1542:17 next [10] - 1410:8, 1416:10, 1433:1, 1443:16, 1466:12, 1466:14, 1480:12, 1518:12, 1532:7, 1555:11 nice [2] - 1487:17, 1500:3 night [9] - 1391:15, 1398:10, 1469:20, 1497:3, 1497:4, 1513:20, 1517:11, 1517:19, 1533:11 nine [2] - 1524:24, 1525:12 Ninth [9] - 1447:7, 1448:5, 1449:2, 1450:8, 1450:9, 1450:12, 1450:18, 1547:12, 1552:19 no-contact [9] - 1394:7, 1394:14, 1394:19, 1395:10, 1395:23, 1396:16, 1396:25, 1551:8, 1551:20 nobody [1] - 1428:23 Nobody [5] - 1429:2, 1473:9, 1474:21, 1513:23, 1525:4 noises [4] - 1493:21, 1494:1, 1494:17, 1534:15 noncontact [1] -</p>	<p>1551:18 none [4] - 1448:20, 1456:23, 1519:7, 1521:6 nonpersonal [1] - 1406:2 normal [1] - 1409:11 normally [2] - 1438:14, 1548:20 north [2] - 1423:13, 1518:13 note [19] - 1391:9, 1391:14, 1410:2, 1424:5, 1444:15, 1446:16, 1446:23, 1447:4, 1447:17, 1452:12, 1452:13, 1465:21, 1487:14, 1502:24, 1543:22, 1548:20, 1550:7, 1552:8, 1552:10 noted [1] - 1552:18 notes [15] - 1398:9, 1398:22, 1422:19, 1424:7, 1427:2, 1427:10, 1431:13, 1434:12, 1548:17, 1548:18, 1552:13, 1552:14, 1561:4, 1561:5 nothing [9] - 1434:21, 1448:20, 1481:21, 1492:1, 1492:2, 1505:6, 1507:7, 1508:21, 1556:2 Nothing [5] - 1429:5, 1443:1, 1443:11, 1507:8, 1552:3 Notice [5] - 1493:21, 1493:23, 1496:12, 1496:19, 1500:8 notice [6] - 1482:20, 1496:10, 1498:4, 1498:17, 1499:11, 1533:22 noticed [1] - 1514:3 notices [1] - 1498:21 notification [1] - 1498:19 notify [1] - 1543:8 novel [3] - 1508:7, 1508:8, 1521:8 nowhere [2] - 1442:25, 1443:8 number [4] - 1425:13, 1457:14, 1500:11, 1545:25 numbers [2] - 1399:13, 1401:10 numerically [1] -</p>	<p>1544:9</p>
N				
<p>name [7] - 1435:9, 1435:12, 1436:5, 1436:6, 1463:13, 1463:14, 1500:11 named [4] - 1503:9, 1503:10, 1526:25, 1527:12 Nampa [1] - 1559:21 Nation [2] - 1439:14, 1439:16 Nations [1] - 1440:2 natural [7] - 1470:10, 1493:18, 1498:20, 1498:22, 1499:2, 1534:15 near [2] - 1393:6, 1466:3 necessarily [2] - 1426:15, 1457:14 necessary [5] - 1443:24, 1480:14, 1480:16, 1492:24, 1543:20 need [25] - 1392:13, 1395:16, 1397:5, 1399:6, 1400:14, 1407:13, 1420:13, 1423:21, 1425:14, 1443:25, 1445:4, 1490:7, 1490:8, 1545:6, 1546:18, 1548:10, 1550:19, 1552:12, 1552:17,</p>				<p style="text-align: center;">O</p> <p>oath [5] - 1410:16, 1411:17, 1413:12, 1433:15, 1453:10 Obama [2] - 1532:4, 1532:8 obey [1] - 1539:22 obeying [1] - 1539:24 object [9] - 1395:19, 1411:24, 1412:23, 1421:19, 1422:10, 1428:12, 1441:4, 1449:1, 1449:10 objected [1] - 1399:4 objection [24] - 1391:21, 1392:1, 1396:6, 1415:12, 1417:10, 1419:15, 1420:13, 1420:15, 1421:25, 1422:24, 1423:22, 1428:17, 1429:17, 1432:19, 1439:21, 1441:16, 1448:2, 1448:23, 1549:5, 1549:8, 1549:9, 1549:10, 1551:15, 1554:24 Objection [12] - 1415:9, 1418:2, 1418:11, 1419:10, 1420:8, 1421:1, 1422:5, 1429:13, 1431:14, 1441:14, 1441:24, 1510:8 objections [11] - 1404:11, 1446:21, 1446:24, 1446:25, 1447:21, 1448:24, 1449:21, 1450:7, 1455:4, 1548:23, 1548:24 objects [3] - 1440:10, 1440:23, 1440:25 obligated [1] - 1397:23 obstinate [1] - 1492:1 obviously [6] - 1392:24, 1397:23, 1406:25, 1448:19, 1553:11, 1558:8 occasionally [1] - 1525:21 occur [2] - 1448:17, 1545:16 occurred [4] - 1393:12, 1437:14, 1448:21, 1459:16 offense [4] - 1465:8,</p>

<p>1465:22, 1523:22, 1529:7</p> <p>offenses [1] - 1465:22</p> <p>offer [1] - 1404:6</p> <p>offered [3] - 1403:2, 1403:10</p> <p>Office [1] - 1500:22</p> <p>office [1] - 1497:19</p> <p>Officer [1] - 1476:9</p> <p>officer [4] - 1495:3, 1498:17, 1498:18</p> <p>officers [5] - 1498:5, 1499:9, 1534:13, 1559:11, 1562:8</p> <p>oil [1] - 1507:14</p> <p>old [2] - 1515:23, 1516:5</p> <p>older [1] - 1447:9</p> <p>omissions [2] - 1465:13, 1465:16</p> <p>omitted [2] - 1477:2, 1477:3</p> <p>Once [2] - 1480:12, 1558:6</p> <p>once [4] - 1435:17, 1450:14, 1556:4, 1561:23</p> <p>One [7] - 1391:14, 1442:4, 1442:6, 1472:1, 1493:18, 1550:5, 1560:9</p> <p>one [86] - 1392:2, 1392:6, 1393:11, 1395:3, 1395:20, 1398:17, 1406:24, 1407:10, 1409:8, 1426:16, 1435:18, 1440:16, 1442:8, 1443:10, 1447:4, 1450:22, 1456:6, 1457:21, 1463:8, 1463:18, 1466:6, 1469:17, 1470:11, 1474:6, 1477:7, 1479:19, 1479:21, 1480:12, 1483:15, 1483:20, 1483:21, 1483:22, 1484:6, 1484:8, 1484:9, 1484:10, 1484:11, 1484:12, 1485:11, 1486:3, 1487:23, 1488:5, 1488:11, 1488:19, 1488:23, 1489:2, 1489:3, 1489:13, 1489:21, 1491:14, 1492:4, 1492:16, 1492:22, 1497:16, 1500:19, 1505:9, 1505:12,</p>	<p>1507:6, 1507:9, 1507:12, 1507:14, 1520:12, 1521:13, 1525:4, 1528:8, 1528:25, 1529:8, 1531:17, 1533:6, 1536:13, 1537:5, 1539:9, 1539:10, 1540:20, 1543:22, 1545:13, 1546:1, 1550:3, 1553:16, 1554:1, 1554:24, 1555:12, 1555:16, 1555:20, 1556:14</p> <p>one-half [1] - 1463:18</p> <p>open [9] - 1438:14, 1502:13, 1502:17, 1544:1, 1548:12, 1548:18, 1549:1, 1549:4, 1559:23</p> <p>open-ended [1] - 1438:14</p> <p>opening [6] - 1455:10, 1468:25, 1471:25, 1494:21, 1537:6, 1540:12</p> <p>operative [1] - 1490:4</p> <p>opinion [3] - 1444:7, 1458:21, 1541:6</p> <p>opinions [7] - 1445:21, 1446:7, 1453:9, 1458:16, 1458:17, 1502:13, 1502:18</p> <p>opportunity [5] - 1394:12, 1446:24, 1457:2, 1469:22, 1543:2</p> <p>opposed [1] - 1529:15</p> <p>options [1] - 1482:11</p> <p>orange [2] - 1483:7, 1532:22</p> <p>order [26] - 1394:7, 1394:14, 1394:19, 1394:22, 1395:10, 1395:23, 1396:16, 1396:25, 1397:9, 1399:5, 1404:22, 1450:25, 1459:2, 1460:6, 1461:24, 1464:21, 1487:2, 1491:4, 1510:25, 1529:6, 1530:24, 1550:1, 1550:18, 1551:8, 1551:9, 1551:20</p> <p>ordered [4] - 1398:11, 1508:13, 1542:13, 1547:7</p> <p>ordering [1] - 1491:3</p>	<p>ordnance [1] - 1464:6</p> <p>Oregon [26] - 1459:24, 1469:16, 1471:10, 1473:3, 1480:17, 1480:22, 1483:1, 1484:22, 1496:23, 1497:13, 1497:22, 1507:17, 1510:23, 1531:14, 1537:15, 1537:19, 1537:22, 1537:23, 1538:1, 1538:5, 1538:14</p> <p>original [5] - 1482:23, 1516:15, 1544:17, 1550:3, 1550:9</p> <p>originally [2] - 1447:6, 1464:2</p> <p>originated [1] - 1531:17</p> <p>otherwise [6] - 1400:6, 1544:9, 1545:18, 1545:19, 1549:4, 1559:8</p> <p>Otherwise [1] - 1482:20</p> <p>ounce [1] - 1463:8</p> <p>ounces [1] - 1463:7</p> <p>outcome [1] - 1457:6</p> <p>outset [1] - 1529:14</p> <p>outside [5] - 1393:1, 1393:7, 1397:4, 1430:13, 1543:7</p> <p>overall [1] - 1538:13</p> <p>Overgard [2] - 1545:3, 1545:10</p> <p>overlap [1] - 1494:7</p> <p>overrule [4] - 1422:23, 1429:16, 1448:23, 1450:6</p> <p>Overruled [1] - 1441:25</p> <p>overweight [1] - 1532:22</p> <p>overwhelming [2] - 1501:11, 1504:19</p> <p>own [12] - 1400:20, 1411:13, 1472:14, 1478:17, 1506:1, 1516:22, 1523:3, 1523:5, 1523:14, 1539:14, 1541:13, 1542:23</p> <p>owner [1] - 1464:12</p> <p>oxidizing [1] - 1461:13</p>	<p>page [16] - 1399:13, 1401:10, 1412:18, 1423:25, 1424:3, 1425:8, 1425:10, 1425:13, 1425:16, 1426:2, 1430:9, 1432:4, 1466:12, 1466:15, 1533:8</p> <p>pages [8] - 1402:4, 1411:14, 1412:8, 1414:3, 1419:2, 1513:2, 1524:8, 1549:23</p> <p>pagination [1] - 1550:11</p> <p>paid [6] - 1441:10, 1448:16, 1499:21, 1500:2, 1531:18, 1531:22</p> <p>pal [3] - 1470:1, 1470:4, 1482:19</p> <p>paragraph [2] - 1424:10, 1463:21</p> <p>paraphrasing [1] - 1413:6</p> <p>pardon [2] - 1497:4, 1535:20</p> <p>parking [6] - 1392:21, 1393:5, 1545:18, 1558:18, 1560:5, 1560:7</p> <p>part [22] - 1418:9, 1438:21, 1438:24, 1439:7, 1439:10, 1442:21, 1456:23, 1461:17, 1471:15, 1478:19, 1485:4, 1516:19, 1516:20, 1526:1, 1526:9, 1535:18, 1538:6, 1538:7, 1538:9, 1538:12, 1550:11, 1560:15</p> <p>Part [1] - 1425:18</p> <p>participant [2] - 1490:19, 1539:3</p> <p>particular [3] - 1470:14, 1516:1, 1528:24</p> <p>particularly [1] - 1463:12</p> <p>parties [3] - 1454:22, 1542:25, 1545:18</p> <p>parts [3] - 1463:19, 1471:13</p> <p>party [1] - 1543:2</p> <p>pass [1] - 1477:3</p> <p>past [4] - 1449:10, 1556:24, 1557:1</p> <p>pay [3] - 1459:12,</p>	<p>1471:22, 1537:7</p> <p>paying [1] - 1487:23</p> <p>payment [1] - 1448:22</p> <p>payout [1] - 1536:20</p> <p>pecuniary [2] - 1459:12, 1459:17</p> <p>peers [1] - 1528:23</p> <p>people [23] - 1403:22, 1472:10, 1494:4, 1501:4, 1501:5, 1501:17, 1503:21, 1503:22, 1506:20, 1509:2, 1509:18, 1519:1, 1524:20, 1526:4, 1527:5, 1527:25, 1528:9, 1528:10, 1528:11, 1528:22, 1529:11, 1542:10</p> <p>people's [1] - 1509:10</p> <p>percussion [1] - 1461:16</p> <p>perfect [1] - 1534:24</p> <p>perhaps [6] - 1404:15, 1404:20, 1474:20, 1502:12, 1508:1</p> <p>period [2] - 1437:11, 1518:19</p> <p>permission [2] - 1486:16, 1539:21</p> <p>permit [3] - 1402:14, 1468:18, 1551:12</p> <p>permitted [1] - 1458:16</p> <p>person [20] - 1405:22, 1405:24, 1413:21, 1417:2, 1457:22, 1464:14, 1464:15, 1476:18, 1480:3, 1484:22, 1486:12, 1491:7, 1494:5, 1494:6, 1506:6, 1519:22, 1520:14, 1522:25, 1529:6, 1542:4</p> <p>person's [1] - 1449:18</p> <p>personal [7] - 1402:7, 1403:7, 1403:13, 1404:2, 1404:12, 1453:8, 1527:16</p> <p>personality [1] - 1472:14</p> <p>personally [1] - 1456:4</p> <p>persons [1] - 1458:14</p> <p>perspective [1] - 1428:11</p> <p>persuade [2] - 1465:1, 1491:6</p> <p>persuades [1] -</p>
		P		
		p.m [2] - 1533:10, 1562:13		
		packing [1] - 1461:15		

<p>1541:7 pertains [2] - 1485:14, 1488:17 petition [3] - 1518:7, 1518:8, 1519:5 phase [1] - 1552:20 Phone [1] - 1517:22 phone [7] - 1451:19, 1492:5, 1517:4, 1521:14, 1533:9, 1534:1, 1542:4 phones [1] - 1517:5 photo [1] - 1481:23 phrase [2] - 1436:14, 1515:23 physical [4] - 1409:14, 1464:15, 1478:15, 1504:9 physically [1] - 1555:21 pick [1] - 1498:9 pickup [1] - 1435:23 picture [9] - 1439:11, 1439:13, 1441:2, 1442:22, 1443:8, 1511:11, 1532:3, 1532:4, 1532:6 piece [1] - 1504:16 pieces [5] - 1444:3, 1475:10, 1475:18, 1477:9, 1523:16 pile [2] - 1475:5, 1555:22 pipe [44] - 1423:10, 1472:22, 1472:23, 1473:4, 1473:24, 1474:5, 1474:9, 1474:11, 1475:8, 1475:15, 1476:11, 1476:13, 1476:24, 1477:5, 1478:5, 1478:14, 1478:17, 1478:22, 1479:5, 1479:11, 1480:11, 1480:24, 1481:3, 1481:13, 1481:15, 1481:25, 1482:7, 1484:10, 1484:23, 1485:15, 1486:15, 1486:20, 1486:22, 1487:2, 1488:12, 1488:18, 1488:25, 1489:1, 1489:2, 1489:9, 1508:23, 1537:13 pity [1] - 1536:12 place [17] - 1397:3, 1397:19, 1409:24, 1433:14, 1473:24, 1475:21, 1476:13,</p>	<p>1476:16, 1480:20, 1494:8, 1494:14, 1497:6, 1497:21, 1514:2, 1534:22, 1551:20, 1551:22 placed [6] - 1423:7, 1472:23, 1474:3, 1486:16, 1510:22, 1515:19 places [4] - 1480:19, 1495:6, 1501:16, 1524:24 plainly [1] - 1450:14 plaintiff [1] - 1466:20 plan [15] - 1393:25, 1451:21, 1469:10, 1469:12, 1472:5, 1472:18, 1476:2, 1482:8, 1482:9, 1483:24, 1487:2, 1489:6, 1489:7, 1516:20, 1516:24 planning [1] - 1516:9 plans [2] - 1473:2, 1533:16 plastic [1] - 1555:22 play [12] - 1478:18, 1482:16, 1483:4, 1490:4, 1491:13, 1539:9, 1539:12, 1547:14, 1548:11, 1554:3, 1554:10, 1556:3 played [11] - 1490:9, 1506:17, 1508:8, 1512:2, 1521:16, 1547:18, 1548:4, 1552:10, 1553:1, 1553:18 player [1] - 1548:4 playing [4] - 1547:25, 1552:19, 1553:8, 1554:22 plea [2] - 1405:3, 1457:25 pleaded [1] - 1457:23 pleasant [1] - 1410:5 pled [1] - 1532:14 pledge [1] - 1527:22 plot [7] - 1405:24, 1428:23, 1481:8, 1488:2, 1489:14, 1493:10, 1516:24 point [21] - 1392:13, 1394:3, 1394:4, 1395:12, 1404:9, 1404:14, 1407:12, 1427:8, 1428:6, 1428:13, 1428:22, 1445:16, 1486:11,</p>	<p>1514:13, 1525:17, 1526:15, 1527:4, 1535:4, 1545:23, 1556:24, 1557:2 pointing [3] - 1392:5, 1424:11, 1430:10 points [1] - 1486:13 poison [1] - 1463:5 Police [1] - 1498:18 policy [2] - 1397:7, 1485:6 portion [1] - 1413:4 portions [1] - 1451:11 Portland [8] - 1480:22, 1485:1, 1496:23, 1513:6, 1513:19, 1513:21, 1515:13, 1520:17 pose [1] - 1560:25 position [3] - 1402:11, 1406:24, 1561:7 possess [3] - 1462:8, 1462:24, 1520:24 possessed [3] - 1489:5, 1489:12, 1505:7 possesses [1] - 1464:14 possession [3] - 1461:20, 1467:15, 1489:10 possibility [1] - 1448:7 possible [15] - 1392:4, 1415:2, 1445:13, 1448:7, 1454:2, 1465:7, 1499:20, 1505:1, 1534:23, 1545:13, 1552:24, 1555:12, 1555:15, 1559:1, 1559:9 Possibly [1] - 1420:19 Post [1] - 1552:14 post [1] - 1497:19 Post-It [1] - 1552:14 potential [3] - 1432:24, 1435:3, 1450:16 powder [14] - 1475:3, 1475:4, 1475:5, 1477:11, 1477:13, 1477:14, 1477:16, 1477:17, 1477:18, 1486:7 powders [2] - 1461:7, 1461:10 power [1] - 1464:17 powerful [1] - 1483:15 practice [3] - 1406:16, 1409:11, 1548:17</p>	<p>precautions [1] - 1397:8 prefer [4] - 1409:20, 1553:5, 1554:4, 1555:23 prejudice [3] - 1399:24, 1404:7, 1457:7 prejudices [1] - 1453:9 prepare [1] - 1548:20 prepared [3] - 1466:9, 1514:23, 1552:25 presence [5] - 1464:15, 1464:16, 1547:25, 1554:9, 1554:21 present [24] - 1395:1, 1395:3, 1396:14, 1397:21, 1397:22, 1410:1, 1410:3, 1444:14, 1444:16, 1452:11, 1452:13, 1502:23, 1502:25, 1511:4, 1520:12, 1547:18, 1552:22, 1553:7, 1553:15, 1554:13, 1555:5, 1557:12, 1558:2, 1558:3 presented [8] - 1445:3, 1510:3, 1510:16, 1510:20, 1518:24, 1520:2, 1525:15, 1537:12 presenting [1] - 1526:11 preserved [2] - 1447:1, 1550:14 preside [1] - 1540:21 President [3] - 1532:4, 1532:8, 1539:19 press [1] - 1542:9 pressure [1] - 1395:18 presumably [1] - 1406:10 presumed [1] - 1511:3 presumption [4] - 1447:11, 1450:21, 1450:24, 1453:21 pretended [1] - 1498:15 pretty [3] - 1490:25, 1494:4, 1558:25 Pretty [1] - 1437:17 prevent [1] - 1465:5 previous [1] - 1395:2 previously [5] - 1398:20, 1418:15, 1433:12, 1434:1,</p>	<p>1518:7 primarily [2] - 1448:17, 1550:10 primary [1] - 1459:20 principle [2] - 1528:18, 1529:4 privilege [2] - 1408:6, 1550:10 problem [10] - 1391:10, 1509:15, 1513:2, 1551:4, 1553:16, 1556:10, 1559:16, 1559:20, 1561:2, 1561:12 problematic [1] - 1553:19 problems [9] - 1392:4, 1413:20, 1432:6, 1507:1, 1507:4, 1513:1, 1517:17, 1518:10 procedure [1] - 1480:3 Proceed [3] - 1416:18, 1422:24, 1436:22 proceed [6] - 1409:7, 1426:7, 1452:3, 1510:18, 1544:19, 1544:21 proceeding [2] - 1400:22, 1404:17 proceedings [2] - 1543:4, 1547:17 process [8] - 1398:23, 1400:19, 1453:3, 1474:16, 1474:18, 1543:6, 1548:19, 1552:23 proclaim [1] - 1423:16 proclamation [1] - 1527:20 procured [6] - 1460:15, 1462:8, 1486:4, 1487:9, 1488:10, 1520:24 produce [1] - 1526:2 produced [1] - 1504:19 production [1] - 1562:10 professional [2] - 1401:9, 1406:1 program [1] - 1479:19 programmed [2] - 1495:5 progress [1] - 1557:6 projectile [1] - 1463:16 projection [1] - 1442:10 promise [2] - 1459:12,</p>
--	---	---	--	---

<p>1471:22 promising [1] - 1453:11 Proof [4] - 1449:5, 1453:24, 1504:23, 1530:13 proof [17] - 1449:6, 1453:25, 1456:2, 1456:6, 1503:25, 1504:14, 1504:23, 1508:5, 1512:6, 1520:22, 1525:15, 1526:4, 1526:13, 1529:18, 1530:10, 1530:22 propellant [2] - 1463:6, 1463:17 proper [6] - 1422:16, 1422:17, 1425:25, 1435:2, 1546:20, 1547:6 proportions [1] - 1461:14 proposed [7] - 1441:1, 1446:17, 1447:6, 1452:18, 1452:19, 1548:21, 1548:23 proposition [1] - 1536:24 propped [2] - 1532:10, 1535:8 prosecution [3] - 1400:20, 1503:5, 1505:20 protective [2] - 1550:1, 1550:18 prove [16] - 1454:2, 1456:16, 1459:3, 1460:7, 1461:25, 1464:22, 1465:12, 1465:24, 1496:18, 1504:25, 1510:25, 1526:14, 1529:25, 1530:15, 1535:18, 1535:19 proved [3] - 1504:3, 1504:20, 1543:12 proven [11] - 1470:19, 1484:21, 1489:20, 1520:6, 1524:2, 1524:4, 1529:2, 1529:9, 1529:15, 1529:16, 1530:3 proves [1] - 1466:1 provide [2] - 1399:13, 1527:10 provided [8] - 1391:17, 1434:2, 1442:17, 1446:16, 1448:10, 1452:17,</p>	<p>1504:22, 1543:9 provides [1] - 1448:14 provisions [1] - 1464:7 public [3] - 1392:20, 1514:2 published [4] - 1478:23, 1482:18, 1491:16, 1539:13 pull [1] - 1425:10 punishment [2] - 1543:9, 1543:11 purely [3] - 1454:5, 1505:3, 1537:8 purpose [16] - 1395:22, 1396:15, 1396:24, 1399:19, 1400:12, 1434:6, 1436:3, 1455:19, 1488:2, 1503:20, 1514:5, 1517:24, 1520:15, 1521:9, 1551:9, 1552:16 purposes [5] - 1400:5, 1400:9, 1422:9, 1463:13, 1464:13 pursuant [3] - 1464:7, 1472:17, 1550:17 pursued [1] - 1401:4 put [32] - 1402:9, 1402:10, 1417:2, 1418:24, 1430:2, 1430:19, 1435:14, 1435:23, 1440:11, 1440:22, 1445:5, 1469:12, 1472:22, 1476:18, 1476:19, 1485:25, 1495:14, 1503:21, 1504:15, 1505:24, 1508:13, 1510:4, 1510:7, 1512:22, 1515:9, 1519:24, 1528:5, 1528:6, 1528:19, 1537:13, 1537:23, 1560:16 putting [7] - 1415:19, 1416:12, 1431:3, 1504:10, 1509:10, 1527:20, 1561:8 pyrotechnic [1] - 1464:4</p>	<p>QUESTION [1] - 1552:7 questions [14] - 1401:7, 1408:23, 1412:2, 1418:16, 1422:20, 1432:1, 1437:8, 1441:17, 1449:24, 1455:6, 1455:8, 1486:21, 1549:6, 1561:13 Questions [1] - 1455:3 quibble [1] - 1536:3 quickly [2] - 1445:5, 1550:7 quite [5] - 1395:9, 1396:19, 1475:4, 1478:6, 1528:6 quote [7] - 1402:5, 1413:18, 1423:19, 1447:9, 1496:1, 1519:10, 1539:19 quoted [1] - 1412:24 quoting [1] - 1413:7</p>	<p>1452:3, 1468:14, 1543:18 Reagan [1] - 1532:3 real [7] - 1473:18, 1494:17, 1509:8, 1509:23, 1513:2, 1526:4 realized [1] - 1528:17 realizing [1] - 1392:18 really [15] - 1431:13, 1438:3, 1477:21, 1481:16, 1505:14, 1506:8, 1511:15, 1512:18, 1513:16, 1514:3, 1514:20, 1516:24, 1520:19, 1524:17, 1528:13 Really [1] - 1558:3 reason [21] - 1392:11, 1396:19, 1396:23, 1404:22, 1405:6, 1406:16, 1415:21, 1420:20, 1454:4, 1505:2, 1512:13, 1531:4, 1531:5, 1537:5, 1537:6, 1544:20, 1544:21, 1551:10, 1551:19, 1560:15, 1562:7 reasonable [40] - 1416:4, 1449:5, 1449:9, 1450:7, 1450:13, 1453:24, 1454:3, 1454:10, 1454:15, 1459:4, 1460:8, 1461:1, 1462:1, 1462:22, 1464:23, 1466:1, 1484:21, 1487:6, 1488:9, 1489:20, 1501:12, 1501:13, 1502:3, 1504:23, 1505:1, 1520:22, 1524:2, 1526:14, 1529:2, 1529:10, 1530:10, 1530:13, 1530:16, 1530:25, 1531:6, 1534:17, 1534:24, 1534:25, 1543:13 reasonableness [1] - 1457:9 reasonably [1] - 1466:3 reasons [5] - 1443:24, 1458:7, 1458:16, 1458:21, 1546:8 rebuttal [4] - 1395:17, 1444:22, 1444:25, 1530:6</p>	<p>REBUTTAL [1] - 1530:7 receipt [3] - 1459:12, 1481:12, 1497:20 receive [1] - 1542:25 received [12] - 1391:8, 1405:4, 1453:2, 1454:21, 1454:24, 1455:19, 1455:25, 1458:4, 1533:25, 1541:17, 1549:23, 1552:8 recent [1] - 1516:8 recess [9] - 1392:22, 1392:24, 1394:25, 1444:11, 1446:9, 1452:1, 1452:9, 1502:21, 1552:4 Recess [5] - 1444:13, 1452:10, 1502:22, 1552:5, 1557:11 recessed [1] - 1562:13 recognized [1] - 1463:12 recollection [3] - 1412:19, 1424:15, 1426:4 recommend [4] - 1470:14, 1470:18, 1470:21, 1470:24 recommendations [1] - 1448:9 recommends [1] - 1407:10 record [15] - 1401:22, 1410:2, 1444:15, 1446:13, 1446:25, 1447:18, 1452:12, 1479:17, 1502:24, 1518:23, 1534:6, 1535:13, 1548:22, 1550:11, 1550:15 recorded [11] - 1469:19, 1469:22, 1480:7, 1490:10, 1521:15, 1521:18, 1521:19, 1521:20, 1538:18, 1538:20, 1539:6 recorder [3] - 1429:3, 1548:1, 1548:9 recording [19] - 1395:13, 1465:3, 1482:22, 1490:4, 1491:15, 1492:17, 1492:19, 1492:22, 1493:1, 1494:3, 1495:15, 1495:22, 1501:21, 1508:24, 1521:16, 1525:9,</p>
Q		<p>R rainfall [1] - 1456:11 raise [2] - 1410:21, 1536:15 raised [3] - 1447:12, 1453:21, 1518:13 rather [3] - 1548:25, 1559:3, 1559:25 reach [4] - 1521:6, 1540:23, 1541:11, 1541:15 reached [5] - 1468:5, 1543:14, 1544:11, 1545:24, 1546:2 reaches [2] - 1523:17, 1548:15 reaching [1] - 1454:23 reacted [1] - 1499:14 reaction [2] - 1498:20, 1498:22 read [15] - 1402:2, 1402:3, 1413:4, 1424:11, 1424:14, 1430:11, 1452:20, 1453:15, 1466:15, 1511:18, 1511:19, 1517:8, 1542:16, 1552:11, 1553:1 readily [2] - 1463:15, 1463:23 reading [2] - 1508:7, 1552:17 reads [3] - 1447:9, 1449:5, 1466:17 ready [5] - 1444:21,</p>	<p>1452:3, 1468:14, 1543:18 Reagan [1] - 1532:3 real [7] - 1473:18, 1494:17, 1509:8, 1509:23, 1513:2, 1526:4 realized [1] - 1528:17 realizing [1] - 1392:18 really [15] - 1431:13, 1438:3, 1477:21, 1481:16, 1505:14, 1506:8, 1511:15, 1512:18, 1513:16, 1514:3, 1514:20, 1516:24, 1520:19, 1524:17, 1528:13 Really [1] - 1558:3 reason [21] - 1392:11, 1396:19, 1396:23, 1404:22, 1405:6, 1406:16, 1415:21, 1420:20, 1454:4, 1505:2, 1512:13, 1531:4, 1531:5, 1537:5, 1537:6, 1544:20, 1544:21, 1551:10, 1551:19, 1560:15, 1562:7 reasonable [40] - 1416:4, 1449:5, 1449:9, 1450:7, 1450:13, 1453:24, 1454:3, 1454:10, 1454:15, 1459:4, 1460:8, 1461:1, 1462:1, 1462:22, 1464:23, 1466:1, 1484:21, 1487:6, 1488:9, 1489:20, 1501:12, 1501:13, 1502:3, 1504:23, 1505:1, 1520:22, 1524:2, 1526:14, 1529:2, 1529:10, 1530:10, 1530:13, 1530:16, 1530:25, 1531:6, 1534:17, 1534:24, 1534:25, 1543:13 reasonableness [1] - 1457:9 reasonably [1] - 1466:3 reasons [5] - 1443:24, 1458:7, 1458:16, 1458:21, 1546:8 rebuttal [4] - 1395:17, 1444:22, 1444:25, 1530:6</p>	<p>REBUTTAL [1] - 1530:7 receipt [3] - 1459:12, 1481:12, 1497:20 receive [1] - 1542:25 received [12] - 1391:8, 1405:4, 1453:2, 1454:21, 1454:24, 1455:19, 1455:25, 1458:4, 1533:25, 1541:17, 1549:23, 1552:8 recent [1] - 1516:8 recess [9] - 1392:22, 1392:24, 1394:25, 1444:11, 1446:9, 1452:1, 1452:9, 1502:21, 1552:4 Recess [5] - 1444:13, 1452:10, 1502:22, 1552:5, 1557:11 recessed [1] - 1562:13 recognized [1] - 1463:12 recollection [3] - 1412:19, 1424:15, 1426:4 recommend [4] - 1470:14, 1470:18, 1470:21, 1470:24 recommendations [1] - 1448:9 recommends [1] - 1407:10 record [15] - 1401:22, 1410:2, 1444:15, 1446:13, 1446:25, 1447:18, 1452:12, 1479:17, 1502:24, 1518:23, 1534:6, 1535:13, 1548:22, 1550:11, 1550:15 recorded [11] - 1469:19, 1469:22, 1480:7, 1490:10, 1521:15, 1521:18, 1521:19, 1521:20, 1538:18, 1538:20, 1539:6 recorder [3] - 1429:3, 1548:1, 1548:9 recording [19] - 1395:13, 1465:3, 1482:22, 1490:4, 1491:15, 1492:17, 1492:19, 1492:22, 1493:1, 1494:3, 1495:15, 1495:22, 1501:21, 1508:24, 1521:16, 1525:9,</p>

<p>1548:3, 1553:6, 1555:6</p> <p>recordings [56] - 1429:3, 1479:8, 1482:12, 1483:11, 1490:18, 1492:23, 1493:2, 1493:5, 1493:14, 1494:5, 1494:15, 1495:18, 1495:20, 1495:21, 1497:1, 1499:3, 1504:17, 1506:16, 1506:18, 1506:25, 1507:2, 1507:7, 1508:9, 1508:19, 1515:21, 1521:4, 1521:5, 1521:25, 1522:6, 1523:4, 1523:7, 1524:15, 1524:16, 1524:23, 1524:25, 1525:8, 1526:1, 1529:19, 1533:20, 1534:8, 1535:1, 1535:2, 1538:23, 1538:24, 1547:11, 1547:14, 1547:25, 1548:8, 1548:11, 1552:9, 1552:15, 1552:20, 1553:8, 1554:14</p> <p>records [4] - 1517:4, 1517:22, 1523:14, 1523:15</p> <p>recount [1] - 1431:6</p> <p>recover [1] - 1482:14</p> <p>recreational [1] - 1464:13</p> <p>Recross [1] - 1443:12</p> <p>redaction [1] - 1436:2</p> <p>redactions [3] - 1547:7, 1547:9, 1550:9</p> <p>redesigned [2] - 1464:1, 1464:3</p> <p>Redirect [1] - 1429:6</p> <p>redirect [1] - 1443:14</p> <p>REDIRECT [1] - 1429:7</p> <p>redundancy [4] - 1476:1, 1476:8, 1489:4, 1508:19</p> <p>Redundancy [2] - 1476:1, 1476:14</p> <p>reference [9] - 1400:3, 1430:7, 1431:9, 1435:25, 1436:15, 1479:9, 1508:23, 1508:25, 1542:21</p> <p>referenced [1] - 1550:13</p>	<p>references [1] - 1479:7</p> <p>referred [3] - 1398:16, 1423:12, 1423:14</p> <p>referring [4] - 1399:14, 1424:2, 1425:15, 1533:10</p> <p>refers [1] - 1536:1</p> <p>reflect [2] - 1399:24, 1465:19</p> <p>reflection [1] - 1409:20</p> <p>refresh [1] - 1424:15</p> <p>refreshes [2] - 1412:19, 1426:4</p> <p>regard [11] - 1407:3, 1409:22, 1422:18, 1447:5, 1450:20, 1470:17, 1471:2, 1475:8, 1547:4, 1547:11, 1550:8</p> <p>regarded [1] - 1547:16</p> <p>regarding [1] - 1465:3</p> <p>regardless [1] - 1459:15</p> <p>regularly [1] - 1536:7</p> <p>reinforce [1] - 1408:19</p> <p>reject [1] - 1458:19</p> <p>relate [1] - 1437:8</p> <p>relating [2] - 1422:20, 1465:7</p> <p>relation [4] - 1461:21, 1462:10, 1462:25, 1467:16</p> <p>relationship [1] - 1406:18</p> <p>release [1] - 1410:15</p> <p>released [2] - 1410:20, 1433:12</p> <p>relevant [11] - 1402:20, 1403:1, 1403:8, 1404:8, 1404:14, 1404:16, 1404:21, 1434:11, 1434:20, 1435:2, 1435:5</p> <p>religious [1] - 1527:17</p> <p>rely [2] - 1473:10, 1495:19</p> <p>remain [6] - 1393:8, 1397:18, 1397:22, 1432:24, 1548:13, 1551:8</p> <p>remarkably [1] - 1447:15</p> <p>remedy [1] - 1551:3</p> <p>Remember [2] - 1497:25, 1544:7</p> <p>remember [23] - 1399:6, 1401:25,</p>	<p>1437:10, 1455:13, 1471:24, 1474:1, 1474:7, 1474:8, 1474:17, 1475:7, 1475:9, 1475:25, 1476:9, 1477:6, 1477:16, 1478:1, 1478:3, 1479:18, 1480:1, 1496:25, 1499:23, 1534:3, 1540:16</p> <p>remind [2] - 1540:9, 1541:18</p> <p>reminds [1] - 1531:25</p> <p>remove [5] - 1514:15, 1520:18, 1538:2, 1538:4, 1538:6</p> <p>removing [3] - 1475:8, 1538:7</p> <p>rendering [1] - 1474:19</p> <p>Rental [1] - 1481:12</p> <p>repeat [3] - 1419:17, 1421:7, 1429:18</p> <p>repeated [1] - 1407:19</p> <p>repeatedly [2] - 1421:12, 1511:23</p> <p>rephrase [4] - 1428:16, 1431:16, 1434:9, 1434:10</p> <p>Rephrase [1] - 1412:2</p> <p>rephrasing [1] - 1428:15</p> <p>replace [2] - 1545:15, 1545:21</p> <p>reply [1] - 1493:20</p> <p>report [1] - 1542:14</p> <p>reported [2] - 1469:15, 1532:25</p> <p>represent [1] - 1526:8</p> <p>representation [2] - 1401:23, 1538:17</p> <p>representing [1] - 1404:3</p> <p>request [5] - 1428:8, 1446:21, 1447:8, 1447:19, 1548:9</p> <p>requested [2] - 1394:9, 1447:25</p> <p>requesting [1] - 1552:9</p> <p>require [4] - 1438:16, 1539:22, 1543:5, 1552:21</p> <p>required [7] - 1454:1, 1465:12, 1482:7, 1504:25, 1526:2, 1530:23, 1535:22</p> <p>requirement [1] - 1549:3</p>	<p>requirements [1] - 1398:18</p> <p>requires [6] - 1510:25, 1520:4, 1526:17, 1542:24, 1554:11, 1558:2</p> <p>Rescue [1] - 1560:7</p> <p>research [1] - 1542:19</p> <p>researching [1] - 1500:14</p> <p>resented [1] - 1536:8</p> <p>residence [1] - 1525:6</p> <p>resonates [1] - 1549:16</p> <p>respectfully [1] - 1470:11</p> <p>respond [5] - 1542:13, 1543:25, 1548:18, 1548:19, 1548:25</p> <p>responded [1] - 1391:16</p> <p>responding [1] - 1549:6</p> <p>response [10] - 1391:9, 1391:15, 1396:6, 1431:12, 1432:1, 1441:7, 1522:12, 1544:23, 1548:21, 1548:23</p> <p>responses [1] - 1549:3</p> <p>responsibility [4] - 1532:15, 1532:23, 1533:5, 1547:5</p> <p>responsible [3] - 1477:5, 1531:19, 1531:23</p> <p>rest [4] - 1393:19, 1394:4, 1406:10, 1528:12</p> <p>restate [1] - 1447:2</p> <p>resting [1] - 1393:19</p> <p>restrict [1] - 1510:11</p> <p>restrictions [1] - 1543:3</p> <p>rests [1] - 1444:18</p> <p>RESTS [1] - 1444:20</p> <p>result [1] - 1543:5</p> <p>resume [1] - 1558:8</p> <p>reswear [1] - 1410:16</p> <p>resworn [2] - 1410:19, 1433:13</p> <p>retake [1] - 1410:13</p> <p>retire [3] - 1544:13, 1546:15, 1546:23</p> <p>retrieve [2] - 1519:24, 1561:6</p> <p>return [11] - 1453:17, 1468:9, 1500:21, 1502:3, 1529:23,</p>	<p>1530:3, 1531:7, 1543:18, 1548:10, 1556:25</p> <p>returned [1] - 1550:19</p> <p>returning [2] - 1550:17, 1558:15</p> <p>returns [2] - 1480:6, 1495:8</p> <p>reversed [1] - 1450:4</p> <p>review [2] - 1398:13, 1446:18</p> <p>reviewed [2] - 1399:9, 1430:18</p> <p>revolves [1] - 1514:19</p> <p>Rex [3] - 1490:5, 1491:10</p> <p>rhinoceros [3] - 1491:22, 1491:25, 1521:23</p> <p>rid [1] - 1519:10</p> <p>ridiculousness [1] - 1507:20</p> <p>riding [2] - 1497:12, 1559:5</p> <p>rifle [1] - 1464:11</p> <p>rightfully [1] - 1473:13</p> <p>rights [2] - 1393:20, 1407:2</p> <p>risk [1] - 1431:7</p> <p>risked [1] - 1475:12</p> <p>road [8] - 1438:20, 1440:19, 1491:22, 1491:25, 1507:22, 1515:25, 1521:23</p> <p>Road [1] - 1534:12</p> <p>robot [3] - 1475:2, 1475:12, 1475:14</p> <p>Rocca [4] - 1451:14, 1478:18, 1482:16, 1491:13</p> <p>rocket [1] - 1463:5</p> <p>Ronald [1] - 1532:3</p> <p>room [15] - 1468:5, 1544:13, 1545:7, 1546:16, 1546:17, 1546:23, 1547:14, 1548:8, 1553:6, 1553:14, 1553:22, 1554:5, 1554:25, 1560:13, 1560:23</p> <p>Roosevelt [1] - 1539:19</p> <p>rough [3] - 1398:12, 1399:9</p> <p>roughly [2] - 1446:19, 1452:5</p> <p>royal [1] - 1527:4</p> <p>rubber [1] - 1515:25</p> <p>rule [2] - 1553:3, 1553:4</p>
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<p>Rule [2] - 1398:11, 1435:3</p> <p>Rules [1] - 1552:21</p> <p>ruling [1] - 1420:14</p> <p>run [4] - 1472:19, 1507:21, 1507:22, 1549:4</p> <p>running [4] - 1439:13, 1440:1, 1479:23, 1494:23</p> <p>Running [1] - 1439:15</p> <p>ruse [1] - 1514:23</p> <p>Russia [2] - 1511:16, 1512:4</p> <p>Russian [7] - 1500:6, 1500:18, 1501:1, 1511:11, 1511:23, 1512:6, 1512:10</p>	<p>second [27] - 1450:5, 1454:20, 1457:3, 1459:10, 1460:13, 1462:6, 1463:10, 1464:2, 1465:4, 1469:13, 1469:25, 1470:2, 1470:4, 1470:20, 1471:20, 1472:4, 1480:12, 1482:8, 1482:9, 1482:19, 1500:7, 1511:14, 1513:19, 1514:5, 1536:14, 1537:11</p> <p>Second [1] - 1455:16</p> <p>Secondly [2] - 1392:2, 1421:21</p> <p>secret [1] - 1507:16</p> <p>Secretary [1] - 1464:7</p> <p>Section [9] - 1459:1, 1460:5, 1461:22, 1464:8, 1464:20, 1467:2, 1467:10, 1467:17, 1467:24</p> <p>section [1] - 1430:10</p> <p>secure [1] - 1495:4</p> <p>security [2] - 1559:11, 1562:8</p> <p>see [45] - 1391:9, 1392:11, 1394:18, 1396:24, 1403:11, 1404:1, 1412:18, 1412:20, 1416:15, 1420:13, 1424:6, 1425:15, 1426:2, 1426:4, 1434:5, 1440:13, 1442:15, 1445:4, 1457:2, 1469:25, 1473:17, 1479:7, 1481:17, 1481:20, 1481:25, 1482:3, 1482:12, 1484:17, 1494:15, 1506:8, 1506:9, 1513:14, 1517:8, 1520:4, 1520:5, 1525:3, 1525:4, 1529:5, 1533:16, 1535:9, 1544:23, 1549:5, 1551:19, 1552:24, 1562:11</p> <p>See [2] - 1500:23</p> <p>seek [3] - 1429:22, 1433:24, 1536:25</p> <p>seeking [1] - 1404:6</p> <p>seem [1] - 1515:22</p> <p>select [1] - 1544:14</p> <p>selected [1] - 1417:18</p> <p>selection [1] - 1545:2</p> <p>self [2] - 1408:7,</p>	<p>1536:12</p> <p>self-incrimination [1] - 1408:7</p> <p>self-pity [1] - 1536:12</p> <p>sell [1] - 1404:23</p> <p>send [13] - 1392:22, 1484:25, 1500:22, 1500:24, 1543:21, 1544:2, 1547:13, 1548:1, 1548:6, 1548:7, 1552:13, 1554:8, 1557:16</p> <p>sending [1] - 1553:21</p> <p>sends [3] - 1495:7, 1512:11, 1525:2</p> <p>sense [9] - 1454:4, 1505:2, 1517:2, 1519:18, 1519:20, 1519:21, 1521:7, 1535:23</p> <p>sent [3] - 1391:16, 1479:16, 1555:15</p> <p>sentence [3] - 1449:5, 1449:13, 1494:11</p> <p>sentencing [1] - 1448:9</p> <p>separate [1] - 1466:4</p> <p>separately [2] - 1422:21, 1466:6</p> <p>separation [1] - 1518:9</p> <p>serious [2] - 1488:16, 1506:14</p> <p>serve [3] - 1399:18, 1546:11</p> <p>served [1] - 1394:21</p> <p>service [2] - 1542:12, 1551:23</p> <p>Service [1] - 1397:23</p> <p>session [2] - 1447:1, 1455:23</p> <p>set [9] - 1441:10, 1441:13, 1446:17, 1452:18, 1475:13, 1509:7, 1513:3, 1522:4, 1524:12</p> <p>sets [2] - 1468:8, 1471:1</p> <p>setting [1] - 1497:16</p> <p>seven [2] - 1391:5, 1525:18</p> <p>seventh [1] - 1457:9</p> <p>several [2] - 1395:10, 1399:4</p> <p>Severson [3] - 1452:2, 1546:11, 1558:3</p> <p>SEVERSON [6] - 1559:22, 1560:9, 1560:18, 1560:24, 1561:11, 1562:4</p>	<p>shall [1] - 1549:16</p> <p>share [2] - 1397:24, 1539:18</p> <p>shell [1] - 1463:11</p> <p>shifts [1] - 1558:20</p> <p>shitting [2] - 1499:7, 1499:12</p> <p>shock [1] - 1515:19</p> <p>shoes [1] - 1392:8</p> <p>shop [1] - 1481:7</p> <p>short [4] - 1452:1, 1502:8, 1540:7, 1557:15</p> <p>shortly [1] - 1544:16</p> <p>shot [4] - 1404:10, 1405:12, 1481:24, 1514:25</p> <p>shotgun [2] - 1463:10, 1463:11</p> <p>show [16] - 1404:7, 1404:21, 1405:5, 1424:3, 1426:3, 1430:7, 1431:9, 1434:21, 1440:1, 1443:8, 1461:1, 1462:22, 1479:15, 1498:6, 1505:6, 1518:21</p> <p>showed [1] - 1439:18</p> <p>showing [1] - 1484:5</p> <p>shown [7] - 1424:7, 1485:2, 1485:6, 1487:15, 1502:2, 1537:9, 1539:25</p> <p>shows [3] - 1496:5, 1497:20, 1515:18</p> <p>shred [1] - 1537:3</p> <p>sic [1] - 1550:21</p> <p>sick [1] - 1526:15</p> <p>side [4] - 1404:13, 1440:13, 1450:2, 1559:17</p> <p>Sidebar [4] - 1415:16, 1416:17, 1433:22, 1436:21</p> <p>sidebar [5] - 1420:11, 1420:13, 1433:20, 1438:12, 1438:17</p> <p>sidebars [1] - 1401:13</p> <p>sides [2] - 1512:12, 1524:9</p> <p>sight [2] - 1495:10, 1534:12</p> <p>sign [6] - 1440:18, 1440:19, 1468:7, 1528:3, 1528:11, 1543:17</p> <p>signaling [1] - 1464:4</p> <p>signature [1] - 1468:3</p> <p>signed [5] - 1516:15,</p>	<p>1527:25, 1528:10, 1543:22, 1543:24</p> <p>significance [1] - 1459:20</p> <p>significant [1] - 1559:6</p> <p>silver [1] - 1485:6</p> <p>similar [3] - 1423:6, 1463:9, 1464:5</p> <p>Similarly [1] - 1455:9</p> <p>simple [5] - 1469:1, 1503:9, 1503:12, 1548:3, 1548:4</p> <p>simply [19] - 1418:14, 1434:20, 1434:23, 1448:11, 1448:13, 1450:14, 1450:17, 1450:22, 1478:6, 1499:2, 1510:13, 1511:15, 1537:8, 1541:8, 1541:15, 1548:19, 1553:5, 1553:9, 1556:2</p> <p>singing [2] - 1525:17, 1525:23</p> <p>single [4] - 1453:13, 1487:14, 1490:6, 1537:3</p> <p>sitting [1] - 1560:5</p> <p>situation [3] - 1396:23, 1420:6, 1427:24</p> <p>situations [1] - 1448:15</p> <p>six [1] - 1536:6</p> <p>sixth [2] - 1392:25, 1457:7</p> <p>size [1] - 1532:5</p> <p>skepticism [2] - 1473:15, 1473:17</p> <p>sleeping [1] - 1514:7</p> <p>slide [1] - 1425:14</p> <p>slightly [1] - 1488:15</p> <p>small [1] - 1525:17</p> <p>smokeless [1] - 1461:10</p> <p>so-and-so [1] - 1440:18</p> <p>sold [1] - 1464:6</p> <p>solely [3] - 1453:7, 1455:24, 1464:12</p> <p>solves [1] - 1556:10</p> <p>someone [5] - 1514:9, 1516:25, 1522:2, 1562:4, 1562:6</p> <p>someplace [2] - 1497:19, 1532:2</p> <p>sometimes [3] - 1448:18, 1477:15, 1557:5</p>
S				
<p>safe [1] - 1474:19</p> <p>safety [3] - 1397:8, 1464:5, 1522:22</p> <p>Sagle [4] - 1472:19, 1480:21, 1483:2, 1537:22</p> <p>samples [1] - 1483:12</p> <p>sanitize [1] - 1553:20</p> <p>sat [1] - 1483:6</p> <p>satisfied [2] - 1487:5, 1488:5</p> <p>satisfies [1] - 1488:8</p> <p>Saturday [1] - 1497:4</p> <p>save [2] - 1415:7, 1506:3</p> <p>saving [2] - 1416:11, 1416:21</p> <p>saw [5] - 1456:4, 1485:20, 1485:21, 1511:12, 1527:4</p> <p>scam [1] - 1511:23</p> <p>scattered [1] - 1475:2</p> <p>schedule [1] - 1445:11</p> <p>scope [1] - 1441:24</p> <p>screen [2] - 1424:5, 1442:14</p> <p>screwed [3] - 1402:5, 1405:17, 1420:7</p> <p>scroll [1] - 1528:8</p> <p>sealed [1] - 1550:8</p> <p>searched [1] - 1480:2</p> <p>searching [2] - 1536:13, 1542:20</p> <p>seat [1] - 1507:23</p> <p>seated [2] - 1411:1, 1545:2</p> <p>seats [2] - 1452:18, 1557:14</p>	<p>section [9] - 1459:1, 1460:5, 1461:22, 1464:8, 1464:20, 1467:2, 1467:10, 1467:17, 1467:24</p> <p>section [1] - 1430:10</p> <p>secure [1] - 1495:4</p> <p>security [2] - 1559:11, 1562:8</p> <p>see [45] - 1391:9, 1392:11, 1394:18, 1396:24, 1403:11, 1404:1, 1412:18, 1412:20, 1416:15, 1420:13, 1424:6, 1425:15, 1426:2, 1426:4, 1434:5, 1440:13, 1442:15, 1445:4, 1457:2, 1469:25, 1473:17, 1479:7, 1481:17, 1481:20, 1481:25, 1482:3, 1482:12, 1484:17, 1494:15, 1506:8, 1506:9, 1513:14, 1517:8, 1520:4, 1520:5, 1525:3, 1525:4, 1529:5, 1533:16, 1535:9, 1544:23, 1549:5, 1551:19, 1552:24, 1562:11</p> <p>See [2] - 1500:23</p> <p>seek [3] - 1429:22, 1433:24, 1536:25</p> <p>seeking [1] - 1404:6</p> <p>seem [1] - 1515:22</p> <p>select [1] - 1544:14</p> <p>selected [1] - 1417:18</p> <p>selection [1] - 1545:2</p> <p>self [2] - 1408:7,</p>	<p>1536:12</p> <p>self-incrimination [1] - 1408:7</p> <p>self-pity [1] - 1536:12</p> <p>sell [1] - 1404:23</p> <p>send [13] - 1392:22, 1484:25, 1500:22, 1500:24, 1543:21, 1544:2, 1547:13, 1548:1, 1548:6, 1548:7, 1552:13, 1554:8, 1557:16</p> <p>sending [1] - 1553:21</p> <p>sends [3] - 1495:7, 1512:11, 1525:2</p> <p>sense [9] - 1454:4, 1505:2, 1517:2, 1519:18, 1519:20, 1519:21, 1521:7, 1535:23</p> <p>sent [3] - 1391:16, 1479:16, 1555:15</p> <p>sentence [3] - 1449:5, 1449:13, 1494:11</p> <p>sentencing [1] - 1448:9</p> <p>separate [1] - 1466:4</p> <p>separately [2] - 1422:21, 1466:6</p> <p>separation [1] - 1518:9</p> <p>serious [2] - 1488:16, 1506:14</p> <p>serve [3] - 1399:18, 1546:11</p> <p>served [1] - 1394:21</p> <p>service [2] - 1542:12, 1551:23</p> <p>Service [1] - 1397:23</p> <p>session [2] - 1447:1, 1455:23</p> <p>set [9] - 1441:10, 1441:13, 1446:17, 1452:18, 1475:13, 1509:7, 1513:3, 1522:4, 1524:12</p> <p>sets [2] - 1468:8, 1471:1</p> <p>setting [1] - 1497:16</p> <p>seven [2] - 1391:5, 1525:18</p> <p>seventh [1] - 1457:9</p> <p>several [2] - 1395:10, 1399:4</p> <p>Severson [3] - 1452:2, 1546:11, 1558:3</p> <p>SEVERSON [6] - 1559:22, 1560:9, 1560:18, 1560:24, 1561:11, 1562:4</p>	<p>shall [1] - 1549:16</p> <p>share [2] - 1397:24, 1539:18</p> <p>shell [1] - 1463:11</p> <p>shifts [1] - 1558:20</p> <p>shitting [2] - 1499:7, 1499:12</p> <p>shock [1] - 1515:19</p> <p>shoes [1] - 1392:8</p> <p>shop [1] - 1481:7</p> <p>short [4] - 1452:1, 1502:8, 1540:7, 1557:15</p> <p>shortly [1] - 1544:16</p> <p>shot [4] - 1404:10, 1405:12, 1481:24, 1514:25</p> <p>shotgun [2] - 1463:10, 1463:11</p> <p>show [16] - 1404:7, 1404:21, 1405:5, 1424:3, 1426:3, 1430:7, 1431:9, 1434:21, 1440:1, 1443:8, 1461:1, 1462:22, 1479:15, 1498:6, 1505:6, 1518:21</p> <p>showed [1] - 1439:18</p> <p>showing [1] - 1484:5</p> <p>shown [7] - 1424:7, 1485:2, 1485:6, 1487:15, 1502:2, 1537:9, 1539:25</p> <p>shows [3] - 1496:5, 1497:20, 1515:18</p> <p>shred [1] - 1537:3</p> <p>sic [1] - 1550:21</p> <p>sick [1] - 1526:15</p> <p>side [4] - 1404:13, 1440:13, 1450:2, 1559:17</p> <p>Sidebar [4] - 1415:16, 1416:17, 1433:22, 1436:21</p> <p>sidebar [5] - 1420:11, 1420:13, 1433:20, 1438:12, 1438:17</p> <p>sidebars [1] - 1401:13</p> <p>sides [2] - 1512:12, 1524:9</p> <p>sight [2] - 1495:10, 1534:12</p> <p>sign [6] - 1440:18, 1440:19, 1468:7, 1528:3, 1528:11, 1543:17</p> <p>signaling [1] - 1464:4</p> <p>signature [1] - 1468:3</p> <p>signed [5] - 1516:15,</p>	<p>1527:25, 1528:10, 1543:22, 1543:24</p> <p>significance [1] - 1459:20</p> <p>significant [1] - 1559:6</p> <p>silver [1] - 1485:6</p> <p>similar [3] - 1423:6, 1463:9, 1464:5</p> <p>Similarly [1] - 1455:9</p> <p>simple [5] - 1469:1, 1503:9, 1503:12, 1548:3, 1548:4</p> <p>simply [19] - 1418:14, 1434:20, 1434:23, 1448:11, 1448:13, 1450:14, 1450:17, 1450:22, 1478:6, 1499:2, 1510:13, 1511:15, 1537:8, 1541:8, 1541:15, 1548:19, 1553:5, 1553:9, 1556:2</p> <p>singing [2] - 1525:17, 1525:23</p> <p>single [4] - 1453:13, 1487:14, 1490:6, 1537:3</p> <p>sitting [1] - 1560:5</p> <p>situation [3] - 1396:23, 1420:6, 1427:24</p> <p>situations [1] - 1448:15</p> <p>six [1] - 1536:6</p> <p>sixth [2] - 1392:25, 1457:7</p> <p>size [1] - 1532:5</p> <p>skepticism [2] - 1473:15, 1473:17</p> <p>sleeping [1] - 1514:7</p> <p>slide [1] - 1425:14</p> <p>slightly [1] - 1488:15</p> <p>small [1] - 1525:17</p> <p>smokeless [1] - 1461:10</p> <p>so-and-so [1] - 1440:18</p> <p>sold [1] - 1464:6</p> <p>solely [3] - 1453:7, 1455:24, 1464:12</p> <p>solves [1] - 1556:10</p> <p>someone [5] - 1514:9, 1516:25, 1522:2, 1562:4, 1562:6</p> <p>someplace [2] - 1497:19, 1532:2</p> <p>sometimes [3] - 1448:18, 1477:15, 1557:5</p>

<p>somewhat [1] - 1413:2</p> <p>somewhere [1] - 1560:6</p> <p>son [5] - 1490:2, 1490:3, 1490:5, 1491:8, 1527:11</p> <p>soon [1] - 1452:7</p> <p>sooner [1] - 1559:10</p> <p>sophistication [2] - 1495:13, 1534:11</p> <p>Sorry [2] - 1418:19, 1550:23</p> <p>sorry [9] - 1400:18, 1412:16, 1431:22, 1435:17, 1449:1, 1451:24, 1556:11, 1561:22, 1561:25</p> <p>sort [3] - 1408:14, 1503:15, 1558:12</p> <p>Sotka [14] - 1402:4, 1403:4, 1405:15, 1416:9, 1429:11, 1429:23, 1479:16, 1479:24, 1492:21, 1493:3, 1495:6, 1524:1, 1525:1, 1525:7</p> <p>sound [3] - 1507:2, 1523:8, 1524:24</p> <p>sounds [1] - 1473:18</p> <p>source [1] - 1424:23</p> <p>space [2] - 1393:2, 1468:20</p> <p>speaker [1] - 1503:7</p> <p>speaking [1] - 1392:18</p> <p>speaks [2] - 1494:5, 1494:6</p> <p>special [1] - 1449:23</p> <p>Special [1] - 1466:21</p> <p>specific [1] - 1395:14</p> <p>specifically [3] - 1403:15, 1470:16, 1506:19</p> <p>specifics [1] - 1415:24</p> <p>specified [1] - 1465:23</p> <p>speculation [3] - 1454:5, 1505:3, 1534:16</p> <p>speculative [1] - 1439:22</p> <p>speed [1] - 1399:14</p> <p>spend [1] - 1516:21</p> <p>spends [4] - 1402:18, 1517:13, 1522:18, 1523:2</p> <p>spent [4] - 1395:9, 1398:10, 1402:7,</p>	<p>1518:2</p> <p>Spokane [1] - 1497:8</p> <p>sporting [2] - 1463:13, 1464:12</p> <p>spouse [1] - 1559:5</p> <p>spread [1] - 1560:11</p> <p>squad [2] - 1474:8, 1475:1</p> <p>stabbing [1] - 1441:3</p> <p>staff [5] - 1546:1, 1549:23, 1550:4, 1554:24, 1555:24</p> <p>stage [1] - 1547:16</p> <p>stall [1] - 1494:9</p> <p>stamped [1] - 1497:20</p> <p>Stand [2] - 1521:23, 1529:11</p> <p>stand [9] - 1410:14, 1433:14, 1448:4, 1473:21, 1491:25, 1498:7, 1529:3, 1532:21</p> <p>standard [5] - 1448:5, 1448:13, 1449:8, 1449:9, 1480:3</p> <p>standing [2] - 1528:19, 1532:7</p> <p>stands [4] - 1503:23, 1507:21, 1517:11, 1544:8</p> <p>star [2] - 1426:14, 1426:19</p> <p>start [7] - 1471:3, 1486:21, 1543:6, 1544:15, 1555:22, 1558:1, 1558:5</p> <p>started [5] - 1437:22, 1452:7, 1536:9, 1536:10, 1540:8</p> <p>starts [1] - 1496:15</p> <p>state [18] - 1406:14, 1420:17, 1421:12, 1446:24, 1455:14, 1458:16, 1471:9, 1480:24, 1480:25, 1481:1, 1484:23, 1489:17, 1489:18, 1510:24, 1515:18, 1517:19, 1537:11, 1548:22</p> <p>State [1] - 1498:18</p> <p>statement [16] - 1399:24, 1400:4, 1400:8, 1401:21, 1411:21, 1413:11, 1413:13, 1416:21, 1416:24, 1425:5, 1425:8, 1432:5, 1436:8, 1471:25, 1496:9, 1537:6</p>	<p>statements [15] - 1399:23, 1400:2, 1400:11, 1403:6, 1413:8, 1415:3, 1415:6, 1455:3, 1455:10, 1493:23, 1493:24, 1515:21, 1540:10, 1540:12, 1540:15</p> <p>States [5] - 1391:6, 1401:22, 1447:24, 1466:18, 1466:19</p> <p>stationary [1] - 1516:16</p> <p>stay [6] - 1437:8, 1448:12, 1554:3, 1556:21, 1556:25, 1557:4</p> <p>staying [1] - 1556:18</p> <p>steel [1] - 1423:10</p> <p>step [3] - 1432:16, 1433:13, 1443:15</p> <p>Step [1] - 1434:7</p> <p>still [11] - 1410:15, 1441:22, 1445:6, 1445:12, 1445:18, 1535:6, 1538:7, 1538:12, 1547:21, 1558:10, 1558:13</p> <p>Stoll [1] - 1516:6</p> <p>stood [2] - 1440:20, 1470:3</p> <p>stop [1] - 1514:7</p> <p>story [3] - 1404:22, 1429:24, 1519:19</p> <p>straight [1] - 1562:1</p> <p>straightforward [1] - 1532:21</p> <p>street [1] - 1519:1</p> <p>stricken [2] - 1418:17, 1455:17</p> <p>strike [4] - 1418:4, 1418:5, 1418:13, 1441:5</p> <p>strong [1] - 1490:25</p> <p>strongly [1] - 1397:10</p> <p>studied [1] - 1402:3</p> <p>studio [2] - 1494:3, 1494:4</p> <p>stuff [2] - 1398:22</p> <p>subject [5] - 1408:8, 1408:9, 1445:18, 1524:16, 1527:21</p> <p>Subject [1] - 1396:11</p> <p>submit [5] - 1475:22, 1476:17, 1477:4, 1496:4, 1499:14</p> <p>submitted [6] - 1443:23, 1444:7, 1445:22, 1446:2,</p>	<p>1446:8, 1502:19</p> <p>substance [1] - 1407:24</p> <p>substantiate [1] - 1529:25</p> <p>substantive [1] - 1400:12</p> <p>succeed [2] - 1469:9</p> <p>sudden [1] - 1556:20</p> <p>suggest [2] - 1415:21, 1536:11</p> <p>suggested [4] - 1391:18, 1507:22, 1530:9, 1537:4</p> <p>suggesting [2] - 1421:4, 1510:14</p> <p>suggestion [3] - 1407:21, 1453:16, 1470:11</p> <p>suitable [1] - 1463:12</p> <p>sum [1] - 1407:23</p> <p>summation [1] - 1505:11</p> <p>summoned [1] - 1545:15</p> <p>suppose [2] - 1512:16, 1547:23</p> <p>supposed [3] - 1496:22, 1497:6, 1533:12</p> <p>supposedly [6] - 1490:9, 1504:7, 1512:10, 1517:1, 1517:12, 1517:20</p> <p>surgery [1] - 1516:8</p> <p>surplus [1] - 1464:6</p> <p>surprised [1] - 1512:21</p> <p>surrebuttal [1] - 1432:24</p> <p>suspects [1] - 1481:9</p> <p>suspicion [1] - 1531:3</p> <p>suspicious [1] - 1531:2</p> <p>sustain [6] - 1404:11, 1415:12, 1420:12, 1421:24, 1423:22, 1441:15</p> <p>Sustained [7] - 1417:12, 1418:3, 1418:12, 1420:9, 1421:22, 1439:23, 1441:6</p> <p>sustaining [1] - 1420:15</p> <p>swear [1] - 1546:9</p> <p>sworn [8] - 1410:22, 1410:24, 1433:17, 1436:23, 1454:20, 1546:11, 1546:13,</p>	<p>1554:2</p> <p>sympathy [1] - 1453:9</p> <p>syndrome [1] - 1536:17</p> <p>syntax [1] - 1507:5</p> <p>system [7] - 1403:22, 1523:24, 1526:9, 1526:19, 1526:23, 1529:12, 1530:14</p>
T				
<p>table [1] - 1504:10</p> <p>tag [1] - 1435:17</p> <p>tag-team [1] - 1435:17</p> <p>tailpipe [2] - 1476:4, 1478:5</p> <p>Talache [1] - 1534:12</p> <p>talents [1] - 1438:6</p> <p>talks [5] - 1402:5, 1507:3, 1521:19, 1523:9, 1531:11</p> <p>tampered [2] - 1493:16, 1522:17</p> <p>tampering [4] - 1464:19, 1467:23, 1521:10, 1538:16</p> <p>tape [10] - 1469:24, 1475:20, 1475:23, 1490:9, 1501:21, 1508:20, 1534:4, 1534:14, 1534:21, 1535:1</p> <p>tapes [14] - 1479:8, 1494:24, 1494:25, 1496:13, 1501:18, 1521:24, 1522:1, 1522:6, 1522:11, 1533:20, 1539:2, 1539:4, 1539:8</p> <p>target [1] - 1472:5</p> <p>targeted [1] - 1486:25</p> <p>Tatyana [4] - 1500:18, 1500:24, 1500:25, 1512:4</p> <p>team [1] - 1435:17</p> <p>technically [2] - 1555:12, 1555:15</p> <p>technician [1] - 1475:10</p> <p>technologically [2] - 1554:7, 1554:14</p> <p>technology [1] - 1553:16</p> <p>teenage [1] - 1536:16</p> <p>teenager [4] - 1421:18, 1422:3, 1423:2, 1536:16</p> <p>telephone [3] - 1517:22, 1523:15, 1545:25</p>				

<p>ten [6] - 1451:19, 1518:7, 1518:10, 1518:12, 1519:9, 1519:11</p> <p>tend [1] - 1405:5</p> <p>tender [1] - 1549:22</p> <p>term [5] - 1461:6, 1463:3, 1463:24, 1465:19, 1536:2</p> <p>terms [4] - 1403:20, 1415:22, 1538:14, 1555:14</p> <p>test [1] - 1513:23</p> <p>testified [23] - 1394:17, 1398:20, 1399:3, 1399:8, 1410:25, 1411:5, 1421:16, 1422:14, 1431:20, 1431:25, 1433:18, 1457:3, 1473:9, 1474:2, 1477:19, 1478:11, 1493:3, 1497:16, 1499:10, 1513:7, 1513:15, 1517:15, 1519:3</p> <p>testifies [2] - 1395:15, 1518:6</p> <p>testify [20] - 1393:21, 1402:15, 1405:6, 1406:21, 1406:22, 1406:25, 1407:5, 1407:16, 1407:20, 1408:4, 1408:6, 1408:7, 1408:17, 1408:20, 1435:21, 1447:11, 1447:14, 1453:20, 1453:23, 1457:15</p> <p>testifying [4] - 1394:11, 1402:22, 1437:13, 1457:5</p> <p>testimony [59] - 1394:15, 1394:17, 1394:24, 1395:17, 1398:14, 1399:22, 1403:2, 1403:3, 1408:10, 1408:16, 1411:9, 1413:2, 1413:6, 1415:22, 1421:20, 1425:24, 1431:15, 1431:18, 1448:21, 1454:20, 1454:24, 1455:16, 1456:3, 1456:21, 1456:22, 1456:25, 1457:9, 1457:10, 1457:17, 1457:18, 1458:8, 1458:9, 1458:11, 1458:14,</p>	<p>1458:17, 1458:18, 1473:11, 1473:14, 1473:17, 1474:1, 1474:20, 1474:24, 1475:1, 1475:7, 1477:17, 1485:24, 1491:5, 1499:23, 1506:19, 1507:1, 1508:1, 1509:13, 1512:3, 1513:13, 1514:4, 1519:12, 1525:18, 1532:20</p> <p>Tetrick [2] - 1546:11, 1558:4</p> <p>TETRICK [2] - 1555:14, 1555:19</p> <p>text [1] - 1542:5</p> <p>themselves [7] - 1399:7, 1444:1, 1493:14, 1494:1, 1535:1, 1554:10</p> <p>Theodore [1] - 1539:19</p> <p>therefore [4] - 1413:12, 1436:1, 1538:4, 1547:22</p> <p>thereof [1] - 1461:17</p> <p>thinking [1] - 1560:12</p> <p>thinks [3] - 1434:25, 1490:13, 1491:1</p> <p>third [4] - 1454:21, 1457:4, 1463:18, 1464:5</p> <p>Third [1] - 1455:22</p> <p>Thomas [7] - 1526:25, 1527:9, 1527:14, 1528:2, 1528:9, 1528:14, 1528:18</p> <p>thoughts [11] - 1398:23, 1398:24, 1469:13, 1469:14, 1469:25, 1470:2, 1470:4, 1482:19, 1524:7</p> <p>three [7] - 1391:12, 1393:13, 1441:23, 1474:21, 1474:25, 1517:18, 1518:3</p> <p>three-quarters [2] - 1474:21, 1474:25</p> <p>Thrifty [1] - 1481:11</p> <p>throne [1] - 1527:11</p> <p>throughout [4] - 1511:7, 1540:13, 1557:20, 1558:9</p> <p>throwing [1] - 1464:5</p> <p>Thursday [3] - 1411:7, 1469:19, 1497:4</p> <p>tied [2] - 1475:10, 1524:4</p>	<p>tired [2] - 1530:9, 1530:11</p> <p>Title [1] - 1464:8</p> <p>title [11] - 1417:18, 1418:8, 1436:14, 1438:24, 1438:25, 1439:2, 1439:5, 1439:6, 1504:7, 1512:16, 1512:17</p> <p>TO [2] - 1452:22, 1540:4</p> <p>Today [1] - 1477:24</p> <p>today [11] - 1393:20, 1402:22, 1403:16, 1406:10, 1431:25, 1443:23, 1444:2, 1445:6, 1499:25, 1550:14, 1551:19</p> <p>together [4] - 1445:5, 1493:25, 1495:14, 1498:10</p> <p>tomorrow [6] - 1445:13, 1557:25, 1558:16, 1558:22, 1561:16, 1562:11</p> <p>tonight [2] - 1556:18, 1561:1</p> <p>took [7] - 1427:3, 1453:10, 1472:18, 1473:21, 1475:9, 1485:24, 1552:18</p> <p>tools [1] - 1495:14</p> <p>topics [1] - 1422:20</p> <p>touch [4] - 1489:25, 1490:1, 1490:22, 1561:4</p> <p>touched [1] - 1504:15</p> <p>tough [1] - 1416:1</p> <p>towards [5] - 1403:4, 1403:7, 1404:2, 1416:7, 1434:19</p> <p>traffic [1] - 1559:19</p> <p>trafficking [1] - 1448:17</p> <p>trail [4] - 1495:24, 1495:25, 1496:11, 1501:8</p> <p>trailer [4] - 1496:24, 1497:2, 1497:7, 1498:12</p> <p>train [5] - 1483:17, 1493:22, 1525:12, 1525:22</p> <p>transaction [1] - 1538:8</p> <p>transcript [3] - 1398:12, 1553:12, 1553:14</p> <p>transcripts [1] - 1552:24</p>	<p>transportation [1] - 1488:22</p> <p>travel [5] - 1448:9, 1459:9, 1484:22, 1520:14, 1537:24</p> <p>traveled [2] - 1471:9, 1537:25</p> <p>traveling [1] - 1531:14</p> <p>treat [1] - 1434:23</p> <p>treated [1] - 1405:2</p> <p>treatment [3] - 1448:1, 1448:8, 1458:5</p> <p>tremendous [1] - 1524:9</p> <p>trial [25] - 1391:5, 1391:20, 1392:14, 1392:20, 1393:13, 1407:19, 1455:25, 1456:9, 1457:25, 1469:1, 1518:24, 1540:13, 1542:10, 1543:1, 1543:6, 1545:1, 1547:4, 1549:15, 1551:2, 1552:21, 1553:2, 1557:21, 1558:4, 1558:9, 1561:6</p> <p>trip [9] - 1481:10, 1482:5, 1485:7, 1513:6, 1513:19, 1514:5, 1515:13, 1538:13</p> <p>truck [11] - 1418:25, 1435:14, 1439:11, 1439:12, 1439:13, 1440:1, 1496:24, 1497:2, 1497:7, 1498:11, 1514:8</p> <p>true [11] - 1411:13, 1412:6, 1413:25, 1414:1, 1414:9, 1421:16, 1426:9, 1430:3, 1430:4, 1450:13, 1495:18</p> <p>truly [1] - 1511:15</p> <p>trust [1] - 1553:21</p> <p>truth [11] - 1403:16, 1410:25, 1413:10, 1425:2, 1433:18, 1477:11, 1480:10, 1499:15, 1506:5, 1515:5</p> <p>try [6] - 1408:1, 1445:6, 1452:7, 1539:5, 1542:22, 1559:25</p> <p>trying [13] - 1402:16, 1403:13, 1405:13, 1405:15, 1406:1, 1415:17, 1475:16,</p>	<p>1491:6, 1498:3, 1509:6, 1509:9, 1522:23, 1558:13</p> <p>tug [1] - 1475:14</p> <p>turn [9] - 1466:14, 1479:20, 1479:21, 1492:19, 1492:20, 1495:5, 1553:23, 1554:3</p> <p>turning [1] - 1419:21</p> <p>turns [1] - 1554:25</p> <p>twice [1] - 1520:17</p> <p>twist [2] - 1476:17, 1503:24</p> <p>two [11] - 1471:13, 1471:25, 1475:10, 1475:18, 1478:4, 1492:13, 1544:25, 1546:7, 1546:17, 1551:2</p> <p>Two [1] - 1476:6</p> <p>type [3] - 1393:16, 1463:10, 1519:12</p> <p>typo [1] - 1462:13</p>
				U
				<p>U.S [10] - 1459:1, 1460:5, 1461:22, 1464:20, 1467:2, 1467:10, 1467:17, 1467:24, 1502:15, 1514:10</p> <p>ultimately [3] - 1407:7, 1407:8, 1408:22</p> <p>unable [1] - 1527:10</p> <p>unanimous [5] - 1468:6, 1541:1, 1541:11, 1543:14, 1544:11</p> <p>unanimously [1] - 1466:22</p> <p>unbelievable [1] - 1519:15</p> <p>uncomfortable [1] - 1553:13</p> <p>under [30] - 1399:19, 1400:6, 1410:16, 1411:17, 1413:11, 1433:15, 1434:16, 1450:17, 1474:3, 1475:13, 1476:10, 1481:17, 1481:18, 1481:19, 1482:2, 1486:20, 1486:22, 1486:23, 1500:21, 1514:14, 1515:20, 1523:1, 1523:24, 1527:16, 1528:6, 1535:22, 1551:21,</p>

<p>1553:3, 1557:20 undermine [1] - 1408:12 underneath [5] - 1473:24, 1481:25, 1489:8, 1489:15, 1537:14 understood [4] - 1397:25, 1398:3, 1438:10, 1451:5 undid [1] - 1476:11 undisputed [4] - 1512:19, 1513:23, 1514:4, 1516:7 undo [1] - 1475:13 undue [1] - 1408:1 unfortunate [1] - 1393:11 Unfortunately [2] - 1469:17, 1544:24 unfortunately [2] - 1486:1, 1509:8 uninsured [2] - 1482:14, 1483:3 unintentionally [3] - 1392:17, 1460:24, 1462:20 unique [1] - 1396:22 United [5] - 1391:6, 1401:22, 1447:24, 1466:18, 1466:19 units [1] - 1461:13 unknowingly [2] - 1460:24, 1462:20 unknown [1] - 1522:25 unlawful [2] - 1459:23, 1465:14 unless [4] - 1436:2, 1447:2, 1535:23, 1548:6 unlimited [1] - 1421:4 unnecessarily [1] - 1448:12 unorthodox [2] - 1430:23, 1431:1 unreasonable [1] - 1537:12 unring [1] - 1401:6 unsworn [2] - 1400:4, 1400:10 up [68] - 1393:7, 1398:5, 1399:14, 1401:1, 1401:14, 1402:23, 1405:9, 1405:14, 1406:6, 1406:9, 1409:12, 1416:16, 1425:10, 1425:14, 1438:25, 1441:10, 1441:13,</p>	<p>1444:2, 1453:18, 1468:21, 1472:5, 1473:2, 1479:2, 1482:10, 1483:6, 1484:2, 1485:15, 1487:14, 1491:24, 1495:13, 1495:25, 1496:25, 1497:2, 1497:17, 1498:8, 1498:9, 1498:11, 1500:3, 1500:8, 1501:2, 1501:17, 1502:9, 1503:16, 1506:9, 1509:7, 1513:3, 1517:23, 1518:15, 1521:9, 1522:4, 1524:12, 1525:20, 1527:24, 1528:19, 1529:3, 1529:4, 1529:11, 1532:6, 1532:10, 1534:22, 1538:10, 1540:6, 1551:24, 1556:12, 1559:11, 1561:1, 1562:2, 1562:8 Up [1] - 1394:13 upset [1] - 1499:1 urgent [2] - 1489:24, 1490:22 uses [3] - 1405:19, 1501:4, 1501:17 usual [1] - 1413:20</p>	<p>verdicts [4] - 1529:23, 1530:3, 1531:7, 1545:23 version [3] - 1425:2, 1447:9, 1447:15 versus [2] - 1391:6, 1466:20 veterinarian [1] - 1516:5 victim [12] - 1405:18, 1415:1, 1419:25, 1420:3, 1421:12, 1428:21, 1464:19, 1467:23, 1512:21, 1521:11, 1521:12, 1523:22 view [4] - 1420:5, 1428:6, 1428:22, 1553:4 viewed [1] - 1456:12 views [1] - 1541:5 villains [1] - 1403:23 violates [1] - 1543:3 violation [8] - 1459:1, 1460:5, 1461:22, 1464:20, 1467:1, 1467:9, 1467:17, 1467:23 violence [3] - 1461:22, 1462:17, 1467:17 visit [6] - 1396:13, 1445:10, 1536:7, 1551:7, 1551:11, 1551:18 visited [1] - 1516:5 visiting [2] - 1542:6, 1558:11 voice [14] - 1465:3, 1490:15, 1492:10, 1501:23, 1508:4, 1521:16, 1521:24, 1522:2, 1522:3, 1523:9, 1538:23, 1538:24, 1549:16 voices [1] - 1534:22 voluntarily [1] - 1457:21 volunteered [2] - 1477:6, 1477:8 vote [1] - 1450:1</p>	<p>1452:6, 1544:5 waivable [1] - 1553:4 waive [9] - 1408:6, 1547:24, 1553:7, 1554:9, 1554:13, 1554:20, 1554:21, 1555:8 waived [2] - 1547:23, 1548:1 waiver [1] - 1548:7 waives [1] - 1553:15 walk [3] - 1511:16, 1532:6, 1558:17 walks [2] - 1554:25, 1555:1 wants [1] - 1518:6 war [1] - 1475:14 warn [1] - 1515:14 warning [1] - 1506:10 Washington [1] - 1532:2 waste [3] - 1424:1, 1424:19, 1424:21 watch [1] - 1542:16 water [2] - 1494:22, 1494:23 watered [1] - 1449:9 weapon [4] - 1463:10, 1464:2, 1464:3, 1464:11 website [1] - 1542:7 websites [1] - 1558:11 wedding [1] - 1527:4 Wednesday [3] - 1391:2, 1411:6, 1478:21 week [4] - 1399:8, 1410:17, 1437:13, 1500:1 weeks [1] - 1393:14 weigh [1] - 1453:1 weight [6] - 1456:17, 1456:19, 1457:13, 1457:16, 1458:19, 1541:14 Wells [1] - 1516:17 west [1] - 1559:17 Westminster [1] - 1527:3 whatsoever [2] - 1508:12, 1509:18 Whelan [12] - 1395:7, 1398:4, 1401:23, 1402:4, 1402:12, 1403:4, 1405:14, 1416:8, 1428:18, 1431:11, 1444:21, 1447:21 Whelan's [1] - 1432:1 whistle [3] - 1524:24,</p>	<p>1525:12, 1525:22 white [1] - 1499:5 whole [6] - 1410:24, 1433:17, 1434:3, 1499:13, 1506:5, 1511:23 wide [1] - 1392:14 wife [33] - 1395:6, 1395:13, 1409:12, 1428:8, 1428:25, 1469:3, 1469:8, 1487:24, 1489:23, 1489:25, 1490:22, 1497:13, 1498:15, 1499:1, 1501:22, 1501:25, 1503:11, 1505:19, 1511:14, 1514:24, 1515:2, 1516:10, 1517:12, 1517:13, 1519:10, 1520:15, 1521:21, 1527:10, 1533:13, 1538:22, 1539:5, 1539:7 wife's [4] - 1498:14, 1508:14, 1516:22, 1522:14 WiFi [1] - 1553:23 willing [6] - 1451:19, 1537:7, 1547:24, 1553:6, 1554:9, 1555:8 willingly [1] - 1530:18 willingness [1] - 1554:12 window [1] - 1559:23 wire [3] - 1475:13, 1476:18, 1503:24 wired [2] - 1468:21, 1537:17 wires [4] - 1476:11, 1476:12, 1476:15 wish [1] - 1546:4 wishes [1] - 1410:16 witness [37] - 1395:17, 1396:10, 1402:11, 1402:12, 1403:11, 1405:21, 1408:17, 1410:8, 1410:14, 1412:24, 1413:4, 1415:19, 1421:6, 1422:8, 1424:6, 1425:15, 1430:20, 1432:17, 1432:20, 1433:1, 1433:14, 1434:1, 1436:23, 1437:2, 1438:13, 1443:16, 1448:16, 1454:20, 1455:7, 1456:3,</p>
	<p style="text-align: center;">V</p> <p>vacate [1] - 1394:6 vacated [1] - 1394:21 valley [1] - 1559:18 value [3] - 1459:13, 1459:17, 1459:18 various [1] - 1443:24 vehicle [5] - 1417:3, 1481:1, 1482:1, 1510:7, 1513:18 veracity [1] - 1416:5 Verdict [1] - 1466:21 verdict [27] - 1449:23, 1450:20, 1451:2, 1453:17, 1454:23, 1466:6, 1466:7, 1466:9, 1466:15, 1466:17, 1468:4, 1468:6, 1468:8, 1468:10, 1502:4, 1540:25, 1541:11, 1541:15, 1541:16, 1543:15, 1543:16, 1544:11, 1545:25, 1546:2, 1548:15, 1548:16</p>	<p style="text-align: center;">W</p> <p>Wachovia [1] - 1516:14 wait [3] - 1391:19, 1402:25, 1451:19 Wait [1] - 1402:25 waited [1] - 1510:5 waiting [5] - 1405:10, 1433:6, 1451:6,</p>		

<p>1456:4, 1456:23, 1457:1, 1457:19, 1491:9, 1495:13, 1497:17</p> <p>Witness ^[1] - 1424:13</p> <p>WITNESS ^[8] - 1419:17, 1421:7, 1425:17, 1429:18, 1431:22, 1439:20, 1440:5, 1442:2</p> <p>witness's ^[12] - 1413:9, 1416:5, 1425:24, 1457:2, 1457:4, 1457:5, 1457:7, 1457:8, 1457:10, 1458:2, 1458:20</p> <p>witnesses ^[10] - 1394:10, 1455:5, 1457:15, 1457:16, 1458:13, 1470:6, 1509:23, 1518:16, 1540:11, 1545:17</p> <p>woman ^[4] - 1511:16, 1512:10, 1527:12, 1536:14</p> <p>word ^[6] - 1405:16, 1447:16, 1478:21, 1479:2, 1512:4, 1512:5</p> <p>words ^[22] - 1402:1, 1405:19, 1417:25, 1420:6, 1426:17, 1439:8, 1465:16, 1469:25, 1478:17, 1479:14, 1483:13, 1483:23, 1484:3, 1484:4, 1490:5, 1490:25, 1492:7, 1493:11, 1521:1, 1530:10, 1539:15, 1539:17</p> <p>worker ^[1] - 1503:15</p> <p>works ^[2] - 1476:7</p> <p>worried ^[3] - 1484:8, 1484:9, 1484:11</p> <p>worry ^[1] - 1560:21</p> <p>wrap ^[1] - 1475:22</p> <p>wrapped ^[1] - 1475:20</p> <p>wrapping ^[1] - 1508:20</p> <p>wreck ^[1] - 1482:13</p> <p>write ^[13] - 1404:20, 1414:2, 1414:3, 1414:14, 1414:19, 1414:22, 1426:10, 1427:7, 1427:21, 1432:7, 1438:24, 1485:15, 1509:9</p> <p>writes ^[1] - 1524:5</p>	<p>writing ^[16] - 1411:10, 1424:1, 1426:6, 1437:19, 1437:22, 1438:4, 1500:19, 1512:8, 1521:8, 1526:21, 1529:20, 1542:4, 1543:25, 1544:1, 1548:19, 1548:25</p> <p>writings ^[2] - 1511:20, 1549:25</p> <p>written ^[6] - 1403:21, 1411:14, 1413:7, 1504:8, 1527:24, 1530:2</p> <p>wrongdoing ^[1] - 1465:20</p> <p>wrongfully ^[1] - 1491:6</p> <p>wrote ^[11] - 1402:13, 1412:19, 1412:22, 1413:18, 1413:23, 1424:16, 1424:18, 1425:20, 1427:23, 1432:10, 1438:25</p>
Y	
	<p>yard ^[1] - 1499:5</p> <p>years ^[13] - 1449:10, 1503:11, 1506:22, 1518:3, 1518:7, 1518:10, 1518:12, 1518:18, 1519:2, 1519:9, 1519:11, 1527:6</p> <p>yesterday ^[1] - 1446:18</p> <p>young ^[2] - 1500:18, 1536:14</p> <p>yourself ^[20] - 1414:4, 1414:17, 1414:25, 1419:3, 1420:2, 1424:2, 1424:11, 1424:16, 1426:10, 1427:23, 1470:7, 1478:12, 1486:10, 1487:6, 1487:11, 1488:24, 1495:12, 1517:7, 1521:22, 1541:2</p> <p>yourselves ^[5] - 1444:5, 1445:20, 1446:6, 1502:20, 1557:22</p>