

JOURNAL OF THE SENATE

SECOND SPECIAL SESSION OF THE NINETY-SIXTH LEGISLATURE

THIRD DAY

STATE OF SOUTH DAKOTA
Senate Chamber, Pierre
Tuesday, June 21, 2022

The Senate Court of Impeachment convened at 8:00 a.m., pursuant to adjournment, the President presiding.

The prayer was offered by the Chaplain, Rev. Craig Wexler, followed by the Pledge of Allegiance led by President Larry Rhoden.

Roll Call: All members present except Sens. Foster and Frye-Mueller who were excused.

APPROVAL OF THE JOURNAL

MR. PRESIDENT:

The Committee on Legislative Procedure respectfully reports that the Secretary of the Senate has had under consideration the Senate Journal of the 2nd day.

All errors, typographical or otherwise, are duly marked in the temporary journal for correction.

And we hereby move the adoption of the report.

Respectfully submitted,
Lee A. Schoenbeck, Chair

Which motion prevailed.

1

MESSAGES

2

3

A transcript of the Court of Impeachment proceedings will be attached to the permanent record of the Senate Journal before its certification and serve as the full and correct record.

4

5

Respectfully,
Kay Johnson, Secretary

6

MOTIONS AND RESOLUTIONS

7

SR 703: A RESOLUTION, Memorializing the proceedings of the Senate Court of Impeachment.

8

Introduced by: **Senator** Schoenbeck

9

Was read the first time.

10

11

Sen. Cammack moved that **SR 703** be placed on the calendar for immediate consideration pursuant to Special Rule No. 5.

12

Which motion prevailed and **SR 703** was so placed.

13

SR 703: A RESOLUTION, Memorializing the proceedings of the Senate Court of Impeachment.

14

Was read the second time.

15

Sen. Cammack moved that **SR 703** as found on page 18 of the Senate Journal be adopted.

16

The question being on Sen. Cammack's motion that **SR 703** be adopted.

17

And the roll being called:

18

Yeas 33, Nays 0, Excused 2, Absent 0

19

20

21

22

Yeas: Bolin, Breitling, Cammack, Castleberry, Crabtree, Curd, Diedrich, Duhamel, Duvall, Brock Greenfield, Heinert, Hunhoff, Johns, David Johnson, Klumb, Kolbeck, Maher, Nesiba, Novstrup, Herman Otten, Rohl, Rusch, Schoenbeck, Schoenfish, V. J. Smith, Stalzer, Steinhauer, Sutton, Symens, Tobin, Wheeler, Wiik, and Zikmund

23

Excused: Foster and Frye-Mueller

24

25

So the motion having received an affirmative vote of a majority of the members-elect, the President declared the motion carried and **SR 703** was adopted.

26

27

Sen. Cammack moved that when we adjourn today, we adjourn to convene at 10:00 a.m. on Wednesday, June 22nd, the 4th legislative day.

28

Which motion prevailed.

1 Sen. Cammack moved that the Senate do now adjourn, which motion prevailed and at 6:06
2 p.m. the Senate adjourned.

3

Kay Johnson, Secretary

IN THE SENATE OF THE STATE OF SOUTH DAKOTA
FOR THE SPECIAL SESSION OF THE NINETY-SIXTH LEGISLATURE
SITTING AS A COURT OF IMPEACHMENT

= = = = =

In Re: ORIGINAL
Impeachment of
Attorney General Jason Ravnsborg

= = = = =

TRANSCRIPT OF PROCEEDINGS

June 21, 2022

Attachment to the Senate Journal

= = = = =

A P P E A R A N C E S

MARK A. VARGO and ALEXIS A. TRACY,
appearing on behalf of the Prosecution;

MICHAEL J. BUTLER and ROSS GARBER,
appearing on behalf of the Respondent.

I N D E X

1		
2	OPENING STATEMENTS	PAGE
3	Prosecution	12
4	Respondent	31
5	PROSECUTION'S WITNESSES	PAGE
6	Sergeant Kevin Kinney	
7	Direct Examination by Mr. Vargo	50
8	Cross-Examination by Mr. Butler	69
9	Special Agent Joe Arenz	
10	Direct Examination by Ms. Tracy	73
11	Cross-Examination by Mr. Butler	94
12	Direct Examination by Ms. Tracy	99
13	Recross-Examination by Mr. Butler	100
14	Special Agent Cassidy Halseth	
15	Direct Examination by Ms. Tracy	102
16	Cross-Examination by Mr. Butler	117
17	Special Agent Brent Gromer	
18	Direct Examination by Mr. Vargo	119
19	Cross-Examination by Mr. Butler	128
20	Redirect Examination by Mr. Vargo	130
21	Supervisory Special Agent Arnie Rummel	
22	Direct Examination by Mr. Vargo	131
23	Cross-Examination by Mr. Butler	170
24	Redirect Examination by Mr. Vargo	186
25	QUESTIONS FROM SENATORS	189
	CLOSING STATEMENTS	PAGE
	Prosecution	209
	Respondent	231
	VERDICT AND JUDGMENT	242

1 The following Transcript of Proceedings was
2 taken at the South Dakota State Capitol Building,
3 Senate Chambers, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 21st day of June, 2022, commencing
5 at 8 o'clock a.m., before Cheri McComsey Wittler, a
6 Registered Professional Reporter, Certified Realtime
7 Reporter, and Notary Public within and for the State of
8 South Dakota.

1 PRESIDENT RHODEN: The Senate will come to
2 order for the Third Legislative Day on the Court of
3 Impeachment.

4 The prayer today will be offered by Reverend
5 Craig Wexler, and then I will lead in the Pledge.

6 (Reverend Craig Wexler offers the prayer.)

7 (President Rhoden leads the Pledge of Allegiance.)

8 PRESIDENT RHODEN: Secretary will call the roll.

9 SECRETARY JOHNSON: Senator Bolin.

10 SENATOR BOLIN: Here.

11 SECRETARY JOHNSON: Breitling.

12 SENATOR BREITLING: Here.

13 SECRETARY JOHNSON: Cammack.

14 SENATOR CAMMACK: Here.

15 SECRETARY JOHNSON: Castleberry.

16 SENATOR CASTLEBERRY: Here.

17 SECRETARY JOHNSON: Crabtree.

18 SENATOR CRABTREE: Here.

19 SECRETARY JOHNSON: Curd.

20 SENATOR CURD: Here.

21 SECRETARY JOHNSON: Diedrich.

22 SENATOR DIEDRICH: Here.

23 SECRETARY JOHNSON: Duhamel.

24 SENATOR DUHAMEL: Here.

25 SECRETARY JOHNSON: Duvall.

1 SENATOR DUVALL: Here.
2 SECRETARY JOHNSON: Foster.
3 Frye-Mueller.
4 Greenfield.
5 SENATOR GREENFIELD: Here.
6 SECRETARY JOHNSON: Heinert.
7 SENATOR HEINERT: Here.
8 SECRETARY JOHNSON: Hunhoff.
9 SENATOR HUNHOFF: Here.
10 SECRETARY JOHNSON: Johns.
11 SENATOR JOHNS: Here.
12 SECRETARY JOHNSON: Johnson.
13 SENATOR JOHNSON: Here.
14 SECRETARY JOHNSON: Klumb.
15 SENATOR KLUMB: Here.
16 SECRETARY JOHNSON: Kolbeck.
17 SENATOR KOLBECK: Here.
18 SECRETARY JOHNSON: Maher.
19 SENATOR MAHER: Here.
20 SECRETARY JOHNSON: Nesiba.
21 SENATOR NESIBA: Here.
22 SECRETARY JOHNSON: Novstrup.
23 SENATOR NOVSTRUP: Here.
24 SECRETARY JOHNSON: Otten.
25 SENATOR OTTEN: Here.

1 SECRETARY JOHNSON: Rohl.
2 SENATOR ROHL: Here.
3 SECRETARY JOHNSON: Rusch.
4 SENATOR RUSCH: Here.
5 SECRETARY JOHNSON: Schoenbeck.
6 SENATOR SCHOENBECK: Here.
7 SECRETARY JOHNSON: Schoenfish.
8 SENATOR SCHOENFISH: Here.
9 SECRETARY JOHNSON: Smith.
10 SENATOR SMITH: Here.
11 SECRETARY JOHNSON: Stalzer.
12 SENATOR STALZER: Here.
13 SECRETARY JOHNSON: Steinhauer.
14 SENATOR STEINHAUER: Here.
15 SECRETARY JOHNSON: Sutton.
16 SENATOR SUTTON: Here.
17 SECRETARY JOHNSON: Symens.
18 SENATOR SYMENS: Here.
19 SECRETARY JOHNSON: Tobin.
20 SENATOR TOBIN: Here.
21 SECRETARY JOHNSON: Wheeler.
22 SENATOR WHEELER: Here.
23 SECRETARY JOHNSON: Wiik.
24 SENATOR WIIK: Here.
25 SECRETARY JOHNSON: Zikmund.

1 SENATOR ZIKMUND: Here.

2 SECRETARY JOHNSON: Mr. President, we have a
3 quorum.

4 PRESIDENT RHODEN: Thank you.
5 Approval of the Journal.

6 SECRETARY JOHNSON: Mr. President, the Committee
7 on Legislative Procedure respectfully reports that the
8 Secretary of the Senate has had under consideration the
9 Senate Journal of the Second Day. All errors,
10 typographical or otherwise, are duly marked in the
11 temporary journal for correction, and we hereby move the
12 adoption of the report.

13 SENATOR SCHOENBECK: Second.

14 PRESIDENT RHODEN: Comments on that motion.
15 Hearing none, all in favor say "aye," opposed
16 "nay."

17 Motion carries.

18 SECRETARY JOHNSON: A transcript of the Court of
19 Impeachment proceedings will be attached to the permanent
20 record of the Senate Journal before its certification and
21 serve as the full and correct record.

22 PRESIDENT RHODEN: The Secretary will now
23 administer my oath of office.

24 (The oath is administered to President Rhoden.)

25 PRESIDENT RHODEN: Now the Secretary will

1 administer the oath to the Senators.

2 Would you all please stand.

3 (The oath is administered to the Senators.)

4 SECRETARY JOHNSON: Thank you.

5 PRESIDENT RHODEN: Ladies and gentlemen, I'll
6 get us started with some opening comments.

7 This Court of Impeachment was convened on
8 April 26, 2022, by the adoption of Senate Resolution 701.
9 The authority for this trial is South Dakota Constitution
10 Article XVI Section 2, which provides that all
11 impeachments shall be tried by the Senate. When sitting
12 for that purpose, the Senators shall be under oath or
13 affirmation to do justice according to law and evidence.
14 No person shall be convicted without concurrence of
15 two-thirds of the members elected.

16 It is noted the Senators have taken their oath.

17 Additionally, the rules for the Trial of
18 Impeachment have been adopted in Senate Resolution 702 on
19 April 26, 2022. These rules have been made public --
20 have been made publicly available on the legislative
21 website since the date of their adoption.

22 In accordance with the rules and Senate
23 Resolution 702, the following is noted: First, the
24 counsel for Attorney General Ravnsborg has filed a
25 written Answer to the Articles of Impeachment on May 31,

1 2022, denying the allegations contained in Article I and
2 Article II of House Resolution 7002.

3 In accordance with Rule 3-1, the entire
4 impeachment file of the House of Representatives has
5 been made available for Senators to review. Each party
6 to the Trial of Impeachment has provided the documents
7 that each party intends to submit to the Senate pursuant
8 to Rule 3-1 Sub 2. Those documents have been made
9 available for Senators' review. Pursuant to Rule 3-2
10 Sub 2, a party may submit additional documents to the
11 presiding officer during the trial.

12 Senators were given the opportunity to present
13 questions to both parties before the beginning of the
14 trial pursuant to Rule 3-1 Sub 3. Those questions have
15 been organized and submitted to each party. Senators may
16 submit additional questions to the presiding officer for
17 any witness or party at the conclusion of each party's
18 case presentation pursuant to Rule 4-3 Sub 8.

19 Prosecution witnesses' subpoenas have been
20 issued in the names of the Senate pursuant to Rule 3-3.
21 Counsel for the Respondents did not request any witness
22 subpoenas.

23 All documents submitted pursuant to Rule 3-1
24 Sub 2 are admitted into evidence.

25 The rules allow for each counsel to have, first,

1 one hour for an opening statement, then four hours to
2 present witness testimony, present exhibits, and
3 cross-examine witnesses and, finally, one hour for a
4 closing statement.

5 There are official timekeepers located in the
6 Senate Chambers, and they will provide intermittent
7 updates during the trial to respective parties and
8 presiding officer. All witnesses will be sworn and put
9 under oath and will appear and testify at the lower
10 podium.

11 For those ladies and gentlemen of you who are in
12 the gallery, this is a trial, and obviously decorum must
13 comply with the solemn occasion. It is my job as the
14 presiding officer to ensure order and that proper respect
15 in our environment is maintained. Accordingly, I'd ask
16 you to please place your cell phones on silent or
17 vibrate. Please do not remove your cell phones from your
18 pockets or your purses while we're in session. And I'd
19 ask you to not leave your seat if at all possible during
20 the trial. We'll have a number of breaks.

21 And I would also ask you to be silent while the
22 trial is going on. That means no talking, no outbursts
23 of any kind, no applause.

24 And I'd also remind you all that if you become
25 uncomfortable in the gallery, just through those doors

1 and to the left Rooms 412, 413, and 414 where they have
2 closed circuit television so you can watch the trial from
3 there, if you so wish.

4 For the Senators, I know you all know by the
5 virtue of your oath and your service to the State that
6 this is an awesome duty that you're undertaking today. I
7 ask that you provide your full attention to the people
8 involved in the process. I also ask that you remain
9 silent during the trial. And we'll have a number of
10 breaks through the trial when appropriate.

11 I'd also remind you that both lobbies on the
12 north and south side of the Senate Chamber are closed,
13 except that parties, senators, and legislative staff have
14 access to these two lobbies.

15 Also a reminder, I will not be granting personal
16 privileges during this impeachment trial.

17 So, with that, I thank you all very much. We
18 shall now proceed with the trial of impeachment.

19 And also a reminder, we have a doctor of the day
20 in the house. Just don't know if she's here yet.
21 Theresa Bormann, are you in the gallery?

22 Okay. We will have a doctor of the day. I
23 think she's on her way. Theresa Bormann will be our
24 doctor for the day.

25 With that, Mr. Vargo, you have the floor for

1 your opening statement. One hour.

2 As you were. This is not Mark Vargo. This is
3 Alexis Tracy.

4 MS. TRACY: Mr. President, Counsel, Senators,
5 there are times when an ordinary day filled with mundane
6 choices, tasks, and routines will be struck with tragedy,
7 altering life as we know it, a direct result of one of
8 those otherwise uneventful choices, tasks, and decisions.

9 How one responds to those life-altering moments
10 and the ones that follow seconds, minutes, hours, days,
11 weeks, and beyond define a person. Because in the
12 aftermath a person is generally presented a number of
13 occasions to do the right thing. When, why, and how a
14 person makes that choice is telling and can have a
15 rippling effect.

16 The night of September 12, 2020, was an
17 otherwise ordinary day, filled with mundane moments, that
18 through a series of tasks and choices ended in tragedy.
19 It was the response to those moments and the ones that
20 followed, those failed opportunities to do the right
21 thing, by Attorney General Jason Ravnsborg that bring us
22 here today.

23 To understand this process, we must understand
24 the events, the moments that led us here and are the
25 subject of Count I of the Article of Impeachment.

1 At approximately 9:15 p.m. on September 20
2 [sic], 2020, Jason Ravnsborg, South Dakota Attorney
3 General, left a political function in Redfield,
4 South Dakota, to make the roughly hour-and-50-minute trip
5 home to Pierre. His departure time was corroborated by
6 interviews of other guests from the events that
7 identified him leaving between 9:00 and 9:30 p.m. and by
8 the GPS data on his cellular telephone that placed his
9 departure at 9:19 p.m.

10 For the drive back Jason Ravnsborg activated the
11 OnMyWay app on his personal cell phone to earn perks and
12 rewards for not using that cell phone on the drive. He
13 then set that personal cell phone aside. Thereafter,
14 Attorney General Ravnsborg for the trip home picked up
15 his work cell phone, placed calls to his father, accessed
16 e-mail and web browsers, perused articles on the
17 internet, all documented in the contents of that phone.

18 About an hour into the trip he approached the
19 small town of Highmore. Slowing down as he passed
20 through town, he began to accelerate as he exited the
21 community. He passed the 65 mile-per-hour sign, passed
22 the sign noting 48 miles to Pierre, and then looked down
23 as he began to accelerate, likely resuming cruise
24 control, looked over at the speedometer, fiddled with his
25 phone, and in the midst of distraction veered all four

1 wheels of the vehicle of his car over the fog line and
2 rumble strip. In the midst of these distractions, Wham.
3 Like a thunderbolt, he would later describe, the feeling
4 of his car impacting "something," as he would say to the
5 911 dispatcher.

6 As we know, something was someone: Joseph
7 Boever. Joseph Boever, who was leading his own ordinary
8 day, full of mundane tasks, his own pickup struck a
9 haybale after he was reaching over for cigarettes and he
10 received a ride back to town, only to return back on foot
11 to his vehicle for reasons that today remain a mystery.

12 Joseph Boever, a man who eyewitnesses, other
13 passing motorists, described seeing walking the shoulder
14 in the night, a night that by all accounts, including the
15 Attorney General's, was described as a very dark night.
16 Joseph Boever was seen walking nearly in the grass,
17 witnesses would tell, headed west out of Highmore before
18 coming back east on the north side of the road,
19 presumably headed home.

20 He was carrying a light, as described by the
21 motorists, that shown like a beacon, as described by
22 the North Dakota BCI investigator who recreated the
23 events. Joseph Boever was struck by Attorney General
24 Jason Ravnsborg as he accelerated out of Highmore
25 traveling over that fog line at approximately 68 miles

1 per hour upon impact, via the South Dakota Highway Patrol
2 Crash Reconstruction Report, which is consistent with
3 that GPS data from the Attorney General's work phone,
4 putting him at 67.6 miles per hour at 10:23:36, the time
5 of impact, and 67.1 miles per hour in the two seconds
6 after.

7 Mr. Boever died upon impact. The Ramsey County
8 Medical Examiner noted cause of death was multiple
9 traumatic injuries, both internal and external, the
10 impact of the crash stopping his heart, lacerating
11 internal organs, and created trauma to the front of his
12 body so severe that his right leg was severed from the
13 body upon impact and projected out into the north ditch
14 while the rest of his body flew up onto the front of the
15 vehicle and his face crashed through the passenger side
16 window.

17 Mr. Boever's glasses crashed with his face
18 through the window and became a part of the debris that
19 was projected into the interior of the car, where they
20 would later be recovered, a partial frame in the back
21 seat and the remaining frame and lens on the floorboard
22 of the front passenger seat.

23 The body traveled with the vehicle for the two
24 seconds it took for that vehicle to begin to slow. At
25 10:23:39 GPS phone data shows a speed of 62.4 miles per

1 hour. So, again, from that 67 to 62 in those two seconds
2 afterwards. And at 10:23:40, just a second after that,
3 the phone data shows a speed of 56.8 miles per hour.

4 It was then as the body is traveling with the
5 vehicle at the heightened speed and the vehicle begins to
6 slow that Joe Boever's body came off the vehicle where
7 the exposed bone from his leg scraped the shoulder of the
8 road, and the entirety of his body came to rest barely in
9 the north side ditch just beyond a piece of vehicle
10 debris that was dislodged and had come to rest on the
11 shoulder of the road.

12 Attorney General Ravensborg was distracted,
13 looked down at the phone next to him, the speedometer,
14 potentially the radio, resumed cruise control, consistent
15 with that GPS data that showed acceleration after the
16 speed signs. Whatever drew his attention, we can say
17 with certainty and he cannot deny that he was distracted.
18 And in the midst of that distraction his tires veered
19 over the shoulder of the road, and he struck Mr. Boever,
20 who the Attorney General never saw until impact, in his
21 own words. He didn't know what he hit until the impact.
22 That's 14 minutes and 44 seconds into that first
23 interview. Meaning, of course, that he absolutely saw
24 the man that he struck in the moments after. As a
25 thunderbolt shook his vehicle and glass came crashing

1 into the passenger side, the moments that transpired
2 within the Attorney General's vehicle are told by his
3 accounts as well as the physical evidence.

4 The physical jolt of the crash, glass shattered
5 upon the passenger seat where his personal cell phone had
6 sat and was thrown into that front wheel well from the
7 force of the impact. But his work phone did not. It was
8 maintained in his possession.

9 Attorney General Jason Ravensborg startled,
10 looked up, to see Mr. Boever as he came through that
11 front windshield. The Attorney General went into tunnel
12 vision, as he would describe it at 1:47:04 in the second
13 interview. And though he couldn't bring himself ever in
14 the two-minute 911 call or three hours worth of two
15 separate interviews actually to say that he hit and
16 killed a man, he knew this fact to be true.

17 He knew it, and his refusal to provide the
18 painstaking details of those seconds that transpired
19 after -- he offered a litany of details down to the
20 verbatim conversations of the mundane, both before and
21 after, the conversations with his father, the Twins game
22 on the radio, how he acquired his insurance, physically
23 removing the car keys from his vehicle to hand them to
24 the sheriff. But the details of the most important
25 moments in the aftermath of killing a man he glossed

1 over, left out, cut short.

2 In his own words we get glimmers of the truth of
3 what he was thinking at that time. As he would later
4 tell investigators, No. No, no, no, no, no. I would not
5 expect a man to be out on the side of the road in the
6 dark like it was; 1:19:39, the second interview. Why
7 would a man be walking down the road; 2:04 in the second
8 interview. Wishing and hoping that the horror of those
9 moments weren't true, but knowing at the same time they
10 were. And, Wham. My life changes, he says at 2:04:04 in
11 the second interview. An unequivocal statement that is
12 true not only for the Attorney General but more so for
13 the Boever family. These tragic events had the potential
14 to either be mitigated by doing the right things or
15 aggravated by the decisions that followed.

16 Is the Attorney General's response that we find,
17 Count II, malfeasance, wrongdoing by the Attorney General
18 following the death of Joseph Boever? In the seconds in
19 the aftermath are explained not only by the, No, no, no,
20 no, no. What would a man be doing on the side of the
21 road, but are also demonstrated in the investigation that
22 shows via the GPS locator information on the Attorney
23 General's work cell phone, that he began braking at the
24 67.1-miles-per-hour mark. And for the next seven seconds
25 he slows down to just 11.9 miles per hour, braking

1 moderately. It took another seven seconds for him to
2 slow to -- from the 11.9 down to 8 miles per hour. More
3 of a coast. Two more seconds to go from the 8 miles an
4 hour to a complete stop at 10:23:54 p.m.

5 This was not a screeching halt, even though
6 that's how the Attorney General described it in his first
7 interview with law enforcement just days later: I
8 immediately jumped out of my car and dialed 911. He
9 slowed to a stop and gathered his thoughts about what to
10 do next.

11 At 10:24:22 the Attorney General initiated the
12 two-minute 911 call where instead of leading with I'm
13 south of Highmore and I've been in a crash, he leads
14 with, Well, Ally, this is the Attorney General.
15 Senators, this is not the first time, but you can assure
16 it will be the last time that he uses his title in an
17 attempt to set the tone and gain influence.

18 As seen in the evidence submitted to you today
19 for the proceedings of other occasions of travel stops,
20 as well as the interviews in this case, it is routine for
21 him to use that title and is one of his first go-to
22 lines. He continues to use that title throughout his
23 interviews in the investigation. You have it in your
24 evidence, but we'll show it to you here today.

25 (Video presentation.)

1 MS. TRACY: He reminds the North Dakota BCI that
2 he is the Attorney General when they want to conduct an
3 investigation on his phone. Senators, any new prosecutor
4 out there knows that that phone is evidence and needs to
5 be reviewed.

6 Going back to the 911 call with dispatch and the
7 statements that followed, Jason Ravensborg advises that he
8 hit "something." Doesn't say that he hit a man. And the
9 dispatcher specifically asks him if he thought it was a
10 deer. The Attorney General responds, still fresh on his
11 mind at this time, I have no idea. Yeah. It could be.
12 And, It was right in the roadway. Two statements that
13 are completely disproven by the evidence.

14 He doesn't volunteer anything like, It sure
15 looked like it might have been a man, or attempt to
16 provide additional information. As a child, my mother
17 used to call those lies by omission.

18 Other noteworthy statements by the Attorney
19 General's response:

20 "Dispatcher: Are you injured at all, Jason?

21 "Attorney General: I am not, but my car sure as
22 hell is." And then he doubled down on the middle of the
23 road statement with, "I'm out of the roadway. I was able
24 to get over. It sure hit me. Smashed my windshield."

25 The dispatcher advised that she'd be sending the

1 sheriff, and the call ended at 10:26:44 per data from the
2 Attorney General's phone, corroborating and consistent
3 with the 911 recording.

4 Following that call, the Attorney General was
5 alone on the side of the road in the pitch black night.
6 And he turned his phone light on to scan the ditches, as
7 he would later say. The phone corroborated the use of
8 that flashlight at 10:26:59 p.m. to 10:33:15 p.m. Six
9 minutes. Alone. In the dark. Roadside. Scanning the
10 ditches. Left to process.

11 Time to walk up to the large piece of debris
12 that was located past Joe Boever's lifeless mangled body,
13 meaning to get to that piece of debris he would have had
14 to walk on the shoulder 3 feet away from his body. And
15 he turned around and passed it again as he scanned the
16 ditches with his phone.

17 Six minutes before the Attorney General returned
18 to the front of his vehicle, as shown by his phone data,
19 10:33:15 the phone line goes off. 10:33:22 he takes the
20 photo that is saved to the phone of his vehicle. And
21 10:33:25 his GPS location data is confirming him in the
22 vicinity of the front of that vehicle.

23 At 10:34 p.m. his phone registered a call from
24 that work phone of his to the personal phone that
25 remained in the vehicle but slid to the floorboard

1 during the crash. Would have been nestled amongst the
2 broken glass from the windshield and the frames of the
3 glasses.

4 Sheriff Volek arrives. Believing that the
5 Attorney General hit a deer and not a man, the sheriff
6 conducts a mediocre investigation at best, gathered the
7 Attorney General's information for formalities,
8 registration and insurance, and subsequently sent the
9 Attorney General home in the sheriff's personal vehicle.

10 The Attorney General was once again headed back
11 to Pierre by 10:54 p.m. It's at that time while driving
12 he sends a photograph, text message, of his vehicle's
13 damage from that work cell phone to his chief of staff
14 Tim Bormann and the Division of Criminal Investigation
15 DCI Director Dave Natvig. Roughly a half-hour after the
16 crash he's back on his phone.

17 The next morning, Sunday, September 13, 2020,
18 Attorney General Jason Ravnsborg traveled back east to
19 Highmore to return Sheriff Volek's vehicle. Tim Bormann,
20 the Attorney General's chief of staff, followed. After
21 filling up in Highmore, Jason Ravnsborg travels the same
22 path out of Highmore that he had traveled just the night
23 before. And he decides to stop by the large piece of
24 debris from his vehicle that remained on the shoulder.
25 23:33 into the first interview he says, That's where I

1 knew approximately to look.

2 Jason Ravnsborg gave the North Dakota BCI
3 investigators varying reasons for why he stopped: To
4 check and see if this deer made it or what happened by
5 checking on the other south side of the road; 22:43 in
6 the first interview. Though he stops on the north
7 instead of the south side of the road.

8 He went back because: The debris was still
9 there; 1:37:58, second interview. But he didn't clean up
10 the debris. Went back because he was curious how it all
11 played out; 1:38:36, second interview. But he knew how
12 it all played out. The Attorney General sent his chief
13 of staff to the right, east, away from the car debris and
14 Joe Boever's body, and Jason Ravnsborg himself headed to
15 the left, west of that debris, where he virtually
16 immediately saw Joe Boever's remains.

17 He articulated to officers in those moments that
18 he thought he saw a fawn or a deer in the ditch; 23:50,
19 first interview. Out of respect for the victim's family,
20 we are not going to publish those photos to the public.
21 But in order to evaluate the integrity of that statement,
22 Senators, we would encourage you to look at those photos
23 of Mr. Boever's body when provided.

24 And then Attorney General Ravnsborg instead of
25 calling 911 again, like he did the night before when he

1 thought he hit something, he and his chief of staff left
2 the crime scene, abandoned Joe Boever, and returned the
3 sheriff's vehicle, brought the sheriff back personally.
4 We have no recording of that conversation the way we
5 would with a 911 call. We only have the Attorney
6 General's account and sheriff's report.

7 The sheriff returned with the Attorney General
8 and his chief of staff. They pointed out Joe Boever's
9 lifeless body, and they left the crime scene per the
10 sheriff's direction and headed back to Pierre while the
11 sheriff began contacting other agencies to investigate.

12 The Highway Patrol responded to conduct their
13 crash reconstruction investigation. Evidence was
14 preserved, documented, and estimations made. The
15 North Dakota Bureau of Criminal Investigation, BCI, the
16 counterpart to our DCI, agreed to be the conflict agency
17 to send agents down to conduct the criminal
18 investigation.

19 Witnesses were interviewed, surveillance footage
20 tracked down, scene processed, evidence collected,
21 photographed -- drone photographs were provided for
22 aerial view. The Attorney General's car was processed
23 for evidence, inside and out. An autopsy was conducted.

24 The Attorney General was interviewed on two
25 separate occasions by BCI Agent Joe Arenz and Supervisory

1 Agent Arnie Rummel. The first time occurred on Monday,
2 September 14, at approximately 1:30 p.m., two days after
3 the crash. Keep in mind that the Attorney General
4 unequivocally knows at that time that he killed a man.
5 It's interesting to reflect on that and watch that
6 interview.

7 The second interview is just over two weeks
8 later on September 30, 2020, at approximately 2 o'clock
9 p.m. He knows they've processed his cell phones by then,
10 and everyone -- everyone -- is now aware that he hit and
11 killed a man, not a deer.

12 I wish we had time to play for you the entirety
13 of those two interviews. The first is approximately an
14 hour long. The second is two hours long. And we simply
15 don't have the time to do that today. But I encourage
16 you all if you haven't done so already -- I know it would
17 be a late night. But these are important proceedings. I
18 would encourage you to spend the three hours really
19 watching those interviews and listening to the statements
20 that are made. Because everything you need to know about
21 Count II, coupled with the physical evidence, is
22 contained in those interviews.

23 Among the misleading statements and outright
24 lies, the Attorney General tells law enforcement officers
25 who interviewed him that he maintained in both interviews

1 that he was in the middle of the roadway. Not consistent
2 with the crash investigation, the physical evidence, not
3 consistent with other eyewitness accounts, not consistent
4 with the lane driving conviction that is now on his
5 record. Maintained he was never on his phone. The phone
6 itself says otherwise.

7 And even after being confronted by the BCI, the
8 second interview, he attempted to deny and minimize that
9 fact. It's not consistent with the operating a motor
10 vehicle while using mobile electronic device conviction
11 that is also now on his record. He maintained he thought
12 he hit a deer. He advised that while he was on his phone
13 with dispatch he went all the way back to the piece of
14 car debris to check the Highmore sign. That fact came
15 afterwards, if at all. Maintained that he never saw Joe
16 Boever's body, even though he would have walked right
17 past it to get to the debris and afterwards as he's
18 scanning ditches with his phone.

19 He maintained to the public in the aftermath
20 that he attempted to reach out to Joseph Boever's family
21 to apologize immediately afterward. But he told another
22 story to the investigators.

23 As if attempting to utilize his title and the
24 lies weren't enough for malfeasance, while the
25 investigation was pending Attorney General Ravnsborg

1 continued to use his position as Attorney General during
2 the criminal investigation to have his chief of staff
3 line up a blood draw for him, to buy time before turning
4 his cell work phone over, the one taxpayers pay for,
5 because, in his words, I am still the Attorney General.
6 He turned over his personal cell phone first.

7 To question his employee, an employee of the
8 State of South Dakota, ICAC Director Brent Gromer about
9 what BCI investigators will find on his phones, and use
10 DCI Director David Natvig to question another employee of
11 the State of South Dakota, employee Tyler Neuharth,
12 polygraph examiner, about what the results of a polygraph
13 might reveal.

14 As you consider all of the evidence in this case
15 about the facts and circumstances surrounding the death
16 of Joe Boever caused by the Attorney General and the
17 Attorney General's multiple opportunities to do the right
18 thing, the evidence will show that wrongdoing by the
19 Attorney General is even more significant than
20 malfeasance by other public officials.

21 It is a crime for any person to lie to law
22 enforcement. SDCL 22-11-9 Sub 3 defines false reporting
23 as: Any person who makes a report or intentionally
24 causes the transmission of a report to law enforcement
25 authorities which furnishes information relating to an

1 offense or other incident within their official control,
2 knowing that such information is false.

3 There's a constitutional right to remain silent.
4 It is a crime to lie to law enforcement. Telling a lie
5 to a federal official would have been a felony under
6 18 USCA [sic] 1001 Sub A. Beyond any person lying to law
7 enforcement, an attorney is required by statute pursuant
8 to SDCL 16-16-2 to possess "good moral character."

9 The In Re Discipline of Tornow case from 2013 in
10 Paragraph 36 underscores that: Attorneys admitted to the
11 practice of law have a continual and ongoing obligation
12 to meet these requirements on a daily basis.

13 Further codified in South Dakota Law,
14 Chapter 16-18, Appendix, provides South Dakota Rules of
15 Professional Conducts for attorneys in this state to
16 follow. Rule 8.4 defines: It is professional misconduct
17 for a lawyer to, B, commit a criminal act that reflects
18 adversely on the lawyer's honesty, trustworthiness, or
19 fitness as a lawyer in other respects; Subsection C,
20 engage in conduct involving dishonesty, fraud, deceit, or
21 misrepresentation; D, engage in conduct that is
22 prejudicial to the administration of justice; E, state or
23 imply that -- an ability to influence improperly a
24 government agency or official or to achieve results by a
25 means that violate the rules of professional conduct or

1 other law.

2 Not all lawyers are elected officials,
3 naturally, but this one is. And a prosecuting attorney
4 is held to an even higher standard. In the first comment
5 of Rule 3.8, Special Responsibilities of Prosecutors, a
6 prosecutor has the responsibility of a minister of
7 justice and not simply an advocate.

8 By statute, the Attorney General is the State's
9 top attorney and chief prosecutor, pursuant to 1-11-1.
10 The Attorney General serves also as the State's chief law
11 enforcement officer with statute directing that it is the
12 Attorney General who oversees the Law Enforcement
13 Standards and Trainings Commission for all law
14 enforcement officers in this state, pursuant to
15 SDCL 23-3-28, 23-3-28.3.

16 He shapes the standards of conduct for all other
17 law enforcement officers by this statute. The standards
18 set for the Attorney General are and should be higher
19 standards than the average person. His role is one of
20 the most powerful in the state. And to quote Uncle Ben,
21 "With great power comes great responsibility."

22 Senators, the conduct of the Attorney General in
23 the aftermath of the death of Joe Boever had the
24 potential to mitigate tragedy, and instead it aggravated
25 those offenses. A man lost his life due to the Attorney

1 General's distracted driving. In the seconds, minutes,
2 hours, days, weeks, and beyond that has transpired the
3 Attorney General has had countless occasions to do the
4 right thing, and at virtually every opportunity he has
5 chosen not to.

6 He's used his title in an attempt to gain
7 influence, lied, misled, and misdirected law enforcement
8 officers, committed crimes of dishonesty, utilized
9 resources within the Attorney General's Office for his
10 own personal gain in this criminal investigation, and at
11 the conclusion of these proceedings after you've spent
12 the last number of weeks poring over the evidence,
13 spending the next eight-hours-plus reviewing key portions
14 again, the Prosecution will ask you, Senators, to sustain
15 the Articles of Impeachment against the Attorney General
16 both as to Count I, the misdemeanor offenses that led to
17 Joe Boever's death, including lane driving and careless
18 driving offenses, but perhaps more important as to these
19 specific proceedings, the countless occasions of
20 malfeasance of office that followed and that are the
21 subject of Count II that should be sustained.

22 Thank you.

23 PRESIDENT RHODEN: Mr. Garber, you have one hour
24 for opening statement.

25 MR. GARBER: Good morning. My name is Ross

1 Garber. I practice law in Washington, D.C., in
2 Connecticut, and I'm here assisting Mike Butler in the
3 defense of the Attorney General.

4 I also teach impeachment and political
5 investigations law at Tulane Law School and have
6 represented over the past 20 years five governors'
7 offices in connection with formal impeachment
8 proceedings.

9 So what I'd like to start by doing is spending
10 some time talking about why we're all here today. And
11 that is not a criminal case, it's not a civil case, it's
12 not a traffic matter. This is an impeachment and removal
13 proceeding. And make no mistake, members of the Senate,
14 what you are here for is incredibly rare in the American
15 experience.

16 As you know, no elected official in South Dakota
17 has been removed through the impeachment process in the
18 entire history of this state. You may also know that not
19 a single federal executive branch official in the entire
20 history of the United States has been removed through the
21 impeachment process.

22 In the entire history of our country, in all of
23 the states, in fact, only eight governors have been
24 removed. All the states, the entire history. In the
25 modern era, which I define as since 1929, only two

1 governors -- only two governors in all of the states have
2 been removed through the impeachment process, and only
3 five other state officials have been removed through the
4 impeachment removal process. You think about how many
5 governors, how many state officials have been elected.
6 This is incredibly rare, what's being contemplated here.

7 I found no record of any attorney general,
8 certainly in the modern era, any place in the country
9 being impeached and removed. And I have found no
10 situation, in the modern era certainly, where an
11 official, an elected official, has been removed for
12 conduct not integral to the performance of their office.

13 And so let's think about some examples. What
14 gets an elected official, somebody who voters go to the
15 polls and elect for a term of office -- what gets
16 somebody removed by a legislative body? I'll give you
17 just a few examples, and there aren't very many
18 throughout history.

19 For example, 1941, the Massachusetts governor's
20 counsel, Daniel Coakley, was removed for selling pardons.
21 That's the kind of thing that gets an elected official
22 chosen by the voters removed from office.

23 In 1988, Arizona Governor Evan Mecham was
24 removed from office for loaning \$80,000 of state money to
25 a business that he and his wife owned. That's the kind

1 of thing that gets an official removed.

2 In 1994, Missouri Secretary of State
3 Judith Moriarty was removed for using her office to help
4 her son in an election.

5 In 2005, the University of Nebraska Regent
6 David Hergert was removed for misconduct in his campaign
7 for office.

8 In 2009, Illinois Governor Rod Blagojevich was
9 removed for trying to sell a United States Senate seat.
10 That's the kind of thing that gets you removed from
11 office. And notably in that case the Senate in that case
12 was unanimous, was not -- it was not a close call. The
13 Senate acted unanimously. Because it is quite a thing to
14 reverse the will of the voters. And the Senate in
15 Illinois acted unanimously in doing that.

16 Here's a situation that didn't warrant
17 impeachment removal, and that was a formal impeachment
18 investigation of the Governor of South Carolina,
19 Mark Sanford. In that situation there was a formal
20 process because the governor of that state left the
21 state, didn't tell anybody where he was going, ditched
22 his security detail to carry on an affair in
23 South Carolina.

24 I represented the Governor's Office in that
25 case, and the legislature made the decision that that

1 conduct was not good. It was not acceptable. It was not
2 appropriate. But it did not rise to the level of
3 impeachment, and Governor Sanford was not removed from
4 office. He was censured but not removed.

5 And here's why. Here's why it makes sense that
6 these things are so rare, that the standard is so high,
7 and that's because of the Constitution. The Constitution
8 of South Dakota is much like the Constitution of the
9 other states, much like the Constitution of the Federal
10 Government. And there are three principles in play here.
11 It's not just the impeachment clause. We're going to
12 talk about that in a second. We have separation of
13 powers, separation in balance of powers principles. We
14 have the principles in the Constitution regarding
15 elections and terms of office, and we have the
16 constitutional provisions related to impeachment.

17 So let's start with separation of powers.
18 Under the separation and balance of powers in the
19 Constitution -- it's one of the geniuses of the American
20 Constitutions -- we have coequal branches of government.
21 The Executive branch is coequal to the Legislative
22 branch. The Executive branch doesn't dominate the
23 Legislative branch. The Legislative branch doesn't
24 dominate the Executive branch.

25 And so, for example, this is not an

1 parliamentary system of government. This is not a system
2 of government -- we see it sometimes in parliamentary
3 systems like England where the Legislative branch holds a
4 vote of no confidence in the prime minister. We don't
5 have that here, and that's because the Legislative branch
6 and the Executive branch are coequal.

7 The Legislative branch doesn't oversee in that
8 way the Executive branch. And the framers of the U.S.
9 Constitution were actually very concerned in structuring
10 the Federal Constitution about creating a system where
11 the Legislative branch would have dominance over the
12 Executive branch. And, keep in mind, what you do over
13 the next couple of days could have implications for
14 government in South Dakota, for the history of
15 South Dakota, for the interplay between the branches of
16 government in South Dakota. And so I'd ask you to please
17 keep in mind those separation of powers principles.

18 The second notion, constitutional notion I
19 mentioned, was elections. Again, genius of the American
20 system. In South Dakota, as you know, you elect your
21 Attorney General. Voters go to the polls every four
22 years. It's built into the Constitution. Voters go to
23 the polls every four years, and they vote. And they
24 voted in this case for this Attorney General.

25 And also in your Constitution there's a fixed

1 term of office. It's in the Constitution. It's four
2 years. The legislature doesn't have the ability to cut
3 that term short. It's in the Constitution. It's a
4 four-year term.

5 And the reason for that, and your framers, just
6 like the federal framers, took a lot of these things into
7 account, is that you trust the voters to make decisions.
8 The voters get to choose their attorney general just like
9 they get to choose their governor. And every four
10 years -- a short period of time in history, every four
11 years the voters get to go back and choose their attorney
12 general, choose their governor again. And if they don't
13 think the attorney general is doing a good job, if they
14 think there's a reason why the attorney general shouldn't
15 continue to serve, then they don't reelect the attorney
16 general. Or the attorney general thinks that he can't
17 get reelected, then he doesn't run. But the system
18 trusts the voters. It trusts the political process to
19 make these decisions. It doesn't put the legislature in
20 a position of making these decisions.

21 So let's look closely at the third provision of
22 the Constitution that I mentioned, and that is the
23 impeachment and removal provision. That provides that
24 the governor and other state and judicial officers shall
25 be liable to impeachment for drunkenness, crimes, corrupt

1 conduct, or malfeasance or misdemeanor in office. "In
2 office."

3 Now the committee of the House that investigated
4 this and the Nebraska Supreme Court in the only case I
5 could find of an impeachment proceeding involving an
6 attorney general noted that an act or omission for which
7 an attorney general may be impeached and removed from
8 office must relate to the duties of that office.

9 Now as the House Committee noted, there is some
10 linguistic trick you can do to read the "in office" part.
11 Only with respect to malfeasance or misdemeanor. But,
12 number one, I'll note that the Attorney General here is
13 accused of malfeasance. So unquestionable the "in
14 office" part applies there.

15 But I'd submit it also applies to the rest of
16 the article. I don't think it can fairly be argued that
17 drunkenness by any Executive branch or Judicial branch
18 official would warrant removal from office. Or that any
19 crime -- think of the vastness of the criminal code, the
20 vastness of the criminal code, that any crime at all
21 would warrant removal of a governor or an attorney
22 general or a member of the Judicial branch from office.
23 No. It's got to relate to the office and be integral to
24 that office.

25 Now the Attorney General was accused -- is

1 accused of malfeasance. Again, in the House report on
2 this matter it cited a South Dakota Supreme Court case
3 that defined malfeasance as reference to evil conduct or
4 illegal deed, the doing of which one ought not to do in
5 the performance of an act by an officer in his official
6 capacity, that is wholly illegal and wrongful. So as you
7 consider malfeasance, consider whether it was integral to
8 the Attorney General's Office and whether it rose to that
9 high of standard.

10 So, members of the Senate, we heard a lot this
11 morning about a very tragic situation. But this is, as I
12 noted, a very rare and solemn and unusual and weighty
13 impeachment and removal proceeding. This is not, as I
14 mentioned before, a vote of no confidence. This isn't a
15 civil case. This isn't a criminal case. This certainly
16 is not a bar case.

17 The objective here, the issue here, it's not to
18 punish. It's not to provide restitution. It's not to
19 reprimand. It's not a recall effort. It's not to make a
20 statement. It's not an employment action. It's not a
21 censure provision. This is undoing the will of the
22 voters. Make no mistake, that's what you're considering
23 doing.

24 And here's -- in the case of Nixon, the House
25 Judiciary Committee conducted an investigation and

1 produced a report, the Rodino Report. Here's how that
2 report put it: Impeachment is a constitutional remedy
3 addressed to serious offenses against the system of
4 government. Impeachment is directed to address
5 constitutional wrongs that subvert the structure of
6 government or undermine the integrity of office and even
7 the Constitution itself.

8 The committee went on, The crucial factor is not
9 the intrinsic quality of behavior but the significance of
10 its effect on our constitutional system or of the
11 functioning of government. That's the measure, members
12 of the Senate.

13 Federalist 65 looked at it. Federalist 65 said:
14 Impeachment removal is reserved for those offenses which
15 proceed from the misconduct of public men or, in other
16 words, from the abuse or violation of a public trust.
17 They are of a nature which may with peculiar propriety be
18 denominated political, as they relate chiefly to injuries
19 immediately to the society itself. That's the standard.
20 That's the standard.

21 And the prosecutor's burden of proof reflects
22 that standard. It is very high. The prosecutor has the
23 burden of proving this to you by clear, satisfactory, and
24 convincing evidence, a very high standard, which is why I
25 think you saw in the case of the governor of Illinois a

1 unanimous conviction. This has to be something that the
2 prosecution proves by clear, satisfactory, and convincing
3 evidence and that that constitutional standard that I
4 met -- that I discussed was met.

5 In this situation it doesn't exist. But I'd ask
6 as you consider it, because it's your decision that
7 matters, you weigh those constitutional standards, you
8 weigh the burden of proof.

9 Thank you.

10 PRESIDENT RHODEN: Mr. Butler.

11 MR. BUTLER: I want to begin by focusing on
12 House Resolution 7002. That sets forth the two
13 Articles of Impeachment. And I'd ask that those be put
14 on the screen, and I'll first focus on Article I.

15 Article I, the first that you must consider, the
16 first that you must find that the Government's lawyers
17 have established by a standard of proof that we believe
18 is appropriate, clear and convincing evidence. It
19 states, Attorney General Jason Ravnsborg committed crimes
20 causing the death of Joseph Boever. Then it breaks it
21 down into three subparts focusing principally on the
22 driving outside of his lane of travel.

23 I want to stop now there. There has been no
24 finding that Mr. Ravnsborg was criminally culpable for
25 the death of Mr. Boever. This happened on September 12

1 of 2020. The Bureau of Criminal Investigation out of
2 North Dakota was brought in. South Dakota Highway Patrol
3 was brought in. I believe as special prosecutor
4 Mike Moore stated, as did Emily Sovell, the most
5 investigated accident in their lifetime in the state of
6 South Dakota.

7 In the end, after the investigation, the
8 charging decisions were made: A lane violation and
9 distracted driving using your phone. The special
10 committee rejected this as a basis for a finding that he
11 should be impeached, commenting on the lane change that
12 this is a common violation that occurs each and every day
13 in the state of South Dakota. It is insufficient for
14 removal of a constitutional officer. And, again, I go
15 back. There is no finding here of criminal culpability
16 in the death of Jason [sic] Boever. None. I
17 respectfully submit to this body that Article I is not
18 complicated. It requires a vote to not sustain the
19 Article of Impeachment.

20 Article II, malfeasance, which we know by now
21 requires conduct occurring in office. Attorney General
22 Jason Ravnsborg committed malfeasance by the following
23 wrongful deeds: Following the collision he identified
24 himself by his official title, made a direct
25 misrepresentation to the dispatch officer, misleading

1 first responders as to the crime he had just committed.

2 If you want to assume for a minute that was done
3 while in office, which my assumption is for the sake of
4 discussion, not because I believe it, I hope you do
5 listen to the 911 call. Don't accept my interpretation
6 of it. Make your own. He did identify himself as the
7 Attorney General, said that he had struck something, was
8 asked if it was a deer, and he said it could have been.

9 Now according to the Government lawyers, this
10 somehow gained an advantage for him, was a misuse of his
11 power. Folks, he called 911. They dispatched sheriff
12 Mike Volek, who was there within minutes. He lived
13 nearby the accident. Sheriff Volek arrived at the scene.

14 They both walked up and down the area of the
15 road and ditch. Mr. Volek when he was interviewed said,
16 I would have walked right by where the body was in order
17 for me to see the small light that he did see. Sheriff
18 Volek said, I did not see a body.

19 I have not heard the allegation that Sheriff
20 Volek is incompetent, was dishonest, or was also engaged
21 in a conspiracy to cover up. I submit that the tragedy
22 that did occur here was traumatic. There's no question
23 about that.

24 The Government lawyers would have you judge him
25 now in hindsight but not for what occurred at the moment.

1 And, again, please listen to the audio recording of the
2 911 call. Listen to his first interview done on the 14th
3 of September. Without legal counsel. He was asked to
4 come in, and he did. Certainly the Attorney General knew
5 of his right to counsel. He waived that right and went
6 and answered questions.

7 In that first meeting they asked about his cell
8 phones. He turned over his personal phone, gave consent,
9 and on this point I will say at every stage of this
10 investigation the Attorney General consented to
11 everything. Every piece of property, every piece of
12 electronic equipment the Government wanted to analyze, he
13 consented. Those are not the actions of a man trying to
14 conceal wrongdoing.

15 On the 30th -- excuse me. Let me back up. He
16 kept his work phone. His personal phone was turned over
17 two days following the accident. He kept his work phone
18 at that time. Then on the 15th of September, three days
19 following the accident -- and I don't know if you can put
20 that up on the screen but he went to the Department of
21 Public Safety here in Pierre and he turned over his work
22 phone. Gave his consent to search it. That consent did
23 not reveal any misuse of that phone, any attempt to
24 delete or alter any data coming off the phone. Nothing.

25 That same day, but later, the Attorney General

1 goes to the Mickelson building here in Pierre where his
2 offices are, where DCI is. He did run into Mr. Gromer,
3 who I believe is now retired. He did ask him about the
4 forensic technology, his capacity to capture in realtime
5 what was going on, such as use of his cell phone
6 flashlight, would the timing be accurate, et cetera.

7 He was seeking information, but he wasn't
8 seeking advantage. His phone was turned over. The
9 devil's in the details, but the details support that
10 Attorney General Ravnsborg at all times cooperated with
11 this investigation, which went on for several months
12 until February of 2021.

13 Appearing before the House Special Committee was
14 Prosecutor Mike Moore, Prosecutor Emily Sovell. And I
15 have included those reports and documents that I
16 submitted to be uploaded because they reveal a very
17 thorough investigation. Many questions asked; many
18 questions answered. Some questions could not be
19 answered, including by investigators.

20 Both prosecutors waited until the investigation
21 was completed and by their account, following meetings,
22 discussions, et cetera, considerations of the elements of
23 each offense that could be charged, came up with their
24 decision: Class 2 misdemeanor, lane change violation,
25 distracted driving.

1 The cell phone would reveal that it was no
2 longer in use 90 seconds prior to the accident. And so
3 while some may want to talk about it, it was not a factor
4 in the accident. That evening driving back from Redfield
5 to Pierre he spoke approximately 25 minutes with his
6 father. He spent five minutes looking at headlines from
7 political websites, and the phone was locked and off
8 90 seconds before the accident. Those are the unrefuted
9 facts about this case. Any effort to twist them
10 otherwise would be improper.

11 When he was asked was he in the center lane --
12 or was he in the center of his lane of travel when the
13 accident occurred or in his lane he said he thought he
14 was. In fact, he strongly said he was. But it turns out
15 he was wrong. The Highway Patrol accident reconstruction
16 investigation that followed establishes that.

17 His vehicle went off on the shoulder of the
18 road. Exactly how far is unclear. Special Prosecutor
19 Moore said there's no question it went off the road, but
20 exactly how far was not clear. But we accept that
21 finding. Not here to dispute it.

22 But I respectfully submit, and in my career it
23 has proven to be true, that people can be involved in
24 traumatic and tragic events and have two very different
25 views of what happened. Or believe that they did do

1 something that later establishes they didn't. It's not
2 proof they're lying. It's proof they're mistaken. Being
3 mistaken is not impeachable. Being mistaken is human.
4 And although Attorney General Ravnsborg was elected
5 Attorney General, he did not leave the human race and
6 become perfect. He's still not perfect.

7 But what he did here each and every step along
8 the way was to provide complete cooperation. He didn't
9 have the answer why he was wrong as to where his vehicle
10 was located, but he was not lying about it. And if
11 you're going to say he knew it and he was lying, don't
12 just say it. Prove it. Prove it by clear and convincing
13 evidence.

14 Allegations are easily made, and it is
15 especially true today. They're made anonymously,
16 mean-spiritedly, but when we come here to this chamber
17 you have to put your name behind it and you have to
18 answer for it. If you know he lied, don't just say it.
19 Prove it.

20 During his second interview Mr. Ravnsborg was
21 asked, would you take a polygraph? Now in this case what
22 could you polygraph on? Was it a human being that you
23 hit? Did you see a human being in the ditch? I think
24 that's a pretty clear question.

25 He responded, Absolutely. I'll take a

1 polygraph. And he said it more than once. I'll take the
2 polygraph. A polygraph is an investigative tool. It's
3 not admissible to prove guilt, but it is used frequently;
4 hence, that's why prosecutors -- or I should say law
5 enforcement always have polygraphers on their staffs.
6 But it is used to conduct investigations. If someone is
7 deceiving, it will indicate so, and they'll be confronted
8 by it. If someone is not, they may be cleared. It's a
9 powerful tool.

10 Mr. Ravensborg, the Attorney General, when asked,
11 So if we arrange for a polygraph, you'd be willing to
12 take one? Absolutely. I'll go to North Dakota. Hell,
13 yes. I'll go. I'm willing.

14 But no polygraph was ever offered. When the
15 polygrapher from North Dakota was here before the special
16 committee he was asked why, and he opined that, well, I
17 discussed it with some others, and we concluded that even
18 if he's telling the truth, it would probably show he was
19 lying. I can tell you I've never heard that before. A
20 qualified polygrapher understands that everybody under
21 investigation believes somebody thinks they might be
22 lying. But it's their skill as a polygrapher that is
23 supposed to be able to discern that and eliminate that
24 from the consideration.

25 An alternate view is, well, what if he passes?

1 Are we better off just not knowing so we can make an
2 accusation that he really can't answer? I say you knew.
3 But I didn't know. I didn't see it. I say you did. But
4 I didn't. And back and forth it goes. A polygraph and
5 its results would have appeared in the investigation.

6 As we go through -- or the Government goes
7 through its case establishing on each article its proof,
8 clearly and convincingly, I'm going to ask that you
9 listen carefully and ask how it supports each of the
10 articles, how it establishes that a crime that qualifies
11 as impeachable was committed, and malfeasance in office.

12 In considering that, here is a definition
13 provided by our State Supreme Court on the meaning of
14 clear and convincing evidence: Evidence that is so
15 clear, direct, weighty, and convincing as to allow the
16 trier of fact to reach clear conviction of precise facts
17 at issue without hesitancy as to their truth. That is a
18 high standard, as it should be.

19 Now I do respect that your task here is a
20 weighty one. But I also respectfully submit it's not a
21 difficult one. We shouldn't be here. As the addendum to
22 the report filed by the special committee indicates,
23 undue influence was brought to bear on the prosecutors to
24 charge something more serious. Undue influence was used
25 to persuade members of the House of Representatives, by

1 robocalls, by billboards.

2 The special committee asked that it stop. The
3 head of the Department of Public Safety, Mr. Price, was
4 removed from further discussions with those involved in
5 the investigation because of his efforts to unduly
6 influence the outcome. Now that's wrong. I trust that
7 the line has been drawn and that will not occur here.

8 We know that the public may not understand
9 exactly what impeachment entails. We understand that.
10 And they have opinions. But they're not fully informed
11 about what must be found specifically in our
12 Constitution, by what standard of proof, and does it
13 apply in each of the articles. You follow that and you
14 acquit the Attorney General, you can hold your head high.
15 Because you did the right thing.

16 Thank you.

17 PRESIDENT RHODEN: We are going to take a
18 15-minute recess.

19 (A short recess is taken.)

20 PRESIDENT RHODEN: Senate will return to order.
21 Mr. Vargo, you may call your first witness.

22 MR. VARGO: Thank you, Mr. President. The
23 Prosecution will call Sergeant Kevin Kinney of the South
24 Dakota Highway Patrol.

25 (Discussion off the record.)

1 MR. VARGO: So our first witness will be
2 Sergeant Kevin Kinney of the South Dakota Highway Patrol.
3 And I believe the LRC is summoning him from the witness
4 room. Sergeant of arms, that is.

5 (The oath is administered to the witness.)

6 DIRECT EXAMINATION

7 BY MR. VARGO:

8 Q. Sergeant, would you please introduce yourself to the
9 members of the Senate.

10 A. Good morning. My name is Kevin Kinney, and I'm a
11 sergeant with the South Dakota Highway Patrol.

12 Q. How long have you been with the Patrol, sir?

13 A. I've been employed by the Highway Patrol since
14 August of 2003; so in August it will be 19 years.

15 Q. And in what capacity do you presently serve with the
16 Patrol, sir?

17 A. My current position with the South Dakota Highway
18 Patrol is that I am the director of the crash programs;
19 so I oversee the Crash Reconstruction Program and also
20 the Crash Assistance Program for the entire state of
21 South Dakota.

22 Q. Can you give us a little bit of an idea of your
23 background both educationally and experientially that
24 allows you to oversee all of the reconstruction work in
25 the state of South Dakota on behalf of the Patrol?

1 A. Sure. When I came on the Highway Patrol in August
2 of 2003, approximately one year later I started to pursue
3 educational opportunities in regards to investigating
4 crashes or reconstructing crashes. In August -- I'm
5 sorry. In 2004 I took my reconstruction course, and I
6 was considered a reconstructionist at that time.

7 In 2010 is when I was promoted to squad sergeant.
8 One year later I took my current position in headquarter
9 staff as the director of the crash programs. During that
10 time amongst all the different opportunities of going to
11 training, conferences, and such I also went back to
12 school and I attended the South Dakota School of Mines
13 and Technology in Rapid City starting in 2015 and I
14 graduated in May of 2019 with my Bachelor of Science in
15 Mechanical Engineering.

16 Q. Over the years how many reconstructions would you
17 say that you have performed?

18 A. I don't have an exact number, but it's been
19 hundreds.

20 Q. Can you explain to us a little bit for those of us
21 who maybe don't do this every day, Sergeant, what is a
22 reconstruction?

23 A. The easiest way to describe a reconstruction is the
24 process of putting the crash back together and
25 determining what happened in that crash, if possible.

1 And so when you have one vehicle that's moving to another
2 vehicle, essentially all objects want to move in a
3 straight line. And so we look at those forces and the
4 physics applied with a reconstruction, and we determine
5 speeds of vehicles and causes of crashes.

6 Q. And when you say that objects want to move in a
7 straight line, is there something special or something
8 different that you need to do to apply that to a
9 vehicle-pedestrian crash as opposed to a two-vehicle
10 crash?

11 A. No. The laws of physics are the same for every
12 crash.

13 Q. So can you describe in brief what happens during a
14 vehicle-pedestrian crash in terms of the impact on the
15 pedestrian in particular?

16 A. Sure. When a pedestrian is struck by a moving
17 vehicle you're going to have a couple different options.
18 And some of it depends on the shape of the vehicle. A
19 pedestrian can be projected forward. They can go
20 underneath the vehicle, they can go up over the top of a
21 vehicle, or they can go off so the side of the vehicle.
22 Depending on the speed of the vehicle will depend on what
23 type of injuries that pedestrian would sustain in that
24 crash.

25 Q. Okay. And specifically in the event that a

1 pedestrian does not either bounce off to the side or go
2 underneath or go over the top, in other words if the
3 pedestrian remains with the vehicle for an appreciable
4 period of time, does that pedestrian by definition go the
5 same speed as the vehicle for a period of time?

6 A. That is correct. If you have an object that
7 becomes -- for lack of a better term, is entangled with
8 the other object, it will gain the speed of the object
9 that it -- that struck it.

10 Q. So what, if anything, was your role in the
11 investigation of this particular crash, sir?

12 A. So my role as the director of the crash programs was
13 to come along side of our district crash coordinator and
14 be the on-scene or on-site supervisor to help make sure
15 that we had all the necessary tools that we needed to
16 complete a thorough investigation of this crash.

17 Q. And as part of that, did you oversee both the
18 collection of evidence, the taking of photographs, all of
19 the things that would normally be associated with a
20 reconstruction, even if you didn't do them yourself?

21 A. I was a part of that entire process. I saw photos
22 being collected, evidence being gathered by North Dakota
23 BCI, and I did observe that taking place.

24 Q. Sergeant, I'd like you to draw your attention to a
25 couple different photographs. I believe they'll come up

1 on the screen in front of you. If not, I have hard
2 copies that we can give you. Okay.

3 So, Sergeant, is this the vehicle that the Attorney
4 General was driving at the time of the crash?

5 A. That is correct.

6 Q. And would you explain to the members of the Senate
7 what it is that this immediately tells you about the
8 nature of the crash that occurred?

9 A. There's a couple things that stand out in this
10 picture to me. One is there's a hole in the windshield,
11 which would indicate that part of the pedestrian came
12 through the windshield. We know that it's farther up on
13 the vehicle so we know that it also indicates a higher
14 speed.

15 And then you'll also see that there's damage to the
16 passenger side mirror and what we would refer to as the
17 A pillar, which is the pillar in between the windshield
18 and the passenger side window. You can see that there's
19 a dent in it, meaning that some object struck that with
20 some force to create that dent.

21 Q. And moving on to the next photograph, I believe this
22 shows a little bit more detail as it relates to the side
23 mirror. What does that show you?

24 A. Yeah. You can see that the side mirror is not fully
25 detached from the vehicle, but it is essentially hanging

1 there by the wires that control or operate the mirror,
2 and so it was also hit at some point during the impact.

3 Q. From all of the evidence that you observed on scene,
4 particularly the evidence as it relates to the Attorney
5 General's vehicle, were you able to determine whether or
6 not it appears that Mr. Boever either went under or over
7 the Attorney General's vehicle?

8 A. Based on the evidence that we have before us here in
9 this picture, we didn't find -- we found no evidence that
10 the pedestrian went under the vehicle. But he did go on
11 top of the hood and then off to the side of the vehicle.

12 Q. And would it be your opinion -- would it be your
13 opinion, sir, that he fell off to the side, and that
14 would be potentially where the damage to the mirror
15 occurred?

16 A. That is correct.

17 Q. So while that may -- we'll go to one more picture.
18 Does this then also show the damage that was done to the
19 lower part of the Attorney General's vehicle?

20 A. Yes. You can see that the majority of the damage is
21 constrained to the right front of this passenger vehicle
22 along with if you follow the line from the headlight
23 down, you can see where there appears to be dust to the
24 right and a clearing to the -- clear red to the left.
25 That would be where Mr. Boever's leg would have impacted

1 the front side of Attorney General Ravnsborg's vehicle.

2 Q. So after you've done the examination of the vehicle
3 that's involved and knowing what you knew -- what little
4 you knew at the time about the injuries to Mr. Boever
5 himself, what does the process of reconstruction look
6 like from there, sir?

7 A. Well, one of the first things that we do is once we
8 are made aware of the situation, we would secure the
9 scene. I think it's important to collect and document
10 and look at all the evidence that's left behind so that
11 we can use all of those pieces of evidence, whether it be
12 components from the vehicle that are left on the ground
13 as debris, any type of blood that we could locate on the
14 ground that would give us an area of impact, document
15 each of those things by taking photographs, and creating
16 a forensic map that would later be able to be used to
17 help us to determine that area of impact and also what
18 would have caused that crash.

19 Q. From what you knew at the very beginning, is it fair
20 to say that you were aware that this was a crash that
21 occurred at, for lack of a better term, highway speed?

22 A. That's correct.

23 Q. And is that based in part on the traumatic injury to
24 Mr. Boever's leg?

25 A. That is correct.

1 Q. In addition to anything associated with the
2 victim -- and you mentioned blood, and obviously we have
3 the victim's remains, his leg where it came to final
4 rest -- looking at this picture number 68, does that tell
5 you what other objects you might be looking for in the
6 area of the crash that would inform, again, an area of
7 impact?

8 A. Yes, it does. When you look at this you can tell
9 that there's significant damage done to the front of the
10 vehicle. That would include the front bumper. Also
11 you'll notice that there's numerous areas on the
12 vehicle's hood and bumper as well where there's red paint
13 chips that are missing from the vehicle.

14 Also you have damage to the windshield that would
15 indicate that there's glass breakage, and so there's a
16 good potential that you'll also see glass at the site of
17 the accident as well.

18 Q. And so in terms of putting together the physical
19 evidence, would it be fair to divide that physical
20 evidence potentially into at least three categories which
21 would be the blood, the paint chips, and the vehicle
22 debris?

23 A. That is correct.

24 Q. With reference to those three things, sir, during
25 the course of the examination or the investigation that

1 was conducted by the Highway Patrol specifically, were
2 any objects conforming to those three things found in the
3 lane of travel?

4 A. There was one piece of debris that was found in the
5 lane of travel, which would have been just to the south
6 of the white fog line on the northbound -- or on the side
7 that you would be traveling westbound on. So it was
8 approximately 2 inches into the lane of travel. Every
9 other piece of evidence that was located that evening was
10 completely on the shoulder or in the ditch.

11 Q. Okay. And is the process that you underwent next
12 sometimes referred to in the reconstruction community as
13 mapping the scene?

14 A. That is correct.

15 Q. Okay. I would like to show you another photograph,
16 268. Okay.

17 We've got a little lag there.

18 Sergeant, if you would, can you orient us a little
19 bit to where we are looking here and why this is kind of
20 the broadest angle that we'll look at, but what areas are
21 important here?

22 A. Sure. So as you're looking at this photograph,
23 you're going to -- your back is towards Highmore, and
24 you're looking to the west. This is the lane of travel
25 that the Attorney General would have been in as he's

1 traveling westbound.

2 You'll see that there's a no passing zone sign
3 that's also in our forensic map. And then a little bit
4 further down the road you'll see -- it just appears to be
5 like a yellow leg of some sort. It's off of our tripod,
6 which is our total station, and we use that to document
7 points of evidence, lane lines, fog lines, rumble strips,
8 any other items that would be important to drawing that
9 map to give a representation of that scene to somebody
10 else.

11 Q. And, specifically, are you trying to create what
12 you, I believe, refer to as trend lines?

13 A. So that's part of the process, yes. As we're
14 documenting all the debris and all the evidence and
15 everything like that, we're documenting those red paint
16 chips that we're locating. We're documenting the vehicle
17 car parts. And then Trooper Berndt, who was the lead
18 investigator, was on his hands and knees looking for the
19 blood evidence and locating all those pieces of blood
20 evidence, and we were documenting those into the forensic
21 map.

22 Q. And can you describe how that works in terms of
23 creating the trend line from the evidence that you find?

24 A. Sure. So one of the ways that I describe
25 determining the trend line is to help us determine the

1 direction that the vehicle would have been traveling at
2 the time of impact. If you think of a cup of sand and
3 you're standing on the roadway or another surface and you
4 take this cup of sand and you throw it out in front of
5 you, it starts very concentrated, and then it slowly
6 moves out to the left and right of that line where you
7 threw it.

8 Debris from a vehicle does exactly the same thing.
9 As it hits the ground the majority of the evidence is
10 going to be located down the center of that line, but
11 also it will move to the left and to the right and shape
12 what appears to be like a V pattern and it points back
13 towards the area of impact.

14 Q. Trooper, I'm going to try to translate this to
15 something that maybe more of us are aware of. Is this
16 something like what happens with a shotgun blast?

17 A. Sure. Yeah. If you're shooting a shotgun, as the
18 pellets come out of the end of the barrel they're going
19 to be very concentrated, but as they get closer to your
20 target they're going to be spread out more.

21 Q. And when you're doing reconstruction is it normal
22 process, normal practice, to use all of the points of
23 evidence, whether it be, again, the blood, the paint
24 chips, or the vehicle debris?

25 A. Yes. It would be considered negligent on our part

1 to just neglect pieces of evidence that are located on
2 the scene.

3 Q. Despite that fact, at the request of one of the
4 prosecutors, did you and the Highway Patrol at the
5 prosecutor's request create separate trend lines for the
6 blood, the paint chips, and the vehicle debris?

7 A. Yes, we did.

8 Q. And when you did that were your results any
9 different than when you considered all of the evidence
10 taken together?

11 A. Surprisingly, there was very little difference.
12 When we plotted the trend lines onto the forensic map of
13 all three of those separate items they were within 1
14 degree of each other as they were traveling down the
15 road. So that gives us an extremely high confidence that
16 the information we have is very accurate.

17 Q. And based on everything then that you had done, were
18 you able to reach a conclusion as to where you believed
19 was the area of impact?

20 A. That is correct.

21 Q. And I'm going to show you the next photograph, and
22 it's 276. There we go.

23 Where would you describe the area of impact as
24 being?

25 A. The area of impact was fairly close to where we set

1 up the total station. That's where the majority of the
2 evidence began. And then it continued towards the west
3 along the shoulder of the road.

4 Q. And specifically with respect to the north-south
5 variance, was the area of impact within the shoulder?

6 A. Yes. The area of impact would have been closer to
7 the grass edge but on the shoulder to the right of the
8 fog line and the rumble strips that you're seeing there.

9 Q. Trooper, I'm going to draw your attention, first of
10 all, to the fog line. And then I believe we can see just
11 to the right of the fog line kind of those striations.

12 Are those the rumble strips?

13 A. That's correct. To the right of the fog line would
14 be the rumble strips.

15 Q. And then about midway through the paved section
16 before you get to the grass, there's a darker area that
17 seems like it's where the asphalt makes a transition
18 between what type of asphalt that is.

19 Is that accurate?

20 A. It appears to me that the roadway was wider and then
21 they laid another set of asphalt over the top of it and
22 so it's a transition area there.

23 Q. Okay. Based on everything that you observed and
24 your professional experience, is it your opinion that the
25 area of impact in this case occurred in that last section

1 between that dark line to the right and the grass?

2 A. That is correct.

3 Q. And as best you can establish the area of impact,
4 once the Attorney General's vehicle was appropriately
5 situated for the area of impact as you determined it,
6 would all four of his tires have been past the fog line?

7 A. Yes. They would have.

8 Q. Would all four of his tires have been past the
9 rumble strips?

10 A. Yes. They would have.

11 Q. Now, trooper -- Sergeant. Excuse me. Don't want to
12 demote you.

13 A. We're all troopers.

14 Q. Is there some uncertainty in reconstruction as to an
15 exact area of impact? Is there a reason we don't call it
16 the point of impact?

17 A. Yeah. There's always some uncertainty. Yes.

18 Q. And I believe in presenting the voluntary
19 presentation that was done prior to the House vote you
20 referenced the fact that you were 95 percent certain on
21 the area of impact; is that correct?

22 A. Yes. I referred to 95 percent accurate for the area
23 of impact.

24 Q. Do you have an opinion, though, as to the degree of
25 certainty with which you can say that the Attorney

1 General's vehicle was on the shoulder?

2 A. I do. I would say that the shoulder here between
3 the fog line and the edge of the grass is -- I believe
4 it's approximately 10 and a half feet or so. The
5 Attorney General's vehicle is approximately 5 and a half
6 feet wide, and the area of impact happened within a foot
7 or two of the grass edge, which would put his entire
8 vehicle to the right side of the rumble strips. And so I
9 can say with 100 percent confidence that he was driving
10 down the shoulder of the road.

11 Q. And because of the importance of this case and its
12 high profile nature, did you consult people that you
13 might not otherwise consult, specifically a gentleman by
14 the name of John Daily?

15 A. Yes, we did.

16 Q. Who is John Daily?

17 A. John Daily is somebody who's published three books
18 or more, numerous articles. He has a master's in
19 mechanical engineering, and he's been in the
20 reconstruction field for many, many years. He teaches
21 many classes. I've been in some of his classes that he
22 teaches. And he's somebody that I guess I would call a
23 mentor that, you know, he's -- he's somebody that's
24 renowned. He's taught all over the world and all across
25 the United States.

1 Q. And when you submitted this to Mr. Daily did he
2 concur with your conclusions?

3 A. Yes, he did.

4 Q. And, specifically, did he concur with your
5 conclusion that he would say with 100 percent certainty
6 that the vehicle was entirely past both rumble -- all
7 four tires were past the rumble strip?

8 A. Yes, he did.

9 Q. We now have photograph number 299 up on the screen.
10 The reason I'm asking you to look at that one is because
11 of the dark object that is seen about two-thirds of the
12 way up the photograph.

13 Do you know what I'm talking about there in front of
14 the trooper?

15 A. I do.

16 Q. What is that?

17 A. The object that you're looking at is -- actually to
18 the left of where the cursor was there. It's a piece of
19 vehicle debris from the bumper of the Attorney General's
20 vehicle.

21 Q. And is that something that will be referred to
22 repeatedly and is mapped on the diagram that the
23 Highway Patrol created for the benefit of the Senate?

24 A. Yes, it will be.

25 Q. Okay. And then I believe you now have picture 301,

1 which is just a little bit further down the road with the
2 same thing.

3 So, Sergeant, because we're being mindful of
4 ensuring that we aren't accidentally showing anything that
5 relates to our victim, I'm going to ask you to take a
6 look at 327 as soon as that comes up.

7 And is that essentially the same area but now taken
8 in an eastward-facing direction with that same large
9 piece of debris?

10 A. That is correct. That is facing the east looking
11 back towards Highmore with the large debris piece on the
12 shoulder of the road.

13 Q. Okay. Sergeant, in addition to determining the area
14 of impact, was it part of your investigation to also
15 determine the braking capacity of the Attorney General's
16 vehicle?

17 A. Yes, it was.

18 Q. And we will not go into the mechanisms by which that
19 was done. If a person driving the Attorney General's
20 vehicle on this road engaged in what I will call full
21 braking -- first of all, did the Attorney General's
22 vehicle have ABS braking systems?

23 A. Yes. The Attorney General's vehicle did have ABS
24 braking.

25 Q. And are they particularly efficient at braking?

1 A. Yes, they are.

2 Q. And when a vehicle that has ABS brakes goes into a
3 full braking mode, does it leave those big, dark, thick
4 skid marks that we're used to seeing on pictures?

5 A. No. The intention of ABS brakes is to stop the tire
6 from -- or it's to prevent the tire from locking up. You
7 get a higher -- a better stopping force when the tire
8 doesn't completely lock.

9 Q. Okay. Based on the examination of the Attorney
10 General's vehicle, can you say, assuming that he was
11 going 67.6 miles an hour at the time of the collision,
12 how long after full braking would his vehicle come to a
13 complete stop?

14 A. It would be approximately 175 feet.

15 Q. And do you know how far it was down the road between
16 the area of impact and where the Attorney General's
17 vehicle actually stopped?

18 A. Yeah. The total distance from what we identified as
19 the area of impact to the final rest or the stopping
20 location of the Attorney General's vehicle was 613 feet.

21 Q. Now because this was an anti-lock brake system, were
22 you able to determine the speed based on the physical
23 debris or any other evidence that you gathered at the
24 scene?

25 A. No, we were not.

1 Q. However, did you also have access to some
2 information from GPS?

3 A. Yes, we did.

4 Q. From that information were you able to determine the
5 Attorney General's average speed between Redfield and the
6 area of impact outside Highmore?

7 A. Yes. We were able to do that, and it averaged
8 between 68 and 71 miles per hour.

9 Q. And in the course of doing your testing did you also
10 discover something about the Attorney General's
11 speedometer?

12 A. Yes. As we were testing or doing the brake testing
13 to check the brakes on the Attorney General's vehicle, we
14 were verifying the speed of his vehicle going into those
15 brake tests by radar, and it was determined that his
16 speedometer in the vehicle was reading approximately 3 to
17 5 miles per hour higher than what he was actually
18 traveling.

19 Q. So if he was traveling at -- we'll just pick a
20 number -- 60 miles an hour, his speedometer would have
21 said somewhere between 63 and 65 miles an hour?

22 A. That's correct.

23 MR. VARGO: Thank you, Sergeant.

24 Mr. President, I have no further questions of
25 this witness at this time.

1 PRESIDENT RHODEN: Mr. Butler, your witness.

2 CROSS-EXAMINATION

3 BY MR. BUTLER:

4 Q. Trooper, that photograph we were looking at with the
5 piece of debris on the shoulder, do you know what I'm
6 talking about?

7 A. I do.

8 Q. And that was from the right front corner of the
9 Attorney General's private vehicle?

10 A. That is correct.

11 Q. Do you know whether or not it was moved?

12 A. We have no indication that it was moved based on the
13 Attorney General's own statements that it was there that
14 night and that it was also there the following morning in
15 the same location.

16 Q. The photograph was taken what time of day, the one
17 that we were looking at?

18 A. I don't know the exact time of day, but it would
19 have been in the middle of the day.

20 Q. Would you describe what the conditions were when the
21 accident occurred?

22 A. My understanding is that it was later in the evening
23 and that it was a dark evening out.

24 Q. Was it cloudy?

25 A. Not that I'm aware.

1 Q. Okay. Well, I did a little bit of homework and it
2 was cloudy and it was dark and Sheriff Volek, in fact,
3 said it was very dark.

4 Do you remember seeing his statement?

5 A. I don't recall seeing that.

6 Q. Okay. How long was the Attorney General's vehicle
7 on the shoulder of the road?

8 A. Again, that's -- I don't know the exact time frame
9 that he was on the shoulder. I don't know.

10 Q. So if it was nearly instantaneous or if it were a
11 few seconds, you wouldn't know?

12 A. What I can tell you is that if a vehicle makes an
13 evasive maneuver to the left or to the right, if it's an
14 extreme enough maneuver, you will see tire marks that
15 will give you an indication that there was some sort of
16 extreme input in the steering. We did not observe any of
17 that. So because of that, that would tell me that he was
18 on the side of the road more than a second or two because
19 he had already transitioned over to the shoulder.

20 Q. What were the weather conditions that night?

21 A. Again, my understanding is that it was clear, it was
22 dark. I'm not aware of any other weather condition. We
23 did look at the weather as far as wind, and there was a
24 slight breeze that evening, from what I recall.

25 Q. By "slight breeze" do you mean 18 miles an hour?

1 A. The 18 miles per hour that you're referring to is
2 the highest recorded wind gust, which was not a
3 consistent through the evening. It was one time it was
4 recorded at that -- that velocity or speed.

5 Q. From the time of the accident until South Dakota
6 Highway Patrol was on the scene you would not know how
7 much traffic or the type of traffic that passed the
8 accident scene, would you?

9 A. I don't have an exact count of how many vehicles
10 would have been through the area, but it is not a highly
11 traveled road compared to other roads in the state.

12 Q. And was that considered in determining any movement
13 of debris, such as paint chips?

14 A. It absolutely was. The reason that we did -- part
15 of the reason we did the trend lines was we wanted to
16 look at each of those three different components of
17 evidence that we located, starting with the paint chips.

18 Paint chips are smaller and lighter. And we
19 thought, well, could the wind have affected the paint
20 chips? Based on what we determined with it matching with
21 the other types of evidence that we had, we can say that
22 we don't feel that they were moved at all.

23 Same thing with the vehicle debris. It was still
24 along the shoulder of the road in the same type of V
25 pattern that you see in the forensic map. And then

1 there's also glass that's in a straight line. That's not
2 going to move.

3 And then the other piece of evidence that I think is
4 probably the most convincing is the blood. The blood hit
5 the ground. It's considered high velocity spatter. And
6 if you know that liquid hits the ground and the wind
7 blows, it's not going to blow it anywhere. The blood's
8 going to stay exactly where it was. And all those other
9 pieces of evidence, the trend lines line up exactly with
10 those same.

11 Q. Was any of the debris specifically excluded from
12 trend line considerations?

13 A. At one point later in the investigation we were
14 asked to exclude all the evidence except for the blood
15 that was near the body, against my recommendation.

16 Q. And all other evidence then was included in the
17 trend lines, such as the bolt that was found in the lane
18 of travel?

19 A. That is correct.

20 MR. BUTLER: Thank you. I have nothing else.

21 PRESIDENT RHODEN: Mr. Vargo, do you wish to
22 redirect?

23 MR. VARGO: No, Mr. President.

24 PRESIDENT RHODEN: Thank you.

25 (The witness is excused.)

1 PRESIDENT RHODEN: You may call your next
2 witness.

3 MS. TRACY: The Prosecution calls Special Agent
4 Joe Arenz.

5 (The oath is administered to the witness.)

6 DIRECT EXAMINATION

7 BY MS. TRACY:

8 Q. Will you please state your name and occupation.

9 A. Joseph Arenz, Special Agent with the North Dakota
10 Bureau of Criminal Investigation.

11 Q. And I'll ask you to get as close as you can to the
12 microphone. Try to speak loudly.

13 What is your law enforcement background?

14 A. I have a bachelor's degree in criminal justice. I
15 am a licensed peace officer in the state of North Dakota.
16 I've been a law enforcement officer for 22 years,
17 including time with two local police departments where I
18 spent approximately seven years as a patrol officer, and
19 the rest of my time has been as a criminal investigator
20 investigating various different criminals -- or criminal
21 acts.

22 I've attended the National Forensic Academy through
23 the University of Tennessee, which is a 10-week crime
24 scene processing school. I'm also a licensed polygraph
25 examiner after attending the Texas Department of Public

1 Safety Polygraph School.

2 Q. In your capacity with the North Dakota Bureau of
3 Criminal Investigation, the BCI, did you have occasion to
4 become involved in a law enforcement investigation here
5 in South Dakota in September of 2020 regarding a
6 pedestrian being struck by South Dakota Attorney General
7 Jason Ravnsborg's vehicle?

8 A. Yes, I did.

9 Q. How did that matter come to your attention?

10 A. I was at home and received a text message, along
11 with numerous other agents, from our chief agent who was
12 looking to see who would be available to travel to
13 South Dakota to assist with a vehicle versus a pedestrian
14 fatality accident involving the South Dakota Attorney
15 General.

16 Q. What day was that?

17 A. That would have been on September 13, which I
18 believe was a Sunday.

19 Q. And where did you respond to thereafter?

20 A. Upon me stating that I could travel to South Dakota,
21 I ended up traveling initially to Pierre, South Dakota,
22 where the BCI agents met up. Once we all got to Pierre,
23 then we traveled to the area west of Highmore in
24 Hyde County.

25 Q. When you arrived what role were you specifically

1 assigned by your supervisor for this case?

2 A. I was assigned to be the case agent.

3 Q. What does that mean?

4 A. As the case agent, I am in charge of overseeing the
5 case along with the supervisory special agent that's on
6 scene. We delegate responsibilities, ensure all tasks
7 are being done, and I maintain the investigation
8 throughout the course of it, ensuring all reports are
9 completed and dispersed to where they need to be.

10 Q. Who was your supervisor for this case?

11 A. Supervisory Special Agent Arnie Rummel.

12 Q. And, as you mentioned, he participated in this
13 investigation as well?

14 A. Yes, he did.

15 Q. Who did you first speak to when you arrived at the
16 crash scene near Highmore?

17 A. When we got there initially we met with a trooper
18 west of Highmore that was stationed near a white pickup
19 that was in the ditch near a hay bale. And he explained
20 to us that the rest of the scene was further east closer
21 to Highmore.

22 We then traveled to where the accident scene had
23 occurred, and upon arriving there, myself and Supervisory
24 Special Agent Arnie Rummel were provided information from
25 Sergeant Kinney and Trooper Berndt.

1 Q. What did you learn?

2 A. They walked us through the scene. They showed us
3 debris that was along the road. They explained that a
4 body had been found alongside the road, which was still
5 there when we arrived, and they showed us the body of
6 Mr. Boever and stated that Mr. Boever's leg had been
7 amputated during this accident and they showed us the
8 leg, which was further in the ditch.

9 They explained to us that the body had been
10 discovered earlier in the morning and that the
11 South Dakota Attorney General Jason Ravnsborg had been in
12 an accident the night before and had struck something at
13 that time, but they weren't really sure what he had
14 struck, possibly a deer, but nobody had known really and
15 the deer wasn't discovered at that time. It was the next
16 morning then Jason Ravnsborg came back and discovered a
17 body.

18 Q. So what else did you do that evening to further your
19 investigation?

20 A. Initially assigned other agents duties such as
21 photography, flying our drones, collecting evidence. The
22 first thing I really did was I interviewed Sheriff Mike
23 Volek, who is the Hyde County Sheriff and the officer who
24 had responded to the accident the night before.

25 Q. How did that go?

1 A. I spoke with him at the scene. He basically
2 explained to us that he had been called to an accident,
3 had met the Attorney General Jason Ravnsborg at the
4 accident scene, that there was damage to the front of the
5 vehicle. The vehicle had been towed. He had provided
6 Jason Ravnsborg with the sheriff's personal vehicle to
7 drive back to Pierre.

8 And then the next morning when Jason Ravnsborg
9 brought the vehicle back Jason reported to him that he
10 had found a body at the scene.

11 Q. Had the sheriff done up a report on that matter at
12 that time?

13 A. He did eventually provide a report. It wasn't at
14 that time, no.

15 Q. Did you throughout your investigation that evening
16 attempt to get in touch with Jason Ravnsborg himself?

17 A. Yes. That night. At approximately 10 p.m. I did.

18 Q. How did that go?

19 A. I called, and his phone went straight to voicemail.
20 I actually called twice. The first time I called I did
21 not leave a voicemail. I called back a short time later
22 and left a voicemail to have him call me.

23 Q. What happened the next day, September 14, 2020?

24 A. North Dakota BCI agents went to the Pierre Police
25 Department. We had been advised that Jason Ravnsborg's

1 vehicle had been towed to the Pierre Police Department
2 and was in a secure facility there.

3 We went there with the intentions of processing that
4 vehicle. We had a search warrant written for the vehicle
5 before we processed it, and then once the search warrant
6 was written, we processed and collected evidence from the
7 vehicle.

8 Q. Did you personally participate in the processing of
9 that vehicle for evidence?

10 A. Yes, I did. For a short time.

11 Q. And, thereafter, as the case agent, you would have
12 reviewed the photographs and evidentiary items seized and
13 been familiar with that entire processing?

14 A. Yes.

15 Q. I want to present to you some photographs from that
16 processing. Let's start with photograph 4450204.

17 Once it comes up on the screen here, I'll just ask
18 you to advise what that photo depicts and confirm that
19 this was a part of that processing investigation.

20 A. Yes. This was a photo of basically the overview of
21 the back seat of Jason Ravnsborg's vehicle.

22 Q. And as you look at that photograph, it's kind of
23 where the cursor is, can you describe what's included in
24 that photograph? What's noteworthy?

25 A. Yes. There's part of a pair of broken eye glasses.

1 So what you see there is the black frames for the eye
2 glasses.

3 Q. Let's go on to photograph 4450198.

4 A. This would be a photograph of the front compartment
5 of the vehicle from the driver's side taking a photograph
6 of the passenger side.

7 Q. Okay. And moving on to photograph 4450212.

8 A. That is the front passenger seat floorboard. So
9 what you see there is what I believe to be a phone
10 charging cord, and then there is part of the broken black
11 eyeglass frames there and the lenses for the eyeglasses
12 along the floor. And then broken glass debris.

13 Q. When did you first have occasion to speak to
14 Attorney General Jason Ravnsborg?

15 A. On September 14 at approximately 1:30 p.m.

16 Q. During the course of that interview, did he tell you
17 anything that surprised you or stood out to you?

18 A. The purpose of that interview was just to sit down
19 with him and get a statement from him, his version of --
20 and his perception of what had happened that day.

21 Basically what he said is he had been driving. He
22 had been in a Lincoln Day Dinner, I believe is what they
23 call it, in Spink County and had been traveling back, had
24 traveled through the town of Highmore, and shortly after
25 leaving Highmore, traveling towards Pierre, all the

1 sudden he hit something. Didn't know what he hit.

2 Q. Okay. And any other statements that he made to you
3 during that interview that struck you?

4 A. Yeah. He made the statement that he didn't know
5 what he hit until impact.

6 Q. For the course of that interview what did you notice
7 about the specificity with which the Attorney General
8 described certain topics but not others?

9 A. He was more specific about certain topics prior to
10 and after the accident than during the accident. During
11 the accident it was rather vague. Didn't really --
12 couldn't really give any detail about what happened.

13 Q. So leading up to the crash he provided details about
14 listening to a Twins game?

15 A. Yes. He had listened to a Twins game. He was able
16 to give some details about the dinner, what he ate.

17 Q. Phone calls with his father?

18 A. Yes. Two phone calls with his father. He had
19 described that he had been on the phone and must have hit
20 a dead zone so the phone call disconnected, that he
21 called back then as soon as he received cell phone
22 service again, basically to let his father know that he
23 hadn't hung up and that it was a dropped call.

24 Q. He was going to stop at the gas station, but it was
25 closed. He talked about that too?

1 A. He traveled through Highmore, was going to stop at
2 the gas station, looked at the gas stations on both sides
3 of the road, as there is a gas station on both sides of
4 Highway 14 there in Highmore, and that they looked closed
5 so he continued on. He remembered seeing a 65 mile per
6 hour sign and also seeing a sign that said 48 miles to
7 Pierre.

8 Q. After he mentions those signs, did he have
9 additional specificity about the next transpiring events?

10 A. No.

11 Q. Does he reiterate the same specificity after the
12 crash itself?

13 A. Yes. Somewhat. He describes how he pulled over to
14 the side, that the vehicle had been shaking, that he got
15 out immediately and walked around his vehicle and then
16 called 911.

17 Q. So he mentions those markers in time, and then how
18 specifically does he describe events after he says
19 Sheriff Volek arrived?

20 A. He explains that when Sheriff Volek arrived they had
21 looked at the vehicle, checked the area, that Sheriff
22 Volek had told him that the vehicle wasn't going to be
23 drivable and would need to be towed, and so Sheriff Volek
24 took him to Sheriff Volek's house to loan Sheriff Volek's
25 personally owned vehicle to Mr. Ravensborg.

1 Q. Do you recall Attorney General Ravnsborg
2 demonstrating and going through where he located his
3 insurance and his registration and all of those things?

4 A. Yeah. He explained that Sheriff Volek had asked him
5 for his registration and insurance card and that he had
6 to reach across the center console to the glove box, but
7 the glove box was already opened due to the impact of the
8 crash.

9 Q. And he talked about his conversation with the
10 sheriff about the Lincoln Day Dinner, him leaving. And
11 did he provide additional specificity about the sheriff
12 having to flag him down to get the keys to his vehicle?

13 A. Yes. He explained that after he was given Sheriff
14 Volek's vehicle he then left the scene. And, shortly
15 after, Sheriff Volek pulled him over because
16 Mr. Ravnsborg had taken the keys to Mr. Ravnsborg's
17 vehicle, and they were going to need those to have it
18 towed.

19 So he explained that he then was pulled over and
20 explained how he took the keys off the key ring to -- he
21 initially gave the whole set of keys to the sheriff and
22 the sheriff said, no, I just want the vehicle key and he
23 described how he then took the key off the ring and
24 provided it to the sheriff.

25 Q. So the benign, irrelevant details he provides great

3 | A. Yes.

7 A. Yes. We did talk about some speeds. He said that
8 he generally doesn't go more than 4 miles over the speed
9 limit.

10 Q. And why did you ask about this?

13 Q. I'm going to show you a series of clips from that
14 interview that you're referencing regarding speed.

15	(Video presentation.)
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16 Q. (BY MS. TRACY) Do you recall those moments of that
17 interview?

18 | A. Yes, I do.

19 Q. When was the next time that you spoke to Attorney
20 General Jason Ravnsborg?

21 | A. On September 30 of 2020.

22 Q. And where was that at?

23 | A. At the Pierre Police Department.

24 Q. In the second interview did you ask the Attorney
25 General if he had reached out to the victim's family in

1 any way?

2 A. Yes, we did.

3 Q. And what was his response?

4 A. That they had contacted the sheriff's department
5 about getting the victim's family information to reach
6 out and express their condolences, but they didn't get
7 anywhere with that so they actually looked up the
8 obituary and found information.

9 They then did further research and found that
10 approximately six weeks previous to Mr. Boever's death
11 Mr. Boever's father had passed away also, and so at that
12 time they elected that, due to all of the circumstances,
13 it wouldn't be proper to reach out to the family.

14 Q. And this would have been about two weeks after
15 Mr. Boever's death?

16 A. Correct.

17 Q. I want to show you some video clips referencing
18 those statements.

19 (Video presentation.)

20 Q. (BY MS. TRACY) Obviously that last clip wasn't a
21 part of your interview but was from a statement
22 significantly after that. So any other statements that
23 the Attorney General may have made publicly about
24 reaching out to the victim's family would not be
25 consistent with what he told you during the interview?

1 A. That's correct.

2 Q. In your years of experience as an officer, why would
3 a person lie about reaching out to the family in a
4 situation like this when they didn't?

5 A. Could be a couple reasons. It could be that --
6 self-interest, attempting to make yourself look more
7 concerned and that you care more, would be one reason.

8 Q. Paint yourself in a better light?

9 A. Correct.

10 Q. What data did you recover from the iPhone, the
11 Attorney General's iPhone that was used during his travel
12 on September 12, 2020?

13 A. We were able to retrieve data that would show
14 internet usage such as e-mail, access to e-mail, internet
15 access, phone logs, text logs, those sorts of
16 information.

17 Q. While traveling.

18 A. Yeah. We could basically obtain it from whenever,
19 but specifically we were interested in during his travel.

20 Q. So by the time of the second interview you have this
21 phone data?

22 A. Yes, we do.

23 Q. And that phone data that showed call logs, internet
24 activity, phone usage on the trip from Redfield back to
25 Highmore, was that different than what the Attorney

1 General had previously told you?

2 A. Yes, it was.

3 Q. How so?

4 A. He had told us that his only phone usage was to call
5 his father those two times, and then when we were able to
6 obtain that data, it showed that he had been checking
7 e-mails and also going online and accessing different
8 websites.

9 Q. Did you ask him about that in the second interview?

10 A. Yes, I did.

11 Q. What was his response?

12 A. Initially he maintained that he had just used the
13 phone for the phone calls. And then I started asking
14 more about how he accesses his e-mail and if that was
15 possible, and then he acknowledged that he may have
16 checked some of his e-mails and that eventually got to
17 the point where he acknowledged that he also goes on and
18 browses news headlines.

19 Q. And so did this subject about phone usage come up
20 throughout the second interview repeatedly?

21 A. Yes, it did.

22 Q. Would you characterize his responses to you as
23 forthcoming?

24 A. No. The way I would characterize it is he was only
25 willing to acknowledge something once he knew we knew the

1 information already.

2 Q. Even though he knew that you already had his phones;
3 right?

4 A. Correct.

5 Q. I want to show you four different clips from your
6 interview referencing those inquiries.

7 (Video presentation.)

8 Q. (BY MS. TRACY) And do those clips show a
9 progression of those inquiries throughout that interview?

10 A. Yes, they do.

11 Q. By the time of this interview do you know that
12 Joe Boever was not struck in the middle of the road?

13 A. Yes, we do.

14 Q. And what information have you received to that end?

15 A. We had received the information from the South
16 Dakota Highway Patrol's work that it had been on the
17 shoulder of the road.

18 Q. You had also been out to the crash scene yourself?

19 A. Yes, I had.

20 Q. And observed the debris and items there?

21 A. Yes.

22 Q. And was there anything from that scene that led you
23 to believe that this happened -- Mr. Boever was struck in
24 the middle of the road?

25 A. No.

1 Q. Did the Attorney General ever directly admit that he
2 was on the shoulder of the road in this interview?

3 A. Not directly.

4 Q. What did he tell you about that?

5 A. He made comments throughout the interviews that he
6 had been in the middle of the road, but then he also made
7 comments about who would ever have thought that a guy
8 would have been walking on the side of the road.

9 Q. So would you say that that's an indirect
10 acknowledgment that Mr. Boever was on the shoulder of the
11 road?

12 A. Yes.

13 Q. And you had mentioned in your law enforcement
14 background that you are a polygraph examiner?

15 A. That's correct.

16 Q. Why was a polygraph not used in this case?

17 A. Whenever you administer a polygraph -- a polygraph
18 is not an appropriate tool to use on every single case.
19 Each case has to be evaluated. And what happens is if
20 it's going to be considered is the examiners evaluate the
21 case to determine if it's a case that's proper for a
22 polygraph. We have to consider numerous different things
23 when we're looking at that.

24 We don't want to ever administer a test that we
25 don't have the confidence in our results. From the

1 nature of this, just with all of the facts of the case,
2 not only myself but a few other examiners did not feel
3 that it was a case that would allow for a test that any
4 examiner was going to have great confidence in the
5 results.

6 Q. And a lack of confidence in those results could
7 actually be more harmful to the suspect; correct?

8 A. It could be. Specifically in this case, I
9 personally felt, and so did the other examiners I spoke
10 to, that the likelihood that Mr. Ravensborg would fail
11 this test and show that he's lying were very great, to
12 the point where -- and just with the nature of it, we
13 wouldn't have been confident in those results for certain
14 due to the polygraph itself. And just the nature of
15 everything that we had discovered, we didn't think it
16 would be appropriate to use a polygraph at that time.

17 Q. And when you say would fail the polygraph,
18 regardless of whether or not he was answering the
19 question truthfully.

20 A. Correct. Regardless of whether he was being
21 truthful in everything he had told us up to that point,
22 we believed that it would be very likely that that sort
23 of test he would fail and show that he was lying about
24 it. And we didn't want to give him a test that could
25 potentially show he was lying when he was, in fact,

1 telling the truth on something.

2 Q. Okay. What -- well, before I ask that, and the
3 entirety of your two interviews with Mr. Ravensborg were
4 recorded; correct?

5 A. Correct.

6 MS. TRACY: And I would just reference if the
7 Senate wants more to those interviews and the transcripts
8 in the case as evidence.

9 Q. (BY MS. TRACY) What were some of the other things
10 that were done during the course of your investigation?

11 A. We interviewed the individuals who were at the
12 Lincoln Day Dinner. So the people that attended. We
13 also interviewed the waitress that was there who was able
14 to ensure us that Mr. Ravensborg had not been consuming
15 alcohol.

16 We did have a blood draw done on him on the 14th
17 also. We had went to the scene and done skid testing a
18 couple days after the accident where the Highway Patrol
19 tested the braking of his vehicle.

20 We went out to the scene several days after and used
21 a chemical that's supposed to show blood that maybe is
22 invisible to the naked eye -- in the dark when you
23 sprayed it, it will glow a bright blue color -- to see if
24 there had been blood towards the area of impact to help
25 determine specifically where that was.

1 Q. Did you receive the results of the autopsy in this
2 case?

3 A. Yes, we did. An autopsy was done, and we received
4 those results also.

5 Q. What was noteworthy about those results and the
6 discussion with the physician thereafter?

7 A. The results were -- I believe the terminology they
8 used was something along the lines of multiple impact
9 trauma to Mr. Boever. In a conversation that was had
10 with the medical examiner by Supervisory Special Agent
11 Arnie Rummel, the medical examiner stated that Mr. Boever
12 would have been hit on the front side, not in the back.

13 Q. Because the injuries that they observed in the
14 autopsy were consistent with being struck from the front?

15 A. Correct.

16 Q. Why was that important?

17 A. It showed -- Mr. Ravensborg was traveling west on
18 Highway 14; so it showed that Mr. Boever was traveling
19 east.

20 Q. You may have already mentioned this, but did you
21 interview other motorists who passed by?

22 A. Yes, we did. We interviewed numerous other
23 motorists that had passed by in the time -- around that
24 time frame up to all the way when -- around the time when
25 Mr. Boever's vehicle had been driven in the ditch and

1 struck the hay bale.

2 Q. And did you learn that some individuals had actually
3 seen him walking?

4 A. Yes.

5 Q. What else did you learn about that?

6 A. Learned that he had been seen walking. One
7 individual had actually stopped and asked him if he
8 wanted a ride. And they noted that he had some sort of a
9 flashlight -- whether it was a cell phone or
10 flashlight -- illuminated in his hand.

11 Q. And you received, during the course of your
12 investigation, contents of the cell phone exams conducted
13 on the Attorney General's cell phones?

14 A. Yes, we did.

15 Q. Did you re-interview Sheriff Volek?

16 A. Yes, we did.

17 Q. Why was that important?

18 A. The biggest reason that we wanted to interview him
19 again was because when we were out at the scene on the
20 13th we found a small flashlight laying along the
21 shoulder of the road basically right where the concrete
22 meets the grass.

23 And as of when we got there, and we didn't get there
24 until 5 o'clock that evening, that flashlight was still
25 turned on and still illuminating. And just through

1 investigation we were able to determine that was most
2 likely Joe Boever's flashlight that he had been carrying
3 that day.

4 And so in reviewing Sheriff Volek's report, he notes
5 that when he was out there he saw a light laying along
6 the shoulder of the road that was illuminating so I
7 wanted to speak with him about that light.

8 Q. In your interview with him do you recall if he
9 indicated he went all the way up to that light to take a
10 look at it?

11 A. He did not walk over to check out the light. He saw
12 it and thought it was part of the car that was still
13 illuminating.

14 Q. Do you recall if he indicated to you whether he
15 would have walked right by the body and not seen it
16 himself?

17 A. I don't recall if he said that, but if he had walked
18 to the flashlight, he would have walked right past the
19 body.

20 Q. But he didn't give any indication that he walked up
21 to it or --

22 A. Yeah. He said that he didn't walk up to it. He
23 could see it in the distance, but he never walked over to
24 further examine it.

25 Q. And you -- what was his explanation for that light

1 that he saw?

2 A. He thought it was part of Mr. Ravensborg's vehicle
3 that was still illuminating, even though it had been
4 disconnected from the rest of the vehicle.

5 Q. You also received the South Dakota Highway Patrol
6 reports and crash reconstruction?

7 A. Yes, I did.

8 Q. And how did that affect your investigation?

9 A. It assisted in the reconstruction in the path of the
10 vehicle. Then I believe our forensic -- or our cyber
11 forensic guy was able to provide speeds for the Highway
12 Patrol using the phone GPS. So that all was taken into
13 account.

14 Q. So there was some communication back and forth about
15 that?

16 A. Yes, there was.

17 MS. TRACY: Special Agent Arenz, I have no
18 further questions at this time.

19 PRESIDENT RHODEN: Cross-examine, Mr. Butler.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q. So Sheriff Volek did tell you he walked past where
23 Mr. Boever's body would have been while looking at the
24 light -- or while looking for the light.

25 A. No. I don't believe he said that.

1 Q. "Sheriff states he would have walked past
2 Mr. Boever's body to get to the flashlight." Quote.

3 A. Okay. I don't recall him telling me --

4 Q. You disagree with that statement appearing in a
5 Bureau of Criminal Investigation report?

6 A. No. I believe that it's there. I just don't recall
7 him specifically telling me that.

8 Q. Was Mr. Ravensborg resist -- or did he resist turning
9 over access or giving access to any investigative items
10 in this case?

11 A. No, he did not.

12 Q. With regard to the polygraph, why did you even offer
13 one if you had no intent to provide it?

14 A. At that moment when I offered him the polygraph I
15 hadn't made that determination yet. That was something
16 that was considered, but then after further discussion
17 with other examiners it was deemed that it wouldn't be
18 necessary -- or it wouldn't be appropriate. And it's not
19 an exam I would have done anyways. I would have had to
20 find an examiner to do it.

21 Q. So when you offered the polygraph examination did
22 you think at that time it could be appropriate?

23 A. I didn't know at that time, but I offered it. And
24 that is something we do once in awhile is offer something
25 that we may eventually not follow through on anyways.

1 Q. And you say you had a meeting with other
2 polygraphers?

3 A. That's correct.

4 Q. What are their names?

5 A. I had a meeting with Supervisory Special Agent Mark
6 Nickel, who's a polygraph examiner in North Dakota for
7 the Bureau of Criminal Investigation, and I also had a
8 phone conversation with Tyler Neuharth, who is a DCI
9 polygraph examiner.

10 Q. And I'm really trying to understand this. Because
11 your answer was confusing to me. You think Mr. Ravensborg
12 could have been telling the complete truth but failed the
13 polygraph; is that right?

14 A. I think that the polygraph was not going to be able
15 to answer the question on whether he was telling the
16 truth.

17 Q. For example, could you have fashioned a question,
18 Were you aware that you had struck and killed a human
19 being on the night of September 12, 2020?

20 A. No. That would not have been an appropriate
21 question at the time.

22 Q. I have spoken with a polygrapher who's been in the
23 business longer than you. He was with the Sioux Falls
24 Police Department, DCI, has taught polygraphy, and he
25 strongly disagrees that you could not fashion a question

1 for a polygraph exam on whether he was aware that he had
2 struck and killed a human being, which is why I'm not
3 sure how you can tell this body it was not possible.

4 A. I didn't say it wasn't possible. I said that we
5 didn't feel that it was appropriate. Polygraph is
6 somewhat subjective in that different examiners have
7 differing opinions on that. And I'm not saying that no
8 examiner anywhere would ever disagree with that, but the
9 ones I spoke to, we all agreed, including one of his
10 examiners himself who didn't think it was an appropriate
11 test.

12 Q. What was it about the Attorney General that would
13 have made him a unique person in any respect with regard
14 to administering a polygraph?

15 A. The unique part about this would have been that even
16 though his statement is that he didn't know what he hit
17 on the day of the accident, the next day he went there
18 and he saw what he hit and he saw the body, which is
19 going to always be engrained in his mind for the rest of
20 his life. And, as examiners, we did not feel we could
21 ask questions that that image of that body laying there
22 along this roadway wasn't going to pop into his mental
23 image -- that mental image wasn't going to pop up every
24 question we ask.

25 Q. Have you polygraphed people who were suspects who

1 knew specifically what they were accused of?

2 A. Yes.

3 Q. Even though they were denying it, you still offered
4 them a polygraph?

5 A. Yes.

6 Q. Okay. How did those turn out?

7 A. Various different ways. I've run a lot of polygraph
8 tests. Some have passed. Some have -- some have passed
9 and shown to be not showing any deception. Some have
10 shown deception.

11 Q. Are there techniques for attempting to determine
12 whether a person's anxiety, nervous condition, et cetera,
13 can be adjusted for during the course of a polygraph?

14 A. Yes.

15 Q. Did you ever inform the Attorney General that you
16 would not offer a polygraph?

17 A. I don't believe we ever did tell him that we
18 wouldn't. We just never came back with offering that
19 again and attempting to set one up or schedule one.

20 Q. When he told you that he would absolutely take a
21 polygraph and for you to set it up, the truth is you were
22 surprised, weren't you?

23 A. Not really.

24 Q. Okay. The technique of offering a polygraph
25 oftentimes is done to test the person who is denying what

1 he's being accused of. For example: You saw a human
2 being. He says, No, I didn't. You want to take a
3 polygraph? You expect him to say no, don't you?

4 A. No.

5 Q. And I noticed in none of your reports did you
6 mention that you had offered him a polygraph. Why was
7 that omitted?

8 A. I believe it is in one of the reports. I believe
9 it's in my interview report.

10 Q. Okay. It's in a transcript of your interview, but
11 do you recall putting it in a report?

12 A. I can't remember if it's in the transcript or in the
13 report or in both.

14 MR. BUTLER: Nothing else. Thank you.

15 PRESIDENT RHODEN: Do you wish to redirect the
16 witness?

17 MS. TRACY: Yes, Mr. President.

18 REDIRECT EXAMINATION

19 BY MS. TRACY:

20 Q. Agent Arenz, are you aware that Attorney General
21 Ravensborg had talked to Tyler Neuharth about a polygraph?

22 A. Yes, I am. Or that somebody had. I don't know if
23 it was specifically Attorney General Ravensborg or one of
24 his staff.

25 Q. Okay. And that Tyler Neuharth had advised that the

1 polygraph would not be valid?

2 A. I believe that was something that was said,
3 something along those lines. That's very similar to the
4 conversation myself and Tyler Neuharth also had.

5 Q. So it would be somewhat disingenuous to offer to do
6 something that you know wouldn't be valid anyway?

7 A. That's correct.

8 MS. TRACY: No further questions.

9 MR. BUTLER: I do have a follow-up.

10 That report that you were just showing, Counsel,
11 does it say in there Mr. Ravensborg spoke with Tyler
12 Neurath [sic]?

13 MS. TRACY: I don't know if questions are being
14 asked of me, but I was reviewing my notes to myself,
15 Mr. Butler.

16 MR. BUTLER: Does that report you were showing
17 the officer tell you that the Attorney General spoke with
18 Agent Neurath? Yes or no?

19 MS. TRACY: I don't know what report you're
20 referencing. I didn't show the witness a...

21 MR. BUTLER: You should. You were showing him
22 something.

23 RECROSS-EXAMINATION

24 BY MR. BUTLER:

25 Q. The fact is no one has said the Attorney General

1 spoke with an Agent Neurath here in South Dakota about
2 polygraphs.

3 Are you aware that he ever had that conversation?

4 A. Like I just said, I don't know that he ever did have
5 that conversation. I believe it was one of his staff
6 members spoke to Mr. Neuharth or Tyler Neuharth.

7 Q. Okay. A staff member spoke with Agent Neurath;
8 correct?

9 A. I believe so, yes.

10 Q. Okay. Was it at the Attorney General's request?

11 A. I have no idea.

12 Q. Was the Attorney General in any way, shape, or form
13 involved in that communication?

14 A. I do not know.

15 MR. BUTLER: That's all I have.

16 PRESIDENT RHODEN: Anything else, Mr. Vargo?

17 MS. TRACY: Nothing from this witness.

18 PRESIDENT RHODEN: Thank you. The witness may
19 step down.

20 (The witness is excused.)

21 PRESIDENT RHODEN: We are going to take a
22 10-minute recess. Back here at a quarter after.

23 (A short recess is taken.)

24 PRESIDENT RHODEN: The Senate will return to
25 order.

1 Ms. Tracy, you may call your next witness.

2 MS. TRACY: Thank you.

3 The Prosecution calls Special Agent Cassidy
4 Halseth.

5 (The oath is administered to the witness.)

6 DIRECT EXAMINATION

7 BY MS. TRACY:

8 Q. Will you please state your name and occupation.

9 A. Cassidy Halseth. I'm a Special Agent with the
10 Bureau of Criminal Investigation for the State of North
11 Dakota.

12 Q. What is your law enforcement background?

13 A. Started my law enforcement career in 2001. 2002 I
14 moved on to the Minot Police Department where I was an
15 officer there until 2017. 2011 I was brought into the
16 investigations unit at the Minot Police Department where
17 I kind of started specializing in cybercrimes, crimes
18 involving computers, cell phones, things of that nature,
19 became an active member of the Internet Crimes Against
20 Children Task Force.

21 In 2017 I took a position with the Bureau of
22 Criminal Investigation and was assigned to the cybercrime
23 unit, again kind of specializing in those crimes against
24 children.

25 Q. In your capacity with the BCI, did you have occasion

1 to become involved in a law enforcement investigation in
2 South Dakota in September 2020 regarding a pedestrian
3 being struck by the South Dakota Attorney General
4 Jason Ravnsborg?

5 A. I did. I was contacted via a text message from a
6 chief agent asking if there was agents available to
7 respond to South Dakota to assist with an investigation.

8 Q. And did you respond?

9 A. I did.

10 Q. Approximately when did you arrive down to the crime
11 scene then?

12 A. So where I'm located in North Dakota is a little bit
13 further away from Pierre than the other agents that
14 responded; so I was a couple hours behind them. I would
15 guess I got to the Highmore area approximately 5 to
16 6 o'clock, if I remember correctly.

17 Q. And what were some of your main roles in the
18 investigation?

19 A. So initially when we arrived on scene it was
20 myself and another agent from the Bismarck headquarters,
21 Pat Helfrich. Again, other agents were already there.
22 They were already starting to start their crime scene
23 processing. So I turned into more of an assisting role.
24 Whatever help those agents needed, as far as taking
25 photographs or whatever the case may be, I filled in

1 whatever they needed.

2 Q. Did you end up assisting specifically regarding your
3 areas of specialization with some of the technology
4 review?

5 A. I did. So that day -- I'm a drone pilot with the
6 bureau. Another agent there was also a drone pilot. I
7 assisted that agent with flying the drone, taking overall
8 drone scene pictures and collecting that data.

9 But that initial response, there was no other
10 technical stuff that was done that day.

11 Q. How about the next day?

12 A. So the next day I had responded with Agent Helfrich.
13 Again, Agent Helfrich is part of the cybercrime unit.
14 One of his specialties is vehicle forensics. So we
15 responded to where the vehicle was located, and I
16 assisted Agent Helfrich with attempting to recover data
17 from the infotainment center on the vehicle.

18 Q. Did Supervisory Special Agent Rummel ultimately that
19 day receive consent to search the Attorney General's
20 cell phones?

21 A. Yes. While we were working on the vehicle I got
22 word that the Attorney General's cell phone had been
23 turned over and that he had consented for the extraction
24 of the data from the phone to be completed. So I was
25 called away from the vehicle and started working on that

1 cell phone.

2 Q. And what type of phone was this phone that was
3 provided to you that day?

4 A. I was told that it was Jason Ravnsborg's personal
5 cell phone, and it was an LG model cell phone.

6 Q. When you conduct cell phone analysis or exams can
7 you give us an explanation of how that's done?

8 A. For the most part, we -- with the North Dakota
9 Bureau of Criminal Investigation we have two tools that
10 we use for most of our cell phone extractions. One of
11 them's probably very familiar with everybody -- or most
12 people in law enforcement side of things, and that would
13 be called the Cellebrite. So iPhone is connected to the
14 Cellebrite unit.

15 In this case I was using a Cellebrite universal
16 forensic extraction device PC version. So the phone was
17 plugged into a laptop computer. The software then
18 communicates with the cell phone to extract the data out
19 of the cell phone.

20 Q. And so in layman's terms are you trying to take,
21 say, a copy of that phone's contents?

22 A. That's exactly what we're trying to do. We're not
23 altering the content of the phone or the data on the
24 phone. We are trying to get a copy of the data that was
25 existing on the phone in the state when we received it.

1 Q. And then conduct an analysis of that copy of the
2 data?

3 A. Correct.

4 Q. How did that go on this phone?

5 A. Not well. That particular phone wasn't heavily
6 supported by Cellebrite or the other tool that we used to
7 extract cell phones. I was able to get an extraction
8 done on it, but the data that was recovered was pretty
9 minimal. Mainly consisted of things like pictures and
10 videos, things of that nature.

11 In my opinion, I knew that there was probably a
12 better way to get the data out of that phone. I just
13 didn't have the tools with me at that time to get that
14 data.

15 Q. So was the phone taken with you?

16 A. It was.

17 Q. And is it fair to say it took quite a while to find
18 the tools to extract data from that phone?

19 A. Yeah. I actually reached out to Cellebrite, the
20 company itself. They have a service called Advanced
21 Services where you can actually send cell phones to them.
22 Their engineers will then use different techniques to
23 recover the data from a phone, and then they'll return
24 that data along with the phone to you for your analysis.

25 Q. Once you received the contents of that LG phone and

1 you were able to finally search it and analyze the data,
2 did you discover anything noteworthy?

3 A. The biggest thing that stood out to me on that
4 particular cell phone, that LG cell phone, was that
5 Jason Ravnsborg was utilizing a third-party application
6 that basically one would use -- it gives the user of the
7 cell phone a benefit by not using their phone while
8 driving.

9 So you turn on the application while you're driving.
10 If you don't use your phone, you collect these rewards
11 that can be redeemed at different places, you know, for
12 all kinds of different things.

13 Q. And is that -- are you referencing the OnMyWay app?

14 A. That is correct. Yes.

15 Q. Did anything else that you discovered about the
16 contents of that phone indicate that the Attorney General
17 was using that personal cell phone after the Lincoln Day
18 Dinner on the ride back from Redfield to Highmore?

19 A. No. The only thing of note that was located on the
20 phone is there was some missed calls on the phone, but
21 nothing was answered. Some missed phone calls.

22 That phone appeared, again, to be you turn on that
23 application, you put that phone down in the car and
24 collect the benefits. Because you're not going to
25 obviously use it and get the benefits.

1 Q. Let's talk about the second phone, the Attorney
2 General's iPhone XR.

3 A. Correct.

4 Q. And did Supervisory Special Agent Rummel also
5 receive consent to search that work cell phone as well?

6 A. We did, yes.

7 Q. And when was that?

8 A. So that would have been on the morning of
9 September 14, probably late in the morning of
10 September 14.

11 Q. Okay. And did you subsequently utilize the
12 technology at your disposal to extract information from
13 that phone?

14 A. Yes. So that phone was hand-delivered to me by
15 Jason Ravensborg. I immediately started working and
16 processing on that cell phone. While that phone was
17 processing, though, I was contacted by a special --
18 Supervisory Special Agent Rummel, and he requested that I
19 return -- I was in Pierre at that time at the Department
20 of Public Safety office working on that phone. They had
21 given us some space. And Supervisory Special Agent
22 Rummel asked if I would return out to Highmore to assist
23 with recovery surveillance footage. So I left that phone
24 processing with Special Agent Helfrich so that I could go
25 do that.

1 Q. And what happened with the processing of that phone
2 thereafter?

3 A. So I ended up not ever returning back to Pierre.
4 While we were recovering the video surveillance footage,
5 the agents that were in Pierre were told to start heading
6 back. We were going to head back to North Dakota. So I
7 met with Agent Helfrich in between Pierre and Highmore.
8 He turned over my equipment that I had brought with,
9 along with the cell phones, and he had stated that the
10 extraction that I had started on the phone had failed and
11 that he didn't have time to restart it so that it needed
12 to still be processed.

13 Q. So once you got back to North Dakota did you run
14 further extraction on that phone?

15 A. We did. And, again, I knew right from the beginning
16 that we had a piece of hardware at headquarters in
17 Bismarck called a GrayKey that I knew was going to get us
18 the best extraction on that particular model of phone.
19 So as soon as we returned to Bismarck, that Apple
20 iPhone XR was put on the GrayKey unit and a full file
21 system extraction was completed on it.

22 Q. Is it fair to say there was a lot of data extracted?

23 A. Yeah. If I remember right, it was in the
24 20 millions or close to 20 million artifacts on that
25 phone.

1 Q. And what types of information were recovered?

2 A. All kinds of it. I mean, there was phone logs, text
3 messages, application installations, the screen time on
4 and off, if the phone was unlocked, if it was not locked,
5 data showing if the flashlight had been turned on and
6 off, you know, if third-party texting applications had
7 been used, GPS -- different GPS coordinates and
8 locations. It even documented like how many steps he
9 took around the time of the 911 call, things of that
10 nature.

11 Q. In your analysis of that data, did you break that
12 out into some reports?

13 A. I did. I thought it was prudent to kind of show the
14 usage of the cell phone. So using the data that I
15 recovered I was able to approximately determine when
16 Jason Ravensborg left Pierre for the dinner in Spink
17 County.

18 I documented then his travel from Pierre to there,
19 any of the phone usage that was done on the phone during
20 that time period. I then broke it down when he got to
21 the dinner to show the different types of usage that was
22 going on on the phone during the dinnertime.

23 I, again, was able to determine an approximate time
24 that he left that dinner and started to head back to
25 Pierre. So I documented the phone usage, travel, from

1 the dinner to -- up until the time of the 911 phone call.
2 And then I broke it down from the time of the 911 phone
3 call until the time he left Highmore. And then Highmore
4 to Pierre.

5 Q. In conjunction with that analysis, what were some of
6 the noteworthy things you recovered from the Attorney
7 General's work phone?

8 A. The biggest thing that I noticed is that he did use
9 his phone quite often while he was traveling. He was
10 checking his e-mails. He would be checking websites,
11 things like that, when he was traveling.

12 So when he was going to the dinner, activity like
13 that was going on. When he left the dinner, activity of
14 that such was going on. And I definitely noticed that
15 just a few minutes prior to the 911 phone call that there
16 was activity of e-mail being checked and web browser
17 activity showing that the user was manually looking at
18 some websites.

19 Q. Was it your understanding from the investigation
20 that the Attorney General had denied being on his phone
21 for his trip home?

22 A. That was my understanding.

23 Q. So the phone data you recovered refuted those
24 statements?

25 A. Correct.

1 Q. How does -- how is GPS data recovered?

2 A. So especially on a smartphone there's a lot of
3 different applications that are working to show that
4 phone's location. Because it's an important aspect as
5 far as the working of the phone -- you know, if you want
6 to use your Google Maps, you have to have a location.

7 Also the applications that you're using, they want
8 to track your behavior, where you frequent to travel,
9 things of that nature, so they can get you, you know, the
10 best advertisements and kind of target things towards the
11 things that you're looking at.

12 So there's a lot of social engineering that's going
13 on in the background, and GPS location is one of the
14 things that those applications, you know, want to focus
15 on.

16 Q. So the more the phone's being used, the more GPS
17 data you can have to recover?

18 A. I mean, that's all very dependent, but it seems the
19 more usage that the phone is doing, there's probably a
20 more chance or a greater chance that something's going to
21 interact with it that's going to want to know the GPS
22 location.

23 Q. What did the GPS data on the Attorney General's
24 phone tell you about the speeds he traveled on his way
25 back from Redfield to Highmore?

1 A. It showed that he was traveling -- sometimes he was
2 getting down to as low as 62 miles per hour, and his
3 phone speed got up to as high as 77 miles per hour as he
4 was driving between Redfield and Highmore.

5 Q. So if his phone is showing that it's traveling with
6 the vehicle at a maximum speed of 77 miles per hour but
7 the Attorney General's speedometer was reading 3 to 5
8 miles higher than that, he would have thought he was
9 traveling 80-plus miles per hour at that point?

10 A. I have no reason not to believe that.

11 Q. Certainly more than the at most 4 miles per hour
12 over that he told Special Agent Arenz?

13 A. That is my understanding.

14 Q. What data -- well, let me rephrase that.

15 Special Agent Halseth, did you note some of the GPS
16 time data in your original report?

17 A. I did.

18 Q. And were you asked to do some additional review of
19 the GPS data included in the phone contents in
20 preparation for today's proceeding?

21 A. I was.

22 Q. Including GPS data points for the phone travel
23 leading up to and through Highmore but also the GPS data
24 points and timing through and after the crash?

25 A. Yes.

1 Q. I want to show you a table that's from our GPS phone
2 data point table.

3 A. Sorry. I'm going to need my readers for this.

4 Q. And it's a two-page document there. Do you
5 recognize this document?

6 A. I do.

7 Q. And what does it depict?

8 A. It depicts the time and speed of the GPS coordinates
9 that I was able to collect from the cell phone, along
10 with some artifact times that were also collected off of
11 the cell phone.

12 Q. And so it's a true and accurate compilation of speed
13 and timing of other events from the phone contents that
14 you recovered on the Attorney General's work iPhone?

15 A. Correct.

16 Q. Depicting the second breakdown of the GPS data,
17 flashlight used, et cetera?

18 A. Correct.

19 MS. TRACY: I would note for the Senate that
20 this document has been provided to you in advance of
21 trial in the prosecution folder labeled "Cell Phone
22 Data," the document labeled "GPS Data Points."

23 Q. I want to show you what's been labeled "AG Driving."

24 Agent Halseth, do the blue lines on this diagram --
25 are they the GPS coordinates that are registering the

1 times and speeds that come from the phone data we just
2 referenced --

3 A. Yes.

4 Q. -- arising from the phone content you acquired?

5 A. Correct.

6 Q. And so those are plotted out on this "AG Driving"
7 diagram?

8 A. Correct.

9 Q. Now I want to show you what's been labeled "AG 911
10 Intervals."

11 Is the information displayed on this document
12 consistent with the data and location information
13 observed between the beginning and ending of the 911 call
14 the Attorney General made, as evidenced by the
15 information you recovered from his phone?

16 A. Yes.

17 Q. And, finally, I want to show you what's been labeled
18 "AG Walking Increments."

19 Does this document also contain data based upon the
20 GPS data you retrieved from the iPhone in question?

21 A. It does.

22 Q. At 10:33 p.m. how many GPS data points does the
23 phone register?

24 A. I'm sorry. Can you repeat that time? I didn't
25 catch it.

1 Q. Yes. At 10:33 p.m. -- after 10:33 p.m., excuse me,
2 how many GPS data points does the phone register?

3 A. Four.

4 Q. And, as we analyze this, why would we have a
5 six-minute gap of GPS coordinates from the time that the
6 phone flashlight goes on at 10:33 until the flashlight
7 goes off?

8 A. The data was basically a null set. It was
9 inaccurate. Or I shouldn't say inaccurate. That's a bad
10 term.

11 There was no accurate GPS points recorded on the
12 phone in between 10:26 and 10:33, and I don't really have
13 an explanation for why.

14 Q. And you testified that there were all of these other
15 GPS data points registering on the Attorney General's
16 phone throughout the day, following the Redfield dinner,
17 tracking back through Highmore, at the crash, and then
18 after 10:33 p.m. when the Attorney General is stopped
19 roadside there are only four data points for GPS; is that
20 correct?

21 A. Correct.

22 Q. Certainly, there's other information that indicates
23 that the phone still is used thereafter; right?

24 A. There is.

25 Q. With text messages, a photograph text message of the

1 photo of his vehicle that he sends?

2 A. That is correct. I know there were some phone calls
3 and some texting and a picture sent after leaving the
4 accident scene heading back towards Pierre.

5 Q. But no additional GPS data points?

6 A. No.

7 MS. TRACY: Agent Halseth, I have no further
8 questions at this time.

9 PRESIDENT RHODEN: Mr. Butler, you have the
10 witness.

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q. You indicated that the Attorney General denied using
14 his cell phone between Redfield and Highmore?

15 A. That is what I was told. I never spoke with the
16 Attorney General, but that's kind of the general
17 consensus that I got from the agents that had spoke with
18 him.

19 Q. Well, I can tell you he was on the phone for
20 25 minutes with his father.

21 A. You are absolutely correct. I did forget about
22 that, yeah. I think he did reference that he made a
23 phone call, but other than that phone call, he wasn't on
24 his phone.

25 Q. When you receive a phone from someone do you

1 typically attempt to ascertain whether or not there's
2 been any effort to alter or remove or eliminate data from
3 the phone?

4 A. Yeah. We'll normally be able to tell that once we
5 get the extraction completed on the phone. We'll be able
6 to see if there's any type of manipulation that way.

7 Q. Was that done in this case?

8 A. Absolutely.

9 Q. And any data you could tell that was altered,
10 eliminated, or removed?

11 A. Not that I can tell, no.

12 Q. And from your report or reports --

13 A. Actually could I answer that question a little more
14 truthfully. I mean, there were some things that were
15 deleted, but I have nothing to believe that the things
16 that were deleted on the phone were done in any type of
17 inappropriate fashion, I guess.

18 Q. That the phone, or the cell phone that had been
19 examined, the work phone, was in locked mode or locked
20 position at least 90 seconds prior to the collision; is
21 that correct?

22 A. I don't know the times right off the top of my head,
23 but it was around a minute or two, if I remember
24 correctly.

25 Q. And nothing you've testified to here today changes

1 that conclusion?

2 A. No.

3 Q. To your knowledge, were your reports and findings
4 disseminated to all appropriate parties, including the
5 prosecutors in this case?

6 A. That's my understanding, yes.

7 MR. BUTLER: I don't have anything else. Thank
8 you.

9 PRESIDENT RHODEN: Redirect?

10 MS. TRACY: Nothing further from this witness.

11 PRESIDENT RHODEN: Thank you. The witness may
12 step down.

13 (The witness is excused.)

14 PRESIDENT RHODEN: You may call your next
15 witness.

16 MR. VARGO: Call Special Agent Brent Gromer.

17 (The oath is administered to the witness.)

18 PRESIDENT RHODEN: Mr. Vargo, you may proceed.

19 MR. VARGO: Thank you, Mr. President.

20 DIRECT EXAMINATION

21 BY MR. VARGO:

22 Q. Special Agent Gromer, would you please introduce
23 yourself to the members of the Senate.

24 A. My name is Brent Gromer. I am a retired supervisory
25 special agent with the South Dakota Division of Criminal

1 Investigation.

2 Q. Can you give us just a very brief background in your
3 training and experience as a law enforcement officer and
4 perhaps a little bit about what positions you served in
5 as a law enforcement officer, especially around the end
6 of your career with DCI?

7 A. I spent 25 years in law enforcement in South Dakota.
8 The last little over 22 and a half years was with the
9 Division of Criminal Investigation where I investigated
10 all types of felony crimes.

11 The latter part of my career, about the last half of
12 my career with the South Dakota DCI, I was assigned to
13 the South Dakota Internet Crimes Against Children Task
14 Force, and the last eight years of my career I was the
15 supervisor over the South Dakota Internet Crimes Against
16 Children Task Force, as well as the Electronic Crimes
17 Unit for the Division of Criminal Investigation where I
18 oversaw the forensic examinations done in South Dakota.

19 Q. And is there -- the interplay between the Internet
20 Crimes Against Children and the -- I think you called it
21 the digital crimes unit?

22 A. Yes.

23 Q. Is that simply because many of our internet crimes
24 against children involve technology?

25 A. Yes. That's correct.

1 Q. And at that point would you say that you would have
2 occupied the highest position in the DCI as it related to
3 the examination of forensic devices?

4 A. Yes. That's accurate.

5 Q. And you said you did that for eight years?

6 A. Yes.

7 Q. I would like to direct your attention to about the
8 middle of September of 2020, shortly after the crash that
9 brings us here today.

10 Do you know the date that I'm talking about?

11 A. I do.

12 Q. And were you in Pierre shortly after that crash?

13 A. I was.

14 Q. And for what reason?

15 A. We were actually conducting new agent interviews to
16 hire a new ICAC agent.

17 Q. Okay. And were you basically borrowing space from
18 somebody?

19 A. We were. We were utilizing a conference room in the
20 headquarters at the Mickelson building here in Pierre.

21 Q. And at that point the Attorney General had been in
22 office for just a little over a year and a half
23 basically?

24 A. Yes.

25 Q. Up to that point, what was the nature of your

1 contact, direct contact, with the Attorney General?

2 A. Very limited.

3 Q. Okay. Describe what you mean by "very limited."

4 A. I don't -- I don't recall ever having a private
5 conversation with him prior to that, with just he and I.

6 Q. Okay. Had you ever had an extended conversation
7 with him about your job or the needs of your department
8 or anything like that?

9 A. No. Never.

10 Q. Would that principally have gone through chain of
11 command essentially?

12 A. Correct.

13 Q. Okay. When you were in Pierre getting ready to
14 interview these potential agents did you notice that
15 the Attorney General was in the same vicinity that you
16 were?

17 A. I saw him come to the door, and he and Director
18 Natvig left the office that I was in.

19 Q. Okay. And shortly thereafter the Attorney General
20 returned to the office that you were in?

21 A. He came to the doorway, yes.

22 Q. And what did he do when he got to the doorway?

23 A. He motioned for me to follow him.

24 Q. And where did he take you?

25 A. To Director Natvig's office.

1 Q. And at that point where was Director Natvig?

2 A. I was not -- I'm not sure where he was when we
3 walked in. He was not in the office when we walked into
4 the office.

5 Q. Did he join you at some point during the
6 conversation that we're about to discuss?

7 A. Yes, he did.

8 Q. Okay. When the Attorney General summonsed you to
9 Director Natvig's office what was the topic that he led
10 with?

11 A. He wanted to ask me about evidence that could be
12 recovered from a cellular telephone.

13 Q. Was there any pretense that this was about him
14 educating himself on the activities of your unit?

15 A. No.

16 Q. Or a criminal case in which the State of South
17 Dakota was prosecuting?

18 A. No.

19 Q. Or his office was prosecuting. I should be more
20 exact.

21 A. No.

22 Q. How do you know that?

23 A. Just based on the context. He immediately asked
24 about information that could be recovered from a cell
25 phone and started referring to his own phone.

1 Q. What specific questions did he have about the
2 capacity of a forensic expert to seize data from his
3 phone?

4 A. Specifically he had asked me about an app that was
5 on his personal phone or what he called his campaign
6 phone, the OnMyWay app. And he stated that this phone
7 would ping even when it was locked or in airplane and was
8 questioning whether or not that app would make it appear
9 that the phone was being used when, in fact, it was not.

10 Q. And were you able to reassure him that the very
11 nature of the app is to show that you're not using your
12 phone?

13 A. Correct.

14 Q. Did that seem to put him at ease somewhat?

15 A. No. Then he switched and asked questions about
16 whether or not the activation of the flashlight would be
17 recoverable, as well as any e-mails and things of that
18 nature.

19 Q. And, again, was there any pretense that this was
20 about anything related to your job?

21 A. No. He was actually talking about facts of the
22 investigation.

23 Q. Were you uncomfortable with this?

24 A. Yes.

25 Q. Why?

1 A. We were not supposed to be involved. We conflicted
2 out of this investigation and contacted North Dakota to
3 do the investigation, and we were not supposed to have
4 anything to do with it.

5 Q. Have you ever given a criminal defendant expert
6 advice where the State of South Dakota is prosecuting
7 that criminal defendant?

8 A. Not outside a criminal trial.

9 Q. When you're called at a trial you simply testify to
10 the facts.

11 A. Correct.

12 Q. But if, for instance, the Brown County State's
13 Attorney's Office were prosecuting the case and a
14 criminal defendant called you and wanted to know from you
15 things that would help them prepare their case, would you
16 participate in that process?

17 A. No, I would not.

18 Q. Would you have participated in this process if it
19 weren't the Attorney General himself that was asking you
20 to participate?

21 A. No, I would not.

22 Q. Special Agent Gromer, have you had a chance to
23 listen to some of the testimony that was presented to the
24 House Special Investigative Committee?

25 A. Yes, I did.

1 Q. And specifically did you listen to testimony that
2 was given by Mr. Bormann and Mr. Natvig?

3 A. Yes, I did.

4 Q. And are there any portions of that testimony that
5 you would take issue with?

6 A. Yes.

7 Q. And specifically what are they, sir?

8 A. The context of that meeting, I believe, was -- the
9 meeting that I had between the Attorney General and
10 myself was minimized, and there were certainly aspects of
11 that testimony that were not factual.

12 Q. Let's go, first of all, to the minimization. What
13 do you mean by that?

14 A. It was referred that the meeting was just a
15 happenstance meeting by the water cooler between two
16 individuals that knew each other. That was not the
17 correct context. And then as far as the -- the context
18 was minimized that it was just a happenstance.

19 Q. And then what about you referenced that there were
20 some things that you believe were just flat out wrong.
21 What were those?

22 A. That's correct. There was statements that the
23 conversation was just about transferring data between a
24 cell phone as they were trying to exchange those cell
25 phones and that it was just about moving contacts and

1 things of that nature. That was not correct.

2 Q. Special Agent, I do want to ask you one other
3 question. You've been involved in how many searches that
4 related to electronic devices over the course of your
5 career?

6 A. Thousands.

7 Q. At any point when you were interested in seizing or
8 examining a cell phone and one for which you believe you
9 had probable cause and, if necessary, could obtain a
10 search warrant, have you ever had a defendant tell you,
11 well, I'll give one phone but I won't give you the other
12 one?

13 A. During the course of an investigation we've had them
14 turn over certain phones and not others, yes.

15 Q. And if that happens, do you just let the other phone
16 walk out the door, or would your process be then to go
17 get a warrant for that phone?

18 A. If we have probable cause to support affidavits in
19 support of a request for a search warrant, we would
20 complete that document and attempt to get a search
21 warrant for that device.

22 MR. VARGO: Thank you, Special Agent Gromer. I
23 have no further questions on direct.

24 PRESIDENT RHODEN: Thank you.

25 Mr. Butler, you have the witness.

CROSS-EXAMINATION

BY MR. BUTLER:

Q. What date did this conversation take place?

A. On September 15 of 2020.

Q. Three days following the accident?

A. I believe that's correct.

Q. Was Mr. Ravensborg a defendant at that point in time?

A. He was certainly a subject in a criminal investigation that I was aware of.

Q. Was he a defendant at that point in time?

A. I guess it depends on -- he was not charged at that point in time; so if that's when the title of defendant kicks in, he was not charged at that time.

Q. Do you know whether he had either his personal or his work cell phone any longer in his possession when he spoke to you?

A. I do not know. I do recall he handed a phone case to someone, but I did not see a cellular phone.

Q. He had turned his personal phone over on the 14th of September. Are you aware of that?

A. I'm not. But okay.

Q. And on the morning of the 15th prior to speaking to you he had turned his work phone over to the Department of Public Safety. Were you aware of that?

A. I don't know that information.

1 Q. With that information in mind, could you tell me
2 what advantage the Attorney General gained by having that
3 conversation with you?

4 A. It's speculation. It may prepare him for a later
5 interview to be able to explain some of the data that may
6 have been recovered on his phone.

7 Q. What information did you give him that would help
8 prepare him?

9 A. I didn't say that I gave him any information, but
10 that may have been some of the information. I told him
11 in generalities what data would come off the phone and
12 basically explained to him that if he was on his phone at
13 the time of the accident, the digital evidence would show
14 that, and if he was not, the digital evidence would also
15 show that.

16 Q. That wouldn't particularly be inside baseball
17 information, would it?

18 A. No. I didn't give him any inside baseball
19 information.

20 Q. So you didn't give him anything. So going back to
21 my question, what advantage did he gain by asking you how
22 something might work when his phones were already turned
23 over into evidence?

24 A. I don't know, I guess. I don't know how to answer
25 that.

1 MR. BUTLER: That's all.

2 PRESIDENT RHODEN: Redirect, Mr. Vargo.

3 MR. VARGO: Briefly, Mr. President.

4 REDIRECT EXAMINATION

5 BY MR. VARGO:

6 Q. Special Agent Gromer, you've also done interviews
7 with criminal defendants, have you not?

8 A. I have.

9 Q. Or, in this case, I suppose, more accurately,
10 criminal suspect?

11 A. Correct.

12 Q. Is it useful to the suspect when doing an interview
13 to know what you know?

14 A. It would be.

15 Q. In other words, to know what information you already
16 have or what information you may later obtain?

17 A. Correct.

18 Q. Would that be of advantage to the suspect?

19 A. I believe so.

20 Q. And from your answers to Mr. Butler, is it fair to
21 say that you tried to avoid any kind of detail here?

22 A. I did.

23 Q. Why?

24 A. Because he was a criminal defendant -- or criminal
25 suspect at that time, and I knew there was a criminal

1 investigation that was ongoing.

2 MR. VARGO: Thank you, sir.

3 MR. BUTLER: I have no questions.

4 PRESIDENT RHODEN: Thank you.

5 The witness may step down.

6 (The witness is excused.)

7 PRESIDENT RHODEN: Mr. Vargo, you may call your
8 next witness.

9 MR. VARGO: Call Supervisory Special Agent
10 Arnie Rummel.

11 (The oath is administered to the witness.)

12 PRESIDENT RHODEN: Mr. Vargo, you may proceed.

13 MR. VARGO: Thank you, Mr. President.

14 DIRECT EXAMINATION

15 BY MR. VARGO:

16 Q. Special Agent Rummel, would you introduce yourself
17 to the members of the Senate.

18 A. My name is Arnie Rummel. I'm a Supervisory Special
19 Agent for the Bureau of Criminal Investigation for the
20 State of North Dakota.

21 Q. Please repeat your answer.

22 A. My name is Arnie Rummel. I am a Supervisory Special
23 Agent for the Bureau of Criminal Investigation for the
24 State of North Dakota.

25 Q. And in that capacity, sir, have you become the

1 supervisor overseeing the investigation into the
2 affairs of the death of Joe Boever and the involvement of
3 the South Dakota Attorney General Jason Ravnsborg?

4 A. Yes, I have.

5 Q. Have you previously testified before the House
6 Subcommittee on investigations in this matter?

7 A. Yes, I have.

8 Q. And did you at that time express to the House
9 Special Committee your opinion that the Attorney General
10 had not been truthful with you during the course of this
11 investigation?

12 A. I did.

13 Q. Special Agent Rummel, I'm going to tell you that --
14 well, I'm going to ask you, I guess, first.

15 Did they ever ask you to elaborate in what ways you
16 believed that Mr. Ravnsborg had been untruthful?

17 A. No. Not specifically.

18 Q. Okay. That's what I'm going to do today.

19 But before we get there to any kind of specifics, I
20 want to ask you is there an overarching reason that you
21 would conduct more than one interview with a witness or a
22 suspect, either one?

23 A. Yes.

24 Q. And what are some of those reasons, sir?

25 A. So one of the reasons is we get the person locked

1 into the story of the events of the day. In this
2 specific case it was prior to us having the information
3 that we were going to get from the evidence that we had
4 collected, but we wanted to know the version of what
5 happened coming from the person that was involved in the
6 event.

7 Q. And particularly if that first interview was
8 conducted early in the investigation, is it sometimes
9 useful to go back to again either a witness or a suspect
10 and ask more detailed questions when additional
11 information has been unearthed by the investigation
12 itself?

13 A. Yes. As more information is brought out or more
14 evidence is obtained, whether it be from witnesses or
15 from the crime lab, we would go back and speak to the
16 person to get the -- what their answers are, in light of
17 what we knew at that point in time.

18 Q. So I'm going to ask you about some very specific
19 factual scenarios. During the course of your interviews
20 with Mr. Ravensborg did he inform you, I think multiple
21 times, about where he had walked during the process of
22 his call to 911?

23 A. Yes. He said he walked past the piece of debris on
24 the shoulder of the road when he was on his walk with
25 911.

1 Q. And during the course of that did he also express to
2 you or tell you what his motivation was for doing so?

3 A. He said he wanted to make sure that it was Highmore
4 that he had traveled through, that it was the city of
5 Highmore, rather than something different.

6 Q. And, specifically, did he say what he was looking
7 for to make sure that it was Highmore?

8 A. It was the sign indicating Highmore was the town
9 that he had driven through.

10 Q. Had you seen that sign in the course of your
11 investigation?

12 A. Yes. Numerous times.

13 Q. And can you describe it? I mean, we're not talking
14 I-90 here; so can you describe what the sign looks like?

15 A. It's a green and white sign. It's approximately two
16 and a half feet wide. I believe it has a white border on
17 it. Just on the outskirts of Highmore.

18 Q. Okay.

19 MR. VARGO: So if we could play clip number 2
20 and clip number 13, please.

21 (Video presentation.)

22 MR. VARGO: Sorry. Lag.

23 Q. (BY MR. VARGO) So when he describes both walking
24 toward Highmore to see the sign and then back to the car
25 and where he took the photograph, is your impression of

1 that first clip that he's talking about the entirety of
2 the time that he's away from his car?

3 A. Yes.

4 Q. Okay.

5 MR. VARGO: So if we could play number 13.

6 (Video presentation.)

7 Q. (BY MR. VARGO) So at the time of this second
8 interview, Special Agent Rummel, did you have concerns
9 over whether or not what the Attorney General was telling
10 you was truthful?

11 A. Yes, I did.

12 Q. Why?

13 A. Part of the --

14 Q. Closer to your mic, please.

15 A. Part of the evidence collection is we're confirming
16 the statements that he made. So I actually went out
17 there at night to determine how close you had to be to
18 the sign to actually see the sign and to be able to read
19 the sign.

20 MR. VARGO: So if we can pull up the driving
21 intervals.

22 Q. (BY MR. VARGO) Special Agent Rummel, this is kind
23 of a conglomeration of data entered by the Highway Patrol
24 as it relates to certain physical evidence and then the
25 information that Special Agent Halseth was able to

1 retrieve from the phone.

2 Are you familiar with this diagram?

3 A. Yes, sir. I am.

4 Q. So if we use the large piece of debris as the rough
5 point that Mr. Ravensborg was describing, from that
6 location roughly how far is it to the Highmore sign?

7 A. About 475 feet.

8 Q. And when you recreated this event the next night did
9 you get close to the sign -- excuse me. Did you get
10 close to the spot that Mr. Ravensborg had described?

11 A. I'm sorry. I didn't catch the last part.

12 Q. When you recreated this event the next night did you
13 get close to the spot that Mr. Ravensborg described?

14 A. Yes. I walked the distance to where the sign --
15 where I was able to actually read the sign.

16 Q. And in order to do that did you have to go far
17 beyond where Mr. Ravensborg had described?

18 A. Yes, I did.

19 Q. Now you do wear glasses.

20 A. That is correct. It's for astigmatism and for
21 reading.

22 Q. Does that have any impact on your ability to see
23 things at a distance?

24 A. No. I actually have 20/20 and 20/15 in separate
25 eyes.

1 Q. Okay. Do you remember how far you had to get beyond
2 where that piece of debris had been before you could see
3 the Highmore sign?

4 A. Yes. I had to -- there's a fence line that borders
5 the State shop that's out there. I had to get to that
6 fence line before I could actually read the Highmore
7 sign.

8 Q. And that Highmore sign, is there any illumination on
9 it in the normal course of events?

10 A. It's reflective so if there's light shining on it,
11 the light would allow people to see it better, but in
12 this particular case it was at night. There was no
13 headlights; so it's not illuminated at all. You can see
14 it in the distance, but it isn't lit up.

15 Q. Okay. And you just mentioned something about
16 headlights, though. Do we know whether or not there were
17 other vehicles on the road at the time that Mr. Ravensborg
18 was looking at the sign?

19 A. Mr. Ravensborg said he did not believe he was passed
20 by any vehicle while he was standing out -- or while he
21 was at the scene of the crash.

22 Q. So as far as he told you, the light -- or the sign
23 would have been unilluminated?

24 A. That is correct.

25 Q. Now once Special Agent Halseth had done some

1 additional work with the GPS data --

2 MR. VARGO: Would you pull up the 911
3 increments, please -- intervals.

4 Q. -- did you have additional concerns about the
5 veracity of the description that Mr. Ravensborg had given
6 you?

7 A. Yes, I did.

8 Q. So as we look at this diagram, the 911 intervals,
9 this represents the GPS locations for the entirety of the
10 911 call.

11 A. That is correct, sir.

12 Q. And I think we used every five seconds because
13 otherwise it just got way too busy.

14 A. Yes.

15 Q. But what is the furthest east from the place where
16 the Attorney General's vehicle stopped that he ever
17 walked while he was still on 911?

18 A. Somewhere around 100 feet is the furthest he got
19 from his vehicle.

20 Q. And that would mean an additional 300 feet to the
21 west compared to that piece of debris, roughly?

22 A. That is correct.

23 Q. So if you couldn't see it from 400 some feet, are
24 you likely to be able -- 475, I think is what you said?

25 A. That is correct.

1 Q. Is there any chance you're going to be able to see
2 it from 775?

3 A. Absolutely not.

4 MR. VARGO: And if we could pull up the walking
5 increments, please.

6 Q. (BY MR. VARGO) This last diagram, Special Agent
7 Rummel, I am referencing as walking increments. And I
8 believe it shows us two related but somewhat separate
9 sets of GPS data.

10 To the right we see a number of -- I think those are
11 the black ones. A number of GPS data points which are
12 numbered 1 through 5. Do you see those?

13 A. I do.

14 Q. And based on the fact that the GPS and the phone
15 data are drawn from the same device, can we reliably
16 compare the GPS data with other events that occur on the
17 phone?

18 A. Yes.

19 Q. So, for instance, we know that the 911 call ends at
20 10:26:44. And the GPS data point number 1 is at
21 10:26:47; so three seconds later.

22 A. That is correct.

23 Q. And we know that at 10:26:59 the flashlight comes on
24 the phone.

25 A. That is correct.

1 Q. And that -- excuse me. That data point, 10:26:59,
2 represents further down the road than any of the previous
3 data points that were made while the Attorney General was
4 on the phone with 911.

5 A. Yes, sir.

6 Q. And then we have two more data points proceeding
7 down the road. They now get spottier; so we have
8 10:27:05 and 10:27:09.

9 A. Yes, sir.

10 Q. And then the next data point in terms of time
11 returning to the vehicle would be number 6, which is
12 listed at 10:33:25.

13 A. Yes, sir.

14 Q. So that's roughly a discrepancy of six minutes and
15 change.

16 A. Correct.

17 Q. And then we have four -- excuse me -- three more
18 data points, a total of four, in the next 10, 15 seconds,
19 all clustered around the vehicle?

20 A. Yes, sir.

21 Q. And according to Special Agent Halseth, those are
22 our remaining GPS data waypoints. That's all we've got.

23 A. That's correct.

24 Q. What I want to ask you, first of all, Special Agent
25 Rummel, is whether or not that is then consistent with

1 the description that Mr. Ravensborg gave you of where he
2 walked with reference to the large piece of debris.

3 In other words, is six minutes enough time to get up
4 to that and then get back to the vehicle?

5 A. To the debris?

6 Q. To the debris and back to the vehicle.

7 A. Yes.

8 Q. Would that even be very much of a stretch?

9 A. No. Not at all.

10 Q. And in that description, sir -- that's actually the
11 next area that I'd like to cover with you. In that
12 description is Mr. Ravensborg very adamant that he walked
13 up to that large piece of debris?

14 A. Yes, he is.

15 Q. And slightly past it?

16 A. Yes.

17 Q. Knowing what you know, can you envision any
18 mechanism by which a person could walk down the shoulder,
19 past a large piece of debris with a flashlight on,
20 scanning the ditch, and not see the body of Joe Boever?

21 A. No. I don't believe it's possible.

22 Q. And was that an opinion that you formed even during
23 the first and second interviews prior to the GPS data?

24 A. Yes.

25 Q. What makes you think that that's true?

1 A. Due to the fact that Mr. Boever's deceased and he is
2 completely white, he's laying just off of the roadway
3 within two feet, and if you're scanning with a white
4 light, a light from your flashlight or from a camera
5 light and you go across a white anything, it's
6 reflective. So, therefore, you would see it. It
7 would -- it would stick out. And there isn't any way you
8 can go by without seeing that.

9 Q. Special Agent, are you familiar with all of the
10 photographs that were taken by all of the various
11 agencies, your own and the South Dakota Highway Patrol,
12 the drone footage, whatever, that were taken in this
13 case?

14 A. Yes. I'm familiar with all of them.

15 Q. From those, we have selected seven which we believe
16 is appropriate for the Senators to view as against the --
17 the statement that you just made that the body would have
18 been highly visible to anybody walking in the vicinity.

19 MR. VARGO: Mr. President, it would be my
20 suggestion at this time -- I have one or two more
21 questions prior to this moment, but I do believe that it
22 would be appropriate then to release the Senators. We
23 have physical copies of those photographs to protect the
24 family of Mr. Boever from those being accidentally
25 disseminated from this chamber.

1 We will set up two copies on each lobbying area.
2 And I am going to ask the witness a couple of questions
3 about two of them in particular, but there are a total of
4 seven. I will tell you that they are not pleasant, but I
5 do believe that they're very important and would ask your
6 indulgence in actually viewing them.

7 If we want to do that consistent with the lunch
8 break, we could possibly make happen at the same -- or
9 subsequently so that we don't have to break, reconvene,
10 and then break again. But that's up to you,
11 Mr. President.

12 PRESIDENT RHODEN: I believe -- I would just as
13 soon that we wrap up this testimony. And so I think we
14 should --

15 MR. VARGO: Very good. I'll ask my questions,
16 and then I'll ask the President for the indulgence of
17 five minutes for the Senators to go see those particular
18 photographs.

19 PRESIDENT RHODEN: Very good.

20 Q. (BY MR. VARGO) Special Agent Rummel, within the
21 seven photographs that we've selected some are largely to
22 ensure that the people understand the relationship
23 between that large piece of debris and Mr. Boever.

24 A. Yes, sir.

25 Q. But I'm going to ask you about two in specific.

1 Photograph number 2 and photograph number 7, what do they
2 depict that, again, feeds your opinion that Mr. Ravensborg
3 was not being truthful with you when he said he had not
4 seen Mr. Boever's remains?

5 A. I believe that from that point of view you would see
6 the whiteness as you went by.

7 Q. And so is number 2 a photograph taken facing east?

8 A. That is correct.

9 Q. And probably 5 to 10 feet before you actually are
10 even with Mr. Boever?

11 A. Yes.

12 Q. And then photograph number 7 is the same thing but
13 coming west and, again, 5 to 10 feet taken from the
14 shoulder?

15 A. Yes. They're from both sides of where the victim's
16 body was -- came to rest.

17 MR. VARGO: All right. Mr. President, if we
18 could take that five minutes to allow the Senators to
19 view those photographs.

20 PRESIDENT RHODEN: Yeah. We'll be at ease for
21 five minutes while the Senators view the photographs, or
22 less than that if all the Senators are -- as soon as the
23 Senators are back in the seat, we'll go back to
24 questioning.

25 (Senators view the photographs.)

1 PRESIDENT RHODEN: Members of the Senate, the
2 audience, we are going to, I think, take a break now for
3 lunch for one half hour. So it is 12:20 now. We will
4 back in at 10 minutes until 1:00.

5 And, Senators, there is pizza in the lobby. And
6 I would make an announcement that the downstairs
7 cafeteria in the Capitol basement is open; so if you want
8 to grab some lunch down there. With that, we will be in
9 recess until 10 until 1:00.

10 Thank you.

11 (A lunch recess is taken.)

12 PRESIDENT RHODEN: Senate will come to order
13 again.

14 Mr. Vargo, you may proceed.

15 MR. VARGO: Thank you, Mr. President.

16 Q. (BY MR. VARGO) Special Agent Rummel, I want to go
17 back to the question of what the Attorney General would
18 have seen or could not have seen.

19 In addition to just kind of the physical facts, the
20 sharp contrast between Mr. Boever's body and the
21 surrounding area -- and for those that maybe chose not to
22 look at the pictures, and I certainly understand that --
23 Mr. Boever was originally dressed in darker clothing,
24 wasn't he?

25 A. Yes, he was. Yes, he was.

1 Q. So a dark blue shirt and blue jeans.

2 A. Blue jeans. Correct.

3 Q. Did it appear to you that the traumatic nature of
4 the crash had essentially -- if not removed those, had
5 bunched them in such a way that almost -- most of his
6 body was visible?

7 A. Yes, sir. That's accurate.

8 Q. And is that part of what you were saying when you
9 said a white object against a dark background with a
10 flashlight would show up quite visibly?

11 A. That is correct.

12 Q. But in addition to all of that, Special Agent, was
13 there something about -- or was there anything about the
14 way that the Attorney General described how he was
15 scanning the ditch that stood out to you?

16 A. His description was he was scanning the ditch, and
17 as he was describing it he was showing us that he was
18 looking up in the sky, which was absurd at best
19 (Indicating).

20 Q. And did you confront him on that?

21 A. Yeah. Because he would have been laying in the
22 ditch if it would have been there, whatever he said he
23 was looking for.

24 Q. So I'm going to play you the clip of that, sir.

25 (Video presentation.)

1 Q. (BY MR. VARGO) So when you confront him with that
2 he says he looked at both?

3 A. He looked at both.

4 Q. Both on the ground and in the air.

5 A. Correct.

6 Q. Agent Rummel, we talked at the very beginning about
7 the fact that you are the -- or were the supervisor on
8 scene here.

9 A. Yes, sir.

10 Q. And from one man with gray hair to another, can you
11 tell me a little bit about what makes you the supervisor?
12 I've been admonished that I introduced you by name but
13 not by experience.

14 Can you tell us a little bit about who you are and
15 where you've been as it relates to law enforcement.

16 A. I started my law enforcement career in 1981. I
17 worked for the Dickinson Police Department as a patrolman
18 for a period of like five years. I was an investigator
19 at that same agency for another five years. And I've
20 been with BCI for 30-plus years, of which I have been a
21 supervisor for all of it.

22 Q. And how many criminal investigations would you say
23 you've conducted over that 40-plus years?

24 A. I would say hundreds. If we're talking about death
25 investigations, easily in the hundreds. As far as other

1 things, I can't even venture a guess because there's, you
2 know, smaller crimes that we end up investigating,
3 including narcotics and burglaries and such, but they all
4 are investigations of importance.

5 Q. In this particular case, so in addition to doing
6 whatever you did on the ground, so to speak,
7 participating in the interviews and whatnot, were you
8 also responsible for knowing what was being done by the
9 rest of your agents?

10 A. Yes, I was.

11 Q. And we had some cross-examination of Special Agent
12 Arenz here just a little bit ago. Mr. Butler wanted to
13 know whether Mr. Arenz -- Agent Arenz, excuse me -- had
14 put his offer of a polygraph in a report specifically,
15 not just in the -- not just in the transcript of the
16 interview.

17 Were you able to go look at Special Agent Arenz's
18 reports and find that?

19 A. Yes. I was the one that approved those reports, and
20 in paragraph 66 he does talk about the polygraph with the
21 Attorney General at that time in that report.

22 Q. And there was also some discussion about whether or
23 not Mr. Ravensborg himself would have known about what his
24 people had said about the propriety of the polygraph.

25 A. That is correct.

1 Q. And, again, you're not a polygrapher?

2 A. No, sir. I am not.

3 Q. Have you supervised polygraphers?

4 A. Yes. I currently supervise some.

5 Q. And were you Joe's supervisor in this case?

6 A. Yes, I was.

7 Q. And so let me ask, first of all, is a question about
8 what you knew and when you knew it one that is more
9 difficult for a polygraph? I won't say impossible, but
10 is it more difficult for a polygraph?

11 A. Yes, it is.

12 Q. And did you specifically have a conversation with
13 the Attorney General about that during the course of your
14 second interview?

15 A. Yes, I did.

16 Q. And I'm showing you on screen your questions -- or
17 mostly it's Joe's questions and his results. But do you
18 see about five, six lines down, Well, they told me the
19 only concern would be now you know it versus you didn't
20 know it at the time?

21 A. That's correct.

22 Q. And the "they" that he is referring to, that would
23 be South Dakota DCI agents?

24 A. Yes, sir.

25 Q. That either he or some member of his office had

1 talked to?

2 A. That's correct.

3 Q. And it is pretty clear from this that the
4 information that they received had come back to the
5 Attorney General?

6 A. Yes, it did.

7 Q. Okay. So let's go back to some of your impressions
8 about the Attorney General's veracity during the course
9 of your interview with him.

10 Were there things that you believe -- believed, long
11 before the GPS data came in, about the crash and the
12 aftermath of the crash suggested that Mr. Ravensborg knew
13 that he hit a man not just before he left the scene but
14 before his vehicle came to a stop?

15 A. Yes.

16 Q. What are some of those, sir?

17 A. Well, part of --

18 Q. You need to be by your mic.

19 A. So prior to the GPS coordinates, during the first
20 interview he said, "I turned around and I saw him." To
21 me that was one of the indicators.

22 The other indicator was, "I did not know what I hit
23 until impact." That tells me that upon impact he knew
24 what he hit. He could identify what he hit after the
25 impact, which is instantaneously.

1 Q. So I'm going to kind of focus in on that part of it,
2 the -- between impact and the vehicle stopping. Because
3 the reference to turning around and seeing the body is
4 after that, obviously.

5 A. Yes, it is.

6 Q. Let's start with first whether he knows that he hits
7 a man before he comes to a stop.

8 Did you participate in an experiment or re-creation
9 of trying to re-create what it is that the Attorney
10 General would have seen as he drove down the road?

11 A. Yes, I did.

12 Q. And, specifically, were you the Joe Boever in that
13 experiment?

14 A. Yes, I was.

15 Q. And you were dressed in dark clothing?

16 A. I was dressed in blue jeans and dark blue shirt.

17 Q. And you were carrying, specifically, Joe Boever's
18 flashlight?

19 A. We used Joe's flashlight for that, yes.

20 Q. And is it fair to say that west of Highmore there's
21 not a lot of artificial light?

22 A. It's very dark out there. There is not.

23 Q. And is that specifically how the Attorney General
24 described that location that night?

25 A. I think his words were "extremely dark."

1 Q. Does that flashlight show up?

2 A. Yes, it does.

3 Q. And did you use the phrase I believe in one of your
4 reports "like a beacon"?

5 A. Yes.

6 Q. Now is it possible that if a flashlight's pointed in
7 a direction other than in front of the person who's
8 walking down the shoulder -- if it's pointed in a
9 different direction, might it be harder to see?

10 A. I agree with that statement, yes.

11 Q. But can you come up with a good reason why he would
12 be pointing it in the air or behind him or off into the
13 grass?

14 A. No. I believe he would be using it to watch where
15 he's going. There might be some hand movement as he
16 steps, but that movement in itself would make it more of
17 a beacon because it would be shining in the light of the
18 person that's approaching them.

19 Q. There would be almost like the difference between a
20 flashing light and a light that's simply on?

21 A. Correct.

22 Q. And would you say that that is visible from how far?
23 Did you guys attempt to re-create that?

24 A. We did, and the people in the car said that we could
25 see you for a long ways, almost from the highway

1 department building that's there. So it's quite a
2 distance to the scene.

3 Because we actually went to the area of impact to do
4 that test, and they said they could see me right away if
5 I was walking with that light.

6 Q. And the highway department entrance would be just
7 past that Highmore sign?

8 A. I believe it's just before that.

9 Q. Okay. So we're talking in the vicinity of 300 feet?

10 A. Yes.

11 Q. And so if you don't see anybody for 300 feet, is
12 that a fairly egregious lack of attention?

13 A. I'd say that, yes.

14 Q. Even for people who are on their phones.

15 A. That is correct.

16 Q. Even people who are messing with their radios?

17 A. That is correct.

18 Q. Even people who might be looking to reset their
19 speedometers or their cruise controls?

20 A. Yes, sir.

21 Q. Was there anything else physically about the scene
22 that suggests to you that the Attorney General knew what
23 he had hit before he even came to a stop in terms of
24 when and -- or not when. Excuse me. Where he parked.

25 A. The fact that it took him such a long period of time

1 to actually stop made me think that he was panicked, if
2 you will, about what he just did.

3 Q. So sometimes we use the phrase "panic stop" to mean
4 you slam on your brakes as hard as you can. Are you
5 using it really in the opposite sense?

6 A. That is correct. I'm using it that internally he's
7 like fight or flight possibly. Or I can't believe what I
8 just did and slowly comes to a stop because he needs to
9 make a decision at that point of whether he's going to,
10 you know, call 911 or what he's going to do at that
11 point.

12 Q. Okay. So we'll get to the "when" again, but I want
13 to ask you about the "where." I'm showing on the screen
14 photograph 35350. And I believe that's in our packet
15 under the reconstruction photos. But the -- is this an
16 attempt by North Dakota BCI to re-create where the
17 Attorney General's vehicle was at the time that it came
18 to a full stop prior to being towed?

19 A. Yes, it is. Yes, it is.

20 Q. And that's based, I assume, on the picture that the
21 Attorney General himself had taken?

22 A. Yes. The Attorney General took the initial picture
23 and I had another agent from BCI superimpose it so that
24 we could put it in the exact place that it was when it
25 came to rest.

1 Q. So using the various markers like telephone poles or
2 lights from Highmore or whatever the case may be, did
3 they attempt to establish exactly where the Attorney
4 General's vehicle was and then take a photo without the
5 vehicle to re-create that location?

6 A. Yes, sir.

7 Q. And then superimpose the Attorney General's photo --
8 and that's why we can kind of see -- it's almost like a
9 ghost vehicle in the sense that you can see through it?

10 A. Yes. You can see the white fog line through the
11 vehicle in this picture that is superimposed.

12 Q. And from where that would have been, sir, is it fair
13 to say that the Attorney General's vehicle was parked at
14 least partially in the lane of traffic?

15 A. Yes, it was.

16 Q. Would you consider that normal?

17 A. No.

18 Q. Is that another indication to you of more of a panic
19 situation?

20 A. Yeah. Yes.

21 Q. And is the panic -- let me just ask you this: Did
22 the Attorney General describe to you that he had hit deer
23 before?

24 A. Yes, he did. He said he had hit a couple before.

25 Q. And so whatever the opinions may be in this room for

1 all of those of us, which has got to be most of us, who
2 have probably hit deer at some point, is there any reason
3 to be panicked after you hit a deer and you realize
4 you're uninjured?

5 A. No. There isn't anything you can do at that point.
6 So it's a deer was hit.

7 Q. And it's sort of obvious from the picture, but let
8 me ask it out loud. Is there room to move the vehicle to
9 the right and get entirely out of the lane of travel?

10 A. Yes.

11 Q. So in addition to that -- you've referenced already
12 the amount of time that it took him to come to a stop.

13 A. Yes, sir.

14 Q. I'm not going to pull this up because it's basically
15 numbers; it's not all that helpful. But we'll pull up
16 the diagram that gives a little bit of a visual on
17 this.

18 The area of impact is the small red car and then an
19 AOI in the middle of that screen. And as we move to the
20 left on that, Special Agent Halseth identifies that those
21 are each the times and the speeds at which
22 Mr. Ravensborg's vehicle was traveling. So for the two
23 seconds after the collision, which we know based on the
24 location, not so much timing -- but from the location if
25 we know the area of impact, we know that that happened at

1 10:23 and 36 seconds.

2 In the next two seconds there's no real appreciable
3 slowing. It goes from 67.6 to 67.1. Is that what you're
4 talking about?

5 A. That's correct. That's correct.

6 Q. And then in the next seven seconds the vehicle slows
7 from 67.1 miles an hour to 11.9 miles an hour; is that
8 right?

9 A. That is correct.

10 Q. And I believe that the reconstructionist would refer
11 to that as moderate braking.

12 A. Yes, sir.

13 Q. Would you agree with that?

14 A. I would agree with that.

15 Q. So it's not exactly slamming on your brakes, but
16 it's also you're braking at least?

17 A. You're stepping on the brake, slowing down. You're
18 not hammering them or slamming them, no.

19 Q. In the next seven seconds from 10:23:45 to 10:23:52
20 the decrease in speed is from 11.9 miles an hour to
21 7.9 miles an hour. Is there something about that that
22 again causes you concern about exactly what was going on
23 inside that car?

24 A. Yes. I believe it's just a rolling stop.

25 Q. And then we have a two-second stop from 7.9. Two

1 seconds later the vehicle is stopped?

2 A. That is correct.

3 Q. And I believe you already started to answer this,
4 but if you could, tell the Senate why it is that you
5 believe that that is inconsistent with somebody who just
6 hit a deer?

7 A. Because somebody that just hit a deer would just
8 stop and pull over to the side, not take their time and
9 do a rolling stop.

10 In my opinion, it's whether to flee or stop or what
11 am I going to do next because I know what just happened
12 to me.

13 Q. And before we move on to some of the other
14 statements that the Attorney General made to you, from
15 the time that the vehicle stops until the phone is
16 unlocked is how long?

17 A. About two seconds.

18 Q. And then another 10 seconds before the phone is
19 unlocked?

20 A. Before the -- yeah. It's two seconds, and then
21 there's an additional 10 seconds before dialing of 911.

22 Q. And then another 16 seconds between the phone being
23 unlocked and the 911 call.

24 A. I believe that's correct.

25 Q. What does that tell you, if anything?

1 A. There is hesitation about what needs to be taken
2 care of.

3 Q. And, again, in your experience, North Dakota has
4 deer; right?

5 A. Yes, sir.

6 Q. Is that something that you associate with a -- even
7 a catastrophic collision with a deer?

8 A. No, sir.

9 Q. Special Agent Rummel, in the course of interrogation
10 is it unusual for someone to have kind of their taking
11 points that they want to repeat over and over?

12 A. Yes. They're trying to make a point, and they
13 repeat it and repeat it.

14 Q. Okay. So I -- I guess I phrased that badly. Is
15 that usual or unusual?

16 A. It's dependent on if they're telling the truth or
17 not.

18 Q. Okay. Are there times when somebody who has their
19 talking points, if you can get them off their talking
20 points, they might accidentally tell you the truth?

21 A. That is correct.

22 Q. Did you feel like that happened to you at times with
23 the Attorney General?

24 A. Yes. I believe so.

25 Q. And I have two specific instances that I want to

1 talk to you about. So we got to listen to a couple of
2 references to a man on the side of the road.

3 A. I'm sorry. I missed that again.

4 Q. Let's do this: I want to play for you two clips
5 from the second interview that you conducted with
6 Mr. Ravensborg.

7 (Video presentation.)

8 Q. (BY MR. VARGO) What I want to ask you is during
9 this phase of your investigation, your conversation with
10 Mr. Ravensborg, had he ever acknowledged that he was on
11 the shoulder?

12 A. Not until that point in time.

13 Q. And did it appear to you -- did he again then deny
14 it later?

15 A. Yes. He denied it later, but he actually said, Why
16 is he walking down the side of the road?

17 Q. And did you take that as something where he was
18 admitting something; maybe you had moved him off his
19 talking points a little bit?

20 A. That's correct.

21 Q. All right. So this next statement relates to the
22 what he saw prior to impact. Or prior to coming to a
23 stop, I should say.

24 (Video presentation.)

25 Q. (BY MR. VARGO) When somebody says "I never saw

1 anything until impact" what does that suggest to you?

2 A. He saw somebody at impact.

3 MR. VARGO: Let's play the second one, please.

4 (Video presentation.)

5 A. So in that incident he says that he did see him when
6 he turned around. He saw him. But then he caught
7 himself in that particular statement and tried to
8 downplay it or reverse it, if you will.

9 Q. So those would be instances where Mr. Ravensborg may
10 have been accidentally telling you the truth.

11 A. That is correct.

12 Q. I'd like to talk to you about some of the other
13 statements that he makes.

14 Special Agent, are there times when it is very
15 important to you to know not just what a defendant said
16 happened but maybe a little bit about what's going on in
17 their mind?

18 A. One more time, please.

19 Q. Are there times when you want to know not just what
20 they saw but what they were thinking?

21 A. Yes.

22 Q. And are there times when defendants use what they're
23 thinking to try to convince you that what they're telling
24 you is the truth?

25 A. That is correct.

1 Q. Okay. So I'd like to play for you -- it's actually
2 four different clips. And we'll do them one at a time
3 and let you comment on each of them where I believe that
4 you have said that you found that that is what was
5 happening here.

6 MR. VARGO: So if we would start with --
7 (Video presentation.)

8 Q. (BY MR. VARGO) So that basically has two
9 contentions in it, two assertions in it. One is that
10 he's a military man, and he would never leave a dead man
11 behind.

12 A. Yes, sir.

13 Q. And the second is that if he knew there was a man
14 that was hit, he would have demanded, "insisted upon" I
15 believe were his words, an immediate blood test or breath
16 test.

17 A. That is correct.

18 Q. When he found out the next morning that this was, in
19 fact, a man and that what was left by the side of the
20 road was the remains of a human being, did he leave that
21 man behind?

22 A. Yes, he did.

23 Q. Were there two of them standing there at that time?

24 A. There were two people standing there.

25 Q. They each had a car?

1 A. Each had a car.

2 Q. Each had a phone?

3 A. Each had a phone.

4 Q. He knew how to use his phone.

5 A. Correct.

6 Q. He's called 911 just 12 hours before.

7 A. That is correct.

8 Q. And yet he decided that the fastest way to find the
9 sheriff was to drive to his house, and neither of them
10 stayed behind.

11 A. That is correct. I'm unsure -- just to make a
12 clarification, I'm unsure if Bormann actually had his
13 phone with.

14 Q. But if Mr. Ravensborg is acting according to plan, he
15 has two phones with; right?

16 A. He has two phones with him. Correct.

17 Q. So we have at least two phones, probably three?

18 A. Quite likely.

19 Q. And the second assertion is that if he knew it was a
20 man, he would have insisted on a breathalyzer right away.

21 A. That is correct.

22 Q. Would have insisted on a drug test right away.

23 A. That is correct.

24 Q. And the next morning when he found out it was a man,
25 did he insist on a breathalyzer?

1 A. No, sir.

2 Q. Did he insist on a drug test?

3 A. No, sir.

4 (Video presentation.)

5 Q. (BY MR. VARGO) So that really has two parts that I
6 want to talk to you about. One is his expressed concern
7 was that they check the other side of the road.

8 A. Yes, sir.

9 Q. When he went back did he check the other side of the
10 road?

11 A. No, sir. They drove past that area to the gas
12 station, turned around, and came back to the north side
13 of the road.

14 Q. And the second one -- and we're going to get to a
15 few others of these, but we might as well do it now when
16 we've played the clip.

17 The second one is that he wanted to see if the deer
18 made it.

19 A. That's absurd because if the deer isn't there, how
20 do you know if it's alive or what it is; so it's just an
21 absurd statement.

22 (Video presentation.)

23 Q. (BY MR. VARGO) So this time he's telling you that
24 he went back because the debris was there and it might be
25 a problem for some other driver. Or at least that's the

1 implication; right?

2 A. That is my belief.

3 Q. First off, the debris is on the shoulder?

4 A. Yes.

5 Q. The rest of us who are driving down the lane of
6 traffic, that shouldn't be a particular problem?

7 A. No, sir.

8 Q. From his description, though, of where he parked and
9 where he walked before he saw Mr. Boever, did Attorney
10 General Ravensborg acknowledge that he had gone past the
11 debris?

12 A. Yes, sir.

13 Q. And consistent with his statement and his worry that
14 this debris was a danger to somebody else, did he pick it
15 up and throw it into his trunk?

16 A. No, sir.

17 Q. Did he kick it into the ditch where it might be a
18 problem for the lawn mower but probably not for anything
19 else?

20 A. No, sir.

21 Q. Never touched it.

22 A. No.

23 Q. And that's even before he knew that this was a crime
24 scene. Or before he acknowledges knowing that this is a
25 crime scene.

1 A. That's correct.

2 (Video presentation.)

3 Q. (BY MR. VARGO) You ever hit a deer, Special Agent
4 Rummel?

5 A. Yes, sir.

6 Q. Single digits still or double digits?

7 A. Single digits.

8 Q. Okay. You ever have anybody tell you that they had
9 to put their mind at ease about how they hit a deer?

10 A. Other than Jason Ravnsborg, no.

11 Q. One other type of untruthfulness that I'd like you
12 to focus in on. Were there certain statements that he
13 made to you that you deemed so absurd that they just put
14 in doubt basically everything else that he said?

15 A. The not using his cell phone was the start of it,
16 that due to the fact that most people use their cell
17 phone.

18 Q. Mic.

19 A. I said the fact that he said he doesn't ever use his
20 cell phone and that he's in the middle of the road. From
21 the initial investigation at the scene, we knew that it
22 was not in the middle of the road.

23 Q. So that kind of set the tone. Were there other
24 individual statements, though, that even standing alone,
25 without reference to the physical evidence or the witness

1 statements of others or all the other investigation that
2 you put together, so deeply made no sense to you?

3 I'll tell you what. Why don't I play some clips,
4 and then you can comment on each of them.

5 (Video presentation.)

6 Q. (BY MR. VARGO) The suggestion is that because the
7 family has already suffered a tragedy, it would be the
8 wrong time to offer condolences for this tragedy?

9 A. Yes, sir.

10 Q. You ever had somebody tell you something like that
11 before?

12 A. No, sir.

13 Q. Did it feel to you more like this was he was trying
14 to convince himself that it was okay not to contact the
15 family?

16 A. That is my belief.

17 (Video presentation.)

18 Q. (BY MR. VARGO) So is this sort of part of your
19 conversation about phone use?

20 A. Yes, it is.

21 Q. And, specifically, he's gone from the I don't use it
22 for anything except phone calls to the I used it for
23 something; right?

24 A. That is correct. Yes.

25 Q. But at this point he's now saying he looks at it for

1 the time?

2 A. That is what he's saying he's looking at it for is
3 just the time, which he opens it to see the time, which
4 actually makes the time smaller. So --

5 Q. When was the last car you were in that didn't have a
6 clock radio in it?

7 A. I think I had a '73 Chevy pickup that did not.

8 Q. All right. One more for you, Agent Rummel.

9 (Video presentation.)

10 Q. (BY MR. VARGO) So here Mr. Ravensborg's basically
11 suggesting to you that he wouldn't use his phone in the
12 car because he knows it's the law?

13 A. Yes, sir. That is correct.

14 Q. From your investigation, though, did he use the
15 phone before the crash?

16 A. Yes, he did.

17 Q. Did he use the phone after the crash?

18 A. Yes, he did.

19 Q. So whether -- is it only the law within a mile of
20 Highmore?

21 A. That is what he's portraying there, but it's still
22 the law even then.

23 Q. So, Special Agent Rummel, I want to finish up by
24 talking to you about your supervisory role. In the
25 course of supervising agents, are you occasionally called

1 upon to judge whether they've done a good job or not?

2 A. Yes, I am.

3 Q. And, specifically, is there something that we refer
4 to in the business as Giglio? Do you know what that is?

5 A. Yes, sir. I do. That's a U.S. Supreme Court
6 Decision.

7 Q. Okay. And for ease of translation, let me just say
8 Giglio is a law that requires -- or case that requires us
9 if a law enforcement officer has been found to be
10 untruthful, that agency has to turn that information over
11 to the prosecutor, and the prosecutor has to turn it over
12 to the defense.

13 If an agent under your control, sir, had any level
14 of administrative finding about being untruthful as it
15 related to a criminal case, would they be subject to that
16 Giglio rule?

17 A. Yes, they would. They would be --

18 Q. What would the practical effect be on their career?

19 A. It would end at that point in time.

20 Q. Why is that?

21 A. Because they are no longer useful in the court of
22 law. They're not trustworthy. And you have to release
23 that information to the defense. And, with that, you're
24 not able to continue in your position.

25 Q. And would that qualify whether you were a rookie

1 patrol officer or the director of BCI?

2 A. That is correct. Everybody has the same rule.

3 MR. VARGO: I believe that's all the questions I
4 have for you, Special Agent. Thank you, sir.

5 THE WITNESS: Thank you.

6 PRESIDENT RHODEN: Mr. Butler, cross-examine.

7 CROSS-EXAMINATION

8 BY MR. BUTLER:

9 Q. Is everything that you've been testifying about here
10 today contained in your reports?

11 A. No, sir.

12 Q. What is not contained in your reports that you've
13 testified to?

14 A. Are you speaking specifically about my reports or --

15 Q. Your reports.

16 A. -- or the team reports?

17 Q. Your reports.

18 A. There's a lot of things that are not in my report.

19 Q. Well, let's go back again because you've testified
20 to quite a few opinions, particularly regarding the
21 truthfulness of the Attorney General.

22 Are your opinions contained, with regard to
23 Mr. Ravnsborg, in your reports?

24 A. No, sir.

25 Q. These opinions that you're now expressing, did you

1 have them then and choose not to put them in your
2 reports?

3 A. I am the supervisor so I don't usually -- the case
4 agent is the one that does the reports of record, for the
5 most part.

6 Q. Let me go back. The opinions that you have been
7 expressing here to the State Senate regarding all the
8 various reasons you question the credibility of the
9 Attorney General, can you identify where those are
10 contained in reports authored by you?

11 A. They aren't in the reports.

12 Q. When did you arrive at these various opinions
13 regarding the credibility of the Attorney General?

14 A. As we were working on the case, I made those
15 opinions throughout the investigation of the case.

16 Q. But I want to know why they're not in your reports.
17 This is something that you would need to disclose if you
18 held those opinions, is it not?

19 A. We don't generally put opinions in our reports.

20 Q. Well, you're testifying to them here today, are you
21 not?

22 A. Yes.

23 Q. But you kept them to yourself. That is your
24 testimony.

25 A. No. I've shared them with the House, as well as

1 here today, as well as the other people involved.

2 Q. For example, having testified to these opinions but
3 not disclose them in your reports, would it be something
4 that you would be permitted to testify to in a court of
5 law?

6 MR. VARGO: Objection as to relevance. This is
7 not a court of law. I don't believe there's any
8 comparison that needs to be drawn or is fruitful to be
9 drawn.

10 PRESIDENT RHODEN: Objection's overruled. You
11 may answer.

12 A. Could you repeat the question, please.

13 Q. Not having disclosed any of the opinions that you've
14 been testifying to today, would you be permitted to
15 testify to those opinions in a court of law?

16 A. I believe I would.

17 Q. Okay. Are you allowed typically to give your
18 opinion on the credibility of a witness in a court of
19 law?

20 A. Sometimes.

21 Q. Okay. And sometimes are you not allowed to give
22 that opinion?

23 A. Yes. I'm sure there are times that that would
24 apply.

25 Q. And part of the reason I'm asking is is a great deal

1 of what you're testifying about here today I'm hearing
2 for the first time. I've never seen a word about a
3 number of these opinions that you now express, and that
4 concerns me. Do you understand why?

5 A. No, sir.

6 Q. You don't understand?

7 A. If you read the reports, they would intermingle, and
8 you would know that there was some problems with the
9 truthfulness.

10 Q. Okay. I'm supposed to guess, rather than hear it
11 directly from you?

12 A. You heard it from me today.

13 Q. Okay. How many traffic fatalities have you
14 investigated in your career?

15 A. Maybe three.

16 Q. The interviews that you've referred to here today,
17 the findings of accident reconstruction, findings of the
18 telephone forensics, everything that was done, have you
19 reviewed it?

20 A. Yes, sir.

21 Q. And it was turned over to our state prosecutors?

22 A. I believe so.

23 Q. Did you have conversations with our state
24 prosecutors?

25 A. Yes, I did.

1 Q. Did you express opinions to them about the Attorney
2 General that are not in your reports?

3 A. Yes.

4 Q. So they're aware of much of what you were saying
5 here today?

6 A. Yes. A portion of it at least.

7 Q. And despite being aware of them, and everything
8 contained in your reports, the charges here were leaving
9 the lane of travel and distracted driving, which are
10 Class 2 misdemeanor offenses in the state of South
11 Dakota; is that correct?

12 A. I believe that's correct.

13 Q. You were aware that your -- I guess the Bureau of
14 Criminal Investigation interviewed Sheriff Volek.

15 A. Did you say our bureau?

16 Q. Yes.

17 A. That is correct.

18 Q. And did he inform your investigators that he would
19 have walked right past the location of where Mr. Boever
20 was found the next day?

21 A. I don't believe so.

22 Q. BCI interviewed Sheriff Volek and was given the
23 following information -- and I'll skip down to the part
24 I'm referring to -- "The sheriff states he would have
25 walked past Mr. Boever's body to get to the flashlight."

1 Does that refresh your memory?

2 A. I believe that was us that was saying that.

3 Q. You believe what?

4 A. It was us that told him that --

5 Q. Are you familiar with this report?

6 PRESIDENT RHODEN: Probably get on your mic a
7 little better.

8 THE WITNESS: Maybe like this? Is that better?
9 Is this better? Let's try it? Okay. I'm sorry.

10 Q. Assuming your officers took down correctly what he
11 said, does what I read to you help refresh your memory?

12 A. I believe that it was one of us that actually said
13 that.

14 Q. "The sheriff states he would have walked past
15 Mr. Boever's body to get to the flashlight."

16 A. I don't recall seeing that.

17 Q. Okay. Well, now that I've read it to you, and it
18 does come from the official investigation which you
19 headed up, how do you explain that he did not see the
20 body?

21 A. The sheriff?

22 Q. Correct.

23 A. Because he said he didn't go to the light. He did
24 not go to the light that was on the side of the road. He
25 saw it but didn't go to it. He thought it was part of

1 the car.

2 Q. He says he would have walked past Mr. Boever, and my
3 question to you is how do you explain he did not see
4 Mr. Boever's body?

5 A. I don't believe he walked past it.

6 Q. So you are saying either the person who wrote the
7 report or Sheriff Volek is not being accurate or
8 truthful?

9 A. I'm not sure. But I am sure that he did not walk to
10 the light.

11 Q. Tell me why you're sure of it.

12 A. Because I was in those interviews.

13 Q. I'm sorry. Say it again.

14 A. I was in those interviews.

15 Q. Okay. Do you know why it would be contained in a
16 report of BCI interview of Sheriff Volek?

17 A. It may have been a misunderstanding or something.
18 I'm not sure.

19 Q. Or maybe you're the one that's misunderstanding.
20 That's a possibility as well, is it not?

21 A. No. I was in those interviews. I know he said he
22 didn't go to that light.

23 Q. The photographs that you made available -- or that I
24 should say the prosecution made available for Senate
25 members to look at, what time of day were they taken, the

1 pictures of Mr. Boever's body?

2 A. Estimating, around 6 o'clock in the evening.

3 Q. Okay. What was the lighting outside at that time?

4 A. It was daylight. It was bright.

5 Q. Okay. And so there was not an attempt -- and I
6 understand why not, but there was not an attempt to
7 replicate what the Attorney General was seeing that night
8 under the conditions that he saw them.

9 A. That is correct. We removed the body to the funeral
10 home prior to that -- to darkness because we needed to
11 complete our crime scene.

12 Q. Earlier you -- there was a diagram, I believe,
13 charting GPS points taken from the phone or something
14 like that. Do you know what I'm talking about?

15 A. There were several of them.

16 Q. I want to know from that data that was provided from
17 the cell phone, how close was Mr. Ravnsborg to Mr. Boever
18 that night?

19 A. Within I believe it was 12 meters.

20 Q. And that's from the cell phone data?

21 A. I believe so.

22 Q. Okay. And at that point in time his phone was
23 positioned how? Cell phone light.

24 A. He said he was scanning the -- like this
25 (indicating).

1 Q. And Mr. Boever was in the ditch, and that was a
2 slope away from the road; correct?

3 A. That is correct.

4 Q. How many times did you yourself speak with
5 Sheriff Volek?

6 A. Three times.

7 Q. Three times?

8 A. I believe so.

9 Q. Okay. Did you find him to be credible?

10 A. Yes.

11 Q. With regard to the cell phone data that was
12 obtained, was the Attorney General on his telephone at
13 the time of the collision?

14 A. No, sir. We could not prove that.

15 Q. So your answer is no?

16 A. That is correct.

17 Q. When you were meeting with the Attorney General on
18 the second occasion, and that would be the 30th of
19 September, in that interview you indicated to him that
20 you knew he was on his cell phone at the time of the
21 collision, or words to that effect, didn't you?

22 A. Yes. I believe so.

23 Q. And he insisted that that was not the case.

24 A. Yes.

25 Q. And you insisted that it was.

1 A. That was my belief, yes.

2 Q. And you believed what you were saying, no doubt.

3 A. As -- what's the question again?

4 Q. You believed what you were saying to him in that
5 interview, the second interview when you told him he was
6 on his cell phone at the time of the collision, you
7 believed that.

8 A. That it was likely that he was on his phone, yes.

9 Q. Okay. And the subsequent analysis done of the phone
10 proved you to be incorrect and the Attorney General to be
11 correct.

12 A. That is correct.

13 Q. And were you as sure about yourself on that occasion
14 as you are sure -- as sure of yourself today regarding
15 the supposition about the Attorney General's credibility?

16 A. Am I as certain about his credibility?

17 Q. You were certain of yourself in that second
18 interview, and you were proven to be wrong. Today you
19 testified again with a certain level of certitude. Why
20 wouldn't you be wrong this time as well?

21 A. Because we have more evidence since then.

22 Q. Say that again.

23 A. We have additional information and the totality of
24 all the situation.

25 Q. What does this additional information prove?

1 For example, you were speculating as to his state of
2 mind after he struck the body and it took him longer than
3 you think it should have to stop his car. You were up
4 here speculating as to what must have been going through
5 his mind at the time.

6 What is the additional information that informs that
7 opinion?

8 A. The time frame, that it's broken down into seconds
9 from the collision and the speed all put together in the
10 total case.

11 Q. How does that help you understand the Attorney
12 General's state of mind within a second after the
13 collision?

14 A. It's just mere deduction and evidence.

15 Q. Okay. So what is the evidence that supports your
16 opinions as to what he was thinking?

17 A. So if somebody is in a crash and they say that they
18 slam on the brakes, they stop that car within a short
19 distance of time. That is what he told us. That wasn't
20 the truth. He went for a longer -- way longer period of
21 time, which indicates to me that he had other thoughts
22 going through his mind at that time.

23 Q. What was the answer or explanation that he gave for
24 why it took him longer than you thought appropriate to
25 stop his vehicle?

1 A. He said he was pumping his brakes and trying to save
2 his own life.

3 Q. He said he was tapping on the brakes, that he had
4 learned while in the military, that that would keep the
5 vehicle from probably potentially sliding out of control
6 or words to that effect. That is what he explained to
7 you.

8 A. That's incorrect. He said he was slamming the
9 brakes or hammering the brakes.

10 Q. You don't think he used the word "tapping" on them?

11 A. I don't believe so.

12 Q. Okay. And what was wrong with that explanation?

13 A. I'm sorry?

14 Q. Is there a problem with that explanation?

15 A. With anti-lock brakes if you slam on the brakes,
16 your car stops faster.

17 Q. We'll see if we can find it. I believe his words
18 that he were -- was tapping, but he came to a slower stop
19 than I guess your studies or somebody's studies would
20 have shown panic braking would have led him to do.

21 After the charging decisions were made in this case,
22 did you call and express your opposition to those charges
23 to Michael Moore or Emily Sovell as the two state
24 prosecutors?

25 A. No, sir. I did not.

1 Q. And in the years that you've been conducting
2 investigations, typically your role is to investigate,
3 and then ultimately prosecutors make the decisions as to
4 what offenses they believe have been shown by the
5 evidence.

6 Is that a fair statement?

7 A. In the state of North Dakota it would be something
8 comparable but we're in South Dakota and I'm not aware of
9 all the South Dakota laws that pertain to this. If this
10 event happened in North Dakota, it would have been a
11 felony.

12 Q. Well, let's go back to South Dakota, and we have
13 South Dakota prosecutors who got your information.

14 A. Yes, sir.

15 Q. And they made the decisions they thought were
16 appropriate. And without regard to what you say would or
17 would not have happened in North Dakota, you do have to
18 accept their decisions, don't you?

19 A. Yes.

20 Q. You're not questioning their competency as
21 prosecutors, are you?

22 A. I did not.

23 Q. Had you ever met Jason Ravensborg before you
24 interviewed him?

25 A. No, sir. I had never met him. Did not know him.

1 Q. Do you know anything about him?

2 A. No. I don't know anything about him other than what
3 I've learned through this investigation.

4 Q. Okay. And part of the reason I ask that question is
5 if a person had known they had killed a human being and
6 wanted to cover it up, don't you suppose they would have
7 gone about it just a bit differently than the manner in
8 which you have described here?

9 A. Not necessarily.

10 Q. Was it just sheer luck that the sheriff didn't see
11 the body?

12 A. In regards to the sheriff, he's obviously deceased
13 now. He was 70 years old. And I don't think he did a
14 complete investigation. That's my thoughts on the
15 sheriff.

16 Q. So he avoided that problem.

17 And then coming back the next day and finding the
18 body. And then I believe you were asked about two people
19 with cell phones and both going to the sheriff to report
20 what they had found, and you found that to be an odd
21 thing or unusual?

22 A. The fact that one didn't stay because he's a
23 military man and would never leave him behind, the fact
24 that they both left him behind and went to the sheriff.

25 Q. And from that you infer a guilty conscience or a

1 guilty mind on his part?

2 A. It's just a statement that he said he would never do
3 and did.

4 Q. And from that you then infer what?

5 A. Another incidence of not being truthful.

6 Q. Okay.

7 So could you tell me again what it is that he said
8 with regard to the brakes? As far as your recollection
9 goes, what did he say as to how he worked the brakes
10 following the collision?

11 A. I believe he said he slammed or hammered the brakes,
12 something to that -- I don't remember the exact words,
13 but I don't believe it was "tap."

14 Q. But you're part right. He said he was pumping the
15 brakes.

16 A. He was also demonstrating at that time. He was
17 hitting his knee and showing that maneuver.

18 Q. And he said he pumped the brakes. Are you denying
19 that?

20 A. No. He did say he pumped the brakes.

21 Q. And in looking at the transcript, I do see that you
22 said slammed the brakes, but he is saying he pumped the
23 brakes. Maybe it's a tomato-tomahto comparison. But
24 it's different than you describe it.

25 MR. BUTLER: I don't have any additional

1 questions. Thank you.

2 PRESIDENT RHODEN: Thank you.

3 Redirect, Mr. Vargo.

4 MR. VARGO: Thank you, Mr. President.

5 Mr. President, I'd like to start by asking
6 Mr. Butler if I could borrow the copy of the report to
7 which he was referring to Sheriff Volek's statements or
8 at least a reference so that Special Agent Rummel can see
9 it in context.

10 PRESIDENT RHODEN: Mr. Butler, can you identify
11 to us what the name of the document is so we can enter
12 that into the record?

13 Mr. Vargo, can you identify this document we're
14 talking about?

15 MR. VARGO: Certainly. As best I can. These
16 are ones that the defense Bates-stamped; so I don't know
17 what their original references are.

18 It is Ravensborg documents 93 and 95, presumably,
19 Mr. Butler, from the Bates-stamped version that you
20 submitted?

21 MR. BUTLER: These would be my Bates-stamped
22 numbers but it also has, I think, report page numbers,
23 and it does reference the investigative entity as well.

24 MR. VARGO: I'm sure it does. It doesn't
25 necessarily on every page so...

1 PRESIDENT RHODEN: Please proceed.

2 REDIRECT EXAMINATION

3 BY MR. VARGO:

4 Q. So let's start there if we could, Special Agent
5 Rummel. So in both of those documents is the sheriff's
6 reference to walking past the flashlight, not walking
7 past the piece of debris?

8 (Witness examines documents.)

9 A. I'm sorry. Could you ask the question again,
10 please.

11 Q. Let me put it this way: The flashlight is found
12 significantly further east to the area of impact than is
13 the piece of debris; is that correct?

14 A. That is correct.

15 Q. So if, in fact, the sheriff had walked up to the
16 flashlight, that would have meant that he walked past
17 Mr. Boever's body; is that correct?

18 A. That is correct.

19 Q. The sheriff at least on one occasion denied that he
20 walked up to the flashlight; is that correct?

21 A. Yes, sir.

22 Q. And, specifically, he said he thought that the
23 flashlight was the headlight of Mr. Ravensborg's vehicle
24 which had been knocked out and was somehow still
25 functioning?

1 A. That is accurate.

2 Q. From Mr. Ravensborg's second interview -- I want to
3 quote you something just so we can see if we can reach
4 some form of consensus on exact language -- do you recall
5 Mr. Ravensborg saying, "I remember hitting it and letting
6 off, hitting it and letting off, hitting it, you know. I
7 don't know if it was three or four times or I don't
8 know"?

9 A. Yes.

10 Q. Do you remember him saying that to you?

11 A. Yes. Now that it's read to me.

12 Q. And his explanation as we go further is that, "If
13 you slam it, you can spin yourself or go in a ditch or
14 roll over or something is I guess what I knew. That's
15 why I hit hard but not to the floor."

16 Do you remember that?

17 A. Yes, sir.

18 Q. Now does he explain at any point why it would be
19 that he would spin out at 12 miles an hour?

20 A. No, he does not.

21 PRESIDENT RHODEN: Mr. Vargo, for the benefit of
22 members, when referring to the report could you give a
23 page number?

24 MR. VARGO: The truth is probably not because I
25 don't believe that these are numbered. We can find it,

1 and I will make the reference shortly.

2 But I do believe that's all the questions I have
3 on redirect. Thank you, Special Agent Rummel.

4 PRESIDENT RHODEN: Any further witnesses,
5 Mr. Vargo?

6 MR. VARGO: Mr. President, the Prosecution
7 rests.

8 PRESIDENT RHODEN: Mr. Butler, you may present
9 the Respondent's case.

10 MR. BUTLER: Mr. President, we have no witnesses
11 to present; so we rest.

12 PRESIDENT RHODEN: The Respondent rests.

13 MR. VARGO: Mr. President, per your previous
14 question, pages 96 and 97 are the source of those
15 particular quotes about braking.

16 PRESIDENT RHODEN: 96 and 97. Thank you,
17 Mr. Vargo.

18 The Respondent rests.

19 Being all right with the members, or whether it
20 is or not, we will take a 15-minute recess. 15 minutes.

21 (A short recess is taken.)

22 PRESIDENT RHODEN: The Senate will return to
23 order.

24 We are now in the question phase of the trial.
25 I've had the Senators -- thank you for submitting your

1 questions. Some of these questions to me are a little
2 confusing so I've decided to have the members who wrote
3 the questions ask them personally. So I'll go down the
4 list, and you can stand, key up your mics, and state your
5 question for the appropriate party.

6 With that, we will start with Senator Wheeler.
7 I believe you have a question.

8 SENATOR WHEELER: Thank you, Mr. President.

9 My first question is directed to the Prosecution
10 in general. The Articles of Impeachment for the first
11 article specify crimes and mention a few statutory crimes
12 but don't necessarily charge out a specific crime that
13 we're asked to sustain on.

14 I'm asking you, is the Prosecution asking us to
15 sustain that article based upon any particular crimes?

16 MS. TRACY: The Prosecution would believe that
17 any of the crimes leading up to the -- involving the
18 death of Joe Boever, I think it would be most prudent to
19 consider the crimes that were actually charged and so
20 would refer the Senate to Count II, improper lane
21 driving, that was specifically mentioned in the articles.

22 And I think it would be appropriate to consider
23 Count III, careless driving, that he was originally
24 charged with as well. This is not a criminal burden of
25 proof, and I think that whether that was pled out or as

1 part of a plea agreement or a burden of proof matter is
2 not pertinent to these proceedings and could still be
3 considered.

4 PRESIDENT RHODEN: Senator Wheeler.

5 SENATOR WHEELER: Thank you.

6 I did want to ask a question of one witness,
7 Joe Arenz. Joe Arenz.

8 PRESIDENT RHODEN: Joe. Mr. Arenz, could you
9 come in. We have a question for a witness.

10 Senator Wheeler, would you state your question,
11 please.

12 SENATOR WHEELER: Thank you.

13 PRESIDENT RHODEN: And we would remind the
14 witness that you are still under oath.

15 Senator Wheeler.

16 SENATOR WHEELER: My question gets to this
17 further issue of whether the sheriff walked by the area
18 in which the body would have been located. We already
19 heard some testimony on that specifically. But I believe
20 you were also in those interviews with Sheriff Volek, and
21 because he is no longer here to testify, I want to ask
22 you specifically based upon your recollection of what the
23 sheriff said, would he have walked directly by the area
24 where the body was located?

25 WITNESS ARENZ: My recollection of what he said

1 is that he did not walk by that but that if he had went
2 to the flashlight, he would have walked by it. But that
3 he didn't -- he never went and checked the flashlight.

4 PRESIDENT RHODEN: Senator Wheeler.

5 SENATOR WHEELER: Thank you. That's all the
6 questions I have for the witness.

7 My third and last question --

8 PRESIDENT RHODEN: You're dismissed. Thank you.

9 (The witness is excused.)

10 SENATOR WHEELER: -- goes to the Respondent.
11 And I would ask the Respondent to -- at the time of the
12 crash how far into the shoulder was your vehicle?

13 MR. BUTLER: I don't know. I would agree that
14 there were at least two wheels on the shoulder and
15 possibly four. I would go with what Mr. Moore when he
16 appeared before the committee said, which is that there's
17 an area or an approximation or some discretion in the
18 judgment with regard to accident reconstruction.

19 So was he on the shoulder of the road? Yes.
20 How far? I don't know.

21 SENATOR WHEELER: That's all I have.

22 PRESIDENT RHODEN: Thank you. Are you finished,
23 Senator Wheeler?

24 SENATOR WHEELER: I am. Thank you.

25 PRESIDENT RHODEN: Thank you. We will move to

1 Senator Otten. You had a couple of questions, Senator
2 Otten. You have the floor.

3 SENATOR OTTEN: Thank you, Mr. President.

4 The first one is for any one of the
5 investigators. My question is is when the Attorney
6 General retrieved his insurance card from the glove box
7 were the interior lights of the car working?

8 If unknown, were the lights observed to be
9 working or not at any other time during the
10 investigation?

11 MS. TRACY: I believe that Joe Arenz is --

12 PRESIDENT RHODEN: Microphone on.

13 MS. TRACY: Mr. Arenz is probably the best.

14 PRESIDENT RHODEN: Mr. Arenz, did you hear the
15 question?

16 You're under oath. Just a reminder, you're
17 still under oath. Would you like to have the question
18 repeated?

19 WITNESS RUMMEL: Yes, please.

20 PRESIDENT RHODEN: Senator Otten.

21 SENATOR OTTEN: My question is is so when the
22 Attorney General retrieved his insurance card from the
23 glove box were the interior lights working? And if
24 unknown, were the interior lights observed to be working
25 or not at any other time during the investigation?

1 WITNESS RUMMEL: So at the time that he removed
2 the insurance card it is not known. We don't have any
3 idea. As far as the next -- or the day after -- two days
4 later when we examined the car, I believe it was on. Am
5 I absolutely certain? I am not.

6 PRESIDENT RHODEN: Senator Otten.

7 SENATOR OTTEN: That would be my last question
8 for the investigators.

9 Do you want me to proceed to my next?

10 PRESIDENT RHODEN: You're dismissed. You're
11 dismissed. Thank you.

12 (The witness is excused.)

13 SENATOR OTTEN: This question would go to -- and
14 it's a two-part question to the defense. Actually more
15 than two parts.

16 So my first question is how many Lincoln Day
17 Dinners approximately does the Attorney General think he
18 attended in 2021?

19 MR. BUTLER: Sir, could you repeat that? I
20 wasn't sure I heard it.

21 PRESIDENT RHODEN: Would you repeat the
22 question.

23 SENATOR OTTEN: How many Lincoln Day Dinners
24 approximately does the Attorney General believe he
25 attended in 2021?

1 MR. BUTLER: Zero in '21.

2 SENATOR OTTEN: Mr. President, was he not
3 attending a Lincoln Day Dinner in 2021 that he was coming
4 back from?

5 Or 2020. I'm sorry. So my question is 2020.
6 My apologies.

7 MR. BUTLER: In 2020, approximately 10.

8 SENATOR OTTEN: Okay. Follow-up on that is so
9 is the Attorney General saying he attends these and other
10 events as a citizen and not as a function of being the
11 Attorney General?

12 MR. BUTLER: I'm not sure how to answer that
13 question. I mean, he's obviously the Attorney General.
14 But he's going like everyone here goes to political
15 events in their off hours. And I think that's the answer
16 I would stand with. I mean, in terms -- I'm not sure --
17 I want to be sure I'm responding to your question. Okay.

18 Ask it again, would you?

19 SENATOR OTTEN: Is the Attorney General stating
20 he attends these and other events as a citizen and not as
21 a function of the Attorney General?

22 Parts of the Articles of Impeachment and what's
23 been in question is whether the Attorney General was
24 actually performing a function of the Office of the
25 Attorney General. So it goes to that.

1 MR. BUTLER: Well, one, he was not performing
2 the functions -- official functions of his office as
3 Attorney General by attending a political event.

4 And I'd probably stay right there with that.
5 Otherwise, you get into the position where once elected
6 until out of office you are in office. And I don't think
7 there's any support in the Constitution. And I think, as
8 Mr. Garber said earlier, that is a meaningful
9 distinction. But there is not the in-office performance
10 of duties taking place when he went to Redfield.

11 SENATOR OTTEN: Mr. President.

12 PRESIDENT RHODEN: Senator Otten.

13 SENATOR OTTEN: Does the Prosecution have a
14 response to that also?

15 MS. TRACY: The Prosecution would reference the
16 Senators to the Attorney General's own statements in the
17 recorded interviews that he is always on as Attorney
18 General, that he possesses his work cell phone with him
19 at all times.

20 The Prosecution is not familiar with a
21 prosecutor in this state who does not anticipate being
22 contacted for work events and is not familiar with off
23 hours for the job. So, yes, the Prosecution believes
24 certainly at the time it's part of his constantly
25 presenting himself as the Attorney General, and I think

1 in that function it's appropriate.

2 Beyond that, the malfeasance that comes
3 afterwards he certainly is acting in his capacity as he
4 answers questions and utilizes that title.

5 PRESIDENT RHODEN: Senator Otten.

6 SENATOR OTTEN: Thank you, Mr. President.

7 This is a question out of curiosity also, I
8 guess. So if the Attorney General was attending the
9 Lincoln Day Dinner as Attorney General but personally,
10 why was he using the state phone for personal use instead
11 of his own personal phone that he had with him?

12 PRESIDENT RHODEN: Who do you wish to direct
13 that question to, Senator Otten?

14 SENATOR OTTEN: To the defense, Mr. President.
15 And then a response from the Prosecution.

16 MR. BUTLER: I don't know that I have an answer
17 for that, per se. He does have a work phone. He has a
18 personal phone. And he's indicated to me at times he
19 does use his work phone on, like, for example, here
20 calling his father. I would characterize it as an
21 innocent act, not something malevolent, evil, or illegal.
22 An innocent act.

23 PRESIDENT RHODEN: Thank you.

24 Next question, Senator Otten.

25 SENATOR OTTEN: Thank you, Mr. President.

1 Is there a response from the Prosecution to that
2 question and answer also? Thank you.

3 MS. TRACY: The Prosecution's response, Senator,
4 would be that he gets paid to not utilize his personal
5 cell phone. I think that's one of the practical reasons
6 with the OnMyWay app that he's not utilizing it but would
7 certainly believe that use of that state cell phone
8 further underscores that he is still serving in his
9 capacity.

10 Thank you.

11 PRESIDENT RHODEN: Thank you.

12 We will move on to Senator Sutton. I believe
13 you have a question.

14 SENATOR SUTTON: Thank you, Mr. President.

15 Actually I have several to the defense. And my
16 first question is to the Attorney General. What made you
17 decide to call 911 first and not a tow truck if you
18 thought you hit a deer?

19 MR. BUTLER: The Attorney General did not
20 testify here. And it strikes me a little bit as what's
21 happening is I'm going back and asking him questions that
22 he otherwise would have answered had he testified. And I
23 don't say that lightly because it makes me the fall guy
24 that I have no desire to be.

25 He called 911. As to what else -- what his

1 thought processes were beyond that, I just can't answer.

2 SENATOR SUTTON: My second question --

3 PRESIDENT RHODEN: Senator Sutton. I believe --
4 did you submit to me two questions?

5 SENATOR SUTTON: Yes, sir.

6 PRESIDENT RHODEN: Okay.

7 SENATOR SUTTON: So my second question is how
8 long was the initial search by the Attorney General and
9 Sheriff Volek after the crash?

10 MR. BUTLER: You know, I'm not sure that part of
11 it is well documented as to how long they searched
12 themselves. But I would say it's fair to say probably
13 not more than 15 minutes. Maybe less, a little bit less.

14 You have the call to 911. Sheriff Volek
15 arrives. He has a conversation with the Attorney
16 General. I think at that point they both believed it was
17 a deer. Sheriff Volek indicated he saw nothing unusual
18 at that point about the Attorney General's behavior, but
19 they did go up the road and look. As to how many times,
20 I can't say because it's not clear in the reports.

21 SENATOR SUTTON: That's all, Mr. President.

22 PRESIDENT RHODEN: Thank you.

23 And, as a reminder, I was going to ask these
24 questions presented to you from the -- from the podium.
25 I thought it was a better idea to allow you to state your

1 questions so you can explain it if there's questions
2 about the questions. But it remains in -- the request
3 is, the requirement is that the questions -- all
4 questions from the members be submitted to me in writing.

5 So, with that, we will move on to Senator
6 Kolbeck.

7 SENATOR KOLBECK: Thank you, Mr. President.

8 I would like to direct this question to
9 Mr. Rummel.

10 PRESIDENT RHODEN: Please --

11 WITNESS RUMMEL: I did not hear the question.

12 PRESIDENT RHODEN: Remind you, you're under
13 oath. You remain under oath.

14 WITNESS RUMMEL: Yes, sir.

15 SENATOR KOLBECK: Thank you.

16 The question I have is do you know what time the
17 sunrise was on September 30, 2020? Approximate time.

18 WITNESS RUMMEL: I do not.

19 SENATOR KOLBECK: I researched it, and sunrise
20 was at 7:19 a.m. And I believe if I researched it
21 correctly, it was a sunny day.

22 The body was not discovered until sometime after
23 9 a.m. that morning. So my question is -- and there's
24 been a lot of talk about traffic driving by the scene of
25 that accident. My question is if the body as we heard

1 was lying only less than 3 feet off the shoulder of the
2 road, how come a driver of a vehicle, a car or a semi
3 driver -- and I'm sure there was traffic -- did not
4 discover that body prior to it being found almost two
5 hours after sunrise?

6 So how much more difficult would it be to see
7 the body at night by walking the side of the road versus
8 the two hours the sunlight that we had that morning of
9 September 13, 2020?

10 WITNESS RUMMEL: So I would say for one thing at
11 65 miles an hour it would be much more difficult to see
12 an item in the ditch versus walking by at 2 miles an
13 hour, 3 miles an hour. So that would be the logic part
14 of it.

15 As far as driving by at 65 miles an hour, there
16 are things in the ditch that you just don't see. And
17 it's -- it's not -- as you all well know, it's not a
18 complete man. There's pieces missing. So, with that, it
19 would be so much easier to see it walking versus driving
20 at 60, 65 miles an hour.

21 Does that answer your question, sir?

22 SENATOR SUTTON: Yes. I can understand that.
23 But you also gave testimony that Mr. Boever was wearing
24 blue jeans and a dark shirt and that most of that had
25 been removed from his body following the collision and

1 that his body was totally white or completely white, as
2 we saw in those pictures.

3 And so, therefore, my question would just kind
4 of be relevant to the fact that if that was the case, and
5 you testified that that was the way the incident was at
6 that accident scene, that his body would not have been
7 seen by some motorist prior to 9:00, 9:30 a.m. on
8 September 13.

9 Thank you.

10 WITNESS RUMMEL: Was that a question, sir? Or
11 was that just a statement?

12 SENATOR SUTTON: Sorry. Question would be is
13 how come that -- because of your description of the way
14 the body was and the color of the body, that that would
15 not have been seen even at 65 miles an hour?

16 WITNESS RUMMEL: During the daylight there's
17 more light everywhere compared to at night where the
18 color of the grass is absorbing what light there is
19 versus the whiteness of the body that is reflective.

20 PRESIDENT RHODEN: Thank you, sir. You're
21 dismissed.

22 (The witness is excused.)

23 PRESIDENT RHODEN: Senator Schoenbeck, you have
24 a question?

25 SENATOR SCHOENBECK: Thank you, Mr. President.

1 I would direct this to the Respondents based on
2 a couple of comments that were made.

3 Does the Attorney General believe that he has a
4 constitutional right against self-incrimination in an
5 impeachment proceeding?

6 MR. BUTLER: We chose not to call him as a
7 witness. I'm not prepared to go any farther than that.

8 PRESIDENT RHODEN: Any follow-up?

9 SENATOR SCHOENBECK: Yes, Mr. President. I
10 would like to hear from the Prosecution on that subject
11 of whether or not there was a constitutional right
12 against self-incrimination.

13 PRESIDENT RHODEN: Can you hold the mic a little
14 closer.

15 SENATOR SCHOENBECK: Do you need me to repeat
16 it, Alexis?

17 MS. TRACY: No. I think I heard you.

18 The Prosecution does not believe there is a
19 constitutional right against self-incrimination in an
20 impeachment process. It's a completely different
21 function.

22 MR. BUTLER: If I may, the only other
23 observation I would make is the burden of proof is on the
24 Prosecution in this case. So presumably nothing would
25 have to be done by the Respondent if it felt that burden

1 was not satisfied.

2 I have not called this a matter of
3 constitutional right against self-incrimination, merely
4 that the burden rests with the Government.

5 PRESIDENT RHODEN: Being no further questions --
6 that's all I have on my sheet.

7 Okay. We'll give Senator Curd a second to get
8 his question jotted down.

9 Senator Curd.

10 SENATOR CURD: Thank you, Mr. President. My
11 question is for Special Agent Rummel.

12 PRESIDENT RHODEN: Mr. Rummel. Welcome back.
13 Go ahead, Senator Curd.

14 SENATOR CURD: Thank you, Mr. President.

15 Special Agent Rummel, I'm curious if you are
16 familiar with a condition called dissociative amnesia.

17 WITNESS RUMMEL: No, sir. I'm not.

18 SENATOR CURD: Mr. President, if you'd allow the
19 latitude to help further my question for the Special
20 Agent and the members of the Senate, I can read a brief
21 definition for you. It comes from the Cleveland Clinic.
22 I'll be brief.

23 PRESIDENT RHODEN: You'll need to hang closer to
24 your mic.

25 SENATOR CURD: Okay.

1 So according to the Cleveland Clinic, this is an
2 extraordinarily rare condition. It affects about
3 1 percent of men and 2.6 percent of women in the general
4 population.

5 [Reading] In general, dissociative amnesia
6 occurs and has been linked to overwhelming stress, which
7 may be caused by traumatic events such as war, abuse,
8 accidents, or disasters. The person who has experienced
9 such an event may have suffered the trauma individually
10 or just witnessed it. There are several types, one of
11 which is localized. In a localized dissociative amnesic
12 event memory loss affects specific areas of knowledge or
13 parts of a person's life and could include memory loss
14 for a very specific trauma. One example would be a
15 victim of a crime may have no memory of being robbed at
16 gunpoint but can recall details from the rest of the day
17 with significant degree of certainty.

18 So my question, Special Agent, although this is
19 a rare condition, is it a potentially plausible reason
20 why everything that you have stated before the Senate
21 today and all of the information and facts provided by
22 the Prosecution but still the Attorney General -- if this
23 was indeed a rare case of dissociative amnesia of a
24 localized variety, to be an explanation where all things
25 could be true?

1 And I will elaborate slightly by saying that all
2 of the information you provided, all of the Prosecution
3 information could all be truthful and accurate -- and I
4 have no reason to believe that it's not -- but that what
5 the Attorney General has said could also potentially be
6 valid, that he is unable to recall the specific events
7 and the details because he himself is part of this
8 particular phenomenon, albeit rare?

9 WITNESS RUMMEL: So the question is do I believe
10 that he has that?

11 SENATOR CURD: I'm just wondering if you believe
12 it could be an explanation.

13 He certainly, to my knowledge, has not had a
14 psychological or psychiatric evaluation and, to my
15 knowledge, has not been diagnosed with this. I'm just
16 asking if you think it is a potential explanation where
17 all things could be true?

18 WITNESS RUMMEL: I highly doubt that because he
19 remembers some things that he wants specifically in great
20 detail, things that are part and parcel to it, but the
21 actual events that puts him at blame, that's the amnesia
22 part or that's the part he doesn't want to remember.

23 The reference that you do is a victim, a victim
24 that's held at gunpoint. I don't see the Attorney
25 General as a victim. I see him as a suspect.

1 SENATOR CURD: Just, Mr. President, same
2 question for the Prosecution and the Respondent if they
3 would just briefly opine.

4 PRESIDENT RHODEN: Well, state that again,
5 Senator Curd. What did you say?

6 SENATOR CURD: The same question. Albeit rare,
7 and what I'm offering here is a rare instance of
8 dissociative amnesia, although be it localized, and
9 understanding that the person doesn't necessarily have to
10 experience the trauma themselves. They could only have
11 witnessed it.

12 PRESIDENT RHODEN: So, Senator Curd, I will err
13 on being very generous as far as allowing the questions.
14 But it's an odd situation when you're -- you know, if
15 this was a viable defense, the defense should have
16 brought it forward. And now you're asking the defense if
17 it's a viable defense. So...

18 SENATOR CURD: I understand, Mr. President.
19 I'll accept whatever ruling you have. I have the same
20 question for the Prosecution and the Respondent.

21 PRESIDENT RHODEN: Okay. Do you wish to answer,
22 Mr. Butler, or reply?

23 MR. BUTLER: My response is not so much to
24 attach a label to it but to look at some common
25 experiences in life where you have or are involved in a

1 traumatic event. Maybe not one involving death but a
2 traumatic event. And people remember what they remember.
3 It's not always a knowing falsehood if it turns out to be
4 incorrect.

5 When he says, I was traveling in the lane, did
6 he believe that to be true at the time? I absolutely
7 believe he did. Did accident reconstruction later come
8 along and require him to reconsider? It did, and he did.

9 That is normal, I believe, when traumatic events
10 occur in our lives. I honestly don't think it
11 necessarily requires a diagnosis as much as it may
12 require us to look honestly at what occurred and not
13 necessarily go back after six months and pick apart not
14 just words but snippets of phrases in interviews and see
15 if there is a way to characterize that as a falsehood
16 rather than a misstatement.

17 MS. TRACY: And the Prosecution's response to
18 that was, no, we do not believe that that is a plausible
19 explanation. If that were the case, then the
20 inconsistencies would not conveniently be designed to
21 mislead law enforcement.

22 And I think that there has been an abundance of
23 evidence that's been demonstrated in that result. It
24 wasn't that the Attorney General blacked out in this
25 situation. It wasn't that he -- there are periods of

1 time that he can't explain. He provided explanations
2 that he glossed over providing the extreme details of
3 other aspects, but there are significant moments, where
4 when given multiple opportunities -- and I think the use
5 of his phone is the most blatant example of that. It
6 wasn't good for him to tell the truth about that. He
7 knew that would reflect poorly upon him so he
8 intentionally lied until law enforcement was able to pull
9 out partial truths.

10 And it's not mischaracterizations,
11 misstatements, or snippets. It's pieces of evidence
12 contained within the Attorney General's own explanations
13 that just don't make sense.

14 PRESIDENT RHODEN: Thank you all. And that
15 is -- brings us to the end of the question phase of this
16 trial.

17 We are going to take a 10-minute break right
18 now. We will come back in at 3:15. At that time we will
19 receive the closing remarks starting with the prosecuting
20 side and then the Respondent.

21 Witnesses are hereby released. So thank you for
22 your testimony to the witnesses today.

23 We are in recess.

24 (A short recess is taken.)

25 PRESIDENT RHODEN: The Senate will return to

1 order.

2 Mr. Vargo, you can proceed with your closing
3 remarks. One hour.

4 MR. VARGO: By deed and by word Jason Ravnsborg
5 has forfeited his right to be the Attorney General of
6 this great state. The House Impeachment Articles make it
7 very clear that he is charged both with deeds and with
8 words.

9 And we'll begin with Article I of the
10 impeachment, which is the misdemeanors while in office.
11 Those misdemeanors are absolutely clear. They are
12 matters for which Mr. Ravnsborg has taken responsibility
13 in a court of law to the extent that it was imposed upon
14 him. His counsel now acknowledges that, in fact, he was
15 driving outside of the lane. So while a good and
16 honorable prosecutor decided that the charges that could
17 be sustained beyond a reasonable doubt were misdemeanors,
18 that does not mean that you should allow yourself to use
19 the phrase that they were "only misdemeanors."

20 The words "only a misdemeanor" with respect to
21 the death of a human being are offensive, and in this
22 case they are misleading. Joe Boever lost his life. And
23 he lost his life because of a pattern of conduct on the
24 night in question and because of a pattern of conduct
25 over the course of a career.

1 The Attorney General was entirely outside the
2 lane of travel. Mike Moore is not a traffic
3 reconstructionist, and his doubt expressed to the House
4 Subcommittee means nothing more than the hesitancy of a
5 prosecutor when you are faced with a standard of beyond a
6 reasonable doubt.

7 But there were warning signs to Jason Ravensborg
8 as he drove down the road. There is a fog line, which is
9 the primary warning sign. There are the warning signs on
10 steroids in the rumble strip, which Mr. Ravensborg crossed
11 first with the passenger side of his vehicle and then
12 with the tires on the driver's side of his vehicle.

13 We had a victim in this matter who was doing
14 exactly what he was supposed to do. He is walking on the
15 shoulder. He is walking against the flow of traffic so
16 that he is more visible. He is walking with a flashlight
17 in hand in a dark area where that flashlight stood out
18 like a beacon. And Jason Ravensborg, the degree of
19 distraction was so severe that he claims that he didn't
20 know what he hit until after he hit it.

21 So one of two things is true, ladies and
22 gentlemen: He is so far outside of the lane of travel
23 and he is so far from paying attention to where he is
24 going -- and I want you to think about this for just a
25 moment, that as all of these things are happening, the

1 GPS tells us that he doesn't brake for two seconds after
2 the impact. And then he takes seven seconds to slow to
3 12 miles an hour and then another seven seconds to slow
4 to 8 miles an hour.

5 When he is that deeply distracted -- as
6 John Daily told the House Subcommittee -- or Special
7 Committee, we don't necessarily know why he was
8 distracted, but we know that he was distracted. And
9 there is one thing that is crystal clear to every single
10 person in this room: Wherever his attention was, it was
11 not on the road. And it was not on the road as he was
12 accelerating to highway speeds coming out of the city of
13 Highmore.

14 Every single one of us, ladies and gentlemen,
15 has been inattentive while driving. But what do you do
16 while you're accelerating? What do you do, in converse,
17 when you know maybe you're doing something you shouldn't
18 do? You're looking at that phone. You're playing with
19 the radio. You're reaching for a pop that you've got
20 sitting on the passenger seat or in the seat behind you.
21 You slow down. You take your foot off the gas. You
22 don't bury your head in the sand and keep accelerating.
23 The degree of distraction was extreme.

24 And the habitual nature of that distraction is
25 abundantly clear by his behavior both before and after.

1 At highway speeds heading down South Dakota's roads
2 Jason Ravnsborg has his phone on, his cruise control on.
3 If we believe him. That's what he does when he gets
4 outside of the town.

5 And as far as the idea that he was not acting in
6 an official capacity or he was not in office when he
7 committed these misdemeanors, Jason Ravnsborg is the one
8 that tells us you're the AG, you're always running. He
9 wasn't on stage there because he was a candidate for
10 Attorney General. He was on stage there because he was
11 the Attorney General.

12 And so the misdemeanors, which these days are
13 simply crimes that involve less than a year -- a year or
14 less in jail. Class 2 misdemeanors involve 60 days -- or
15 30 days or less in jail. Misdemeanors in office, though,
16 relate to the idea of what he was doing and why he was
17 there. If the man is on his state cell phone, the man is
18 coming from an event where he is recognized and accepted
19 as the Attorney General, that man is acting in office.

20 But he compounds what he did with lies. What
21 does he tell you about his speed? What does he tell
22 Special Agent Arenz and Special Agent Rummel? I set my
23 cruise control at 65, 67. That's what I would have done.
24 Well, based on what his speedometer shows, if he sets it
25 at 65 to 67, we know he would have been going 61 to 63

1 miles an hour.

2 We know that wasn't true. We know that he got
3 up to 77 miles an hour, which means that his speedometer
4 would have showed him that he was going about 81 miles an
5 hour. So we know that he's lying about his speed.

6 We know that he is lying to the people who own
7 the app OnMyWay. Think about it for a minute. How
8 honest is it, if I have two cell phones, to connect one
9 to OnMyWay and be rewarded money, prizes, I don't know
10 what the stuff is, discounts, whatever it is? He's
11 earning benefit by having a phone that he's not using
12 while he's driving. But, of course, he's using the other
13 phone in exactly that moment. How honest is that? How
14 truthful, how representative of South Dakota values is it
15 to be lying for pennies a mile?

16 Now Mr. Ravensborg and his attorney would like to
17 make a great deal out of his willingness to take a
18 polygraph. I have several responses to that, one of
19 which is he knew from his own people that this was not an
20 appropriate topic for a polygraph.

21 Tyler Neuharth told him and he told Special
22 Agent Rummel in the interview that he had been told that
23 this was not appropriate because it's hard to prove the
24 "what did you know and when did you know it." Whether or
25 not he knew it once upon a time at the moment of the

1 collision that that was a man, because he now knows it,
2 he would likely fail that polygraph.

3 But, there is, of course, unnamed, unquoted
4 Sioux Falls polygrapher who thinks it's just fine to
5 administer this polygraph. And I've got to ask you: Why
6 isn't he here, and why didn't he give the Attorney
7 General a polygraph? He has every access to that. He
8 could have presented that to you if he chose to do so.
9 So the idea that somehow he was prevented by North Dakota
10 from taking the polygraph is about as honest as the rest
11 of the story that he's told you.

12 He lies about where he is in the lane. And
13 Mr. Butler has several times acknowledged on behalf of
14 the Attorney General that he knows that he wasn't in the
15 lane of travel. Which is fascinating, ladies and
16 gentlemen, because it's the first.

17 Jason Ravensborg lied to 911. He lied to law
18 enforcement. But, okay, let's say that he maybe didn't
19 realize he was in the lane. Two months ago when the
20 House Special Committee -- or, excuse me, the House
21 proper was examining the question of Jason Ravensborg's
22 impeachment Mr. Ravensborg issued a document that he
23 referred to as "Evidence, Allegations, and
24 Misconceptions."

25 It's a little weird to think that it's him

1 because he refers to himself routinely in the third
2 person. But in the accompanying letter he says, I'm
3 going to be issuing this under separate cover or as a
4 separate document. So these are his words. These are
5 his allegations.

6 One of the "Evidence, Allegations, and
7 Misconceptions" is headed, "Jason's vehicle was off the
8 road. False." So he didn't just lie to 911. He didn't
9 just lie to law enforcement. He lied to the House the
10 night before they were going to consider his impeachment
11 proceeding. And he did that with all of the same
12 knowledge that he has here before you today.

13 So he can't claim situational amnesia. He
14 can't claim that he has come around to understanding
15 that he was outside the lane of travel. He lied to the
16 House.

17 And while I know that Mr. Butler will refer --
18 or has referred, excuse me -- to the question of whether
19 or not you can simply be mistaken about something, I want
20 you to think about the difference between these events
21 and the simple, logical conclusion that one reaches about
22 the nature of a collision that is catastrophic.

23 Let's assume for a minute that Mr. Ravnsborg is,
24 in fact, unbelievably distracted, which we do think is
25 true. Let's assume that he's so distracted that he

1 doesn't actually recognize that he's on the shoulder.
2 And then, as he says, "Wham." The crash happens.

3 Now, first of all, we know that that body rode
4 the front of his hood for about two, two and a half
5 seconds. Second of all, we know that the natural
6 reaction to that after you probably blink is that you're
7 going to look up, and you're going to see where you are.

8 We can, I suppose, wrap our heads around the
9 idea that he didn't know that he was on the shoulder
10 prior to the crash. But it is not possible, I submit to
11 you, to believe that he did not know that he had been on
12 the shoulder in the immediate aftermath of that crash.

13 And part of what we then learn from him is
14 accidental truths.

15 (Video presentation.)

16 MR. VARGO: You've heard better lies from five
17 years old.

18 But the last and perhaps the most egregious of
19 the lies relates to the question of when and how he uses
20 his phone. And I think it's appropriate that we simply
21 do that. And I want you to understand when we play this
22 clip this is not reordered. This is in order --
23 obviously, they're snippets so we're skipping things.
24 This is in order how he started his story and how he
25 finished his story. And if you can watch this and not

1 come to the conclusion that the Attorney General was
2 deliberately lying to DCI, I suppose we're done.

3 (Video presentation.)

4 MR. VARGO: A flat no.

5 (Video presentation.)

6 MR. VARGO: I don't "not" use my phone.

7 (Video presentation.)

8 MR. VARGO: It goes from I don't use my phone to
9 I glance at my phone to, well, that's what I do. I do it
10 all the time. And if it's too long, I just hit next.
11 And by "next" do you think, folks, that he's talking
12 about next I pay attention to the road and I drive down
13 the road and I pay attention to the things that are in
14 front of me, or do you think that he means he goes to a
15 different article?

16 He lies about whether he saw a human being and
17 about whether he saw the remains of a human being. And
18 much has been made over whether or not Sheriff Volek saw
19 the human being or should have had the same opportunity.
20 Those two references to which Mr. Butler referred are in
21 the reconstruction reports from Trooper John Berndt.

22 Trooper Berndt did not speak to Sheriff Volek.
23 He was relating from his own understanding. How he made
24 he that mistake, I have no idea. It doesn't matter. If
25 you look at the reports that were filed by Special Agent

1 Arenz and Special Agent Rummel and Sheriff Volek's own
2 description, he never says that he went up to the
3 flashlight.

4 We've transitioned into a place where the
5 Attorney General wants you to feel sorry for him. In his
6 "Evidence, Allegations, and Misconceptions" the final one
7 was, "Jason was treated differently because he is the
8 Attorney General," and the italicized word right after
9 that is "True."

10 And it is certainly true that he was on the news
11 more than you and I would be, and we're on the news if we
12 did something like this more than an average citizen
13 would be. That part's true. There is a certain degree
14 of scrutiny that comes with public office, and if you
15 can't embrace that, you probably shouldn't be in public
16 office.

17 But let's look a little bit at what it is that
18 didn't happen to him that would have happened to every
19 other citizen of the state of South Dakota. He did not
20 give a blood test until the next day. He did not give a
21 blood test while he was on scene. He did not give a
22 breath test until the next day. He did not give a breath
23 test until he was off scene.

24 He was loaned the sheriff's personal vehicle.
25 Now I know we're real friendly folk here, but I don't

1 think that happens all that often. He is not questioned
2 on scene the night of. Sheriff Volek doesn't ask him
3 anything about other than, oh, you hit a deer. Okay.

4 But then, and perhaps more to the point, he's
5 not questioned the next day. We now know that a man
6 lies dead, and the sheriff's response to that is to tell
7 Tim Bormann, oh, go take care of him. You want to know
8 the quality of this investigation up to the point the BCI
9 took over, it is encapsulated in that phrase: "Go take
10 care of him."

11 It doesn't ask how did you not know it was a
12 human? Doesn't ask how did it happen? Were you on your
13 phone? Nothing. No questions at all until two days
14 later. He turns off his phone. And when he is told, We
15 need both your phones -- and I submit that there's no
16 doubt but that a search warrant could have been issued on
17 them had he not been cooperative. And he did sign the
18 consent; don't get me wrong -- he insists on keeping one
19 phone because, Well, I am still the Attorney General.

20 Does that sound to you like the sort of thing
21 that some poor mechanic, waitress, rancher would be
22 allowed to do? So was he treated differently? He
23 absolutely was. To his great benefit.

24 So I want to address the question of impeachment
25 and the standards that you apply here. LRC has provided

1 you with an outline or a statement that:

2 [Reading] Each Senator should make the decision
3 on impeachment questions based on how they view the
4 evidence in the performance of their duties as a State
5 Senator and with regard to the oath of office they took
6 to perform these duties. This is neither a criminal nor
7 a civil legal proceeding. It is a constitutionally
8 prescribed impeachment trial that you serve on and
9 decide, pursuant to your election to the office of State
10 Senate, and you should decide it as you see appropriate
11 in fulfilling the duties of your office.

12 And that is exactly the standard that was
13 articulated as I listened to some of the podcasts that
14 Mr. Garber has about impeachment. One of the folks that
15 he had on as a guest was the prosecutor who prosecuted
16 Alcee Hastings, a federal judge who was accused of taking
17 bribes. And the prosecutor basically said the standard
18 is whatever the senate decides the standard is, and each
19 individual senator, more to the point, whichever they
20 decide the standard is.

21 And another nationally recognized impeachment
22 scholar has said that impeachment and the criminal matter
23 are entirely independent of each other and should be
24 treated separately. That expert is Ross Garber. When
25 Nancy Pelosi thought that, well, you can't impeachment

1 Trump -- she didn't have that opinion for very long, by
2 the way, but for a while she held that, and he disagreed
3 with that. I understand why we worry about impeachment.
4 I understand why this can't simply be a given.

5 In Federalist 65, Alexander Hamilton wrote that
6 impeachment will "seldom fail to agitate the passions of
7 the whole community and to divide it into parties...There
8 will always be the greatest danger that the decision will
9 be regulated more by the competitive [sic] strength of
10 the parties than by the real demonstrations of innocence
11 or guilt."

12 But I respectfully submit to you that that is
13 not what has happened here. This chamber, I don't think
14 I need to point out to you, is largely composed of the
15 partisan allies of the Attorney General. There are
16 multiple members of this chamber who wrote or texted to
17 the Attorney General in the days following the crash
18 expressing their condolences to him, some -- bless their
19 hearts -- to the family of Joe Boever, and expressing
20 their joy that Mr. Ravnsborg was unharmed.

21 If there are factions that now exist in the
22 question of whether or not the Attorney General deserves
23 to be impeached, they arose from the events of
24 impeachment. This is not a situation where one sector of
25 the party had it out for Jason Ravnsborg and just waited

1 for the moment when they could find something he did
2 wrong. You of all people know that prior to this event
3 there wasn't a Jason faction and a not-Jason faction. He
4 was the Attorney General, and he was treated as such. If
5 this created factions, it created them based on the
6 Attorney General's conduct and candor, not a question of
7 the subsets of the Republican party.

8 And I will point out that Mr. Garber's analysis
9 of when impeachment is appropriate judged by who actually
10 got impeached ignores a very important matter, which is a
11 question of resignations. Mr. Garber, as he pointed out
12 to me, has now represented five governors who were
13 charged formally, investigated or formal proceedings were
14 initiated as it related to impeachment. Three of those
15 five, ladies and gentlemen, resigned.

16 If we defer the decision about whether an
17 official should leave office to their resignation, we are
18 relying on people who have demonstrably done bad things
19 to make the moral decision about what their punishment
20 should be. And I am old enough to recall that every once
21 in awhile my father let me pick a punishment. Let me
22 just tell you that was not meant to be pleasant for me
23 and was largely because if I suggested something too
24 light, I knew that he would come up with the actual real
25 punishment.

1 But because this Attorney General has not done
2 the right thing, because he has not chosen to acknowledge
3 the harm that he has done to the reputation of law
4 enforcement, of the bar, of prosecution, and of elected
5 officials in this state, you now have the responsibility
6 to do the right thing.

7 And those cases to which Mr. Garber referred in
8 opening about cases that were impeached, I submit that at
9 least a few of them are strikingly similar to what we
10 have here. Money is the easy thing to look at. When you
11 steel money we kind of understand that we're against
12 that. Who steals money steals trash; who steals my good
13 name. He put Brent Gromer into an impossible situation.
14 A career law enforcement officer who was put between a
15 rock and a hard place and kind of found an out by not
16 really saying much of anything.

17 But if loaning money to yourself is an
18 appropriate grounds for impeachment, which Mr. Garber
19 suggested, or helping your son's election campaign is an
20 appropriate grounds for impeachment, so too does it seem
21 that stealing the knowledge and expertise of a good and
22 honorable officer is grounds for impeachment.

23 And then we get to the question of what it means
24 to be "in office." It feels like that moment where in
25 order to buy this argument you truly have to just stick

1 your head in the sand. This man made this about his
2 office. When you lead with 911 with "I am the Attorney
3 General," to what end? Because it works for him. It has
4 worked for him. And it is --

5 (Video presentation.)

6 MR. VARGO: Ask yourself on any of those whether
7 there was any legitimate purpose to informing the person
8 who had pulled him over or the person to whom he was
9 speaking to emphasize that he was the Attorney General.
10 You can even see it in -- or hear it in the 911 call and
11 see it in that very last clip when he's pulled over. I
12 believe it's Nebraska. His hesitation. Well, Ally --
13 Ally, I am the Attorney General. Or when he's talking to
14 the trooper on the side of the road there and he says,
15 Well, here's the other thing. And he stops, he turns off
16 the car, and he does this thing that appears to be his
17 go-to gesture, and he says, The thing is, I'm the
18 Attorney General in South Dakota.

19 Now that's the same stop where he's already
20 tried the -- when the trooper asks him, Why are you
21 driving so fast, and he says, Well, I'm going to drill,
22 and I'm the commander. Again, is there a legitimate
23 reason to say that I am the commander and that's why I'm
24 speeding? Or is that just designed to impress upon the
25 officer that I'm a big deal, and you should probably just

1 believe me and let me go.

2 Historically and in this case, Jason Ravnsborg
3 uses his office to get out of trouble. He does it on the
4 911 call. Ask yourselves about the press release that he
5 issued the next day, drafted by a friend of his, who is a
6 representative, with Tim Bormann, who is a State
7 employee. But it goes out on Attorney General
8 letterhead. And does it simply reassure the public, hey,
9 a bad thing happened, but I'm on the job; the office will
10 continue to run?

11 That's not at all what it says. It lays out the
12 facts of the case. It begins his defense. It is the
13 germ of what he is going to tell the world. It is his
14 trial balloon, and it is out there on Attorney General
15 letterhead. Is that the use of his office in an
16 appropriate manner or an inappropriate manner?

17 Why else is the chief of staff of the Attorney
18 General's Office the one that sets up your blood test?
19 Is that an appropriate use of State employees? Why else
20 does he talk to both Brent Gromer and Tyler Neuharth
21 about what it is that law enforcement is going to be able
22 to find if they examine either, in one case, the
23 polygraph and, in the other case, his phone?

24 The day after -- well, I don't know if I got it
25 the day after. But the day after the impeachment vote in

1 the House as a whole in April, I received a letter from
2 Law Enforcement Standards and Training division that
3 referenced an officer who has the potential to testify in
4 Pennington County who had been removed from the academy
5 for lying. So we're talking about a kid not yet through
6 the academy who lied -- and let me be very specific here.
7 The allegation is that he lied about whether he had done
8 his homework. And as a result of that he's booted out of
9 the academy.

10 So if we hold that youngster to a standard of
11 professionalism and integrity and honesty that we don't
12 hold our Attorney General to, what are we saying about
13 ourselves? And what are we saying about the point of
14 being elected in this state?

15 Mr. Ravnsborg can come up and say, well, I
16 really wasn't on the phone at the time of the crash so
17 none of this really matters. My lies about phone use --
18 you know, Bill Clinton did that one to us. He convinced
19 the Senate that it didn't matter as long as the lie
20 wasn't an important lie.

21 Bill Clinton wasn't an attorney, he wasn't
22 Attorney General, and he didn't act as the chief law
23 enforcement officer of anything. Acted as the commander
24 in chief. But we know what would happen to any officer,
25 patrol officer, who did what Jason Ravnsborg did, and

1 they would be a former officer. And that is what he
2 should be as well.

3 South Dakota Law makes it a crime to lie in a
4 criminal investigation, and I don't think I really need
5 to cite chapter and verse to a bunch of people from
6 South Dakota about integrity and honesty and why we don't
7 lie in public life.

8 Now Mr. Butler has suggested Mr. Ravensborg was
9 mistaken about being outside of his lane. Again, I bring
10 you back to the fact that it's just not possible that he
11 didn't know immediately after the crash even if he didn't
12 know immediately before the crash. And I also bring you
13 back to the fact that he didn't simply tell that lie
14 once. He told it probably a half a dozen to a dozen
15 times in the course of those interviews with law
16 enforcement.

17 And most of the time -- I shouldn't say most of
18 the time. Several times he makes it very clear --
19 gesture. He's going to the right. He's pulling over.
20 He's trying to save his life. Only if he had done any of
21 that, he would have ended up in the ditch next to Joe
22 Boever's pickup.

23 So those are the two questions that you have
24 before you. There is a third, though. In the event that
25 you vote to impeach, which I submit you should -- I've

1 often been warned you can't tell a judge or a legislator
2 that they must do anything, and so I suppose legislators
3 who are also judges, that would be particularly
4 difficult -- you also have to decide a question of
5 debarment. In other words, can Mr. Ravensborg ever run
6 again. And I submit to you that if you have made the
7 primary decision that he should be impeached, that that
8 becomes a fairly easy answer. But I want you also to
9 think about this statement that he has made.

10 (Video presentation.)

11 MR. VARGO: This happened to me. My life
12 changed. And, most importantly of all, most offensively
13 of all, I would not do anything different. How about you
14 just look where you're going? That would be something
15 you could do different. And Joe Boever would still be
16 alive. How about you stay in your lane? We know for
17 sure Joe Boever would be alive then.

18 And so if we think -- if you believe that an
19 impeachment vote is proper, the idea that the person who
20 you're impeaching has already said I'm going to go out
21 and do it again, I wouldn't change a single thing I
22 did -- and you know how he's telling the truth on that
23 one? Because he did. 10 minutes down the road he's
24 sending pictures via text message while he drives
25 somebody else's car after Joe Boever lies dead. So we

1 know he's willing to do it again.

2 And so if he is unfit to serve as Attorney
3 General today, he will be unfit to serve as Attorney
4 General tomorrow, and he will be unfit to serve as
5 Attorney General in any foreseeable future. And so the
6 debarment vote should closely follow the question of
7 impeachment.

8 Mr. Ravensborg's attorneys have taken great pains
9 to raise a specter of what impeachment would mean.
10 They've used phrases like "overturning an election,"
11 "risking constitutional" -- I don't know if they used the
12 word "crisis," "undercutting democracy itself." And they
13 refer to the "genius of the American system."

14 But genius of the American system is where we
15 got impeachment from. And there are consequences to
16 inaction as well. There are consequences to law
17 enforcement, who you have then told that little lies are
18 okay. Even lies that result in somebody's death or lies
19 about somebody's death can be okay.

20 There are consequences to the bar where we have
21 the duty of candor, which has very clearly been violated.
22 There are consequences to prosecution. Every
23 South Dakota prosecutor that I know holds dear the idea
24 that we don't do this for the cash. Go to your county
25 commissions. Ask them what they're paying us. I

1 guarantee the men and women who fill those roles are not
2 there because they are making the most money they
3 possibly could.

4 But there are also consequences to this great
5 state as a whole and to our community as a whole, and
6 none greater than this: That you will place a stamp of
7 approval on Jason Ravnsborg's view of how office and
8 position work. You would effectively endorse the idea
9 that there comes a point when you are too powerful to
10 fail, too powerful to be held accountable, and that there
11 are two standards of law in this great state, one for
12 patrol deputies and another for the chief law enforcement
13 officer. And, oh, the one for the chief law enforcement
14 officer is lower.

15 There are two standards in this state, one for
16 working people and another for elected people. You will
17 reinforce the idea that our elected officials are
18 separate from and above the laws that you pass and that
19 they are sworn to enforce. By your vote here today you
20 will decide whether you want to be -- whether you want
21 that to be who we are and who we will be seen as in our
22 South Dakota.

23 PRESIDENT RHODEN: We will now take closing
24 remarks from the Respondent, Mike Butler.

25 Sorry. Mr. Garber. You have one hour.

1 MR. GARBER: Thank you. You're going to hear
2 from Mr. Butler in just a couple of minutes. There were
3 a lot of factual assertions that we heard. Mr. Butler is
4 going to address those.

5 But before he does, I think I'd like to see if I
6 could reorient us on the standards. As we have discussed
7 before, it is true, I'm engaged by governors' offices to
8 come in and explain the standard for impeachment and how
9 it's applied. I teach a law school class where I explain
10 to my students here's the history of impeachments, here's
11 the standards for impeachments, here's how they're
12 applied, and if there's an acquittal in this case, I can
13 explain that to everybody. I can explain the Senate of
14 South Dakota acted as a bullwork, as the system is
15 designed.

16 I will tell you, it would be very hard to
17 explain a conviction. I've spent the day listening to
18 what sounded like a prosecution of a vehicular crime.
19 But we know that those criminal issues have already been
20 resolved. There was also essentially a prosecutorial
21 argument about lying to law enforcement. Notably, the
22 Attorney General wasn't charged with that, hasn't been
23 charged with that.

24 But also this isn't a criminal case. This is,
25 as we know, an impeachment and removal case, and removal

1 in this situation cannot be sustained without doing
2 violence to some significant parts of the Constitution.

3 For example, as I explained earlier, the notion
4 of separation and balance of powers, coequal branches --
5 this is not the United Kingdom. This isn't a form of
6 government that's parliamentary in nature. There's no
7 vote of no confidence in the system. The Executive
8 branch is coequal with the Legislative branch, and the
9 Legislative branch doesn't oversee the Executive branch
10 in that way.

11 And removal in this case would actually do
12 violence to the provision of your Constitution dealing
13 with elections where it's actually the voters who choose
14 who the Attorney General is. It's the Constitution that
15 prescribes the term of office. The Legislative branch,
16 the Senate, with all due respect, doesn't cut those
17 things short absent incredibly extraordinary
18 circumstances.

19 And if the circumstances were, as my friends
20 suggested, we would have seen many, many, many more
21 removals of public officials. Imagine if the standard
22 were telling untruths. We would see many, many, many
23 more of these kinds of proceedings.

24 But that's not the standard. The standard, as
25 we have talked about, is in your Constitution. The

1 Governor and other state and judicial officers -- and the
2 standard, again, that you apply here is applicable to all
3 of these other officials.

4 [Reading] Shall be liable to impeachment for
5 drunkenness, crimes, corrupt conduct, or malfeasance or
6 misdemeanor in office.

7 Now you can't read the "in office" part out of
8 the Constitution. And you also can't stretch it to the
9 point where it would be meaningless, where an elected
10 official is essentially in office 24 hours a day. That
11 would read it out of the Constitution.

12 I would urge you to look at two documents. One
13 is a submission that I made to the House going on at much
14 more length than you're thankfully hearing today about
15 the standards for impeachment. And the other is a report
16 that the House Special Committee put together, which I
17 think is quite well done, and it goes element by element
18 by element.

19 And in that report it does note a decision by
20 the Nebraska Supreme Court addressing impeachment of an
21 attorney general in that case where the Nebraska Supreme
22 Court said that "in office" means, "act or omission for
23 which --" in that case it was the attorney general may be
24 impeached and removed from office "must relate -- must
25 relate to the duties of that office." And I'd ask you to

1 focus on that standard. Is that what was happening here?
2 Has that standard been met?

3 Same thing with the standard for malfeasance.
4 Again, the House Select Committee cited a case from the
5 South Dakota Supreme Court saying, "reference to evil
6 conduct --" in the context of malfeasance, "reference to
7 evil conduct or an illegal deed, the doing of that which
8 one ought not to do, the performance of an act by an
9 officer in his official capacity that is wholly illegal
10 and wrongful."

11 Again, members of the Senate, this isn't a
12 criminal proceeding, despite how it seemed today. This
13 isn't a civil proceeding. This isn't a bar proceeding.
14 This isn't a vote of no confidence. This isn't an
15 employment proceeding. This is rare -- a very rare
16 removal, and very different standards apply.

17 And with respect to burden, it is true, you
18 determine what the burden is. And what I mean by that is
19 that the Supreme Court is not going to second-guess you.
20 It is not going to ask you what was the standard of proof
21 that you applied? Isn't going to prescribe for you a
22 standard of proof and say that you missed it. That was
23 the lesson of Nixon vs. The United States where the
24 United States Supreme Court said that the Senate gets to
25 make its procedures in the case of impeachment and

1 removal.

2 But as the House noted, the correct standard
3 actually is at least clear, satisfactory, and convincing.
4 That's the standard that the South Dakota Supreme Court
5 applied to lower government officials. Certainly for a
6 statewide official it should be at least that high.
7 Clear, satisfactory, and convincing.

8 And I'll leave you with a reminder of what the
9 U.S. House Judiciary Committee said in the context of the
10 Nixon impeachment.

11 [Reading] Impeachment is a constitutional remedy
12 addressed to serious offenses against the system of
13 government. Impeachment is directed to address
14 constitutional wrongs that subvert the structure of
15 government or undermine the integrity of office and even
16 the Constitution itself. The crucial factor, the report
17 went on, is not intrinsic quality of behavior but the
18 significance of its effect upon our constitutional system
19 or the functioning of our government.

20 Members of the Senate, that standard, those
21 principles, have not been met. Not even close. I
22 couldn't begin to explain an argument that they have.
23 And so I think acquittal is the only answer here.

24 And, Mr. President, members of the Senate,
25 Counsel, I appreciate your hospitality in having me here

1 and listening to my discussion about this. And, with
2 that, I will turn it over to Mr. Butler.

3 PRESIDENT RHODEN: Further closing remarks,
4 Mr. Butler.

5 MR. BUTLER: When we opened this morning I
6 referred the Senate to the Articles of Impeachment.
7 Article I charged Attorney General Jason Ravnsborg
8 committed crimes causing the death of Joseph Boever. As
9 I pointed out then and I point out now, there was no
10 finding of criminal culpability in the death, the tragic
11 death, of Joseph Boever. No amount of fire and brimstone
12 changes that as a given fact.

13 The Prosecution did slightly shift, either
14 intentionally or not, to instead of crimes, referring to
15 it as misdemeanors in office. Is that important? It
16 certainly can be. Because we are back to "in office."
17 And, as my co-counsel has pointed out, those words are
18 central to the question of removal from office and when
19 it can occur.

20 Now the Prosecution, with regard to the
21 in-office requirement that they must prove, said once
22 Attorney General, always Attorney General. And I would
23 submit that's not a legal argument. It's a phrase, but
24 it's not a legal argument.

25 "In office," as courts have looked at it,

1 involves illegal or evil behavior involving the use of
2 your office. Not a traffic accident.

3 Misdemeanor in office. The Florida Supreme
4 Court defined the term "misdemeanor in office" as, Any
5 act involving moral turpitude, which is contrary to
6 justice, honesty, principles, or good morals if performed
7 by virtue or authority in office. The Court found that
8 misdemeanor in office is synonymous with misconduct in
9 office. The term "misdemeanor" historically was adopted
10 to apply to all offenses other than treason or felony.

11 It says nothing about driving off the shoulder
12 of a road. It must be a serious offense. The Senate
13 should not be reduced to a traffic court. That's not the
14 role that you would be playing here today. It is
15 whether, for the first time ever, the conduct in office,
16 the misdemeanor in office, was so egregious, unlawful,
17 and evil it warrants his removal. Not were two tires off
18 the road or were four.

19 The Second Article of Impeachment: Malfeasance
20 in office. Again, the conduct of your office. Do we
21 really think that means when you call 911 after an
22 accident you identify yourself as the Attorney General?
23 Is there any serious argument to be made by a
24 serious-minded person that that warrants removal from
25 office? "I am the Attorney General." You got to go.

1 You can't do that.

2 As counsel said, we literally would have to back
3 up the school bus then if that is the direction we would
4 go in minimizing and trivializing the seriousness of what
5 went on here today. Not of the death of Joseph Boever.
6 That is a serious matter. And there was a civil
7 settlement for negligence. Negligence is a civil
8 standard different than the criminal standard. But the
9 family did receive a settlement, and they couldn't have
10 done it without the Attorney General's cooperation.

11 Going back to some of the facts of the case, as
12 much as I really don't care to because I really think
13 it's beside the point, but there was one in particular
14 and it involved the sheriff and what he said or didn't
15 say about walking past the body.

16 Now I have two reports, neither of which I have
17 prepared, both of which the Bureau of Criminal
18 Investigation did prepare, and I'll read them to you, the
19 relevant part. On the report it says, page 43, "Sheriff
20 Volek states he does not see Mr. Boever's body but agrees
21 he had to walk directly past him." Page 13, "The sheriff
22 states he would have walked past Mr. Boever's body to get
23 to the flashlight."

24 Now we are told to disregard that because
25 there's no good answer for it, other than Sheriff Volek

1 didn't see it. It was dark. It was cloudy. The road
2 was not lit up. The body was in a ditch and the ditch
3 sloped away from the road. It just happened.

4 And for the Government to simply fill in the
5 blanks with a witness who acknowledged, I kept this out
6 of my reports -- all the different things about people
7 being honest or what he can read into someone's mind and
8 how each little action or behavior informed him of
9 dishonesty, that he kept out because it has no place in
10 police reports, number one -- I had never heard of it or
11 seen it until today, and I suspect for good reason.

12 And as sure as that officer is of himself, when
13 he was asked did he tell the Attorney General, You were
14 on your phone, We know that -- the second interview,
15 September 30, 2020 -- he admitted that he did do that.
16 He admitted that he did believe that. The Attorney
17 General said, I was not. Forensic evidence established
18 the Attorney General was correct and he was not. And yet
19 I tell you had it not been for the forensic evidence, he
20 would have added that to his list to stand here and tell
21 you he knows he's right. The human lie detector.

22 And speaking of such, the Attorney General
23 offered to take a polygraph, period. Even if he had been
24 told, well, there could be a problem because now you know
25 the gentleman is deceased, I'll still take it.

1 Absolutely. All that remained for them to do is give you
2 reasons they did not believe he should take it. Fine.
3 But he never backed off, and he said, I would,
4 absolutely.

5 That is an action of someone who has an innocent
6 state of mind. It's not the defendant saying, Oh, I've
7 heard bad things. I don't want to do it. It's the
8 Attorney General saying, I have heard things, but I will
9 do it.

10 It has been a long day, and I'm not going to
11 make it longer. But I want to leave you with a thought.
12 What you do here today does make history in one form or
13 another, long after your terms have ended and I've been
14 replaced, you've been replaced, and we've all been
15 replaced. And they'll look back and wonder, What did
16 they mean? And will they say, He was not well-liked,
17 that Attorney General; he lost the confidence of law
18 enforcement or of the people or of the Governor?

19 Well, losing the confidence isn't grounds for
20 impeachment either. That takes place at a ballot box or,
21 as will happen here in a few days, at a convention. And,
22 as we all know, he has lost on that level. Because he is
23 not seeking a reelection. But he does seek to vindicate
24 himself.

25 The right answer here is the two articles

1 alleging conduct occurring in office were not established
2 by clear and convincing evidence. And, again, I think it
3 is important so I'll read it one last time, and then I'll
4 close.

5 [Reading] Clear and convincing evidence is
6 evidence that is so clear, direct, weighty, and
7 convincing as to allow the trier of fact to reach clear
8 conviction of precise facts at issue without hesitancy as
9 to their truth.

10 If that can not be done on both counts, both
11 articles, on the in-office component, it's done.

12 But I submit to you this matter never should
13 have been here in the first place. It was a tragedy and
14 always will be. But justice isn't always done by not
15 following the law to seek vindication. That will always
16 be regretted in time. Whatever moment of feeling good
17 someone gets from removing this man from office because
18 he did cause the death -- not criminally so, but he
19 did -- whatever temporary satisfaction you get, this
20 state will live with that in history. I hope and I do
21 trust that you will not let that happen.

22 Thank you very much.

23 PRESIDENT RHODEN: We are going to recess for a
24 15-minute break, and we've got to do some setup to get
25 ready for the votes. So the Senate is in recess. We

1 will reconvene at 4:40.

2 (A short recess is taken.)

3 PRESIDENT RHODEN: The Senate will return to
4 order.

5 I would just make a couple of reminders on this
6 first vote that will also apply to the second vote.
7 First of all, they will be put to you in a form of a
8 question. These questions are debatable. They will
9 require a two-thirds majority vote. The motion to
10 reconsider is never in order. Beyond that, the regular
11 rules of debate will apply.

12 Also remind the members that we have a court
13 reporter. When we do the voice vote we need you to speak
14 up.

15 Okay. We will get started.

16 On Article I the question before the Senate is
17 shall the Senate sustain the First Article of
18 Impeachment, crimes causing the death of Joseph Boever
19 against Attorney General Jason Ravnsborg, and remove him
20 from the Office of Attorney General?

21 Are there any remarks?

22 SENATOR SCHOENBECK: Mr. President.

23 PRESIDENT RHODEN: Senator Schoenbeck.

24 SENATOR SCHOENBECK: Thank you, Mr. President,
25 members of the body.

1 Every day in South Dakota somewhere our friends,
2 our family, our neighbors are highly likely to be out
3 walking somewhere on a road. It's not an unusual event.
4 In the summer we probably have tourists, flat tire, out
5 of gas, any number of things. Could be Highway 12, 212,
6 81, 50. It doesn't matter.

7 Picture that person that you know walking where
8 they're supposed to be along the road like hundreds, if
9 not thousands, of South Dakotans do every year. Now
10 picture a vehicle coming at them at highway speeds. And
11 this vehicle has had its first set of tires on the side
12 go over the fog line, then the rumble strips, which make
13 a hell of a lot of noise. And then the other two tires,
14 they cross the fog line. Now they've crossed the rumble
15 strips, and they're bearing down on that family or friend
16 or neighbor that you know and they smash them at highway
17 speeds accelerating their body to the highway speed that
18 the car's accelerating to so hard they put the face
19 through the windshield so the driver of this vehicle
20 could actually reach over and touch that face.

21 And if the defense is I was not a distracted
22 driver, then there's a way, way bigger -- way, way bigger
23 set of facts here we should be thinking about. Because
24 that means this person -- this person ran down that
25 family, friend, or neighbor at highway speeds, seeing

1 them right in front of them, put their head through the
2 windshield, they were on the vehicle for a couple of
3 seconds before the body rolls off, and says, I hit
4 something.

5 Well, that was a lie. There is no question that
6 was a lie. There's no question that this person ran down
7 an innocent South Dakotan. Ran them down. And we do not
8 have to leave our decisions about crimes to the charging
9 decisions of the Deputy State's Attorney for Hyde County.
10 We don't have to. If we think that's criminal conduct,
11 then it is criminal conduct for purposes of the
12 Constitution.

13 There's some other statements that have been
14 made here. There is no such thing as a burden of proof.
15 And every one of you knows that because we make a couple
16 thousand votes a year, and we don't sit down and say
17 beyond a reasonable doubt, clear and convincing? Okay.
18 I'll vote for that water bill or I won't. It doesn't
19 work that way.

20 What we do is the instructions or the statements
21 that have been shared with all of you, that each Senator
22 should make the decision on the impeachment question
23 based upon how they view the evidence in the performance
24 of their duties as a State Senator with regard to the
25 oath of office they took to perform those duties. This

1 is neither a criminal or a civil legal proceeding.

2 It is exactly what you do with every single
3 decision you have made every year and every day you've
4 been in this body. There's no such thing as a burden of
5 proof. So this discussion about clear and convincing,
6 that's all made up. That's all made up.

7 And here's another interesting thing. There is
8 no such thing as a right against self-incrimination in
9 this proceeding. That's a criminal concept. So the
10 Attorney General, if he was going to -- as the phrase --
11 I didn't write it down, but vigorously defend or
12 something, there's a mic right there, and that's a damn
13 short walk. And somebody could have got up there and
14 told us why the heck if he wasn't a distracted driver,
15 why he ran down a South Dakota citizen at highway speeds
16 and put their head through his windshield and then lied
17 about it.

18 He had no right against self-incrimination. He
19 chose -- he chose not to be here to share with us what
20 the hell he was doing killing that person.

21 The issues about the tires off the road, those
22 are science. The standards used by National Highway
23 Traffic Safety Institute to reconstruct, that's not
24 guesswork. That's not magic. The law enforcement
25 officers had no reason to make any of this up.

1 We'll talk about malfeasance with the next one,
2 but this one as to criminal conduct, if this was anybody
3 besides the Attorney General that did that to your
4 neighbor, your family, your friend, we wouldn't be having
5 this discussion.

6 Why this has dragged out, why we're even having
7 this trial is beyond me. This is only because of the
8 sordid political agendas other folks have. There should
9 have been a resignation a long time ago. There should
10 have been contrition that hasn't happened. And there
11 should be impeachment.

12 Thank you.

13 PRESIDENT RHODEN: Further remarks.

14 SENATOR HEINERT: Mr. President.

15 PRESIDENT RHODEN: Senator Heinert.

16 SENATOR HEINERT: Mitakuyepi, Mr. President.

17 Senators, we were tasked with, it seems like, an
18 impossible task. It's never happened in the state
19 before. Nobody wanted to be here. The Attorney General
20 doesn't want to be here. We don't want to be here. The
21 family of Joseph Boever doesn't want to be here. But
22 here we are.

23 We were told that this isn't a criminal or a
24 civil trial. So I'm not an attorney. I know a few
25 members of our body, they are. So how do I reconcile all

1 of this information that we've received?

2 And it comes down to what do you believe? Do
3 you believe the actions that the Attorney General took
4 prior to that accident and after warrant his removal from
5 office?

6 Now I looked at the data, and I was extremely
7 disheartened when I saw some of those pictures and when I
8 read the reports. That man laid out there for almost a
9 day. And in our way you cannot go on your journey when
10 that happens. With all of these proceedings happening
11 right now, he still cannot go; so he's waiting for us to
12 finish this.

13 There was something that really struck me as
14 we've went through this. I'm going to pause right now.

15 (Pause.)

16 SENATOR HEINERT: That's how long it took for
17 the time that he struck Mr. Boever to stop his car.
18 18 seconds. He went over a football field and a half
19 before he stopped.

20 So what do I believe? Why did it take so long?
21 Why was he so far down the road? What I believe is he
22 knew. He knew that something terrible happened and he
23 was going to have to answer for it and he panicked. And
24 he thought maybe if I get far enough down the road, they
25 won't see what's laying in the ditch back here.

1 And it worked. It worked the whole night. So
2 if I believe that, then I have to look at what else was
3 done. And from everything I've read, everything I've
4 seen and what I believe, I have to sustain this Article
5 of Impeachment. Ask yourself if you believe it too.

6 Pilamaye`.

7 PRESIDENT RHODEN: Further remarks.

8 SENATOR CAMMACK: Mr. President.

9 PRESIDENT RHODEN: Senator Cammack.

10 SENATOR CAMMACK: Mr. President, every day in
11 South Dakota there are folks that drive outside of the
12 lane of traffic. But in this instance we've got -- the
13 science says that very likely there were four wheels
14 outside across that fog line, four wheels that had
15 crossed a rumble strip. Anybody that's crossed a rumble
16 strip you can -- even if you're not in the car, you can
17 hear it forever. And crossed the rumble strip twice and
18 ended up in the taking of a human life.

19 In the end, regardless of the outcome of these
20 questions, there will be no winners. It's not possible.
21 But I ask that you vote yes on the question.

22 Thank you.

23 PRESIDENT RHODEN: Further remarks.

24 SENATOR RUSCH: Mr. President.

25 PRESIDENT RHODEN: Senator Rusch.

1 SENATOR RUSCH: Thank you, Mr. President.

2 Ladies and gentlemen of the Senate, my fellow
3 Senators, my friends here after eight years in this body,
4 I never imagined in those eight years that I would
5 approach this on this kind of an issue regarding the
6 impeachment of another person that I had regarded as my
7 friend for many years.

8 I think I've probably known the Attorney General
9 longer than anyone else here. He started practicing in
10 my court in Yankton when he first got out of law school.
11 He appeared in my court numerous times. And, you know, I
12 have difficulty reconciling the young man and the
13 maturing man that I knew there in my court with a lot of
14 the testimony here today.

15 Based on my personal experiences with him, I
16 don't believe that he would get up here and deliberately
17 about -- lie about these issues. But the fact that he
18 isn't lying doesn't mean that his recollection about what
19 happened is necessarily accurate.

20 You know, that's one thing that I learned in
21 many, many years in the courtroom is that people can tell
22 absolutely what they think is the truth and it's not the
23 truth because they recollect things differently.

24 You know, I don't think there's any evidence to
25 support the claim by his cousin that he committed suicide

1 by throwing himself in front of the car. I don't think
2 there's any evidence to support a claim by his other
3 cousin that this is some kind of a gigantic cover-up
4 because he's an elected official. You know, if that was
5 true, we wouldn't be here today.

6 You know, I am impressed with the investigation
7 that the North Dakota BCI did. I think they did an
8 absolutely thorough investigation and followed up on
9 every possible lead that they could.

10 You know, the issue addressed by the House
11 Investigating Committee that he can't be impeached
12 because this was not part of his official office duties
13 as Attorney General is inaccurate, in my opinion. He
14 identified himself as the Attorney General. He consulted
15 with the Attorney General's Office staff about how to
16 proceed in this matter. He consulted with the head of
17 the Division of Criminal Investigation about this matter.
18 He consulted with the Attorney General's Office chief of
19 staff. He consulted with different DCI experts about the
20 cell phone and polygraph. He put out a press release on
21 A.G.'s Office stationery.

22 You know, regretfully, I think that the actions
23 that he took after the accident converted this into
24 something involving -- directly involving the Attorney
25 General's Office in the entire matter. And a result of

1 that, this was treated differently than your ordinary
2 vehicular homicide case.

3 The decision what to charge him with was made by
4 a committee of prosecutors. He was allowed to plead to
5 two Class 2 misdemeanors. And, just as an aside, I was
6 one of the substitute justices that sat on the Bill
7 Janklow case. Bill Janklow, in a similar case, although
8 I would have to say much more egregious, was convicted of
9 second degree manslaughter for that, and he served his
10 sentence on that.

11 He was, of course, a federal officer at that
12 time, not subject to impeachment. But the prosecutor
13 there made the decision to go ahead and try the case and
14 left the decision to a jury of Moody County jurors. And
15 that didn't happen in this case. In this case, the case
16 was plea bargained away to a couple of Class 2
17 misdemeanors. And that's not our decision. We're bound
18 by that decision.

19 You know, I spent a dozen years as a prosecutor.
20 I'm adamant about the powers and the rights of a
21 prosecutor. And we don't have a right to second-guess
22 those charging decisions. But, you know, we certainly
23 have a right to think about whether it should have been
24 plea bargained down to that level.

25 In preparation for this hearing -- I don't want

1 to call it a trial -- this impeachment hearing, I got a
2 book about the impeachment of Andrew Johnson, which is,
3 of course, the most important impeachment that we've had
4 in the United States, and if I could just read a
5 paragraph or so here.

6 [Reading] So in 1868 Congress and the public
7 would have to consider the definition of a high crime and
8 the meaning of a misdemeanor. It was bewildering. The
9 multitude of strangers were waiting for impeachment,
10 Mark Twain observed. They did not know what impeachment
11 was exactly, but they had a general idea that it would
12 come in the form of an avalanche or a thunderclap or that
13 maybe the roof would fall in. For no one knew what the
14 first ever impeachment of the President of the
15 United States would look like or what sufficient grounds,
16 legal or otherwise, were necessary. No one knew partly
17 because the U.S. Constitution provides few guidelines
18 about impeachment beyond stipulating in Article II
19 Section 4 that a federal officer can be impeached for
20 treason, bribery, or a high crime or misdemeanor. The
21 president -- if the President of the United States was to
22 be impeached for treason, bribery, or a high crime or
23 misdemeanor, then the country had to define high crime.
24 Originally the crime warranting impeachment was
25 maladministration, but James Madison had objected as the

1 term was too hazy. Yet high crimes and misdemeanors is
2 fuzzy too. Alexander Hamilton clarified, sort of. A
3 high crime is an abuse of executive authority proceeding
4 from an abuse or violation of some public trust.
5 Impeachment is a national inquest into the conduct of
6 public men. Fuzzy again. Are impeachments to proceed
7 because of violations of law or infractions against that
8 murky thing called public trust? But surely if the only
9 crimes that were impeachable were high, then the founders
10 must have meant high misdemeanors as well, for a
11 misdemeanor is a legal offense ranked below that of a
12 felony. Could a president be impeached for any
13 misdemeanor, like stealing a chicken, or did it have to
14 be something, well, higher?

15 I don't want in any way to indicate that the
16 death of a human being is equivalent to stealing a
17 chicken, but in this case the misdemeanors that were
18 charged were equivalent to that.

19 What really troubles me about these proceedings
20 is I don't know what happened here. I'm troubled by
21 that. It's clear that Attorney General Ravnsborg has a
22 long history of being a poor driver. He doesn't pay
23 attention when he drives and was planned that night that
24 he wasn't going to pay attention because he was going to
25 be thinking about upcoming cases.

1 How fast was he driving? Was he using his cell
2 phone when he hit Mr. Boever? How did he get on the
3 shoulder of the highway? No explanation about why he
4 didn't see Mr. Boever walking along the road with a
5 flashlight.

6 No satisfactory explanation about why he didn't
7 see Mr. Boever's face in his windshield. No satisfactory
8 explanation about why he didn't see the body or why the
9 sheriff didn't see the body when they apparently or may
10 have walked right by it. No satisfactory explanation of
11 why the sheriff didn't investigate the lit flashlight
12 when he saw it.

13 But the Count I charges that he has been
14 committed [sic] of crimes. He's only been convicted of a
15 couple of Class 2 misdemeanors, traffic offenses. So do
16 we impeach for Class 2 misdemeanors? And I guess my
17 answer to that is no.

18 And I might have a different answer to that in
19 respect to Count II, but my answer in Count I is that we
20 don't impeach for Class 2 misdemeanors.

21 Thank you.

22 SENATOR CASTLEBERRY: Mr. President.

23 PRESIDENT RHODEN: Further remarks.

24 Senator Castleberry.

25 SENATOR CASTLEBERRY: Thank you, Mr. President.

1 When I was growing up I went between our two
2 houses, which one was in Rapid Valley and one was in
3 Hill City. And so many times during the week we would
4 drive back and forth on Highway 16 and Highway 385. And
5 throughout my childhood we probably hit 10 deer.

6 And I will tell you, the one thing that we
7 always did because it was the humane thing to do, was to
8 stop and ensure that that animal was deceased. And when
9 it was practical, if they were not, my mother would
10 discharge a firearm to ensure that that animal did not
11 suffer.

12 When he thought that he had struck a deer, he
13 called 911, and he stayed. When he knew that he had
14 struck a human he did not call 911, and he left.

15 There's no question here that this is a tragedy
16 of chance. There were miles and miles of highway where
17 he could have veered off the road, and for whatever
18 reason destiny has forever intertwined these two people.

19 For Mr. Boever it meant the end of his life.
20 And for Mr. Ravensborg it led to discrepancy after
21 discrepancy to show us what the Attorney General of our
22 state was capable of, which I think is grounds for
23 impeachment.

24 Thank you.

25 PRESIDENT RHODEN: Further remarks.

1 SENATOR JOHNS: Mr. President.

2 PRESIDENT RHODEN: Senator Johns.

3 SENATOR JOHNS: Thank you, Mr. President.

4 First of all, on behalf of all the members of
5 the Senate, we send our sincerest condolences to the
6 Joseph Boever family. It certainly is a tragedy, and
7 it's too bad that we have to be here today. And things
8 could have possibly been different if other charges had
9 been brought in this case.

10 Second, we're not entitled to exercise unbridled
11 discretion in this case. The Constitution's clear.
12 There's only five grounds for which it can impeach. One
13 is drunkenness. Doesn't apply. Crimes. Corrupt conduct
14 or misfeasance or misdemeanors in office. Crimes here
15 mean felonies. There's no reason why you would say
16 misdemeanors and felony -- crimes and misdemeanors. It's
17 crimes are limited specifically to felonies. Now the
18 felony that could have been charged and was charged in
19 Governor Janklow's case was manslaughter, recklessly
20 taking the life of another human being.

21 If you look at the elements of Article I, these
22 people -- he is not charged with recklessly taking the
23 life of a human being. Nor is he even charged with
24 negligently taking the life of another human being. He's
25 charged with lane changing and distracted driving.

1 They're Class 2 misdemeanors. A felony is something you
2 can go to the penitentiary for. A Class 2 misdemeanor is
3 \$500 and a -- or 1,000 -- well, no. It's 500 and six
4 months in jail or something now. But it's changed. And
5 then there's a Class 1 misdemeanor.

6 We aren't looking at a Class 1 misdemeanor.
7 We're not looking at a felony. We're looking at two
8 Class 2 misdemeanors that caused the death of another
9 individual. And neither of these relate to any
10 performance of anything that would be related to his
11 performance in office.

12 These misdemeanors, as used in the Constitution,
13 must relate specifically to duties of office. They must
14 be integral to that office. And driving while you're
15 coming back from a Lincoln Day Dinner, which is an act of
16 a politician, somebody that wants to get elected -- it's
17 not a requirement that I go to a Lincoln Day Dinner as a
18 Attorney General. There's no requirement. That's not
19 one of the things that I'm required to do as an Attorney
20 General. I'm doing that because I want to get reelected.
21 I'm going to all of these places and doing a lot of those
22 things, but that's the act of a politician.

23 I'm going to keep my remarks as to the Second
24 Article since we'll be voting on them separately. But we
25 do need to keep our eye on the ball, and we don't have a

1 felony charge here. There was nothing ever alleged in
2 that respect. And we're limited to specifically what
3 they said in the article, and there's nothing mentioned
4 about a crime that would qualify under our Constitution
5 for this death. And for that reason I would submit that
6 we must vote -- that the article has not been sustained.

7 Thank you.

8 PRESIDENT RHODEN: Further remarks.

9 Senator Wheeler.

10 SENATOR WHEELER: Members of the Senate, as I've
11 been contemplating this matter for a long time, I try and
12 bring myself back to the law -- to my duty to do law --
13 to do justice according to law and evidence. That's what
14 our oath is, to do justice according to law and evidence.

15 And so when thinking about this First Article I
16 first have to ask myself what is the law? The law is
17 that we can only impeach by drunkenness, crimes, corrupt
18 conduct, or malfeasance or misdemeanors in office.

19 Now there's been some debate about what "crimes"
20 mean. There's been an argument made that it only applies
21 to felonies. There was an argument made by the
22 Respondent's team that it only applies to crimes made in
23 office. I submit to you both of those are wrong. Crimes
24 means crimes. It's a plain word that all of us
25 understand. And any crime you commit can potentially

1 make you liable for impeachment. Now whether any crime
2 rises to the level of impeachment, I'll address a little
3 bit later.

4 But as the definition of crime in general means
5 any crime you commit -- because if you believe the
6 Respondent's argument that it only applies to crimes in
7 office, well, then someone could commit murder not
8 related to their office, be convicted and sent to prison,
9 and yet still be an official of this state because we
10 would have been powerless to remove them. That cannot
11 be. That's an absurd reading of our Constitution.

12 And so I look at this to say we can impeach for
13 any crimes. And so then I now must look to what is the
14 law the House gave to us? The House's duty is to
15 impeach. They submit Articles of Impeachment. Our
16 question that we are going to answer to today is to
17 sustain that Article of Impeachment.

18 And so I review what the House sent to us. The
19 House said that they are impeaching Attorney General
20 Jason Ravnsborg for crimes causing the death of Joseph
21 Boever. That is all they specified, crimes causing the
22 death of Joseph Boever.

23 Now they did specify three paragraphs regarding
24 the facts surrounding that, and they mentioned two
25 Class 2 misdemeanors to which he pled no contest. But

1 the impeachment article did not limit us to just those
2 two crimes. The impeachment article applies to any
3 crimes causing the death. So I exclude crimes involving
4 lying to law enforcement because those didn't result in
5 his death. Those were afterwards. We'll deal with those
6 in Count II. But in this case I am only looking at what
7 caused his death.

8 And so in this case I now go to the evidence.
9 The evidence in this case was presented to me by the --
10 all of the investigators who were involved, clearly that
11 he was off the road, and he was off the road by all four
12 tires.

13 Now I won't get too much into a debate about the
14 burden of proof except to say I believe it's correct that
15 one doesn't exist. We set our own standards
16 individually. But I believe that the Prosecution team
17 has proven this case by a clear and convincing standard.
18 It is clear to me his tires were off the road. All of
19 the science proves that.

20 They have three different ways they try and do
21 the trajectory of where the car came from, where was the
22 area of impact, and he was so far to the right, to the
23 north, that it was clear that his tires were -- all four
24 were across the rumble strip.

25 And it was clear that they had been there for

1 more than just a few seconds. It wasn't a brief swerve
2 because there wasn't any tire marks indicating there was
3 a jerking motion, and so he had been there for at least
4 more than a few seconds.

5 And if you've been doing that, then his driving
6 was reckless. If you've been doing that, he had lost so
7 much control of his driving that he went all four tires
8 off the road. This is beyond distracted driving. This
9 is beyond careless driving. It doesn't matter -- and I
10 completely agree at the moment of impact he was not on
11 his phone. But it's clear that he was on it very much
12 shortly before then.

13 And the Attorney General did not provide to us
14 an explanation of what he was doing. I specifically
15 asked the question to them because this is what I wanted
16 to know is why was he so far off the road? How far was
17 he off the road? And all they can say is they don't
18 know.

19 They had the opportunity to present evidence to
20 rebut this, and they did not. They didn't provide any
21 debating or disputing scientific evidence that maybe it
22 only was two lanes -- maybe just two tires off the road.
23 They didn't really even try and question it at all. So
24 we're only left with the investigators' conclusions that
25 to me remain unrebutted, that he was four tires off the

1 road. And when you're so far -- when you do that for so
2 long that you are so distracted that you don't see the
3 individual in front of you, then you have definitely in
4 my mind committed reckless driving.

5 And if you've committed reckless driving --
6 recklessness is a standard for manslaughter. If you
7 recklessly kill another human being, you've committed
8 manslaughter. That's second degree manslaughter in our
9 code. That's a felony. And he would very likely -- I
10 wouldn't say that. I'm not going to say very likely
11 because I've seen second degree manslaughter cases where
12 people don't go to prison. Because there's a lot of
13 variation in recklessness and degree of culpability. But
14 he would definitely be charged with a felony.

15 Now in this case the prosecutors didn't do that.
16 I'm not going to second-guess their particular
17 prosecutorial decision. Because they have a different
18 standard. They're in criminal court. They have to
19 explain what he was doing off the road, which they can't
20 necessarily do, or how far or why he was on there for so
21 long, what he was doing at the moment of the impact that
22 distracted him.

23 Maybe they felt there was enough question that
24 they couldn't present it to a jury and prove beyond a
25 reasonable doubt. I'm not going to second-guess them on

1 that question. But to me the evidence presented here
2 today is clear that he was, and he was there for so long
3 that there could be no question that he was driving
4 recklessly. And so to me he committed manslaughter, and
5 that is a crime.

6 Then that gets to my final question is is
7 whatever he committed worthy of being impeached, worthy
8 of being removed from office? If this was just a Class 2
9 misdemeanor, if it was just careless driving or just an
10 illegal lane change, there was nothing more involved, I
11 would not find that to be a removable offense. Speeding
12 is a Class 2 misdemeanor. It's not a removable offense.

13 But that's not what he did here today. Or
14 that's not what he did that we are judging today. We
15 today have seen that that careless driving actually rose
16 to the level of recklessness, actually rose to the level
17 of manslaughter. And so we must send the signal to
18 everybody that if you drive recklessly on a road and kill
19 somebody, you can no longer be an official in this state.

20 And so I ask the members of this body to sustain
21 the Article of Impeachment sent to us by the House
22 because they have -- it has been proven to us by the law
23 and the evidence that a sustaining vote is the only vote
24 that should result.

25 Thank you.

1 PRESIDENT RHODEN: Further remarks.

2 Senator Duhamel.

3 SENATOR DUHAMEL: Thank you, Mr. President.

4 All four wheels across the rumble strips. So
5 distracted he did not know what he hit. So reckless.
6 Clear, convincing, direct evidence. This is a serious
7 offense that killed a man. I will vote to sustain the
8 Articles of Impeachment.

9 PRESIDENT RHODEN: Further remarks.

10 SENATOR DIEDRICH: Mr. President.

11 PRESIDENT RHODEN: Senator Diedrich.

12 SENATOR DIEDRICH: Thank you, Mr. President.

13 I want to thank the fellow members of the bar
14 for them sharing their expertise and information on this.
15 And I'm not going to be redundant on it. I just simply
16 want to say --

17 PRESIDENT RHODEN: Senator, could you try and
18 get a little closer to your microphone.

19 SENATOR DIEDRICH: I just wanted to say that I
20 agree with the good Senators from Lawrence County and
21 Beadle and Kingsbury and Clay and Turner County as to
22 Article I and how they look at that and the information
23 they've shared with us.

24 And I think that topic has probably been well
25 explained. We've had excellent information from the

1 investigators today and the reports that we've all had
2 access. The hours and hours and hours that I know
3 everybody looked at. We took this job very seriously.

4 I think a really important thing to me is the
5 fitness for office. And for our chief law enforcement
6 officer in the state to conduct himself in the manner
7 that occurred before and after, more importantly after
8 the accident in his dealings with law enforcement, in his
9 call to 911 and to his referencing himself, using the
10 letterhead of the State and his office to make political
11 statements essentially, those things have eroded and
12 caused the loss of confidence in our chief law
13 enforcement officer by law enforcement throughout the
14 state and probably a lot of public that we don't know.
15 We can't really quantify that.

16 But I think that that -- it is up to us and it's
17 appropriate for us to make a determination as to the
18 qualifications and the performance of our constitutional
19 officers when we have the opportunity based on tragedies
20 that may occur from the way they conduct themselves.

21 And so it's -- the matter of the driving and the
22 distraction and leaving the road is just so well settled.
23 The other part that's really important to keep the public
24 trust in the state of South Dakota and our law
25 enforcement in South Dakota is to ensure that we have the

1 appropriate chief law enforcement. And I think that this
2 is an opportunity to make that statement clear for future
3 generations. And so I urge you to vote to sustain number
4 two.

5 PRESIDENT RHODEN: Further remarks.

6 Hearing no further remarks, the question before
7 the Senate is shall the Senate sustain the First Article
8 of Impeachment, crimes causing the death of Joseph Boever
9 against Attorney General Jason Ravnsborg, and remove him
10 from the Office of Attorney General?

11 Members in favor will vote "aye," those opposed
12 "nay." This is a two-thirds majority vote.

13 The Secretary will please call the roll.

14 SECRETARY JOHNSON: Senator Bolin.

15 SENATOR BOLIN: Yes.

16 SECRETARY JOHNSON: Breitling.

17 SENATOR BREITLING: Yes.

18 SECRETARY JOHNSON: Cammack.

19 SENATOR CAMMACK: Aye.

20 SECRETARY JOHNSON: Castleberry.

21 SENATOR CASTLEBERRY: Aye.

22 SECRETARY JOHNSON: Crabtree.

23 SENATOR CRABTREE: Aye.

24 SECRETARY JOHNSON: Curd.

25 SENATOR CURD: Aye.

1 SECRETARY JOHNSON: Diedrich.
2 SENATOR DIEDRICH: Aye.
3 SECRETARY JOHNSON: Duhamel.
4 SENATOR DUHAMEL: Aye.
5 SECRETARY JOHNSON: Duvall.
6 SENATOR DUVAL: Aye.
7 SECRETARY JOHNSON: Foster, excused.
8 Frye-Mueller, excused.
9 Greenfield.
10 SENATOR GREENFIELD: No.
11 SECRETARY JOHNSON: Heinert.
12 SENATOR HEINERT: Aye.
13 SECRETARY JOHNSON: Hunhoff.
14 SENATOR HUNHOFF: Aye.
15 SECRETARY JOHNSON: Johns.
16 SENATOR JOHNS: Nay.
17 SECRETARY JOHNSON: Johnson.
18 SENATOR JOHNSON: Aye.
19 SECRETARY JOHNSON: Klumb.
20 SENATOR KLUMB: No.
21 SECRETARY JOHNSON: Kolbeck.
22 SENATOR KOLBECK: No.
23 SECRETARY JOHNSON: Maher.
24 SENATOR MAHER: No.
25 SECRETARY JOHNSON: Nesiba.

1 SENATOR NESIBA: Aye.
2 SECRETARY JOHNSON: Novstrup.
3 SENATOR NOVSTRUP: No.
4 SECRETARY JOHNSON: Pardon?
5 SENATOR NOVSTRUP: No.
6 SECRETARY JOHNSON: Otten.
7 SENATOR OTTEN: Aye.
8 SECRETARY JOHNSON: Rohl.
9 SENATOR ROHL: Aye.
10 SECRETARY JOHNSON: Rusch.
11 SENATOR RUSCH: No.
12 SECRETARY JOHNSON: Schoenbeck.
13 SENATOR SCHOENBECK: Aye.
14 SECRETARY JOHNSON: Schoenfish.
15 SENATOR SCHOENFISH: Aye.
16 SECRETARY JOHNSON: Smith.
17 SENATOR SMITH: Aye.
18 SECRETARY JOHNSON: Stalzer.
19 SENATOR STALZER: Aye.
20 SECRETARY JOHNSON: Steinhauer.
21 SENATOR STEINHAUER: No.
22 SECRETARY JOHNSON: Sutton.
23 SENATOR SUTTON: Aye.
24 SECRETARY JOHNSON: Symens.
25 SENATOR SYMENS: No.

1 SECRETARY JOHNSON: Tobin.

2 SENATOR TOBIN: Aye.

3 SECRETARY JOHNSON: Wheeler.

4 SENATOR WHEELER: Aye.

5 SECRETARY JOHNSON: Wiik.

6 SENATOR WIIK: Aye.

7 SECRETARY JOHNSON: Zikmund.

8 SENATOR ZIKMUND: Aye.

9 SECRETARY JOHNSON: Mr. President, there are
10 24 yeas, 9 nays, and 2 excused.

11 PRESIDENT RHODEN: The question having received
12 a two-thirds majority vote of the members elect, the
13 Attorney General of the State of South Dakota is
14 convicted of the First Article of Impeachment and removed
15 from the Office of Attorney General.

16 We will now take up Article II. The question
17 before the Senate is shall the Senate sustain the Second
18 Article of Impeachment, malfeasance in office following
19 the death of Joseph Boever against Attorney General
20 Jason Ravnsborg, and remove him from the Office of
21 Attorney General?

22 Are there any remarks?

23 SENATOR RUSCH: Mr. President.

24 PRESIDENT RHODEN: Senator Rusch.

25 SENATOR RUSCH: I'm not going to be repetitive

1 on a lot of the things I said before. I voted no on
2 Count I, but Count II is a different issue on this case.

3 And in respect to Count II, I'm concerned about
4 whether the Attorney General misused his office as
5 Attorney General. You know, obviously, he's a poor
6 driver. There have been numerous incidents where he's
7 avoided responsibility for his poor driving by
8 identifying himself as Attorney General.

9 In this case he started out by identifying
10 himself as Attorney General and got special treatment as
11 a result. How many other cases have received the use of
12 the sheriff's personal car? How many other cases have
13 received such an inadequate investigation? How many
14 other cases have had a committee of prosecutors to decide
15 what charges to bring?

16 What really concerns me, though, is the fact
17 that he was consulting with staff at the Attorney
18 General's Office about this and how to handle this
19 matter. The head of the DCI that was involved in it, his
20 chief of staff in the Attorney General's Office was
21 involved in that. He consulted DCI experts about the
22 cell phone and polygraph. He put out a press release on
23 his A.G.'s Office stationery.

24 Although there's the argument that this was not
25 part of his Attorney General's Office, he made this part

1 of his Attorney General's Office. He directly involved
2 the Attorney General's Office in this entire matter. He
3 affected the credibility of the Attorney General's Office
4 by his conduct. And I believe that in respect to
5 Count II the answer should be yes and that he should be
6 impeached in this matter.

7 Thank you.

8 PRESIDENT RHODEN: Further remarks?

9 SENATOR JOHNS: Mr. President.

10 PRESIDENT RHODEN: Senator Johns.

11 SENATOR JOHNS: Thank you, Mr. President.

12 Again, I want us to look at what the elements
13 are in the Articles of Impeachment. And we're talking
14 about malfeasance, and we're talking about malfeasance
15 while in office.

16 Now I understand that law enforcement lost
17 confidence in our Attorney General right after the event
18 and the things that did follow and that that would have
19 been appropriate at the time for him to resign from
20 office but he decided not to and that was a decision he's
21 entitled to.

22 You know, when you lose confidence in your
23 elected leaders -- in parliamentary countries you have a
24 no confidence vote. Or in South Dakota if it's a
25 municipal leader, you can have recall elections. In

1 California they have recall elections for state
2 officials. We just don't have it here. But we respect
3 the rights of the electors as to the decisions they make
4 to put in office. There's a huge difference when it
5 comes to impeachment.

6 Why haven't we seen it since we've been a state?
7 Because of the fact that we are extremely reluctant to
8 remove someone from office unless they've really
9 committed major, major faux pas or criminal offenses or
10 things where it's truly a misuse of office where you're
11 using everything that's related to office. And I can
12 understand the arguments just made by the Senator from
13 Clay County where he's saying that they made too much use
14 of it.

15 But then I got to look at when it comes to
16 malfeasance and what the South Dakota Supreme Court has
17 said about malfeasance. It says that, first of all, it
18 has to be done in the official capacity. But that's only
19 one element.

20 The next element is it must be done knowingly.
21 A third element is must be done willfully. And, finally
22 and most importantly, it must be done with an evil or
23 corrupt motive or purpose. And if you really analyze the
24 evidence, I don't think we have any evidence here that
25 anything he did was done with an evil or improper,

1 corrupt purpose. I don't see it.

2 You know, we're asked to draw inferences. And
3 inferences can lead to a conclusion. But inferences must
4 be based on evidence, evidence that you're satisfied
5 with, and then it has to be reasoned that this is
6 something that logically follows.

7 We don't have it here, folks. I think we had a
8 lot of speculation in some of the opinions. And the
9 opinions rendered by one of the witnesses as to whether
10 he thought he was lying or not would never come up in
11 court. The only thing you're entitled to in court when
12 it comes to a person's credibility is I can give an
13 opinion as to whether or not they're deemed to be
14 credible within the community. Or I can -- but it's
15 reputation. It's a reputation for being a false --
16 falsifier.

17 And I just struck -- and, you know, do I approve
18 of what happened? No. Like the Senator from Yankton --
19 or Vermillion, I truly think that things have happened
20 that really have demeaned that office. But is it grounds
21 for impeachment? And I have to say no. But -- and I
22 understand the majority of you are going to go the other
23 way, and that's okay because that's why you have your
24 position and you get paid the big bucks. But my position
25 is legally it's not sustained.

1 So thank you.

2 PRESIDENT RHODEN: Further remarks.

3 Senator Duhamel.

4 SENATOR DUHAMEL: Thank you, Mr. President.

5 The standard is honesty. As much as anything,
6 this is about an elected official not telling the truth.
7 Law enforcement testified that the Attorney General lied
8 about several things.

9 He said he was not using his phone while driving
10 until they proved that he was. He insisted he was
11 driving in the middle of the road and that he had to
12 wrestle the vehicle to the side. He initially didn't
13 offer that he had asked law enforcement what
14 investigators would find on his phone. An abundance of
15 evidence that the Attorney General misled or lied to law
16 enforcement.

17 The Attorney General has the duty to hold
18 himself to a higher standard of personal and professional
19 conduct. As the chief law officer, the top cop, once
20 you're caught in a lie how do you ever overcome that?
21 Ever. He lost the faith of law enforcement and the
22 people of South Dakota because of his conduct.

23 PRESIDENT RHODEN: Further remarks.

24 Senator Wheeler.

25 SENATOR WHEELER: Thank you, Mr. President.

1 Members of the Senate, I'll try and go through a
2 similar analysis as the last one. I believe this one
3 will be a little more brief.

4 To me, the question on the law is a little
5 more -- is a little more close because of the murky
6 definition of what "in office" means. I tried to do a
7 lot of research on this, and whether it applies to simply
8 exercising -- only official exercising of his official
9 duties and he has to do something there that would apply,
10 or could it mean more broadly to his conduct as an
11 official of this state?

12 And as the Prosecution team pointed out, as the
13 Attorney General he has higher duties than your average
14 official. As an attorney he has a duty to candor, and as
15 a prosecutor he has a duty to be a minister of justice.
16 And when you lie to law enforcement you're violating that
17 duty.

18 When -- and I -- there's a lot of questions
19 about what happened in terms of what he knew and when he
20 knew it. I don't know all those questions. I don't know
21 all those answers. But I do know that he lied about his
22 cell phone use. That was clearly shown by the evidence,
23 that he minimized that conduct at first and just
24 continued to only admit to evidence as it was presented
25 to him by law enforcement.

1 And so the idea that our chief law enforcement
2 officer could lie to law enforcement, even about a small
3 matter, and still remain our chief law enforcement
4 officer to me is untenable. To me when you are the
5 Attorney General you have a higher duty when your
6 relation -- in all of your interactions with other law
7 enforcement officers you must always tell the truth.

8 He could have chosen to not have an interview
9 with them at all, and that might have come with other
10 political implications, but he chose to sit down with
11 that interview and minimize his conduct to such an extent
12 that he lied. And we cannot send the message that our
13 chief law enforcement officer can lie to law enforcement
14 and remain in office. Therefore, I believe that the law
15 and the evidence again bring me to vote yes on sustaining
16 this article.

17 Thank you.

18 PRESIDENT RHODEN: Further remarks.

19 Any further remarks?

20 Hearing none, the question before the Senate:
21 Shall the Senate sustain the Second Article of
22 Impeachment, malfeasance in office following the death of
23 Joseph Boever against Attorney General Jason Ravensborg,
24 and remove him from Office of Attorney General?

25 Members in favor of that question will vote

1 "aye," those opposed "nay." This is also a two-thirds
2 majority vote.

3 The Secretary will please call the roll.

4 SECRETARY JOHNSON: Senator Bolin.

5 SENATOR BOLIN: Yes.

6 SECRETARY JOHNSON: Breitling.

7 SENATOR BREITLING: Yes.

8 SECRETARY JOHNSON: Cammack.

9 SENATOR CAMMACK: Aye.

10 SECRETARY JOHNSON: Castleberry.

11 SENATOR CASTLEBERRY: Aye.

12 SECRETARY JOHNSON: Crabtree.

13 SENATOR CRABTREE: Aye.

14 SECRETARY JOHNSON: Curd.

15 SENATOR CURD: Aye.

16 SECRETARY JOHNSON: Diedrich.

17 SENATOR DIEDRICH: Aye.

18 SECRETARY JOHNSON: Duhamel.

19 SENATOR DUHAMEL: Aye.

20 SECRETARY JOHNSON: Duvall.

21 SENATOR DUVALL: Aye.

22 SECRETARY JOHNSON: Foster is excused.

23 Frye-Mueller is excused.

24 Greenfield.

25 SENATOR GREENFIELD: Aye.

1 SECRETARY JOHNSON: Heinert.
2 SENATOR HEINERT: Aye.
3 SECRETARY JOHNSON: Hunhoff.
4 SENATOR HUNHOFF: Aye.
5 SECRETARY JOHNSON: Johns.
6 SENATOR JOHNS: Nay.
7 SECRETARY JOHNSON: Pardon? Nay?
8 SENATOR JOHNS: No.
9 SECRETARY JOHNSON: Johnson.
10 SENATOR JOHNSON: Aye.
11 SECRETARY JOHNSON: Klumb.
12 SENATOR KLUMB: Aye.
13 SECRETARY JOHNSON: Kolbeck.
14 SENATOR KOLBECK: Aye.
15 SECRETARY JOHNSON: Maher.
16 SENATOR MAHER: Aye.
17 SECRETARY JOHNSON: Nesiba.
18 SENATOR NESIBA: Aye.
19 SECRETARY JOHNSON: Novstrup.
20 SENATOR NOVSTRUP: No.
21 SECRETARY JOHNSON: Otten.
22 SENATOR OTTEN: Aye.
23 SECRETARY JOHNSON: Rohl.
24 SENATOR ROHL: Aye.
25 SECRETARY JOHNSON: Rusch.

1 SENATOR RUSCH: Aye.
2 SECRETARY JOHNSON: Schoenbeck.
3 SENATOR SCHOENBECK: Aye.
4 SECRETARY JOHNSON: Schoenfish.
5 SENATOR SCHOENFISH: Aye.
6 SECRETARY JOHNSON: Smith.
7 SENATOR SMITH: Aye.
8 SECRETARY JOHNSON: Stalzer.
9 SENATOR STALZER: Aye.
10 SECRETARY JOHNSON: Steinhauer.
11 SENATOR STEINHAUER: Aye.
12 SECRETARY JOHNSON: Sutton.
13 SENATOR SUTTON: Aye.
14 SECRETARY JOHNSON: Symens.
15 SENATOR SYMENS: Aye.
16 SECRETARY JOHNSON: Tobin.
17 SENATOR TOBIN: Aye.
18 SECRETARY JOHNSON: Wheeler.
19 SENATOR WHEELER: Aye.
20 SECRETARY JOHNSON: Wiik.
21 SENATOR WIIK: Aye.
22 SECRETARY JOHNSON: Zikmund.
23 SENATOR ZIKMUND: Aye.
24 SECRETARY JOHNSON: Mr. President, there are
25 31 yeas, 2 nays, and 2 excused.

1 PRESIDENT RHODEN: So the question having
2 received a two-thirds majority vote of the members elect,
3 the President declares the Attorney General of
4 South Dakota is convicted of the Second Article of
5 Impeachment and removed from the Office of Attorney
6 General.

7 Now as a reminder, members of the Senate, we
8 have two votes on disqualification. We will have one
9 vote for each of the two Articles of Impeachment that
10 both passed, starting with Article I.

11 So the question before the Senate is shall
12 Jason Ravnsborg be disqualified from holding any office
13 of trust or profit under the State as a result of being
14 convicted on the First Article of Impeachment?

15 Are there any remarks?

16 Senator Schoenbeck.

17 SENATOR SCHOENBECK: I think we're all weary of
18 the culmination of these events that have weighed on us;
19 so I'll be brief.

20 I think the result to impeach has to go hand in
21 hand with the message you send about whether that person
22 can ever hold public office again in our state. I think
23 yes is the appropriate vote.

24 Thank you.

25 PRESIDENT RHODEN: Further remarks.

1 Any further remarks?

2 Hearing no further remarks, the question before
3 the Senate is shall Senator [sic] Ravensborg be
4 disqualified from holding any office of trust or profit
5 under the State?

6 Members in favor will vote "aye," those opposed
7 "nay." This is also a two-thirds majority vote.

8 The Secretary will call the roll.

9 SECRETARY JOHNSON: Senator Bolin.

10 SENATOR BOLIN: Aye.

11 SECRETARY JOHNSON: Breitling.

12 SENATOR BREITLING: Aye.

13 SECRETARY JOHNSON: Cammack.

14 SENATOR CAMMACK: Aye.

15 SECRETARY JOHNSON: Castleberry.

16 SENATOR CASTLEBERRY: Aye.

17 SECRETARY JOHNSON: Crabtree.

18 SENATOR CRABTREE: Aye.

19 SECRETARY JOHNSON: Curd.

20 SENATOR CURD: Aye.

21 SECRETARY JOHNSON: Diedrich.

22 SENATOR DIEDRICH: Aye.

23 SECRETARY JOHNSON: Duhamel.

24 SENATOR DUHAMEL: Aye.

25 SECRETARY JOHNSON: Duvall.

1 SENATOR DUVALL: Aye.
2 SECRETARY JOHNSON: Foster is excused.
3 Frye-Mueller is excused.
4 Greenfield.
5 SENATOR GREENFIELD: Aye.
6 SECRETARY JOHNSON: Heinert.
7 SENATOR HEINERT: Aye.
8 SECRETARY JOHNSON: Hunhoff.
9 SENATOR HUNHOFF: Aye.
10 SECRETARY JOHNSON: Johns.
11 SENATOR JOHNS: Aye.
12 SECRETARY JOHNSON: Johnson?
13 SENATOR JOHNSON: Aye.
14 SECRETARY JOHNSON: Pardon?
15 SENATOR JOHNSON: Aye.
16 SECRETARY JOHNSON: Klumb.
17 SENATOR KLUMB: Aye.
18 SECRETARY JOHNSON: Kolbeck.
19 SENATOR KOLBECK: Aye.
20 SECRETARY JOHNSON: Maher.
21 SENATOR MAHER: Aye.
22 SECRETARY JOHNSON: Nesiba.
23 SENATOR NESIBA: Aye.
24 SECRETARY JOHNSON: Novstrup.
25 SENATOR NOVSTRUP: Aye.

1 SECRETARY JOHNSON: Otten.
2 SENATOR OTTEN: Aye.
3 SECRETARY JOHNSON: Rohl.
4 SENATOR ROHL: Aye.
5 SECRETARY JOHNSON: Rusch.
6 SENATOR RUSCH: Aye.
7 SECRETARY JOHNSON: Schoenbeck.
8 SENATOR SCHOENBECK: Aye.
9 SECRETARY JOHNSON: Schoenfish.
10 SENATOR SCHOENFISH: Aye.
11 SECRETARY JOHNSON: Smith.
12 SENATOR SMITH: Aye.
13 SECRETARY JOHNSON: Stalzer.
14 SENATOR STALZER: Aye.
15 SECRETARY JOHNSON: Steinhauer.
16 SENATOR STEINHAUER: Aye.
17 SECRETARY JOHNSON: Sutton.
18 SENATOR SUTTON: Aye.
19 SECRETARY JOHNSON: Symens.
20 SENATOR SYMENS: Aye.
21 SECRETARY JOHNSON: Tobin.
22 SENATOR TOBIN: Aye.
23 SECRETARY JOHNSON: Wheeler.
24 SENATOR WHEELER: Aye.
25 SECRETARY JOHNSON: Wiik.

1 SENATOR WIIK: Aye.

2 SECRETARY JOHNSON: Zikmund.

3 SENATOR ZIKMUND: Aye.

4 SECRETARY JOHNSON: Mr. President, there are
5 33 yeas and 2 excused.

6 PRESIDENT RHODEN: So the question having
7 received a two-thirds majority vote of the members elect,
8 the President declares the Attorney General of the State
9 of South Dakota is disqualified from holding any office
10 of trust or profit under the State as a result of being
11 convicted of the First Article of Impeachment.

12 On the Second Article of Impeachment the
13 question before the Senate is shall Jason Ravnsborg be
14 disqualified from holding any office of trust or profit
15 under the State as a result of being convicted of the
16 Second Article of Impeachment?

17 Are there any remarks?

18 Senator Schoenbeck.

19 SENATOR SCHOENBECK: Mr. President, members of
20 the body, especially since my seat mate asked me, I will
21 tell you that we had no prior impeachment to draw upon in
22 drafting these. The constitutional provision is in the
23 disjunctive because I thought some people might want to
24 vote one way on the first question and differently on the
25 second question. That's why you have two questions. And

1 you have two questions on each article so they stand
2 independently. And I would encourage you to vote again
3 yes on this one.

4 Thank you.

5 PRESIDENT RHODEN: Further remarks.

6 Hearing no further remarks, the question before
7 the Senate is shall Jason Ravensborg be disqualified from
8 holding any office of trust or profit under the State as
9 a result of being convicted of the Second Article of
10 Impeachment?

11 Members in favor will vote "aye," those opposed
12 "nay." Also a two-thirds majority vote.

13 Secretary will please call the roll.

14 SECRETARY JOHNSON: Senator Bolin.

15 SENATOR BOLIN: Aye.

16 SECRETARY JOHNSON: Breitling.

17 SENATOR BREITLING: Aye.

18 SECRETARY JOHNSON: Cammack.

19 SENATOR CAMMACK: Aye.

20 SECRETARY JOHNSON: Castleberry.

21 SENATOR CASTLEBERRY: Aye.

22 SECRETARY JOHNSON: Crabtree.

23 SENATOR CRABTREE: Aye.

24 SECRETARY JOHNSON: Curd.

25 SENATOR CURD: Aye.

1 SECRETARY JOHNSON: Diedrich.
2 SENATOR DIEDRICH: Aye.
3 SECRETARY JOHNSON: Duhamel.
4 SENATOR DUHAMEL: Aye.
5 SECRETARY JOHNSON: Duvall.
6 SENATOR DUVAL: Aye.
7 SECRETARY JOHNSON: Foster is excused.
8 Frye-Mueller is excused.
9 Greenfield.
10 SENATOR GREENFIELD: Aye.
11 SECRETARY JOHNSON: Heinert.
12 SENATOR HEINERT: Aye.
13 SECRETARY JOHNSON: Hunhoff.
14 SENATOR HUNHOFF: Aye.
15 SECRETARY JOHNSON: Johns.
16 SENATOR JOHNS: Aye.
17 SECRETARY JOHNSON: Johnson.
18 SENATOR JOHNSON: Aye.
19 SECRETARY JOHNSON: Klumb.
20 SENATOR KLUMB: Aye.
21 SECRETARY JOHNSON: Kolbeck.
22 SENATOR KOLBECK: Aye.
23 SECRETARY JOHNSON: Maher.
24 SENATOR MAHER: Aye.
25 SECRETARY JOHNSON: Nesiba.

1 SENATOR NESIBA: Aye.
2 SECRETARY JOHNSON: Novstrup.
3 SENATOR NOVSTRUP: Aye.
4 SECRETARY JOHNSON: Otten.
5 SENATOR OTTEN: Aye.
6 SECRETARY JOHNSON: Rohl.
7 SENATOR ROHL: Aye.
8 SECRETARY JOHNSON: Rusch.
9 SENATOR RUSCH: Aye.
10 SECRETARY JOHNSON: Schoenbeck.
11 SENATOR SCHOENBECK: Aye.
12 SECRETARY JOHNSON: Schoenfish.
13 SENATOR SCHOENFISH: Aye.
14 SECRETARY JOHNSON: Smith.
15 SENATOR SMITH: Aye.
16 SECRETARY JOHNSON: Stalzer.
17 SENATOR STALZER: Aye.
18 SECRETARY JOHNSON: Steinhauer.
19 SENATOR STEINHAUER: Aye.
20 SECRETARY JOHNSON: Sutton.
21 SENATOR SUTTON: Aye.
22 SECRETARY JOHNSON: Symens.
23 SENATOR SYMENS: Aye.
24 SECRETARY JOHNSON: Tobin.
25 SENATOR TOBIN: Aye.

1 SECRETARY JOHNSON: Wheeler.

2 SENATOR WHEELER: Aye.

3 SECRETARY JOHNSON: Wiik.

4 SENATOR WIIK: Aye.

5 SECRETARY JOHNSON: Zikmund.

6 SENATOR ZIKMUND: Aye.

7 SECRETARY JOHNSON: Mr. President, there are
8 33 yeas, 2 excused.

9 PRESIDENT RHODEN: So the question having
10 received a two-thirds majority vote of the members elect,
11 the President declares the Attorney General of the State
12 of South Dakota is disqualified from holding any office
13 of trust or profit under the State as a result of being
14 convicted of the Second Article of Impeachment.

15 We'll be at ease for a minute.

16 (Pause.)

17 PRESIDENT RHODEN: May I have your attention.
18 We will take a 15-minute break and prepare the resolution
19 and so we can tie things up for tonight. 15-minute
20 break. When you come back it shouldn't take us long to
21 finish.

22 We are in recess.

23 (A short recess is taken.)

24 PRESIDENT RHODEN: The Senate will come to
25 order.

1 Madam Secretary.

2 SECRETARY JOHNSON: Senator Cammack moves that
3 the Senate Court of Impeachment do now dissolve.

4 SENATOR SCHOENBECK: Second.

5 PRESIDENT RHODEN: Comments on that motion.

6 Hearing none, all in favor of that motion will
7 say "aye," opposed "nay."

8 Motion carried.

9 Motions and resolutions.

10 SECRETARY JOHNSON: Senate Resolution 703
11 memorializing the proceedings of the Senate Court of
12 Impeachment.

13 Senator Cammack moves that Senate Resolution 703
14 be placed on today's calendar for immediate consideration
15 pursuant to Special Rule Number 5.

16 (The motion is seconded.)

17 PRESIDENT RHODEN: Comments on that motion.

18 Hearing none, all in favor say "aye," opposed
19 "nay."

20 Motion carries.

21 SECRETARY JOHNSON: Senate Resolution 703, a
22 resolution memorializing the proceedings of the Senate
23 Court of Impeachment.

24 Senator Cammack moves that Senate Resolution 703
25 be adopted.

1 PRESIDENT RHODEN: Is there a second?

2 SENATOR WHEELER: Second.

3 PRESIDENT RHODEN: Comments on that motion.

4 SENATOR SCHOENBECK: Mr. President.

5 PRESIDENT RHODEN: Senator Schoenbeck.

6 SENATOR SCHOENBECK: Mr. President, members of
7 the body, the resolution memorializes the actions taken
8 by the Court of Impeachment.

9 Thank you.

10 PRESIDENT RHODEN: Any other remarks?

11 Hearing none, the question before the Senate is
12 the adoption of Senate Resolution 703. Members in favor
13 will vote "aye," opposed "nay."

14 Secretary will please call the roll.

15 SECRETARY JOHNSON: Senator Bolin.

16 SENATOR BOLIN: Aye.

17 SECRETARY JOHNSON: Breitling.

18 SENATOR BREITLING: Aye.

19 SECRETARY JOHNSON: Cammack.

20 SENATOR CAMMACK: Aye.

21 SECRETARY JOHNSON: Castleberry.

22 SENATOR CASTLEBERRY: Aye.

23 SECRETARY JOHNSON: Crabtree.

24 SENATOR CRABTREE: Aye.

25 SECRETARY JOHNSON: Curd.

1 SENATOR CURD: Aye.
2 SECRETARY JOHNSON: Diedrich.
3 SENATOR DIEDRICH: Aye.
4 SECRETARY JOHNSON: Duhamel.
5 SENATOR DUHAMEL: Aye.
6 SECRETARY JOHNSON: Duvall.
7 SENATOR DUVAL: Aye.
8 SECRETARY JOHNSON: Foster is excused.
9 Frye-Mueller, excused.
10 Greenfield.
11 SENATOR GREENFIELD: Aye.
12 SECRETARY JOHNSON: Heinert.
13 SENATOR HEINERT: Aye.
14 SECRETARY JOHNSON: Hunhoff.
15 SENATOR HUNHOFF: Aye.
16 SECRETARY JOHNSON: Johns.
17 SENATOR JOHNS: Aye.
18 SECRETARY JOHNSON: Johnson.
19 SENATOR JOHNSON: Aye.
20 SECRETARY JOHNSON: Klumb.
21 SENATOR KLUMB: Aye.
22 SECRETARY JOHNSON: Kolbeck.
23 SENATOR KOLBECK: Aye.
24 SECRETARY JOHNSON: Maher.
25 SENATOR MAHER: Aye.

1 SECRETARY JOHNSON: Nesiba.
2 SENATOR NESIBA: Aye.
3 SECRETARY JOHNSON: Novstrup.
4 SENATOR NOVSTRUP: Aye.
5 SECRETARY JOHNSON: Otten.
6 SENATOR OTTEN: Aye.
7 SECRETARY JOHNSON: Rohl.
8 SENATOR ROHL: Aye.
9 SECRETARY JOHNSON: Rusch.
10 SENATOR RUSCH: Aye.
11 SECRETARY JOHNSON: Schoenbeck.
12 SENATOR SCHOENBECK: Aye.
13 SECRETARY JOHNSON: Schoenfish.
14 SENATOR SCHOENFISH: Aye.
15 SECRETARY JOHNSON: Smith.
16 SENATOR SMITH: Aye.
17 SECRETARY JOHNSON: Stalzer.
18 SENATOR STALZER: Aye.
19 SECRETARY JOHNSON: Steinhauer.
20 SENATOR STEINHAUER: Aye.
21 SECRETARY JOHNSON: Sutton.
22 SENATOR SUTTON: Aye.
23 SECRETARY JOHNSON: Symens.
24 SENATOR SYMENS: Aye.
25 SECRETARY JOHNSON: Tobin.

1 SENATOR TOBIN: Aye.

2 SECRETARY JOHNSON: Wheeler.

3 SENATOR WHEELER: Aye.

4 SECRETARY JOHNSON: Wiik.

5 SENATOR WIIK: Aye.

6 SECRETARY JOHNSON: Zikmund.

7 SENATOR ZIKMUND: Aye.

8 SECRETARY JOHNSON: Mr. President, there are
9 33 yeas, 2 excused.

10 PRESIDENT RHODEN: So the motion having received
11 an affirmative vote of the majority of the members elect,
12 the President declares the motion carried, and Senate
13 Resolution 703 is adopted.

14 SENATOR CAMMACK: Mr. President.

15 PRESIDENT RHODEN: Senator Cammack.

16 SENATOR CAMMACK: I would like to take a moment
17 to congratulate you and thank you, everyone, whether it
18 was staff or prosecution or the defense or the members of
19 the body and the members that were in the gallery. I
20 felt that today everyone was treated with respect and
21 with civility, and that's no minor -- minor task to
22 accomplish.

23 Today we did make history. Like I said earlier,
24 there were no winners today, but we did our business.
25 And thank you for your hard work.

1 PRESIDENT RHODEN: Senator Schoenbeck.

2 SENATOR SCHOENBECK: Thank you, Mr. President,
3 members of the body. I want to join in on a couple of
4 points.

5 First, the staff in this, Reed and John and
6 Hilary and Isaiah [sic], they were jumping without a
7 parachute. You know, they had to create a way to land on
8 the way down, and I don't think we should
9 underestimate -- and Sue is probably busy working
10 somewhere. All these people, the work they did and the
11 hours they put in, you just really can't imagine how
12 much.

13 And then I -- on a different level, the members
14 of the body, I just want to say I was so impressed by
15 the -- I could tell, in the days leading up, the readings
16 that people were doing and the time they were putting in
17 and the efforts they were making and the questions they
18 had, that people took their job seriously.

19 And I know that a number of people here had very
20 close relationships with the Attorney General, and that's
21 not an easy thing to set aside and do your job. And I
22 don't think anybody that's not here on this floor can
23 really appreciate what all of you did and the difficult
24 decisions you weighed, regardless of whatever decision
25 you finally reached. I know that everybody worked so

1 hard and so thoughtful, and I just want to say on behalf
2 of the citizens of South Dakota, thank you.

3 PRESIDENT RHODEN: I will take the opportunity
4 to also pile on.

5 You know, this has been a pretty incredible
6 process. And for me it was quite an eye-opener to work
7 as closely as I did -- I think the first time since I was
8 in the legislature -- with the LRC and with the staff,
9 with Boots, you know, all of us working on a process that
10 we were making it up as we went.

11 And I also want to say a special shout-out to
12 Matt Michels for coming alongside me through this
13 process. I've had a pretty challenging time in my
14 personal life and a lot of things going on and don't know
15 quite how I would have dealt with that all had it not
16 been for Matt taking the pressure off and helping me make
17 the decisions and pointing me in the right direction.
18 And all of you. And I'm very proud to be part of this
19 chamber.

20 Any other remarks before we go back to the
21 Secretary?

22 Thank you, all.

23 Madam Secretary.

24 SECRETARY JOHNSON: Senator Cammack moves that
25 when we adjourn today we adjourn to convene at 10 a.m. on

1 Wednesday, June 22, the Fourth Legislative Day.

2 SENATOR CAMMACK: As a matter of clarification,
3 we tried to get it to 9:00, and the House is not going to
4 come in until 10:00; so we would just be sitting here.
5 So sorry.

6 (The motion is seconded.)

7 PRESIDENT RHODEN: Do I get to announce --

8 SECRETARY JOHNSON: It's 10 o'clock -- the
9 motion is 10 o'clock tomorrow.

10 PRESIDENT RHODEN: Do I get to order Schoenbeck
11 to stand down?

12 The motion has been made and seconded; is that
13 correct?

14 Comments on the motion.

15 Hearing none, all in favor say "aye," opposed
16 "nay."

17 Motion carries.

18 Hold on.

19 SECRETARY JOHNSON: Senator Cammack moves that
20 the Senate do now adjourn.

21 (The motion is seconded.)

22 PRESIDENT RHODEN: All in favor of Senator
23 Cammack's motion to adjourn will say "aye," opposed
24 "nay."

25 Motion carries.

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The Senate is adjourned.

(The Senate is adjourned at 6:06 p.m.)

1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

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5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter, and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had on the 21st day of June, 2022, and that the attached
11 is a true and correct transcription of the proceedings so
12 taken.

13 Dated at Onida, South Dakota this 19th day
14 of July, 2022.

15

16

17

18 /s/ Cheri McComsey Wittler
Cheri McComsey Wittler,
19 Notary Public and
Registered Professional Reporter
20 Certified Realtime Reporter

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\$	10:34 ^[1] - 21:23 10:54 ^[1] - 22:11 11.9 ^[4] - 18:25, 19:2, 157:7, 157:20 117 ^[1] - 2:12 119 ^[1] - 2:13 12 ^[10] - 2:3, 12:16, 40:25, 85:12, 96:19, 163:6, 177:19, 187:19, 211:3, 243:5 128 ^[1] - 2:14 12:20 ^[1] - 145:3 13 ^[7] - 22:17, 74:17, 134:20, 135:5, 200:9, 201:8, 238:21 130 ^[1] - 2:14 131 ^[1] - 2:16 13th ^[1] - 92:20 14 ^[8] - 16:22, 25:2, 77:23, 79:15, 81:4, 91:18, 108:9, 108:10 14th ^[3] - 43:2, 90:16, 128:19 15 ^[4] - 128:4, 140:18, 188:20, 198:13 15-minute ^[5] - 49:18, 188:20, 241:24, 288:18, 288:19 15th ^[2] - 43:18, 128:22 16 ^[2] - 158:22, 255:4 16-16-2 ^[1] - 28:8 16-18 ^[1] - 28:14 170 ^[1] - 2:16 175 ^[1] - 67:14 18 ^[4] - 28:6, 70:25, 71:1, 247:18 186 ^[1] - 2:17 1868 ^[1] - 252:6 189 ^[1] - 2:18 18th ^[1] - 298:13 19 ^[1] - 50:14 1929 ^[1] - 31:25 1941 ^[1] - 32:19 1981 ^[1] - 147:16 1988 ^[1] - 32:23 1994 ^[1] - 33:2 1:00 ^[2] - 145:4, 145:9 1:19:39 ^[1] - 18:6 1:30 ^[2] - 25:2, 79:15 1:37:58 ^[1] - 23:9 1:38:36 ^[1] - 23:11 1:47:04 ^[1] - 17:12	200:12, 212:14, 251:5, 251:16, 254:15, 254:16, 254:20, 257:1, 257:2, 257:8, 259:25, 263:8, 263:12, 269:10, 279:25, 284:5, 288:8, 293:9 2.6 ^[1] - 204:3 20 ^[4] - 13:1, 31:6, 109:24 20/15 ^[1] - 136:24 20/20 ^[1] - 136:24 2001 ^[1] - 102:13 2002 ^[1] - 102:13 2003 ^[2] - 50:14, 51:2 2004 ^[1] - 51:5 2005 ^[1] - 33:5 2009 ^[1] - 33:8 2010 ^[1] - 51:7 2011 ^[1] - 102:15 2013 ^[1] - 28:9 2015 ^[1] - 51:13 2017 ^[2] - 102:15, 102:21 2019 ^[1] - 51:14 2020 ^[19] - 12:16, 13:2, 22:17, 25:8, 41:1, 74:5, 77:23, 83:21, 85:12, 96:19, 103:2, 121:8, 128:4, 194:5, 194:7, 199:17, 200:9, 239:15 2021 ^[4] - 44:12, 193:18, 193:25, 194:3 2022 ^[7] - 1:13, 3:4, 8:8, 8:19, 9:1, 298:10, 298:14 209 ^[1] - 2:21 21 ^[1] - 1:13 212 ^[1] - 243:5 213 ^[1] - 1:25 21st ^[2] - 3:4, 298:10 22 ^[3] - 73:16, 120:8, 296:1 22-11-9 ^[1] - 27:22 22:43 ^[1] - 23:5 23-3-28 ^[1] - 29:15 23-3-28.3 ^[1] - 29:15 231 ^[1] - 2:21 23:33 ^[1] - 22:25 23:50 ^[1] - 23:18 24 ^[2] - 233:10, 269:10 242 ^[1] - 2:23 25 ^[3] - 45:5, 117:20, 120:7 26 ^[2] - 8:8, 8:19 268 ^[1] - 58:16	276 ^[1] - 61:22 299 ^[1] - 65:9 2:04 ^[1] - 18:7 2:04:04 ^[1] - 18:10	50 ^[2] - 2:6, 243:6 500 ^[2] - 3:3, 257:3 56.8 ^[1] - 16:3 57564 ^[1] - 1:25
'			3	6
'21 ^[1] - 194:1 '73 ^[1] - 168:7			3 ^[7] - 9:14, 21:14, 27:22, 68:16, 113:7, 200:1, 200:13 3-1 ^[4] - 9:3, 9:8, 9:14, 9:23 3-2 ^[1] - 9:9 3-3 ^[1] - 9:20 3.8 ^[1] - 29:5 30 ^[5] - 25:8, 83:21, 199:17, 212:15, 239:15 30-plus ^[1] - 147:20 300 ^[3] - 138:20, 153:9, 153:11 301 ^[1] - 65:25 30th ^[2] - 43:15, 178:18 31 ^[3] - 2:3, 8:25, 279:25 327 ^[1] - 66:6 33 ^[3] - 284:5, 288:8, 293:9 35350 ^[1] - 154:14 36 ^[2] - 28:10, 157:1 385 ^[1] - 255:4 3:15 ^[1] - 208:18	6 ^[3] - 103:16, 140:11, 177:2 60 ^[3] - 68:20, 200:20, 212:14 61 ^[1] - 212:25 613 ^[1] - 67:20 62 ^[2] - 16:1, 113:2 62.4 ^[1] - 15:25 63 ^[2] - 68:21, 212:25 65 ^[12] - 13:21, 39:13, 68:21, 81:5, 200:11, 200:15, 200:20, 201:15, 212:23, 212:25, 221:5 66 ^[1] - 148:20 67 ^[3] - 16:1, 212:23, 212:25 67.1 ^[3] - 15:5, 157:3, 157:7 67.1-miles-per-hour ^[1] - 18:24 67.6 ^[3] - 15:4, 67:11, 157:3 68 ^[3] - 14:25, 57:4, 68:8 69 ^[1] - 2:7 6:06 ^[1] - 297:2
/			4	7
/s ^[1] - 298:17			4 ^[3] - 83:8, 113:11, 252:19 4-3 ^[1] - 9:18 40-plus ^[1] - 147:23 400 ^[1] - 138:23 412 ^[1] - 11:1 413 ^[1] - 11:1 414 ^[1] - 11:1 43 ^[1] - 238:19 44 ^[1] - 16:22 4450198 ^[1] - 79:3 4450204 ^[1] - 78:16 4450212 ^[1] - 79:7 475 ^[2] - 136:7, 138:24 48 ^[2] - 13:22, 81:6 4:40 ^[1] - 242:1	7 ^[2] - 144:1, 144:12 7.9 ^[2] - 157:21, 157:25 70 ^[1] - 183:13 7002 ^[2] - 9:2, 40:12 701 ^[1] - 8:8 702 ^[2] - 8:18, 8:23 703 ^[6] - 289:10, 289:13, 289:21, 289:24, 290:12, 293:13 71 ^[1] - 68:8 73 ^[1] - 2:8 77 ^[3] - 113:3, 113:6, 213:3 775 ^[1] - 139:2 7:19 ^[1] - 199:20
1			5	8
1 ^[6] - 61:13, 139:12, 139:20, 204:3, 257:5, 257:6 1,000 ^[1] - 257:3 1-11-1 ^[1] - 29:9 10 ^[15] - 64:4, 77:17, 140:18, 144:9, 144:13, 145:4, 145:9, 158:18, 158:21, 194:7, 228:23, 255:5, 295:25, 296:8, 296:9 10-minute ^[2] - 101:22, 208:17 10-week ^[1] - 73:23 100 ^[4] - 2:10, 64:9, 65:5, 138:18 1001 ^[1] - 28:6 102 ^[1] - 2:11 10:00 ^[1] - 296:4 10:23 ^[1] - 157:1 10:23:36 ^[1] - 15:4 10:23:39 ^[1] - 15:25 10:23:40 ^[1] - 16:2 10:23:45 ^[1] - 157:19 10:23:52 ^[1] - 157:19 10:23:54 ^[1] - 19:4 10:24:22 ^[1] - 19:11 10:26 ^[1] - 116:12 10:26:44 ^[2] - 21:1, 139:20 10:26:47 ^[1] - 139:21 10:26:59 ^[3] - 21:8, 139:23, 140:1 10:27:05 ^[1] - 140:8 10:27:09 ^[1] - 140:8 10:33 ^[6] - 115:22, 116:1, 116:6, 116:12, 116:18 10:33:15 ^[2] - 21:8, 21:19 10:33:22 ^[1] - 21:19 10:33:25 ^[2] - 21:21, 140:12	2 2 ^[30] - 8:10, 9:8, 9:10, 9:24, 25:8, 44:24, 58:8, 134:19, 144:1, 144:7, 174:10,		5 ^[9] - 64:5, 68:17, 92:24, 103:15, 113:7, 139:12, 144:9, 144:13, 289:15	8 ^[5] - 3:5, 9:18, 19:2, 19:3, 211:4 8.4 ^[1] - 28:16

80-plus ^[1] - 113:9 81 ^[2] - 213:4, 243:6	124:10, 129:5, 135:18, 135:25, 136:15, 138:24, 139:1, 148:17, 169:24, 208:8, 225:21 ABS ^[4] - 66:22, 66:23, 67:2, 67:5 absent ^[1] - 232:17 absolutely ^[16] - 16:23, 46:25, 47:12, 71:14, 98:20, 117:21, 118:8, 139:3, 193:5, 207:6, 209:11, 219:23, 240:1, 240:4, 249:22, 250:8 absorbing ^[1] - 201:18 absurd ^[5] - 146:18, 164:19, 164:21, 166:13, 259:11 abundance ^[2] - 207:22, 274:14 abundantly ^[1] - 211:25 abuse ^[4] - 39:16, 204:7, 253:3, 253:4 academy ^[4] - 73:22, 226:4, 226:6, 226:9 accelerate ^[2] - 13:20, 13:23 accelerated ^[1] - 14:24 accelerating ^[5] - 211:12, 211:16, 211:22, 243:17, 243:18 acceleration ^[1] - 16:15 accept ^[4] - 42:5, 45:20, 182:18, 206:19 acceptable ^[1] - 34:1 accepted ^[1] - 212:18 access ^[8] - 11:14, 68:1, 85:14, 85:15, 95:9, 214:7, 265:2 accessed ^[1] - 13:15 accesses ^[1] - 86:14 accessing ^[1] - 86:7 accident ^[38] - 41:5, 42:13, 43:17, 43:19, 45:2, 45:4, 45:8, 45:13, 45:15, 57:17, 69:21, 71:5, 71:8, 74:14, 75:22, 76:7, 76:12, 76:24, 77:2, 77:4, 80:10, 80:11, 90:18, 97:17, 117:4, 128:5, 129:13,	173:17, 191:18, 199:25, 201:6, 207:7, 237:2, 237:22, 247:4, 250:23, 265:8 accidental ^[1] - 216:14 accidentally ^[4] - 66:4, 142:24, 159:20, 161:10 accidents ^[1] - 204:8 accompanying ^[1] - 215:2 accomplish ^[1] - 293:22 accordance ^[2] - 8:22, 9:3 according ^[7] - 8:13, 42:9, 140:21, 163:14, 204:1, 258:13, 258:14 accordingly ^[1] - 10:15 account ^[4] - 24:6, 36:7, 44:21, 94:13 accountable ^[1] - 230:10 accounts ^[3] - 14:14, 17:3, 26:3 accurate ^[12] - 44:6, 61:16, 62:19, 63:22, 114:12, 116:11, 121:4, 146:7, 176:7, 187:1, 205:3, 249:19 accurately ^[1] - 130:9 accusation ^[1] - 48:2 accused ^[6] - 37:13, 37:25, 38:1, 98:1, 99:1, 220:16 achieve ^[1] - 28:24 acknowledge ^[3] - 86:25, 165:10, 223:2 acknowledged ^[5] - 86:15, 86:17, 160:10, 214:13, 239:5 acknowledges ^[2] - 165:24, 209:14 acknowledgment ^[1] - 88:10 acquired ^[2] - 17:22, 115:4 acquit ^[1] - 49:14 acquittal ^[2] - 231:12, 235:23 act ^[11] - 28:17, 37:6, 38:5, 196:21, 196:22, 226:22, 233:22, 234:8, 237:5, 257:15,	257:22 acted ^[4] - 33:13, 33:15, 226:23, 231:14 acting ^[4] - 163:14, 196:3, 212:5, 212:19 action ^[3] - 38:20, 239:8, 240:5 actions ^[4] - 43:13, 247:3, 250:22, 290:7 activated ^[1] - 13:10 activation ^[1] - 124:16 active ^[1] - 102:19 activities ^[1] - 123:14 activity ^[5] - 85:24, 111:12, 111:13, 111:16, 111:17 acts ^[1] - 73:21 actual ^[2] - 205:21, 222:24 adamant ^[2] - 141:12, 251:20 added ^[1] - 239:20 addendum ^[1] - 48:21 addition ^[6] - 57:1, 66:13, 145:19, 146:12, 148:5, 156:11 additional ^[16] - 9:10, 9:16, 20:16, 81:9, 82:11, 113:18, 117:5, 133:10, 138:1, 138:4, 138:20, 158:21, 179:23, 179:25, 180:6, 184:25 additionally ^[1] - 8:17 address ^[5] - 39:4, 219:24, 231:4, 235:13, 259:2 addressed ^[3] - 39:3, 235:12, 250:10 addressing ^[1] - 233:20 adjourn ^[4] - 295:25, 296:20, 296:23 adjourned ^[2] - 297:1, 297:2 adjusted ^[1] - 98:13 administer ^[5] - 7:23, 8:1, 88:17, 88:24, 214:5 administered ^[7] - 7:24, 8:3, 50:5, 73:5, 102:5, 119:17, 131:11 administering ^[1] - 97:14 administration ^[1] - 28:22	administrative ^[1] - 2 169:14 admissible ^[1] - 47:3 admit ^[2] - 88:1, 275:24 admitted ^[4] - 9:24, 28:10, 239:15, 239:16 admitting ^[1] - 160:18 admonished ^[1] - 147:12 adopted ^[4] - 8:18, 237:9, 289:25, 293:13 adoption ^[4] - 7:12, 8:8, 8:21, 290:12 advance ^[1] - 114:20 advanced ^[1] - 106:20 advantage ^[5] - 42:10, 44:8, 129:2, 129:21, 130:18 adversely ^[1] - 28:18 advertisements ^[1] - 112:10 advice ^[1] - 125:6 advise ^[1] - 78:18 advised ^[4] - 20:25, 26:12, 77:25, 99:25 advises ^[1] - 20:7 advocate ^[1] - 29:7 aerial ^[1] - 24:22 affair ^[1] - 33:22 affairs ^[1] - 132:2 affect ^[1] - 94:8 affected ^[2] - 71:19, 271:3 affects ^[2] - 204:2, 204:12 affidavits ^[1] - 127:18 affirmation ^[1] - 8:13 aftermath ^[7] - 12:12, 17:25, 18:19, 26:19, 29:23, 150:12, 216:12 afterwards ^[5] - 16:2, 26:15, 26:17, 196:3, 260:5 AG ^[5] - 114:23, 115:6, 115:9, 115:18, 212:8 agencies ^[2] - 24:11, 142:11 agency ^[4] - 24:16, 28:24, 147:19, 169:10 agendas ^[1] - 246:8 Agent ^[67] - 2:8, 2:11, 2:13, 2:15, 73:3, 73:9, 75:11, 75:24, 91:10, 94:17, 96:5, 102:3, 102:9,
9				
9 ^[2] - 199:23, 269:10 90 ^[3] - 45:2, 45:8, 118:20 911 ^[42] - 14:5, 17:14, 19:8, 19:12, 20:6, 21:3, 23:25, 24:5, 42:5, 42:11, 43:2, 81:16, 110:9, 111:1, 111:2, 111:15, 115:9, 115:13, 133:22, 133:25, 138:2, 138:8, 138:10, 138:17, 139:19, 140:4, 154:10, 158:21, 158:23, 163:6, 197:17, 197:25, 198:14, 214:17, 215:8, 224:2, 224:10, 225:4, 237:21, 255:13, 255:14, 265:9 93 ^[1] - 185:18 94 ^[1] - 2:9 95 ^[3] - 63:20, 63:22, 185:18 96 ^[2] - 188:14, 188:16 97 ^[2] - 188:14, 188:16 99 ^[1] - 2:9 9:00 ^[3] - 13:7, 201:7, 296:3 9:15 ^[1] - 13:1 9:19 ^[1] - 13:9 9:30 ^[2] - 13:7, 201:7				
A				
a. ^[1] - 100:20 A.G.'s ^[2] - 250:21, 270:23 a.m ^[5] - 3:5, 199:20, 199:23, 201:7, 295:25 abandoned ^[1] - 24:2 ability ^[3] - 28:23, 36:2, 136:22 able ^[33] - 20:23, 47:23, 55:5, 56:16, 61:18, 67:22, 68:4, 68:7, 80:15, 85:13, 86:5, 90:13, 93:1, 94:11, 96:14, 106:7, 107:1, 110:15, 110:23, 114:9, 118:4, 118:5,				

<p>104:12, 104:13, 104:16, 104:18, 108:4, 108:18, 108:21, 108:24, 109:7, 113:12, 113:15, 119:16, 119:22, 125:22, 127:2, 127:22, 130:6, 131:9, 131:16, 131:19, 131:23, 132:13, 135:8, 135:22, 135:25, 137:25, 139:6, 140:21, 140:24, 142:9, 143:20, 145:16, 146:12, 148:11, 148:17, 156:20, 159:9, 161:14, 166:3, 168:8, 168:23, 170:4, 185:8, 186:4, 188:3, 203:11, 203:15, 203:20, 204:18, 212:22, 213:22, 217:25, 218:1</p> <p>agent [25] - 24:25, 25:1, 74:11, 75:2, 75:4, 75:5, 78:11, 99:20, 100:18, 101:1, 101:7, 103:6, 103:20, 104:6, 104:7, 114:24, 117:7, 119:25, 121:15, 121:16, 147:6, 148:13, 154:23, 169:13, 171:4</p> <p>agents [15] - 24:17, 74:11, 74:22, 76:20, 77:24, 103:6, 103:13, 103:21, 103:24, 109:5, 117:17, 122:14, 148:9, 149:23, 168:25</p> <p>aggravated [2] - 18:15, 29:24</p> <p>agitate [1] - 221:6</p> <p>ago [3] - 148:12, 214:19, 246:9</p> <p>agree [6] - 152:10, 157:13, 157:14, 191:13, 261:10, 264:20</p> <p>agreed [2] - 24:16, 97:9</p> <p>agreement [1] - 190:1</p> <p>agrees [1] - 238:20</p> <p>ahead [2] - 203:13,</p>	<p>251:13</p> <p>air [2] - 147:4, 152:12</p> <p>airplane [1] - 124:7</p> <p>albeit [2] - 205:8, 206:6</p> <p>Alcee [1] - 220:16</p> <p>alcohol [1] - 90:15</p> <p>Alexander [2] - 221:5, 253:2</p> <p>Alexis [2] - 12:3, 202:16</p> <p>ALEXIS [1] - 1:18</p> <p>alive [3] - 164:20, 228:16, 228:17</p> <p>allegation [2] - 42:19, 226:7</p> <p>allegations [6] - 9:1, 46:14, 214:23, 215:5, 215:6, 218:6</p> <p>alleged [1] - 258:1</p> <p>Allegiance [1] - 4:7</p> <p>alleging [1] - 241:1</p> <p>allies [1] - 221:15</p> <p>allow [9] - 9:25, 48:15, 89:3, 137:11, 144:18, 198:25, 203:18, 209:18, 241:7</p> <p>allowed [4] - 172:17, 172:21, 219:22, 251:4</p> <p>allowing [1] - 206:13</p> <p>allows [1] - 50:24</p> <p>Ally [3] - 19:14, 224:12, 224:13</p> <p>almost [6] - 146:5, 152:19, 152:25, 155:8, 200:4, 247:8</p> <p>alone [3] - 21:5, 21:9, 166:24</p> <p>alongside [2] - 76:4, 295:12</p> <p>alter [2] - 43:24, 118:2</p> <p>altered [1] - 118:9</p> <p>altering [3] - 12:7, 12:9, 105:23</p> <p>alternate [1] - 47:25</p> <p>American [5] - 31:14, 34:19, 35:19, 229:13, 229:14</p> <p>amnesia [6] - 203:16, 204:5, 204:23, 205:21, 206:8, 215:13</p> <p>amnesic [1] - 204:11</p> <p>amount [2] - 156:12, 236:11</p> <p>amputated [1] - 76:7</p> <p>analysis [8] - 105:6, 106:1, 106:24,</p>	<p>110:11, 111:5, 179:9, 222:8, 275:2</p> <p>analyze [4] - 43:12, 107:1, 116:4, 272:23</p> <p>AND [1] - 2:23</p> <p>Andrew [1] - 252:2</p> <p>angle [1] - 58:20</p> <p>animal [2] - 255:8, 255:10</p> <p>announce [1] - 296:7</p> <p>announcement [1] - 145:6</p> <p>anonymously [1] - 46:15</p> <p>answer [30] - 8:25, 46:9, 46:18, 48:2, 96:11, 96:15, 118:13, 129:24, 131:21, 158:3, 172:11, 178:15, 180:23, 194:12, 194:15, 196:16, 197:2, 198:1, 200:21, 206:21, 228:8, 235:23, 238:25, 240:25, 247:23, 254:17, 254:18, 254:19, 259:16, 271:5</p> <p>answered [5] - 43:6, 44:18, 44:19, 107:21, 197:22</p> <p>answering [1] - 89:18</p> <p>answers [4] - 130:20, 133:16, 196:4, 275:21</p> <p>anti [2] - 67:21, 181:15</p> <p>anti-lock [2] - 67:21, 181:15</p> <p>anticipate [1] - 195:21</p> <p>anxiety [1] - 98:12</p> <p>anyway [1] - 100:6</p> <p>anyways [2] - 95:19, 95:25</p> <p>AOI [1] - 156:19</p> <p>apart [1] - 207:13</p> <p>apologies [1] - 194:6</p> <p>apologize [1] - 26:21</p> <p>app [8] - 13:11, 107:13, 124:4, 124:6, 124:8, 124:11, 197:6, 213:7</p> <p>appear [4] - 10:9, 124:8, 146:3, 160:13</p> <p>appeared [4] - 48:5, 107:22, 191:16, 249:11</p> <p>appearing [4] - 1:18, 1:20, 44:13, 95:4</p> <p>appendix [1] - 28:14</p>	<p>applause [1] - 10:23</p> <p>Apple [1] - 109:19</p> <p>applicable [1] - 233:2</p> <p>application [4] - 107:5, 107:9, 107:23, 110:3</p> <p>applications [4] - 110:6, 112:3, 112:7, 112:14</p> <p>applied [5] - 52:4, 231:9, 231:12, 234:21, 235:5</p> <p>applies [7] - 37:14, 37:15, 258:20, 258:22, 259:6, 260:2, 275:7</p> <p>apply [11] - 49:13, 52:8, 172:24, 219:25, 233:2, 234:16, 237:10, 242:6, 242:11, 256:13, 275:9</p> <p>appointed [1] - 298:8</p> <p>appreciable [2] - 53:3, 157:2</p> <p>appreciate [2] - 235:25, 294:23</p> <p>approach [1] - 249:5</p> <p>approached [1] - 13:18</p> <p>approaching [1] - 152:18</p> <p>appropriate [31] - 11:10, 34:2, 40:18, 88:18, 89:16, 95:18, 95:22, 96:20, 97:5, 97:10, 119:4, 142:16, 142:22, 180:24, 182:16, 189:5, 189:22, 196:1, 213:20, 213:23, 216:20, 220:10, 222:9, 223:18, 223:20, 225:16, 225:19, 265:17, 266:1, 271:19, 280:23</p> <p>appropriately [1] - 63:4</p> <p>approval [2] - 7:5, 230:7</p> <p>approve [1] - 273:17</p> <p>approved [1] - 148:19</p> <p>approximate [2] - 110:23, 199:17</p> <p>approximation [1] - 191:17</p> <p>April [3] - 8:8, 8:19, 226:1</p> <p>area [43] - 42:14,</p>	<p>56:14, 56:17, 57:6, 60:13, 61:19, 61:23, 61:25, 62:5, 62:6, 62:16, 62:22, 62:25, 63:3, 63:5, 63:15, 63:21, 63:22, 64:6, 66:7, 66:13, 67:16, 67:19, 68:6, 71:10, 74:23, 81:21, 90:24, 103:15, 141:11, 143:1, 145:21, 153:3, 156:18, 156:25, 164:11, 186:12, 190:17, 190:23, 191:17, 210:17, 260:22</p> <p>areas [4] - 57:11, 58:20, 104:3, 204:12</p> <p>Arenz [18] - 2:8, 24:25, 73:4, 73:9, 94:17, 99:20, 113:12, 148:12, 148:13, 190:7, 190:8, 192:11, 192:13, 192:14, 212:22, 218:1</p> <p>ARENZ [1] - 190:25</p> <p>Arenz's [1] - 148:17</p> <p>argued [1] - 37:16</p> <p>argument [10] - 223:25, 231:21, 235:22, 236:23, 236:24, 237:23, 258:20, 258:21, 259:6, 270:24</p> <p>arguments [1] - 272:12</p> <p>arising [1] - 115:4</p> <p>Arizona [1] - 32:23</p> <p>arms [1] - 50:4</p> <p>Arnie [8] - 2:15, 25:1, 75:11, 75:24, 91:11, 131:10, 131:18, 131:22</p> <p>arose [1] - 221:23</p> <p>arrange [1] - 47:11</p> <p>arrive [2] - 103:10, 171:12</p> <p>arrived [7] - 42:13, 74:25, 75:15, 76:5, 81:19, 81:20, 103:19</p> <p>arrives [2] - 22:4, 198:15</p> <p>arriving [1] - 75:23</p> <p>Article [26] - 8:10, 9:1, 9:2, 12:25, 40:14, 40:15, 41:17, 41:20, 209:9, 236:7, 242:16, 252:18, 256:21, 259:17,</p>
--	--	--	--	--

<p>264:22, 269:14, 269:16, 269:18, 280:4, 280:10, 280:14, 284:11, 284:12, 284:16, 285:9, 288:14</p> <p>article [20] - 37:16, 41:19, 48:7, 189:11, 189:15, 217:15, 237:19, 242:17, 248:4, 257:24, 258:3, 258:6, 258:15, 260:1, 260:2, 263:21, 266:7, 276:16, 276:21, 285:1</p> <p>articles [8] - 13:16, 48:10, 49:13, 64:18, 189:21, 209:6, 240:25, 241:11</p> <p>Articles [10] - 8:25, 30:15, 40:13, 189:10, 194:22, 236:6, 259:15, 264:8, 271:13, 280:9</p> <p>articulated [2] - 23:17, 220:13</p> <p>artifact [1] - 114:10</p> <p>artifacts [1] - 109:24</p> <p>artificial [1] - 151:21</p> <p>AS [1] - 1:3</p> <p>ascertain [1] - 118:1</p> <p>aside [3] - 13:13, 251:5, 294:21</p> <p>aspect [1] - 112:4</p> <p>aspects [2] - 126:10, 208:3</p> <p>asphalt [3] - 62:17, 62:18, 62:21</p> <p>assertion [1] - 163:19</p> <p>assertions [2] - 162:9, 231:3</p> <p>assigned [5] - 75:1, 75:2, 76:20, 102:22, 120:12</p> <p>assist [3] - 74:13, 103:7, 108:22</p> <p>assistance [1] - 50:20</p> <p>assisted [3] - 94:9, 104:7, 104:16</p> <p>assisting [3] - 31:2, 103:23, 104:2</p> <p>associate [1] - 159:6</p> <p>associated [2] - 53:19, 57:1</p> <p>assume [4] - 42:2, 154:20, 215:23, 215:25</p> <p>assuming [2] - 67:10, 175:10</p>	<p>assumption [1] - 42:3</p> <p>assure [1] - 19:15</p> <p>astigmatism [1] - 136:20</p> <p>ate [1] - 80:16</p> <p>attach [1] - 206:24</p> <p>attached [2] - 7:19, 298:10</p> <p>Attachment [1] - 1:14</p> <p>attempt [12] - 19:17, 20:15, 30:6, 43:23, 77:16, 118:1, 127:20, 152:23, 154:16, 155:3, 177:5, 177:6</p> <p>attempted [2] - 26:8, 26:20</p> <p>attempting [5] - 26:23, 85:6, 98:11, 98:19, 104:16</p> <p>attended [5] - 51:12, 73:22, 90:12, 193:18, 193:25</p> <p>attending [4] - 73:25, 194:3, 195:3, 196:8</p> <p>attends [2] - 194:9, 194:20</p> <p>attention [14] - 11:7, 16:16, 53:24, 62:9, 74:9, 121:7, 153:12, 210:23, 211:10, 217:12, 217:13, 253:23, 253:24, 288:17</p> <p>Attorney [293] - 1:9, 8:24, 12:21, 13:2, 13:14, 14:15, 14:23, 15:3, 16:12, 16:20, 17:2, 17:9, 17:11, 18:12, 18:16, 18:17, 18:22, 19:6, 19:11, 19:14, 20:2, 20:10, 20:18, 20:21, 21:2, 21:4, 21:17, 22:5, 22:7, 22:9, 22:10, 22:18, 22:20, 23:12, 23:24, 24:5, 24:7, 24:22, 24:24, 25:3, 25:24, 26:25, 27:1, 27:5, 27:16, 27:17, 27:19, 29:8, 29:10, 29:18, 29:22, 29:25, 30:3, 30:9, 30:15, 31:3, 35:21, 35:24, 37:12, 37:25, 38:8, 40:19, 41:21, 42:7, 43:4, 43:10, 43:25, 44:10, 46:4, 46:5, 47:10, 49:14, 54:3, 55:4, 55:7, 55:19,</p>	<p>56:1, 58:25, 63:4, 63:25, 64:5, 65:19, 66:15, 66:19, 66:21, 66:23, 67:9, 67:16, 67:20, 68:5, 68:10, 68:13, 69:9, 69:13, 70:6, 74:6, 74:14, 76:11, 77:3, 79:14, 80:7, 82:1, 83:5, 83:19, 83:24, 84:23, 85:11, 85:25, 88:1, 92:13, 97:12, 98:15, 99:20, 99:23, 100:17, 100:25, 101:10, 101:12, 103:3, 104:19, 104:22, 107:16, 108:1, 111:6, 111:20, 112:23, 113:7, 114:14, 115:14, 116:15, 116:18, 117:13, 117:16, 121:21, 122:1, 122:15, 122:19, 123:8, 125:19, 126:9, 129:2, 132:3, 132:9, 135:9, 138:16, 140:3, 145:17, 146:14, 148:21, 149:13, 150:5, 150:8, 151:9, 151:23, 153:22, 154:17, 154:21, 154:22, 155:3, 155:7, 155:13, 155:22, 158:14, 159:23, 165:9, 170:21, 171:9, 171:13, 174:1, 177:7, 178:12, 178:17, 179:10, 179:15, 180:11, 192:5, 192:22, 193:17, 193:24, 194:9, 194:11, 194:13, 194:19, 194:21, 194:23, 194:25, 195:3, 195:16, 195:17, 195:25, 196:8, 196:9, 197:16, 197:19, 198:8, 198:15, 198:18, 202:3, 204:22, 205:5, 205:24, 207:24, 208:12, 209:5, 210:1, 212:10, 212:11, 212:19, 214:6, 214:14, 217:1,</p>	<p>218:5, 218:8, 219:19, 221:15, 221:17, 221:22, 222:4, 222:6, 223:1, 224:2, 224:9, 224:13, 224:18, 225:7, 225:14, 225:17, 226:12, 226:22, 229:2, 229:3, 229:5, 231:22, 236:7, 236:22, 237:22, 237:25, 238:10, 239:13, 239:16, 239:18, 239:22, 240:8, 240:17, 242:19, 242:20, 244:9, 245:10, 246:3, 246:19, 247:3, 249:8, 250:13, 250:14, 250:15, 250:18, 250:24, 253:21, 255:21, 257:18, 257:19, 259:19, 261:13, 266:9, 266:10, 269:13, 269:15, 269:19, 269:21, 270:4, 270:5, 270:8, 270:10, 270:17, 270:20, 270:25, 271:1, 271:2, 271:3, 271:17, 274:7, 274:15, 274:17, 275:13, 276:5, 276:23, 276:24, 280:3, 280:5, 284:8, 288:11, 294:20</p> <p>attorney [21] - 28:7, 29:3, 29:9, 29:12, 32:7, 36:8, 36:11, 36:13, 36:14, 36:15, 36:16, 37:6, 37:7, 37:21, 213:16, 226:21, 232:14, 233:21, 233:23, 246:24, 275:14</p> <p>Attorney's [1] - 125:13</p> <p>attorneys [3] - 28:10, 28:15, 229:8</p> <p>audience [1] - 145:2</p> <p>audio [1] - 43:1</p> <p>August [4] - 50:14, 51:1, 51:4</p> <p>authored [1] - 171:10</p> <p>authorities [1] - 27:25</p> <p>authority [3] - 8:9, 237:7, 253:3</p> <p>autopsy [4] - 24:23,</p>	<p>91:1, 91:3, 91:14</p> <p>available [7] - 8:20, 9:5, 9:9, 74:12, 103:6, 176:23, 176:24</p> <p>avalanche [1] - 252:12</p> <p>Avenue [1] - 3:3</p> <p>average [4] - 29:19, 68:5, 218:12, 275:13</p> <p>averaged [1] - 68:7</p> <p>avoid [1] - 130:21</p> <p>avoided [2] - 183:16, 270:7</p> <p>aware [17] - 25:10, 56:8, 56:20, 60:15, 69:25, 70:22, 96:18, 97:1, 99:20, 101:3, 128:9, 128:20, 128:24, 174:4, 174:7, 174:13, 182:8</p> <p>awesome [1] - 11:6</p> <p>awhile [2] - 95:24, 222:21</p> <p>aye [161] - 7:15, 266:11, 266:19, 266:21, 266:23, 266:25, 267:2, 267:4, 267:6, 267:12, 267:14, 267:18, 268:1, 268:7, 268:9, 268:13, 268:15, 268:17, 268:19, 268:23, 269:2, 269:4, 269:6, 269:8, 277:1, 277:9, 277:11, 277:13, 277:15, 277:17, 277:19, 277:21, 277:25, 278:2, 278:4, 278:10, 278:12, 278:14, 278:16, 278:18, 278:22, 278:24, 279:1, 279:3, 279:5, 279:7, 279:9, 279:11, 279:13, 279:15, 279:17, 279:19, 279:21, 279:23, 281:6, 281:10, 281:12, 281:14, 281:16, 281:18, 281:20, 281:22, 281:24, 282:1, 282:5, 282:7, 282:9, 282:11, 282:13, 282:15, 282:17, 282:19, 282:21, 282:23, 282:25, 283:2,</p>
---	---	--	--	---

283:4, 283:6, 283:8, 283:10, 283:12, 283:14, 283:16, 283:18, 283:20, 283:22, 283:24, 284:1, 284:3, 285:11, 285:15, 285:17, 285:19, 285:21, 285:23, 285:25, 286:2, 286:4, 286:6, 286:10, 286:12, 286:14, 286:16, 286:18, 286:20, 286:22, 286:24, 287:1, 287:3, 287:5, 287:7, 287:9, 287:11, 287:13, 287:15, 287:17, 287:19, 287:21, 287:23, 287:25, 288:2, 288:4, 288:6, 289:7, 289:18, 290:13, 290:16, 290:18, 290:20, 290:22, 290:24, 291:1, 291:3, 291:5, 291:7, 291:11, 291:13, 291:15, 291:17, 291:19, 291:21, 291:23, 291:25, 292:2, 292:4, 292:6, 292:8, 292:10, 292:12, 292:14, 292:16, 292:18, 292:20, 292:22, 292:24, 293:1, 293:3, 293:5, 293:7, 296:15, 296:23	229:20, 234:13, 264:13 barely [1] - 16:8 bargained [2] - 251:16, 251:24 barrel [1] - 60:18 baseball [2] - 129:16, 129:18 based [23] - 55:8, 56:23, 61:17, 62:23, 67:9, 67:22, 69:12, 71:20, 115:19, 123:23, 139:14, 154:20, 156:23, 189:15, 190:22, 202:1, 212:24, 220:3, 222:5, 244:23, 249:15, 265:19, 273:4 basement [1] - 145:7 basis [2] - 28:12, 41:10 Bates [3] - 185:16, 185:19, 185:21 Bates-stamped [3] - 185:16, 185:19, 185:21 BCI [20] - 14:22, 20:1, 23:2, 24:15, 24:25, 26:7, 27:9, 53:23, 74:3, 74:22, 77:24, 102:25, 147:20, 154:16, 154:23, 170:1, 174:22, 176:16, 219:8, 250:7 beacon [4] - 14:21, 152:4, 152:17, 210:18 Beadle [1] - 264:21 bear [1] - 48:23 bearing [1] - 243:15 became [2] - 15:18, 102:19 become [5] - 10:24, 46:6, 74:4, 103:1, 131:25 becomes [2] - 53:7, 228:8 began [5] - 13:20, 13:23, 18:23, 24:11, 62:2 begin [4] - 15:24, 40:11, 209:9, 235:22 beginning [5] - 9:13, 56:19, 109:15, 115:13, 147:6 begins [2] - 16:5, 225:12 behalf [6] - 1:18, 1:20, 50:25, 214:13, 256:4, 295:1 behavior [7] - 39:9, 112:8, 198:18, 211:25, 235:17, 237:1, 239:8 behind [10] - 46:17, 56:10, 103:14, 152:12, 162:11, 162:21, 163:10, 183:23, 183:24, 211:20 belief [3] - 165:2, 167:16, 179:1 believes [2] - 47:21, 195:23 below [1] - 253:11 Ben [1] - 29:20 benefit [5] - 65:23, 107:7, 187:21, 213:11, 219:23 benefits [2] - 107:24, 107:25 benign [1] - 82:25 Berndt [4] - 59:17, 75:25, 217:21, 217:22 beside [1] - 238:13 best [7] - 22:6, 63:3, 109:18, 112:10, 146:18, 185:15, 192:13 better [12] - 48:1, 53:7, 56:21, 67:7, 85:8, 106:12, 137:11, 175:7, 175:8, 175:9, 198:25, 216:16 between [27] - 13:7, 35:15, 54:17, 62:18, 63:1, 64:2, 67:15, 68:5, 68:8, 68:21, 109:7, 113:4, 115:13, 116:12, 117:14, 120:19, 126:9, 126:15, 126:23, 143:23, 145:20, 151:2, 152:19, 158:22, 215:20, 223:14, 255:1 bewildering [1] - 252:8 beyond [17] - 12:11, 16:9, 28:6, 30:2, 136:17, 137:1, 196:2, 198:1, 209:17, 210:5, 242:10, 244:17, 246:7, 252:18, 261:8, 261:9, 262:24 big [3] - 67:3, 224:25, 273:24 bigger [2] - 243:22 biggest [3] - 92:18, 107:3, 111:8 Bill [4] - 226:18, 226:21, 251:6, 251:7 bill [1] - 244:18 billboards [1] - 49:1 Bismarck [3] - 103:20, 109:17, 109:19 bit [20] - 50:22, 51:20, 54:22, 58:19, 59:3, 66:1, 70:1, 103:12, 120:4, 147:11, 147:14, 148:12, 156:16, 160:19, 161:16, 183:7, 197:20, 198:13, 218:17, 259:3 black [4] - 21:5, 79:1, 79:10, 139:11 blacked [1] - 207:24 Blagojevich [1] - 33:8 blame [1] - 205:21 blanks [1] - 239:5 blast [1] - 60:16 blatant [1] - 208:5 bless [1] - 221:18 blink [1] - 216:6 blood [18] - 27:3, 56:13, 57:2, 57:21, 59:19, 60:23, 61:6, 72:4, 72:14, 90:16, 90:21, 90:24, 162:15, 218:20, 218:21, 225:18 blood's [1] - 72:7 blow [1] - 72:7 blows [1] - 72:7 blue [8] - 90:23, 114:24, 146:1, 146:2, 151:16, 200:24 body [77] - 15:12, 15:13, 15:14, 15:23, 16:4, 16:6, 16:8, 21:12, 21:14, 23:14, 23:23, 24:9, 26:16, 32:16, 41:17, 42:16, 42:18, 72:15, 76:4, 76:5, 76:9, 76:17, 77:10, 93:15, 93:19, 94:23, 95:2, 97:3, 97:18, 97:21, 141:20, 142:17, 144:16, 145:20, 146:6, 151:3, 174:25, 175:15, 175:20, 176:4, 177:1, 177:9, 180:2, 183:11, 183:18, 186:17, 190:18, 190:24, 199:22, 199:25, 200:4, 200:7, 200:25, 201:1, 201:6, 201:14, 201:19, 216:3, 238:15, 238:20, 238:22, 239:2, 242:25, 243:17, 244:3, 245:4, 246:25, 249:3, 254:8, 254:9, 263:20, 284:20, 290:7, 293:19, 294:3, 294:14 Boever [59] - 14:7, 14:12, 14:16, 14:23, 15:7, 16:19, 17:10, 18:13, 18:18, 24:2, 27:16, 29:23, 40:20, 40:25, 41:16, 55:6, 56:4, 76:6, 87:12, 87:23, 88:10, 91:9, 91:11, 91:18, 132:2, 141:20, 142:24, 143:23, 144:10, 145:23, 151:12, 165:9, 174:19, 176:2, 177:17, 178:1, 189:18, 200:23, 209:22, 221:19, 228:15, 228:17, 228:25, 236:8, 236:11, 238:5, 242:18, 246:21, 247:17, 254:2, 254:4, 255:19, 256:6, 259:21, 259:22, 266:8, 269:19, 276:23 Boever's [33] - 15:17, 16:6, 21:12, 23:14, 23:16, 23:23, 24:8, 26:16, 26:20, 30:17, 55:25, 56:24, 76:6, 84:10, 84:11, 84:15, 91:25, 93:2, 94:23, 95:2, 142:1, 144:4, 145:20, 151:17, 174:25, 175:15, 176:4, 177:1, 186:17, 227:22, 238:20, 238:22, 254:7 Bolin [6] - 4:9, 266:14, 277:4, 281:9, 285:14, 290:15 BOLIN [6] - 4:10, 266:15, 277:5,
B	
Bachelor [1] - 51:14 bachelor's [1] - 73:14 backed [1] - 240:3 background [7] - 50:23, 73:13, 88:14, 102:12, 112:13, 120:2, 146:9 bad [5] - 116:9, 222:18, 225:9, 240:7, 256:7 badly [1] - 159:14 balance [3] - 34:13, 34:18, 232:4 bale [2] - 75:19, 92:1 ball [1] - 257:25 balloon [1] - 225:14 ballot [1] - 240:20 bar [5] - 38:16, 223:4,	

281:10, 285:15, 290:16 bolt [1] - 72:17 bone [1] - 16:7 book [1] - 252:2 books [1] - 64:17 booted [1] - 226:8 boots [1] - 295:9 border [1] - 134:16 borders [1] - 137:4 Bormann [8] - 11:21, 11:23, 22:14, 22:19, 126:2, 163:12, 219:7, 225:6 borrow [1] - 185:6 borrowing [1] - 121:17 bounce [1] - 53:1 bound [1] - 251:17 box [5] - 82:6, 82:7, 192:6, 192:23, 240:20 brake [5] - 67:21, 68:12, 68:15, 157:17, 211:1 brakes [20] - 67:2, 67:5, 68:13, 154:4, 157:15, 180:18, 181:1, 181:3, 181:9, 181:15, 184:8, 184:9, 184:11, 184:15, 184:18, 184:20, 184:22, 184:23 braking [14] - 18:23, 18:25, 66:15, 66:21, 66:22, 66:24, 66:25, 67:3, 67:12, 90:19, 157:11, 157:16, 181:20, 188:15 branch [22] - 31:19, 34:21, 34:22, 34:23, 34:24, 35:3, 35:5, 35:6, 35:7, 35:8, 35:11, 35:12, 37:17, 37:22, 232:8, 232:9, 232:15 branches [3] - 34:20, 35:15, 232:4 break [9] - 110:11, 143:8, 143:9, 143:10, 145:2, 208:17, 241:24, 288:18, 288:20 breakage [1] - 57:15 breakdown [1] - 114:16 breaks [3] - 10:20, 11:10, 40:20 breath [3] - 162:15,	218:22 breathalyzer [2] - 163:20, 163:25 breeze [2] - 70:24, 70:25 Breitling [6] - 4:11, 266:16, 277:6, 281:11, 285:16, 290:17 BREITLING [6] - 4:12, 266:17, 277:7, 281:12, 285:17, 290:18 Brent [6] - 2:13, 27:8, 119:16, 119:24, 223:13, 225:20 bribery [2] - 252:20, 252:22 bribes [1] - 220:17 brief [7] - 52:13, 120:2, 203:20, 203:22, 261:1, 275:3, 280:19 briefly [2] - 130:3, 206:3 bright [2] - 90:23, 177:4 brimstone [1] - 236:11 bring [7] - 12:21, 17:13, 227:9, 227:12, 258:12, 270:15, 276:15 brings [2] - 121:9, 208:15 broadest [1] - 58:20 broadly [1] - 275:10 broke [2] - 110:20, 111:2 broken [5] - 22:2, 78:25, 79:10, 79:12, 180:8 brought [10] - 24:3, 41:2, 41:3, 48:23, 77:9, 102:15, 109:8, 133:13, 206:16, 256:9 Brown [1] - 125:12 browser [1] - 111:16 browsers [1] - 13:16 browses [1] - 86:18 bucks [1] - 273:24 building [3] - 44:1, 121:20, 153:1 Building [1] - 3:2 built [1] - 35:22 bullwork [1] - 231:14 bumper [3] - 57:10, 57:12, 65:19 bunch [1] - 227:5 bunched [1] - 146:5	burden [13] - 39:21, 39:23, 40:8, 189:24, 190:1, 202:23, 202:25, 203:4, 234:17, 234:18, 244:14, 245:4, 260:14 bureau [2] - 104:6, 174:15 Bureau [13] - 24:15, 41:1, 73:10, 74:2, 95:5, 96:7, 102:10, 102:21, 105:9, 131:19, 131:23, 174:13, 238:17 burglaries [1] - 148:3 bury [1] - 211:22 bus [1] - 238:3 business [4] - 32:25, 96:23, 169:4, 293:24 busy [2] - 138:13, 294:9 Butler [30] - 2:7, 2:9, 2:10, 2:12, 2:14, 2:16, 31:2, 40:10, 69:1, 94:19, 100:15, 117:9, 127:25, 130:20, 148:12, 170:6, 185:6, 185:10, 185:19, 188:8, 206:22, 214:13, 215:17, 217:20, 227:8, 230:24, 231:2, 231:3, 236:2, 236:4 BUTLER [33] - 1:19, 40:11, 69:3, 72:20, 94:21, 99:14, 100:9, 100:16, 100:21, 100:24, 101:15, 117:12, 119:7, 128:2, 130:1, 131:3, 170:8, 184:25, 185:21, 188:10, 191:13, 193:19, 194:1, 194:7, 194:12, 195:1, 196:16, 197:19, 198:10, 202:6, 202:22, 206:23, 236:5 buy [2] - 27:3, 223:25 BY [34] - 50:7, 69:3, 73:7, 83:16, 84:20, 87:8, 90:9, 94:21, 99:19, 100:24, 102:7, 117:12, 119:21, 128:2, 130:5, 131:15, 134:23, 135:7,	135:22, 139:6, 143:20, 145:16, 147:1, 160:8, 160:25, 162:8, 164:5, 164:23, 166:3, 167:6, 167:18, 168:10, 170:8, 186:3 <div>C</div> cafeteria [1] - 145:7 calendar [1] - 289:14 California [1] - 272:1 camera [1] - 142:4 Cammack [13] - 4:13, 248:9, 266:18, 277:8, 281:13, 285:18, 289:2, 289:13, 289:24, 290:19, 293:15, 295:24, 296:19 CAMMACK [11] - 4:14, 248:8, 248:10, 266:19, 277:9, 281:14, 285:19, 290:20, 293:14, 293:16, 296:2 Cammack's [1] - 296:23 campaign [3] - 33:6, 124:5, 223:19 candidate [1] - 212:9 candor [3] - 222:6, 229:21, 275:14 cannot [6] - 16:17, 232:1, 247:9, 247:11, 259:10, 276:12 capable [1] - 255:22 capacity [13] - 38:6, 44:4, 50:15, 66:15, 74:2, 102:25, 124:2, 131:25, 196:3, 197:9, 212:6, 234:9, 272:18 Capitol [3] - 3:2, 3:3, 145:7 capture [1] - 44:4 car [35] - 14:1, 14:4, 15:19, 17:23, 19:8, 20:21, 23:13, 24:22, 26:14, 59:17, 93:12, 107:23, 134:24, 135:2, 152:24, 156:18, 157:23, 162:25, 163:1, 168:5, 168:12, 176:1, 180:3, 180:18, 181:16,	192:7, 193:4, 200:2, 6 224:16, 228:25, 247:17, 248:16, 250:1, 260:21, 270:12 car's [1] - 243:18 card [4] - 82:5, 192:6, 192:22, 193:2 care [5] - 85:7, 159:2, 219:7, 219:10, 238:12 career [12] - 45:22, 102:13, 120:6, 120:11, 120:12, 120:14, 127:5, 147:16, 169:18, 173:14, 209:25, 223:14 carefully [1] - 48:9 careless [5] - 30:17, 189:23, 261:9, 263:9, 263:15 Carolina [2] - 33:18, 33:23 carried [2] - 289:8, 293:12 carries [4] - 7:17, 289:20, 296:17, 296:25 carry [1] - 33:22 carrying [3] - 14:20, 93:2, 151:17 case [99] - 9:18, 19:20, 27:14, 28:9, 31:11, 33:11, 33:25, 35:24, 37:4, 38:2, 38:15, 38:16, 38:24, 39:25, 45:9, 46:21, 48:7, 62:25, 64:11, 75:1, 75:2, 75:4, 75:5, 75:10, 78:11, 88:16, 88:18, 88:19, 88:21, 89:1, 89:3, 89:8, 90:8, 91:2, 95:10, 103:25, 105:15, 118:7, 119:5, 123:16, 125:13, 125:15, 128:17, 130:9, 133:2, 137:12, 142:13, 148:5, 149:5, 155:2, 169:8, 169:15, 171:3, 171:14, 171:15, 178:23, 180:10, 181:21, 188:9, 201:4, 202:24, 204:23, 207:19, 209:22, 225:2, 225:12, 225:22, 225:23,
--	---	---	---	--

<p>231:12, 231:24, 231:25, 232:11, 233:21, 233:23, 234:4, 234:25, 238:11, 251:2, 251:7, 251:13, 251:15, 253:17, 256:9, 256:11, 256:19, 260:6, 260:8, 260:9, 260:17, 262:15, 270:2, 270:9</p> <p>cases [7] - 223:7, 223:8, 253:25, 262:11, 270:11, 270:12, 270:14</p> <p>cash [1] - 229:24</p> <p>Cassidy [3] - 2:11, 102:3, 102:9</p> <p>Castleberry [7] - 4:15, 254:24, 266:20, 277:10, 281:15, 285:20, 290:21</p> <p>CASTLEBERRY [8] - 4:16, 254:22, 254:25, 266:21, 277:11, 281:16, 285:21, 290:22</p> <p>catastrophic [2] - 159:7, 215:22</p> <p>catch [2] - 115:25, 136:11</p> <p>categories [1] - 57:20</p> <p>caught [2] - 161:6, 274:20</p> <p>caused [6] - 27:16, 56:18, 204:7, 257:8, 260:7, 265:12</p> <p>causes [3] - 27:24, 52:5, 157:22</p> <p>causing [7] - 40:20, 236:8, 242:18, 259:20, 259:21, 260:3, 266:8</p> <p>cell [68] - 10:16, 10:17, 13:11, 13:12, 13:13, 13:15, 17:5, 18:23, 22:13, 25:9, 27:4, 27:6, 43:7, 44:5, 45:1, 80:21, 92:9, 92:12, 92:13, 102:18, 104:20, 104:22, 105:1, 105:5, 105:6, 105:10, 105:18, 105:19, 106:7, 106:21, 107:4, 107:7, 107:17, 108:5, 108:16, 109:9, 110:14,</p>	<p>114:9, 114:11, 114:21, 117:14, 118:18, 123:24, 126:24, 127:8, 128:15, 166:15, 166:16, 166:20, 177:17, 177:20, 177:23, 178:11, 178:20, 179:6, 183:19, 195:18, 197:5, 197:7, 212:17, 213:8, 250:20, 254:1, 270:22, 275:22</p> <p>Cellebrite [5] - 105:13, 105:14, 105:15, 106:6, 106:19</p> <p>cellular [3] - 13:8, 123:12, 128:18</p> <p>censure [1] - 38:21</p> <p>censured [1] - 34:4</p> <p>center [5] - 45:11, 45:12, 60:10, 82:6, 104:17</p> <p>central [1] - 236:18</p> <p>certain [12] - 63:20, 80:8, 80:9, 89:13, 127:14, 135:24, 166:12, 179:16, 179:17, 179:19, 193:5, 218:13</p> <p>certainly [19] - 32:8, 32:10, 38:15, 43:4, 113:11, 116:22, 126:10, 128:8, 145:22, 185:15, 195:24, 196:3, 197:7, 205:13, 218:10, 235:5, 236:16, 251:22, 256:6</p> <p>certainty [4] - 16:17, 63:25, 65:5, 204:17</p> <p>CERTIFICATE [1] - 298:2</p> <p>certification [1] - 7:20</p> <p>Certified [3] - 3:6, 298:6, 298:19</p> <p>CERTIFY [1] - 298:8</p> <p>certitude [1] - 179:19</p> <p>cetera [4] - 44:6, 44:22, 98:12, 114:17</p> <p>chain [1] - 122:10</p> <p>challenging [1] - 295:13</p> <p>Chamber [1] - 11:12</p> <p>chamber [5] - 46:16, 142:25, 221:13, 221:16, 295:19</p> <p>Chambers [1] - 3:3</p>	<p>chambers [1] - 10:6</p> <p>chance [5] - 112:20, 125:22, 139:1, 255:16</p> <p>change [5] - 41:11, 44:24, 140:15, 228:21, 263:10</p> <p>changed [2] - 228:12, 257:4</p> <p>changes [3] - 18:10, 118:25, 236:12</p> <p>changing [1] - 256:25</p> <p>chapter [2] - 28:14, 227:5</p> <p>character [1] - 28:8</p> <p>characterize [4] - 86:22, 86:24, 196:20, 207:15</p> <p>charge [5] - 48:24, 75:4, 189:12, 251:3, 258:1</p> <p>charged [17] - 44:23, 128:11, 128:13, 189:19, 189:24, 209:7, 222:13, 231:22, 231:23, 236:7, 253:18, 256:18, 256:22, 256:23, 256:25, 262:14</p> <p>charges [6] - 174:8, 181:22, 209:16, 254:13, 256:8, 270:15</p> <p>charging [5] - 41:8, 79:10, 181:21, 244:8, 251:22</p> <p>charting [1] - 177:13</p> <p>check [6] - 23:4, 26:14, 68:13, 93:11, 164:7, 164:9</p> <p>checked [4] - 81:21, 86:16, 111:16, 191:3</p> <p>checking [4] - 23:5, 86:6, 111:10</p> <p>chemical [1] - 90:21</p> <p>CHERI [1] - 298:5</p> <p>Cheri [4] - 1:24, 3:5, 298:17, 298:18</p> <p>Chevy [1] - 168:7</p> <p>chicken [2] - 253:13, 253:17</p> <p>chief [24] - 22:13, 22:20, 23:12, 24:1, 24:8, 27:2, 29:9, 29:10, 74:11, 103:6, 225:17, 226:22, 226:24, 230:12, 230:13, 250:18, 265:5, 265:12,</p>	<p>266:1, 270:20, 274:19, 276:1, 276:3, 276:13</p> <p>chiefly [1] - 39:18</p> <p>child [1] - 20:16</p> <p>childhood [1] - 255:5</p> <p>Children [2] - 102:20, 120:20</p> <p>children [4] - 102:24, 120:13, 120:16, 120:24</p> <p>chips [9] - 57:13, 57:21, 59:16, 60:24, 61:6, 71:13, 71:17, 71:18, 71:20</p> <p>choice [1] - 12:14</p> <p>choices [3] - 12:6, 12:8, 12:18</p> <p>choose [6] - 36:8, 36:9, 36:11, 36:12, 171:1, 232:13</p> <p>chose [6] - 145:21, 202:6, 214:8, 245:19, 276:10</p> <p>chosen [4] - 30:5, 32:22, 223:2, 276:8</p> <p>cigarettes [1] - 14:9</p> <p>circuit [1] - 11:2</p> <p>circumstances [4] - 27:15, 84:12, 232:18, 232:19</p> <p>cite [1] - 227:5</p> <p>cited [2] - 38:2, 234:4</p> <p>citizen [5] - 194:10, 194:20, 218:12, 218:19, 245:15</p> <p>citizens [1] - 295:2</p> <p>city [2] - 134:4, 211:12</p> <p>City [2] - 51:13, 255:3</p> <p>civil [8] - 31:11, 38:15, 220:7, 234:13, 238:6, 238:7, 245:1, 246:24</p> <p>civility [1] - 293:21</p> <p>claim [4] - 215:13, 215:14, 249:25, 250:2</p> <p>claims [1] - 210:19</p> <p>clarification [2] - 163:12, 296:2</p> <p>clarified [1] - 253:2</p> <p>class [4] - 44:24, 231:9, 257:5, 257:6</p> <p>Class [13] - 174:10, 212:14, 251:5, 251:16, 254:15, 254:16, 254:20, 257:1, 257:2, 257:8, 259:25, 263:8, 263:12</p>	<p>classes [2] - 64:21</p> <p>clause [1] - 34:11</p> <p>clay [1] - 264:21</p> <p>Clay [1] - 272:13</p> <p>clean [1] - 23:9</p> <p>clear [36] - 39:23, 40:2, 40:18, 45:20, 46:12, 46:24, 48:14, 48:15, 48:16, 55:24, 70:21, 150:3, 198:20, 209:7, 209:11, 211:9, 211:25, 227:18, 235:3, 235:7, 241:2, 241:5, 241:6, 241:7, 244:17, 245:5, 253:21, 256:11, 260:17, 260:18, 260:23, 260:25, 261:11, 263:2, 264:6, 266:2</p> <p>cleared [1] - 47:8</p> <p>clearing [1] - 55:24</p> <p>clearly [4] - 48:8, 229:21, 260:10, 275:22</p> <p>Cleveland [2] - 203:21, 204:1</p> <p>Clinic [2] - 203:21, 204:1</p> <p>Clinton [2] - 226:18, 226:21</p> <p>clip [8] - 84:20, 134:19, 134:20, 135:1, 146:24, 164:16, 216:22, 224:11</p> <p>clips [7] - 83:13, 84:17, 87:5, 87:8, 160:4, 162:2, 167:3</p> <p>clock [1] - 168:6</p> <p>close [13] - 33:12, 61:25, 73:11, 109:24, 135:17, 136:9, 136:10, 136:13, 177:17, 235:21, 241:4, 275:5, 294:20</p> <p>closed [4] - 11:2, 11:12, 80:25, 81:4</p> <p>closely [3] - 36:21, 229:6, 295:7</p> <p>closer [7] - 60:19, 62:6, 75:20, 135:14, 202:14, 203:23, 264:18</p> <p>closing [5] - 10:4, 208:19, 209:2, 230:23, 236:3</p> <p>CLOSING [1] - 2:20</p>
--	--	---	--	---

<p>clothing [2] - 145:23, 151:15</p> <p>cloudy [3] - 69:24, 70:2, 239:1</p> <p>clustered [1] - 140:19</p> <p>co [1] - 236:17</p> <p>co-counsel [1] - 236:17</p> <p>Coakley [1] - 32:20</p> <p>coast [1] - 19:3</p> <p>code [3] - 37:19, 37:20, 262:9</p> <p>codified [1] - 28:13</p> <p>coequal [5] - 34:20, 34:21, 35:6, 232:4, 232:8</p> <p>collect [4] - 56:9, 107:10, 107:24, 114:9</p> <p>collected [5] - 24:20, 53:22, 78:6, 114:10, 133:4</p> <p>collecting [2] - 76:21, 104:8</p> <p>collection [2] - 53:18, 135:15</p> <p>collision [14] - 41:23, 67:11, 118:20, 156:23, 159:7, 178:13, 178:21, 179:6, 180:9, 180:13, 184:10, 200:25, 214:1, 215:22</p> <p>color [3] - 90:23, 201:14, 201:18</p> <p>coming [12] - 14:18, 43:24, 133:5, 144:13, 160:22, 183:17, 194:3, 211:12, 212:18, 243:10, 257:15, 295:12</p> <p>command [1] - 122:11</p> <p>commander [3] - 224:22, 224:23, 226:23</p> <p>commencing [1] - 3:4</p> <p>comment [3] - 29:4, 162:3, 167:4</p> <p>commenting [1] - 41:11</p> <p>comments [9] - 7:14, 8:6, 88:5, 88:7, 202:2, 289:5, 289:17, 290:3, 296:14</p> <p>commission [1] - 29:13</p> <p>commissions [1] -</p>	<p>229:25</p> <p>commit [4] - 28:17, 258:25, 259:5, 259:7</p> <p>committed [15] - 30:8, 40:19, 41:22, 42:1, 48:11, 212:7, 236:8, 249:25, 254:14, 262:4, 262:5, 262:7, 263:4, 263:7, 272:9</p> <p>Committee [6] - 44:13, 132:9, 214:20, 233:16, 234:4, 235:9</p> <p>committee [15] - 7:6, 37:3, 37:9, 38:25, 39:8, 41:10, 47:16, 48:22, 49:2, 125:24, 191:16, 211:7, 250:11, 251:4, 270:14</p> <p>common [2] - 41:12, 206:24</p> <p>communicates [1] - 105:18</p> <p>communication [2] - 94:14, 101:13</p> <p>community [5] - 13:21, 58:12, 221:7, 230:5, 273:14</p> <p>company [1] - 106:20</p> <p>comparable [1] - 182:8</p> <p>compare [1] - 139:16</p> <p>compared [3] - 71:11, 138:21, 201:17</p> <p>comparison [2] - 172:8, 184:23</p> <p>compartment [1] - 79:4</p> <p>competency [1] - 182:20</p> <p>competitive [1] - 221:9</p> <p>compilation [1] - 114:12</p> <p>complete [9] - 19:4, 46:8, 53:16, 67:13, 96:12, 127:20, 177:11, 183:14, 200:18</p> <p>completed [5] - 44:21, 75:9, 104:24, 109:21, 118:5</p> <p>completely [7] - 20:13, 58:10, 67:8, 142:2, 201:1, 202:20, 261:10</p> <p>complicated [1] - 41:18</p> <p>comply [1] - 10:13</p>	<p>component [1] - 241:11</p> <p>components [2] - 56:12, 71:16</p> <p>composed [1] - 221:14</p> <p>compounds [1] - 212:20</p> <p>computer [1] - 105:17</p> <p>computers [1] - 102:18</p> <p>conceal [1] - 43:14</p> <p>concentrated [2] - 60:5, 60:19</p> <p>concept [1] - 245:9</p> <p>concern [3] - 149:19, 157:22, 164:6</p> <p>concerned [3] - 35:9, 85:7, 270:3</p> <p>concerns [4] - 135:8, 138:4, 173:4, 270:16</p> <p>concluded [1] - 47:17</p> <p>conclusion [8] - 9:17, 30:11, 61:18, 65:5, 119:1, 215:21, 217:1, 273:3</p> <p>conclusions [2] - 65:2, 261:24</p> <p>concrete [1] - 92:21</p> <p>concur [2] - 65:2, 65:4</p> <p>concurrence [1] - 8:14</p> <p>condition [5] - 70:22, 98:12, 203:16, 204:2, 204:19</p> <p>conditions [3] - 69:20, 70:20, 177:8</p> <p>condolences [4] - 84:6, 167:8, 221:18, 256:5</p> <p>conduct [40] - 20:2, 24:12, 24:17, 28:20, 28:21, 28:25, 29:16, 29:22, 32:12, 34:1, 37:1, 38:3, 41:21, 47:6, 105:6, 106:1, 132:21, 209:23, 209:24, 222:6, 233:5, 234:6, 234:7, 237:15, 237:20, 241:1, 244:10, 244:11, 246:2, 253:5, 256:13, 258:18, 265:6, 265:20, 271:4, 274:19, 274:22, 275:10, 275:23, 276:11</p> <p>conducted [7] - 24:23, 38:25, 58:1, 92:12, 133:8, 147:23, 160:5</p>	<p>conducting [2] - 121:15, 182:1</p> <p>conducts [2] - 22:6, 28:15</p> <p>conference [1] - 121:19</p> <p>conferences [1] - 51:11</p> <p>confidence [15] - 35:4, 38:14, 61:15, 64:9, 88:25, 89:4, 89:6, 232:7, 234:14, 240:17, 240:19, 265:12, 271:17, 271:22, 271:24</p> <p>confident [1] - 89:13</p> <p>confirm [1] - 78:18</p> <p>confirming [2] - 21:21, 135:15</p> <p>conflict [1] - 24:16</p> <p>conflicted [1] - 125:1</p> <p>conforming [1] - 58:2</p> <p>confront [2] - 146:20, 147:1</p> <p>confronted [2] - 26:7, 47:7</p> <p>confusing [2] - 96:11, 189:2</p> <p>conglomeration [1] - 135:23</p> <p>congratulate [1] - 293:17</p> <p>Congress [1] - 252:6</p> <p>conjunction [1] - 111:5</p> <p>connect [1] - 213:8</p> <p>connected [1] - 105:13</p> <p>Connecticut [1] - 31:2</p> <p>connection [1] - 31:7</p> <p>conscience [1] - 183:25</p> <p>consensus [2] - 117:17, 187:4</p> <p>consent [6] - 43:8, 43:22, 104:19, 108:5, 219:18</p> <p>consented [3] - 43:10, 43:13, 104:23</p> <p>consequences [5] - 229:15, 229:16, 229:20, 229:22, 230:4</p> <p>consider [11] - 27:14, 38:7, 40:6, 40:15, 88:22, 155:16, 189:19, 189:22, 215:10, 252:7</p> <p>consideration [3] - 7:8, 47:24, 289:14</p>	<p>considerations [2] - 44:22, 72:12</p> <p>considered [8] - 51:6, 60:25, 61:9, 71:12, 72:5, 88:20, 95:16, 190:3</p> <p>considering [2] - 38:22, 48:12</p> <p>consisted [1] - 106:9</p> <p>consistent [14] - 15:2, 16:14, 21:2, 26:1, 26:3, 26:9, 71:3, 84:25, 91:14, 115:12, 140:25, 143:7, 165:13</p> <p>console [1] - 82:6</p> <p>conspiracy [1] - 42:21</p> <p>constantly [1] - 195:24</p> <p>Constitution [29] - 8:9, 34:7, 34:8, 34:9, 34:14, 34:19, 35:9, 35:10, 35:22, 35:25, 36:1, 36:3, 36:22, 39:7, 49:12, 195:7, 232:2, 232:12, 232:14, 232:25, 233:8, 233:11, 235:16, 244:12, 252:17, 257:12, 258:4, 259:11</p> <p>Constitution's [1] - 256:11</p> <p>constitutional [19] - 28:3, 34:16, 35:18, 39:2, 39:5, 39:10, 40:3, 40:7, 41:14, 202:4, 202:11, 202:19, 203:3, 229:11, 235:11, 235:14, 235:18, 265:18, 284:22</p> <p>constitutionally [1] - 220:7</p> <p>Constitutions [1] - 34:20</p> <p>constrained [1] - 55:21</p> <p>consult [2] - 64:12, 64:13</p> <p>consulted [5] - 250:14, 250:16, 250:18, 250:19, 270:21</p> <p>consulting [1] - 270:17</p> <p>consuming [1] - 90:14</p> <p>contact [3] - 122:1, 167:14</p> <p>contacted [5] - 84:4,</p>
--	---	--	---	---

<p>103:5, 108:17, 125:2, 195:22</p> <p>contacting [1] - 24:11</p> <p>contacts [1] - 126:25</p> <p>contain [1] - 115:19</p> <p>contained [9] - 9:1, 25:22, 170:10, 170:12, 170:22, 171:10, 174:8, 176:15, 208:12</p> <p>contemplated [1] - 32:6</p> <p>contemplating [1] - 258:11</p> <p>content [2] - 105:23, 115:4</p> <p>contentions [1] - 162:9</p> <p>contents [7] - 13:17, 92:12, 105:21, 106:25, 107:16, 113:19, 114:13</p> <p>contest [1] - 259:25</p> <p>context [7] - 123:23, 126:8, 126:17, 185:9, 234:6, 235:9</p> <p>continual [1] - 28:11</p> <p>continue [3] - 36:15, 169:24, 225:10</p> <p>continued [4] - 27:1, 62:2, 81:5, 275:24</p> <p>continues [1] - 19:22</p> <p>contrary [1] - 237:5</p> <p>contrast [1] - 145:20</p> <p>contrition [1] - 246:10</p> <p>control [9] - 13:24, 16:14, 28:1, 55:1, 169:13, 181:5, 212:2, 212:23, 261:7</p> <p>controls [1] - 153:19</p> <p>convene [1] - 295:25</p> <p>convened [1] - 8:7</p> <p>conveniently [1] - 207:20</p> <p>convention [1] - 240:21</p> <p>conversation [17] - 24:4, 82:9, 91:9, 96:8, 100:4, 101:3, 101:5, 122:5, 122:6, 123:6, 126:23, 128:3, 129:3, 149:12, 160:9, 167:19, 198:15</p> <p>conversations [3] - 17:20, 17:21, 173:23</p> <p>converse [1] - 211:16</p> <p>converted [1] - 250:23</p> <p>convicted [11] - 8:14, 251:8, 254:14,</p>	<p>259:8, 269:14, 280:4, 280:14, 284:11, 284:15, 285:9, 288:14</p> <p>conviction [6] - 26:4, 26:10, 40:1, 48:16, 231:17, 241:8</p> <p>convince [2] - 161:23, 167:14</p> <p>convinced [1] - 226:18</p> <p>convincing [16] - 39:24, 40:2, 40:18, 46:12, 48:14, 48:15, 72:4, 235:3, 235:7, 241:2, 241:5, 241:7, 244:17, 245:5, 260:17, 264:6</p> <p>convincingly [1] - 48:8</p> <p>cooler [1] - 126:15</p> <p>cooperated [1] - 44:10</p> <p>cooperation [2] - 46:8, 238:10</p> <p>cooperative [1] - 219:17</p> <p>coordinates [5] - 110:7, 114:8, 114:25, 116:5, 150:19</p> <p>coordinator [1] - 53:13</p> <p>cop [1] - 274:19</p> <p>copies [3] - 54:2, 142:23, 143:1</p> <p>copy [4] - 105:21, 105:24, 106:1, 185:6</p> <p>cord [1] - 79:10</p> <p>corner [1] - 69:8</p> <p>correct [112] - 7:21, 53:6, 54:5, 55:16, 56:22, 56:25, 57:23, 58:14, 61:20, 62:13, 63:2, 63:21, 66:10, 68:22, 69:10, 72:19, 84:16, 85:1, 85:9, 87:4, 88:15, 89:7, 89:20, 90:4, 90:5, 91:15, 96:3, 100:7, 101:8, 106:3, 107:14, 108:3, 111:25, 114:15, 114:18, 115:5, 115:8, 116:20, 116:21, 117:2, 117:21, 118:21, 120:25, 122:12, 124:13, 125:11, 126:17, 126:22, 127:1, 128:6,</p>	<p>130:11, 130:17, 136:20, 137:24, 138:11, 138:22, 138:25, 139:22, 139:25, 140:16, 140:23, 144:8, 146:2, 146:11, 147:5, 148:25, 149:21, 150:2, 152:21, 153:15, 153:17, 154:6, 157:5, 157:9, 158:2, 158:24, 159:21, 160:20, 161:11, 161:25, 162:17, 163:5, 163:7, 163:11, 163:16, 163:21, 163:23, 166:1, 167:24, 168:13, 170:2, 174:11, 174:12, 174:17, 175:22, 177:9, 178:2, 178:3, 178:16, 179:11, 179:12, 186:13, 186:14, 186:17, 186:18, 186:20, 235:2, 239:18, 260:14, 296:13, 298:11</p> <p>correction [1] - 7:11</p> <p>correctly [4] - 103:16, 118:24, 175:10, 199:21</p> <p>corroborated [2] - 13:5, 21:7</p> <p>corroborating [1] - 21:2</p> <p>corrupt [6] - 36:25, 233:5, 256:13, 258:17, 272:23, 273:1</p> <p>counsel [12] - 8:24, 9:21, 9:25, 12:4, 32:20, 43:3, 43:5, 100:10, 209:14, 235:25, 236:17, 238:2</p> <p>Count [15] - 12:25, 18:17, 25:21, 30:16, 30:21, 189:20, 189:23, 254:13, 254:19, 260:6, 270:2, 270:3, 271:5</p> <p>count [1] - 71:9</p> <p>counterpart [1] - 24:16</p> <p>countless [2] - 30:3, 30:19</p> <p>countries [1] - 271:23</p>	<p>country [3] - 31:22, 32:8, 252:23</p> <p>counts [1] - 241:10</p> <p>county [2] - 110:17, 229:24</p> <p>County [11] - 15:7, 74:24, 76:23, 79:23, 125:12, 226:4, 244:9, 251:14, 264:20, 264:21, 272:13</p> <p>COUNTY [1] - 298:3</p> <p>couple [19] - 35:13, 52:17, 53:25, 54:9, 85:5, 90:18, 103:14, 143:2, 155:24, 160:1, 192:1, 202:2, 231:2, 242:5, 244:2, 244:15, 251:16, 254:15, 294:3</p> <p>coupled [1] - 25:21</p> <p>course [27] - 16:23, 51:5, 57:25, 68:9, 75:8, 79:16, 80:6, 90:10, 92:11, 98:13, 127:4, 127:13, 132:10, 133:19, 134:1, 134:10, 137:9, 149:13, 150:8, 159:9, 168:25, 209:25, 213:12, 214:3, 227:15, 251:11, 252:3</p> <p>COURT [1] - 1:3</p> <p>Court [19] - 4:2, 7:18, 8:7, 37:4, 38:2, 48:13, 169:5, 233:20, 233:22, 234:5, 234:19, 234:24, 235:4, 237:4, 237:7, 272:16, 289:3, 289:11, 290:8</p> <p>court [15] - 169:21, 172:4, 172:7, 172:15, 172:18, 209:13, 237:13, 242:12, 249:10, 249:11, 249:13, 262:18, 273:11, 289:23</p> <p>courtroom [1] - 249:21</p> <p>courts [1] - 236:25</p> <p>cousin [2] - 249:25, 250:3</p> <p>cover [5] - 42:21, 141:11, 183:6, 215:3, 250:3</p>	<p>cover-up [1] - 250:3</p> <p>Crabtree [6] - 4:17, 266:22, 277:12, 281:17, 285:22, 290:23</p> <p>CRABTREE [6] - 4:18, 266:23, 277:13, 281:18, 285:23, 290:24</p> <p>Craig [2] - 4:5, 4:6</p> <p>crash [56] - 15:2, 15:10, 17:4, 19:13, 22:1, 22:16, 24:13, 25:3, 26:2, 50:18, 50:19, 50:20, 51:9, 51:24, 51:25, 52:9, 52:10, 52:12, 52:14, 52:24, 53:11, 53:12, 53:13, 53:16, 54:4, 54:8, 56:18, 56:20, 57:6, 75:16, 80:13, 81:12, 82:8, 83:2, 87:18, 94:6, 113:24, 116:17, 121:8, 121:12, 137:21, 146:4, 150:11, 150:12, 168:15, 168:17, 180:17, 191:12, 198:9, 216:2, 216:10, 216:12, 221:17, 226:16, 227:11, 227:12</p> <p>crashed [2] - 15:15, 15:17</p> <p>crashes [3] - 51:4, 52:5</p> <p>crashing [1] - 16:25</p> <p>create [8] - 54:20, 59:11, 61:5, 151:9, 152:23, 154:16, 155:5, 294:7</p> <p>created [4] - 15:11, 65:23, 222:5</p> <p>creating [3] - 35:10, 56:15, 59:23</p> <p>creation [1] - 151:8</p> <p>credibility [7] - 171:8, 171:13, 172:18, 179:15, 179:16, 271:3, 273:12</p> <p>credible [2] - 178:9, 273:14</p> <p>crime [31] - 24:2, 24:9, 27:21, 28:4, 37:19, 37:20, 42:1, 48:10, 73:23, 103:10, 103:22, 133:15, 165:23, 165:25, 177:11, 189:12,</p>
---	--	--	--	--

<p>204:15, 227:3, 231:18, 252:7, 252:20, 252:22, 252:23, 252:24, 253:3, 258:4, 258:25, 259:1, 259:4, 259:5, 263:5</p> <p>Crimes [2] - 102:19, 120:20</p> <p>crimes [43] - 30:8, 36:25, 40:19, 102:17, 102:23, 120:10, 120:13, 120:15, 120:16, 120:21, 120:23, 148:2, 189:11, 189:15, 189:17, 189:19, 212:13, 233:5, 236:8, 236:14, 242:18, 244:8, 253:1, 253:9, 254:14, 256:13, 256:14, 256:16, 256:17, 258:17, 258:19, 258:22, 258:23, 258:24, 259:6, 259:13, 259:20, 259:21, 260:2, 260:3, 266:8</p> <p>Criminal [18] - 22:14, 24:15, 41:1, 73:10, 74:3, 95:5, 96:7, 102:10, 102:22, 105:9, 119:25, 120:9, 120:17, 131:19, 131:23, 174:14, 238:17, 250:17</p> <p>criminal [42] - 24:17, 27:2, 28:17, 30:10, 31:11, 37:19, 37:20, 38:15, 41:15, 73:14, 73:19, 73:20, 123:16, 125:5, 125:7, 125:8, 125:14, 128:8, 130:7, 130:10, 130:24, 130:25, 147:22, 169:15, 189:24, 220:6, 220:22, 227:4, 231:19, 231:24, 234:12, 236:10, 238:8, 244:10, 244:11, 245:1, 245:9, 246:2, 246:23, 262:18, 272:9</p> <p>criminally [2] - 40:24, 241:18</p>	<p>criminals [1] - 73:20</p> <p>crisis [1] - 229:12</p> <p>cross [5] - 10:3, 94:19, 148:11, 170:6, 243:14</p> <p>Cross [5] - 2:7, 2:9, 2:12, 2:14, 2:16</p> <p>CROSS [5] - 69:2, 94:20, 117:11, 128:1, 170:7</p> <p>cross-examination [1] - 148:11</p> <p>CROSS- EXAMINATION [5] - 69:2, 94:20, 117:11, 128:1, 170:7</p> <p>Cross-Examination [5] - 2:7, 2:9, 2:12, 2:14, 2:16</p> <p>cross-examine [3] - 10:3, 94:19, 170:6</p> <p>crossed [5] - 210:10, 243:14, 248:15, 248:17</p> <p>CRR [1] - 1:24</p> <p>crucial [2] - 39:8, 235:16</p> <p>cruise [5] - 13:23, 16:14, 153:19, 212:2, 212:23</p> <p>crystal [1] - 211:9</p> <p>culmination [1] - 280:18</p> <p>culpability [3] - 41:15, 236:10, 262:13</p> <p>culpable [1] - 40:24</p> <p>cup [2] - 60:2, 60:4</p> <p>Curd [11] - 4:19, 203:7, 203:9, 203:13, 206:5, 206:12, 266:24, 277:14, 281:19, 285:24, 290:25</p> <p>CURD [14] - 4:20, 203:10, 203:14, 203:18, 203:25, 205:11, 206:1, 206:6, 206:18, 266:25, 277:15, 281:20, 285:25, 291:1</p> <p>curiosity [1] - 196:7</p> <p>curious [2] - 23:10, 203:15</p> <p>current [2] - 50:17, 51:8</p> <p>cursor [2] - 65:18, 78:23</p> <p>cut [3] - 18:1, 36:2, 232:16</p>	<p>cwittler@ venturecomm.net [1] - 1:25</p> <p>cyber [1] - 94:10</p> <p>cybercrime [2] - 102:22, 104:13</p> <p>cybercrimes [1] - 102:17</p>	<p>284:9, 288:12, 295:2, 298:7, 298:13</p> <p>Dakota's [1] - 212:1</p> <p>Dakotan [1] - 244:7</p> <p>Dakotans [1] - 243:9</p> <p>damage [8] - 22:13, 54:15, 55:14, 55:18, 55:20, 57:9, 57:14, 77:4</p> <p>damn [1] - 245:12</p> <p>danger [2] - 165:14, 221:8</p> <p>Daniel [1] - 32:20</p> <p>dark [20] - 14:15, 18:6, 21:9, 63:1, 65:11, 67:3, 69:23, 70:2, 70:3, 70:22, 90:22, 146:1, 146:9, 151:15, 151:16, 151:22, 151:25, 200:24, 210:17, 239:1</p> <p>darker [2] - 62:16, 145:23</p> <p>darkness [1] - 177:10</p> <p>data [80] - 13:8, 15:3, 15:25, 16:3, 16:15, 21:1, 21:18, 21:21, 43:24, 85:10, 85:13, 85:21, 85:23, 86:6, 104:8, 104:16, 104:24, 105:18, 105:23, 105:24, 106:2, 106:8, 106:12, 106:14, 106:18, 106:23, 106:24, 107:1, 109:22, 110:5, 110:11, 110:14, 111:23, 112:1, 112:17, 112:23, 113:14, 113:16, 113:19, 113:22, 113:23, 114:2, 114:16, 114:22, 115:1, 115:12, 115:19, 115:20, 115:22, 116:2, 116:8, 116:15, 116:19, 117:5, 118:2, 118:9, 124:2, 126:23, 129:5, 129:11, 135:23, 138:1, 139:9, 139:11, 139:15, 139:16, 139:20, 140:1, 140:3, 140:6, 140:10, 140:18, 140:22, 141:23, 150:11, 177:16,</p>	<p>177:20, 178:11, 180:10, 247:6</p> <p>date [3] - 8:21, 121:10, 128:3</p> <p>Dated [1] - 298:13</p> <p>Dave [1] - 22:15</p> <p>David [2] - 27:10, 33:6</p> <p>daylight [2] - 177:4, 201:16</p> <p>days [18] - 12:10, 19:7, 25:2, 30:2, 35:13, 43:17, 43:18, 90:18, 90:20, 128:5, 193:3, 212:12, 212:14, 212:15, 219:13, 221:17, 240:21, 294:15</p> <p>DCI [14] - 22:15, 24:16, 27:10, 44:2, 96:8, 96:24, 120:6, 120:12, 121:2, 149:23, 217:2, 250:19, 270:19, 270:21</p> <p>dead [4] - 80:20, 162:10, 219:6, 228:25</p> <p>deal [4] - 172:25, 213:17, 224:25, 260:5</p> <p>dealing [1] - 232:12</p> <p>dealings [1] - 265:8</p> <p>dealt [1] - 295:15</p> <p>dear [1] - 229:23</p> <p>death [34] - 15:8, 18:18, 27:15, 29:23, 30:17, 40:20, 40:25, 41:16, 84:10, 84:15, 132:2, 147:24, 189:18, 207:1, 209:21, 229:18, 229:19, 236:8, 236:10, 236:11, 238:5, 241:18, 242:18, 253:16, 257:8, 258:5, 259:20, 259:22, 260:3, 260:5, 260:7, 266:8, 269:19, 276:22</p> <p>debarment [2] - 228:5, 229:6</p> <p>debatable [1] - 242:8</p> <p>debate [3] - 242:11, 258:19, 260:13</p> <p>debating [1] - 261:21</p> <p>debris [45] - 15:18, 16:10, 21:11, 21:13, 22:24, 23:8, 23:10, 23:13, 23:15, 26:14,</p>
---	---	---	---	---

<p>26:17, 56:13, 57:22, 58:4, 59:14, 60:8, 60:24, 61:6, 65:19, 66:9, 66:11, 67:23, 69:5, 71:13, 71:23, 72:11, 76:3, 79:12, 87:20, 133:23, 136:4, 137:2, 138:21, 141:2, 141:5, 141:6, 141:13, 141:19, 143:23, 164:24, 165:3, 165:11, 165:14, 186:7, 186:13</p> <p>deceased [4] - 142:1, 183:12, 239:25, 255:8</p> <p>deceit [1] - 28:20</p> <p>deceiving [1] - 47:7</p> <p>deception [2] - 98:9, 98:10</p> <p>decide [7] - 197:17, 220:9, 220:10, 220:20, 228:4, 230:20, 270:14</p> <p>decided [4] - 163:8, 189:2, 209:16, 271:20</p> <p>decides [2] - 22:23, 220:18</p> <p>Decision [1] - 169:6</p> <p>decision [20] - 33:25, 40:6, 44:24, 154:9, 220:2, 221:8, 222:16, 222:19, 228:7, 233:19, 244:22, 245:3, 251:3, 251:13, 251:14, 251:17, 251:18, 262:17, 271:20, 294:24</p> <p>decisions [16] - 12:8, 18:15, 36:7, 36:19, 36:20, 41:8, 181:21, 182:3, 182:15, 182:18, 244:8, 244:9, 251:22, 272:3, 294:24, 295:17</p> <p>declares [4] - 280:3, 284:8, 288:11, 293:12</p> <p>decorum [1] - 10:12</p> <p>decrease [1] - 157:20</p> <p>deduction [1] - 180:14</p> <p>deed [3] - 38:4, 209:4, 234:7</p> <p>deeds [2] - 41:23, 209:7</p>	<p>deemed [3] - 95:17, 166:13, 273:13</p> <p>deeply [2] - 167:2, 211:5</p> <p>deer [26] - 20:10, 22:5, 23:4, 23:18, 25:11, 26:12, 42:8, 76:14, 76:15, 155:22, 156:2, 156:3, 156:6, 158:6, 158:7, 159:4, 159:7, 164:17, 164:19, 166:3, 166:9, 197:18, 198:17, 219:3, 255:5, 255:12</p> <p>defend [1] - 245:11</p> <p>defendant [10] - 125:5, 125:7, 125:14, 127:10, 128:7, 128:10, 128:12, 130:24, 161:15, 240:6</p> <p>defendants [2] - 130:7, 161:22</p> <p>defense [14] - 31:3, 169:12, 169:23, 185:16, 193:14, 196:14, 197:15, 206:15, 206:16, 206:17, 225:12, 243:21, 293:18</p> <p>defer [1] - 222:16</p> <p>define [3] - 12:11, 31:25, 252:23</p> <p>defined [2] - 38:3, 237:4</p> <p>defines [2] - 27:22, 28:16</p> <p>definitely [3] - 111:14, 262:3, 262:14</p> <p>definition [6] - 48:12, 53:4, 203:21, 252:7, 259:4, 275:6</p> <p>degree [11] - 61:14, 63:24, 73:14, 204:17, 210:18, 211:23, 218:13, 251:9, 262:8, 262:11, 262:13</p> <p>delegate [1] - 75:6</p> <p>delete [1] - 43:24</p> <p>deleted [2] - 118:15, 118:16</p> <p>deliberately [2] - 217:2, 249:16</p> <p>delivered [1] - 108:14</p> <p>demand [1] - 162:14</p> <p>demeaned [1] - 273:20</p>	<p>democracy [1] - 229:12</p> <p>demonstrably [1] - 222:18</p> <p>demonstrated [2] - 18:21, 207:23</p> <p>demonstrating [2] - 82:2, 184:16</p> <p>demonstrations [1] - 221:10</p> <p>demote [1] - 63:12</p> <p>denied [4] - 111:20, 117:13, 160:15, 186:19</p> <p>denominated [1] - 39:18</p> <p>dent [2] - 54:19, 54:20</p> <p>deny [3] - 16:17, 26:8, 160:13</p> <p>denying [4] - 9:1, 98:3, 98:25, 184:18</p> <p>department [7] - 84:4, 102:14, 102:16, 122:7, 147:17, 153:1, 153:6</p> <p>Department [9] - 43:20, 49:3, 73:25, 77:25, 78:1, 83:23, 96:24, 108:19, 128:23</p> <p>departments [1] - 73:17</p> <p>departure [2] - 13:5, 13:9</p> <p>dependent [2] - 112:18, 159:16</p> <p>depict [2] - 114:7, 144:2</p> <p>depicting [1] - 114:16</p> <p>depicts [2] - 78:18, 114:8</p> <p>deputies [1] - 230:12</p> <p>Deputy [1] - 244:9</p> <p>describe [15] - 14:3, 17:12, 51:23, 52:13, 59:22, 59:24, 61:23, 69:20, 78:23, 81:18, 122:3, 134:13, 134:14, 155:22, 184:24</p> <p>described [14] - 14:13, 14:15, 14:20, 14:21, 19:6, 80:8, 80:19, 82:23, 136:10, 136:13, 136:17, 146:14, 151:24, 183:8</p> <p>describes [2] - 81:13, 134:23</p> <p>describing [2] - 136:5,</p>	<p>146:17</p> <p>description [8] - 138:5, 141:1, 141:10, 141:12, 146:16, 165:8, 201:13, 218:2</p> <p>deserves [1] - 221:22</p> <p>designed [3] - 207:20, 224:24, 231:15</p> <p>desire [1] - 197:24</p> <p>despite [3] - 61:3, 174:7, 234:12</p> <p>destiny [1] - 255:18</p> <p>detached [1] - 54:25</p> <p>detail [5] - 33:22, 54:22, 80:12, 130:21, 205:20</p> <p>detailed [1] - 133:10</p> <p>details [11] - 17:18, 17:19, 17:24, 44:9, 80:13, 80:16, 82:25, 204:16, 205:7, 208:2</p> <p>detector [1] - 239:21</p> <p>determination [2] - 95:15, 265:17</p> <p>determine [15] - 52:4, 55:5, 56:17, 59:25, 66:15, 67:22, 68:4, 88:21, 90:25, 93:1, 98:11, 110:15, 110:23, 135:17, 234:18</p> <p>determined [3] - 63:5, 68:15, 71:20</p> <p>determining [4] - 51:25, 59:25, 66:13, 71:12</p> <p>device [4] - 26:10, 105:16, 127:21, 139:15</p> <p>devices [2] - 121:3, 127:4</p> <p>devil's [1] - 44:9</p> <p>diagnosed [1] - 205:15</p> <p>diagnosis [1] - 207:11</p> <p>diagram [8] - 65:22, 114:24, 115:7, 136:2, 138:8, 139:6, 156:16, 177:12</p> <p>dial [1] - 19:8</p> <p>dialing [1] - 158:21</p> <p>Dickinson [1] - 147:17</p> <p>died [1] - 15:7</p> <p>Diedrich [7] - 4:21, 264:11, 267:1, 277:16, 281:21, 286:1, 291:2</p> <p>DIEDRICH [9] - 4:22, 264:10, 264:12,</p>	<p>264:19, 267:2, 277:17, 281:22, 286:2, 291:3</p> <p>difference [4] - 61:11, 152:19, 215:20, 272:4</p> <p>different [38] - 45:24, 51:10, 52:8, 52:17, 53:25, 61:9, 71:16, 73:20, 85:25, 86:7, 87:5, 88:22, 97:6, 98:7, 106:22, 107:11, 107:12, 110:7, 110:21, 112:3, 134:5, 152:9, 162:2, 184:24, 202:20, 217:15, 228:13, 228:15, 234:16, 238:8, 239:6, 250:19, 254:18, 256:8, 260:20, 262:17, 270:2, 294:13</p> <p>differently [6] - 183:7, 218:7, 219:22, 249:23, 251:1, 284:24</p> <p>differing [1] - 97:7</p> <p>difficult [7] - 48:21, 149:9, 149:10, 200:6, 200:11, 228:4, 294:23</p> <p>difficulty [1] - 249:12</p> <p>digital [3] - 120:21, 129:13, 129:14</p> <p>digits [3] - 166:6, 166:7</p> <p>Dinner [7] - 82:10, 90:12, 107:18, 194:3, 196:9, 257:15, 257:17</p> <p>dinner [9] - 79:22, 80:16, 110:16, 110:21, 110:24, 111:1, 111:12, 111:13, 116:16</p> <p>Dinners [1] - 193:17</p> <p>dinners [1] - 193:23</p> <p>dinnertime [1] - 110:22</p> <p>Direct [6] - 2:6, 2:8, 2:9, 2:11, 2:13, 2:16</p> <p>direct [11] - 12:7, 41:24, 48:15, 121:7, 122:1, 127:23, 196:12, 199:8, 202:1, 241:6, 264:6</p> <p>DIRECT [5] - 50:6, 73:6, 102:6, 119:20, 131:14</p>
---	--	--	--	--

<p>directed [3] - 39:4, 189:9, 235:13</p> <p>directing [1] - 29:11</p> <p>direction [7] - 24:10, 60:1, 66:8, 152:7, 152:9, 238:3, 295:17</p> <p>directly [7] - 88:1, 88:3, 173:11, 190:23, 238:21, 250:24, 271:1</p> <p>Director [6] - 22:15, 27:10, 122:17, 122:25, 123:1, 123:9</p> <p>director [5] - 27:8, 50:18, 51:9, 53:12, 170:1</p> <p>disagree [2] - 95:4, 97:8</p> <p>disagreed [1] - 221:2</p> <p>disagrees [1] - 96:25</p> <p>disasters [1] - 204:8</p> <p>discern [1] - 47:23</p> <p>discharge [1] - 255:10</p> <p>discipline [1] - 28:9</p> <p>disclose [2] - 171:17, 172:3</p> <p>disclosed [1] - 172:13</p> <p>disconnected [2] - 80:20, 94:4</p> <p>discounts [1] - 213:10</p> <p>discover [3] - 68:10, 107:2, 200:4</p> <p>discovered [6] - 76:10, 76:15, 76:16, 89:15, 107:15, 199:22</p> <p>discrepancy [3] - 140:14, 255:20, 255:21</p> <p>discretion [2] - 191:17, 256:11</p> <p>discuss [1] - 123:6</p> <p>discussed [3] - 40:4, 47:17, 231:6</p> <p>Discussion [1] - 49:25</p> <p>discussion [7] - 42:4, 91:6, 95:16, 148:22, 236:1, 245:5, 246:5</p> <p>discussions [2] - 44:22, 49:4</p> <p>disheartened [1] - 247:7</p> <p>dishonest [1] - 42:20</p> <p>dishonesty [3] - 28:20, 30:8, 239:9</p> <p>disingenuous [1] - 100:5</p> <p>disjunctive [1] - 284:23</p> <p>dislodged [1] - 16:10</p>	<p>dismissed [4] - 191:8, 193:10, 193:11, 201:21</p> <p>dispatch [3] - 20:6, 26:13, 41:25</p> <p>dispatched [1] - 42:11</p> <p>dispatcher [4] - 14:5, 20:9, 20:20, 20:25</p> <p>dispersed [1] - 75:9</p> <p>displayed [1] - 115:11</p> <p>disposal [1] - 108:12</p> <p>disproven [1] - 20:13</p> <p>dispute [1] - 45:21</p> <p>disputing [1] - 261:21</p> <p>disqualification [1] - 280:8</p> <p>disqualified [6] - 280:12, 281:4, 284:9, 284:14, 285:7, 288:12</p> <p>disregard [1] - 238:24</p> <p>disseminated [2] - 119:4, 142:25</p> <p>dissociative [5] - 203:16, 204:5, 204:11, 204:23, 206:8</p> <p>dissolve [1] - 289:3</p> <p>distance [7] - 67:18, 93:23, 136:14, 136:23, 137:14, 153:2, 180:19</p> <p>distinction [1] - 195:9</p> <p>distracted [18] - 16:12, 16:17, 30:1, 41:9, 44:25, 174:9, 211:5, 211:8, 215:24, 215:25, 243:21, 245:14, 256:25, 261:8, 262:2, 262:22, 264:5</p> <p>distraction [6] - 13:25, 16:18, 210:19, 211:23, 211:24, 265:22</p> <p>distractions [1] - 14:2</p> <p>district [1] - 53:13</p> <p>ditch [22] - 15:13, 16:9, 23:18, 42:15, 46:23, 58:10, 75:19, 76:8, 91:25, 141:20, 146:15, 146:16, 146:22, 165:17, 178:1, 187:13, 200:12, 200:16, 227:21, 239:2, 247:25</p> <p>ditched [1] - 33:21</p> <p>ditches [4] - 21:6, 21:10, 21:16, 26:18</p>	<p>divide [2] - 57:19, 221:7</p> <p>division [1] - 226:2</p> <p>Division [5] - 22:14, 119:25, 120:9, 120:17, 250:17</p> <p>DO [1] - 298:8</p> <p>doctor [3] - 11:19, 11:22, 11:24</p> <p>document [14] - 56:9, 56:14, 59:6, 114:4, 114:5, 114:20, 114:22, 115:11, 115:19, 127:20, 185:11, 185:13, 214:22, 215:4</p> <p>documented [6] - 13:17, 24:14, 110:8, 110:18, 110:25, 198:11</p> <p>documenting [4] - 59:14, 59:15, 59:16, 59:20</p> <p>documents [9] - 9:6, 9:8, 9:10, 9:23, 44:15, 185:18, 186:5, 186:8, 233:12</p> <p>dominance [1] - 35:11</p> <p>dominate [2] - 34:22, 34:24</p> <p>done [49] - 25:16, 42:2, 43:2, 55:18, 56:2, 57:9, 61:17, 63:19, 66:19, 75:7, 77:11, 90:10, 90:16, 90:17, 91:3, 95:19, 98:25, 104:10, 105:7, 106:8, 110:19, 118:7, 118:16, 120:18, 130:6, 137:25, 148:8, 169:1, 173:18, 179:9, 202:25, 212:23, 217:2, 222:18, 223:1, 223:3, 226:7, 227:20, 233:17, 238:10, 241:10, 241:11, 241:14, 248:3, 272:18, 272:20, 272:21, 272:22, 272:25</p> <p>door [2] - 122:17, 127:16</p> <p>doors [1] - 10:25</p> <p>doorway [2] - 122:21, 122:22</p> <p>double [1] - 166:6</p> <p>doubled [1] - 20:22</p> <p>doubt [9] - 166:14, 179:2, 205:18, 209:17, 210:3, 210:6, 219:16, 244:17, 262:25</p> <p>down [63] - 13:19, 13:22, 16:13, 17:19, 18:7, 18:25, 19:2, 20:22, 24:17, 24:20, 40:21, 42:14, 55:23, 59:4, 60:10, 61:14, 64:10, 66:1, 67:15, 79:18, 82:12, 101:19, 103:10, 107:23, 110:20, 111:2, 113:2, 119:12, 131:5, 140:2, 140:7, 141:18, 145:8, 149:18, 151:10, 152:8, 157:17, 160:16, 165:5, 174:23, 175:10, 180:8, 189:3, 203:8, 210:8, 211:21, 212:1, 217:12, 228:23, 243:15, 243:24, 244:6, 244:7, 244:16, 245:11, 245:15, 247:2, 247:21, 247:24, 251:24, 276:10, 294:8, 296:11</p> <p>downplay [1] - 161:8</p> <p>downstairs [1] - 145:6</p> <p>dozen [3] - 227:14, 251:19</p> <p>drafted [1] - 225:5</p> <p>drafting [1] - 284:22</p> <p>dragged [1] - 246:6</p> <p>draw [6] - 27:3, 53:24, 62:9, 90:16, 273:2, 284:21</p> <p>drawing [1] - 59:8</p> <p>drawn [4] - 49:7, 139:15, 172:8, 172:9</p> <p>dressed [3] - 145:23, 151:15, 151:16</p> <p>drew [1] - 16:16</p> <p>drill [1] - 224:21</p> <p>drivable [1] - 81:23</p> <p>drive [8] - 13:10, 13:12, 77:7, 163:9, 217:12, 248:11, 255:4, 263:18</p> <p>driven [2] - 91:25, 134:9</p> <p>driver [8] - 164:25, 200:2, 200:3, 243:19, 243:22, 245:14, 253:22, 270:6</p>	<p>12</p> <p>driver's [2] - 79:5, 210:12</p> <p>drives [2] - 228:24, 253:23</p> <p>driving [47] - 22:11, 26:4, 30:1, 30:17, 30:18, 40:22, 41:9, 44:25, 45:4, 54:4, 64:9, 66:19, 79:21, 107:8, 107:9, 113:4, 114:23, 115:6, 135:20, 165:5, 174:9, 189:21, 189:23, 199:24, 200:15, 200:19, 209:15, 211:15, 213:12, 224:21, 237:11, 254:1, 256:25, 257:14, 261:5, 261:7, 261:8, 261:9, 262:4, 262:5, 263:3, 263:9, 263:15, 265:21, 270:7, 274:9, 274:11</p> <p>drone [6] - 24:21, 104:5, 104:6, 104:7, 104:8, 142:12</p> <p>drones [1] - 76:21</p> <p>dropped [1] - 80:23</p> <p>drove [3] - 151:10, 164:11, 210:8</p> <p>drug [2] - 163:22, 164:2</p> <p>drunkenness [5] - 36:25, 37:17, 233:5, 256:13, 258:17</p> <p>due [7] - 29:25, 82:7, 84:12, 89:14, 142:1, 166:16, 232:16</p> <p>Duhamel [8] - 4:23, 264:2, 267:3, 274:3, 277:18, 281:23, 286:3, 291:4</p> <p>DUHAMEL [8] - 4:24, 264:3, 267:4, 274:4, 277:19, 281:24, 286:4, 291:5</p> <p>duly [2] - 7:10, 298:8</p> <p>duly-appointed [1] - 298:8</p> <p>during [41] - 9:11, 10:7, 10:19, 11:9, 11:16, 22:1, 27:1, 46:20, 51:9, 52:13, 55:2, 57:24, 76:7, 79:16, 80:3, 80:10, 83:4, 84:25, 85:11, 85:19, 90:10, 92:11,</p>
---	--	--	--

<p>98:13, 110:19, 110:22, 123:5, 127:13, 132:10, 133:19, 133:21, 134:1, 141:22, 149:13, 150:8, 150:19, 160:8, 192:9, 192:25, 201:16, 255:3</p> <p>dust [1] - 55:23</p> <p>duties [13] - 37:8, 76:20, 195:10, 220:4, 220:6, 220:11, 233:25, 244:24, 244:25, 250:12, 257:13, 275:9, 275:13</p> <p>duty [9] - 11:6, 229:21, 258:12, 259:14, 274:17, 275:14, 275:15, 275:17, 276:5</p> <p>Duval [6] - 4:25, 267:5, 277:20, 281:25, 286:5, 291:6</p> <p>DUVALL [6] - 5:1, 267:6, 277:21, 282:1, 286:6, 291:7</p>	<p>educationally [1] - 50:23</p> <p>effect [6] - 12:15, 39:10, 169:18, 178:21, 181:6, 235:18</p> <p>effectively [1] - 230:8</p> <p>efficient [1] - 66:25</p> <p>effort [3] - 38:19, 45:9, 118:2</p> <p>efforts [2] - 49:5, 294:17</p> <p>egregious [4] - 153:12, 216:18, 237:16, 251:8</p> <p>eight [6] - 30:13, 31:23, 120:14, 121:5, 249:3, 249:4</p> <p>eight-hours-plus [1] - 30:13</p> <p>either [11] - 18:14, 53:1, 55:6, 128:14, 132:22, 133:9, 149:25, 176:6, 225:22, 236:13, 240:20</p> <p>elaborate [2] - 132:15, 205:1</p> <p>elect [7] - 32:15, 35:20, 269:12, 280:2, 284:7, 288:10, 293:11</p> <p>elected [19] - 8:15, 29:2, 31:16, 32:5, 32:11, 32:14, 32:21, 46:4, 84:12, 195:5, 223:4, 226:14, 230:16, 230:17, 233:9, 250:4, 257:16, 271:23, 274:6</p> <p>election [4] - 33:4, 220:9, 223:19, 229:10</p> <p>elections [5] - 34:15, 35:19, 232:13, 271:25, 272:1</p> <p>electors [1] - 272:3</p> <p>electronic [4] - 26:10, 43:12, 120:16, 127:4</p> <p>element [6] - 233:17, 233:18, 272:19, 272:20, 272:21</p> <p>elements [3] - 44:22, 256:21, 271:12</p> <p>eliminate [2] - 47:23, 118:2</p> <p>eliminated [1] - 118:10</p> <p>embrace [1] - 218:15</p>	<p>Emily [3] - 41:4, 44:14, 181:23</p> <p>emphasize [1] - 224:9</p> <p>employed [1] - 50:13</p> <p>employee [5] - 27:7, 27:10, 27:11, 225:7</p> <p>employees [1] - 225:19</p> <p>employment [2] - 38:20, 234:15</p> <p>encapsulated [1] - 219:9</p> <p>encourage [4] - 23:22, 25:15, 25:18, 285:2</p> <p>end [11] - 41:7, 60:18, 87:14, 104:2, 120:5, 148:2, 169:19, 208:15, 224:3, 248:19, 255:19</p> <p>ended [7] - 12:18, 21:1, 74:21, 109:3, 227:21, 240:13, 248:18</p> <p>ending [1] - 115:13</p> <p>endorse [1] - 230:8</p> <p>ends [1] - 139:19</p> <p>enforce [1] - 230:19</p> <p>enforcement [62] - 19:7, 25:24, 27:22, 27:24, 28:4, 28:7, 29:11, 29:12, 29:14, 29:17, 30:7, 47:5, 73:13, 73:16, 74:4, 88:13, 102:12, 102:13, 103:1, 105:12, 120:3, 120:5, 120:7, 147:15, 147:16, 169:9, 207:21, 208:8, 214:18, 215:9, 223:4, 223:14, 225:21, 226:2, 226:23, 227:16, 229:17, 230:12, 230:13, 231:21, 240:18, 245:24, 260:4, 265:5, 265:8, 265:13, 265:25, 266:1, 271:16, 274:7, 274:13, 274:16, 274:21, 275:16, 275:25, 276:1, 276:2, 276:3, 276:7, 276:13</p> <p>engage [2] - 28:20, 28:21</p> <p>engaged [3] - 42:20, 66:20, 231:7</p> <p>engineering [3] -</p>	<p>51:15, 64:19, 112:12</p> <p>engineers [1] - 106:22</p> <p>England [1] - 35:3</p> <p>engrained [1] - 97:19</p> <p>ensure [7] - 10:14, 75:6, 90:14, 143:22, 255:8, 255:10, 265:25</p> <p>ensuring [2] - 66:4, 75:8</p> <p>entails [1] - 49:9</p> <p>entangled [1] - 53:7</p> <p>enter [1] - 185:11</p> <p>entered [1] - 135:23</p> <p>entire [11] - 9:3, 31:18, 31:19, 31:22, 31:24, 50:20, 53:21, 64:7, 78:13, 250:25, 271:2</p> <p>entirely [4] - 65:6, 156:9, 210:1, 220:23</p> <p>entirety [5] - 16:8, 25:12, 90:3, 135:1, 138:9</p> <p>entitled [3] - 256:10, 271:21, 273:11</p> <p>entity [1] - 185:23</p> <p>entrance [1] - 153:6</p> <p>environment [1] - 10:15</p> <p>envision [1] - 141:17</p> <p>equipment [2] - 43:12, 109:8</p> <p>equivalent [2] - 253:16, 253:18</p> <p>era [3] - 31:25, 32:8, 32:10</p> <p>eroded [1] - 265:11</p> <p>err [1] - 206:12</p> <p>errors [1] - 7:9</p> <p>especially [4] - 46:15, 112:2, 120:5, 284:20</p> <p>essentially [8] - 52:2, 54:25, 66:7, 122:11, 146:4, 231:20, 233:10, 265:11</p> <p>establish [2] - 63:3, 155:3</p> <p>established [3] - 40:17, 239:17, 241:1</p> <p>establishes [3] - 45:16, 46:1, 48:10</p> <p>establishing [1] - 48:7</p> <p>estimating [1] - 177:2</p> <p>estimations [1] - 24:14</p> <p>et [4] - 44:6, 44:22, 98:12, 114:17</p> <p>evaluate [2] - 23:21, 88:20</p> <p>evaluated [1] - 88:19</p>	<p>evaluation [1] - 13 205:14</p> <p>Evan [1] - 32:23</p> <p>evasive [1] - 70:13</p> <p>evening [10] - 45:4, 58:9, 69:22, 69:23, 70:24, 71:3, 76:18, 77:15, 92:24, 177:2</p> <p>event [15] - 52:25, 133:6, 136:8, 136:12, 182:10, 195:3, 204:9, 204:12, 207:1, 207:2, 212:18, 222:2, 227:24, 243:3, 271:17</p> <p>events [22] - 12:24, 13:6, 14:23, 18:13, 45:24, 81:9, 81:18, 114:13, 133:1, 137:9, 139:16, 194:10, 194:15, 194:20, 195:22, 204:7, 205:6, 205:21, 207:9, 215:20, 221:23, 280:18</p> <p>eventually [3] - 77:13, 86:16, 95:25</p> <p>everywhere [1] - 201:17</p> <p>evidence [97] - 8:13, 9:24, 17:3, 19:18, 19:24, 20:4, 20:13, 24:13, 24:20, 24:23, 25:21, 26:2, 27:14, 27:18, 30:12, 39:24, 40:3, 40:18, 46:13, 48:14, 53:18, 53:22, 55:3, 55:4, 55:8, 55:9, 56:10, 56:11, 57:19, 57:20, 58:9, 59:7, 59:14, 59:19, 59:20, 59:23, 60:9, 60:23, 61:1, 61:9, 62:2, 67:23, 71:17, 71:21, 72:3, 72:9, 72:14, 72:16, 76:21, 78:6, 78:9, 90:8, 123:11, 129:13, 129:14, 129:23, 133:3, 133:14, 135:15, 135:24, 166:25, 179:21, 180:14, 180:15, 182:5, 207:23, 208:11, 214:23, 215:6, 218:6, 220:4, 239:17, 239:19, 241:2, 241:5, 241:6,</p>
E				
<p>e-mail [5] - 13:16, 85:14, 86:14, 111:16</p> <p>e-mails [4] - 86:7, 86:16, 111:10, 124:17</p> <p>early [1] - 133:8</p> <p>earn [1] - 13:11</p> <p>earning [1] - 213:11</p> <p>ease [5] - 124:14, 144:20, 166:9, 169:7, 288:15</p> <p>easier [1] - 200:19</p> <p>easiest [1] - 51:23</p> <p>easily [2] - 46:14, 147:25</p> <p>east [9] - 14:18, 22:18, 23:13, 66:10, 75:20, 91:19, 138:15, 144:7, 186:12</p> <p>East [1] - 3:3</p> <p>eastward [1] - 66:8</p> <p>eastward-facing [1] - 66:8</p> <p>easy [3] - 223:10, 228:8, 294:21</p> <p>edge [3] - 62:7, 64:3, 64:7</p> <p>educating [1] - 123:14</p> <p>educational [1] - 51:3</p>				

<p>244:23, 249:24, 250:2, 258:13, 258:14, 260:8, 260:9, 261:19, 261:21, 263:1, 263:23, 264:6, 272:24, 273:4, 274:15, 275:22, 275:24, 276:15</p> <p>evidenced [1] - 115:14</p> <p>evidentiary [1] - 78:12</p> <p>evil [8] - 38:3, 196:21, 234:5, 234:7, 237:1, 237:17, 272:22, 272:25</p> <p>exact [9] - 51:18, 63:15, 69:18, 70:8, 71:9, 123:20, 154:24, 184:12, 187:4</p> <p>exactly [15] - 45:18, 45:20, 49:9, 60:8, 72:8, 72:9, 105:22, 155:3, 157:15, 157:22, 210:14, 213:13, 220:12, 245:2, 252:11</p> <p>exam [2] - 95:19, 97:1</p> <p>Examination [14] - 2:6, 2:7, 2:8, 2:9, 2:9, 2:10, 2:11, 2:12, 2:13, 2:14, 2:14, 2:16, 2:16, 2:17</p> <p>EXAMINATION [14] - 50:6, 69:2, 73:6, 94:20, 99:18, 100:23, 102:6, 117:11, 119:20, 128:1, 130:4, 131:14, 170:7, 186:2</p> <p>examination [6] - 56:2, 57:25, 67:9, 95:21, 121:3, 148:11</p> <p>examinations [1] - 120:18</p> <p>examine [5] - 10:3, 93:24, 94:19, 170:6, 225:22</p> <p>examined [2] - 118:19, 193:4</p> <p>examiner [11] - 15:8, 27:12, 73:25, 88:14, 89:4, 91:10, 91:11, 95:20, 96:6, 96:9, 97:8</p> <p>examiners [7] - 88:20, 89:2, 89:9, 95:17, 97:6, 97:10, 97:20</p> <p>examines [1] - 186:8</p> <p>examining [2] - 127:8,</p>	<p>214:21</p> <p>example [10] - 32:19, 34:25, 96:17, 99:1, 172:2, 180:1, 196:19, 204:14, 208:5, 232:3</p> <p>examples [2] - 32:13, 32:17</p> <p>exams [2] - 92:12, 105:6</p> <p>excellent [1] - 264:25</p> <p>except [4] - 11:13, 72:14, 167:22, 260:14</p> <p>excess [1] - 83:12</p> <p>exchange [1] - 126:24</p> <p>exclude [2] - 72:14, 260:3</p> <p>excluded [1] - 72:11</p> <p>excuse [10] - 43:15, 63:11, 116:1, 136:9, 140:1, 140:17, 148:13, 153:24, 214:20, 215:18</p> <p>excused [22] - 72:25, 101:20, 119:13, 131:6, 191:9, 193:12, 201:22, 267:7, 267:8, 269:10, 277:22, 277:23, 279:25, 282:2, 282:3, 284:5, 286:7, 286:8, 288:8, 291:8, 291:9, 293:9</p> <p>executive [2] - 31:19, 253:3</p> <p>Executive [9] - 34:21, 34:22, 34:24, 35:6, 35:8, 35:12, 37:17, 232:7, 232:9</p> <p>exercise [1] - 256:10</p> <p>exercising [2] - 275:8</p> <p>exhibits [1] - 10:2</p> <p>exist [3] - 40:5, 221:21, 260:15</p> <p>existing [1] - 105:25</p> <p>exited [1] - 13:20</p> <p>expect [2] - 18:5, 99:3</p> <p>experience [7] - 31:15, 62:24, 85:2, 120:3, 147:13, 159:3, 206:10</p> <p>experienced [1] - 204:8</p> <p>experiences [2] - 206:25, 249:15</p> <p>experientially [1] - 50:23</p> <p>experiment [2] - 151:8, 151:13</p>	<p>expert [3] - 124:2, 125:5, 220:24</p> <p>expertise [2] - 223:21, 264:14</p> <p>experts [2] - 250:19, 270:21</p> <p>explain [15] - 51:20, 54:6, 129:5, 175:19, 176:3, 187:18, 199:1, 208:1, 231:8, 231:9, 231:13, 231:17, 235:22, 262:19</p> <p>explained [13] - 18:19, 75:19, 76:3, 76:9, 77:2, 82:4, 82:13, 82:19, 82:20, 129:12, 181:6, 232:3, 264:25</p> <p>explains [1] - 81:20</p> <p>explanation [16] - 93:25, 105:7, 116:13, 180:23, 181:12, 181:14, 187:12, 204:24, 205:12, 205:16, 207:19, 254:3, 254:6, 254:8, 254:10, 261:14</p> <p>explanations [2] - 208:1, 208:12</p> <p>exposed [1] - 16:7</p> <p>express [6] - 84:6, 132:8, 134:1, 173:3, 174:1, 181:22</p> <p>expressed [2] - 164:6, 210:3</p> <p>expressing [4] - 170:25, 171:7, 221:18, 221:19</p> <p>extended [1] - 122:6</p> <p>extent [2] - 209:13, 276:11</p> <p>external [1] - 15:9</p> <p>extract [4] - 105:18, 106:7, 106:18, 108:12</p> <p>extracted [1] - 109:22</p> <p>extraction [8] - 104:23, 105:16, 106:7, 109:10, 109:14, 109:18, 109:21, 118:5</p> <p>extractions [1] - 105:10</p> <p>extraordinarily [1] - 204:2</p> <p>extraordinary [1] - 232:17</p> <p>extreme [4] - 70:14,</p>	<p>70:16, 208:2, 211:23</p> <p>extremely [4] - 61:15, 151:25, 247:6, 272:7</p> <p>eye [5] - 78:25, 79:1, 90:22, 257:25, 295:6</p> <p>eye-opener [1] - 295:6</p> <p>eyeglass [1] - 79:11</p> <p>eyeglasses [1] - 79:11</p> <p>eyes [1] - 136:25</p> <p>eyewitness [1] - 26:3</p> <p>eyewitnesses [1] - 14:12</p>	<p>198:12</p> <p>fairly [4] - 37:16, 61:25, 153:12, 228:8</p> <p>faith [1] - 274:21</p> <p>fall [2] - 197:23, 252:13</p> <p>Falls [2] - 96:23, 214:4</p> <p>false [4] - 27:22, 28:2, 215:8, 273:15</p> <p>falsehood [2] - 207:3, 207:15</p> <p>falsifier [1] - 273:16</p> <p>familiar [9] - 78:13, 105:11, 136:2, 142:9, 142:14, 175:5, 195:20, 195:22, 203:16</p> <p>family [19] - 18:13, 23:19, 26:20, 83:25, 84:5, 84:13, 84:24, 85:3, 142:24, 167:7, 167:15, 221:19, 238:9, 243:2, 243:15, 243:25, 246:4, 246:21, 256:6</p> <p>far [29] - 45:18, 45:20, 67:15, 70:23, 103:24, 112:5, 126:17, 136:6, 136:16, 137:1, 137:22, 147:25, 152:22, 184:8, 191:12, 191:20, 193:3, 200:15, 206:13, 210:22, 210:23, 212:5, 247:21, 247:24, 260:22, 261:16, 262:1, 262:20</p> <p>fascinating [1] - 214:15</p> <p>fashion [2] - 96:25, 118:17</p> <p>fashioned [1] - 96:17</p> <p>fast [2] - 224:21, 254:1</p> <p>faster [1] - 181:16</p> <p>fastest [1] - 163:8</p> <p>fatalities [1] - 173:13</p> <p>fatality [1] - 74:14</p> <p>father [11] - 13:15, 17:21, 45:6, 80:17, 80:18, 80:22, 84:11, 86:5, 117:20, 196:20, 222:21</p> <p>faux [1] - 272:9</p> <p>favor [10] - 7:15, 266:11, 276:25, 281:6, 285:11, 289:6, 289:18, 290:12, 296:15,</p>
--	--	---	---	---

296:22 fawn ^[1] - 23:18 February ^[1] - 44:12 Federal ^[2] - 34:9, 35:10 federal ^[6] - 28:5, 31:19, 36:6, 220:16, 251:11, 252:19 federalist ^[3] - 39:13, 221:5 feeds ^[1] - 144:2 feet ^[16] - 21:14, 64:4, 64:6, 67:14, 67:20, 134:16, 136:7, 138:18, 138:20, 138:23, 142:3, 144:9, 144:13, 153:9, 153:11, 200:1 fell ^[1] - 55:13 fellow ^[2] - 249:2, 264:13 felonies ^[3] - 256:15, 256:17, 258:21 felony ^[12] - 28:5, 120:10, 182:11, 237:10, 253:12, 256:16, 256:18, 257:1, 257:7, 258:1, 262:9, 262:14 felt ^[4] - 89:9, 202:25, 262:23, 293:20 fence ^[2] - 137:4, 137:6 few ^[13] - 32:17, 70:11, 89:2, 111:15, 164:15, 170:20, 189:11, 223:9, 240:21, 246:24, 252:17, 261:1, 261:4 fiddled ^[1] - 13:24 field ^[2] - 64:20, 247:18 fight ^[1] - 154:7 file ^[2] - 9:4, 109:20 filed ^[3] - 8:24, 48:22, 217:25 fill ^[2] - 230:1, 239:4 filled ^[3] - 12:5, 12:17, 103:25 filling ^[1] - 22:21 final ^[4] - 57:3, 67:19, 218:6, 263:6 finally ^[5] - 10:3, 107:1, 115:17, 272:21, 294:25 findings ^[3] - 119:3, 173:17 Fine ^[1] - 240:2 fine ^[1] - 214:4 finish ^[3] - 168:23,	247:12, 288:21 finished ^[2] - 191:22, 216:25 fire ^[1] - 236:11 firearm ^[1] - 255:10 first ^[65] - 8:23, 9:25, 16:22, 19:6, 19:15, 19:21, 22:25, 23:6, 23:19, 25:1, 25:13, 27:6, 29:4, 40:14, 40:15, 40:16, 42:1, 43:2, 43:7, 49:21, 50:1, 56:7, 62:9, 66:21, 75:15, 76:22, 77:20, 79:13, 126:12, 132:14, 133:7, 135:1, 140:24, 141:23, 149:7, 150:19, 151:6, 165:3, 173:2, 189:9, 189:10, 192:4, 193:16, 197:16, 197:17, 210:11, 214:16, 216:3, 237:15, 241:13, 242:6, 242:7, 242:17, 243:11, 249:10, 252:14, 256:4, 258:15, 258:16, 266:7, 272:17, 275:23, 284:24, 294:5, 295:7 First ^[3] - 269:14, 280:14, 284:11 fitness ^[2] - 28:19, 265:5 five ^[14] - 31:6, 32:3, 45:6, 138:12, 143:17, 144:18, 144:21, 147:18, 147:19, 149:18, 216:16, 222:12, 222:15, 256:12 fixed ^[1] - 35:25 flag ^[1] - 82:12 flashing ^[1] - 152:20 flashlight ^[36] - 21:8, 44:6, 92:9, 92:10, 92:20, 92:24, 93:2, 93:18, 95:2, 110:5, 114:17, 116:6, 124:16, 139:23, 141:19, 142:4, 146:10, 151:18, 151:19, 152:1, 174:25, 175:15, 186:6, 186:11, 186:16, 186:20, 186:23, 191:2,	191:3, 210:16, 210:17, 218:3, 238:23, 254:5, 254:11 flashlight's ^[1] - 152:6 flat ^[3] - 126:20, 217:4, 243:4 flee ^[1] - 158:10 flew ^[1] - 15:14 flight ^[1] - 154:7 floor ^[5] - 11:25, 79:12, 187:15, 192:2, 294:22 floorboard ^[3] - 15:21, 21:25, 79:8 Florida ^[1] - 237:3 flow ^[1] - 210:15 flying ^[2] - 76:21, 104:7 focus ^[5] - 40:14, 112:14, 151:1, 166:12, 234:1 focusing ^[2] - 40:11, 40:21 fog ^[15] - 14:1, 14:25, 58:6, 59:7, 62:8, 62:10, 62:11, 62:13, 63:6, 64:3, 155:10, 210:8, 243:12, 243:14, 248:14 folder ^[1] - 114:21 folk ^[1] - 218:25 folks ^[6] - 42:11, 217:11, 220:14, 246:8, 248:11, 273:7 follow ^[11] - 12:10, 28:16, 49:13, 55:22, 95:25, 100:9, 122:23, 194:8, 202:8, 229:6, 271:18 follow-up ^[3] - 100:9, 194:8, 202:8 followed ^[7] - 12:20, 18:15, 20:7, 22:20, 30:20, 45:16, 250:8 following ^[19] - 3:1, 8:23, 18:18, 21:4, 41:22, 41:23, 43:17, 43:19, 44:21, 69:14, 116:16, 128:5, 174:23, 184:10, 200:25, 221:17, 241:15, 269:18, 276:22 follows ^[1] - 273:6 foot ^[3] - 14:10, 64:6, 211:21 footage ^[4] - 24:19, 108:23, 109:4, 142:12	football ^[1] - 247:18 FOR ^[1] - 1:2 Force ^[1] - 102:20 force ^[5] - 17:7, 54:20, 67:7, 120:14, 120:16 forces ^[1] - 52:3 forensic ^[15] - 44:4, 56:16, 59:3, 59:20, 61:12, 71:25, 73:22, 94:10, 94:11, 105:16, 120:18, 121:3, 124:2, 239:17, 239:19 forensics ^[2] - 104:14, 173:18 foreseeable ^[1] - 229:5 forever ^[2] - 248:17, 255:18 forfeited ^[1] - 209:5 forget ^[1] - 117:21 form ^[6] - 101:12, 187:4, 232:5, 240:12, 242:7, 252:12 formal ^[4] - 31:7, 33:17, 33:19, 222:13 formalities ^[1] - 22:7 formally ^[1] - 222:13 formed ^[1] - 141:22 former ^[1] - 227:1 forth ^[4] - 40:12, 48:4, 94:14, 255:4 forthcoming ^[1] - 86:23 forward ^[2] - 52:19, 206:16 Foster ^[6] - 5:2, 267:7, 277:22, 282:2, 286:7, 291:8 founders ^[1] - 253:9 four ^[27] - 10:1, 13:25, 35:21, 35:23, 36:1, 36:4, 36:9, 36:10, 63:6, 63:8, 65:7, 87:5, 116:3, 116:19, 140:17, 140:18, 162:2, 187:7, 191:15, 237:18, 248:13, 248:14, 260:11, 260:23, 261:7, 261:25, 264:4 four-year ^[1] - 36:4 Fourth ^[1] - 296:1 frame ^[5] - 15:20, 15:21, 70:8, 91:24, 180:8 framers ^[3] - 35:8, 36:5, 36:6 frames ^[3] - 22:2,	79:1, 79:11 15 fraud ^[1] - 28:20 frequent ^[1] - 112:8 frequently ^[1] - 47:3 fresh ^[1] - 20:10 friend ^[5] - 225:5, 243:15, 243:25, 246:4, 249:7 friendly ^[1] - 218:25 friends ^[3] - 232:19, 243:1, 249:3 FROM ^[1] - 2:18 front ^[26] - 15:11, 15:14, 15:22, 17:6, 17:11, 21:18, 21:22, 54:1, 55:21, 56:1, 57:9, 57:10, 60:4, 65:13, 69:8, 77:4, 79:4, 79:8, 91:12, 91:14, 152:7, 216:4, 217:14, 244:1, 250:1, 262:3 fruitful ^[1] - 172:8 Frye ^[6] - 5:3, 267:8, 277:23, 282:3, 286:8, 291:9 Frye-Mueller ^[6] - 5:3, 267:8, 277:23, 282:3, 286:8, 291:9 fulfilling ^[1] - 220:11 full ^[8] - 7:21, 11:7, 14:8, 66:20, 67:3, 67:12, 109:20, 154:18 fully ^[2] - 49:10, 54:24 function ^[6] - 13:3, 194:10, 194:21, 194:24, 196:1, 202:21 functioning ^[3] - 39:11, 186:25, 235:19 functions ^[2] - 195:2 funeral ^[1] - 177:9 furnishes ^[1] - 27:25 furthest ^[2] - 138:15, 138:18 future ^[2] - 229:5, 266:2 fuzzy ^[2] - 253:2, 253:6
G				
gain ^[5] - 19:17, 30:6, 30:10, 53:8, 129:21 gained ^[2] - 42:10, 129:2 gallery ^[4] - 10:12, 10:25, 11:21, 293:19				

<p>game [3] - 17:21, 80:14, 80:15</p> <p>gap [1] - 116:5</p> <p>GARBER [3] - 1:19, 30:25, 231:1</p> <p>Garber [9] - 30:23, 31:1, 195:8, 220:14, 220:24, 222:11, 223:7, 223:18, 230:25</p> <p>Garber's [1] - 222:8</p> <p>gas [7] - 80:24, 81:2, 81:3, 164:11, 211:21, 243:5</p> <p>gathered [4] - 19:9, 22:6, 53:22, 67:23</p> <p>gathering [1] - 83:5</p> <p>General [222] - 1:9, 8:24, 12:21, 13:3, 13:14, 14:23, 16:12, 16:20, 17:9, 17:11, 18:12, 18:17, 19:6, 19:11, 19:14, 20:2, 20:21, 21:4, 21:17, 22:5, 22:9, 22:10, 22:18, 23:12, 23:24, 24:7, 24:24, 25:3, 25:24, 26:25, 27:1, 27:5, 27:16, 27:19, 29:8, 29:10, 29:18, 29:22, 30:3, 30:15, 31:3, 35:21, 35:24, 37:12, 37:25, 40:19, 41:21, 42:7, 43:4, 43:10, 43:25, 44:10, 46:4, 46:5, 47:10, 49:14, 54:4, 56:1, 58:25, 74:6, 74:15, 76:11, 77:3, 79:14, 80:7, 82:1, 83:5, 83:20, 83:25, 84:23, 86:1, 88:1, 97:12, 98:15, 99:20, 99:23, 100:17, 100:25, 101:12, 103:3, 107:16, 111:20, 115:14, 116:18, 117:13, 117:16, 121:21, 122:1, 122:15, 122:19, 123:8, 125:19, 126:9, 129:2, 132:3, 132:9, 135:9, 140:3, 145:17, 146:14, 148:21, 149:13, 150:5, 151:10, 151:23, 153:22, 154:21, 154:22, 155:22, 158:14, 159:23, 165:10,</p>	<p>170:21, 171:9, 171:13, 174:2, 177:7, 178:12, 178:17, 179:10, 192:6, 192:22, 193:17, 193:24, 194:9, 194:11, 194:13, 194:19, 194:21, 194:23, 194:25, 195:3, 195:18, 195:25, 196:8, 196:9, 197:16, 197:19, 198:8, 198:16, 202:3, 204:22, 205:5, 205:25, 207:24, 209:5, 210:1, 212:10, 212:11, 212:19, 214:7, 214:14, 217:1, 218:5, 218:8, 219:19, 221:15, 221:17, 221:22, 222:4, 223:1, 224:3, 224:9, 224:13, 224:18, 225:7, 225:14, 226:12, 226:22, 229:3, 229:4, 229:5, 231:22, 236:7, 236:22, 237:22, 237:25, 239:13, 239:17, 239:18, 239:22, 240:8, 240:17, 242:19, 242:20, 245:10, 246:3, 246:19, 247:3, 249:8, 250:13, 250:14, 253:21, 255:21, 257:18, 257:20, 259:19, 261:13, 266:9, 266:10, 269:13, 269:15, 269:19, 269:21, 270:4, 270:5, 270:8, 270:10, 271:17, 274:7, 274:15, 274:17, 275:13, 276:5, 276:23, 276:24, 280:3, 280:6, 284:8, 288:11, 294:20</p> <p>general [21] - 20:10, 29:12, 32:7, 36:8, 36:12, 36:13, 36:14, 36:16, 37:6, 37:7, 37:22, 117:16, 189:10, 204:3, 204:5, 232:14, 233:21, 233:23,</p>	<p>252:11, 259:4</p> <p>General's [69] - 14:15, 15:3, 17:2, 18:16, 18:23, 20:19, 21:2, 22:7, 22:20, 24:6, 24:22, 27:17, 30:1, 30:9, 38:8, 55:5, 55:7, 55:19, 63:4, 64:1, 64:5, 65:19, 66:15, 66:19, 66:21, 66:23, 67:10, 67:16, 67:20, 68:5, 68:10, 68:13, 69:9, 69:13, 70:6, 85:11, 92:13, 101:10, 104:19, 104:22, 108:2, 111:7, 112:23, 113:7, 114:14, 116:15, 138:16, 150:8, 154:17, 155:4, 155:7, 155:13, 179:15, 180:12, 195:16, 198:18, 208:12, 222:6, 225:18, 238:10, 250:15, 250:18, 250:25, 270:18, 270:20, 270:25, 271:1, 271:2, 271:3</p> <p>generalities [1] - 129:11</p> <p>generally [4] - 12:12, 83:6, 83:8, 171:19</p> <p>generations [1] - 266:3</p> <p>generous [1] - 206:13</p> <p>genius [3] - 35:19, 229:13, 229:14</p> <p>geniuses [1] - 34:19</p> <p>gentleman [2] - 64:13, 239:25</p> <p>gentlemen [7] - 8:5, 10:11, 210:22, 211:14, 214:16, 222:15, 249:2</p> <p>germ [1] - 225:13</p> <p>gesture [2] - 224:17, 227:19</p> <p>ghost [1] - 155:9</p> <p>gigantic [1] - 250:3</p> <p>Giglio [3] - 169:4, 169:8, 169:16</p> <p>given [10] - 9:12, 82:13, 108:21, 125:5, 126:2, 138:5, 174:22, 208:4, 221:4, 236:12</p> <p>glance [1] - 217:9</p> <p>glass [7] - 16:25, 17:4,</p>	<p>22:2, 57:15, 57:16, 72:1, 79:12</p> <p>glasses [5] - 15:17, 22:3, 78:25, 79:2, 136:19</p> <p>glimmers [1] - 18:2</p> <p>glossed [2] - 17:25, 208:2</p> <p>glove [4] - 82:6, 82:7, 192:6, 192:23</p> <p>glow [1] - 90:23</p> <p>go-to [2] - 19:21, 224:17</p> <p>Google [1] - 112:6</p> <p>Government [7] - 34:10, 42:9, 42:24, 43:12, 48:6, 203:4, 239:4</p> <p>government [14] - 28:24, 34:20, 35:1, 35:2, 35:14, 35:16, 39:4, 39:6, 39:11, 232:6, 235:5, 235:13, 235:15, 235:19</p> <p>Government's [1] - 40:16</p> <p>Governor [6] - 33:8, 33:18, 34:3, 233:1, 240:18, 256:19</p> <p>governor [7] - 32:23, 33:20, 36:9, 36:12, 36:24, 37:21, 39:25</p> <p>Governor's [1] - 33:24</p> <p>governor's [1] - 32:19</p> <p>governors [5] - 31:23, 32:1, 32:5, 222:12</p> <p>governors' [2] - 31:6, 231:7</p> <p>GPS [45] - 13:8, 15:3, 15:25, 16:15, 18:22, 21:21, 68:2, 94:12, 110:7, 112:1, 112:13, 112:16, 112:21, 112:23, 113:15, 113:19, 113:22, 113:23, 114:1, 114:8, 114:16, 114:22, 114:25, 115:20, 115:22, 116:2, 116:5, 116:11, 116:15, 116:19, 117:5, 138:1, 138:9, 139:9, 139:11, 139:14, 139:16, 139:20, 140:22, 141:23, 150:11, 150:19, 177:13, 211:1</p>	<p>grab [1] - 145:8</p> <p>graduated [1] - 51:14</p> <p>granting [1] - 11:15</p> <p>grass [9] - 14:16, 62:7, 62:16, 63:1, 64:3, 64:7, 92:22, 152:13, 201:18</p> <p>gray [1] - 147:10</p> <p>GrayKey [2] - 109:17, 109:20</p> <p>great [13] - 29:21, 82:25, 89:4, 89:11, 172:25, 205:19, 209:6, 213:17, 219:23, 229:8, 230:4, 230:11</p> <p>greater [2] - 112:20, 230:6</p> <p>greatest [1] - 221:8</p> <p>green [1] - 134:15</p> <p>Greenfield [6] - 5:4, 267:9, 277:24, 282:4, 286:9, 291:10</p> <p>GREENFIELD [6] - 5:5, 267:10, 277:25, 282:5, 286:10, 291:11</p> <p>Gromer [11] - 2:13, 27:8, 44:2, 119:16, 119:22, 119:24, 125:22, 127:22, 130:6, 223:13, 225:20</p> <p>ground [7] - 56:12, 56:14, 60:9, 72:5, 72:6, 147:4, 148:6</p> <p>grounds [8] - 223:18, 223:20, 223:22, 240:19, 252:15, 255:22, 256:12, 273:20</p> <p>growing [1] - 255:1</p> <p>guarantee [1] - 230:1</p> <p>guess [18] - 64:22, 103:15, 118:17, 128:11, 129:24, 132:14, 148:1, 159:14, 173:10, 174:13, 181:19, 187:14, 196:8, 234:19, 251:21, 254:16, 262:16, 262:25</p> <p>guesswork [1] - 245:24</p> <p>guest [1] - 220:15</p> <p>guests [1] - 13:6</p> <p>guidelines [1] - 252:17</p> <p>guilt [2] - 47:3, 221:11</p>
--	--	---	---	---

<p>guilty ^[2] - 183:25, 184:1</p> <p>gunpoint ^[2] - 204:16, 205:24</p> <p>gust ^[1] - 71:2</p> <p>guy ^[3] - 88:7, 94:11, 197:23</p> <p>guys ^[1] - 152:23</p>	<p>110:24, 118:22, 211:22, 224:1, 244:1, 245:16, 250:16, 270:19</p> <p>headed ^[7] - 14:17, 14:19, 22:10, 23:14, 24:10, 175:19, 215:7</p> <p>heading ^[3] - 109:5, 117:4, 212:1</p> <p>headlight ^[2] - 55:22, 186:23</p> <p>headlights ^[2] - 137:13, 137:16</p> <p>headlines ^[2] - 45:6, 86:18</p> <p>headquarter ^[1] - 51:8</p> <p>headquarters ^[3] - 103:20, 109:16, 121:20</p> <p>heads ^[1] - 216:8</p> <p>hear ^[7] - 173:10, 192:14, 199:11, 202:10, 224:10, 231:1, 248:17</p> <p>heard ^[13] - 38:10, 42:19, 47:19, 173:12, 190:19, 193:20, 199:25, 202:17, 216:16, 231:3, 239:10, 240:7, 240:8</p> <p>hearing ^[13] - 7:15, 173:1, 233:14, 251:25, 252:1, 266:6, 276:20, 281:2, 285:6, 289:6, 289:18, 290:11, 296:15</p> <p>heart ^[1] - 15:10</p> <p>hearts ^[1] - 221:19</p> <p>heavily ^[1] - 106:5</p> <p>heck ^[1] - 245:14</p> <p>heightened ^[1] - 16:5</p> <p>Heinert ^[7] - 5:6, 246:15, 267:11, 278:1, 282:6, 286:11, 291:12</p> <p>HEINERT ^[9] - 5:7, 246:14, 246:16, 247:16, 267:12, 278:2, 282:7, 286:12, 291:13</p> <p>held ^[5] - 29:4, 171:18, 205:24, 221:2, 230:10</p> <p>Helfrich ^[6] - 103:21, 104:12, 104:13, 104:16, 108:24, 109:7</p> <p>hell ^[4] - 20:22, 47:12,</p>	<p>243:13, 245:20</p> <p>help ^[11] - 33:3, 53:14, 56:17, 59:25, 90:24, 103:24, 125:15, 129:7, 175:11, 180:11, 203:19</p> <p>helpful ^[1] - 156:15</p> <p>helping ^[2] - 223:19, 295:16</p> <p>hence ^[1] - 47:4</p> <p>hereby ^[2] - 7:11, 208:21</p> <p>HEREBY ^[1] - 298:8</p> <p>Hergert ^[1] - 33:6</p> <p>hesitancy ^[3] - 48:17, 210:4, 241:8</p> <p>hesitation ^[2] - 159:1, 224:12</p> <p>high ^[19] - 34:6, 38:9, 39:22, 39:24, 48:18, 49:14, 61:15, 64:12, 72:5, 113:3, 235:6, 252:7, 252:20, 252:22, 252:23, 253:1, 253:3, 253:9, 253:10</p> <p>higher ^[10] - 29:4, 29:18, 54:13, 67:7, 68:17, 113:8, 253:14, 274:18, 275:13, 276:5</p> <p>highest ^[2] - 71:2, 121:2</p> <p>highly ^[4] - 71:10, 142:18, 205:18, 243:2</p> <p>Highmore ^[46] - 13:19, 14:17, 14:24, 19:13, 22:19, 22:21, 22:22, 26:14, 58:23, 66:11, 68:6, 74:23, 75:16, 75:18, 75:21, 79:24, 79:25, 81:1, 81:4, 85:25, 103:15, 107:18, 108:22, 109:7, 111:3, 112:25, 113:4, 113:23, 116:17, 117:14, 134:3, 134:5, 134:7, 134:8, 134:17, 134:24, 136:6, 137:3, 137:6, 137:8, 151:20, 153:7, 155:2, 168:20, 211:13</p> <p>Highway ^[25] - 15:1, 24:12, 41:2, 45:15, 49:24, 50:2, 50:11, 50:13, 50:17, 51:1, 58:1, 61:4, 65:23,</p>	<p>71:6, 81:4, 87:16, 90:18, 91:18, 94:5, 94:11, 135:23, 142:11, 243:5, 255:4</p> <p>highway ^[13] - 56:21, 152:25, 153:6, 211:12, 212:1, 243:10, 243:16, 243:17, 243:25, 245:15, 245:22, 254:3, 255:16</p> <p>Hilary ^[1] - 294:6</p> <p>Hill ^[1] - 255:3</p> <p>himself ^[26] - 17:13, 23:14, 41:24, 42:6, 56:5, 77:16, 93:16, 97:10, 123:14, 125:19, 148:23, 154:21, 161:7, 167:14, 195:25, 205:7, 215:1, 239:12, 240:24, 250:1, 250:14, 265:6, 265:9, 270:8, 270:10, 274:18</p> <p>hindsight ^[1] - 42:25</p> <p>hire ^[1] - 121:16</p> <p>historically ^[2] - 225:2, 237:9</p> <p>history ^[12] - 31:18, 31:20, 31:22, 31:24, 32:18, 35:14, 36:10, 231:10, 240:12, 241:20, 253:22, 293:23</p> <p>hit ^[44] - 16:21, 17:15, 20:8, 20:24, 22:5, 24:1, 25:10, 26:12, 46:23, 55:2, 72:4, 80:1, 80:5, 80:19, 91:12, 97:16, 97:18, 150:13, 150:22, 150:24, 153:23, 155:22, 155:24, 156:2, 156:3, 156:6, 158:6, 158:7, 162:14, 166:3, 166:9, 187:15, 197:18, 210:20, 217:10, 219:3, 244:3, 254:2, 255:5, 264:5</p> <p>hits ^[3] - 60:9, 72:6, 151:6</p> <p>hitting ^[4] - 184:17, 187:5, 187:6</p> <p>Hold ^[1] - 296:18</p> <p>hold ^[6] - 49:14, 202:13, 226:10, 226:12, 274:17,</p>	<p>280:22</p> <p>holding ^[6] - 280:12, 281:4, 284:9, 284:14, 285:8, 288:12</p> <p>holds ^[2] - 35:3, 229:23</p> <p>hole ^[1] - 54:10</p> <p>home ^[7] - 13:5, 13:14, 14:19, 22:9, 74:10, 111:21, 177:10</p> <p>homework ^[2] - 70:1, 226:8</p> <p>homicide ^[1] - 251:2</p> <p>honest ^[4] - 213:8, 213:13, 214:10, 239:7</p> <p>honestly ^[2] - 207:10, 207:12</p> <p>honesty ^[5] - 28:18, 226:11, 227:6, 237:6, 274:5</p> <p>honorable ^[2] - 209:16, 223:22</p> <p>hood ^[3] - 55:11, 57:12, 216:4</p> <p>hope ^[2] - 42:4, 241:20</p> <p>hoping ^[1] - 18:8</p> <p>horror ^[1] - 18:8</p> <p>hospitality ^[1] - 235:25</p> <p>hour ^[48] - 10:1, 10:3, 12:1, 13:18, 13:21, 15:1, 15:4, 15:5, 16:1, 16:3, 18:25, 19:2, 19:4, 22:15, 25:14, 30:23, 67:11, 68:8, 68:17, 68:20, 68:21, 70:25, 71:1, 81:6, 113:2, 113:3, 113:6, 113:9, 113:11, 145:3, 157:7, 157:20, 157:21, 187:19, 200:11, 200:13, 200:15, 200:20, 201:15, 209:3, 211:3, 211:4, 213:1, 213:3, 213:5, 230:25</p> <p>hour-and-50-minute ^[1] - 13:4</p> <p>hours ^[18] - 10:1, 12:10, 17:14, 25:14, 25:18, 30:2, 30:13, 103:14, 163:6, 194:15, 195:23, 200:5, 200:8, 233:10, 265:2,</p>
---	---	--	--	--

<p>294:11</p> <p>house [26] - 9:2, 11:20, 37:3, 37:9, 38:1, 63:19, 81:24, 125:24, 132:5, 163:9, 171:25, 209:6, 210:3, 211:6, 214:20, 215:9, 215:16, 226:1, 233:13, 235:2, 250:10, 259:14, 259:18, 259:19, 263:21, 296:3</p> <p>House [10] - 9:4, 38:24, 40:12, 44:13, 48:25, 132:8, 214:20, 233:16, 234:4, 235:9</p> <p>house's [1] - 259:14</p> <p>houses [1] - 255:2</p> <p>huge [1] - 272:4</p> <p>human [22] - 46:3, 46:5, 46:22, 46:23, 96:18, 97:2, 99:1, 162:20, 183:5, 209:21, 217:16, 217:17, 217:19, 219:12, 239:21, 248:18, 253:16, 255:14, 256:20, 256:23, 256:24, 262:7</p> <p>humane [1] - 255:7</p> <p>hundreds [4] - 51:19, 147:24, 147:25, 243:8</p> <p>hung [1] - 80:23</p> <p>Hunhoff [6] - 5:8, 267:13, 278:3, 282:8, 286:13, 291:14</p> <p>HUNHOFF [6] - 5:9, 267:14, 278:4, 282:9, 286:14, 291:15</p> <p>Hyde [3] - 74:24, 76:23, 244:9</p>	<p>230:17, 252:11, 276:1</p> <p>identified [4] - 13:7, 41:23, 67:18, 250:14</p> <p>identifies [1] - 156:20</p> <p>identify [6] - 42:6, 150:24, 171:9, 185:10, 185:13, 237:22</p> <p>identifying [2] - 270:8, 270:9</p> <p>ignores [1] - 222:10</p> <p>II [13] - 9:2, 18:17, 25:21, 30:21, 41:20, 189:20, 252:18, 254:19, 260:6, 269:16, 270:2, 270:3, 271:5</p> <p>III [1] - 189:23</p> <p>illegal [7] - 38:4, 38:6, 196:21, 234:7, 234:9, 237:1, 263:10</p> <p>Illinois [3] - 33:8, 33:15, 39:25</p> <p>illuminated [2] - 92:10, 137:13</p> <p>illuminating [4] - 92:25, 93:6, 93:13, 94:3</p> <p>illumination [1] - 137:8</p> <p>image [3] - 97:21, 97:23</p> <p>imagine [2] - 232:21, 294:11</p> <p>imagined [1] - 249:4</p> <p>immediate [3] - 162:15, 216:12, 289:14</p> <p>immediately [10] - 19:8, 23:16, 26:21, 39:19, 54:7, 81:15, 108:15, 123:23, 227:11, 227:12</p> <p>impact [52] - 15:1, 15:5, 15:7, 15:10, 15:13, 16:20, 16:21, 17:7, 52:14, 55:2, 56:14, 56:17, 57:7, 60:2, 60:13, 61:19, 61:23, 61:25, 62:5, 62:6, 62:25, 63:3, 63:5, 63:15, 63:16, 63:21, 63:23, 64:6, 66:14, 67:16, 67:19, 68:6, 80:5, 82:7, 90:24, 91:8, 136:22, 150:23, 150:25, 151:2, 153:3, 156:18, 156:25,</p>	<p>160:22, 161:1, 161:2, 186:12, 211:2, 260:22, 261:10, 262:21</p> <p>impacted [1] - 55:25</p> <p>impacting [1] - 14:4</p> <p>impeach [8] - 227:25, 254:16, 254:20, 256:12, 258:17, 259:12, 259:15, 280:20</p> <p>impeachable [3] - 46:3, 48:11, 253:9</p> <p>impeached [14] - 32:9, 37:7, 41:11, 221:23, 222:10, 223:8, 228:7, 233:24, 250:11, 252:19, 252:22, 253:12, 263:7, 271:6</p> <p>impeaching [2] - 228:20, 259:19</p> <p>IMPEACHMENT [1] - 1:3</p> <p>impeachment [90] - 8:18, 9:4, 9:6, 11:16, 11:18, 31:4, 31:7, 31:12, 31:17, 31:21, 32:2, 32:4, 33:17, 34:3, 34:11, 34:16, 36:23, 36:25, 37:5, 38:13, 39:2, 39:4, 39:14, 41:19, 49:9, 202:5, 202:20, 209:6, 209:10, 214:22, 215:10, 219:24, 220:3, 220:8, 220:14, 220:21, 220:22, 220:25, 221:3, 221:6, 221:24, 222:9, 222:14, 223:18, 223:20, 223:22, 225:25, 228:19, 229:7, 229:9, 229:15, 231:8, 231:25, 233:4, 233:15, 233:20, 234:25, 235:10, 235:11, 235:13, 237:19, 240:20, 242:18, 244:22, 246:11, 248:5, 249:6, 251:12, 252:1, 252:2, 252:3, 252:9, 252:10, 252:14, 252:18, 252:24, 253:5, 255:23, 259:1, 259:2, 260:1,</p>	<p>260:2, 263:21, 266:8, 272:5, 273:21, 276:22, 284:21, 289:23</p> <p>Impeachment [28] - 1:8, 4:3, 7:19, 8:7, 8:25, 12:25, 30:15, 40:13, 189:10, 194:22, 236:6, 259:15, 259:17, 264:8, 269:14, 269:18, 271:13, 280:5, 280:9, 280:14, 284:11, 284:12, 284:16, 285:10, 288:14, 289:3, 289:12, 290:8</p> <p>impeachments [4] - 8:11, 231:10, 231:11, 253:6</p> <p>implication [1] - 165:1</p> <p>implications [2] - 35:13, 276:10</p> <p>imply [1] - 28:23</p> <p>importance [2] - 64:11, 148:4</p> <p>important [19] - 17:24, 25:17, 30:18, 56:9, 58:21, 59:8, 83:2, 91:16, 92:17, 112:4, 143:5, 161:15, 222:10, 226:20, 236:15, 241:3, 252:3, 265:4, 265:23</p> <p>importantly [3] - 228:12, 265:7, 272:22</p> <p>imposed [1] - 209:13</p> <p>impossible [3] - 149:9, 223:13, 246:18</p> <p>impress [1] - 224:24</p> <p>impressed [2] - 250:6, 294:14</p> <p>impression [1] - 134:25</p> <p>impressions [1] - 150:7</p> <p>improper [3] - 45:10, 189:20, 272:25</p> <p>improperly [1] - 28:23</p> <p>IN [1] - 1:1</p> <p>in-office [3] - 195:9, 236:21, 241:11</p> <p>inaccurate [3] - 116:9, 250:13</p> <p>inaction [1] - 229:16</p> <p>inadequate [1] - 270:13</p> <p>inappropriate [2] -</p>	<p>118:17, 225:16</p> <p>inattentive [1] - 211:15</p> <p>inches [1] - 58:8</p> <p>incidence [1] - 184:5</p> <p>incident [3] - 28:1, 161:5, 201:5</p> <p>incidents [1] - 270:6</p> <p>include [2] - 57:10, 204:13</p> <p>included [4] - 44:15, 72:16, 78:23, 113:19</p> <p>including [8] - 14:14, 30:17, 44:19, 73:17, 97:9, 113:22, 119:4, 148:3</p> <p>incompetent [1] - 42:20</p> <p>inconsistencies [1] - 207:20</p> <p>inconsistent [1] - 158:5</p> <p>incorrect [3] - 179:10, 181:8, 207:4</p> <p>incredible [1] - 295:5</p> <p>incredibly [3] - 31:14, 32:6, 232:17</p> <p>increments [4] - 115:18, 138:3, 139:5, 139:7</p> <p>incrimination [6] - 202:4, 202:12, 202:19, 203:3, 245:8, 245:18</p> <p>indeed [1] - 204:23</p> <p>independent [1] - 220:23</p> <p>independently [1] - 285:2</p> <p>indicate [5] - 47:7, 54:11, 57:15, 107:16, 253:15</p> <p>indicated [6] - 93:9, 93:14, 117:13, 178:19, 196:18, 198:17</p> <p>indicates [4] - 48:22, 54:13, 116:22, 180:21</p> <p>indicating [2] - 134:8, 261:2</p> <p>Indicating [1] - 146:19</p> <p>indicating [1] - 177:25</p> <p>indication [4] - 69:12, 70:15, 93:20, 155:18</p> <p>indicator [1] - 150:22</p> <p>indicators [1] - 150:21</p> <p>indirect [1] - 88:9</p>
<p>I</p>				
<p>I-90 [1] - 134:14</p> <p>ICAC [2] - 27:8, 121:16</p> <p>idea [16] - 20:11, 50:22, 101:11, 193:3, 198:25, 212:5, 212:16, 214:9, 216:9, 217:24, 228:19, 229:23, 230:8,</p>				

<p>individual [5] - 92:7, 166:24, 220:19, 257:9, 262:3</p> <p>individually [2] - 204:9, 260:16</p> <p>individuals [3] - 90:11, 92:2, 126:16</p> <p>indulgence [2] - 143:6, 143:16</p> <p>infer [2] - 183:25, 184:4</p> <p>inferences [3] - 273:2, 273:3</p> <p>influence [6] - 19:17, 28:23, 30:7, 48:23, 48:24, 49:6</p> <p>inform [4] - 57:6, 98:15, 133:20, 174:18</p> <p>information [52] - 18:22, 20:16, 22:7, 27:25, 28:2, 44:7, 61:16, 68:2, 68:4, 75:24, 83:1, 84:5, 84:8, 85:16, 87:1, 87:14, 87:15, 108:12, 110:1, 115:11, 115:12, 115:15, 116:22, 123:24, 128:25, 129:1, 129:7, 129:9, 129:10, 129:17, 129:19, 130:15, 130:16, 133:2, 133:11, 133:13, 135:25, 150:4, 169:10, 169:23, 174:23, 179:23, 179:25, 180:6, 182:13, 204:21, 205:2, 205:3, 247:1, 264:14, 264:22, 264:25</p> <p>informed [2] - 49:10, 239:8</p> <p>informing [1] - 224:7</p> <p>informs [1] - 180:6</p> <p>infotainment [1] - 104:17</p> <p>infractions [1] - 253:7</p> <p>initial [5] - 83:4, 104:9, 154:22, 166:21, 198:8</p> <p>initiated [2] - 19:11, 222:14</p> <p>injured [1] - 20:20</p> <p>injuries [5] - 15:9, 39:18, 52:23, 56:4, 91:13</p> <p>injury [1] - 56:23</p>	<p>innocence [1] - 221:10</p> <p>innocent [4] - 196:21, 196:22, 240:5, 244:7</p> <p>input [1] - 70:16</p> <p>inquest [1] - 253:5</p> <p>inquiries [2] - 87:6, 87:9</p> <p>inside [4] - 24:23, 129:16, 129:18, 157:23</p> <p>insist [2] - 163:25, 164:2</p> <p>insisted [6] - 162:14, 163:20, 163:22, 178:23, 178:25, 274:10</p> <p>insists [1] - 219:18</p> <p>installations [1] - 110:3</p> <p>instance [4] - 125:12, 139:19, 206:7, 248:12</p> <p>instances [2] - 159:25, 161:9</p> <p>instantaneous [1] - 70:10</p> <p>instantaneously [1] - 150:25</p> <p>instead [6] - 19:12, 23:7, 23:24, 29:24, 196:10, 236:14</p> <p>institute [1] - 245:23</p> <p>instructions [1] - 244:20</p> <p>insufficient [1] - 41:13</p> <p>insurance [7] - 17:22, 22:8, 82:3, 82:5, 192:6, 192:22, 193:2</p> <p>integral [4] - 32:12, 37:23, 38:7, 257:14</p> <p>integrity [5] - 23:21, 39:6, 226:11, 227:6, 235:15</p> <p>intends [1] - 9:7</p> <p>intent [1] - 95:13</p> <p>intention [1] - 67:5</p> <p>intentionally [3] - 27:23, 208:8, 236:14</p> <p>intentions [1] - 78:3</p> <p>interact [1] - 112:21</p> <p>interactions [1] - 276:6</p> <p>interest [1] - 85:6</p> <p>interested [2] - 85:19, 127:7</p> <p>interesting [2] - 25:5, 245:7</p> <p>interior [4] - 15:19, 192:7, 192:23,</p>	<p>192:24</p> <p>intermingle [1] - 173:7</p> <p>intermittent [1] - 10:6</p> <p>internal [2] - 15:9, 15:11</p> <p>internally [1] - 154:6</p> <p>internet [7] - 13:17, 85:14, 85:23, 120:13, 120:15, 120:23</p> <p>Internet [2] - 102:19, 120:19</p> <p>interplay [2] - 35:15, 120:19</p> <p>interpretation [1] - 42:5</p> <p>interrogation [1] - 159:9</p> <p>intertwined [1] - 255:18</p> <p>intervals [4] - 115:10, 135:21, 138:3, 138:8</p> <p>interview [60] - 16:23, 17:13, 18:6, 18:8, 18:11, 19:7, 22:25, 23:6, 23:9, 23:11, 23:19, 25:6, 25:7, 26:8, 43:2, 46:20, 79:16, 79:18, 80:3, 80:6, 83:4, 83:14, 83:17, 83:24, 84:21, 84:25, 85:20, 86:9, 86:20, 87:6, 87:9, 87:11, 88:2, 91:21, 92:15, 92:18, 93:8, 99:9, 99:10, 122:14, 129:5, 130:12, 132:21, 133:7, 135:8, 148:16, 149:14, 150:9, 150:20, 160:5, 176:16, 178:19, 179:5, 179:18, 187:2, 213:22, 239:14, 276:8, 276:11</p> <p>interviewed [11] - 24:19, 24:24, 25:25, 42:15, 76:22, 90:11, 90:13, 91:22, 174:14, 174:22, 182:24</p> <p>interviews [24] - 13:6, 17:15, 19:20, 19:23, 25:13, 25:19, 25:22, 25:25, 88:5, 90:3, 90:7, 121:15, 130:6, 133:19, 141:23, 148:7, 173:16, 176:12, 176:14,</p>	<p>176:21, 190:20, 195:17, 207:14, 227:15</p> <p>intrinsic [2] - 39:9, 235:17</p> <p>introduce [3] - 50:8, 119:22, 131:16</p> <p>introduced [1] - 147:12</p> <p>investigate [3] - 24:11, 182:2, 254:11</p> <p>investigated [5] - 37:3, 41:5, 120:9, 173:14, 222:13</p> <p>investigating [4] - 51:3, 73:20, 148:2, 250:11</p> <p>Investigation [18] - 22:14, 24:15, 41:1, 73:10, 74:3, 95:5, 96:7, 102:10, 102:22, 105:9, 120:1, 120:9, 120:17, 131:19, 131:23, 174:14, 238:18, 250:17</p> <p>investigation [66] - 18:21, 19:23, 20:3, 22:6, 24:13, 24:18, 26:2, 26:25, 27:2, 30:10, 33:18, 38:25, 41:7, 43:10, 44:11, 44:17, 44:20, 45:16, 47:21, 48:5, 49:5, 53:11, 53:16, 57:25, 66:14, 72:13, 74:4, 75:7, 75:13, 76:19, 77:15, 78:19, 90:10, 92:12, 93:1, 94:8, 103:1, 103:7, 103:18, 111:19, 124:22, 125:2, 125:3, 127:13, 128:9, 131:1, 132:1, 132:11, 133:8, 133:11, 134:11, 160:9, 166:21, 167:1, 168:14, 171:15, 175:18, 183:3, 183:14, 192:10, 192:25, 219:8, 227:4, 250:6, 250:8, 270:13</p> <p>investigations [8] - 31:5, 47:6, 102:16, 132:6, 147:22, 147:25, 148:4, 182:2</p> <p>investigative [4] - 47:2, 95:9, 125:24, 185:23</p>	<p>investigator [4] - 14:22, 59:18, 73:19, 147:18</p> <p>investigators [11] - 18:4, 23:3, 26:22, 27:9, 44:19, 174:18, 192:5, 193:8, 260:10, 265:1, 274:14</p> <p>investigators' [1] - 261:24</p> <p>invisible [1] - 90:22</p> <p>involve [3] - 120:24, 212:13, 212:14</p> <p>involved [18] - 11:8, 45:23, 49:4, 56:3, 74:4, 101:13, 103:1, 125:1, 127:3, 133:5, 172:1, 206:25, 238:14, 260:10, 263:10, 270:19, 270:21, 271:1</p> <p>involvement [1] - 132:2</p> <p>involves [1] - 237:1</p> <p>involving [11] - 28:20, 37:5, 74:14, 102:18, 189:17, 207:1, 237:1, 237:5, 250:24, 260:3</p> <p>iphone [7] - 85:10, 85:11, 105:13, 108:2, 109:20, 114:14, 115:20</p> <p>irrelevant [1] - 82:25</p> <p>Isaiah [1] - 294:6</p> <p>issue [8] - 38:17, 48:17, 126:5, 190:17, 241:8, 249:5, 250:10, 270:2</p> <p>issued [4] - 9:20, 214:22, 219:16, 225:5</p> <p>issues [3] - 231:19, 245:21, 249:17</p> <p>issuing [1] - 215:3</p> <p>italicized [1] - 218:8</p> <p>item [1] - 200:12</p> <p>items [5] - 59:8, 61:13, 78:12, 87:20, 95:9</p> <p>itself [11] - 26:6, 39:7, 39:19, 81:12, 83:2, 89:14, 106:20, 133:12, 152:16, 229:12, 235:16</p>
J				
<p>jail [3] - 212:14, 212:15, 257:4</p>				

<p>James ^[1] - 252:25</p> <p>Janklow ^[2] - 251:7</p> <p>Janklow's ^[1] - 256:19</p> <p>Jason ^[58] - 1:9, 12:21, 13:2, 13:10, 14:24, 17:9, 20:7, 20:20, 22:18, 22:21, 23:2, 23:14, 40:19, 41:16, 41:22, 74:7, 76:11, 76:16, 77:3, 77:6, 77:8, 77:9, 77:16, 77:25, 78:21, 79:14, 83:20, 103:4, 105:4, 107:5, 108:15, 110:16, 132:3, 166:10, 182:23, 209:4, 210:7, 210:18, 212:2, 212:7, 214:17, 214:21, 218:7, 221:25, 222:3, 225:2, 226:25, 230:7, 236:7, 242:19, 259:20, 266:9, 269:20, 276:23, 280:12, 284:13, 285:7</p> <p>Jason's ^[1] - 215:7</p> <p>jeans ^[4] - 146:1, 146:2, 151:16, 200:24</p> <p>jerking ^[1] - 261:3</p> <p>job ^[10] - 10:13, 36:13, 122:7, 124:20, 169:1, 195:23, 225:9, 265:3, 294:18, 294:21</p> <p>Joe ^[30] - 2:8, 16:6, 21:12, 23:14, 23:16, 24:2, 24:8, 24:25, 26:15, 27:16, 29:23, 30:17, 73:4, 87:12, 93:2, 132:2, 141:20, 151:12, 151:17, 189:18, 190:7, 190:8, 192:11, 209:22, 221:19, 227:11, 228:15, 228:21, 228:25</p> <p>Joe's ^[3] - 149:5, 149:17, 151:19</p> <p>John ^[6] - 64:14, 64:16, 64:17, 211:6, 217:21, 294:5</p> <p>Johns ^[8] - 5:10, 256:2, 267:15, 271:10, 278:5, 282:10, 286:15, 291:16</p>	<p>JOHNS ^[11] - 5:11, 256:1, 256:3, 267:16, 271:9, 271:11, 278:6, 278:8, 282:11, 286:16, 291:17</p> <p>JOHNSON ^[223] - 4:9, 4:11, 4:13, 4:15, 4:17, 4:19, 4:21, 4:23, 4:25, 5:2, 5:6, 5:8, 5:10, 5:12, 5:13, 5:14, 5:16, 5:18, 5:20, 5:22, 5:24, 6:1, 6:3, 6:5, 6:7, 6:9, 6:11, 6:13, 6:15, 6:17, 6:19, 6:21, 6:23, 6:25, 7:2, 7:6, 7:18, 8:4, 266:14, 266:16, 266:18, 266:20, 266:22, 266:24, 267:1, 267:3, 267:5, 267:7, 267:11, 267:13, 267:15, 267:17, 267:18, 267:19, 267:21, 267:23, 267:25, 268:2, 268:4, 268:6, 268:8, 268:10, 268:12, 268:14, 268:16, 268:18, 268:20, 268:22, 268:24, 269:1, 269:3, 269:5, 269:7, 269:9, 277:4, 277:6, 277:8, 277:10, 277:12, 277:14, 277:16, 277:18, 277:20, 277:22, 278:1, 278:3, 278:5, 278:7, 278:9, 278:10, 278:11, 278:13, 278:15, 278:17, 278:19, 278:21, 278:23, 278:25, 279:2, 279:4, 279:6, 279:8, 279:10, 279:12, 279:14, 279:16, 279:18, 279:20, 279:22, 279:24, 281:9, 281:11, 281:13, 281:15, 281:17, 281:19, 281:21, 281:23, 281:25, 282:2, 282:6, 282:8, 282:10, 282:12, 282:13, 282:14, 282:15, 282:16, 282:18, 282:20, 282:22, 282:24,</p>	<p>283:1, 283:3, 283:5, 283:7, 283:9, 283:11, 283:13, 283:15, 283:17, 283:19, 283:21, 283:23, 283:25, 284:2, 284:4, 285:14, 285:16, 285:18, 285:20, 285:22, 285:24, 286:1, 286:3, 286:5, 286:7, 286:11, 286:13, 286:15, 286:17, 286:18, 286:19, 286:21, 286:23, 286:25, 287:2, 287:4, 287:6, 287:8, 287:10, 287:12, 287:14, 287:16, 287:18, 287:20, 287:22, 287:24, 288:1, 288:3, 288:5, 288:7, 289:2, 289:10, 289:21, 290:15, 290:17, 290:19, 290:21, 290:23, 290:25, 291:2, 291:4, 291:6, 291:8, 291:12, 291:14, 291:16, 291:18, 291:19, 291:20, 291:22, 291:24, 292:1, 292:3, 292:5, 292:7, 292:9, 292:11, 292:13, 292:15, 292:17, 292:19, 292:21, 292:23, 292:25, 293:2, 293:4, 293:6, 293:8, 295:24, 296:8, 296:19</p> <p>Johnson ^[7] - 5:12, 252:2, 267:17, 278:9, 282:12, 286:17, 291:18</p> <p>join ^[2] - 123:5, 294:3</p> <p>jolt ^[1] - 17:4</p> <p>Joseph ^[20] - 14:6, 14:7, 14:12, 14:16, 14:23, 18:18, 26:20, 40:20, 73:9, 236:8, 236:11, 238:5, 242:18, 246:21, 256:6, 259:20, 259:22, 266:8, 269:19, 276:23</p> <p>jotted ^[1] - 203:8</p> <p>journal ^[1] - 7:11</p> <p>Journal ^[4] - 1:14, 7:5,</p>	<p>7:9, 7:20</p> <p>journey ^[1] - 247:9</p> <p>joy ^[1] - 221:20</p> <p>judge ^[4] - 42:24, 169:1, 220:16, 228:1</p> <p>judged ^[1] - 222:9</p> <p>judges ^[1] - 228:3</p> <p>judging ^[1] - 263:14</p> <p>judgment ^[1] - 191:18</p> <p>JUDGMENT ^[1] - 2:23</p> <p>judicial ^[2] - 36:24, 233:1</p> <p>Judicial ^[2] - 37:17, 37:22</p> <p>Judiciary ^[2] - 38:25, 235:9</p> <p>Judith ^[1] - 33:3</p> <p>July ^[1] - 298:14</p> <p>jumped ^[1] - 19:8</p> <p>jumping ^[1] - 294:6</p> <p>June ^[4] - 1:13, 3:4, 296:1, 298:10</p> <p>jurors ^[1] - 251:14</p> <p>jury ^[2] - 251:14, 262:24</p> <p>justice ^[9] - 8:13, 28:22, 29:7, 73:14, 237:6, 241:14, 258:13, 258:14, 275:15</p> <p>justices ^[1] - 251:6</p>	<p>102:17, 102:23, 200:17, 110:13, 112:10, 117:16, 130:21, 132:19, 135:22, 145:19, 151:1, 155:8, 159:10, 166:23, 201:3, 223:11, 223:15, 249:5, 250:3</p> <p>kinds ^[3] - 107:12, 110:2, 232:23</p> <p>Kingdom ^[1] - 232:5</p> <p>Kingsbury ^[1] - 264:21</p> <p>Kinney ^[5] - 2:6, 49:23, 50:2, 50:10, 75:25</p> <p>Klumb ^[6] - 5:14, 267:19, 278:11, 282:16, 286:19, 291:20</p> <p>KLUMB ^[6] - 5:15, 267:20, 278:12, 282:17, 286:20, 291:21</p> <p>knee ^[1] - 184:17</p> <p>knees ^[1] - 59:18</p> <p>knocked ^[1] - 186:24</p> <p>knowing ^[8] - 18:9, 28:2, 48:1, 56:3, 141:17, 148:8, 165:24, 207:3</p> <p>knowingly ^[1] - 272:20</p> <p>knowledge ^[6] - 119:3, 204:12, 205:13, 205:15, 215:12, 223:21</p> <p>known ^[5] - 76:14, 148:23, 183:5, 193:2, 249:8</p> <p>knows ^[9] - 20:4, 25:4, 25:9, 151:6, 168:12, 214:1, 214:14, 239:21, 244:15</p> <p>Kolbeck ^[7] - 5:16, 199:6, 267:21, 278:13, 282:18, 286:21, 291:22</p> <p>KOLBECK ^[9] - 5:17, 199:7, 199:15, 199:19, 267:22, 278:14, 282:19, 286:22, 291:23</p>
K				
<p>keep ^[8] - 25:3, 35:12, 35:17, 181:4, 211:22, 257:23, 257:25, 265:23</p> <p>keeping ^[1] - 219:18</p> <p>kept ^[5] - 43:16, 43:17, 171:23, 239:5, 239:9</p> <p>Kevin ^[4] - 2:6, 49:23, 50:2, 50:10</p> <p>key ^[5] - 30:13, 82:20, 82:22, 82:23, 189:4</p> <p>keys ^[5] - 17:23, 82:12, 82:16, 82:20, 82:21</p> <p>kick ^[1] - 165:17</p> <p>kicks ^[1] - 128:13</p> <p>kid ^[1] - 226:5</p> <p>kill ^[2] - 262:7, 263:18</p> <p>killed ^[7] - 17:16, 25:4, 25:11, 96:18, 97:2, 183:5, 264:7</p> <p>killing ^[2] - 17:25, 245:20</p> <p>kind ^[25] - 10:23, 32:21, 32:25, 33:10, 58:19, 62:11, 78:22,</p>				
L				
<p>lab ^[1] - 133:15</p> <p>label ^[1] - 206:24</p> <p>labeled ^[5] - 114:21,</p>				

<p>114:22, 114:23, 115:9, 115:17</p> <p>lacerating [1] - 15:10</p> <p>lack [4] - 53:7, 56:21, 89:6, 153:12</p> <p>ladies [7] - 8:5, 10:11, 210:21, 211:14, 214:15, 222:15, 249:2</p> <p>Lag [1] - 134:22</p> <p>lag [1] - 58:17</p> <p>laid [2] - 62:21, 247:8</p> <p>land [1] - 294:7</p> <p>lane [33] - 26:4, 30:17, 40:22, 41:8, 41:11, 44:24, 45:11, 45:12, 45:13, 58:3, 58:5, 58:8, 58:24, 59:7, 72:17, 155:14, 156:9, 165:5, 174:9, 189:20, 207:5, 209:15, 210:2, 210:22, 214:12, 214:15, 214:19, 215:15, 227:9, 228:16, 248:12, 256:25, 263:10</p> <p>lanes [1] - 261:22</p> <p>language [1] - 187:4</p> <p>laptop [1] - 105:17</p> <p>large [9] - 21:11, 22:23, 66:8, 66:11, 136:4, 141:2, 141:13, 141:19, 143:23</p> <p>largely [3] - 143:21, 221:14, 222:23</p> <p>last [16] - 19:16, 30:12, 62:25, 84:20, 120:8, 120:11, 120:14, 136:11, 139:6, 168:5, 191:7, 193:7, 216:18, 224:11, 241:3, 275:2</p> <p>late [2] - 25:17, 108:9</p> <p>latitude [1] - 203:19</p> <p>latter [1] - 120:11</p> <p>law [94] - 8:13, 19:7, 25:24, 27:21, 27:24, 28:4, 28:6, 28:11, 29:1, 29:10, 29:12, 29:13, 29:17, 30:7, 31:1, 31:5, 47:4, 73:13, 73:16, 74:4, 88:13, 102:12, 102:13, 103:1, 105:12, 120:3, 120:5, 120:7, 147:15, 147:16, 168:12, 168:19,</p>	<p>168:22, 169:8, 169:9, 169:22, 172:5, 172:7, 172:15, 172:19, 207:21, 208:8, 209:13, 214:17, 215:9, 223:3, 223:14, 225:21, 226:2, 226:22, 227:15, 229:16, 230:11, 230:12, 230:13, 231:9, 231:21, 240:17, 241:15, 245:24, 249:10, 253:7, 258:12, 258:13, 258:14, 258:16, 259:14, 260:4, 263:22, 265:5, 265:8, 265:12, 265:13, 265:24, 266:1, 271:16, 274:7, 274:13, 274:15, 274:19, 274:21, 275:4, 275:16, 275:25, 276:1, 276:2, 276:3, 276:6, 276:13, 276:14</p> <p>Law [2] - 28:13, 227:3</p> <p>lawn [1] - 165:18</p> <p>Lawrence [1] - 264:20</p> <p>laws [3] - 52:11, 182:9, 230:18</p> <p>lawyer [2] - 28:17, 28:19</p> <p>lawyer's [1] - 28:18</p> <p>lawyers [4] - 29:2, 40:16, 42:9, 42:24</p> <p>laying [6] - 92:20, 93:5, 97:21, 142:2, 146:21, 247:25</p> <p>layman's [1] - 105:20</p> <p>lays [1] - 225:11</p> <p>lead [5] - 4:5, 59:17, 224:2, 250:9, 273:3</p> <p>leader [1] - 271:25</p> <p>leaders [1] - 271:23</p> <p>leading [6] - 14:7, 19:12, 80:13, 113:23, 189:17, 294:15</p> <p>leads [2] - 4:7, 19:13</p> <p>learn [4] - 76:1, 92:2, 92:5, 216:13</p> <p>learned [4] - 92:6, 181:4, 183:3, 249:20</p> <p>least [14] - 57:20, 118:20, 155:14, 157:16, 163:17,</p>	<p>164:25, 174:6, 185:8, 186:19, 191:14, 223:9, 235:3, 235:6, 261:3</p> <p>leave [11] - 10:19, 46:5, 67:3, 77:21, 162:10, 162:20, 183:23, 222:17, 235:8, 240:11, 244:8</p> <p>leaving [6] - 13:7, 79:25, 82:10, 117:3, 174:8, 265:22</p> <p>led [6] - 12:24, 30:16, 87:22, 123:9, 181:20, 255:20</p> <p>left [30] - 11:1, 13:3, 18:1, 21:10, 23:15, 24:1, 24:9, 33:20, 55:24, 56:10, 56:12, 60:6, 60:11, 65:18, 70:13, 77:22, 82:14, 108:23, 110:16, 110:24, 111:3, 111:13, 122:18, 150:13, 156:20, 162:19, 183:24, 251:14, 255:14, 261:24</p> <p>leg [8] - 15:12, 16:7, 55:25, 56:24, 57:3, 59:5, 76:6, 76:8</p> <p>legal [7] - 43:3, 220:7, 236:23, 236:24, 245:1, 252:16, 253:11</p> <p>legally [1] - 273:25</p> <p>legislative [4] - 7:7, 8:20, 11:13, 32:16</p> <p>Legislative [12] - 4:2, 34:21, 34:23, 35:3, 35:5, 35:7, 35:11, 232:8, 232:9, 232:15, 296:1</p> <p>legislator [1] - 228:1</p> <p>legislators [1] - 228:2</p> <p>legislature [4] - 33:25, 36:2, 36:19, 295:8</p> <p>LEGISLATURE [1] - 1:2</p> <p>legitimate [2] - 224:7, 224:22</p> <p>length [1] - 233:14</p> <p>lens [1] - 15:21</p> <p>lenses [1] - 79:11</p> <p>less [7] - 144:22, 198:13, 200:1, 212:13, 212:14, 212:15</p> <p>lesson [1] - 234:23</p> <p>letter [2] - 215:2,</p>	<p>226:1</p> <p>letterhead [3] - 225:8, 225:15, 265:10</p> <p>letting [2] - 187:5, 187:6</p> <p>level [9] - 34:2, 169:13, 179:19, 240:22, 251:24, 259:2, 263:16, 294:13</p> <p>LG [3] - 105:5, 106:25, 107:4</p> <p>liable [3] - 36:25, 233:4, 259:1</p> <p>licensed [2] - 73:15, 73:24</p> <p>lie [19] - 27:21, 28:4, 85:3, 215:8, 215:9, 226:19, 226:20, 227:3, 227:7, 227:13, 239:21, 244:5, 244:6, 249:17, 274:20, 275:16, 276:2, 276:13</p> <p>lied [14] - 30:7, 46:18, 208:8, 214:17, 215:9, 215:15, 226:6, 226:7, 245:16, 274:7, 274:15, 275:21, 276:12</p> <p>lies [14] - 20:17, 25:24, 26:24, 212:20, 214:12, 216:16, 216:19, 217:16, 219:6, 226:17, 228:25, 229:17, 229:18</p> <p>life [19] - 12:7, 12:9, 18:10, 29:25, 97:20, 181:2, 204:13, 206:25, 209:22, 209:23, 227:7, 227:20, 228:11, 248:18, 255:19, 256:20, 256:23, 256:24, 295:14</p> <p>life-altering [1] - 12:9</p> <p>lifeless [2] - 21:12, 24:9</p> <p>lifetime [1] - 41:5</p> <p>light [31] - 14:20, 21:6, 42:17, 85:8, 93:5, 93:7, 93:9, 93:11, 93:25, 94:24, 133:16, 137:10, 137:11, 137:22, 142:4, 142:5, 151:21, 152:17,</p>	<p>152:20, 153:5, 21 175:23, 175:24, 176:10, 176:22, 177:23, 201:17, 201:18, 222:24</p> <p>lighter [1] - 71:18</p> <p>lighting [1] - 177:3</p> <p>lightly [1] - 197:23</p> <p>lights [5] - 155:2, 192:7, 192:8, 192:23, 192:24</p> <p>likelihood [1] - 89:10</p> <p>likely [11] - 13:23, 89:22, 93:2, 138:24, 163:18, 179:8, 214:2, 243:2, 248:13, 262:9, 262:10</p> <p>limit [2] - 83:9, 260:1</p> <p>limited [4] - 122:2, 122:3, 256:17, 258:2</p> <p>Lincoln [10] - 79:22, 82:10, 90:12, 107:17, 193:16, 193:23, 194:3, 196:9, 257:15, 257:17</p> <p>line [30] - 14:1, 14:25, 21:19, 27:3, 49:7, 52:3, 52:7, 55:22, 58:6, 59:23, 59:25, 60:6, 60:10, 62:8, 62:10, 62:11, 62:13, 63:1, 63:6, 64:3, 72:1, 72:9, 72:12, 137:4, 137:6, 155:10, 210:8, 243:12, 243:14, 248:14</p> <p>lines [13] - 19:22, 59:7, 59:12, 61:5, 61:12, 71:15, 72:9, 72:17, 91:8, 100:3, 114:24, 149:18</p> <p>linguistic [1] - 37:10</p> <p>linked [1] - 204:6</p> <p>liquid [1] - 72:6</p> <p>list [2] - 189:4, 239:20</p> <p>listed [1] - 140:12</p> <p>listen [7] - 42:5, 43:1, 43:2, 48:9, 125:23, 126:1, 160:1</p> <p>listened [2] - 80:15, 220:13</p> <p>listening [4] - 25:19, 80:14, 231:17, 236:1</p> <p>lit [3] - 137:14, 239:2, 254:11</p> <p>litany [1] - 17:19</p> <p>literally [1] - 238:2</p>
--	---	--	---	--

<p>live ^[1] - 241:20 lived ^[1] - 42:12 lives ^[1] - 207:10 loan ^[1] - 81:24 loaned ^[1] - 218:24 loaning ^[2] - 32:24, 223:17 lobbies ^[2] - 11:11, 11:14 lobby ^[1] - 145:5 lobbying ^[1] - 143:1 local ^[1] - 73:17 localized ^[4] - 204:11, 204:24, 206:8 locate ^[1] - 56:13 located ^[13] - 10:5, 21:12, 46:10, 58:9, 60:10, 61:1, 71:17, 82:2, 103:12, 104:15, 107:19, 190:18, 190:24 locating ^[2] - 59:16, 59:19 location ^[14] - 21:21, 67:20, 69:15, 112:4, 112:6, 112:13, 112:22, 115:12, 136:6, 151:24, 155:5, 156:24, 174:19 locations ^[2] - 110:8, 138:9 locator ^[1] - 18:22 lock ^[3] - 67:8, 67:21, 181:15 locked ^[6] - 45:7, 110:4, 118:19, 124:7, 132:25 locking ^[1] - 67:6 logic ^[1] - 200:13 logical ^[1] - 215:21 logically ^[1] - 273:6 logs ^[4] - 85:15, 85:23, 110:2 look ^[37] - 23:1, 23:22, 36:21, 52:3, 56:5, 56:10, 57:8, 58:20, 65:10, 66:6, 70:23, 71:16, 78:22, 85:6, 93:10, 138:8, 145:22, 148:17, 176:25, 198:19, 206:24, 207:12, 216:7, 217:25, 218:17, 223:10, 228:14, 233:12, 240:15, 248:2, 252:15, 256:21, 259:12, 259:13, 264:22, 271:12,</p>	<p>272:15 looked ^[15] - 13:22, 13:24, 16:13, 17:10, 20:15, 39:13, 81:2, 81:4, 81:21, 84:7, 147:2, 147:3, 236:25, 247:6, 265:3 looking ^[29] - 45:6, 57:4, 57:5, 58:19, 58:22, 58:24, 59:18, 65:17, 66:10, 69:4, 69:17, 74:12, 88:23, 94:23, 94:24, 111:17, 112:11, 134:6, 137:18, 146:18, 146:23, 153:18, 168:2, 184:21, 211:18, 257:6, 257:7, 260:6 looks ^[2] - 134:14, 167:25 lose ^[1] - 271:22 losing ^[1] - 240:19 loss ^[3] - 204:12, 204:13, 265:12 lost ^[8] - 29:25, 209:22, 209:23, 240:17, 240:22, 261:6, 271:16, 274:21 loud ^[1] - 156:8 loudly ^[1] - 73:12 low ^[1] - 113:2 lower ^[4] - 10:9, 55:19, 230:14, 235:5 LRC ^[3] - 50:3, 219:25, 295:8 luck ^[1] - 183:10 lunch ^[4] - 143:7, 145:3, 145:8, 145:11 lying ^[19] - 28:6, 46:2, 46:10, 46:11, 47:19, 47:22, 89:11, 89:23, 89:25, 200:1, 213:5, 213:6, 213:15, 217:2, 226:5, 231:21, 249:18, 260:4, 273:10</p>	<p>267:24, 278:16, 282:21, 286:24, 291:25 mail ^[5] - 13:16, 85:14, 86:14, 111:16 mails ^[4] - 86:7, 86:16, 111:10, 124:17 main ^[1] - 103:17 Main ^[1] - 1:25 maintain ^[1] - 75:7 maintained ^[8] - 10:15, 17:8, 25:25, 26:5, 26:11, 26:15, 26:19, 86:12 major ^[2] - 272:9 majority ^[14] - 55:20, 60:9, 62:1, 242:9, 266:12, 269:12, 273:22, 277:2, 280:2, 281:7, 284:7, 285:12, 288:10, 293:11 maladministration ^[1] - 252:25 malevolent ^[1] - 196:21 malfeasance ^[26] - 18:17, 26:24, 27:20, 30:20, 37:1, 37:11, 37:13, 38:1, 38:3, 38:7, 41:20, 41:22, 48:11, 196:2, 233:5, 234:3, 234:6, 237:19, 246:1, 258:18, 269:18, 271:14, 272:16, 272:17, 276:22 man ^[38] - 14:12, 16:24, 17:16, 17:25, 18:5, 18:7, 18:20, 20:8, 20:15, 22:5, 25:4, 25:11, 29:25, 43:13, 147:10, 150:13, 151:7, 160:2, 162:10, 162:13, 162:19, 162:21, 163:20, 163:24, 183:23, 200:18, 212:17, 212:19, 214:1, 219:5, 224:1, 241:17, 247:8, 249:12, 249:13, 264:7 maneuver ^[3] - 70:13, 70:14, 184:17 mangled ^[1] - 21:12 manipulation ^[1] - 118:6 manner ^[4] - 183:7,</p>	<p>225:16, 265:6 manslaughter ^[8] - 251:9, 256:19, 262:6, 262:8, 262:11, 263:4, 263:17 manually ^[1] - 111:17 map ^[6] - 56:16, 59:3, 59:9, 59:21, 61:12, 71:25 mapped ^[1] - 65:22 mapping ^[1] - 58:13 Maps ^[1] - 112:6 mark ^[1] - 18:24 MARK ^[1] - 1:18 Mark ^[4] - 12:2, 33:19, 96:5, 252:10 marked ^[1] - 7:10 markers ^[2] - 81:17, 155:1 marks ^[3] - 67:4, 70:14, 261:2 Massachusetts ^[1] - 32:19 master's ^[1] - 64:18 matching ^[1] - 71:20 mate ^[1] - 284:20 Matt ^[2] - 295:12, 295:16 matter ^[26] - 31:12, 38:2, 74:9, 77:11, 132:6, 190:1, 203:2, 210:13, 217:24, 220:22, 222:10, 226:19, 238:6, 241:12, 243:6, 250:16, 250:17, 250:25, 258:11, 261:9, 265:21, 270:19, 271:2, 271:6, 276:3, 296:2 matters ^[3] - 40:7, 209:12, 226:17 maturing ^[1] - 249:13 maximum ^[1] - 113:6 MCCOMSEY ^[1] - 298:5 McComsey ^[4] - 1:24, 3:5, 298:17, 298:18 mean ^[21] - 46:16, 70:25, 75:3, 110:2, 112:18, 118:14, 122:3, 126:13, 134:13, 138:20, 154:3, 194:13, 194:16, 209:18, 229:9, 234:18, 240:16, 249:18, 256:15, 258:20, 275:10</p>	<p>mean-spiritedly ^[1] - 22:46:16 meaning ^[5] - 16:23, 21:13, 48:13, 54:19, 252:8 meaningful ^[1] - 195:8 meaningless ^[1] - 233:9 means ^[12] - 10:22, 28:25, 210:4, 213:3, 217:14, 223:23, 233:22, 237:21, 243:24, 258:24, 259:4, 275:6 meant ^[4] - 186:16, 222:22, 253:10, 255:19 measure ^[1] - 39:11 Mecham ^[1] - 32:23 mechanic ^[1] - 219:21 mechanical ^[2] - 51:15, 64:19 mechanism ^[1] - 141:18 mechanisms ^[1] - 66:18 medical ^[3] - 15:8, 91:10, 91:11 mediocre ^[1] - 22:6 meet ^[1] - 28:12 meeting ^[8] - 43:7, 96:1, 96:5, 126:8, 126:9, 126:14, 126:15, 178:17 meetings ^[1] - 44:21 meets ^[1] - 92:22 member ^[4] - 37:22, 101:7, 102:19, 149:25 members ^[46] - 8:15, 31:13, 38:10, 39:11, 48:25, 50:9, 54:6, 101:6, 119:23, 131:17, 145:1, 176:25, 187:22, 188:19, 189:2, 199:4, 203:20, 221:16, 234:11, 235:20, 235:24, 242:12, 242:25, 246:25, 256:4, 258:10, 263:20, 264:13, 266:11, 269:12, 275:1, 276:25, 280:2, 280:7, 281:6, 284:7, 284:19, 285:11, 288:10, 290:6, 290:12, 293:11, 293:18, 293:19,</p>
	<p style="text-align: center;">M</p>			
	<p>madam ^[2] - 289:1, 295:23 Madison ^[1] - 252:25 magic ^[1] - 245:24 Maher ^[6] - 5:18, 267:23, 278:15, 282:20, 286:23, 291:24 MAHER ^[6] - 5:19,</p>			

<p>294:3, 294:13</p> <p>memorializes [1] - 290:7</p> <p>memorializing [2] - 289:11, 289:22</p> <p>memory [5] - 175:1, 175:11, 204:12, 204:13, 204:15</p> <p>men [4] - 39:15, 204:3, 230:1, 253:6</p> <p>mental [2] - 97:22, 97:23</p> <p>mention [2] - 99:6, 189:11</p> <p>mentioned [11] - 35:19, 36:22, 38:14, 57:2, 75:12, 88:13, 91:20, 137:15, 189:21, 258:3, 259:24</p> <p>mentions [2] - 81:8, 81:17</p> <p>mentor [1] - 64:23</p> <p>mere [1] - 180:14</p> <p>merely [1] - 203:3</p> <p>message [7] - 22:12, 74:10, 103:5, 116:25, 228:24, 276:12, 280:21</p> <p>messages [2] - 110:3, 116:25</p> <p>messing [1] - 153:16</p> <p>met [10] - 40:4, 74:22, 75:17, 77:3, 109:7, 182:23, 182:25, 234:2, 235:21</p> <p>meters [1] - 177:19</p> <p>mic [7] - 135:14, 150:18, 166:18, 175:6, 202:13, 203:24, 245:12</p> <p>Michael [1] - 181:23</p> <p>MICHAEL [1] - 1:19</p> <p>Michels [1] - 295:12</p> <p>Mickelson [2] - 44:1, 121:20</p> <p>microphone [3] - 73:12, 192:12, 264:18</p> <p>mics [1] - 189:4</p> <p>middle [11] - 20:22, 26:1, 69:19, 87:12, 87:24, 88:6, 121:8, 156:19, 166:20, 166:22, 274:11</p> <p>midst [3] - 13:25, 14:2, 16:18</p> <p>midway [1] - 62:15</p> <p>might [16] - 20:15, 27:13, 47:21, 57:5,</p>	<p>64:13, 129:22, 152:9, 152:15, 153:18, 159:20, 164:15, 164:24, 165:17, 254:18, 276:9, 284:23</p> <p>Mike [7] - 31:2, 41:4, 42:12, 44:14, 76:22, 210:2, 230:24</p> <p>mile [4] - 13:21, 81:5, 168:19, 213:15</p> <p>mile-per-hour [1] - 13:21</p> <p>miles [42] - 13:22, 14:25, 15:4, 15:5, 15:25, 16:3, 18:25, 19:2, 19:3, 67:11, 68:8, 68:17, 68:20, 68:21, 70:25, 71:1, 81:6, 83:8, 113:2, 113:3, 113:6, 113:8, 113:9, 113:11, 157:7, 157:20, 157:21, 187:19, 200:11, 200:12, 200:13, 200:15, 200:20, 201:15, 211:3, 211:4, 213:1, 213:3, 213:4, 255:16</p> <p>military [3] - 162:10, 181:4, 183:23</p> <p>million [1] - 109:24</p> <p>millions [1] - 109:24</p> <p>mind [16] - 20:11, 25:3, 35:12, 35:17, 97:19, 129:1, 161:17, 166:9, 180:2, 180:5, 180:12, 180:22, 184:1, 239:7, 240:6, 262:4</p> <p>minded [1] - 237:24</p> <p>mindful [1] - 66:3</p> <p>Mines [1] - 51:12</p> <p>minimal [1] - 106:9</p> <p>minimization [1] - 126:12</p> <p>minimize [2] - 26:8, 276:11</p> <p>minimized [3] - 126:10, 126:18, 275:23</p> <p>minimizing [1] - 238:4</p> <p>minister [3] - 29:6, 35:4, 275:15</p> <p>minor [2] - 293:21</p> <p>Minot [2] - 102:14, 102:16</p> <p>minute [8] - 17:14, 19:12, 42:2, 116:5,</p>	<p>118:23, 213:7, 215:23, 288:15</p> <p>minutes [20] - 12:10, 16:22, 21:9, 21:17, 30:1, 42:12, 45:5, 45:6, 111:15, 117:20, 140:14, 141:3, 143:17, 144:18, 144:21, 145:4, 188:20, 198:13, 228:23, 231:2</p> <p>mirror [5] - 54:16, 54:23, 54:24, 55:1, 55:14</p> <p>mischaracterization [1] - 208:10</p> <p>Misconceptions [1] - 214:24</p> <p>misconceptions [2] - 215:7, 218:6</p> <p>misconduct [4] - 28:16, 33:6, 39:15, 237:8</p> <p>misdeemeanor [22] - 30:16, 37:1, 37:11, 44:24, 174:10, 209:20, 233:6, 237:3, 237:4, 237:8, 237:9, 237:16, 252:8, 252:20, 252:23, 253:11, 253:13, 257:2, 257:5, 257:6, 263:9, 263:12</p> <p>misdeemeanors [25] - 209:10, 209:11, 209:17, 209:19, 212:7, 212:12, 212:14, 212:15, 236:15, 251:5, 251:17, 253:1, 253:10, 253:17, 254:15, 254:16, 254:20, 256:14, 256:16, 257:1, 257:8, 257:12, 258:18, 259:25</p> <p>misdirected [1] - 30:7</p> <p>misfeasance [1] - 256:14</p> <p>mislead [1] - 207:21</p> <p>misleading [3] - 25:23, 41:25, 209:22</p> <p>misled [2] - 30:7, 274:15</p> <p>misrepresentation [2] - 28:21, 41:25</p> <p>missed [4] - 107:20, 107:21, 160:3,</p>	<p>234:22</p> <p>missing [2] - 57:13, 200:18</p> <p>Missouri [1] - 33:2</p> <p>misstatement [1] - 207:16</p> <p>misstatements [1] - 208:11</p> <p>mistake [3] - 31:13, 38:22, 217:24</p> <p>mistaken [5] - 46:2, 46:3, 215:19, 227:9</p> <p>misunderstanding [2] - 176:17, 176:19</p> <p>misuse [3] - 42:10, 43:23, 272:10</p> <p>misused [1] - 270:4</p> <p>Mitakuyepi [1] - 246:16</p> <p>mitigate [1] - 29:24</p> <p>mitigated [1] - 18:14</p> <p>mobile [1] - 26:10</p> <p>mode [2] - 67:3, 118:19</p> <p>model [2] - 105:5, 109:18</p> <p>moderate [1] - 157:11</p> <p>moderately [1] - 19:1</p> <p>modern [3] - 31:25, 32:8, 32:10</p> <p>moment [12] - 42:25, 95:14, 142:21, 210:25, 213:13, 213:25, 222:1, 223:24, 241:16, 261:10, 262:21, 293:16</p> <p>moments [11] - 12:9, 12:17, 12:19, 12:24, 16:24, 17:1, 17:25, 18:9, 23:17, 83:16, 208:3</p> <p>Monday [1] - 25:1</p> <p>money [7] - 32:24, 213:9, 223:10, 223:11, 223:12, 223:17, 230:2</p> <p>months [4] - 44:11, 207:13, 214:19, 257:4</p> <p>Moody [1] - 251:14</p> <p>Moore [6] - 41:4, 44:14, 45:19, 181:23, 191:15, 210:2</p> <p>moral [3] - 28:8, 222:19, 237:5</p> <p>morals [1] - 237:6</p> <p>Moriarty [1] - 33:3</p> <p>morning [16] - 22:17,</p>	<p>30:25, 38:11, 50:10, 23:69:14, 76:10, 76:16, 77:8, 108:8, 108:9, 128:22, 162:18, 163:24, 199:23, 200:8, 236:5</p> <p>most [24] - 17:24, 29:20, 41:4, 72:4, 93:1, 105:8, 105:10, 105:11, 113:11, 146:5, 156:1, 166:16, 171:5, 189:18, 200:24, 208:5, 216:18, 227:17, 228:12, 230:2, 252:3, 272:22</p> <p>mostly [1] - 149:17</p> <p>mother [2] - 20:16, 255:9</p> <p>motion [19] - 7:14, 242:9, 261:3, 289:5, 289:6, 289:8, 289:16, 289:17, 289:20, 290:3, 293:10, 293:12, 296:6, 296:9, 296:12, 296:14, 296:21, 296:23, 296:25</p> <p>Motion [2] - 7:17, 296:17</p> <p>motioned [1] - 122:23</p> <p>motions [1] - 289:9</p> <p>motivation [1] - 134:2</p> <p>motive [1] - 272:23</p> <p>motor [1] - 26:9</p> <p>motorist [1] - 201:7</p> <p>motorists [4] - 14:13, 14:21, 91:21, 91:23</p> <p>move [11] - 7:11, 52:2, 52:6, 60:11, 72:2, 156:8, 156:19, 158:13, 191:25, 197:12, 199:5</p> <p>moved [5] - 69:11, 69:12, 71:22, 102:14, 160:18</p> <p>movement [3] - 71:12, 152:15, 152:16</p> <p>moves [6] - 60:6, 289:2, 289:13, 289:24, 295:24, 296:19</p> <p>moving [5] - 52:1, 52:16, 54:21, 79:7, 126:25</p> <p>mower [1] - 165:18</p> <p>MR [93] - 30:25, 40:11, 49:22, 50:1, 50:7, 68:23, 69:3, 72:20,</p>
---	---	--	--	--

72:23, 94:21, 99:14, 100:9, 100:16, 100:21, 100:24, 101:15, 117:12, 119:7, 119:16, 119:19, 119:21, 127:22, 128:2, 130:1, 130:3, 130:5, 131:2, 131:3, 131:9, 131:13, 131:15, 134:19, 134:22, 134:23, 135:5, 135:7, 135:20, 135:22, 138:2, 139:4, 139:6, 142:19, 143:15, 143:20, 144:17, 145:15, 145:16, 147:1, 160:8, 160:25, 161:3, 162:6, 162:8, 164:5, 164:23, 166:3, 167:6, 167:18, 168:10, 170:3, 170:8, 172:6, 184:25, 185:4, 185:15, 185:21, 185:24, 186:3, 187:24, 188:6, 188:10, 188:13, 191:13, 193:19, 194:1, 194:7, 194:12, 195:1, 196:16, 197:19, 198:10, 202:6, 202:22, 206:23, 209:4, 216:16, 217:4, 217:6, 217:8, 224:6, 228:11, 231:1, 236:5 MS [28] - 12:4, 20:1, 73:3, 73:7, 83:16, 84:20, 87:8, 90:6, 90:9, 94:17, 99:17, 99:19, 100:8, 100:13, 100:19, 101:17, 102:2, 102:7, 114:19, 117:7, 119:10, 189:16, 192:11, 192:13, 195:15, 197:3, 202:17, 207:17 Mueller [6] - 5:3, 267:8, 277:23, 282:3, 286:8, 291:9 multiple [6] - 15:8, 27:17, 91:8, 133:20, 208:4, 221:16 multitude [1] - 252:9	mundane [4] - 12:5, 12:17, 14:8, 17:20 municipal [1] - 271:25 murder [1] - 259:7 murky [2] - 253:8, 275:5 must [24] - 10:12, 12:23, 37:8, 40:15, 40:16, 49:11, 80:19, 180:4, 228:2, 233:24, 236:21, 237:12, 253:10, 257:13, 258:6, 259:13, 263:17, 272:20, 272:21, 272:22, 273:3, 276:7 mystery [1] - 14:11 N naked [1] - 90:22 name [12] - 30:25, 46:17, 50:10, 64:14, 73:8, 102:8, 119:24, 131:18, 131:22, 147:12, 185:11, 223:13 names [2] - 9:20, 96:4 Nancy [1] - 220:25 narcotics [1] - 148:3 National [1] - 73:22 national [2] - 245:22, 253:5 nationally [1] - 220:21 natural [1] - 216:5 naturally [1] - 29:3 nature [18] - 39:17, 54:8, 64:12, 89:1, 89:12, 89:14, 102:18, 106:10, 110:10, 112:9, 121:25, 124:11, 124:18, 127:1, 146:3, 211:24, 215:22, 232:6 Natvig [5] - 22:15, 27:10, 122:18, 123:1, 126:2 Natvig's [2] - 122:25, 123:9 Nay [1] - 278:7 nay [12] - 7:16, 266:12, 267:16, 277:1, 278:6, 281:7, 285:12, 289:7, 289:19, 290:13, 296:16, 296:24 nays [2] - 269:10, 279:25 near [4] - 72:15, 75:16, 75:18, 75:19 nearby [1] - 42:13 nearily [2] - 14:16, 70:10 Nebraska [5] - 33:5, 37:4, 224:12, 233:20, 233:21 necessarily [9] - 183:9, 185:25, 189:12, 206:9, 207:11, 207:13, 211:7, 249:19, 262:20 necessary [4] - 53:15, 95:18, 127:9, 252:16 need [15] - 25:20, 52:8, 75:9, 81:23, 82:17, 114:3, 150:18, 171:17, 202:15, 203:23, 219:15, 221:14, 227:4, 242:13, 257:25 needed [5] - 53:15, 103:24, 104:1, 109:11, 177:10 needs [5] - 20:4, 122:7, 154:8, 159:1, 172:8 neglect [1] - 61:1 negligence [2] - 238:7 negligent [1] - 60:25 negligently [1] - 256:24 neighbor [3] - 243:16, 243:25, 246:4 neighbors [1] - 243:2 nervous [1] - 98:12 Nesiba [6] - 5:20, 267:25, 278:17, 282:22, 286:25, 292:1 NESIBA [6] - 5:21, 268:1, 278:18, 282:23, 287:1, 292:2 nestled [1] - 22:1 Neuharth [9] - 27:11, 96:8, 99:21, 99:25, 100:4, 101:6, 213:21, 225:20 Neurath [4] - 100:12, 100:18, 101:1, 101:7 never [24] - 16:20, 26:5, 26:15, 47:19, 93:23, 98:18, 117:15, 122:9, 160:25, 162:10, 165:21, 173:2, 182:25, 183:23, 184:2, 191:3, 218:2, 239:10, 240:3, 241:12, 242:10, 246:18, 249:4, 273:10 new [3] - 20:3, 121:15, 121:16 news [3] - 86:18, 218:10, 218:11 next [48] - 16:13, 18:24, 19:10, 22:17, 30:13, 35:13, 54:21, 58:11, 61:21, 73:1, 76:15, 77:8, 77:23, 81:9, 83:19, 97:17, 102:1, 104:11, 104:12, 119:14, 131:8, 136:8, 136:12, 140:10, 140:18, 141:11, 157:2, 157:6, 157:19, 158:11, 160:21, 162:18, 163:24, 174:20, 183:17, 193:3, 193:9, 196:24, 217:10, 217:11, 217:12, 218:20, 218:22, 219:5, 225:5, 227:21, 246:1, 272:20 Nickel [1] - 96:6 night [28] - 12:16, 14:14, 14:15, 21:5, 22:22, 23:25, 25:17, 69:14, 70:20, 76:12, 76:24, 77:17, 96:19, 135:17, 136:8, 136:12, 137:12, 151:24, 177:7, 177:18, 200:7, 201:17, 209:24, 215:10, 219:2, 248:1, 253:23 NINETY [1] - 1:2 NINETY-SIXTH [1] - 1:2 Nixon [3] - 38:24, 234:23, 235:10 nobody [2] - 76:14, 246:19 noise [1] - 243:13 none [10] - 7:15, 41:16, 99:5, 226:17, 230:6, 276:20, 289:6, 289:18, 290:11, 296:15 normal [5] - 60:21, 60:22, 137:9, 155:16, 207:9 normally [2] - 53:19, 118:4 north [8] - 11:12, 14:18, 15:13, 16:9, 23:6, 62:4, 164:12, 260:23 North [28] - 14:22, 20:1, 23:2, 24:15, 41:2, 47:12, 47:15, 53:22, 73:9, 73:15, 74:2, 77:24, 96:6, 102:10, 103:12, 105:8, 109:6, 109:13, 125:2, 131:20, 131:24, 154:16, 159:3, 182:7, 182:10, 182:17, 214:9, 250:7 north-south [1] - 62:4 northbound [1] - 58:6 not-Jason [1] - 222:3 notably [2] - 33:11, 231:21 Notary [3] - 3:7, 298:7, 298:18 note [5] - 37:12, 107:19, 113:15, 114:19, 233:19 noted [8] - 8:16, 8:23, 15:8, 37:6, 37:9, 38:12, 92:8, 235:2 notes [2] - 93:4, 100:14 noteworthy [5] - 20:18, 78:24, 91:5, 107:2, 111:6 nothing [16] - 43:24, 72:20, 99:14, 101:17, 107:21, 118:15, 118:25, 119:10, 198:17, 202:24, 210:4, 219:13, 237:11, 258:1, 258:3, 263:10 notice [3] - 57:11, 80:6, 122:14 noticed [3] - 99:5, 111:8, 111:14 noting [1] - 13:22 notion [3] - 35:18, 232:3 Novstrup [6] - 5:22, 268:2, 278:19, 282:24, 287:2, 292:3 NOVSTRUP [7] - 5:23, 268:3, 268:5, 278:20, 282:25, 287:3, 292:4 null [1] - 116:8 number [27] - 10:20, 11:9, 12:12, 30:12,
--	---

<p>37:12, 51:18, 57:4, 65:9, 68:20, 134:19, 134:20, 135:5, 139:10, 139:11, 139:20, 140:11, 144:1, 144:7, 144:12, 173:3, 187:23, 239:10, 243:5, 266:3, 289:15, 294:19</p> <p>numbered [2] - 139:12, 187:25</p> <p>numbers [3] - 156:15, 185:22</p> <p>numerous [8] - 57:11, 64:18, 74:11, 88:22, 91:22, 134:12, 249:11, 270:6</p>	<p>194:13, 216:23, 270:5</p> <p>occasion [7] - 10:13, 74:3, 79:13, 102:25, 178:18, 179:13, 186:19</p> <p>occasionally [1] - 168:25</p> <p>occasions [5] - 12:13, 19:19, 24:25, 30:3, 30:19</p> <p>occupation [2] - 73:8, 102:8</p> <p>occupied [1] - 121:2</p> <p>occur [6] - 42:22, 49:7, 139:16, 207:10, 236:19, 265:20</p> <p>occurred [11] - 25:1, 42:25, 45:13, 54:8, 55:15, 56:21, 62:25, 69:21, 75:23, 207:12, 265:7</p> <p>occurring [2] - 41:21, 241:1</p> <p>occurs [2] - 41:12, 204:6</p> <p>odd [2] - 183:20, 206:14</p> <p>OF [7] - 1:1, 1:2, 1:3, 1:12, 298:1, 298:3</p> <p>offense [7] - 28:1, 44:23, 237:12, 253:11, 263:11, 263:12, 264:7</p> <p>offenses [11] - 29:25, 30:16, 30:18, 39:3, 39:14, 174:10, 182:4, 235:12, 237:10, 254:15, 272:9</p> <p>offensive [1] - 209:21</p> <p>offensively [1] - 228:12</p> <p>offer [7] - 95:12, 95:24, 98:16, 100:5, 148:14, 167:8, 274:13</p> <p>offered [9] - 4:4, 17:19, 47:14, 95:14, 95:21, 95:23, 98:3, 99:6, 239:23</p> <p>offering [3] - 98:18, 98:24, 206:7</p> <p>offers [1] - 4:6</p> <p>office [125] - 7:23, 30:20, 32:12, 32:15, 32:22, 32:24, 33:3, 33:7, 33:11, 34:4, 34:15, 36:1, 37:1,</p>	<p>37:2, 37:8, 37:10, 37:14, 37:18, 37:22, 37:23, 37:24, 39:6, 41:21, 42:3, 48:11, 108:20, 121:22, 122:18, 122:20, 122:25, 123:3, 123:4, 123:9, 123:19, 125:13, 149:25, 194:24, 195:2, 195:6, 195:9, 209:10, 212:6, 212:15, 212:19, 218:14, 218:16, 220:5, 220:9, 220:11, 222:17, 223:24, 224:2, 225:3, 225:9, 225:15, 230:7, 232:15, 233:6, 233:7, 233:10, 233:22, 233:24, 233:25, 235:15, 236:15, 236:16, 236:18, 236:21, 236:25, 237:2, 237:3, 237:4, 237:7, 237:8, 237:9, 237:15, 237:16, 237:20, 237:25, 241:1, 241:11, 241:17, 244:25, 247:5, 250:12, 250:15, 250:18, 250:21, 250:25, 256:14, 257:11, 257:13, 257:14, 258:18, 258:23, 259:7, 259:8, 263:8, 265:5, 265:10, 269:18, 270:4, 270:23, 271:15, 271:20, 272:4, 272:8, 272:10, 272:11, 273:20, 275:6, 276:14, 276:22, 276:24, 280:5, 280:12, 280:22, 281:4, 284:9, 284:14, 285:8, 288:12</p> <p>Office [14] - 30:9, 33:24, 38:8, 225:18, 242:20, 266:10, 269:15, 269:20, 270:18, 270:20, 270:25, 271:1, 271:2, 271:3</p> <p>officer [39] - 9:11, 9:16, 10:8, 10:14, 29:11, 38:5, 41:14,</p>	<p>41:25, 73:15, 73:16, 73:18, 76:23, 85:2, 100:17, 102:15, 120:3, 120:5, 169:9, 170:1, 223:14, 223:22, 224:25, 226:3, 226:23, 226:24, 226:25, 227:1, 230:13, 230:14, 234:9, 239:12, 251:11, 252:19, 265:6, 265:13, 274:19, 276:2, 276:4, 276:13</p> <p>officers [11] - 23:17, 25:24, 29:14, 29:17, 30:8, 36:24, 175:10, 233:1, 245:25, 265:19, 276:7</p> <p>offices [3] - 31:7, 44:2, 231:7</p> <p>official [31] - 10:5, 28:1, 28:5, 28:24, 31:16, 31:19, 32:11, 32:14, 32:21, 33:1, 37:18, 38:5, 41:24, 175:18, 195:2, 212:6, 222:17, 233:10, 234:9, 235:6, 250:4, 250:12, 259:9, 263:19, 272:18, 274:6, 275:8, 275:11, 275:14</p> <p>officials [10] - 27:20, 29:2, 32:3, 32:5, 223:5, 230:17, 232:21, 233:3, 235:5, 272:2</p> <p>often [3] - 111:9, 219:1, 228:1</p> <p>oftentimes [1] - 98:25</p> <p>old [3] - 183:13, 216:17, 222:20</p> <p>omission [3] - 20:17, 37:6, 233:22</p> <p>omitted [1] - 99:7</p> <p>on-scene [1] - 53:14</p> <p>on-site [1] - 53:14</p> <p>once [19] - 22:10, 47:1, 56:7, 63:4, 74:22, 78:5, 78:17, 86:25, 95:24, 106:25, 109:13, 118:4, 137:25, 195:5, 213:25, 222:20, 227:14, 236:21, 274:19</p> <p>one [127] - 10:1, 10:3, 12:1, 12:7, 12:9,</p>	<p>19:21, 27:4, 29:3, 29:19, 30:23, 34:19, 37:12, 38:4, 47:12, 48:20, 48:21, 51:2, 51:8, 52:1, 54:10, 55:17, 56:7, 58:4, 59:24, 61:3, 65:10, 69:16, 71:3, 72:13, 85:7, 92:6, 95:13, 97:9, 98:19, 99:8, 99:23, 100:25, 101:5, 104:14, 105:10, 107:6, 112:13, 127:2, 127:8, 127:11, 127:12, 132:21, 132:22, 132:25, 142:20, 145:3, 147:10, 148:19, 149:8, 150:21, 152:3, 161:3, 161:18, 162:2, 162:9, 164:6, 164:14, 164:17, 166:11, 168:8, 171:4, 175:12, 176:19, 183:22, 186:19, 190:6, 192:4, 195:1, 197:5, 200:10, 204:10, 204:14, 207:1, 209:3, 210:21, 211:9, 211:14, 212:7, 213:8, 213:18, 215:6, 215:21, 218:6, 219:18, 220:14, 221:24, 225:18, 225:22, 226:18, 228:23, 230:11, 230:13, 230:15, 230:25, 233:12, 234:8, 238:13, 239:10, 240:12, 241:3, 244:15, 246:1, 246:2, 249:20, 251:6, 252:13, 252:16, 255:2, 255:6, 256:12, 257:19, 260:15, 272:19, 273:9, 275:2, 280:8, 284:24, 285:3</p> <p>ones [5] - 12:10, 12:19, 97:9, 139:11, 185:16</p> <p>ongoing [2] - 28:11, 131:1</p> <p>Onida [2] - 1:25, 298:13</p> <p>online [1] - 86:7</p>
<p style="text-align: center;">O</p>				
<p>o'clock [7] - 3:5, 25:8, 92:24, 103:16, 177:2, 296:8, 296:9</p> <p>oath [21] - 7:23, 7:24, 8:1, 8:3, 8:12, 8:16, 10:9, 11:5, 50:5, 73:5, 102:5, 119:17, 131:11, 190:14, 192:16, 192:17, 199:13, 220:5, 244:25, 258:14</p> <p>obituary [1] - 84:8</p> <p>object [7] - 53:6, 53:8, 54:19, 65:11, 65:17, 146:9</p> <p>objected [1] - 252:25</p> <p>objection [1] - 172:6</p> <p>objection's [1] - 172:10</p> <p>objective [1] - 38:17</p> <p>objects [4] - 52:2, 52:6, 57:5, 58:2</p> <p>obligation [1] - 28:11</p> <p>observation [1] - 202:23</p> <p>observe [2] - 53:23, 70:16</p> <p>observed [8] - 55:3, 62:23, 87:20, 91:13, 115:13, 192:8, 192:24, 252:10</p> <p>obtain [4] - 85:18, 86:6, 127:9, 130:16</p> <p>obtained [2] - 133:14, 178:12</p> <p>obvious [1] - 156:7</p> <p>obviously [9] - 10:12, 57:2, 84:20, 107:25, 151:4, 183:12,</p>				

OnMyWay [6] - 13:11, 107:13, 124:6, 197:6, 213:7, 213:9 open [1] - 145:7 opened [2] - 82:7, 236:5 opener [1] - 295:6 opening [5] - 8:6, 10:1, 12:1, 30:24, 223:8 OPENING [1] - 2:2 opens [1] - 168:3 operate [1] - 55:1 operating [1] - 26:9 opine [1] - 206:3 opined [1] - 47:16 opinion [15] - 55:12, 55:13, 62:24, 63:24, 106:11, 132:9, 141:22, 144:2, 158:10, 172:18, 172:22, 180:7, 221:1, 250:13, 273:13 opinions [19] - 49:10, 97:7, 155:25, 170:20, 170:22, 170:25, 171:6, 171:12, 171:15, 171:18, 171:19, 172:2, 172:13, 172:15, 173:3, 174:1, 180:16, 273:8, 273:9 opportunities [5] - 12:20, 27:17, 51:3, 51:10, 208:4 opportunity [7] - 9:12, 30:4, 217:19, 261:19, 265:19, 266:2, 295:3 opposed [11] - 7:15, 52:9, 266:11, 277:1, 281:6, 285:11, 289:7, 289:18, 290:13, 296:15, 296:23 opposite [1] - 154:5 opposition [1] - 181:22 options [1] - 52:17 order [17] - 4:2, 10:14, 23:21, 42:16, 49:20, 101:25, 136:16, 145:12, 188:23, 209:1, 216:22, 216:24, 223:25, 242:4, 242:10, 288:25, 296:10 ordinary [4] - 12:5,	12:17, 14:7, 251:1 organized [1] - 9:15 organs [1] - 15:11 orient [1] - 58:18 original [2] - 113:16, 185:17 originally [3] - 145:23, 189:23, 252:24 otherwise [10] - 7:10, 12:8, 12:17, 26:6, 45:10, 64:13, 138:13, 195:5, 197:22, 252:16 Otten [14] - 5:24, 192:1, 192:2, 192:20, 193:6, 195:12, 196:5, 196:13, 196:24, 268:6, 278:21, 283:1, 287:4, 292:5 OTTEN [19] - 5:25, 192:3, 192:21, 193:7, 193:13, 193:23, 194:2, 194:8, 194:19, 195:11, 195:13, 196:6, 196:14, 196:25, 268:7, 278:22, 283:2, 287:5, 292:6 ought [2] - 38:4, 234:8 ourselves [1] - 226:13 outbursts [1] - 10:22 outcome [2] - 49:6, 248:19 outline [1] - 220:1 outright [1] - 25:23 outside [12] - 40:22, 68:6, 125:8, 177:3, 209:15, 210:1, 210:22, 212:4, 215:15, 227:9, 248:11, 248:14 outskirts [1] - 134:17 overall [1] - 104:7 overarching [1] - 132:20 overcome [1] - 274:20 overruled [1] - 172:10 oversaw [1] - 120:18 oversee [5] - 35:7, 50:19, 50:24, 53:17, 232:9 overseeing [2] - 75:4, 132:1 oversees [1] - 29:12 overturning [1] - 229:10 overview [1] - 78:20 overwhelming [1] -	204:6 own [18] - 14:7, 14:8, 16:21, 18:2, 30:10, 42:6, 69:13, 123:25, 142:11, 181:2, 195:16, 196:11, 208:12, 213:6, 213:19, 217:23, 218:1, 260:15 owned [2] - 32:25, 81:25	56:23, 59:13, 60:25, 66:14, 71:14, 78:19, 78:25, 79:10, 83:4, 84:21, 93:12, 94:2, 97:15, 104:13, 105:8, 120:11, 135:13, 135:15, 136:11, 146:8, 150:17, 151:1, 167:18, 171:5, 172:25, 174:23, 175:25, 183:4, 184:1, 184:14, 190:1, 193:14, 195:24, 198:10, 200:13, 205:7, 205:20, 205:22, 216:13, 233:7, 238:19, 250:12, 265:23, 270:25, 295:18 part's [1] - 218:13 partial [2] - 15:20, 208:9 partially [1] - 155:14 participate [4] - 78:8, 125:16, 125:20, 151:8 participated [2] - 75:12, 125:18 participating [1] - 148:7 particular [16] - 52:15, 53:11, 106:5, 107:4, 109:18, 137:12, 143:3, 143:17, 148:5, 161:7, 165:6, 188:15, 189:15, 205:8, 238:13, 262:16 particularly [6] - 55:4, 66:25, 129:16, 133:7, 170:20, 228:3 parties [5] - 9:13, 10:7, 11:13, 119:4, 221:10 parties...There [1] - 221:7 partisan [1] - 221:15 partly [1] - 252:16 parts [6] - 59:17, 164:5, 193:15, 194:22, 204:13, 232:2 party [10] - 9:5, 9:7, 9:10, 9:15, 9:17, 107:5, 110:6, 189:5, 221:25, 222:7 party's [1] - 9:17 pas [1] - 272:9	pass [1] - 230:18 passed [12] - 13:19, 13:21, 21:15, 71:7, 84:11, 91:21, 91:23, 98:8, 137:19, 280:10 passenger [11] - 15:15, 15:22, 17:1, 17:5, 54:16, 54:18, 55:21, 79:6, 79:8, 210:11, 211:20 passes [1] - 47:25 passing [2] - 14:13, 59:2 passions [1] - 221:6 past [27] - 21:12, 26:17, 31:6, 63:6, 63:8, 65:6, 65:7, 93:18, 94:22, 95:1, 133:23, 141:15, 141:19, 153:7, 164:11, 165:10, 174:19, 174:25, 175:14, 176:2, 176:5, 186:6, 186:7, 186:16, 238:15, 238:21, 238:22 Pat [1] - 103:21 path [2] - 22:22, 94:9 patrol [7] - 50:12, 50:16, 50:25, 73:18, 170:1, 226:25, 230:12 Patrol [19] - 15:1, 24:12, 41:2, 45:15, 49:24, 50:2, 50:11, 50:13, 50:18, 51:1, 58:1, 61:4, 65:23, 71:6, 90:18, 94:5, 94:12, 135:23, 142:11 Patrol's [1] - 87:16 patrolman [1] - 147:17 pattern [4] - 60:12, 71:25, 209:23, 209:24 pause [1] - 247:14 Pause [2] - 247:15, 288:16 paved [1] - 62:15 pay [5] - 27:4, 217:12, 217:13, 253:22, 253:24 paying [2] - 210:23, 229:25 PC [1] - 105:16 peace [1] - 73:15 peculiar [1] - 39:17 pedestrian [14] - 52:9, 52:14, 52:15, 52:16, 52:19, 52:23, 53:1,
---	---	--	---	--

<p>53:3, 53:4, 54:11, 55:10, 74:6, 74:13, 103:2</p> <p>pellets [1] - 60:18</p> <p>Pelosi [1] - 220:25</p> <p>pending [1] - 26:25</p> <p>penitentiary [1] - 257:2</p> <p>pennies [1] - 213:15</p> <p>Pennington [1] - 226:4</p> <p>people [37] - 11:7, 45:23, 64:12, 90:12, 97:25, 105:12, 137:11, 143:22, 148:24, 152:24, 153:14, 153:16, 153:18, 162:24, 166:16, 172:1, 183:18, 207:2, 213:6, 213:19, 222:2, 222:18, 227:5, 230:16, 239:6, 240:18, 249:21, 255:18, 256:22, 262:12, 274:22, 284:23, 294:10, 294:16, 294:18, 294:19</p> <p>per [21] - 13:21, 15:1, 15:4, 15:5, 15:25, 16:3, 18:25, 19:2, 21:1, 24:9, 68:8, 68:17, 71:1, 81:5, 113:2, 113:3, 113:6, 113:9, 113:11, 188:13, 196:17</p> <p>percent [6] - 63:20, 63:22, 64:9, 65:5, 204:3</p> <p>perception [1] - 79:20</p> <p>perfect [2] - 46:6</p> <p>perform [2] - 220:6, 244:25</p> <p>performance [9] - 32:12, 38:5, 195:9, 220:4, 234:8, 244:23, 257:10, 257:11, 265:18</p> <p>performed [2] - 51:17, 237:6</p> <p>performing [2] - 194:24, 195:1</p> <p>perhaps [4] - 30:18, 120:4, 216:18, 219:4</p> <p>period [8] - 36:10, 53:4, 53:5, 110:20, 147:18, 153:25, 180:20, 239:23</p> <p>periods [1] - 207:25</p>	<p>perks [1] - 13:11</p> <p>permanent [1] - 7:19</p> <p>permitted [2] - 172:4, 172:14</p> <p>person [35] - 8:14, 12:11, 12:12, 12:14, 27:21, 27:23, 28:6, 29:19, 66:19, 85:3, 97:13, 98:25, 132:25, 133:5, 133:16, 141:18, 152:7, 152:18, 176:6, 183:5, 204:8, 206:9, 211:10, 215:2, 224:7, 224:8, 228:19, 237:24, 243:7, 243:24, 244:6, 245:20, 249:6, 280:21</p> <p>person's [3] - 98:12, 204:13, 273:12</p> <p>personal [25] - 11:15, 13:11, 13:13, 17:5, 21:24, 22:9, 27:6, 30:10, 43:8, 43:16, 77:6, 105:4, 107:17, 124:5, 128:14, 128:19, 196:10, 196:11, 196:18, 197:4, 218:24, 249:15, 270:12, 274:18, 295:14</p> <p>personally [6] - 24:3, 78:8, 81:25, 89:9, 189:3, 196:9</p> <p>persuade [1] - 48:25</p> <p>pertain [1] - 182:9</p> <p>pertinent [1] - 190:2</p> <p>perused [1] - 13:16</p> <p>phase [3] - 160:9, 188:24, 208:15</p> <p>phenomenon [1] - 205:8</p> <p>phone [243] - 13:11, 13:12, 13:13, 13:15, 13:17, 13:25, 15:3, 15:25, 16:3, 16:13, 17:5, 17:7, 18:23, 20:3, 20:4, 21:2, 21:6, 21:7, 21:16, 21:18, 21:19, 21:20, 21:23, 21:24, 22:13, 22:16, 26:5, 26:12, 26:18, 27:4, 27:6, 41:9, 43:8, 43:16, 43:17, 43:22, 43:23, 43:24, 44:5, 44:8, 45:1, 45:7, 77:19, 79:9, 80:17, 80:18, 80:19, 80:20, 80:21,</p>	<p>85:15, 85:21, 85:23, 85:24, 86:4, 86:13, 86:19, 92:9, 92:12, 94:12, 96:8, 104:22, 104:24, 105:1, 105:2, 105:5, 105:6, 105:10, 105:16, 105:18, 105:19, 105:23, 105:24, 105:25, 106:4, 106:5, 106:12, 106:15, 106:18, 106:23, 106:24, 106:25, 107:4, 107:7, 107:10, 107:16, 107:17, 107:20, 107:21, 107:22, 107:23, 108:1, 108:5, 108:13, 108:14, 108:16, 108:20, 108:23, 109:1, 109:10, 109:14, 109:18, 109:25, 110:2, 110:4, 110:14, 110:19, 110:22, 110:25, 111:1, 111:2, 111:7, 111:9, 111:15, 111:20, 111:23, 112:5, 112:19, 112:24, 113:3, 113:5, 113:19, 113:22, 114:1, 114:9, 114:11, 114:13, 114:21, 115:1, 115:4, 115:15, 115:23, 116:2, 116:6, 116:12, 116:16, 116:23, 117:2, 117:14, 117:19, 117:23, 117:24, 117:25, 118:3, 118:5, 118:16, 118:18, 118:19, 123:25, 124:3, 124:5, 124:6, 124:9, 124:12, 126:24, 127:8, 127:11, 127:15, 127:17, 128:15, 128:17, 128:18, 128:19, 128:23, 129:6, 129:11, 129:12, 136:1, 139:14, 139:17, 139:24, 140:4, 158:15, 158:18, 158:22, 163:2, 163:3, 163:4, 163:13, 166:15,</p>	<p>166:17, 166:20, 167:19, 167:22, 168:11, 168:15, 168:17, 177:13, 177:17, 177:20, 177:22, 177:23, 178:11, 178:20, 179:6, 179:8, 179:9, 195:18, 196:10, 196:11, 196:17, 196:18, 196:19, 197:5, 197:7, 208:5, 211:18, 212:2, 212:17, 213:11, 213:13, 216:20, 217:6, 217:8, 217:9, 219:13, 219:14, 219:19, 225:23, 226:16, 226:17, 239:14, 250:20, 254:2, 261:11, 270:22, 274:9, 274:14, 275:22</p> <p>phone's [3] - 105:21, 112:4, 112:16</p> <p>phones [22] - 10:16, 10:17, 25:9, 27:9, 43:8, 87:2, 92:13, 102:18, 104:20, 106:7, 106:21, 109:9, 126:25, 127:14, 129:22, 153:14, 163:15, 163:16, 163:17, 183:19, 213:8, 219:15</p> <p>photo [6] - 21:20, 78:18, 78:20, 117:1, 155:4, 155:7</p> <p>photograph [23] - 22:12, 54:21, 58:15, 58:22, 61:21, 65:9, 65:12, 69:4, 69:16, 78:16, 78:22, 78:24, 79:3, 79:4, 79:5, 79:7, 116:25, 134:25, 144:1, 144:7, 144:12, 154:14</p> <p>photographed [1] - 24:21</p> <p>photographs [15] - 24:21, 53:18, 53:25, 56:15, 78:12, 78:15, 103:25, 142:10, 142:23, 143:18, 143:21, 144:19, 144:21, 144:25, 176:23</p> <p>photography [1] -</p>	<p>76:21</p> <p>photos [4] - 23:20, 23:22, 53:21, 154:15</p> <p>phrase [6] - 152:3, 154:3, 209:19, 219:9, 236:23, 245:10</p> <p>phrased [1] - 159:14</p> <p>phrases [2] - 207:14, 229:10</p> <p>physical [11] - 17:3, 17:4, 25:21, 26:2, 57:18, 57:19, 67:22, 135:24, 142:23, 145:19, 166:25</p> <p>physically [2] - 17:22, 153:21</p> <p>physician [1] - 91:6</p> <p>physics [2] - 52:4, 52:11</p> <p>pick [4] - 68:19, 165:14, 207:13, 222:21</p> <p>picked [1] - 13:14</p> <p>pickup [4] - 14:8, 75:18, 168:7, 227:22</p> <p>picture [12] - 54:10, 55:9, 55:17, 57:4, 65:25, 117:3, 154:20, 154:22, 155:11, 156:7, 243:7, 243:10</p> <p>pictures [8] - 67:4, 104:8, 106:9, 145:22, 177:1, 201:2, 228:24, 247:7</p> <p>piece [25] - 16:9, 21:11, 21:13, 22:23, 26:13, 43:11, 58:4, 58:9, 65:18, 66:9, 66:11, 69:5, 72:3, 109:16, 133:23, 136:4, 137:2, 138:21, 141:2, 141:13, 141:19, 143:23, 186:7, 186:13</p> <p>pieces [6] - 56:11, 59:19, 61:1, 72:9, 200:18, 208:11</p> <p>Pierre [29] - 3:3, 13:5, 13:22, 22:11, 24:10, 43:21, 44:1, 45:5, 74:21, 74:22, 77:7, 77:24, 78:1, 79:25, 81:7, 83:23, 103:13, 108:19, 109:3, 109:5, 109:7, 110:16, 110:18, 110:25, 111:4,</p>
--	--	--	---	---

<p>117:4, 121:12, 121:20, 122:13</p> <p>Pilamaye ^[1] - 248:6</p> <p>pile ^[1] - 295:4</p> <p>pillar ^[2] - 54:17</p> <p>pilot ^[2] - 104:5, 104:6</p> <p>ping ^[1] - 124:7</p> <p>pitch ^[1] - 21:5</p> <p>pizza ^[1] - 145:5</p> <p>place ^[13] - 10:16, 32:8, 53:23, 128:3, 138:15, 154:24, 195:10, 218:4, 223:15, 230:6, 239:9, 240:20, 241:13</p> <p>placed ^[3] - 13:8, 13:15, 289:14</p> <p>places ^[2] - 107:11, 257:21</p> <p>plain ^[1] - 258:24</p> <p>plan ^[1] - 163:14</p> <p>planned ^[1] - 253:23</p> <p>plausible ^[2] - 204:19, 207:18</p> <p>play ^[10] - 25:12, 34:10, 134:19, 135:5, 146:24, 160:4, 161:3, 162:1, 167:3, 216:21</p> <p>played ^[3] - 23:11, 23:12, 164:16</p> <p>playing ^[2] - 211:18, 237:14</p> <p>plea ^[3] - 190:1, 251:16, 251:24</p> <p>plead ^[1] - 251:4</p> <p>pleasant ^[2] - 143:4, 222:22</p> <p>pled ^[2] - 189:25, 259:25</p> <p>pledge ^[1] - 4:5</p> <p>Pledge ^[1] - 4:7</p> <p>plotted ^[2] - 61:12, 115:6</p> <p>plugged ^[1] - 105:17</p> <p>plus ^[1] - 30:13</p> <p>pockets ^[1] - 10:18</p> <p>podcasts ^[1] - 220:13</p> <p>podium ^[2] - 10:10, 198:24</p> <p>point ^[46] - 43:9, 55:2, 63:16, 72:13, 86:17, 89:12, 89:21, 113:9, 114:2, 121:1, 121:21, 121:25, 123:1, 123:5, 127:7, 128:7, 128:10, 128:12, 133:17, 136:5, 139:20,</p>	<p>140:1, 140:10, 144:5, 154:9, 154:11, 156:2, 156:5, 159:12, 160:12, 167:25, 169:19, 177:22, 187:18, 198:16, 198:18, 219:4, 219:8, 220:19, 221:14, 222:8, 226:13, 230:9, 233:9, 236:9, 238:13</p> <p>pointed ^[7] - 24:8, 152:6, 152:8, 222:11, 236:9, 236:17, 275:12</p> <p>pointing ^[2] - 152:12, 295:17</p> <p>points ^[22] - 59:7, 60:12, 60:22, 113:22, 113:24, 114:22, 115:22, 116:2, 116:11, 116:15, 116:19, 117:5, 139:11, 140:3, 140:6, 140:18, 159:11, 159:19, 159:20, 160:19, 177:13, 294:4</p> <p>poles ^[1] - 155:1</p> <p>police ^[5] - 73:17, 102:14, 102:16, 147:17, 239:10</p> <p>Police ^[4] - 77:24, 78:1, 83:23, 96:24</p> <p>political ^[10] - 13:3, 31:4, 36:18, 39:18, 45:7, 194:14, 195:3, 246:8, 265:10, 276:10</p> <p>politician ^[2] - 257:16, 257:22</p> <p>polls ^[3] - 32:15, 35:21, 35:23</p> <p>polygraph ^[55] - 27:12, 46:21, 46:22, 47:1, 47:2, 47:11, 47:14, 48:4, 73:24, 74:1, 88:14, 88:16, 88:17, 88:22, 89:14, 89:16, 89:17, 95:12, 95:14, 95:21, 96:6, 96:9, 96:13, 96:14, 97:1, 97:5, 97:14, 98:4, 98:7, 98:13, 98:16, 98:21, 98:24, 99:3, 99:6, 99:21, 100:1, 148:14, 148:20, 148:24,</p>	<p>149:9, 149:10, 213:18, 213:20, 214:2, 214:5, 214:7, 214:10, 225:23, 239:23, 250:20, 270:22</p> <p>polygraphed ^[1] - 97:25</p> <p>polygrapher ^[6] - 47:15, 47:20, 47:22, 96:22, 149:1, 214:4</p> <p>polygraphers ^[3] - 47:5, 96:2, 149:3</p> <p>polygraphs ^[1] - 101:2</p> <p>polygraphy ^[1] - 96:24</p> <p>poor ^[4] - 219:21, 253:22, 270:5, 270:7</p> <p>poorly ^[1] - 208:7</p> <p>pop ^[3] - 97:22, 97:23, 211:19</p> <p>population ^[1] - 204:4</p> <p>poring ^[1] - 30:12</p> <p>portion ^[1] - 174:6</p> <p>portions ^[2] - 30:13, 126:4</p> <p>portraying ^[1] - 168:21</p> <p>position ^[12] - 27:1, 36:20, 50:17, 51:8, 102:21, 118:20, 121:2, 169:24, 195:5, 230:8, 273:24</p> <p>positioned ^[1] - 177:23</p> <p>positions ^[1] - 120:4</p> <p>possess ^[1] - 28:8</p> <p>possesses ^[1] - 195:18</p> <p>possession ^[2] - 17:8, 128:15</p> <p>possibility ^[1] - 176:20</p> <p>possible ^[11] - 10:19, 51:25, 86:15, 97:3, 97:4, 141:21, 152:6, 216:10, 227:10, 248:20, 250:9</p> <p>possibly ^[6] - 76:14, 143:8, 154:7, 191:15, 230:3, 256:8</p> <p>potential ^[7] - 18:13, 29:24, 57:16, 83:11, 122:14, 205:16, 226:3</p> <p>potentially ^[8] - 16:14, 55:14, 57:20, 89:25, 181:5, 204:19, 205:5, 258:25</p> <p>power ^[2] - 29:21, 42:11</p>	<p>powerful ^[4] - 29:20, 47:9, 230:9, 230:10</p> <p>powerless ^[1] - 259:10</p> <p>powers ^[7] - 34:13, 34:17, 34:18, 35:17, 232:4, 251:20</p> <p>practical ^[3] - 169:18, 197:5, 255:9</p> <p>practice ^[3] - 28:11, 31:1, 60:22</p> <p>practicing ^[1] - 249:9</p> <p>prayer ^[2] - 4:4, 4:6</p> <p>precise ^[2] - 48:16, 241:8</p> <p>precision ^[1] - 1:25</p> <p>prejudicial ^[1] - 28:22</p> <p>preparation ^[2] - 113:20, 251:25</p> <p>prepare ^[5] - 125:15, 129:4, 129:8, 238:18, 288:18</p> <p>prepared ^[2] - 202:7, 238:17</p> <p>prescribe ^[1] - 234:21</p> <p>prescribed ^[1] - 220:8</p> <p>prescribes ^[1] - 232:15</p> <p>present ^[8] - 9:12, 10:2, 78:15, 188:8, 188:11, 261:19, 262:24</p> <p>presentation ^[25] - 9:18, 19:25, 63:19, 83:15, 84:19, 87:7, 134:21, 135:6, 146:25, 160:7, 160:24, 161:4, 162:7, 164:4, 164:22, 166:2, 167:5, 167:17, 168:9, 216:15, 217:3, 217:5, 217:7, 224:5, 228:10</p> <p>presented ^[7] - 12:12, 125:23, 198:24, 214:8, 260:9, 263:1, 275:24</p> <p>presenting ^[2] - 63:18, 195:25</p> <p>presently ^[1] - 50:15</p> <p>preserved ^[1] - 24:14</p> <p>president ^[64] - 7:2, 7:6, 12:4, 49:22, 68:24, 72:23, 99:17, 119:19, 130:3, 131:13, 142:19, 143:11, 143:16, 144:17, 145:15, 185:4, 185:5, 188:6,</p>	<p>188:10, 188:13, 288:10, 189:8, 192:3, 194:2, 195:11, 196:6, 196:25, 197:14, 198:21, 199:7, 201:25, 202:9, 203:10, 203:14, 203:18, 206:1, 206:18, 235:24, 242:24, 246:16, 248:10, 249:1, 252:14, 252:21, 253:12, 254:25, 256:3, 264:3, 264:12, 269:9, 271:11, 274:4, 274:25, 279:24, 280:3, 284:4, 284:8, 284:19, 288:7, 288:11, 290:6, 293:8, 293:12, 294:2</p> <p>PRESIDENT ^[130] - 4:1, 4:8, 7:4, 7:14, 7:22, 7:25, 8:5, 30:23, 40:10, 49:17, 49:20, 69:1, 72:21, 72:24, 73:1, 94:19, 99:15, 101:16, 101:18, 101:21, 101:24, 117:9, 119:9, 119:11, 119:14, 119:18, 127:24, 130:2, 131:4, 131:7, 131:12, 143:12, 143:19, 144:20, 145:1, 145:12, 170:6, 172:10, 175:6, 185:2, 185:10, 186:1, 187:21, 188:4, 188:8, 188:12, 188:16, 188:22, 190:4, 190:8, 190:13, 191:4, 191:8, 191:22, 191:25, 192:12, 192:14, 192:20, 193:6, 193:10, 193:21, 195:12, 196:5, 196:12, 196:23, 197:11, 198:3, 198:6, 198:22, 199:10, 199:12, 201:20, 201:23, 202:8, 202:13, 203:5, 203:12, 203:23, 206:4, 206:12, 206:21, 208:14, 208:25, 230:23,</p>
---	--	--	--	--

<p>236:3, 241:23, 242:3, 242:23, 246:13, 246:15, 248:7, 248:9, 248:23, 248:25, 254:23, 255:25, 256:2, 258:8, 264:1, 264:9, 264:11, 264:17, 266:5, 269:11, 269:24, 271:8, 271:10, 274:2, 274:23, 276:18, 280:1, 280:25, 284:6, 285:5, 288:9, 288:17, 288:24, 289:5, 289:17, 290:1, 290:3, 290:5, 290:10, 293:10, 293:15, 294:1, 295:3, 296:7, 296:10, 296:22 President [14] - 4:7, 7:24, 196:14, 242:22, 246:14, 248:8, 248:24, 254:22, 256:1, 264:10, 269:23, 271:9, 290:4, 293:14 presiding [4] - 9:11, 9:16, 10:8, 10:14 press [3] - 225:4, 250:20, 270:22 pressure [1] - 295:16 presumably [3] - 14:19, 185:18, 202:24 pretense [2] - 123:13, 124:19 pretty [5] - 46:24, 106:8, 150:3, 295:5, 295:13 prevent [1] - 67:6 prevented [1] - 214:9 previous [3] - 84:10, 140:2, 188:13 previously [2] - 86:1, 132:5 price [1] - 49:3 primary [2] - 210:9, 228:7 prime [1] - 35:4 principally [2] - 40:21, 122:10 principles [6] - 34:10, 34:13, 34:14, 35:17, 235:21, 237:6 prison [2] - 259:8, 262:12 private [2] - 69:9,</p>	<p>122:4 privileges [1] - 11:16 prizes [1] - 213:9 probable [2] - 127:9, 127:18 problem [6] - 164:25, 165:6, 165:18, 181:14, 183:16, 239:24 problems [1] - 173:8 procedure [1] - 7:7 procedures [1] - 234:25 proceed [10] - 11:18, 39:15, 119:18, 131:12, 145:14, 186:1, 193:9, 209:2, 250:16, 253:6 proceeding [15] - 31:13, 37:5, 38:13, 113:20, 140:6, 202:5, 215:11, 220:7, 234:12, 234:13, 234:15, 245:1, 245:9, 253:3 Proceedings [1] - 3:1 PROCEEDINGS [1] - 1:12 proceedings [15] - 7:19, 19:19, 25:17, 30:11, 30:19, 31:8, 190:2, 222:13, 232:23, 247:10, 253:19, 289:11, 289:22, 298:9, 298:11 process [23] - 11:8, 12:23, 21:10, 31:17, 31:21, 32:2, 32:4, 33:20, 36:18, 51:24, 53:21, 56:5, 58:11, 59:13, 60:22, 125:16, 125:18, 127:16, 133:21, 202:20, 295:6, 295:9, 295:13 processed [6] - 24:20, 24:22, 25:9, 78:5, 78:6, 109:12 processes [1] - 198:1 processing [1] - 73:24, 78:3, 78:8, 78:13, 78:16, 78:19, 103:23, 108:16, 108:17, 108:24, 109:1 produced [1] - 39:1 Professional [3] - 3:6, 298:6, 298:19 professional [5] -</p>	<p>28:15, 28:16, 28:25, 62:24, 274:18 professionalism [1] - 226:11 profile [1] - 64:12 profit [6] - 280:13, 281:4, 284:10, 284:14, 285:8, 288:13 program [2] - 50:19, 50:20 programs [3] - 50:18, 51:9, 53:12 progression [1] - 87:9 projected [3] - 15:13, 15:19, 52:19 promoted [1] - 51:7 proof [15] - 39:21, 40:8, 40:17, 46:2, 48:7, 49:12, 189:25, 190:1, 202:23, 234:20, 234:22, 244:14, 245:5, 260:14 proper [5] - 10:14, 84:13, 88:21, 214:21, 228:19 property [1] - 43:11 propriety [2] - 39:17, 148:24 prosecuted [1] - 220:15 prosecuting [6] - 29:3, 123:17, 123:19, 125:6, 125:13, 208:19 Prosecution [3] - 1:18, 2:3, 2:21 prosecution [33] - 9:19, 30:14, 40:2, 49:23, 73:3, 102:3, 114:21, 176:24, 188:6, 189:9, 189:14, 189:16, 195:13, 195:15, 195:20, 195:23, 196:15, 197:1, 202:10, 202:18, 202:24, 204:22, 205:2, 206:2, 206:20, 223:4, 229:22, 231:18, 236:13, 236:20, 260:16, 275:12, 293:18 prosecution's [2] - 197:3, 207:17 PROSECUTION'S [1] - 2:5 prosecutor [20] - 20:3,</p>	<p>29:6, 29:9, 39:22, 41:3, 44:14, 45:18, 169:11, 195:21, 209:16, 210:5, 220:15, 220:17, 229:23, 251:12, 251:19, 251:21, 275:15 prosecutor's [2] - 39:21, 61:5 prosecutorial [2] - 231:20, 262:17 prosecutors [15] - 29:5, 44:20, 47:4, 48:23, 61:4, 119:5, 173:21, 173:24, 181:24, 182:3, 182:13, 182:21, 251:4, 262:15, 270:14 protect [1] - 142:23 proud [1] - 295:18 prove [9] - 46:12, 46:19, 47:3, 178:14, 179:25, 213:23, 236:21, 262:24 proved [2] - 179:10, 274:10 proven [4] - 45:23, 179:18, 260:17, 263:22 proves [2] - 40:2, 260:19 provide [12] - 10:6, 11:7, 17:17, 20:16, 38:18, 46:8, 77:13, 82:11, 94:11, 95:13, 261:13, 261:20 provided [15] - 9:6, 23:23, 24:21, 48:13, 75:24, 77:5, 80:13, 82:24, 105:3, 114:20, 177:16, 204:21, 205:2, 208:1, 219:25 provides [5] - 8:10, 28:14, 36:23, 82:25, 252:17 providing [1] - 208:2 proving [1] - 39:23 provision [5] - 36:21, 36:23, 38:21, 232:12, 284:22 provisions [1] - 34:16 prudent [2] - 110:13, 189:18 psychiatric [1] - 205:14 psychological [1] - 205:14</p>	<p>Public [8] - 3:7, 43:21, 29:9, 49:3, 73:25, 108:20, 128:24, 298:7, 298:18 public [19] - 8:19, 23:20, 26:19, 27:20, 39:15, 39:16, 49:8, 218:14, 218:15, 225:8, 227:7, 232:21, 252:6, 253:4, 253:6, 253:8, 265:14, 265:23, 280:22 publicly [2] - 8:20, 84:23 publish [1] - 23:20 published [1] - 64:17 pull [7] - 135:20, 138:2, 139:4, 156:14, 156:15, 158:8, 208:8 pulled [5] - 81:13, 82:15, 82:19, 224:8, 224:11 pulling [1] - 227:19 pumped [3] - 184:18, 184:20, 184:22 pumping [2] - 181:1, 184:14 punish [1] - 38:18 punishment [3] - 222:19, 222:21, 222:25 purpose [5] - 8:12, 79:18, 224:7, 272:23, 273:1 purposes [1] - 244:11 purses [1] - 10:18 pursuant [1] - 9:7, 9:9, 9:14, 9:18, 9:20, 9:23, 28:7, 29:9, 29:14, 220:9, 289:15 pursue [1] - 51:2 put [30] - 10:8, 36:19, 39:2, 40:13, 43:19, 46:17, 64:7, 107:23, 109:20, 124:14, 148:14, 154:24, 166:9, 166:13, 167:2, 171:1, 171:19, 180:9, 186:11, 223:13, 223:14, 233:16, 242:7, 243:18, 244:1, 245:16, 250:20, 270:22, 272:4, 294:11 puts [1] - 205:21 putting [5] - 15:4, 51:24, 57:18, 99:11,</p>
--	---	---	--	--

294:16	Ramsey ^[1] - 15:7 ran ^[4] - 243:24, 244:6, 244:7, 245:15 rancher ^[1] - 219:21 ranked ^[1] - 253:11 Rapid ^[2] - 51:13, 255:2 rare ^[12] - 31:14, 32:6, 34:6, 38:12, 204:2, 204:19, 204:23, 205:8, 206:6, 206:7, 234:15 rather ^[4] - 80:11, 134:5, 173:10, 207:16 Ravnsborg ^[104] - 1:9, 8:24, 12:21, 13:2, 13:10, 13:14, 14:24, 16:12, 17:9, 20:7, 22:18, 22:21, 23:2, 23:14, 23:24, 26:25, 40:19, 40:24, 41:22, 44:10, 46:4, 46:20, 47:10, 76:11, 76:16, 77:3, 77:6, 77:8, 77:16, 79:14, 81:25, 82:1, 82:16, 83:20, 89:10, 90:3, 90:14, 91:17, 95:8, 96:11, 99:21, 99:23, 100:11, 103:4, 107:5, 108:15, 110:16, 128:7, 132:3, 132:16, 133:20, 136:5, 136:10, 136:13, 136:17, 137:17, 137:19, 138:5, 141:1, 141:12, 144:2, 148:23, 150:12, 160:6, 160:10, 161:9, 163:14, 165:10, 166:10, 170:23, 177:17, 182:23, 185:18, 187:5, 209:4, 209:12, 210:7, 210:10, 210:18, 212:2, 212:7, 213:16, 214:17, 214:22, 215:23, 221:20, 221:25, 225:2, 226:15, 226:25, 227:8, 228:5, 236:7, 242:19, 253:21, 255:20, 259:20, 266:9, 269:20, 276:23, 280:12, 281:3, 284:13, 285:7	Ravnsborg's ^[14] - 56:1, 74:7, 77:25, 78:21, 82:16, 94:2, 105:4, 156:22, 168:10, 186:23, 187:2, 214:21, 229:8, 230:7 Re ^[2] - 1:7, 28:9 re ^[6] - 92:15, 151:8, 151:9, 152:23, 154:16, 155:5 re-create ^[4] - 151:9, 152:23, 154:16, 155:5 re-creation ^[1] - 151:8 re-interview ^[1] - 92:15 reach ^[9] - 26:20, 48:16, 61:18, 82:6, 84:5, 84:13, 187:3, 241:7, 243:20 reached ^[3] - 83:25, 106:19, 294:25 reaches ^[1] - 215:21 reaching ^[4] - 14:9, 84:24, 85:3, 211:19 reaction ^[1] - 216:6 read ^[17] - 37:10, 135:18, 136:15, 137:6, 173:7, 175:11, 175:17, 187:11, 203:20, 233:7, 233:11, 238:18, 239:7, 241:3, 247:8, 248:3, 252:4 readers ^[1] - 114:3 reading ^[4] - 68:16, 113:7, 136:21, 259:11 Reading ^[6] - 204:5, 220:2, 233:4, 235:11, 241:5, 252:6 readings ^[1] - 294:15 ready ^[2] - 122:13, 241:25 real ^[4] - 157:2, 218:25, 221:10, 222:24 realize ^[2] - 156:3, 214:19 really ^[31] - 25:18, 48:2, 76:13, 76:14, 76:22, 80:11, 80:12, 96:10, 98:23, 116:12, 154:5, 164:5, 223:16, 226:16, 226:17, 227:4, 237:21, 238:12, 247:13,	253:19, 261:23, 265:4, 265:15, 265:23, 270:16, 272:8, 272:23, 273:20, 294:11, 294:23 realtime ^[1] - 44:4 Realtime ^[3] - 3:6, 298:6, 298:19 reason ^[23] - 36:5, 36:14, 63:15, 65:10, 71:14, 71:15, 85:7, 92:18, 113:10, 121:14, 132:20, 152:11, 156:2, 172:25, 183:4, 204:19, 205:4, 224:23, 239:11, 245:25, 255:18, 256:15, 258:5 reasonable ^[4] - 209:17, 210:6, 244:17, 262:25 reasoned ^[1] - 273:5 reasons ^[8] - 14:11, 23:3, 85:5, 132:24, 132:25, 171:8, 197:5, 240:2 reassure ^[2] - 124:10, 225:8 rebut ^[1] - 261:20 receive ^[6] - 91:1, 104:19, 108:5, 117:25, 208:19, 238:9 received ^[20] - 14:10, 74:10, 80:21, 87:14, 87:15, 91:3, 92:11, 94:5, 105:25, 106:25, 150:4, 226:1, 247:1, 269:11, 270:11, 270:13, 280:2, 284:7, 288:10, 293:10 recess ^[15] - 49:18, 49:19, 101:22, 101:23, 145:9, 145:11, 188:20, 188:21, 208:23, 208:24, 241:23, 241:25, 242:2, 288:22, 288:23 reckless ^[4] - 261:6, 262:4, 262:5, 264:5 recklessly ^[5] - 256:19, 256:22, 262:7, 263:4, 263:18 recklessness ^[3] - 262:6, 262:13,	263:16 recognize ^[2] - 114:5, 216:1 recognized ^[2] - 212:18, 220:21 recollect ^[1] - 249:23 recollection ^[4] - 184:8, 190:22, 190:25, 249:18 recommendation ^[1] - 72:15 reconcile ^[1] - 246:25 reconciling ^[1] - 249:12 reconsider ^[2] - 207:8, 242:10 reconstruct ^[1] - 245:23 reconstructing ^[1] - 51:4 reconstruction ^[22] - 15:2, 24:13, 45:15, 50:19, 50:24, 51:5, 51:22, 51:23, 52:4, 53:20, 56:5, 58:12, 60:21, 63:14, 64:20, 94:6, 94:9, 154:15, 173:17, 191:18, 207:7, 217:21 reconstructionist ^[3] - 51:6, 157:10, 210:3 reconstructions ^[1] - 51:16 reconvene ^[2] - 143:9, 242:1 record ^[8] - 7:20, 7:21, 26:5, 26:11, 32:7, 49:25, 171:4, 185:12 recorded ^[5] - 71:2, 71:4, 90:4, 116:11, 195:17 recording ^[3] - 21:3, 24:4, 43:1 recover ^[4] - 85:10, 104:16, 106:23, 112:17 recoverable ^[1] - 124:17 recovered ^[12] - 15:20, 106:8, 110:1, 110:15, 111:6, 111:23, 112:1, 114:14, 115:15, 123:12, 123:24, 129:6 recovering ^[1] - 109:4 recovery ^[1] - 108:23 recreated ^[3] - 14:22, 136:8, 136:12 RECROSS ^[1] -
Q				
qualifications ^[1] - 265:18 qualified ^[1] - 47:20 qualifies ^[1] - 48:10 qualify ^[2] - 169:25, 258:4 quality ^[3] - 39:9, 219:8, 235:17 quantify ^[1] - 265:15 quarter ^[1] - 101:22 questioned ^[2] - 219:1, 219:5 questioning ^[3] - 124:8, 144:24, 182:20 questions ^[52] - 9:13, 9:14, 9:16, 43:6, 44:17, 44:18, 68:24, 94:18, 97:21, 100:8, 100:13, 117:8, 124:1, 124:15, 127:23, 131:3, 133:10, 142:21, 143:2, 143:15, 149:16, 149:17, 170:3, 185:1, 188:2, 189:1, 189:3, 191:6, 192:1, 196:4, 197:21, 198:4, 198:24, 199:1, 199:2, 199:3, 199:4, 203:5, 206:13, 219:13, 220:3, 227:23, 242:8, 248:20, 275:18, 275:20, 284:25, 285:1, 294:17 QUESTIONS ^[1] - 2:18 quite ^[10] - 33:13, 106:17, 111:9, 146:10, 153:1, 163:18, 170:20, 233:17, 295:6, 295:15 quorum ^[1] - 7:3 quote ^[3] - 29:20, 95:2, 187:3 quotes ^[1] - 188:15				
R				
race ^[1] - 46:5 radar ^[1] - 68:15 radio ^[4] - 16:14, 17:22, 168:6, 211:19 radios ^[1] - 153:16 raise ^[1] - 229:9				

<p>100:23</p> <p>Recross ^[1] - 2:10</p> <p>RECROSS-EXAMINATION ^[1] - 100:23</p> <p>Recross-Examination ^[1] - 2:10</p> <p>red ^[4] - 55:24, 57:12, 59:15, 156:18</p> <p>redeemed ^[1] - 107:11</p> <p>Redfield ^[10] - 13:3, 45:4, 68:5, 85:24, 107:18, 112:25, 113:4, 116:16, 117:14, 195:10</p> <p>Redirect ^[2] - 2:14, 2:17</p> <p>redirect ^[6] - 72:22, 99:15, 119:9, 130:2, 185:3, 188:3</p> <p>REDIRECT ^[3] - 99:18, 130:4, 186:2</p> <p>reduced ^[1] - 237:13</p> <p>redundant ^[1] - 264:15</p> <p>Reed ^[1] - 294:5</p> <p>reelect ^[1] - 36:15</p> <p>reelected ^[2] - 36:17, 257:20</p> <p>reelection ^[1] - 240:23</p> <p>refer ^[7] - 54:16, 59:12, 157:10, 169:3, 189:20, 215:17, 229:13</p> <p>reference ^[15] - 38:3, 57:24, 90:6, 117:22, 141:2, 151:3, 166:25, 185:8, 185:23, 186:6, 188:1, 195:15, 205:23, 234:5, 234:6</p> <p>referenced ^[5] - 63:20, 115:2, 126:19, 156:11, 226:3</p> <p>references ^[3] - 160:2, 185:17, 217:20</p> <p>referencing ^[7] - 83:14, 84:17, 87:6, 100:20, 107:13, 139:7, 265:9</p> <p>referred ^[10] - 58:12, 63:22, 65:21, 126:14, 173:16, 214:23, 215:18, 217:20, 223:7, 236:6</p> <p>referring ^[7] - 71:1, 123:25, 149:22, 174:24, 185:7, 187:22, 236:14</p>	<p>refers ^[1] - 215:1</p> <p>reflect ^[2] - 25:5, 208:7</p> <p>reflective ^[3] - 137:10, 142:6, 201:19</p> <p>reflects ^[2] - 28:17, 39:21</p> <p>refresh ^[2] - 175:1, 175:11</p> <p>refusal ^[1] - 17:17</p> <p>refuted ^[1] - 111:23</p> <p>regard ^[10] - 95:12, 97:13, 170:22, 178:11, 182:16, 184:8, 191:18, 220:5, 236:20, 244:24</p> <p>regarded ^[1] - 249:6</p> <p>regarding ^[11] - 34:14, 74:5, 83:14, 103:2, 104:2, 170:20, 171:7, 171:13, 179:14, 249:5, 259:23</p> <p>regardless ^[4] - 89:18, 89:20, 248:19, 294:24</p> <p>regards ^[2] - 51:3, 183:12</p> <p>Regent ^[1] - 33:5</p> <p>register ^[2] - 115:23, 116:2</p> <p>Registered ^[3] - 3:6, 298:5, 298:19</p> <p>registered ^[1] - 21:23</p> <p>registering ^[2] - 114:25, 116:15</p> <p>registration ^[3] - 22:8, 82:3, 82:5</p> <p>regretfully ^[1] - 250:22</p> <p>regretted ^[1] - 241:16</p> <p>regular ^[1] - 242:10</p> <p>regulated ^[1] - 221:9</p> <p>reinforce ^[1] - 230:17</p> <p>reiterate ^[1] - 81:11</p> <p>rejected ^[1] - 41:10</p> <p>relate ^[8] - 37:8, 37:23, 39:18, 212:16, 233:24, 233:25, 257:9, 257:13</p> <p>related ^[10] - 34:16, 121:2, 124:20, 127:4, 139:8, 169:15, 222:14, 257:10, 259:8, 272:11</p> <p>relates ^[7] - 54:22, 55:4, 66:5, 135:24, 147:15, 160:21,</p>	<p>216:19</p> <p>relating ^[2] - 27:25, 217:23</p> <p>relation ^[1] - 276:6</p> <p>relationship ^[1] - 143:22</p> <p>relationships ^[1] - 294:20</p> <p>release ^[5] - 142:22, 169:22, 225:4, 250:20, 270:22</p> <p>released ^[1] - 208:21</p> <p>relevance ^[1] - 172:6</p> <p>relevant ^[2] - 201:4, 238:19</p> <p>reliably ^[1] - 139:15</p> <p>reluctant ^[1] - 272:7</p> <p>relying ^[1] - 222:18</p> <p>remain ^[7] - 11:8, 14:11, 28:3, 199:13, 261:25, 276:3, 276:14</p> <p>remained ^[3] - 21:25, 22:24, 240:1</p> <p>remaining ^[2] - 15:21, 140:22</p> <p>remains ^[7] - 23:16, 53:3, 57:3, 144:4, 162:20, 199:2, 217:17</p> <p>remarks ^[31] - 208:19, 209:3, 230:24, 236:3, 242:21, 246:13, 248:7, 248:23, 254:23, 255:25, 257:23, 258:8, 264:1, 264:9, 266:5, 266:6, 269:22, 271:8, 274:2, 274:23, 276:18, 276:19, 280:15, 280:25, 281:1, 281:2, 284:17, 285:5, 285:6, 290:10, 295:20</p> <p>remedy ^[2] - 39:2, 235:11</p> <p>remember ^[13] - 70:4, 99:12, 103:16, 109:23, 118:23, 137:1, 184:12, 187:5, 187:10, 187:16, 205:22, 207:2</p> <p>remembered ^[1] - 81:5</p> <p>remembers ^[1] - 205:19</p> <p>remind ^[5] - 10:24, 11:11, 190:13,</p>	<p>199:12, 242:12</p> <p>reminder ^[6] - 11:15, 11:19, 192:16, 198:23, 235:8, 280:7</p> <p>reminders ^[1] - 242:5</p> <p>reminds ^[1] - 20:1</p> <p>removable ^[2] - 263:11, 263:12</p> <p>removal ^[18] - 31:12, 32:4, 33:17, 36:23, 37:18, 37:21, 38:13, 39:14, 41:14, 231:25, 232:11, 234:16, 235:1, 236:18, 237:17, 237:24, 247:4</p> <p>removals ^[1] - 232:21</p> <p>remove ^[8] - 10:17, 118:2, 242:19, 259:10, 266:9, 269:20, 272:8, 276:24</p> <p>removed ^[30] - 31:17, 31:20, 31:24, 32:2, 32:3, 32:9, 32:11, 32:16, 32:20, 32:22, 32:24, 33:1, 33:3, 33:6, 33:9, 33:10, 34:3, 34:4, 37:7, 49:4, 118:10, 146:4, 177:9, 193:1, 200:25, 226:4, 233:24, 263:8, 269:14, 280:5</p> <p>removing ^[2] - 17:23, 241:17</p> <p>rendered ^[1] - 273:9</p> <p>renowned ^[1] - 64:24</p> <p>reordered ^[1] - 216:22</p> <p>reorient ^[1] - 231:6</p> <p>repeat ^[9] - 115:24, 131:21, 159:11, 159:13, 172:12, 193:19, 193:21, 202:15</p> <p>repeated ^[1] - 192:18</p> <p>repeatedly ^[2] - 65:22, 86:20</p> <p>repetitive ^[1] - 269:25</p> <p>rephrase ^[1] - 113:14</p> <p>replaced ^[3] - 240:14, 240:15</p> <p>replicate ^[1] - 177:7</p> <p>reply ^[1] - 206:22</p> <p>report ^[36] - 7:12, 15:2, 24:6, 27:23, 27:24, 38:1, 39:1, 39:2, 48:22, 77:11, 77:13, 93:4, 95:5, 99:9, 99:11, 99:13,</p>	<p>100:10, 100:16, 100:19, 113:16, 118:12, 148:14, 148:21, 170:18, 175:5, 176:7, 176:16, 183:19, 185:6, 185:22, 187:22, 233:15, 233:19, 235:16, 238:19</p> <p>reported ^[1] - 77:9</p> <p>Reported ^[1] - 1:24</p> <p>reporter ^[2] - 242:13, 298:9</p> <p>Reporter ^[6] - 3:6, 3:7, 298:6, 298:19, 298:19</p> <p>reporting ^[1] - 27:22</p> <p>Reporting ^[1] - 1:25</p> <p>reports ^[37] - 7:7, 44:15, 75:8, 94:6, 99:5, 99:8, 110:12, 118:12, 119:3, 148:18, 148:19, 152:4, 170:10, 170:12, 170:14, 170:15, 170:16, 170:17, 170:23, 171:2, 171:4, 171:10, 171:11, 171:16, 171:19, 172:3, 173:7, 174:2, 174:8, 198:20, 217:21, 217:25, 238:16, 239:6, 239:10, 247:8, 265:1</p> <p>representation ^[1] - 59:9</p> <p>representative ^[2] - 213:14, 225:6</p> <p>Representatives ^[2] - 9:4, 48:25</p> <p>represented ^[3] - 31:6, 33:24, 222:12</p> <p>represents ^[2] - 138:9, 140:2</p> <p>reprimand ^[1] - 38:19</p> <p>Republican ^[1] - 222:7</p> <p>reputation ^[3] - 223:3, 273:15</p> <p>request ^[6] - 9:21, 61:3, 61:5, 101:10, 127:19, 199:2</p> <p>requested ^[1] - 108:18</p> <p>require ^[3] - 207:8, 207:12, 242:9</p> <p>required ^[2] - 28:7, 257:19</p> <p>requirement ^[4] - 199:3, 236:21,</p>
--	--	---	---	---

257:17, 257:18 requirements [1] - 28:12 requires [5] - 41:18, 41:21, 169:8, 207:11 research [2] - 84:9, 275:7 researched [2] - 199:19, 199:20 reserved [1] - 39:14 reset [1] - 153:18 resign [1] - 271:19 resignation [2] - 222:17, 246:9 resignations [1] - 222:11 resigned [1] - 222:15 resist [2] - 95:8 Resolution [3] - 8:8, 8:18, 8:23 resolution [11] - 9:2, 40:12, 288:18, 289:10, 289:13, 289:21, 289:22, 289:24, 290:7, 290:12, 293:13 resolutions [1] - 289:9 resolved [1] - 231:20 resources [1] - 30:9 respect [15] - 10:14, 23:19, 37:11, 48:19, 62:4, 97:13, 209:20, 232:16, 234:17, 254:19, 258:2, 270:3, 271:4, 272:2, 293:20 respectfully [5] - 7:7, 41:17, 45:22, 48:20, 221:12 respective [1] - 10:7 respects [1] - 28:19 respond [3] - 74:19, 103:7, 103:8 responded [6] - 24:12, 46:25, 76:24, 103:14, 104:12, 104:15 respondent [9] - 188:12, 188:18, 191:10, 191:11, 202:25, 206:2, 206:20, 208:20, 230:24 Respondent [3] - 1:20, 2:3, 2:21 respondent's [2] - 258:22, 259:6 Respondent's [1] - 188:9 Respondents [2] -	9:21, 202:1 responders [1] - 42:1 responding [1] - 194:17 responds [2] - 12:9, 20:10 response [13] - 12:19, 18:16, 20:19, 84:3, 86:11, 104:9, 195:14, 196:15, 197:1, 197:3, 206:23, 207:17, 219:6 responses [2] - 86:22, 213:18 responsibilities [1] - 75:6 Responsibilities [1] - 29:5 responsibility [5] - 29:6, 29:21, 209:12, 223:5, 270:7 responsible [1] - 148:8 rest [17] - 15:14, 16:8, 16:10, 37:15, 57:4, 67:19, 73:19, 75:20, 94:4, 97:19, 144:16, 148:9, 154:25, 165:5, 188:11, 204:16, 214:10 restart [1] - 109:11 restitution [1] - 38:18 rests [4] - 188:7, 188:12, 188:18, 203:4 result [14] - 12:7, 207:23, 226:8, 229:18, 250:25, 260:4, 263:24, 270:11, 280:13, 280:20, 284:10, 284:15, 285:9, 288:13 results [13] - 27:12, 28:24, 48:5, 61:8, 88:25, 89:5, 89:6, 89:13, 91:1, 91:4, 91:5, 91:7, 149:17 resumed [1] - 16:14 resuming [1] - 13:23 retired [2] - 44:3, 119:24 retrieve [2] - 85:13, 136:1 retrieved [3] - 115:20, 192:6, 192:22 return [10] - 14:10, 22:19, 49:20, 101:24, 106:23,	108:19, 108:22, 188:22, 208:25, 242:3 returned [5] - 21:17, 24:2, 24:7, 109:19, 122:20 returning [2] - 109:3, 140:11 reveal [4] - 27:13, 43:23, 44:16, 45:1 reverend [1] - 4:4 Reverend [1] - 4:6 reverse [2] - 33:14, 161:8 review [5] - 9:5, 9:9, 104:4, 113:18, 259:18 reviewed [3] - 20:5, 78:12, 173:19 reviewing [3] - 30:13, 93:4, 100:14 rewarded [1] - 213:9 rewards [2] - 13:12, 107:10 RHODEN [130] - 4:1, 4:8, 7:4, 7:14, 7:22, 7:25, 8:5, 30:23, 40:10, 49:17, 49:20, 69:1, 72:21, 72:24, 73:1, 94:19, 99:15, 101:16, 101:18, 101:21, 101:24, 117:9, 119:9, 119:11, 119:14, 119:18, 127:24, 130:2, 131:4, 131:7, 131:12, 143:12, 143:19, 144:20, 145:1, 145:12, 170:6, 172:10, 175:6, 185:2, 185:10, 186:1, 187:21, 188:4, 188:8, 188:12, 188:16, 188:22, 190:4, 190:8, 190:13, 191:4, 191:8, 191:22, 191:25, 192:12, 192:14, 192:20, 193:6, 193:10, 193:21, 195:12, 196:5, 196:12, 196:23, 197:11, 198:3, 198:6, 198:22, 199:10, 199:12, 201:20, 201:23, 202:8, 202:13, 203:5, 203:12, 203:23,	206:4, 206:12, 206:21, 208:14, 208:25, 230:23, 236:3, 241:23, 242:3, 242:23, 246:13, 246:15, 248:7, 248:9, 248:23, 248:25, 254:23, 255:25, 256:2, 258:8, 264:1, 264:9, 264:11, 264:17, 266:5, 269:11, 269:24, 271:8, 271:10, 274:2, 274:23, 276:18, 280:1, 280:25, 284:6, 285:5, 288:9, 288:17, 288:24, 289:5, 289:17, 290:1, 290:3, 290:5, 290:10, 293:10, 293:15, 294:1, 295:3, 296:7, 296:10, 296:22 Rhoden [2] - 4:7, 7:24 ride [3] - 14:10, 92:8, 107:18 rights [2] - 251:20, 272:3 ring [2] - 82:20, 82:23 rippling [1] - 12:15 rise [1] - 34:2 rises [1] - 259:2 risking [1] - 229:11 road [88] - 14:18, 16:8, 16:11, 16:19, 18:5, 18:7, 18:21, 20:23, 21:5, 23:5, 23:7, 42:15, 45:18, 45:19, 59:4, 61:15, 62:3, 64:10, 66:1, 66:12, 66:20, 67:15, 70:7, 70:18, 71:11, 71:24, 76:3, 76:4, 81:3, 87:12, 87:17, 87:24, 88:2, 88:6, 88:8, 88:11, 92:21, 93:6, 133:24, 137:17, 140:2, 140:7, 151:10, 160:2, 160:16, 162:20, 164:7, 164:10, 164:13, 166:20, 166:22, 175:24, 178:2, 191:19, 198:19, 200:2, 200:7, 210:8, 211:11, 215:8, 217:12, 217:13,	224:14, 228:23, 237:12, 237:18, 239:1, 239:3, 243:3, 243:8, 245:21, 247:21, 247:24, 254:4, 255:17, 260:11, 260:18, 261:8, 261:16, 261:17, 261:22, 262:1, 262:19, 263:18, 265:22, 274:11 roads [2] - 71:11, 212:1 roadside [2] - 21:9, 116:19 roadway [7] - 20:12, 20:23, 26:1, 60:3, 62:20, 97:22, 142:2 robbed [1] - 204:15 robocalls [1] - 49:1 rock [1] - 223:15 Rod [1] - 33:8 rode [1] - 216:3 Rodino [1] - 39:1 Rohl [6] - 6:1, 268:8, 278:23, 283:3, 287:6, 292:7 ROHL [6] - 6:2, 268:9, 278:24, 283:4, 287:7, 292:8 role [8] - 29:19, 53:10, 53:12, 74:25, 103:23, 168:24, 182:2, 237:14 roles [2] - 103:17, 230:1 roll [7] - 4:8, 187:14, 266:13, 277:3, 281:8, 285:13, 290:14 rolling [2] - 157:24, 158:9 rolls [1] - 244:3 roof [1] - 252:13 rookie [1] - 169:25 room [5] - 50:4, 121:19, 155:25, 156:8, 211:10 rooms [1] - 11:1 rose [3] - 38:8, 263:15, 263:16 ROSS [1] - 1:19 Ross [2] - 30:25, 220:24 rough [1] - 136:4 roughly [5] - 13:4, 22:15, 136:6, 138:21, 140:14 routine [1] - 19:20
---	---	--	--	---

<p>routinely ^[1] - 215:1</p> <p>routines ^[1] - 12:6</p> <p>RPR ^[1] - 1:24</p> <p>rule ^[4] - 28:16, 169:16, 170:2, 289:15</p> <p>Rule ^[8] - 9:3, 9:8, 9:9, 9:14, 9:18, 9:20, 9:23, 29:5</p> <p>rules ^[7] - 8:17, 8:19, 8:22, 9:25, 28:14, 28:25, 242:11</p> <p>ruling ^[1] - 206:19</p> <p>rumble ^[17] - 14:2, 59:7, 62:8, 62:12, 62:14, 63:9, 64:8, 65:6, 65:7, 210:10, 243:12, 243:14, 248:15, 248:17, 260:24, 264:4</p> <p>RUMMEL ^[11] - 192:19, 193:1, 199:11, 199:14, 199:18, 200:10, 201:10, 201:16, 203:17, 205:9, 205:18</p> <p>Rummel ^[35] - 2:15, 25:1, 75:11, 75:24, 91:11, 104:18, 108:4, 108:18, 108:22, 131:10, 131:16, 131:18, 131:22, 132:13, 135:8, 135:22, 139:7, 140:25, 143:20, 145:16, 147:6, 159:9, 166:4, 168:8, 168:23, 185:8, 186:5, 188:3, 199:9, 203:11, 203:12, 203:15, 212:22, 213:22, 218:1</p> <p>run ^[6] - 36:17, 44:2, 98:7, 109:13, 225:10, 228:5</p> <p>running ^[1] - 212:8</p> <p>Rusch ^[8] - 6:3, 248:25, 268:10, 269:24, 278:25, 283:5, 287:8, 292:9</p> <p>RUSCH ^[10] - 6:4, 248:24, 249:1, 268:11, 269:23, 269:25, 279:1, 283:6, 287:9, 292:10</p>	<p>S</p> <p>safety ^[1] - 245:23</p> <p>Safety ^[5] - 43:21, 49:3, 74:1, 108:20, 128:24</p> <p>sake ^[1] - 42:3</p> <p>sand ^[4] - 60:2, 60:4, 211:22, 224:1</p> <p>Sanford ^[2] - 33:19, 34:3</p> <p>sat ^[2] - 17:6, 251:6</p> <p>satisfaction ^[1] - 241:19</p> <p>satisfactory ^[7] - 39:23, 40:2, 235:3, 235:7, 254:6, 254:7, 254:10</p> <p>satisfied ^[2] - 203:1, 273:4</p> <p>save ^[2] - 181:1, 227:20</p> <p>saved ^[1] - 21:20</p> <p>saw ^[30] - 16:20, 16:23, 23:16, 23:18, 26:15, 39:25, 53:21, 93:5, 93:11, 94:1, 97:18, 99:1, 122:17, 150:20, 160:22, 160:25, 161:2, 161:6, 161:20, 165:9, 175:25, 177:8, 198:17, 201:2, 217:16, 217:17, 217:18, 247:7, 254:12</p> <p>scan ^[1] - 21:6</p> <p>scanned ^[1] - 21:15</p> <p>scanning ^[7] - 21:9, 26:18, 141:20, 142:3, 146:15, 146:16, 177:24</p> <p>scenarios ^[1] - 133:19</p> <p>scene ^[47] - 24:2, 24:9, 24:20, 42:13, 53:14, 55:3, 56:9, 58:13, 59:9, 61:2, 67:24, 71:6, 71:8, 73:24, 75:6, 75:16, 75:20, 75:22, 76:2, 77:1, 77:4, 77:10, 82:14, 87:18, 87:22, 90:17, 90:20, 92:19, 103:11, 103:19, 103:22, 104:8, 117:4, 137:21, 147:8, 150:13, 153:2, 153:21, 165:24, 165:25, 166:21, 177:11,</p>	<p>199:24, 201:6, 218:21, 218:23, 219:2</p> <p>schedule ^[1] - 98:19</p> <p>Schoenbeck ^[13] - 6:5, 201:23, 242:23, 268:12, 279:2, 280:16, 283:7, 284:18, 287:10, 290:5, 292:11, 294:1, 296:10</p> <p>SCHOENBECK ^[18] - 6:6, 7:13, 201:25, 202:9, 202:15, 242:22, 242:24, 268:13, 279:3, 280:17, 283:8, 284:19, 287:11, 289:4, 290:4, 290:6, 292:12, 294:2</p> <p>Schoenfish ^[6] - 6:7, 268:14, 279:4, 283:9, 287:12, 292:13</p> <p>SCHOENFISH ^[6] - 6:8, 268:15, 279:5, 283:10, 287:13, 292:14</p> <p>scholar ^[1] - 220:22</p> <p>school ^[7] - 31:5, 51:12, 73:24, 74:1, 231:9, 238:3, 249:10</p> <p>School ^[1] - 51:12</p> <p>science ^[3] - 245:22, 248:13, 260:19</p> <p>Science ^[1] - 51:14</p> <p>scientific ^[1] - 261:21</p> <p>scraped ^[1] - 16:7</p> <p>screeching ^[1] - 19:5</p> <p>screen ^[9] - 40:14, 43:20, 54:1, 65:9, 78:17, 110:3, 149:16, 154:13, 156:19</p> <p>scrutiny ^[1] - 218:14</p> <p>SDCL ^[3] - 27:22, 28:8, 29:15</p> <p>se ^[1] - 196:17</p> <p>search ^[11] - 43:22, 78:4, 78:5, 104:19, 107:1, 108:5, 127:10, 127:19, 127:20, 198:8, 219:16</p> <p>searched ^[1] - 198:11</p> <p>searches ^[1] - 127:3</p> <p>seat ^[11] - 10:19, 15:21, 15:22, 17:5, 33:9, 78:21, 79:8, 144:23, 211:20,</p>	<p>284:20</p> <p>Second ^[2] - 269:17, 280:4</p> <p>second ^[62] - 7:9, 7:13, 16:2, 17:12, 18:6, 18:7, 18:11, 23:9, 23:11, 25:7, 25:14, 26:8, 34:12, 35:18, 46:20, 70:18, 83:24, 85:20, 86:9, 86:20, 108:1, 114:16, 135:7, 141:23, 149:14, 157:25, 160:5, 161:3, 162:13, 163:19, 164:14, 164:17, 178:18, 179:5, 179:17, 180:12, 187:2, 198:2, 198:7, 203:7, 216:5, 234:19, 237:19, 239:14, 242:6, 251:9, 251:21, 256:10, 257:23, 262:8, 262:11, 262:16, 262:25, 276:21, 284:12, 284:16, 284:25, 285:9, 288:14, 289:4, 290:1, 290:2</p> <p>second-guess ^[4] - 234:19, 251:21, 262:16, 262:25</p> <p>seconded ^[4] - 289:16, 296:6, 296:12, 296:21</p> <p>seconds ^[38] - 12:10, 15:5, 15:24, 16:1, 16:22, 17:18, 18:18, 18:24, 19:1, 19:3, 30:1, 45:2, 45:8, 70:11, 118:20, 138:12, 139:21, 140:18, 156:23, 157:1, 157:2, 157:6, 157:19, 158:1, 158:17, 158:18, 158:20, 158:21, 158:22, 180:8, 211:1, 211:2, 211:3, 216:5, 244:3, 247:18, 261:1, 261:4</p> <p>secretary ^[11] - 4:8, 7:22, 7:25, 266:13, 277:3, 281:8, 285:13, 289:1, 290:14, 295:21, 295:23</p> <p>Secretary ^[2] - 7:8,</p>	<p>33:2</p> <p>SECRETARY ^[216] - 4:9, 4:11, 4:13, 4:15, 4:17, 4:19, 4:21, 4:23, 4:25, 5:2, 5:6, 5:8, 5:10, 5:12, 5:14, 5:16, 5:18, 5:20, 5:22, 5:24, 6:1, 6:3, 6:5, 6:7, 6:9, 6:11, 6:13, 6:15, 6:17, 6:19, 6:21, 6:23, 6:25, 7:2, 7:6, 7:18, 8:4, 266:14, 266:16, 266:18, 266:20, 266:22, 266:24, 267:1, 267:3, 267:5, 267:7, 267:11, 267:13, 267:15, 267:17, 267:19, 267:21, 267:23, 267:25, 268:2, 268:4, 268:6, 268:8, 268:10, 268:12, 268:14, 268:16, 268:18, 268:20, 268:22, 268:24, 269:1, 269:3, 269:5, 269:7, 269:9, 277:4, 277:6, 277:8, 277:10, 277:12, 277:14, 277:16, 277:18, 277:20, 277:22, 278:1, 278:3, 278:5, 278:7, 278:9, 278:11, 278:13, 278:15, 278:17, 278:19, 278:21, 278:23, 278:25, 279:2, 279:4, 279:6, 279:8, 279:10, 279:12, 279:14, 279:16, 279:18, 279:20, 279:22, 279:24, 281:9, 281:11, 281:13, 281:15, 281:17, 281:19, 281:21, 281:23, 281:25, 282:2, 282:6, 282:8, 282:10, 282:12, 282:14, 282:16, 282:18, 282:20, 282:22, 282:24, 283:1, 283:3, 283:5, 283:7, 283:9, 283:11, 283:13, 283:15, 283:17, 283:19, 283:21, 283:23, 283:25, 284:2, 284:4,</p>
--	--	---	--	--

285:14, 285:16, 285:18, 285:20, 285:22, 285:24, 286:1, 286:3, 286:5, 286:7, 286:11, 286:13, 286:15, 286:17, 286:19, 286:21, 286:23, 286:25, 287:2, 287:4, 287:6, 287:8, 287:10, 287:12, 287:14, 287:16, 287:18, 287:20, 287:22, 287:24, 288:1, 288:3, 288:5, 288:7, 289:2, 289:10, 289:21, 290:15, 290:17, 290:19, 290:21, 290:23, 290:25, 291:2, 291:4, 291:6, 291:8, 291:12, 291:14, 291:16, 291:18, 291:20, 291:22, 291:24, 292:1, 292:3, 292:5, 292:7, 292:9, 292:11, 292:13, 292:15, 292:17, 292:19, 292:21, 292:23, 292:25, 293:2, 293:4, 293:6, 293:8, 295:24, 296:8, 296:19 Section [1] - 8:10 section [3] - 62:15, 62:25, 252:19 sector [1] - 221:24 secure [2] - 56:8, 78:2 security [1] - 33:22 see [80] - 17:10, 23:4, 35:2, 42:17, 42:18, 46:23, 48:3, 54:15, 54:18, 54:24, 55:20, 55:23, 57:16, 59:2, 59:4, 62:10, 70:14, 71:25, 74:12, 79:1, 79:9, 90:23, 93:23, 118:6, 128:18, 134:24, 135:18, 136:22, 137:2, 137:11, 137:13, 138:23, 139:1, 139:10, 139:12, 141:20, 142:6, 143:17, 144:5, 149:18, 152:9, 152:25, 153:4, 153:11, 155:8, 155:9, 155:10,	161:5, 164:17, 168:3, 175:19, 176:3, 181:17, 183:10, 184:21, 185:8, 187:3, 200:6, 200:11, 200:16, 200:19, 205:24, 205:25, 207:14, 216:7, 220:10, 224:10, 224:11, 231:5, 232:22, 238:20, 239:1, 247:25, 254:4, 254:7, 254:8, 254:9, 262:2, 273:1 seeing [12] - 14:13, 62:8, 67:4, 70:4, 70:5, 81:5, 81:6, 142:8, 151:3, 175:16, 177:7, 243:25 seek [2] - 240:23, 241:15 seeking [3] - 44:7, 44:8, 240:23 seem [2] - 124:14, 223:20 seize [1] - 124:2 seized [1] - 78:12 seizing [1] - 127:7 seldom [1] - 221:6 Select [1] - 234:4 selected [2] - 142:15, 143:21 self [7] - 85:6, 202:4, 202:12, 202:19, 203:3, 245:8, 245:18 self-incrimination [6] - 202:4, 202:12, 202:19, 203:3, 245:8, 245:18 self-interest [1] - 85:6 sell [1] - 33:9 selling [1] - 32:20 semi [1] - 200:2 SENATE [1] - 1:1 senate [1] - 220:18 Senate [83] - 1:14, 3:3, 4:1, 7:8, 7:9, 7:20, 8:8, 8:11, 8:18, 8:22, 9:7, 9:20, 10:6, 11:12, 31:13, 33:9, 33:11, 33:13, 33:14, 38:10, 39:12, 49:20, 50:9, 54:6, 65:23, 90:7, 101:24, 114:19, 119:23, 131:17, 145:1, 145:12, 158:4, 171:7, 176:24,	188:22, 189:20, 203:20, 204:20, 208:25, 220:10, 226:19, 231:13, 232:16, 234:11, 234:24, 235:20, 235:24, 236:6, 237:12, 241:25, 242:3, 242:16, 242:17, 249:2, 256:5, 258:10, 266:7, 269:17, 275:1, 276:20, 276:21, 280:7, 280:11, 281:3, 284:13, 285:7, 288:24, 289:3, 289:10, 289:11, 289:13, 289:21, 289:22, 289:24, 290:11, 290:12, 293:12, 296:20, 297:1, 297:2 Senator [59] - 4:9, 189:6, 190:4, 190:10, 190:15, 191:4, 191:23, 192:1, 192:20, 193:6, 195:12, 196:5, 196:13, 196:24, 197:3, 197:12, 198:3, 199:5, 201:23, 203:7, 203:9, 203:13, 206:5, 206:12, 220:5, 242:23, 244:21, 244:24, 246:15, 248:9, 248:25, 254:24, 256:2, 258:9, 264:2, 264:11, 266:14, 269:24, 271:10, 272:12, 273:18, 274:3, 277:4, 280:16, 281:3, 281:9, 284:18, 285:14, 289:2, 289:13, 289:24, 290:5, 290:15, 293:15, 294:1, 295:24, 296:19, 296:22 senator [4] - 220:2, 220:19, 264:17, 274:24 SENATOR [278] - 4:10, 4:12, 4:14, 4:16, 4:18, 4:20, 4:22, 4:24, 5:1, 5:5, 5:7, 5:9, 5:11, 5:13, 5:15,	5:17, 5:19, 5:21, 5:23, 5:25, 6:2, 6:4, 6:6, 6:8, 6:10, 6:12, 6:14, 6:16, 6:18, 6:20, 6:22, 6:24, 7:1, 7:13, 189:8, 190:5, 190:12, 190:16, 191:5, 191:10, 191:21, 191:24, 192:3, 192:21, 193:7, 193:13, 193:23, 194:2, 194:8, 194:19, 195:11, 195:13, 196:6, 196:14, 196:25, 197:14, 198:2, 198:5, 198:7, 198:21, 199:7, 199:15, 199:19, 200:22, 201:12, 201:25, 202:9, 202:15, 203:10, 203:14, 203:18, 203:25, 205:11, 206:1, 206:6, 206:18, 242:22, 242:24, 246:14, 246:16, 247:16, 248:8, 248:10, 248:24, 249:1, 254:22, 254:25, 256:1, 256:3, 258:10, 264:3, 264:10, 264:12, 264:19, 266:15, 266:17, 266:19, 266:21, 266:23, 266:25, 267:2, 267:4, 267:6, 267:10, 267:12, 267:14, 267:16, 267:18, 267:20, 267:22, 267:24, 268:1, 268:3, 268:5, 268:7, 268:9, 268:11, 268:13, 268:15, 268:17, 268:19, 268:21, 268:23, 268:25, 269:2, 269:4, 269:6, 269:8, 269:23, 269:25, 271:9, 271:11, 274:4, 274:25, 277:5, 277:7, 277:9, 277:11, 277:13, 277:15, 277:17, 277:19, 277:21, 277:25, 278:2, 278:4, 278:6, 278:8, 278:10, 278:12,	278:14, 278:16, 34 278:18, 278:20, 278:22, 278:24, 279:1, 279:3, 279:5, 279:7, 279:9, 279:11, 279:13, 279:15, 279:17, 279:19, 279:21, 279:23, 280:17, 281:10, 281:12, 281:14, 281:16, 281:18, 281:20, 281:22, 281:24, 282:1, 282:5, 282:7, 282:9, 282:11, 282:13, 282:15, 282:17, 282:19, 282:21, 282:23, 282:25, 283:2, 283:4, 283:6, 283:8, 283:10, 283:12, 283:14, 283:16, 283:18, 283:20, 283:22, 283:24, 284:1, 284:3, 284:19, 285:15, 285:17, 285:19, 285:21, 285:23, 285:25, 286:2, 286:4, 286:6, 286:10, 286:12, 286:14, 286:16, 286:18, 286:20, 286:22, 286:24, 287:1, 287:3, 287:5, 287:7, 287:9, 287:11, 287:13, 287:15, 287:17, 287:19, 287:21, 287:23, 287:25, 288:2, 288:4, 288:6, 289:4, 290:2, 290:4, 290:6, 290:16, 290:18, 290:20, 290:22, 290:24, 291:1, 291:3, 291:5, 291:7, 291:11, 291:13, 291:15, 291:17, 291:19, 291:21, 291:23, 291:25, 292:2, 292:4, 292:6, 292:8, 292:10, 292:12, 292:14, 292:16, 292:18, 292:20, 292:22, 292:24, 293:1, 293:3, 293:5, 293:7, 293:14, 293:16, 294:2, 296:2 SENATORS [1] - 2:18 Senators [21] - 11:4,
---	---	--	---	---

<p>12:4, 19:15, 20:3, 23:22, 29:22, 30:14, 142:16, 142:22, 143:17, 144:18, 144:21, 144:22, 144:23, 144:25, 145:5, 188:25, 195:16, 246:17, 249:3, 264:20</p> <p>senators [8] - 8:1, 8:3, 8:12, 8:16, 9:5, 9:12, 9:15, 11:13</p> <p>senators' [1] - 9:9</p> <p>send [6] - 24:17, 106:21, 256:5, 263:17, 276:12, 280:21</p> <p>sending [2] - 20:25, 228:24</p> <p>sends [2] - 22:12, 117:1</p> <p>sense [5] - 34:5, 154:5, 155:9, 167:2, 208:13</p> <p>sent [6] - 22:8, 23:12, 117:3, 259:8, 259:18, 263:21</p> <p>sentence [1] - 251:10</p> <p>separate [9] - 17:15, 24:25, 61:5, 61:13, 136:24, 139:8, 215:3, 215:4, 230:18</p> <p>separately [2] - 220:24, 257:24</p> <p>separation [6] - 34:12, 34:13, 34:17, 34:18, 35:17, 232:4</p> <p>September [26] - 12:16, 13:1, 22:17, 25:2, 25:8, 40:25, 43:3, 43:18, 74:5, 74:17, 77:23, 79:15, 83:21, 85:12, 96:19, 103:2, 108:9, 108:10, 121:8, 128:4, 128:20, 178:19, 199:17, 200:9, 201:8, 239:15</p> <p>sergeant [13] - 49:23, 50:2, 50:4, 50:8, 50:11, 51:7, 51:21, 53:24, 54:3, 58:18, 63:11, 66:3, 66:13</p> <p>Sergeant [3] - 2:6, 68:23, 75:25</p> <p>series [2] - 12:18, 83:13</p> <p>serious [8] - 39:3, 48:24, 235:12, 237:12, 237:23,</p>	<p>237:24, 238:6, 264:6</p> <p>serious-minded [1] - 237:24</p> <p>seriously [2] - 265:3, 294:18</p> <p>seriousness [1] - 238:4</p> <p>serve [7] - 7:21, 36:15, 50:15, 220:8, 229:2, 229:3, 229:4</p> <p>served [2] - 120:4, 251:9</p> <p>serves [1] - 29:10</p> <p>service [3] - 11:5, 80:22, 106:20</p> <p>services [1] - 106:21</p> <p>serving [1] - 197:8</p> <p>SESSION [1] - 1:2</p> <p>session [1] - 10:18</p> <p>set [16] - 13:13, 19:17, 29:18, 61:25, 62:21, 82:21, 98:19, 98:21, 116:8, 143:1, 166:23, 212:22, 243:11, 243:23, 260:15, 294:21</p> <p>sets [4] - 40:12, 139:9, 212:24, 225:18</p> <p>settled [1] - 265:22</p> <p>settlement [2] - 238:7, 238:9</p> <p>setup [1] - 241:24</p> <p>seven [10] - 18:24, 19:1, 73:18, 142:15, 143:4, 143:21, 157:6, 157:19, 211:2, 211:3</p> <p>several [9] - 44:11, 90:20, 177:15, 197:15, 204:10, 213:18, 214:13, 227:18, 274:8</p> <p>severe [2] - 15:12, 210:19</p> <p>severed [1] - 15:12</p> <p>shaking [1] - 81:14</p> <p>shall [14] - 8:11, 8:12, 8:14, 11:18, 36:24, 233:4, 242:17, 266:7, 269:17, 276:21, 280:11, 281:3, 284:13, 285:7</p> <p>shape [3] - 52:18, 60:11, 101:12</p> <p>shapes [1] - 29:16</p> <p>share [1] - 245:19</p> <p>shared [3] - 171:25, 244:21, 264:23</p> <p>sharing [1] - 264:14</p> <p>sharp [1] - 145:20</p>	<p>shattered [1] - 17:4</p> <p>sheer [1] - 183:10</p> <p>sheet [1] - 203:6</p> <p>Sheriff [34] - 22:4, 22:19, 42:13, 42:17, 42:19, 70:2, 76:22, 76:23, 81:19, 81:20, 81:21, 81:23, 81:24, 82:4, 82:13, 82:15, 92:15, 94:22, 174:14, 174:22, 176:7, 176:16, 178:5, 190:20, 198:9, 198:14, 198:17, 217:18, 217:22, 218:1, 219:2, 238:19, 238:25</p> <p>sheriff [33] - 17:24, 21:1, 22:5, 24:3, 24:7, 24:11, 42:11, 77:11, 82:10, 82:11, 82:21, 82:22, 82:24, 93:4, 95:1, 163:9, 174:24, 175:14, 175:21, 183:10, 183:12, 183:15, 183:19, 183:24, 185:7, 186:15, 186:19, 190:17, 190:23, 238:14, 238:21, 254:9, 254:11</p> <p>sheriff's [10] - 22:9, 24:3, 24:6, 24:10, 77:6, 84:4, 186:5, 218:24, 219:6, 270:12</p> <p>shift [1] - 236:13</p> <p>shining [2] - 137:10, 152:17</p> <p>shirt [3] - 146:1, 151:16, 200:24</p> <p>shook [1] - 16:25</p> <p>shooting [1] - 60:17</p> <p>shop [1] - 137:5</p> <p>short [14] - 18:1, 36:3, 36:10, 49:19, 77:21, 78:10, 101:23, 180:18, 188:21, 208:24, 232:17, 242:2, 245:13, 288:23</p> <p>shortcuts [1] - 83:1</p> <p>shorthand [2] - 298:9</p> <p>shortly [7] - 79:24, 82:14, 121:8, 121:12, 122:19, 188:1, 261:12</p> <p>shotgun [2] - 60:16,</p>	<p>60:17</p> <p>shoulder [41] - 14:13, 16:7, 16:11, 16:19, 21:14, 22:24, 45:17, 58:10, 62:3, 62:5, 62:7, 64:1, 64:2, 64:10, 66:12, 69:5, 70:7, 70:9, 70:19, 71:24, 87:17, 88:2, 88:10, 92:21, 93:6, 133:24, 141:18, 144:14, 152:8, 160:11, 165:3, 191:12, 191:14, 191:19, 200:1, 210:15, 216:1, 216:9, 216:12, 237:11, 254:3</p> <p>shout [1] - 295:11</p> <p>shout-out [1] - 295:11</p> <p>show [30] - 19:24, 27:18, 47:18, 54:23, 55:18, 58:15, 61:21, 83:13, 84:17, 85:13, 87:5, 87:8, 89:11, 89:23, 89:25, 90:21, 100:20, 110:13, 110:21, 112:3, 114:1, 114:23, 115:9, 115:17, 124:11, 129:13, 129:15, 146:10, 152:1, 255:21</p> <p>showed [10] - 16:15, 76:2, 76:5, 76:7, 85:23, 86:6, 91:17, 91:18, 113:1, 213:4</p> <p>showing [12] - 66:4, 98:9, 100:10, 100:16, 100:21, 110:5, 111:17, 113:5, 146:17, 149:16, 154:13, 184:17</p> <p>shown [7] - 14:21, 21:18, 98:9, 98:10, 181:20, 182:4, 275:22</p> <p>shows [6] - 15:25, 16:3, 18:22, 54:22, 139:8, 212:24</p> <p>sic [8] - 13:2, 28:6, 41:16, 100:12, 221:9, 254:14, 281:3, 294:6</p> <p>side [44] - 11:12, 14:18, 15:15, 16:9, 17:1, 18:5, 18:20, 21:5, 23:5, 23:7, 52:21, 53:1, 53:13,</p>	<p>54:16, 54:18, 54:22, 35 54:24, 55:11, 55:13, 56:1, 58:6, 64:8, 70:18, 79:5, 79:6, 81:14, 88:8, 91:12, 105:12, 158:8, 160:2, 160:16, 162:19, 164:7, 164:9, 164:12, 175:24, 200:7, 208:20, 210:11, 210:12, 224:14, 243:11, 274:12</p> <p>sides [3] - 81:2, 81:3, 144:15</p> <p>sign [26] - 13:21, 13:22, 26:14, 59:2, 81:6, 134:8, 134:10, 134:14, 134:15, 134:24, 135:18, 135:19, 136:6, 136:9, 136:14, 136:15, 137:3, 137:7, 137:8, 137:18, 137:22, 153:7, 210:9, 219:17</p> <p>signal [1] - 263:17</p> <p>significance [2] - 39:9, 235:18</p> <p>significant [5] - 27:19, 57:9, 204:17, 208:3, 232:2</p> <p>significantly [2] - 84:22, 186:12</p> <p>signs [4] - 16:16, 81:8, 210:7, 210:9</p> <p>silent [4] - 10:16, 10:21, 11:9, 28:3</p> <p>similar [4] - 100:3, 223:9, 251:7, 275:2</p> <p>simple [1] - 215:21</p> <p>simply [14] - 25:14, 29:7, 120:23, 125:9, 152:20, 212:13, 215:19, 216:20, 221:4, 225:8, 227:13, 239:4, 264:15, 275:7</p> <p>sincerest [1] - 256:5</p> <p>single [8] - 31:19, 88:18, 166:6, 166:7, 211:9, 211:14, 228:21, 245:2</p> <p>Sioux [2] - 96:23, 214:4</p> <p>sit [3] - 79:18, 244:16, 276:10</p> <p>site [2] - 53:14, 57:16</p> <p>SITTING [1] - 1:3</p> <p>sitting [3] - 8:11,</p>
---	---	--	--	--

<p>211:20, 296:4 situated [1] - 63:5 situation [14] - 32:10, 33:16, 33:19, 38:11, 40:5, 56:8, 85:4, 155:19, 179:24, 206:14, 207:25, 221:24, 223:13, 232:1 situational [1] - 215:13 six [9] - 21:8, 21:17, 84:10, 116:5, 140:14, 141:3, 149:18, 207:13, 257:3 six-minute [1] - 116:5 SIXTH [1] - 1:2 skid [2] - 67:4, 90:17 skill [1] - 47:22 skip [1] - 174:23 skipping [1] - 216:23 sky [1] - 146:18 slam [4] - 154:4, 180:18, 181:15, 187:13 slammed [2] - 184:11, 184:22 slamming [3] - 157:15, 157:18, 181:8 slid [1] - 21:25 sliding [1] - 181:5 slight [2] - 70:24, 70:25 slightly [3] - 141:15, 205:1, 236:13 slope [1] - 178:2 sloped [1] - 239:3 slow [6] - 15:24, 16:6, 19:2, 211:2, 211:3, 211:21 slowed [1] - 19:9 slower [1] - 181:18 slowing [3] - 13:19, 157:3, 157:17 slowly [2] - 60:5, 154:8 slows [2] - 18:25, 157:6 small [5] - 13:19, 42:17, 92:20, 156:18, 276:2 smaller [3] - 71:18, 148:2, 168:4 smartphone [1] - 112:2 smash [1] - 243:16 smashed [1] - 20:24 Smith [6] - 6:9,</p>	<p>268:16, 279:6, 283:11, 287:14, 292:15 SMITH [6] - 6:10, 268:17, 279:7, 283:12, 287:15, 292:16 snippets [3] - 207:14, 208:11, 216:23 so.. [2] - 185:25, 206:17 social [1] - 112:12 society [1] - 39:19 software [1] - 105:17 solemn [2] - 10:13, 38:12 someone [10] - 14:6, 47:6, 47:8, 117:25, 128:18, 159:10, 240:5, 241:17, 259:7, 272:8 something's [1] - 112:20 sometime [1] - 199:22 sometimes [7] - 35:2, 58:12, 113:1, 133:8, 154:3, 172:20, 172:21 somewhat [5] - 81:13, 97:6, 100:5, 124:14, 139:8 somewhere [5] - 68:21, 138:18, 243:1, 243:3, 294:10 son [1] - 33:4 son's [1] - 223:19 soon [5] - 66:6, 80:21, 109:19, 143:13, 144:22 sordid [1] - 246:8 sorry [15] - 51:5, 114:3, 115:24, 134:22, 136:11, 160:3, 175:9, 176:13, 181:13, 186:9, 194:5, 201:12, 218:5, 230:25, 296:5 sort [8] - 59:5, 70:15, 89:22, 92:8, 156:7, 167:18, 219:20, 253:2 sorts [1] - 85:15 sound [1] - 219:20 sounded [1] - 231:18 source [1] - 188:14 south [6] - 11:12, 19:13, 23:5, 23:7, 58:5, 62:4 SOUTH [2] - 1:1,</p>	<p>298:1 South [89] - 1:25, 3:2, 3:4, 3:8, 8:9, 13:2, 13:4, 15:1, 27:8, 27:11, 28:13, 28:14, 31:16, 33:18, 33:23, 34:8, 35:14, 35:15, 35:16, 35:20, 38:2, 41:2, 41:6, 41:13, 49:23, 50:2, 50:11, 50:17, 50:21, 50:25, 51:12, 71:5, 74:5, 74:6, 74:13, 74:14, 74:20, 74:21, 76:11, 87:15, 94:5, 101:1, 103:2, 103:3, 103:7, 119:25, 120:7, 120:12, 120:13, 120:15, 120:18, 123:16, 125:6, 132:3, 142:11, 149:23, 174:10, 182:8, 182:9, 182:12, 182:13, 212:1, 213:14, 218:19, 224:18, 227:3, 227:6, 229:23, 230:22, 231:14, 234:5, 235:4, 243:1, 243:9, 244:7, 245:15, 248:11, 265:24, 265:25, 269:13, 271:24, 272:16, 274:22, 280:4, 284:9, 288:12, 295:2, 298:7, 298:13 Sovell [3] - 41:4, 44:14, 181:23 space [2] - 108:21, 121:17 spatter [1] - 72:5 speaking [4] - 128:22, 170:14, 224:9, 239:22 SPECIAL [1] - 1:2 Special [66] - 2:8, 2:11, 2:13, 2:15, 44:13, 73:3, 73:9, 75:11, 75:24, 91:10, 94:17, 96:5, 102:3, 102:9, 104:18, 108:4, 108:18, 108:21, 108:24, 113:12, 113:15, 119:16, 119:22, 125:22, 127:2, 127:22, 130:6, 131:9, 131:16, 131:18, 131:22,</p>	<p>132:9, 132:13, 135:8, 135:22, 135:25, 137:25, 139:6, 140:21, 140:24, 142:9, 143:20, 145:16, 146:12, 148:11, 148:17, 156:20, 159:9, 161:14, 166:3, 168:23, 170:4, 185:8, 186:4, 188:3, 203:11, 203:15, 203:19, 204:18, 212:22, 213:21, 214:20, 217:25, 218:1, 233:16 special [16] - 29:5, 41:3, 41:9, 45:18, 47:15, 48:22, 49:2, 52:7, 75:5, 108:17, 119:25, 125:24, 211:6, 270:10, 289:15, 295:11 specialization [1] - 104:3 specializing [2] - 102:17, 102:23 specialties [1] - 104:14 specific [12] - 30:19, 80:9, 124:1, 133:2, 133:18, 143:25, 159:25, 189:12, 204:12, 204:14, 205:6, 226:6 specifically [40] - 20:9, 49:11, 52:25, 58:1, 59:11, 62:4, 64:13, 65:4, 72:11, 74:25, 81:18, 85:19, 89:8, 90:25, 95:7, 98:1, 99:23, 104:2, 124:4, 126:1, 126:7, 132:17, 134:6, 148:14, 149:12, 151:12, 151:17, 151:23, 167:21, 169:3, 170:14, 186:22, 189:21, 190:19, 190:22, 205:19, 256:17, 257:13, 258:2, 261:14 specificity [4] - 80:7, 81:9, 81:11, 82:11 specifics [2] - 83:1, 132:19 specified [1] - 259:21 specify [2] - 189:11,</p>	<p>259:23 specter [1] - 229:9 speculating [2] - 180:1, 180:4 speculation [2] - 129:4, 273:8 speed [26] - 15:25, 16:3, 16:5, 16:16, 52:22, 53:5, 53:8, 54:14, 56:21, 67:22, 68:5, 68:14, 71:4, 83:6, 83:8, 83:12, 83:14, 113:3, 113:6, 114:8, 114:12, 157:20, 180:9, 212:21, 213:5, 243:17 speeding [2] - 224:24, 263:11 speedometer [8] - 13:24, 16:13, 68:11, 68:16, 68:20, 113:7, 212:24, 213:3 speedometers [1] - 153:19 speeds [12] - 52:5, 83:7, 94:11, 112:24, 115:1, 156:21, 211:12, 212:1, 243:10, 243:17, 243:25, 245:15 spend [1] - 25:18 spending [2] - 30:13, 31:9 spent [6] - 30:11, 45:6, 73:18, 120:7, 231:17, 251:19 spin [2] - 187:13, 187:19 Spink [2] - 79:23, 110:16 spiritedly [1] - 46:16 spoken [1] - 96:22 spot [2] - 136:10, 136:13 spottier [1] - 140:7 sprayed [1] - 90:23 spread [1] - 60:20 squad [1] - 51:7 SS [1] - 298:2 staff [19] - 11:13, 22:13, 22:20, 23:13, 24:1, 24:8, 27:2, 51:9, 99:24, 101:5, 101:7, 225:17, 250:15, 250:19, 270:17, 270:20, 293:18, 294:5, 295:8 staffs [1] - 47:5 stage [3] - 43:9, 212:9,</p>
---	---	---	---	--

<p>212:10</p> <p>Stalzer [6] - 6:11, 268:18, 279:8, 283:13, 287:16, 292:17</p> <p>STALZER [6] - 6:12, 268:19, 279:9, 283:14, 287:17, 292:18</p> <p>stamp [1] - 230:6</p> <p>stamped [3] - 185:16, 185:19, 185:21</p> <p>stand [7] - 8:2, 54:9, 189:4, 194:16, 239:20, 285:1, 296:11</p> <p>standard [37] - 29:4, 34:6, 38:9, 39:19, 39:20, 39:22, 39:24, 40:3, 40:17, 48:18, 49:12, 210:5, 220:12, 220:17, 220:18, 220:20, 226:10, 231:8, 232:21, 232:24, 233:2, 234:1, 234:2, 234:3, 234:20, 234:22, 235:2, 235:4, 235:20, 238:8, 260:17, 262:6, 262:18, 274:5, 274:18</p> <p>standards [15] - 29:13, 29:16, 29:17, 29:19, 40:7, 219:25, 226:2, 230:11, 230:15, 231:6, 231:11, 233:15, 234:16, 245:22, 260:15</p> <p>standing [5] - 60:3, 137:20, 162:23, 162:24, 166:24</p> <p>start [11] - 31:9, 34:17, 78:16, 103:22, 109:5, 151:6, 162:6, 166:15, 185:5, 186:4, 189:6</p> <p>started [16] - 8:6, 51:2, 86:13, 102:13, 102:17, 104:25, 108:15, 109:10, 110:24, 123:25, 147:16, 158:3, 216:24, 242:15, 249:9, 270:9</p> <p>starting [5] - 51:13, 71:17, 103:22, 208:19, 280:10</p> <p>startled [1] - 17:9</p>	<p>starts [1] - 60:5</p> <p>STATE [2] - 1:1, 298:1</p> <p>state [68] - 11:5, 28:15, 28:22, 29:14, 29:20, 31:18, 32:3, 32:5, 32:24, 33:20, 33:21, 36:24, 41:5, 41:13, 50:20, 50:25, 71:11, 73:8, 73:15, 102:8, 105:25, 171:7, 173:21, 173:23, 174:10, 180:1, 180:12, 181:23, 182:7, 189:4, 190:10, 195:21, 196:10, 197:7, 198:25, 206:4, 209:6, 212:17, 218:19, 220:4, 220:9, 223:5, 225:6, 225:19, 226:14, 230:5, 230:11, 230:15, 233:1, 240:6, 241:20, 244:24, 246:18, 255:22, 259:9, 263:19, 265:6, 265:10, 265:14, 265:24, 272:1, 272:6, 275:11, 280:22, 284:10, 284:15, 285:8, 288:13</p> <p>State [18] - 3:2, 3:7, 27:8, 27:11, 33:2, 48:13, 102:10, 123:16, 125:6, 131:20, 131:24, 137:5, 269:13, 280:13, 281:5, 284:8, 288:11, 298:7</p> <p>State's [4] - 29:8, 29:10, 125:12, 244:9</p> <p>statement [26] - 10:1, 10:4, 12:1, 18:11, 20:23, 23:21, 30:24, 38:20, 70:4, 79:19, 80:4, 84:21, 95:4, 97:16, 142:17, 152:10, 160:21, 161:7, 164:21, 165:13, 182:6, 184:2, 201:11, 220:1, 228:9, 266:2</p> <p>statements [22] - 20:7, 20:12, 20:18, 25:19, 25:23, 69:13, 80:2, 84:18, 84:22, 111:24, 126:22, 135:16, 158:14,</p>	<p>161:13, 166:12, 166:24, 167:1, 185:7, 195:16, 244:13, 244:20, 265:11</p> <p>STATEMENTS [2] - 2:2, 2:20</p> <p>States [8] - 31:20, 33:9, 64:25, 234:23, 234:24, 252:4, 252:15, 252:21</p> <p>states [10] - 31:23, 31:24, 32:1, 34:9, 40:19, 95:1, 174:24, 175:14, 238:20, 238:22</p> <p>statewide [1] - 235:6</p> <p>stating [2] - 74:20, 194:19</p> <p>station [6] - 59:6, 62:1, 80:24, 81:2, 81:3, 164:12</p> <p>stationed [1] - 75:18</p> <p>stationery [2] - 250:21, 270:23</p> <p>stations [1] - 81:2</p> <p>statute [4] - 28:7, 29:8, 29:11, 29:17</p> <p>statutory [1] - 189:11</p> <p>stay [4] - 72:8, 183:22, 195:4, 228:16</p> <p>stayed [2] - 163:10, 255:13</p> <p>stealing [3] - 223:21, 253:13, 253:16</p> <p>steals [3] - 223:12</p> <p>steel [1] - 223:11</p> <p>steering [1] - 70:16</p> <p>Steinhauer [6] - 6:13, 268:20, 279:10, 283:15, 287:18, 292:19</p> <p>STEINHAUER [6] - 6:14, 268:21, 279:11, 283:16, 287:19, 292:20</p> <p>step [4] - 46:7, 101:19, 119:12, 131:5</p> <p>stepping [1] - 157:17</p> <p>steps [2] - 110:8, 152:16</p> <p>steroids [1] - 210:10</p> <p>stick [2] - 142:7, 223:25</p> <p>still [28] - 20:10, 23:8, 27:5, 46:6, 71:23, 76:4, 92:24, 92:25, 93:12, 94:3, 98:3, 109:12, 116:23, 138:17, 166:6,</p>	<p>168:21, 186:24, 190:2, 190:14, 192:17, 197:8, 204:22, 219:19, 228:15, 239:25, 247:11, 259:9, 276:3</p> <p>stipulating [1] - 252:18</p> <p>stood [4] - 79:17, 107:3, 146:15, 210:17</p> <p>stop [30] - 19:4, 19:9, 22:23, 40:23, 49:2, 67:5, 67:13, 80:24, 81:1, 150:14, 151:7, 153:23, 154:1, 154:3, 154:8, 154:18, 156:12, 157:24, 157:25, 158:8, 158:9, 158:10, 160:23, 180:3, 180:18, 180:25, 181:18, 224:19, 247:17, 255:8</p> <p>stopped [7] - 23:3, 67:17, 92:7, 116:18, 138:16, 158:1, 247:19</p> <p>stopping [4] - 15:10, 67:7, 67:19, 151:2</p> <p>stops [5] - 19:19, 23:6, 158:15, 181:16, 224:15</p> <p>story [5] - 26:22, 133:1, 214:11, 216:24, 216:25</p> <p>straight [4] - 52:3, 52:7, 72:1, 77:19</p> <p>strangers [1] - 252:9</p> <p>strength [1] - 221:9</p> <p>stress [1] - 204:6</p> <p>stretch [2] - 141:8, 233:8</p> <p>striations [1] - 62:11</p> <p>strikes [1] - 197:20</p> <p>strikingly [1] - 223:9</p> <p>strip [7] - 14:2, 65:7, 210:10, 248:15, 248:16, 248:17, 260:24</p> <p>strips [9] - 59:7, 62:8, 62:12, 62:14, 63:9, 64:8, 243:12, 243:15, 264:4</p> <p>strongly [2] - 45:14, 96:25</p> <p>struck [26] - 12:6, 14:8, 14:23, 16:19, 16:24, 42:7, 52:16,</p>	<p>53:9, 54:19, 74:6, 76:12, 76:14, 80:3, 87:12, 87:23, 91:14, 92:1, 96:18, 97:2, 103:3, 180:2, 247:13, 247:17, 255:12, 255:14, 273:17</p> <p>structure [2] - 39:5, 235:14</p> <p>structuring [1] - 35:9</p> <p>students [1] - 231:10</p> <p>studies [2] - 181:19</p> <p>stuff [2] - 104:10, 213:10</p> <p>sub [1] - 9:8</p> <p>Sub [6] - 9:10, 9:14, 9:18, 9:24, 27:22, 28:6</p> <p>subcommittee [3] - 132:6, 210:4, 211:6</p> <p>subject [7] - 12:25, 30:21, 86:19, 128:8, 169:15, 202:10, 251:12</p> <p>subjective [1] - 97:6</p> <p>submission [1] - 233:13</p> <p>submit [20] - 9:7, 9:10, 9:16, 37:15, 41:17, 42:21, 45:22, 48:20, 198:4, 216:10, 219:15, 221:12, 223:8, 227:25, 228:6, 236:23, 241:12, 258:5, 258:23, 259:15</p> <p>submitted [7] - 9:15, 9:23, 19:18, 44:16, 65:1, 185:20, 199:4</p> <p>submitting [1] - 188:25</p> <p>subparts [1] - 40:21</p> <p>subpoenas [2] - 9:19, 9:22</p> <p>Subsection [1] - 28:19</p> <p>subsequent [1] - 179:9</p> <p>subsequently [3] - 22:8, 108:11, 143:9</p> <p>subsets [1] - 222:7</p> <p>substitute [1] - 251:6</p> <p>subvert [2] - 39:5, 235:14</p> <p>sudden [1] - 80:1</p> <p>sue [1] - 294:9</p> <p>suffer [1] - 255:11</p> <p>suffered [2] - 167:7, 204:9</p> <p>sufficient [1] - 252:15</p>
--	---	--	--	--

<p>suggest ^[1] - 161:1</p> <p>suggested ^[5] - 150:12, 222:23, 223:19, 227:8, 232:20</p> <p>suggesting ^[1] - 168:11</p> <p>suggestion ^[2] - 142:20, 167:6</p> <p>suggests ^[1] - 153:22</p> <p>suicide ^[1] - 249:25</p> <p>SULLY ^[1] - 298:3</p> <p>summer ^[1] - 243:4</p> <p>summoning ^[1] - 50:3</p> <p>summonsed ^[1] - 123:8</p> <p>Sunday ^[2] - 22:17, 74:18</p> <p>sunlight ^[1] - 200:8</p> <p>sunny ^[1] - 199:21</p> <p>sunrise ^[3] - 199:17, 199:19, 200:5</p> <p>superimpose ^[2] - 154:23, 155:7</p> <p>superimposed ^[1] - 155:11</p> <p>supervise ^[1] - 149:4</p> <p>supervised ^[1] - 149:3</p> <p>supervising ^[1] - 168:25</p> <p>supervisor ^[10] - 53:14, 75:1, 75:10, 120:15, 132:1, 147:7, 147:11, 147:21, 149:5, 171:3</p> <p>Supervisory ^[8] - 2:15, 96:5, 104:18, 108:4, 108:18, 108:21, 131:9, 131:22</p> <p>supervisory ^[8] - 24:25, 75:5, 75:11, 75:23, 91:10, 119:24, 131:18, 168:24</p> <p>support ^[6] - 44:9, 127:18, 127:19, 195:7, 249:25, 250:2</p> <p>supported ^[1] - 106:6</p> <p>supports ^[2] - 48:9, 180:15</p> <p>suppose ^[5] - 130:9, 183:6, 216:8, 217:2, 228:2</p> <p>supposed ^[7] - 47:23, 90:21, 125:1, 125:3, 173:10, 210:14, 243:8</p> <p>supposition ^[1] - 179:15</p>	<p>Supreme ^[12] - 37:4, 38:2, 48:13, 169:5, 233:20, 233:21, 234:5, 234:19, 234:24, 235:4, 237:3, 272:16</p> <p>surely ^[1] - 253:8</p> <p>surface ^[1] - 60:3</p> <p>surprised ^[2] - 79:17, 98:22</p> <p>surprisingly ^[1] - 61:11</p> <p>surrounding ^[3] - 27:15, 145:21, 259:24</p> <p>surveillance ^[3] - 24:19, 108:23, 109:4</p> <p>suspect ^[9] - 89:7, 130:10, 130:12, 130:18, 130:25, 132:22, 133:9, 205:25, 239:11</p> <p>suspects ^[1] - 97:25</p> <p>sustain ^[14] - 30:14, 41:18, 52:23, 189:13, 189:15, 242:17, 248:4, 259:17, 263:20, 264:7, 266:3, 266:7, 269:17, 276:21</p> <p>sustained ^[5] - 30:21, 209:17, 232:1, 258:6, 273:25</p> <p>sustaining ^[2] - 263:23, 276:15</p> <p>Sutton ^[8] - 6:15, 197:12, 198:3, 268:22, 279:12, 283:17, 287:20, 292:21</p> <p>SUTTON ^[13] - 6:16, 197:14, 198:2, 198:5, 198:7, 198:21, 200:22, 201:12, 268:23, 279:13, 283:18, 287:21, 292:22</p> <p>swerve ^[1] - 261:1</p> <p>switched ^[1] - 124:15</p> <p>sworn ^[2] - 10:8, 230:19</p> <p>Symens ^[6] - 6:17, 268:24, 279:14, 283:19, 287:22, 292:23</p> <p>SYMENS ^[6] - 6:18, 268:25, 279:15, 283:20, 287:23, 292:24</p> <p>synonymous ^[1] -</p>	<p>237:8</p> <p>system ^[15] - 35:1, 35:10, 35:20, 36:17, 39:3, 39:10, 67:21, 109:21, 229:13, 229:14, 231:14, 232:7, 235:12, 235:18</p> <p>systems ^[2] - 35:3, 66:22</p>	<p>153:23, 194:16, 240:13, 275:19</p> <p>terrible ^[1] - 247:22</p> <p>test ^[17] - 88:24, 89:3, 89:11, 89:23, 89:24, 97:11, 98:25, 153:4, 162:15, 162:16, 163:22, 164:2, 218:20, 218:21, 218:22, 218:23, 225:18</p> <p>tested ^[1] - 90:19</p> <p>testified ^[10] - 116:14, 118:25, 132:5, 170:13, 170:19, 172:2, 179:19, 197:22, 201:5, 274:7</p> <p>testify ^[7] - 10:9, 125:9, 172:4, 172:15, 190:21, 197:20, 226:3</p> <p>testifying ^[4] - 170:9, 171:20, 172:14, 173:1</p> <p>testimony ^[11] - 10:2, 125:23, 126:1, 126:4, 126:11, 143:13, 171:24, 190:19, 200:23, 208:22, 249:14</p> <p>testing ^[4] - 68:9, 68:12, 90:17</p> <p>tests ^[2] - 68:15, 98:8</p> <p>Texas ^[1] - 73:25</p> <p>text ^[8] - 22:12, 74:10, 85:15, 103:5, 110:2, 116:25, 228:24</p> <p>texted ^[1] - 221:16</p> <p>texting ^[2] - 110:6, 117:3</p> <p>thankfully ^[1] - 233:14</p> <p>THE ^[6] - 1:1, 1:2, 170:5, 175:8</p> <p>themselves ^[1] - 265:20</p> <p>them's ^[1] - 105:11</p> <p>themselves ^[2] - 198:12, 206:10</p> <p>thereafter ^[7] - 13:13, 74:19, 78:11, 91:6, 109:2, 116:23, 122:19</p> <p>therefore ^[3] - 142:6, 201:3, 276:14</p> <p>Theresa ^[2] - 11:21, 11:23</p> <p>they've ^[6] - 25:9, 169:1, 229:10, 243:14, 264:23, 272:8</p>	<p>thick ^[1] - 67:3</p> <p>thinking ^[7] - 18:3, 161:20, 161:23, 180:16, 243:23, 253:25, 258:15</p> <p>thinks ^[3] - 36:16, 47:21, 214:4</p> <p>Third ^[1] - 4:2</p> <p>third ^[7] - 36:21, 107:5, 110:6, 191:7, 215:1, 227:24, 272:21</p> <p>third-party ^[2] - 107:5, 110:6</p> <p>thirds ^[11] - 8:15, 65:11, 242:9, 266:12, 269:12, 277:1, 280:2, 281:7, 284:7, 285:12, 288:10</p> <p>thorough ^[3] - 44:17, 53:16, 250:8</p> <p>thoughtful ^[1] - 295:1</p> <p>thoughts ^[3] - 19:9, 180:21, 183:14</p> <p>thousand ^[1] - 244:16</p> <p>thousands ^[2] - 127:6, 243:9</p> <p>three ^[22] - 17:14, 25:18, 34:10, 40:21, 43:18, 57:20, 57:24, 58:2, 61:13, 64:17, 71:16, 128:5, 139:21, 140:17, 163:17, 173:15, 178:6, 178:7, 187:7, 222:14, 259:23, 260:20</p> <p>threw ^[1] - 60:7</p> <p>throughout ^[11] - 19:22, 32:18, 75:8, 77:15, 86:20, 87:9, 88:5, 116:16, 171:15, 255:5, 265:13</p> <p>throw ^[2] - 60:4, 165:15</p> <p>throwing ^[1] - 250:1</p> <p>thrown ^[1] - 17:6</p> <p>thunderbolt ^[2] - 14:3, 16:25</p> <p>thunderclap ^[1] - 252:12</p> <p>tie ^[1] - 288:19</p> <p>Tim ^[4] - 22:14, 22:19, 219:7, 225:6</p> <p>timekeepers ^[1] - 10:5</p> <p>timing ^[4] - 44:6, 113:24, 114:13, 156:24</p>
---	--	---	--	---

<p>tire [6] - 67:5, 67:6, 67:7, 70:14, 243:4, 261:2</p> <p>tires [15] - 16:18, 63:6, 63:8, 65:7, 210:12, 237:17, 243:11, 243:13, 245:21, 260:12, 260:18, 260:23, 261:7, 261:22, 261:25</p> <p>title [8] - 19:16, 19:21, 19:22, 26:23, 30:6, 41:24, 128:12, 196:4</p> <p>Tobin [6] - 6:19, 269:1, 279:16, 283:21, 287:24, 292:25</p> <p>TOBIN [6] - 6:20, 269:2, 279:17, 283:22, 287:25, 293:1</p> <p>today [46] - 4:4, 11:6, 12:22, 14:11, 19:18, 19:24, 25:15, 31:10, 46:15, 118:25, 121:9, 132:18, 170:10, 171:20, 172:1, 172:14, 173:1, 173:12, 173:16, 174:5, 179:14, 179:18, 204:21, 208:22, 215:12, 229:3, 230:19, 233:14, 234:12, 237:14, 238:5, 239:11, 240:12, 249:14, 250:5, 256:7, 259:16, 263:2, 263:13, 263:14, 263:15, 265:1, 293:20, 293:23, 293:24, 295:25</p> <p>today's [2] - 113:20, 289:14</p> <p>together [6] - 51:24, 57:18, 61:10, 167:2, 180:9, 233:16</p> <p>tomahto [1] - 184:23</p> <p>tomato [1] - 184:23</p> <p>tomato-tomahto [1] - 184:23</p> <p>tomorrow [2] - 229:4, 296:9</p> <p>tone [2] - 19:17, 166:23</p> <p>tonight [1] - 288:19</p> <p>took [27] - 15:24, 19:1, 36:6, 51:5, 51:8, 81:24, 82:20, 82:23, 102:21, 106:17, 110:9, 134:25, 153:25, 154:22, 156:12, 175:10, 180:2, 180:24, 219:9, 220:5, 244:25, 247:3, 247:16, 250:23, 265:3, 294:18, 298:9</p> <p>tool [4] - 47:2, 47:9, 88:18, 106:6</p> <p>tools [4] - 53:15, 105:9, 106:13, 106:18</p> <p>top [7] - 29:9, 52:20, 53:2, 55:11, 62:21, 118:22, 274:19</p> <p>topic [3] - 123:9, 213:20, 264:24</p> <p>topics [2] - 80:8, 80:9</p> <p>Tornow [1] - 28:9</p> <p>total [6] - 59:6, 62:1, 67:18, 140:18, 143:3, 180:10</p> <p>totality [1] - 179:23</p> <p>totally [1] - 201:1</p> <p>touch [2] - 77:16, 243:20</p> <p>touched [1] - 165:21</p> <p>tourists [1] - 243:4</p> <p>tow [1] - 197:17</p> <p>toward [1] - 134:24</p> <p>towards [8] - 58:23, 60:13, 62:2, 66:11, 79:25, 90:24, 112:10, 117:4</p> <p>towed [5] - 77:5, 78:1, 81:23, 82:18, 154:18</p> <p>town [6] - 13:19, 13:20, 14:10, 79:24, 134:8, 212:4</p> <p>track [1] - 112:8</p> <p>tracked [1] - 24:20</p> <p>tracking [1] - 116:17</p> <p>TRACY [29] - 1:18, 12:4, 20:1, 73:3, 73:7, 83:16, 84:20, 87:8, 90:6, 90:9, 94:17, 99:17, 99:19, 100:8, 100:13, 100:19, 101:17, 102:2, 102:7, 114:19, 117:7, 119:10, 189:16, 192:11, 192:13, 195:15, 197:3, 202:17, 207:17</p> <p>Tracy [5] - 2:8, 2:9, 2:11, 12:3, 102:1</p> <p>traffic [15] - 31:12, 71:7, 155:14, 165:6, 173:13, 199:24, 200:3, 210:2, 210:15, 237:2, 237:13, 245:23, 248:12, 254:15</p> <p>tragedies [1] - 265:19</p> <p>tragedy [9] - 12:6, 12:18, 29:24, 42:21, 167:7, 167:8, 241:13, 255:15, 256:6</p> <p>tragic [4] - 18:13, 38:11, 45:24, 236:10</p> <p>training [3] - 51:11, 120:3, 226:2</p> <p>trainings [1] - 29:13</p> <p>trajectory [1] - 260:21</p> <p>Transcript [1] - 3:1</p> <p>transcript [5] - 7:18, 99:10, 99:12, 148:15, 184:21</p> <p>TRANSCRIPT [1] - 1:12</p> <p>transcription [1] - 298:11</p> <p>transcripts [1] - 90:7</p> <p>transferring [1] - 126:23</p> <p>transition [2] - 62:17, 62:22</p> <p>transitioned [2] - 70:19, 218:4</p> <p>translate [1] - 60:14</p> <p>translation [1] - 169:7</p> <p>transmission [1] - 27:24</p> <p>transpired [3] - 17:1, 17:18, 30:2</p> <p>transpiring [1] - 81:9</p> <p>trash [1] - 223:12</p> <p>trauma [5] - 15:11, 91:9, 204:9, 204:14, 206:10</p> <p>traumatic [9] - 15:9, 42:22, 45:24, 56:23, 146:3, 204:7, 207:1, 207:2, 207:9</p> <p>travel [22] - 19:19, 40:22, 45:12, 58:3, 58:5, 58:8, 58:24, 72:18, 74:12, 74:20, 85:11, 85:19, 110:18, 110:25, 112:8, 113:22, 156:9, 174:9, 210:2, 210:22, 214:15, 215:15</p> <p>traveled [10] - 15:23, 22:18, 22:22, 71:11, 74:23, 75:22, 79:24, 81:1, 112:24, 134:4</p> <p>traveling [21] - 14:25, 16:4, 58:7, 59:1, 60:1, 61:14, 68:18, 68:19, 74:21, 79:23, 79:25, 85:17, 91:17, 91:18, 111:9, 111:11, 113:1, 113:5, 113:9, 156:22, 207:5</p> <p>travels [2] - 22:21, 83:6</p> <p>treason [3] - 237:10, 252:20, 252:22</p> <p>treated [6] - 218:7, 219:22, 220:24, 222:4, 251:1, 293:20</p> <p>treatment [1] - 270:10</p> <p>trend [9] - 59:12, 59:23, 59:25, 61:5, 61:12, 71:15, 72:9, 72:12, 72:17</p> <p>trial [24] - 8:9, 8:17, 9:6, 9:11, 9:14, 10:7, 10:12, 10:20, 10:22, 11:2, 11:9, 11:10, 11:16, 11:18, 114:21, 125:8, 125:9, 188:24, 208:16, 220:8, 225:14, 246:7, 246:24, 252:1</p> <p>trick [1] - 37:10</p> <p>tried [6] - 8:11, 130:21, 161:7, 224:20, 275:6, 296:3</p> <p>trier [2] - 48:16, 241:7</p> <p>trip [5] - 13:4, 13:14, 13:18, 85:24, 111:21</p> <p>tripod [1] - 59:5</p> <p>trivializing [1] - 238:4</p> <p>Trooper [4] - 59:17, 75:25, 217:21, 217:22</p> <p>trooper [8] - 60:14, 62:9, 63:11, 65:14, 69:4, 75:17, 224:14, 224:20</p> <p>troopers [1] - 63:13</p> <p>trouble [1] - 225:3</p> <p>troubled [1] - 253:20</p> <p>troubles [1] - 253:19</p> <p>truck [1] - 197:17</p> <p>true [20] - 17:16, 18:9, 18:12, 45:23, 46:15, 114:12, 141:25, 204:25, 205:17, 207:6, 210:21, 213:2, 215:25, 218:9, 218:10, 218:13, 231:7, 234:17, 250:5, 298:11</p> <p>truly [3] - 223:25, 272:10, 273:19</p> <p>trump [1] - 221:1</p> <p>trunk [1] - 165:15</p> <p>trust [13] - 36:7, 39:16, 49:6, 241:21, 253:4, 253:8, 265:24, 280:13, 281:4, 284:10, 284:14, 285:8, 288:13</p> <p>trusts [2] - 36:18</p> <p>trustworthiness [1] - 28:18</p> <p>trustworthy [1] - 169:22</p> <p>truth [20] - 18:2, 47:18, 48:17, 90:1, 96:12, 96:16, 98:21, 159:16, 159:20, 161:10, 161:24, 180:20, 187:24, 208:6, 228:22, 241:9, 249:22, 249:23, 274:6, 276:7</p> <p>truthful [8] - 89:21, 132:10, 135:10, 144:3, 176:8, 184:5, 205:3, 213:14</p> <p>truthfully [2] - 89:19, 118:14</p> <p>truthfulness [2] - 170:21, 173:9</p> <p>truths [2] - 208:9, 216:14</p> <p>try [10] - 60:14, 73:12, 161:23, 175:9, 251:13, 258:11, 260:20, 261:23, 264:17, 275:1</p> <p>trying [13] - 33:9, 43:13, 59:11, 96:10, 105:20, 105:22, 105:24, 126:24, 151:9, 159:12, 167:13, 181:1, 227:20</p> <p>Tulane [1] - 31:5</p> <p>tunnel [1] - 17:11</p> <p>turn [7] - 98:6, 107:9, 107:22, 127:14, 169:10, 169:11, 236:2</p> <p>turned [19] - 21:6, 21:15, 27:6, 43:8, 43:16, 43:21, 44:8, 92:25, 103:23,</p>	39
--	----

<p>104:23, 109:8, 110:5, 128:19, 128:23, 129:22, 150:20, 161:6, 164:12, 173:21</p> <p>Turner [1] - 264:21</p> <p>turning [3] - 27:3, 95:8, 151:3</p> <p>turns [4] - 45:14, 207:3, 219:14, 224:15</p> <p>turpitude [1] - 237:5</p> <p>Twain [1] - 252:10</p> <p>twice [2] - 77:20, 248:17</p> <p>Twins [3] - 17:21, 80:14, 80:15</p> <p>twist [1] - 45:9</p> <p>two [104] - 8:15, 11:14, 15:5, 15:23, 16:1, 17:14, 19:3, 19:12, 20:12, 24:24, 25:2, 25:7, 25:13, 25:14, 31:25, 32:1, 40:12, 43:17, 45:24, 52:9, 64:7, 65:11, 70:18, 73:17, 80:18, 84:14, 86:5, 90:3, 105:9, 114:4, 118:23, 126:15, 134:15, 139:8, 140:6, 142:3, 142:20, 143:1, 143:3, 143:25, 156:22, 157:2, 157:25, 158:17, 158:20, 159:25, 160:4, 162:8, 162:9, 162:23, 162:24, 163:15, 163:16, 163:17, 164:5, 181:23, 183:18, 191:14, 193:3, 193:14, 193:15, 198:4, 200:4, 200:8, 210:21, 211:1, 213:8, 214:19, 216:4, 217:20, 219:13, 227:23, 230:11, 230:15, 233:12, 237:17, 238:16, 240:25, 242:9, 243:13, 251:5, 255:1, 255:18, 257:7, 259:24, 260:2, 261:22, 266:4, 266:12, 269:12, 277:1, 280:2, 280:8, 280:9, 281:7, 284:7, 284:25, 285:1,</p>	<p>285:12, 288:10</p> <p>two-minute [2] - 17:14, 19:12</p> <p>two-page [1] - 114:4</p> <p>two-part [1] - 193:14</p> <p>two-second [1] - 157:25</p> <p>two-thirds [11] - 8:15, 65:11, 242:9, 266:12, 269:12, 277:1, 280:2, 281:7, 284:7, 285:12, 288:10</p> <p>two-vehicle [1] - 52:9</p> <p>Tyler [9] - 27:11, 96:8, 99:21, 99:25, 100:4, 100:11, 101:6, 213:21, 225:20</p> <p>type [9] - 52:23, 56:13, 62:18, 71:7, 71:24, 105:2, 118:6, 118:16, 166:11</p> <p>types [5] - 71:21, 110:1, 110:21, 120:10, 204:10</p> <p>typically [3] - 118:1, 172:17, 182:2</p> <p>typographical [1] - 7:10</p>	<p>285:8, 288:13</p> <p>undercutting [1] - 229:12</p> <p>underestimate [1] - 294:9</p> <p>undermine [2] - 39:6, 235:15</p> <p>underneath [2] - 52:20, 53:2</p> <p>underscores [2] - 28:10, 197:8</p> <p>undertaking [1] - 11:6</p> <p>underwent [1] - 58:11</p> <p>undoing [1] - 38:21</p> <p>undue [2] - 48:23, 48:24</p> <p>unduly [1] - 49:5</p> <p>unearthed [1] - 133:11</p> <p>unequivocal [1] - 18:11</p> <p>unequivocally [1] - 25:4</p> <p>uneventful [1] - 12:8</p> <p>unfit [3] - 229:2, 229:3, 229:4</p> <p>unharmd [1] - 221:20</p> <p>unilluminated [1] - 137:23</p> <p>uninjured [1] - 156:4</p> <p>unique [2] - 97:13, 97:15</p> <p>unit [8] - 102:16, 102:23, 104:13, 105:14, 109:20, 120:17, 120:21, 123:14</p> <p>United [9] - 31:20, 33:9, 64:25, 232:5, 234:23, 234:24, 252:4, 252:15, 252:21</p> <p>universal [1] - 105:15</p> <p>University [2] - 33:5, 73:23</p> <p>unknown [2] - 192:8, 192:24</p> <p>unlawful [1] - 237:16</p> <p>unless [1] - 272:8</p> <p>unlocked [4] - 110:4, 158:16, 158:19, 158:23</p> <p>unnamed [1] - 214:3</p> <p>unquestionable [1] - 37:13</p> <p>unquoted [1] - 214:3</p> <p>unrebutted [1] - 261:25</p> <p>unrefuted [1] - 45:8</p> <p>unsure [2] - 163:11, 163:12</p>	<p>untenable [1] - 276:4</p> <p>untruthful [3] - 132:16, 169:10, 169:14</p> <p>untruthfulness [1] - 166:11</p> <p>untruths [1] - 232:22</p> <p>unusual [6] - 38:12, 159:10, 159:15, 183:21, 198:17, 243:3</p> <p>up [98] - 13:14, 15:14, 17:10, 21:11, 22:21, 23:9, 27:3, 42:14, 42:21, 43:15, 43:20, 44:23, 52:20, 53:25, 54:12, 62:1, 65:9, 65:12, 66:6, 67:6, 72:9, 74:21, 74:22, 77:11, 78:17, 80:13, 80:23, 84:7, 86:19, 89:21, 91:24, 93:9, 93:20, 93:22, 97:23, 98:19, 98:21, 100:9, 104:2, 109:3, 111:1, 113:3, 113:23, 121:25, 135:20, 137:14, 138:2, 139:4, 141:3, 141:13, 143:1, 143:10, 143:13, 146:10, 146:18, 148:2, 152:1, 152:11, 156:14, 156:15, 165:15, 168:23, 175:19, 180:3, 183:6, 186:15, 186:20, 189:4, 189:17, 194:8, 198:19, 202:8, 213:3, 216:7, 218:2, 219:8, 222:24, 225:18, 226:15, 227:21, 238:3, 239:2, 242:14, 245:6, 245:13, 245:25, 248:18, 249:16, 250:3, 250:8, 255:1, 265:16, 269:16, 273:10, 288:19, 294:15, 295:10</p> <p>upcoming [1] - 253:25</p> <p>updates [1] - 10:7</p> <p>uploaded [1] - 44:16</p> <p>urge [2] - 233:12, 266:3</p> <p>usage [9] - 85:14, 85:24, 86:4, 86:19, 110:14, 110:19,</p>	<p>110:21, 110:25, 112:19</p> <p>USCA [1] - 28:6</p> <p>useful [3] - 130:12, 133:9, 169:21</p> <p>user [2] - 107:6, 111:17</p> <p>uses [3] - 19:16, 216:19, 225:3</p> <p>usual [1] - 159:15</p> <p>utilize [3] - 26:23, 108:11, 197:4</p> <p>utilized [1] - 30:8</p> <p>utilizes [1] - 196:4</p> <p>utilizing [3] - </p>
--	---	--	---	---

<p>224:6, 228:11 variance [1] - 62:5 variation [1] - 262:13 variety [1] - 204:24 various [6] - 73:20, 98:7, 142:10, 155:1, 171:8, 171:12 varying [1] - 23:3 vastness [2] - 37:19, 37:20 veered [3] - 13:25, 16:18, 255:17 vehicle [147] - 14:1, 14:11, 15:15, 15:23, 15:24, 16:5, 16:6, 16:9, 16:25, 17:2, 17:23, 21:18, 21:20, 21:22, 21:25, 22:9, 22:19, 22:24, 24:3, 26:10, 45:17, 46:9, 52:1, 52:2, 52:9, 52:14, 52:17, 52:18, 52:20, 52:21, 52:22, 53:3, 53:5, 54:3, 54:13, 54:25, 55:5, 55:7, 55:10, 55:11, 55:19, 55:21, 56:1, 56:2, 56:12, 57:10, 57:13, 57:21, 59:16, 60:1, 60:8, 60:24, 61:6, 63:4, 64:1, 64:5, 64:8, 65:6, 65:19, 65:20, 66:16, 66:20, 66:22, 66:23, 67:2, 67:10, 67:12, 67:17, 67:20, 68:13, 68:14, 68:16, 69:9, 70:6, 70:12, 71:23, 74:7, 74:13, 77:5, 77:6, 77:9, 78:1, 78:4, 78:7, 78:9, 78:21, 79:5, 81:14, 81:15, 81:21, 81:22, 81:25, 82:12, 82:14, 82:17, 82:22, 90:19, 91:25, 94:2, 94:4, 94:10, 104:14, 104:15, 104:17, 104:21, 104:25, 113:6, 117:1, 137:20, 138:16, 138:19, 140:11, 140:19, 141:4, 141:6, 150:14, 151:2, 154:17, 155:4, 155:5, 155:9, 155:11, 155:13, 156:8, 156:22, 157:6, 158:1, 158:15, 180:25,</p>	<p>181:5, 186:23, 191:12, 200:2, 210:11, 210:12, 215:7, 218:24, 243:10, 243:11, 243:19, 244:2, 274:12 vehicle's [2] - 22:12, 57:12 vehicle-pedestrian [2] - 52:9, 52:14 vehicles [3] - 52:5, 71:9, 137:17 vehicular [2] - 231:18, 251:2 velocity [2] - 71:4, 72:5 venture [1] - 148:1 veracity [2] - 138:5, 150:8 verbatim [1] - 17:20 VERDICT [1] - 2:23 verifying [1] - 68:14 Vermillion [1] - 273:19 verse [1] - 227:5 version [4] - 79:19, 105:16, 133:4, 185:19 versus [6] - 74:13, 149:19, 200:7, 200:12, 200:19, 201:19 via [4] - 15:1, 18:22, 103:5, 228:24 viable [2] - 206:15, 206:17 vibrate [1] - 10:17 vicinity [4] - 21:22, 122:15, 142:18, 153:9 victim [7] - 57:2, 66:5, 204:15, 205:23, 205:25, 210:13 victim's [6] - 23:19, 57:3, 83:25, 84:5, 84:24, 144:15 video [2] - 84:17, 109:4 Video [23] - 19:25, 83:15, 84:19, 87:7, 134:21, 135:6, 146:25, 160:7, 160:24, 161:4, 162:7, 164:4, 164:22, 166:2, 167:5, 167:17, 168:9, 216:15, 217:3, 217:5, 217:7, 224:5, 228:10 videos [1] - 106:10</p>	<p>view [10] - 24:22, 47:25, 142:16, 144:5, 144:19, 144:21, 144:25, 220:3, 230:7, 244:23 viewing [1] - 143:6 views [1] - 45:25 vigorously [1] - 245:11 vindicate [1] - 240:23 vindication [1] - 241:15 violate [1] - 28:25 violated [1] - 229:21 violating [1] - 275:16 violation [5] - 39:16, 41:8, 41:12, 44:24, 253:4 violations [1] - 253:7 violence [2] - 232:2, 232:12 virtually [2] - 23:15, 30:4 virtue [2] - 11:5, 237:7 visible [4] - 142:18, 146:6, 152:22, 210:16 visibly [1] - 146:10 vision [1] - 17:12 visual [1] - 156:16 voice [1] - 242:13 voicemail [3] - 77:19, 77:21, 77:22 Volek [30] - 22:4, 42:12, 42:13, 42:15, 42:18, 42:20, 70:2, 76:23, 81:19, 81:20, 81:22, 81:23, 82:4, 82:15, 92:15, 94:22, 174:14, 174:22, 176:7, 176:16, 178:5, 190:20, 198:9, 198:14, 198:17, 217:18, 217:22, 219:2, 238:20, 238:25 Volek's [7] - 22:19, 81:24, 82:14, 93:4, 185:7, 218:1 voluntary [1] - 63:18 volunteer [1] - 20:14 vote [43] - 35:4, 35:23, 38:14, 41:18, 63:19, 225:25, 227:25, 228:19, 229:6, 230:19, 232:7, 234:14, 242:6, 242:9, 242:13, 244:18, 248:21, 258:6, 263:23,</p>	<p>264:7, 266:3, 266:11, 266:12, 269:12, 271:24, 276:15, 276:25, 277:2, 280:2, 280:9, 280:23, 281:6, 281:7, 284:7, 284:24, 285:2, 285:11, 285:12, 288:10, 290:13, 293:11 voted [2] - 35:24, 270:1 voters [11] - 32:14, 32:22, 33:14, 35:21, 35:22, 36:7, 36:8, 36:11, 36:18, 38:22, 232:13 votes [3] - 241:25, 244:16, 280:8 voting [1] - 257:24 vs [1] - 234:23</p>	<p>200:19, 210:14, 41 210:15, 210:16, 238:15, 243:3, 243:7, 254:4 wants [4] - 90:7, 205:19, 218:5, 257:16 war [1] - 204:7 warned [1] - 228:1 warning [3] - 210:7, 210:9 warrant [11] - 33:16, 37:18, 37:21, 78:4, 78:5, 127:10, 127:17, 127:19, 127:21, 219:16, 247:4 warranting [1] - 252:24 warrants [2] - 237:17, 237:24 Washington [1] - 31:1 watch [4] - 11:2, 25:5, 152:14, 216:25 watching [1] - 25:19 water [2] - 126:15, 244:18 waypoints [1] - 140:22 ways [5] - 59:24, 98:7, 132:15, 152:25, 260:20 wear [1] - 136:19 wearing [1] - 200:23 weary [1] - 280:17 weather [3] - 70:20, 70:22, 70:23 web [2] - 13:16, 111:16 website [1] - 8:21 websites [4] - 45:7, 86:8, 111:10, 111:18 Wednesday [1] - 296:1 week [1] - 255:3 weeks [6] - 12:11, 25:7, 30:2, 30:12, 84:10, 84:14 weigh [2] - 40:7, 40:8 weighed [2] - 280:18, 294:24 weighty [4] - 38:12, 48:15, 48:20, 241:6 weird [1] - 214:25 welcome [1] - 203:12 well-liked [1] - 240:16 west [10] - 14:17, 23:15, 58:24, 62:2, 74:23, 75:18, 91:17, 138:21, 144:13,</p>
--	--	--	--	---

151:20 westbound [2] - 58:7, 59:1 Wexler [2] - 4:5, 4:6 wham [3] - 14:2, 18:10, 216:2 whatnot [1] - 148:7 wheel [1] - 17:6 Wheeler [14] - 6:21, 189:6, 190:4, 190:10, 190:15, 191:4, 191:23, 258:9, 269:3, 274:24, 279:18, 283:23, 288:1, 293:2 WHEELER [17] - 6:22, 189:8, 190:5, 190:12, 190:16, 191:5, 191:10, 191:21, 191:24, 258:10, 269:4, 274:25, 279:19, 283:24, 288:2, 290:2, 293:3 wheels [5] - 14:1, 191:14, 248:13, 248:14, 264:4 whichever [1] - 220:19 white [11] - 58:6, 75:18, 134:15, 134:16, 142:2, 142:3, 142:5, 146:9, 155:10, 201:1 whiteness [2] - 144:6, 201:19 whole [6] - 82:21, 221:7, 226:1, 230:5, 248:1 wholly [2] - 38:6, 234:9 wide [2] - 64:6, 134:16 wider [1] - 62:20 wife [1] - 32:25 Wiik [6] - 6:23, 269:5, 279:20, 283:25, 288:3, 293:4 WIIK [6] - 6:24, 269:6, 279:21, 284:1, 288:4, 293:5 willfully [1] - 272:21 willing [4] - 47:11, 47:13, 86:25, 229:1 willingness [1] - 213:17 wind [4] - 70:23, 71:2, 71:19, 72:6 window [3] - 15:16, 15:18, 54:18 windshield [11] - 17:11, 20:24, 22:2,	54:10, 54:12, 54:17, 57:14, 243:19, 244:2, 245:16, 254:7 winners [2] - 248:20, 293:24 wires [1] - 55:1 wish [6] - 11:3, 25:12, 72:21, 99:15, 196:12, 206:21 wishing [1] - 18:8 WITNESS [14] - 170:5, 175:8, 190:25, 192:19, 193:1, 199:11, 199:14, 199:18, 200:10, 201:10, 201:16, 203:17, 205:9, 205:18 Witness [1] - 186:8 witness [44] - 9:17, 9:21, 10:2, 49:21, 50:1, 50:3, 50:5, 68:25, 69:1, 72:25, 73:2, 73:5, 99:16, 100:20, 101:17, 101:18, 101:20, 102:1, 102:5, 117:10, 119:10, 119:11, 119:13, 119:15, 119:17, 127:25, 131:5, 131:6, 131:8, 131:11, 132:21, 133:9, 143:2, 166:25, 172:18, 190:6, 190:9, 190:14, 191:6, 191:9, 193:12, 201:22, 202:7, 239:5 witnessed [2] - 204:10, 206:11 witnesses [10] - 10:3, 10:8, 14:17, 24:19, 133:14, 188:4, 188:10, 208:21, 208:22, 273:9 WITNESSES [1] - 2:5 witnesses' [1] - 9:19 Wittler [4] - 1:24, 3:5, 298:17, 298:18 WITTLER [1] - 298:5 women [2] - 204:3, 230:1 wonder [1] - 240:15 wondering [1] - 205:11 word [7] - 104:22, 173:2, 181:10, 209:4, 218:8, 229:12, 258:24	words [19] - 16:21, 18:2, 27:5, 39:16, 53:2, 130:15, 141:3, 151:25, 162:15, 178:21, 181:6, 181:17, 184:12, 207:14, 209:8, 209:20, 215:4, 228:5, 236:17 works [2] - 59:22, 224:3 world [2] - 64:24, 225:13 worry [2] - 165:13, 221:3 worth [1] - 17:14 worthy [2] - 263:7 wrap [2] - 143:13, 216:8 wrestle [1] - 274:12 write [1] - 245:11 writing [1] - 199:4 written [3] - 8:25, 78:4, 78:6 wrongdoing [3] - 18:17, 27:18, 43:14 wrongful [3] - 38:6, 41:23, 234:10 wrongs [2] - 39:5, 235:14 wrote [4] - 176:6, 189:2, 221:5, 221:16	288:8, 293:9 yellow [1] - 59:5 young [1] - 249:12 youngster [1] - 226:10 yourself [18] - 50:8, 53:20, 85:6, 85:8, 87:18, 119:23, 131:16, 171:23, 178:4, 179:13, 179:14, 179:17, 187:13, 209:18, 223:17, 224:6, 237:22, 248:5 yourselves [1] - 225:4
Z			
zero [1] - 194:1 Zikmund [6] - 6:25, 269:7, 279:22, 284:2, 288:5, 293:6 ZIKMUND [6] - 7:1, 269:8, 279:23, 284:3, 288:6, 293:7 zone [2] - 59:2, 80:20			
X			
XR [2] - 108:2, 109:20 XVI [1] - 8:10			
Y			
Yankton [2] - 249:10, 273:18 year [9] - 36:4, 51:2, 51:8, 121:22, 212:13, 243:9, 244:16, 245:3 years [28] - 31:6, 35:22, 35:23, 36:2, 36:10, 36:11, 50:14, 51:16, 64:20, 73:16, 73:18, 85:2, 120:7, 120:8, 120:14, 121:5, 147:18, 147:19, 147:20, 147:23, 182:1, 183:13, 216:17, 249:3, 249:4, 249:7, 249:21, 251:19 yeas [5] - 269:10, 279:25, 284:5,			