

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

NAOMI DELAFUENTE, the natural )  
daughter of ROSA DELAFUENTE, ) Case No.  
deceased; MICAELA PATRICIA )  
IRACHETA, the natural daughter ) CV14-20-1023  
of ROSA DELAFUENTE, deceased; )  
SANTOS CANTU HERNANDEZ, a )  
natural parent of ADAM ZAMUDIO, )  
deceased; GILBERTO ZAMUDIO, )  
JR., a natural parent of ADAM ) DEPOSITION OF:  
ZAMUDIO, deceased; ADAM )  
ZAMUDIO, JR., a natural son of ) DAVID T. SWEENEY  
ADAM ZAMUDIO, deceased; and )  
GILBERT ZAMUDIO, III, a natural ) TAKEN JULY 23, 2021  
son of ADAM ZAMUDIO, deceased, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
The CITY OF NAMPA, an Idaho )  
Municipality; CITY OF NAMPA )  
POLICE DEPARTMENT, a Subsidiary )  
of the City of Nampa; OFFICER )  
RYAN PUTNAM, individually; )  
OFFICER TRAVIS POORE, )  
individually; and; DOES I )  
through X, unknown individuals )  
and/or entities, )  
)  
Defendants. )  
\_\_\_\_\_ )

REPORTED REMOTELY BY:

DIANA KILPATRICK, CSR No. 727, RPR

Notary Public

1                   THE DEPOSITION OF DAVID T. SWEENEY was taken  
2                   on behalf of the Defendants via remote videoconference,  
3                   commencing at 1:00 p.m. on July 23, 2021, before Diana  
4                   Kilpatrick, Certified Shorthand Reporter and Notary  
5                   Public within and for the State of Idaho, in the  
6                   above-entitled matter.

7                   APPEARANCES:

8                   For Plaintiffs:

9                   (Present remotely)

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I N D E X

TESTIMONY OF DAVID SWEENEY	PAGE
Examination By Mr. Kane	5

E X H I B I T S

NO.	DESCRIPTION	PAGE
Exh 1	Seattle Police Department 13:031	26
Exh 2	Nampa Police Department Policy 313	51
Exh 3	Declaration of David T. Sweeney	67

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
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DEPOSITION OF DAVID T. SWEENEY,

COURT REPORTER: The attorneys participating in this proceeding acknowledge that I am not physically present in the proceeding room and that I will be reporting this proceeding remotely. They further acknowledge that the witness will be sworn in remotely by me and that the testimony will have the same force and effect under the rules as an in-person deposition. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting. Please indicate your agreement by stating your name and your agreement on the record. Also, if there is anyone present in the room with you not on video, please so indicate.

MR. MORTIMER: Evan Mortimer, and I'm in agreement. There's nobody else in my room.

THE WITNESS: Dave Sweeney, in agreement, no one else in the room.

MR. KANE: Mike Kane. In agreement, and no one else in the room, although I may have to get assistance if I can't make this chat work.

DAVID T. SWEENEY,  
First duly sworn to tell the truth related to said cause, testified remotely as follows:

1 MR. KANE: Thank you. Do you want to make  
2 any statement before we begin, any stipulations?

3 MR. MORTIMER: Typically on video depositions I  
4 will just reserve objections so I don't have to  
5 interfere, but it's up to you. I'm happy to object as  
6 we move along, but I find it easier if I don't have to  
7 unmute and jump in to object in the middle of an answer.

8 MR. KANE: That's fine. Whatever.

9 MR. MORTIMER: If we can stipulate to that,  
10 then I will reserve my objections.

11 MR. KANE: So stipulated. Sure.

12 EXAMINATION

13 QUESTIONS BY MR. KANE:

14 Q. Okay, then. What do I call you? It says  
15 Mary Sweeney on my screen.

16 A. On my screen?

17 Q. It says Mary Sweeney.

18 A. Let me take a look at that. That's my  
19 daughter.

20 Q. You didn't look like a Mary to me.

21 A. Oh, you're right. Thank you.

22 Q. So do I call you Patrol Commander,  
23 Commander, Officer, what?

24 A. David is fine, or Lieutenant.

25 Q. All right. Lieutenant, you've been sworn in

1 for the record. Would you please spell your name, your  
2 last name?

3 A. David Sweeney. Last name is spelled  
4 S-w-e-e-n-e-y.

5 Q. And I'm looking at your declarations. I  
6 don't want to go over this in fine detail, but for the  
7 record, you are a patrol commander for Oregon State  
8 University Police. Correct?

9 A. Correct. Oregon State University Police  
10 Department.

11 Q. So in looking at that, you say, looks like  
12 you said you built the department. Did I read that  
13 right?

14 A. Yes. We are starting a brand new police  
15 department here. They used to have a contract with the  
16 Oregon State Police, and that contract ended in  
17 December. The chief was here in December, I was hired  
18 in March, so we are starting a brand new police  
19 department at the wishes of the Oregon State University.  
20 It's kind of interesting.

21 Q. And are you then a certified police officer  
22 as you were at Seattle?

23 A. Yes. I am fully-commissioned law  
24 enforcement. Now, the State of Oregon requires me to do  
25 a two-week equivalency academy sometime within the first

1 18 months of my employment, and so far those have been  
2 limited due to COVID-19, but I do believe that the  
3 classes are opening up soon, and some of the staff hired  
4 before me have attended, so I assume I will attend at  
5 some point. But I am certified for law enforcement in  
6 Oregon.

7 Q. Great. So by that, then, would you have all  
8 the powers and duties of a non-university police  
9 officer?

10 A. Yes. I am authorized for law enforcement  
11 anywhere in the State of Oregon.

12 Q. Great. Perfect. So briefly, would you go  
13 over all of the documents you reviewed to prepare for  
14 that deposition?

15 A. Yes. Shall I read from my preparation here?  
16 We have a transcript of an August 7, 2018 preliminary  
17 hearing, State of Idaho vs. Joseph Michael Sena in  
18 Canyon County; in-car video footage from Officer Poore,  
19 Nampa Police Department, in-car video footage from  
20 Officer Putnam; body-worn video footage from Officer  
21 Putnam; Nampa Police Department Policy No. 313 on  
22 vehicle pursuits; Nampa Police Department Policy No. 314  
23 on officer response to calls; an affidavit of probable  
24 cause completed by Officer Putnam; the deposition  
25 transcript of Ryan Putnam; the deposition transcript of

1 Travis Poore; relevant Idaho traffic codes; Google  
2 images of the area along with the pursuit route and  
3 collision. Idaho Vehicle Collision Report Case  
4 No. V18002134, including supplements; an IA Pro pursuit  
5 review from the Nampa Police Department; and the Nampa  
6 Police Department officer reports for Incident  
7 No. N18-36876.

8 Q. When you say relevant statutes, what do you  
9 mean?

10 A. Which letter is that one?

11 Q. I'm sorry. I don't have it in front of me.

12 A. I thought you were looking at documents.

13 Q. We're talking over each other. I apologize.

14 A. Relevant Idaho traffic codes. So primarily  
15 we're talking about Title 49-623, Authorized Emergency  
16 or Police Vehicles.

17 Q. Any others?

18 A. I also looked up the Idaho statutes on what  
19 constitutes eluding, in order to determine what level of  
20 crime we're talking about.

21 Q. Okay. Any others?

22 A. Not that I remember at this time. Those  
23 were the two primary ones I looked at.

24 Q. Okay. Great. So I'd like to speak about  
25 your law enforcement career.



1 A. Sure.

2 Q. At least in some level of detail, but we're  
3 not going to beat this into the ground.

4 A. That's fine.

5 Q. Let's begin with what you're doing now. Do  
6 you have the power, at least, to arrest individuals  
7 driving, I presume, on university property, in an  
8 erratic manner? Do you have the usual standard  
9 abilities to stop vehicles?

10 A. Yes.

11 Q. All right. And have you done that at all?

12 A. No.

13 Q. All right. It's more of your staff job, I  
14 would assume?

15 A. Correct.

16 Q. And so let's go back to your Seattle days.  
17 Now, I read your CV. We're not going to go through it  
18 line by line. But my impression is, for all intents and  
19 purposes, is that your entire career in law enforcement  
20 has been with Seattle PD. Is that correct?

21 A. I retired in March of 2021, March 15th,  
22 which was actually my first day starting here at Oregon  
23 State University.

24 Q. So prior to that, other than, I think you  
25 had a security guard job. You've been a cop with

1 Seattle?

2 A. Correct. From '87 to 2021. So almost  
3 34 years.

4 Q. And you had a number of different  
5 assignments during that time period, so I'm going to  
6 jump around a little bit and maybe talk about some of  
7 the ones that I was rather curious about.

8 A. Sure.

9 Q. So let's go back. I know it's a while.  
10 It's hard to believe that '98, '99 is over 20 years ago.  
11 But you were a DUI enforcement officer, weren't you?

12 A. I was.

13 Q. So give me an idea, during that time period,  
14 what your responsibilities were as a DUI enforcement  
15 officer.

16 A. We had a traffic squad of 6 officers and a  
17 Sergeant, and my primary duty was detecting,  
18 apprehending, and investigating drunk drivers in the  
19 city of Seattle. So we would leave work around 7:00 at  
20 night and we would work until 4:00 a.m. in the morning.  
21 And during that time your primary responsibility was  
22 detecting DUI drivers. I also had other  
23 responsibilities. I could assist on any patrol call  
24 that needed me if there was an emergency, but that was  
25 my primary duty as a traffic officer then.

1           Also, working in traffic we were responsible  
2 for staffing parades and fun runs and sporting events,  
3 so anything you see traffic officers directing traffic,  
4 I did a lot of that as well. But my primary duty, as  
5 you talked about, arresting drunk drivers.

6           Q. All right. Was there a special name for  
7 your unit?

8           A. We called ourselves the DUI squad.

9           Q. And in order to qualify for that, what did  
10 you have to do?

11           A. You have to show proactivity as the patrol  
12 offer, and some expertise in investigating and arresting  
13 drunk drivers. So when I was in the North Precinct, as  
14 you see my earlier part of my patrol career, I worked in  
15 that precinct for several years. And I became known as  
16 the precinct DUI officer. I wasn't a member of the DUI  
17 squad, but if an officer stopped a drunk driver they  
18 knew they could call me because I had developed an  
19 expertise with that. I was efficient, and I would take  
20 the drunk driver for them, and all they had to do was  
21 issue a citation and I would handle pretty much  
22 everything else, which would allow for them to go back  
23 out on the street. And it made for a very efficient  
24 operation, because I could process a drunk driver within  
25 a couple hours, that might take them 4 or 6 hours.

1           Based on that, that led to me requesting an  
2 assignment in the DUI squad to work in traffic, which  
3 was a separate division in the Seattle Police  
4 Department, and I was accepted for that and I worked  
5 there a couple years.

6           Q. So you would agree, I would hope, that being  
7 a DUI recognition officer, DUI squad, there is no  
8 problem with that. It's a completely legitimate part of  
9 law enforcement, is it not?

10          A. Correct.

11          Q. And did you, yourself, get any special  
12 training as to DRE -- I almost said it wrong, DRE -- DUI  
13 recognition enforcement?

14          A. Right. So I had training in detecting DUIs,  
15 conducting field sobriety tests, HGN, Horizontal Gaze  
16 Nystagmus. At that point in my career, I don't believe  
17 the DRE program had ever been talked about. Drug  
18 Recognition Expert. So I didn't get in on the beginning  
19 of that, so I'm not DRE certified.

20          Q. Okay. So would it be fair to say, as a DUI  
21 enforcement officer, you're trained to look beyond just  
22 what a vehicle is doing at that very moment in time,  
23 such as, where the vehicle came from?

24          A. Sure. Yes. Okay. If known.

25          Q. And then what the vehicle did, how it drove,

1           how erratic they were, if there was anything unusual?

2                   A.   Correct.

3                   Q.   Is there anything -- let me put it a  
4           different way.  Thinking out loud here.  Would you agree  
5           that it is the totality of the circumstances that DUI  
6           officers look for, and they could change from one case  
7           to another?

8                   A.   Yes.

9                   Q.   Was there a special problem with DUI back in  
10          Seattle in the late the '90s?

11                  A.   A special problem, did you say?

12                  Q.   Yes.

13                  A.   No.  No other than the usual issue.  I  
14          remember being a patrol officer and seeing a horrible  
15          crash on Highway 99 in Seattle.  It kind of inspired me  
16          to learn more about it and apply myself.  It was kind of  
17          a driving motivator to me to get interested.  I stopped  
18          thousands of drunk drivers, made around 500 arrests.  
19          That night was very informative for me.

20                   But as far as Seattle is concerned, back to  
21          your question at hand, there was no special emphasis  
22          other than, you might see news media stories from time  
23          to time, if someone was killed by a drunk driver.  I  
24          think I saw some things from our chief saying, yes, we  
25          have a traffic squad dedicated to that problem, and

1           arresting drunk drivers at night.

2                       But there was no great emphasis. There was  
3 a DUI squad before I started there and there was one  
4 after. I think it's been there for many years. It's a  
5 good unit to have in a police department.

6           Q. Sure. You say that, because if I read it  
7 right, do I understand that Seattle has abandoned their  
8 DUI program?

9           A. The last I heard, I talked to a couple  
10 friends there, and they said basically there's no one  
11 doing DUIs at night. Seattle's faced a severe shortage  
12 of officers, and I believe most of them were reassigned  
13 to different units and/or retired or left the  
14 department.

15          Q. But you're not really familiar with the  
16 policy decisions that caused that to end?

17          A. No. Only what might be termed as hearsay or  
18 rumor from one of the officers who was kind of telling  
19 me about it. He was a long-time DUI member and he'd  
20 been put back on patrol. So I kind of talked to him  
21 about it, asked him about it.

22          Q. Okay. So if I understand, kind of jumping  
23 around a little bit in your CV here, you were, also in  
24 the early 2000s, a patrol sergeant at the West Precinct.  
25 Is that right?

1           A. Yes.

2           Q. And did you enforce DUI laws in the West  
3 Precinct?

4           A. I seem to remember doing a couple DUIs as a  
5 sergeant. It wasn't common, but because I had my recent  
6 officer experience when I was promoted in 2001, I do  
7 remember doing a couple DUIs to show people, Hey, you  
8 can do this. It's not that bad. So to set an example  
9 for others, I did.

10          Q. And I think you may have just hinted at it.  
11 Was one of your duties to train DUI enforcement officers  
12 on your watch?

13          A. Yes and no. Let's just say that a patrol  
14 officer, when they work for a sergeant and you go to  
15 roll call every day, I always as a sergeant use that  
16 opportunity to train, guide, and motivate others. Would  
17 I actually pull a squad of officers into the precinct  
18 and train them on DUI? No. But I might encourage them  
19 to investigate DUIs, not disregard them, and then of  
20 course supervise them when they'd made an arrest and  
21 they'd come to the precinct. I was a great resource to  
22 ask questions. Hey, Sergeant, how do you do this?  
23 Where do I find this form? What do I do with a breath  
24 test ticket?

25                   I guess in that way you could call it

1 training. I wouldn't call it that I was an official and  
2 had a class. Does that kind of answer your question?

3 Q. Yes. Did that duty change when you became a  
4 watch commander in 2019? In other words, would you be  
5 more training-intensive as to DUIs?

6 A. I suppose, you know, it's interesting, as  
7 you progress in your police career that -- so I became a  
8 lieutenant in 2015. But as you interacted with your  
9 sergeants and officers, it becomes more review of what  
10 they've done, and I kind of missed that hands on  
11 training aspect. But I do get heavily involved at that  
12 point as a lieutenant from a review standpoint.

13 So you're now looking at the actions of the  
14 officers and the supervisor, and did they take proper  
15 actions at a scene, and did the sergeant do their job.  
16 So in a way, yes, I'm supervising. I don't know that I  
17 would call it training at that point, other than I would  
18 issue memos and guidelines, and sometimes I would  
19 send -- let's say an officer had a problem with  
20 collisions. I'm not going to train them in collisions,  
21 but I'm going to send them back to our traffic squad,  
22 because they handle collisions in the police department,  
23 and send them there for training.

24 So when you move to a lieutenant, you're  
25 kind of stepping out of the day-to-day operation, and



1 you have that bigger picture view of it. I hope that  
2 answers the question.

3 Q. It does. Let me make it a lot easier. I  
4 was in law enforcement in one way or the other for most  
5 of my career. I totally get it. So I just gave you a  
6 couple of examples, when you were a patrol sergeant,  
7 when you were a watch commander, when you were a DUI  
8 enforcement officer. Would it be fair to say that  
9 pretty much during the career that you've had as a line  
10 officer, at least when you were actually on patrol, DUI  
11 enforcement was a regular responsibility you had?

12 A. Yes.

13 Q. All right.

14 A. In one form or another, like you said.  
15 Different levels, but yes.

16 Q. Did you ever be assigned to monitor vehicle  
17 pursuits at any time during that time period?

18 A. Several. Many.

19 Q. All right. Let's walk through when that  
20 would have been, first of all.

21 A. Okay. Both as a patrol sergeant and as a  
22 watch commander, possibly as the operations lieutenant.  
23 I think I monitored some even as an ops lieutenant. So  
24 yes. But more commonly, as we talked about, a patrol  
25 sergeant and a watch commander, you're going to be more

1 heavily involved in the monitoring of an officer's  
2 pursuit.

3 Q. To talk to me about what that actually  
4 means, monitoring. Do you listen to the radio traffic?

5 A. Yes.

6 Q. And walk us through it. How would it  
7 actually work?

8 A. The first thing that I would listen for is  
9 what is the officer pursuing? In other words, what's  
10 the initial crime? That's my big emphasis. Why are we  
11 pursuing that vehicle? And then I want to know the  
12 speeds, and I want to know where they're at, and what's  
13 the description of the vehicle. So that basic quick  
14 information that an officer is going to broadcast over  
15 the air to the dispatcher, in order to, one, generate a  
16 call, Hey, I've got something here; and then two, get  
17 his coworkers involved; and then three, what I'm looking  
18 for is a sergeant answering up, and if a sergeant  
19 doesn't answer up, then I would answer up. And I would  
20 say, let's say, 212 is monitoring. One of my call  
21 signs. And hopefully that cues my sergeant, uh-oh, LT  
22 is listening in, I'd better step up my game here. So  
23 most sergeants then would answer, I'm monitoring as  
24 well. And that's what I want to hear. I want them  
25 aware that there is a pursuit in the city and I want

1           them monitoring it.

2                         Sometimes I might quickly direct the actions  
3 of an officer. Generally we're talking about calling  
4 off a pursuit. But if it was a justifiable pursuit, I  
5 might let it fo for a while, depending on the level of  
6 the crime and what the officer is doing as they're in  
7 this pursuit.

8                         Q. I think you may have said it and I may have  
9 missed it. Approximately how many pursuits did you  
10 monitor in that period over the years?

11                        A. Since 2001, I'm going to say 30 to 40.

12                        Q. They don't that happen often, then?

13                        A. No. They became less and less frequent over  
14 the years when Seattle's pursuit policy changed.

15                        Q. And why was that?

16                        A. When or why?

17                        Q. Why.

18                        A. The chief determined that pursuits were  
19 inherently dangerous, and the reasons for the pursuit  
20 did not match up with the risk to the public that was  
21 created by the pursuits. To officers, pursuits were  
22 severely curtailed by policy and by training and by  
23 enforcement from sergeants and lieutenants like myself.

24                        Q. You said there was a change. When did that  
25 occur?

1           A. I'm trying to remember where I was working  
2 when that first came out. Seems like -- my best guess,  
3 it would be, I'm going to say mid-2000s.

4           Q. All right. So was there an attitude at  
5 Seattle PD, then, that pursuits were not effective?  
6 Let's start with that word.

7           A. Was there an attitude that police pursuits  
8 were not effective?

9           Q. You mentioned that the chief didn't find  
10 them to be -- maybe I'll use the term cost benefit  
11 analysis. Is that approximately right?

12          A. I think the chief was primarily considering  
13 the danger to the public, so yes. I will say, if you  
14 want to get down to numbers, it could be a cost benefit  
15 analysis. But the language and the training and the  
16 guidance I gave to others, based on the chief's  
17 guidelines and the policy changes, were that it was  
18 really due to life safety issues.

19          Q. Meaning what, exactly?

20          A. That if we were pursuing for minor  
21 violations of the law, and our pursuit ended in a  
22 collision that injures or kills someone, what's the risk  
23 to the public of the offender getting away, versus the  
24 risk to the public because of the police pursuit? Those  
25 two are way out of whack.

1           Now, we were allowed to pursue for dangerous  
2 criminals. Again, that's what the courts might hold,  
3 too. If you're pursuing because you need to catch the  
4 bank robber, society says, We understand that. We  
5 understand you're going to engage in risk, you're going  
6 to engage in high-speed pursuit driving. You're going  
7 to violate the law in order to stop the bank robber,  
8 because societal interest in stopping the bank robber is  
9 much greater than the societal interest of stopping the  
10 traffic violator.

11           Q. So when the policy changed at Seattle, did  
12 pursuits happen for felonies only?

13           A. Yes. Let's just say this. An officer might  
14 start a pursuit, so technically they've engaged in a  
15 pursuit. And it might be for a traffic violation. But  
16 in general those are going to be called off, either by  
17 the officer or a supervisor. So it wasn't only for  
18 felonies. I think this might answer your question. The  
19 ones that were continued or allowed to continue were  
20 based on felony crimes.

21           Q. Okay. No matter how dangerous the driver  
22 was, if it was a misdemeanor, you would probably call it  
23 off. Is what you're saying?

24           A. Correct.

25           Q. Did you have any accidents during the 30 or

1 40 that you mentioned, that you called off?

2 A. I don't remember any of those ending in a  
3 collision, no.

4 Q. Did you have any accidents at all during the  
5 time that you were monitoring a pursuit?

6 A. So do you mean an accident involving me or  
7 an officer?

8 Q. No. An officer.

9 A. I think that's the same question, if I'm  
10 understanding it correctly. I don't remember any  
11 officer --

12 Q. I'm sorry, I used the called off, and as  
13 soon as I said it, I realized it was a stupid question.  
14 Any pursuits that you were monitoring that ended up in a  
15 crash?

16 A. When I was in S.W.A.T., we would use our  
17 vehicles, sometimes intentionally, to stop a dangerous  
18 suspect. Now, those weren't termed accidents, because  
19 they weren't accidental. You could term them a crash,  
20 though, because two vehicles struck each other. But  
21 again, it's the S.W.A.T. officer using a vehicle to  
22 possibly, let's say pin somebody into a parking space or  
23 against the wall. So we did use those tactics for,  
24 again, dangerous felons that we were trying to arrest.  
25 So we might use our vehicles in that way.

1 Q. Right. Other than those?

2 A. Other than those. I just wanted to give you  
3 that information, that caveat. Other than those, I  
4 don't remember any patrol officer involved in a  
5 collision where I called off the pursuit or where one of  
6 my sergeants called off the pursuit.

7 Q. I was talking monitoring, not just calling  
8 it off.

9 A. Just monitoring a pursuit. Okay. Let me  
10 think on that. No. I can't think of any involving  
11 collisions where I was monitoring. I can think of a few  
12 where I arrived later on scene, maybe I came from a  
13 different precinct or something like that. But nothing  
14 where I was monitoring or a sergeant was monitoring. I  
15 can't think of any that ended in a collision.

16 Q. And were you yourself involved in a  
17 collision during a pursuit?

18 A. I believe I've only had two collisions in my  
19 34 years. Wait. Let's go back. I had one. I was a  
20 brand new officer, maybe 1988, that I hit a stop sign in  
21 a pursuit. So I guess we'd call that a crash, but a  
22 relatively minor one.

23 Q. I guess. Yeah. Okay. You say that you  
24 also arrived later to investigate or whatever.

25 A. Right.

1 Q. A crash in a pursuit. Is that right?

2 A. Yes.

3 Q. Approximately how many of those?

4 A. There was only one I could think of, and we  
5 had a suspect in Seattle armed with a firearm was going  
6 to businesses and threatening people, threatening to  
7 shoot them. He car-jacked a couple people with a car,  
8 and he ended up in a pursuit with a lot of officers from  
9 the North Precinct. And I wasn't monitoring that  
10 pursuit, but it ended in our precinct, and I went out to  
11 the scene.

12 But again, I was not watch commander. I  
13 think I was the operations lieutenant at that point, so  
14 it wasn't my responsibility, but I did go to the scene  
15 to see if there was anything I could do to help, or see  
16 if anyone needed anything, or to assist any of the  
17 sergeants or lieutenants involved in the collision. So  
18 I wasn't directly responsible for it. That's the only  
19 one I can think of that ended in a collision.

20 Q. Okay. I'm going to try now to get to the  
21 Seattle Police Department pursuit policy, if I can make  
22 this work. Give me a moment, and let's see if we can do  
23 this. I've got the Nampa one. Let's see. Here we go.  
24 Can you see that all right? It says Seattle Police  
25 Department Manual, Police Manual --



1           A. Yeah. You did it right. You're sharing  
2 your screen and I see it.

3 BY MR. KANE:

4           Q. So from your information, what I did was I  
5 pulled the 2017 policy. And the reason I did that is it  
6 coincides with the year of the crash here in Nampa.  
7 Now, I know I sent this to your counsel earlier. Did  
8 you have a chance to review this at all?

9           A. I took a couple minutes and reviewed it,  
10 just to see if it's the way I remember it, and pretty  
11 much it is.

12          Q. All right. Very good. So right up on top  
13 there, 13.031-POL, there's a 1, Definitions, Eluding.  
14 As you can see, the definition of eluding in Seattle  
15 was: When an officer operating an authorized police  
16 vehicle issues by hand, voice, emergency lights or siren  
17 a visual and/or audible signal to the driver of the  
18 vehicle to stop, and after a reasonable time to yield in  
19 response to the officer's signal, the driver does any of  
20 the following.

21                   And there are 3 points there. Increases  
22 speed, takes evasive actions, refuses to stop.

23                   You know, I got into this, and I did forget  
24 to do one thing.

25           MR. KANE: I would like to have this

1 marked -- sorry about that Diana -- as Exhibit 1.

2 (Exhibit No. 1 Marked.)

3 BY MR. KANE:

4 Q. So definition of eluding is when increases  
5 speed, takes evasive actions, refuses to stop. Do you  
6 see that?

7 A. Yes.

8 Q. Is that the -- was that the legal definition  
9 of eluding in the state of Washington at the time?

10 A. A lot of our police policies are based on  
11 state law, but Seattle often takes a state law and  
12 creates even more restrictive actions based on it. So I  
13 would have to see the actual state law that was in  
14 effect at that time.

15 Q. Okay. That's fine. The reason I ask is  
16 that eluding, under Seattle policy in 2017, would have  
17 been exactly what Mr. Sena did here in Nampa. Would you  
18 agree?

19 A. Certainly increased speed, he took evasive  
20 action and refused to stop. So yes, I would agree.

21 Q. So was eluding a crime in Washington?

22 A. I believe that it was.

23 Q. Was it a felony, a misdemeanor, or both?

24 A. I think had it was a gross misdemeanor.

25 Q. Meaning something more than the average

1 misdemeanor. Correct?

2 A. Correct.

3 Q. Gross misdemeanors in Idaho have a higher  
4 penalty. Do they have a higher penalty in Washington?

5 A. Generally, yes.

6 Q. Okay. So if you continue, the policy also  
7 defines pursuit. And it's when an officer, operating an  
8 authorized police vehicle with emergency lights and  
9 siren activated, proceeds in an effort to keep pace with  
10 and/or immediately apprehend an eluding driver.

11 Correct?

12 A. Yes.

13 Q. So was your law in Washington -- or I guess  
14 the policy says that both lights and siren had to be  
15 activated before it was considered a pursuit. Is that  
16 right?

17 A. Yes.

18 Q. Now, you've read the Idaho statute.

19 A. Yes.

20 Q. You would agree that, in Idaho, it's lights  
21 or siren. Correct? And if you don't know, that's okay.

22 A. I don't know right off the top of my head.  
23 I'm happy to look it up.

24 Q. It's a small component. All right. So  
25 continuing on, do you see that there are certain

1 limits -- you see I'm moving my screen here. I hope you  
2 can see.

3 A. Yes.

4 Q. It talks about: Exercise due care and  
5 activate emergency equipment.

6 It says: Officers engaged in pursuit shall  
7 drive with due regard for the safety of all persons and  
8 will use both emergency lights and continuous siren.

9 Would you agree that, at least to begin a  
10 pursuit, and continue to engage in it until called off,  
11 at all times the officer had to engage with due regard  
12 for the safety of all persons?

13 A. Yes.

14 Q. Nothing unusual about that?

15 A. Nothing.

16 Q. Okay. And then you see down below:  
17 Officers will not pursue without justification.

18 And so in Seattle, you see here that it  
19 says: Officers will not pursuit solely for any one of  
20 the following.

21 And we've got a list here. But as you have  
22 already stated, it looks like no pursuits at all in  
23 Seattle for a misdemeanor.

24 A. Correct.

25 Q. Like DUI?

1           A. Correct.

2           Q. So it's an absolute forbidden act to pursue  
3 for DUIs. Right?

4           A. There was a policy section that came out for  
5 a while and it was -- it was allowing for DUI as long as  
6 the public wasn't at risk. I can't quote it to you, but  
7 there was a policy for a while, and I don't think it's  
8 in effect anymore. I think even that got shut down.  
9 But they were allowing officers to pursue for DUI for  
10 the types of cases where someone just continues driving.  
11 A lot of drunk drivers drive really slowly. They're  
12 scared to drive fast or brain isn't processing the  
13 street signs or the speed limit.

14           So there was an allowance for drunk drivers,  
15 which you're right, was a misdemeanor unless you  
16 committed several of them. So that was one exception we  
17 had to the misdemeanor rule. I don't know if it's still  
18 in effect or not. If I remember right, even that was  
19 overturned.

20           Q. Okay. So do I understand you to say that  
21 you could, when this policy was in effect, go after DUIs  
22 when you were driving slowly and not a danger to the  
23 public?

24           A. Correct.

25           Q. All right. What kind of factors would have

1 to be determined when the public was not in danger?

2 A. The speed of the vehicle, the actions that  
3 the drivers take in order to get away from the officer.  
4 So if they're engaging in reckless driving -- I'm trying  
5 to remember if I had any. I think I did have a couple  
6 DUI stops that officers were trying to make, and I said,  
7 Let that one go. They're going too fast or they're  
8 being too reckless, let that one go. And the officers  
9 would. I never had an officer try and argue over the  
10 air, or even later in my office say, Hey, I needed to  
11 get that guy.

12 Q. Okay. So when the slow-moving driver in the  
13 scenario, as we've been talking about under this policy,  
14 sped up, the pursuit was called off?

15 A. If they were engaging in reckless driving,  
16 yes.

17 Q. Meaning what?

18 A. Driving with the intent to injure. It's  
19 greater than gross negligence.

20 Q. But if they were just driving, say, 50 in a  
21 35, would that be a reason to call off a pursuit?

22 A. I'd want to know what street that is. So a  
23 35 miles an hour speed limit in Seattle might be, I  
24 discussed Highway 99 earlier. A lot of that's 35 miles  
25 an hour. So 35 on a five-lane highway, probably not a

1 problem. Through a neighborhood, that would be called  
2 off immediately.

3 Q. Yeah. Okay. I'm familiar with Seattle.  
4 I've been there, I can't tell you how many times. I've  
5 been all over the city. I can't think of anywhere where  
6 eluding would even be possible, knowing the traffic in  
7 Seattle.

8 A. Yeah.

9 Q. Are there times, particularly at night, when  
10 there would be less public in certain areas of the city,  
11 where simply speeding up, you could continue to follow a  
12 driver without calling off the pursuit?

13 A. I would need the officer to give me  
14 articulable facts as to why they thought it was a drunk  
15 driver. And again, I think we're talking about a very  
16 small period of time within Seattle. I don't believe,  
17 looking back on any, there might have been one, maybe  
18 two, where I allowed it to continue. But again, I need  
19 those specific articulable facts. If they're not  
20 telling me, I would say, What's the pursuit for? And if  
21 they said, LT, we think it's a drunk driver, we're doing  
22 30 in a 25, I think I would let that one go.

23 Q. So other than this one small period of time  
24 that you're talking about that this sort of escape  
25 valve, so to speak, on going after DUIs in certain

1 circumstances, other than that, would you agree that it  
2 was the culture at Seattle PD not to pursue drunk  
3 drivers?

4 A. Yes.

5 Q. Was the culture based upon the thought that  
6 it was inappropriate in all cases to do that?

7 A. I think I touched on this earlier. The main  
8 idea being -- this was what I talked to a lot of people,  
9 a lot of officers and sergeants about, and command  
10 staff, equal rank or higher rank, is that it just didn't  
11 balance the needs of the public to pursue at all costs.  
12 Seemed like reckless law enforcement behavior.

13 Q. I hear you, but there's a significant  
14 difference between merely pursuing and pursuing at all  
15 costs. Would you agree?

16 A. Yes.

17 Q. And the policy was, no pursuit at all.  
18 Period. Right?

19 A. For the most part, yes.

20 Q. Did you carry that policy over to Oregon?

21 A. Yes.

22 Q. So are you coming from the standpoint that  
23 pursuits in other communities, in other states, for  
24 drunk driving, is simply wrong?

25 A. It seems to me that if a chief doesn't



1 consider the needs of the safety of the people that he's  
2 sworn to protect and serve, as well as those that work  
3 with him or her, they're out of balance. You have to  
4 consider, what is the crime that we're trying to solve  
5 here? What violator are we trying to stop? What level  
6 of crime has this person committed? So what actions am  
7 I able to take as a law enforcement officer in order to  
8 stop them?

9 Just because you have a bank robber in a  
10 house doesn't mean you can just shoot up the house. You  
11 still have to be reasonable in your actions. And the  
12 same thing comes with a traffic pursuit. Just because  
13 you can drive at whatever speed to follow whoever for  
14 any minor crime doesn't mean it's good law enforcement  
15 practice. You've engaged in something that is  
16 inherently dangerous to the public, to the officer.  
17 Think of the number of officers that we lose each year,  
18 and as well as to the violator.

19 Q. So your answer is yes, you come from the, I  
20 hate to use the term -- bias, but I guess that's what it  
21 is, that pursuits for drunk driving at all are just  
22 plain wrong. It shouldn't be done.

23 MR. MORTIMER: Objection. Mischaracterizes  
24 testimony.

25 ///

1 BY MR. KANE:

2 Q. Is that what you're saying?

3 A. I'm waiting to hear on the objection.

4 Q. It's already been done.

5 MR. MORTIMER: It's the same objection.

6 THE WITNESS: So I answer the question  
7 anyway?

8 BY MR. KANE:

9 Q. We don't have a referee.

10 A. Understood.

11 MR. MORTIMER: Go ahead, sir.

12 THE WITNESS: Can you ask the question one  
13 more time?

14 BY MR. KANE:

15 Q. You're coming from the, I'll use the word  
16 bias -- if you have a better word, I'll agree with  
17 you -- that pursuing a DUI in all cases in all  
18 communities, is simply wrong?

19 A. Sorry. Go ahead.

20 Q. Go ahead.

21 A. In my career, I've spent a lot of time  
22 reviewing the work of others. Use of force, collisions,  
23 pursuits, performance reviews, whatever the case might  
24 be. I have learned that it is generally unwise to use  
25 the words all or every. Each case is different. You

1 have to look at each individual case. And just because  
2 the last pursuit that I reviewed, let's say the officers  
3 were out of policy and they got in a collision, or they  
4 didn't follow the manual guidelines, let's say they  
5 didn't use their siren, something like that. So I'm  
6 hesitant to use the term all.

7 In any case, it's always been important for  
8 me -- in fact, I rely on my experience and my ability to  
9 review others' work, but just because something happened  
10 in another case, I don't come in to a new case and say,  
11 Hey, something is wrong. I notice this. You can't do  
12 it that way. You have to still evaluate the facts.

13 Q. All right.

14 A. And what you're presented with, in order to  
15 then make a decision about whether the pursuit was  
16 within policy or not.

17 Q. I understand. That's what I'm trying to get  
18 to here. Because this was the Seattle policy. It  
19 sounds like you carried it over to Oregon. You come  
20 from a place where, absent something unusual, you would  
21 discipline one of your officers for pursuing a DUI. Is  
22 that right?

23 A. I think discipline would result if they  
24 disobeyed an order, and I can't remember anyone  
25 disobeying an order. More likely, this would be a

1 training issue. Like I said, let's say someone used  
2 lights but didn't use their siren. As you and I have  
3 talked about, there's a requirement to use lights and  
4 siren.

5 Or maybe they -- let's say an officer is  
6 trying to get to the scene and they're driving through  
7 stop signs and lights like -- I would -- probably that  
8 would be a training issue. Again, in my line of  
9 thinking, you know, I'm a mistake of the heart versus a  
10 mistake of the head. Are you really thinking about what  
11 you're doing? So more likely than not it would be a  
12 training issue.

13 Q. So I'm trying to pin you down and you're  
14 doing a good job on not being pinned down.

15 A. I'm trying to give an honest answer.

16 Q. I hear you. Have you ever opined, as an  
17 expert, that pursuing a drunk driver, a DUI, was  
18 inappropriate, other than this case?

19 A. I think -- no. I don't believe. In fact,  
20 I'm looking at my cases right here, I don't believe I've  
21 had any involving a drunk driver, if that was the  
22 question.

23 Q. Yeah. That's right. So I think what I'm  
24 hearing you say is, despite what Seattle policy was,  
25 despite what your policy was, while there, at least on

1 the surface, a flat ban on pursuing any misdemeanor, you  
2 would be willing to listen to the facts prior to making  
3 any determination on whether it's a training issue or a  
4 discipline issue. Is that right?

5 A. Yes. Again, if I'm in the review process?  
6 To make sure, there's kind of going to be a difference  
7 of in the moment versus in the review process.

8 Q. Yes.

9 A. Yes. Always important to listen to facts.  
10 Absolutely.

11 Q. Okay. So continuing on down on this same  
12 page, No. 4: Officers will cease pursuit when the risk  
13 of the pursuit outweighs the danger to the public if the  
14 suspect is not captured.

15 I don't believe there are any guidances in  
16 this particular policy, 2017, as to what that exactly  
17 means. Now, if I'm reading this right, this of course  
18 would only occur on felonies, which is apparently still  
19 allowed, at least under certain felonies, to pursue it.  
20 But even then, the officer was charged with weighing the  
21 risk. Right?

22 A. Yes.

23 Q. So what guidances did your officers have as  
24 to when the risk outweighs the danger to the public?

25 A. We task officers with using their judgment

1 and their reasoning and their ability to observe and  
2 articulate facts every time that they engage in any type  
3 of law enforcement action. In all cases, we can talk  
4 about pursuits, we can talk about shootings, we can talk  
5 about S.W.A.T. entries, we can talk about capturing a  
6 bank robber. At all times you have to be aware of the  
7 situation around you, what are the facts I'm presented  
8 with, and what actions am I going to take as a law  
9 enforcement officer? You have to consider those cases  
10 in the light of what's reasonable, what is reasonable  
11 for an officer to do.

12 And those standards are somewhat subjective,  
13 as I think you're suggesting. They absolutely are. Yet  
14 they still have a review process. They still have a  
15 court hearing process. There's still a discipline  
16 process. There's still lawsuits. There's all the  
17 things that might result, as you can think of, that  
18 occur after an incident, where others are now going to  
19 look back on the officer's actions and judge their  
20 reasonableness in the light of what's reasonable  
21 behavior to take, or what is egregious behavior or  
22 reckless disregard on the part of an officer.

23 So hopefully that answers your question.  
24 There's always that standard. Again, we kind of touched  
25 on it. You can't blanket statement an incident just

1 because, you know, you saw a short snippet on the news.  
2 You have to look at all the facts presented and make a  
3 decision based on the officer's actions and whether  
4 they're reasonable or not.

5 Q. Okay. Well, your point is well-taken.  
6 Let's talk about some of those factors you're speaking  
7 about. One of them would be traffic conditions.  
8 Correct?

9 A. Yes.

10 Q. To perhaps ask the obvious, but we should  
11 get it on the record, traffic conditions meaning what,  
12 exactly?

13 A. How many vehicles and pedestrians are on the  
14 road and on the city streets and on the sidewalks. If  
15 you're in the middle of the Nevada desert, not a lot of  
16 people around there. If you're in downtown Seattle,  
17 kind of different.

18 Q. Sure. In Seattle there are people on the  
19 streets and driving all times of day and night. Right?

20 A. Yes.

21 Q. But nevertheless, for pedestrians and for  
22 vehicles, legal vehicles on the road, DUI is a threat to  
23 them, is it not?

24 A. Yes. Drunk drivers? Is that what we're  
25 talking about? Yes.

1           Q. So what's the tipping point on a pursuit as  
2 to when traffic factors are such that pursuit should not  
3 happen?

4           A. Again, as I said, you can't -- there is no  
5 blanket answer for that. There's no bright line answer  
6 for when that is. You have to look at all the facts  
7 that are available to the officer at the time. And  
8 their decision as to what the law allows me to do in  
9 order to pursue this offender, and also, but what is  
10 reasonable. If the law allows for you to do something,  
11 it doesn't always make it a good thing to do. And  
12 that's what a police officer should be doing, is  
13 weighing those factors, examining all of -- everything  
14 that's coming to them, all their senses, in whatever  
15 police action they're involved in, and trying to decide  
16 at that time, is it reasonable, what I'm doing right  
17 now? Or uh-oh, and you get a bad feeling, this is not  
18 reasonable, let me rethink my tactics here, let me  
19 approach this from a different direction, let me try  
20 something else.

21           Q. There is no tipping point?

22           A. Correct.

23           Q. Everything stands and falls on its own  
24 merits in the individual pursuit?

25           A. It does.



1 Q. Let's go to speed.

2 A. I'm sorry, I need to take a 2-minute break  
3 if possible.

4 Q. Of course.

5 (A break was taken.)

6 BY MR. KANE:

7 Q. So among the factors that an officer would  
8 be expected to think about, aside from traffic  
9 conditions during a pursuit, would be speed. Correct?

10 A. Yes.

11 Q. Now, you used the example of 30 in a 25.

12 A. Right.

13 Q. The example that you gave me, you thought  
14 that would be all right to pursue, given all other  
15 factors being --

16 A. Again, yeah. It's kind of a generalization.  
17 But I'm not going to be too alarmed at 30 in a 25.

18 Q. Well, when do you get alarmed?

19 A. Well, again, we've got to look, are you --  
20 are we looking at Seattle? Are we going back to my time  
21 in Seattle?

22 Q. We're looking at the policy.

23 A. My first thing I want to know is, what's the  
24 crime? Are we saying it's a DUI?

25 Q. No. We're on the policy. The policy pretty

1 much says felonies only.

2 A. Right.

3 Q. So even then, for No. 4, the officer has to  
4 weigh certain factors.

5 A. Sure.

6 Q. You spoke about traffic conditions. Now I'm  
7 going to speed.

8 A. Right. That's another factor. Absolutely.

9 Q. So other than 30 in a 25, when does it  
10 become, I think in your term, alarming? When is the  
11 speed alarming?

12 A. It's a hard question to answer. I'm trying  
13 to do my best. The reason is because in Seattle the  
14 pursuit's already called off, so I don't even really get  
15 to hear much about speed. If an officer turns on lights  
16 and siren, says, I'm following someone, and they're  
17 refusing to stop, or failing to yield or something like  
18 that, I might listen.

19 Now, there are some times when people don't  
20 stop. They have room to pull over, they're scared from  
21 the lights and siren. There's any number of things that  
22 can happen. When it appears that the driver is now  
23 taking actions in order to elude the offices, we have  
24 kind of talked about that. When they're increasing  
25 their speed, when they're running stop signs, things

1           like that.

2                       So to get back to your question, you talked  
3 about speed, when we look at those factors. Again, I've  
4 still got to know what crime we're investigating, but in  
5 general, that pursuit's going to be called off. They  
6 just say, I'm not pursuing at this point. They shut  
7 lights and sirens down. That's why it's a hard question  
8 to answer. The pursuit's not really happening at that  
9 point. At least in Seattle, we haven't had one on the  
10 Oregon State University. The pursuit's not even  
11 happening, so you're almost getting to the point where  
12 you hear about those speeds, the stop signs, or the  
13 reckless driving, whatever the case might be.

14                   Q. So speed is not a factor? Is that what  
15 you're saying?

16                   A. Oh, no. Definitely a factor.

17                   Q. But when does it become a factor that would  
18 cause an officer to stop the pursuit?

19                   A. When it becomes part of the eluding, when  
20 someone -- again, I can't define for you. There's no  
21 bright line. But when that officer's engaged in trying  
22 to stop a violator, and it becomes clear that the person  
23 is eluding, the person is refusing to stop, and they're  
24 not only refusing, but they're taking action to avoid  
25 and to flee from the officer, that's when a pursuit's

1 going to get shut down, because again, we're talking  
2 about the safety factors.

3 So what harm comes from continuing that  
4 pursuit, versus what am I stopping this guy for? So  
5 yeah, speed is one of those factors. I hope that  
6 answers the question. I'm trying to.

7 Q. I guess what I think I'm hearing, you tell  
8 me if I'm wrong, is a felon, pick a felony, begins to  
9 elude. That's when you call it off?

10 A. No. Now we're talking felony. That's  
11 different in Seattle. An officer would be allowed to  
12 pursue for a felony. Again, you have to allow for the  
13 danger to the public, the inherent risk of pursuing a  
14 felon in that case. So we have to consider --

15 Q. I'm sorry, Commander -- Lieutenant, I've  
16 been talking about felonies only. So let's stay with  
17 felonies, then.

18 A. Okay. I was still kind of back in  
19 misdemeanor land.

20 Q. No. We're felonies only.

21 A. That kind of helps.

22 Q. So again, felony pursuit in Seattle --

23 A. Yes.

24 Q. Traffic conditions was something that the  
25 officers would have to think about?

1 A. Yes.

2 Q. And they would have to make the individual  
3 call based on that and other factors, which we'll get to  
4 in a minute, as to whether or not to continue the  
5 pursuit of a felony. Correct?

6 A. The officer always had the responsibility to  
7 be reasonable in their actions. So just because a  
8 supervisor is not calling it off doesn't mean, woo-hoo.

9 Q. I get that.

10 A. That's not true. So an officer is always  
11 responsible for their actions. So from my standpoint --

12 Q. They have to weigh the risks?

13 A. Absolutely. So no, blanket pursuit, it's  
14 not that you're going to do whatever you want.

15 Q. One risk is a traffic factor. Another is  
16 speed?

17 A. Yes.

18 Q. In the context of felony pursuits in  
19 Seattle --

20 A. Yes.

21 Q. -- talk to me more about when speed became  
22 an overriding factor when the officer should call it off?

23 A. Every time that you go faster, you've  
24 reduced several things. One, your ability to see. Your  
25 vision narrows to what's directly in front of you and

1 you're not able to perceive everything that's around  
2 you. Number 2, the vehicle capabilities. At higher  
3 speed it takes longer to stop and slow down and to  
4 execute a turn.

5 And then 3, we talk about the violator. We  
6 don't know their driving capabilities or the  
7 capabilities of their vehicle. There's a lot going  
8 through an officer's mind when they get involved in a  
9 pursuit. Then you have tactical considerations at the  
10 same time. You're thinking, Okay, that pursuit I talked  
11 to you about earlier with the car jack suspect in  
12 Seattle. He shot at officers out the window. So I have  
13 a lot of things going on at the same time in deciding  
14 whether to pursue or not, and your job is to protect the  
15 public.

16 From that guy, there was a great duty to  
17 protect the public, especially based on his actions. So  
18 when there is a felony, and again, you said is, insert  
19 your felony here, even amongst felonies there's  
20 different levels. Right? The bank robber that just  
21 shot up a place and injured or killed someone, you're  
22 going to take even greater risk than, let's say, the  
23 burglary suspect. Someone broke into a storage building  
24 and stole something out of it. Both are felonies, but  
25 which one is the greater risk to society? Clearly the

1 bank robber who was willing to shoot it up.

2 Q. How about the burglar who is running stop  
3 signs and red lights?

4 A. That might be a pursuit. In fact, I've had  
5 some of those early in my career.

6 Q. Sure. Because running red lights and stop  
7 signs is a danger to the public. Right?

8 A. Absolutely.

9 Q. So I'm going to try to put words in your  
10 mouth, and you'll have the opportunity to pick it apart.  
11 At the end of the day, unless called off by an officer,  
12 another officer, the pursuit is left up to the  
13 individual officer to weigh those factors and determine  
14 whether to continue. Is that fair?

15 A. Yes and no. Absolutely the officer has the  
16 greatest responsibility. They're the ones behind the  
17 wheel, and if something goes wrong, they're the one on  
18 the stand with their hand in the air swearing to tell  
19 the truth. Yet there's still a responsibility for the  
20 supervisor, placed on them with the authority that  
21 they're granted as a sergeant, lieutenant, captain,  
22 chief, whatever rank they're given. And most  
23 departments, abiding by common law enforcement  
24 standards, it is common that the supervisor also have  
25 supervisory control of that incident.

1           Now, they're not driving the car. They  
2           don't have their foot on the gas or the brake, or  
3           they're not making that turn. Yet they still have to  
4           listen to what's going on and make a decision at that  
5           point. If it sounds like what they're hearing on the  
6           air, sometimes even in a felony, it doesn't mean -- you  
7           do not have blanket permission, just because it was a  
8           felony, to pursue at all costs.

9           Just because your car will go 140 miles an  
10          hour, it doesn't mean that that's something that you  
11          would reasonably be able to do to pursue a felon out  
12          there. We would find that unreasonable. The car can't  
13          physically stop if something were to happen in front of  
14          it. So again, there's an extreme example.

15                 Q. That's pretty extreme.

16                 A. But if you think about it, the car is  
17          capable of doing 140 miles an hour, and on a  
18          straight-shot highway, with no one around, or on a drag  
19          strip, the officer is capable of driving 140 miles an  
20          hour. But what have they lost? They now can't  
21          recognize street signs, they can't see anyone around  
22          them. You probably can't even really focus much on the  
23          driver ahead of you. It's all you can do to keep the  
24          car straight on the wheel. And the slightest turn,  
25          you're in a crash.



1 I use that as an extreme exam. But to try  
2 and explain that, just because an officer can do  
3 something physically, it might not make it reasonable.  
4 And again, they're still going to be liable for their  
5 actions on that pursuit. We're using a fictitious, I  
6 went 140 miles an hour to pursue this individual. It  
7 doesn't make it reasonable to go that fast.

8 And any supervisor that hears that is going  
9 to be derelict in their duties. No. This sounds okay  
10 to me. No, a supervisor is then unreasonable in their  
11 responsibilities, too, if they were to allow something  
12 like that to continue.

13 Q. Okay. But my question was, during the  
14 pursuit, it's up to the individual officer, unless  
15 called off, to weigh those risks in his own mind and  
16 determine whether to pursue?

17 A. I think I tried to answer that by also  
18 saying there's responsibility for the supervisor.

19 Q. I get it. But unless called off, it's up to  
20 the cop, in the arena at the moment, to make that call.  
21 Right?

22 A. I'm not trying to be difficult. I still say  
23 there is a responsibility for both. The supervisor's  
24 been in the position, supposedly because they have some  
25 experience, some training, some supervision guidance.

1 So they are still responsible for the actions of their  
2 officers. So you can't allow an officer to be  
3 irresponsible.

4 Now, I will say that the greatest proportion  
5 is the guy behind the wheel, absolutely. Steering the  
6 car action driving, braking, all of that. That's the  
7 greatest responsibility. I hope that answers the  
8 question. I'm trying.

9 Q. So after almost an hour and a half, we're  
10 finally going to get to Nampa. Actually, not. I want  
11 to ask one more question. Do you know of any other  
12 jurisdictions in Washington that have adopted policies  
13 similar to what we're looking at here, on-screen  
14 sharing, where pursuits will be pretty well banned  
15 absent a felony?

16 A. Most of the Puget Sound agencies adopted  
17 similar standards, and that's where sometimes when a  
18 pursuit would happen in a city, quite often you'll hear  
19 the offices ask for state patrol, because the Washington  
20 State Patrol was still allowed to pursue, specifically  
21 if something went on the freeway. They're not generally  
22 going to come into your city to do a pursuit. But on  
23 the freeway sometimes that was allowed.

24 I would not be able to say for sure without  
25 looking at all of the policies, but I know that it was

1 common that many of the Puget Sound agencies adopted  
2 similar standards.

3 Q. Do you know if any of the Eastern Washington  
4 cities adopted that policy?

5 A. I'm less familiar with those in Eastern  
6 Washington, so I couldn't say.

7 Q. Do you know of any Idaho jurisdiction that  
8 has adopted this policy?

9 A. No.

10 Q. Is this your first Idaho case?

11 A. Yes. I can't think of any other Idaho  
12 cases. Correct.

13 Q. All right. Okay.

14 (Exhibit No. 2 Marked.)

15 BY MR. KANE:

16 Q. I'm now going to officially ask that the  
17 Nampa Police Department Policy 313 be marked as an  
18 exhibit, as 2.

19 A. Is there a way to make it bigger?

20 Q. Yes. I'll do that. Before I do, though, I  
21 want to just ask you some general questions. Are you  
22 familiar with Lexipol?

23 A. Yes.

24 Q. You know what they do?

25 A. Yes.

1 Q. Do you have any issues as a police commander  
2 with the Lexipol policies in general?

3 A. I haven't studied them extensively. This  
4 appears to be based on Lexipol.

5 Q. It is.

6 A. Right. So I can't say that I've studied  
7 them extensively at all. We considered using Lexipol  
8 here at Oregon State University, but ultimately did not  
9 utilize them, and the chief is primarily responsible for  
10 policy here. So I can't say that I've weighed the  
11 different policy producers out there, for lack of a  
12 better term. I can't really say.

13 Q. The reason I ask is that it may shorten the  
14 conversation if you had a view that Lexipol was somehow  
15 inadequate or something like that.

16 A. I don't.

17 Q. Okay. Well, this is the policy that Nampa  
18 had adopted, and you've reviewed this. Correct?

19 A. Yes.

20 Q. All right. You'll see that this was in  
21 effect in August of 2017. Right down there at the  
22 bottom. Do you see where my little arrow is there?

23 A. I do. And there's the Lexipol. There you  
24 go.

25 Q. So I guess the first thing that I noticed

1 about this policy was it was significantly longer than  
2 the Seattle policy, with a lot more flesh on the bones,  
3 for lack of a better term. Did you find anything wrong  
4 with this policy?

5 A. There were some issues that were concerns to  
6 me, yes.

7 Q. Tell me what they were. And if you need to  
8 refer to a specific page, I'll go to it.

9 A. That's okay. 313.1, Purpose and Scope:  
10 Vehicle pursuits expose innocent citizens, law  
11 enforcement officers, and fleeing violators to the risk  
12 of serious injury or death. The primary purpose of this  
13 policy is to provide officers with guidance in balancing  
14 the safety of the public and themselves against law  
15 enforcement's duty to apprehend violators of the law.

16 So I was a little concerned, in essence,  
17 that sounds good, and I'm sure we're starting to get to  
18 the Nampa Police Department, but it doesn't seem that  
19 that balance took place. I think that's a lot what you  
20 and I spent last half hour talking about. It's that  
21 balance. I might term it more as reasonableness, the  
22 officers weighing the reasonableness.

23 Q. My question was, was there anything about  
24 that policy that you found wanting?

25 A. There's a section that says, I think it's

1 still in the same section, deciding whether to pursue a  
2 motor vehicle is a critical decision that must be made  
3 quickly and under difficult and unpredictable  
4 circumstances.

5 I had a problem with that because this  
6 decision need not be made quickly. You can evaluate all  
7 the circumstances around you. You can still utilize  
8 your, I sometimes call it police brain. Again, it's  
9 reasonableness. That standard of reasonableness. And  
10 as it goes on, the longer it goes, you have more time to  
11 evaluate your actions, in any type of police action.  
12 But since we're talking about pursuits here, the longer  
13 it goes the more time you have to think, and this is not  
14 occurring quickly. There might be a decision as to  
15 whether I make a right or a left or hit the brakes. You  
16 still have time to evaluate the actions that are going  
17 on. So that was one concerning thing to me.

18 Q. What else was of concern to you? If you  
19 want me to move it, that's fine.

20 A. That's fine. I'm trying to look at some  
21 notes I took. This was a little concerning to me.

22 313.2.1. My answers are --

23 Q. Slow down. Let me get it up on the screen  
24 here.

25 A. Okay. No problem.

1 Q. 313.1.2?

2 A. 313.2.1.

3 Q. All right. When to Initiate a Pursuit?

4 A. Right. Officers are authorized to initiate  
5 a pursuit when it's a reasonable to believe that a  
6 suspect is attempting to evade arrest or detention by  
7 fleeing in a vehicle.

8 That seems a little careless in a policy to  
9 me to give officers carte blanche, yep, you're  
10 authorized to pursue if someone's trying to get away  
11 from you. That seems short-sighted to me when I read  
12 that.

13 Q. Maybe you can interpret it that way, but it  
14 follows immediately with a series of factors that must  
15 be considered, and they go on for a bit.

16 A. Right. As you and I talked about, those are  
17 all the factors that someone's going to be using in  
18 order to evaluate your reasonableness, what's reasonable  
19 in the actions that you took. But to start off, your  
20 policy as to when to initiate it, you can't argue that  
21 language. I'm not talking about you specifically, but  
22 if an officer, if someone told an officer, Hey, you  
23 shouldn't have done that pursuit, I'd bring up this  
24 language right here. It says I'm allowed to. I find  
25 that troubling.

1           Q. Okay. But you would agree that right below  
2 that there are a series of factors that shall be  
3 considered. So it's not just that sentence standing  
4 alone. Right?

5           A. I do agree that -- you're absolutely right.  
6 I'm sorry, is it Mike?

7           Q. Yes.

8           A. I agree, Mike, that right below that it  
9 says: The following the factors individually and  
10 collectively shall be considered in deciding whether to  
11 initiate a pursuit.

12                       So then we get into some of the things that  
13 you and I have talked about. The known or reasonably  
14 suspected crime, protecting the public.

15           Q. So did you find anything concerning in these  
16 factors, A through L?

17           A. In Line H I was concerned, because it says:  
18 Performance capabilities of the vehicles used in the  
19 pursuit in relation to the speeds and other conditions  
20 of the pursuit.

21                       To me this reads about the conditions of the  
22 officer's vehicle, and it doesn't talk about any of the  
23 suspect's vehicle, the person you're trying to pursue.  
24 They're the ones leading the pursuit. They're the ones  
25 leading the chase, and it seems you should consider both



1 the capabilities of the driver as well as the vehicle  
2 they're driving.

3 Q. How would the officer even know what the  
4 capabilities of the suspect vehicle would be?

5 A. Exactly. That's my point. How would you  
6 even know? Maybe you could take a guess based on the  
7 vehicle, but you don't know anything about the driver's  
8 ability. So it's one thing to consider your own ability  
9 and the ability of the vehicle you're driving, but what  
10 about the capabilities and driving ability of the person  
11 that you're chasing? I thought there should be some  
12 mention of that.

13 Q. Okay. Any other concerns with this  
14 particular section?

15 A. No.

16 Q. Any on other concerns with the pursuit  
17 policy at all?

18 A. Looking at my notes, just seeing if anything  
19 else stood out to me. Yeah. Let's move to, let's --  
20 it's in the Section D, small letter D in the Terminate.  
21 Move on down.

22 Q. Okay.

23 A. Let's look at that. So Extended Pursuits --  
24 this is No. D -- Extended pursuits of violators for  
25 misdemeanors, not involving violence or risk of serious

1 harm independent of the pursuit are discouraged.

2 And granted, I understand, sometimes police  
3 policies are not bright line. But why are they  
4 discouraged but not prohibited? So that was concerning  
5 for me for the Nampa Police Department's standpoint.

6 Q. Well, would you agree that, if you're not  
7 going to prohibit them outright, in certain  
8 circumstances they can still be discouraged? It's  
9 really a philosophical issue, isn't it?

10 A. That's what they've done, exactly what you  
11 said. They discourage it, but they don't prohibit it.  
12 And you're right, it is somewhat of a philosophical,  
13 because I'm musing on it right now. Why not prohibit  
14 it? If you recognize the danger and you'd like to  
15 discourage the officers from doing it, it seems like it  
16 hangs the officer out to dry. Well, the department  
17 didn't say I couldn't do this, so I'm doing it. I was a  
18 little concerned about that aspect of the policy.

19 Q. Any other concerns about the policy?

20 A. Let me look. We've already talked about  
21 this, but they mention it again. In 313.2.3,  
22 subsection C.

23 Q. Yeah.

24 A. Whether the speeds are beyond the  
25 capabilities of the police vehicle, thus making its

1 operation unsafe.

2 Again, we've made no mention of the  
3 capabilities or the driving abilities of the offender.  
4 So it's a similar problem that I had before. You talked  
5 about a long policy. The way to make it long is to  
6 bring up the policy twice and write about it twice.

7 Q. Okay. Any other concerns that you had?

8 A. I think those were the only things that I  
9 came up with that caused me some concern as I read the  
10 policy from strictly a policy standpoint, yes.

11 Q. Okay. Well, you would agree that the policy  
12 allowed for pursuing a suspected DUI. Correct?

13 A. Yes. I would say the policy allowed for --  
14 we talked about that one section where it went to  
15 initiate a pursuit. And again, I'm trying not to repeat  
16 myself, but we talked about that issue that it's allowed  
17 when someone's trying to evade arrest or detention. But  
18 then we get into the other issues, and I don't know if  
19 you're ready to discuss these issues, but then we get  
20 into the judgement of some of the officers, so I do have  
21 concern there.

22 Q. I get that.

23 A. Yeah.

24 Q. What I'm going at here is the policy allowed  
25 my cops to pursue this guy if they believed he was a

1 potential DUI. And I realize that you come from a place  
2 where that shouldn't have happened. But you would agree  
3 that this policy allows that. Right?

4 A. There is still some issue with that. Yes  
5 and no. We talked about, I think we've read through the  
6 sections of the policy where it specifically says that  
7 you can. Again, trying to not get ahead of you or ahead  
8 of myself and get into issues of judgment. But there  
9 are sections in the policy that talk about weighing the  
10 need to get this violator. If you want, I can try to  
11 bring up those sections.

12 Q. We'll do that in a bit. I'd just like an  
13 answer to my question.

14 A. I'm not trying to be obstinate. I'm trying  
15 to answer your question. So yes, the pursuit is allowed  
16 with caveats, I guess is the best way I can put it.

17 Q. Sure. Obviously.

18 A. Yeah.

19 Q. Are you familiar with Idaho law as to police  
20 policies? Are you aware of any cases that speak to  
21 Idaho police policies, as regarding the tort of  
22 negligence?

23 A. There was a case that Evan sent to me that  
24 seemed to have a bearing on this. I assume, if you're  
25 asking, that's one we could kind of talk about.

1 Q. I'm just asking, sound like you reviewed at  
2 least one case?

3 A. Yeah. Athay versus Rich County?

4 Q. That's one case.

5 MR. MORTIMER: Don't forget about Stacy.

6 MR. KANE: Yes.

7 BY MR. KANE:

8 Q. That case really deals with reckless  
9 disregard. I'm talking about cases that speak to how  
10 policies, police policies are treated by the courts.

11 A. No. I don't have any independent knowledge  
12 of that.

13 Q. Okay. Well, if I told you that violation of  
14 a policy, a police policy, does not mean that a duty has  
15 been violated in the law of negligence, would you have  
16 any reason to disagree with that?

17 A. Say it one more time.

18 Q. I'll try and make it easier. You understand  
19 that in Idaho, violating a policy, in and of itself,  
20 does not mean you were negligent if you're a cop?

21 A. I do know that there are going to be  
22 differences in policies versus differences in state law.  
23 And sometimes state law allows for greater leeway for an  
24 officer's actions versus what policy says. So  
25 absolutely. You might be -- a case many years ago in

1 Seattle, an officer shot a fleeing felon. He hit him in  
2 the shoulder. It was against department policy, but the  
3 state allowed it, because it was authorized. I think  
4 that's what you're getting at. There's a different  
5 example, but yes, there are cases like that.

6 Q. And we're on the same page. So you have  
7 found some concerns with this policy, but would you  
8 agree that if an officer was to violate this policy, it  
9 does not automatically mean he was negligent?

10 MR. MORTIMER: Objection. Calls for purely  
11 a legal conclusion.

12 THE WITNESS: Sorry. I have to take this  
13 call. Be back in one minute, hopefully.

14 MR. KANE: Not supposed to happen when a  
15 question is pending, but okay.

16 MR. MORTIMER: To be clear, Mike, it's not  
17 me.

18 THE WITNESS: I apologize, I have an  
19 emergency with a weapon that I do need to attend to. I  
20 suspect that I can be back fairly quickly, but I do need  
21 to leave at this moment. I apologize. Not my goal. If  
22 everyone is still available this afternoon, we could  
23 reengage.

24 MR. KANE: When you say you could attend to  
25 it quickly, what do you mean?

1 THE WITNESS: As a supervisor, I have to go  
2 and supervise. This is going to require my attention.

3 MR. KANE: An hour?

4 THE WITNESS: No. Less than that.

5 MR. KANE: How do you want to handle, Evan?

6 MR. MORTIMER: Do you want to just leave and  
7 reconvene at 3:15 or 3:30?

8 THE WITNESS: That's quite a bit longer. We  
9 could go.

10 MR. KANE: Half an hour from now.

11 MR. MORTIMER: 2:15 your time.

12 MR. KANE: Let's go off the record.

13 (A break was taken.)

14 BY MR. KANE:

15 Q. I keep calling you Chief. I hope that's  
16 okay. Most Idaho positions, Chief, Deputy, something  
17 like that. I hope that's okay. I think we're ready to  
18 go to your declaration now, so let me see if I can bring  
19 that up. Here we are. We'll make this larger.

20 A. Here we are.

21 Q. And I'm not going to insult you by asking if  
22 you recognize this. I know you do.

23 A. I do.

24 Q. I can't tell you how many times I've stated  
25 that in a deposition, and someone says, Do you recognize

1 this document? It's got their signature on it. Before  
2 we actually get into the dirt here, tell me how familiar  
3 you are with the layout of the City of Nampa.

4 A. Not very familiar. I drove through earlier  
5 this year, but didn't have time to stop and really -- I  
6 wasn't there for this purpose, so I didn't really go to  
7 any of the locations that we're talking about. I only  
8 know what I saw on Google Maps, and then I have a  
9 diagram of the pursuit. That's most of my knowledge.  
10 So in answer to your question, not a lot of knowledge of  
11 Nampa locality, geography.

12 Q. So you've already answered my questions.  
13 You didn't go to Nampa and kind of follow the route of  
14 this pursuit, then?

15 A. No.

16 Q. When you say you drove through, do you mean  
17 you drove through the freeway?

18 A. Yeah. I think I was on the freeway.

19 Q. So you didn't actually get off at the exits  
20 and scope out the town, then?

21 A. No.

22 Q. So you've never been to Nampa?

23 A. No. I didn't know which part of the city  
24 actually went through the freeway. No. I didn't spend  
25 any time in Nampa.



1 Q. But you did a Google Map, you say?

2 A. Yes.

3 Q. There's a thing called Google Earth that  
4 actually gets down to the streets and has photographs.  
5 Did you do any of that?

6 A. I didn't use Google Earth, no.

7 Q. So if I asked you about your knowledge of  
8 the Getaway Bar -- in fact, I will ask you. What is  
9 your knowledge of the Getaway Bar?

10 A. Very little. I only saw it in the police  
11 report.

12 Q. Okay. Do you have any knowledge that would  
13 contradict that the Getaway Bar is probably one of the  
14 most significant bars in Nampa that emanate DUIs?

15 A. No. I have nothing to contradict.

16 Q. Okay. Did you check the weather conditions  
17 for the City of Nampa on July 14, 2017, during the night  
18 time?

19 A. No.

20 Q. Do you have any doubt that it was a clear  
21 night, the moon in its last quarter, dry conditions?

22 A. To say for absolute certainty, I would want  
23 to go back to the police officer's report and look at  
24 it, but at this time I don't remember. I remember that  
25 it was not wet. There was no fishtailing of cars in wet

1 weather, wet streets. That type of thing. So no, I  
2 would take the officer's word for it.

3 Q. July 14th in Nampa, I guarantee you  
4 90 percent of the time is going to be dry as a bone.

5 A. I agree.

6 Q. Is there anything in particular that you  
7 feel that you learned from the Google Map that was  
8 helpful to you?

9 A. No, sir. The more useful one was the map  
10 with the pursuit route that was marked. I'm not sure  
11 who created it, but I had access to it.

12 Q. Did you review the in-car footage of  
13 Officers Poore and Putnam, such as it was?

14 A. Right. One had body-worn and one had in-car  
15 video. I think Putnam was the primary. He had a  
16 body-worn camera on, so you saw only the interior of the  
17 vehicle, and then you saw when he exited the vehicle.  
18 Sorry, go ahead.

19 Q. Go ahead.

20 A. Office Poore, second in the pursuit, I got  
21 to see the in-car video from the vehicle camera.

22 Q. Okay. Now, I know that you reviewed the CAD  
23 document, but did you review the radio dispatch  
24 document? Or audio, I should say.

25 A. So Evan had sent me some document that I

1 believe probably had a password expired or something  
2 like that. It seems like I initially reviewed it last  
3 year when we first started talking about the case, but I  
4 haven't looked at it since, and I couldn't really offer  
5 much of an opinion at this point.

6 Q. When we're talking about it, are you talking  
7 about the CAD document?

8 A. Yes. I don't have access to it now.

9 Q. Did you review the radio dispatch, the  
10 actual audio?

11 A. No. Only what I could hear in the car, but  
12 that was mostly covered by siren.

13 Q. Okay. All right. I'm going to pull up some  
14 stuff on this and we will talk about it. So you see  
15 there on paragraph 5, Dangers involved with police  
16 pursuits are well-known.

17 You cite the National Highway Traffic Safety  
18 Administration.

19 A. Yes.

20 Q. And they ran a, I guess an analysis of the  
21 pursuit-related crashes from 1996 to 2015. They came up  
22 with 6,000 fatal pursuit-related crashes.

23 A. Yes.

24 Q. Now, I didn't put it in as a document.

25 (Exhibit No. 3 Marked.)

1 BY MR. KANE:

2 Q. But did this analysis differentiate between  
3 the kinds of failed pursuit-related crashes?

4 A. Well, I remember that it talked about --  
5 there's also line-of-duty deaths, which I also looked  
6 at, and I might be configuring those two together. Some  
7 of those went into more details about what the officers  
8 were doing, or one-officer patrol, two-officer patrols,  
9 what type of thing was going on with them. So I think  
10 it would be beyond me right now to say more specifically  
11 than that. Now, I could click the link and look at that  
12 if we want to do that.

13 Q. Well, I don't know if we need to beat it up,  
14 besides which I'm asking the questions. I will tell you  
15 that the link does not match -- I don't think it  
16 matches, because the link I'm looking at says, Vehicle  
17 pursuits 2012 to 2013.

18 A. Hmm.

19 Q. But I guess we can leave that for another  
20 day. I guess the point I'm trying to make here is, it  
21 doesn't differentiate, at least to your knowledge -- are  
22 you checking it out it now?

23 A. Yeah. If you'd like me to, I'm happy to if  
24 you're going to ask me more questions about it.

25 Q. We're here. Go ahead, check it out.

1           A. Is that an underline next to -- I think it  
2 is.

3           Q. Yeah. It's really not that important. I  
4 just was really curious about that. Let's get back to  
5 work. It's all right.

6           A. I think I can answer your question really  
7 quickly. If you look at the link that that brought up,  
8 the very last paragraph is what I quoted there. So  
9 you're right, the report that I pulled up is from 2012  
10 to 2013, but the language I quoted does cover '96 to  
11 2015, so it's kind of more of an informational.

12          Q. I was confused by the 2012 to 2013 in the  
13 title.

14          A. I was too.

15          Q. So there is only a one-page document on the  
16 link.

17          A. Yes.

18          Q. Was there anything more -- it talks about a  
19 full report in the fine print. Did you read that full  
20 report?

21          A. I might have. I do a lot of research  
22 involving Department of Justice statistics, National  
23 Highway Traffic Safety statistics, Bureau of Justice,  
24 FBI numbers, so my memory is failing me if I definitely  
25 remember looking at that particular report that came up

1 from that link. I couldn't tell you at this point.

2 Q. All right. Well, I don't even know how to  
3 quite ask this question. The 6,000 cases they're  
4 talking about here, would you agree, obviously must  
5 involve cases in which people who were being pursued  
6 kill themselves?

7 A. Yes. Where they die of themselves, yes.  
8 There were 2/3 of pursuit-related fatalities involve the  
9 occupant of the pursued vehicle. So that's the greater  
10 portion right there.

11 Q. And they also include everything from what  
12 you described before as the people being pursued  
13 shooting out the back window, and any other kind of  
14 cases. Correct?

15 A. Yes. As you and I both know, any number of  
16 things can happen in law enforcement on a daily basis,  
17 especially when you're looking at statistics across the  
18 country, yes.

19 Q. And obviously any pursuant is going to have  
20 an element of danger, even at low speeds. Correct?

21 A. Sure. Even the most minor traffic stop --  
22 we're not even getting to the level of pursuit --  
23 there's some element of danger. You don't know who  
24 you're dealing with. Even if there's not a single  
25 traffic violation in a pursuit -- well, there would be.

1 I guess you could have a pursuit without a traffic  
2 violation, they're still refusing to stop. Okay.

3 Q. I think OJ Simpson did that.

4 A. Right.

5 Q. Did you do any similar analysis as to the  
6 number during these dates of fatal DUI cases, crashes?

7 A. I didn't go deeper into the data to look at  
8 that, no.

9 Q. Any doubt in your mind that DUI, driving  
10 under the influence, is a highly dangerous thing to do?

11 A. Yes. Correct.

12 Q. You made your living from stopping them.

13 A. Well, my living was as a Seattle police  
14 officer, but they provided me many different  
15 opportunities and different jobs to do. Every 2 or  
16 3 years I was able to change jobs and do something else,  
17 yes.

18 Q. We talked about DUI being a misdemeanor, at  
19 least in the early stages, until you get two or three of  
20 them.

21 A. Right.

22 Q. But it's still dangerous, even though it's a  
23 misdemeanor. Right?

24 A. Yes.

25 Q. Okay. So I want to go to paragraph 6 here.

1 I want to get in the weeds a bit.

2 A. Okay.

3 Q. You start with your opinion on the first  
4 sentence, that it was appropriate for Putnam to initiate  
5 the traffic stop.

6 A. Yes.

7 Q. Now, you then say: It is my opinion it was  
8 reasonable for Officer Putnam to initiate his sirens and  
9 lights to pursue Mr. Sena after he attempted to flee.

10 A. Yes.

11 Q. But by continuing to pursue Mr. Sena on  
12 July 14, 2018, even after it became clear that he was  
13 not going to voluntarily stop his vehicle, and was going  
14 to flee at all costs, Putnam, Poor, and Nampa PD acted  
15 with reckless disregard.

16 Okay?

17 A. Yes.

18 Q. Now, I want to break that down a little bit.  
19 When you say: It became clear that he was not going to  
20 voluntarily stop his vehicle and was going to continue  
21 to flee at all costs, what do you mean by all costs?

22 A. It seemed that Mr. Sena -- is it pronounced  
23 Sena or Sena?

24 Q. I believe it's Sena. I don't hang around  
25 with this guy.



1           A. S-e-n-a. I'll call him Mr. Sena. That's  
2 how I've been reading it. It seemed that Mr. Sena  
3 refused to stop, and by all costs means that he would do  
4 whatever it took to try to avoid capture by Officer  
5 Putnam, which included running stop signs, speeding, and  
6 eventually going very fast over the 16th Street bridge.  
7 So all those actions -- so at any cost, put another way,  
8 he's doing whatever he can to get away from that  
9 officer.

10           Q. Yeah. I agree. But this is an opinion  
11 that's already gone before the court. And when do you  
12 believe that it became apparent to Officer Putnam,  
13 Poore, and Nampa PD, that he was going to continue to  
14 flee at all costs?

15           A. When you see the speed of the vehicle  
16 increasing and you start seeing him running stop signs,  
17 at that point it seemed apparent that Mr. Sena is  
18 refusing to stop and is going to do what he can to avoid  
19 capture, to avoid stopping his vehicle.

20           Q. So the first stop sign, in your opinion,  
21 that was run, should have been the time they called off  
22 the -- this pursuit?

23           A. I think for me to offer you an opinion on  
24 that day, we need to go back and look at the video and  
25 play it all together, and then I would give you my

1 opinion as to when I believe, one, Mr. Sena knows the  
2 police are there.

3 Again, I didn't see all of it. Because we  
4 only see the body-worn camera from Officer Putnam  
5 initially. So I'm kind of relying on the in-car video  
6 from Poore, and he is not involved in the initial  
7 pursuit. So it's kind of hard to answer that question.  
8 From the video we have, we could throw it up and look at  
9 it all together, and I could give you some opinions on  
10 the way.

11 Q. I don't think we need to do that.

12 A. Okay.

13 Q. Because the police report of Officer Putnam  
14 actually lists the various stop signs and red lights  
15 that were run. Did you review that?

16 A. Yes.

17 Q. So my question is, as you sit here now, it's  
18 your opinion that the very first stop sign that was run,  
19 Officer Putnam, Poore, should have stopped the pursuit.  
20 Is that what I'm hearing?

21 A. I'm not saying that. I would have to look  
22 at it on an individual basis. Let's look at the video  
23 and look at that. But I'm trying to answer your  
24 question.

25 Q. Well, you did. You already told me, as soon

1 as the guy ran a stop sign, that's when it became clear.

2 MR. MORTIMER: Objection. Misstates his  
3 testimony. Go ahead.

4 THE WITNESS: There's two different things I  
5 think we're talking about there. So the way I  
6 understood the question, when we talked about it  
7 earlier, there's going to be a point in that video where  
8 you say, okay, Sena is trying to get away right now, or  
9 see some of the maneuvers he's doing in order to try to  
10 get away from the officer. What we then have to advance  
11 to, and I think this gets at your question, at what  
12 point does it become unreasonable? You have to look at  
13 all the facts and render a decision right there.

14 BY MR. KANE:

15 Q. Hang on for a second.

16 A. Sure.

17 Q. I'm going to be in court Sunday on this  
18 motion for summary judgment. We've got your affidavit  
19 here. And you say, even after it became clear that he  
20 was not going to voluntarily stop, and was going to  
21 continue to flee at all costs, Putnam, Poore, and Nampa  
22 Police Department acted in reckless disregard. When, in  
23 your opinion, did it become clear that he was not going  
24 to voluntarily stop and was going to continue to flee at  
25 all costs?

1 MR. MORTIMER: Objection. Asked and  
2 answered. Go ahead.

3 THE WITNESS: It was --

4 MR. KANE: It was certainly asked, but it  
5 sure as hell wasn't answered.

6 MR. MORTIMER: I think it was.

7 BY MR. KANE:

8 Q. Please give me an answer. When did it  
9 become clear to these officers that he was going to  
10 continue to flee at all costs?

11 MR. MORTIMER: I object to the question as  
12 badgering and reinstate my objection as asked and  
13 answered. Go ahead.

14 THE WITNESS: I think to give you the best  
15 answer on that -- I'm trying to answer the best I can --  
16 we need to actually be sitting and looking at the video,  
17 whether we do it today or at another date. And I'd also  
18 like to see all the vehicle video, if it's available.

19 Again, that body-worn camera doesn't really  
20 show me a lot. It's just the interior of that car. I  
21 can read the officer' report, and I can look at that  
22 body-worn camera, and I can see Officer Poore when he  
23 joins the pursuit. There's a point that occurs there,  
24 and you know what? It's not an easy thing to define.  
25 When is that exact moment? I've already told you that

1 I've maybe called off 30, maybe 40 pursuits. Is there  
2 an exact same time that I would do that? No. It's when  
3 I evaluate the facts that I'm faced with and render a  
4 decision as to whether to stop the pursuit.

5 Same with the officers in this case. I'm  
6 not trying to belabor that point, but you're asking me  
7 to say when the officers should have stopped the  
8 pursuit. When it becomes clear that Sena is not going  
9 to stop for them, you have to evaluate your head, why am  
10 I pursuing this guy? Because it seems very clear to me  
11 that this guy is not going to stop. So there might not  
12 be one exact moment when that occurs, but the thought  
13 process in my head, you have to view it from the  
14 standard of a reasonable officer, and where would that  
15 occur? I can't answer that for you specifically. Not  
16 without looking at the video. And again, this might be  
17 a subjective thing. I might say, It's right here, and  
18 another supervisor might say, No, no, I would have  
19 stopped it one block before this. And another  
20 supervisor might say, No, I think I'd let it go another  
21 half mile.

22 So these are subjective opinions. We need  
23 to sit down and listen the to the radio tape, where I  
24 can actually hear everything that's going on, and look  
25 at the video at the same time, and at that point I could

1 give an opinion, Mike, as to where is the point where I  
2 would call it off. And beyond that, it would seem  
3 unreasonable to me, but I can't define it for you at  
4 this moment.

5 BY MR. KANE:

6 Q. I hear, but I need you to hear me.

7 A. Okay.

8 Q. You have a signed affidavit that's being put  
9 into a court against my motion for summary judgment.  
10 You can't tell me, as you sit here right now, when it  
11 became clear to my officers at all, let alone when, as  
12 to -- that he was not going to voluntarily stop. Yes or  
13 no?

14 A. In order to best answer your question, I  
15 would want to rely on their police report, and I want to  
16 see what they say on that. Right now my link is not  
17 working to have access to that report. So I would rely  
18 on that, and the video, the whole video of the pursuit.  
19 And then I could -- I'm trying to answer your question.  
20 That's the best I can say on it. I would give at a  
21 point, I'd say, don't pursue past this point.

22 Q. And you can't do that now?

23 A. I can say, I watched the video last night.  
24 And I saw Mr. Sena attempting to drive away from the  
25 vehicle. I saw him blowing stop signs and making quick

1 turns and speeding. At that point, I would say yes,  
2 that's the point to stop that pursuit. Don't let it go  
3 beyond that.

4 Q. But how do you know it became clear to the  
5 officers?

6 A. I can't. I can only judge it from the  
7 standpoint of a reasonable officer.

8 Q. All right. Then you say in this same  
9 sentence -- you know what? I realized my door was open.  
10 Let me close it. The whole office doesn't need to hear  
11 this. Hang on a second.

12 Okay. In that same sentence, you then go on  
13 to say, Once it became clear, and he was going to flee  
14 at all costs, that my cops, and Nampa PD acted with  
15 reckless disregard for the safety and welfare of the  
16 public.

17 A. Yes.

18 Q. Please define what your understanding of  
19 reckless disregard means in this state.

20 A. Reckless disregard is defined in, I believe  
21 in the Idaho statutes. So looking at the Title 49-623  
22 § 4: The foregoing provisions shall not relieve the  
23 driver or an authorized emergency or police vehicle from  
24 the duty to drive with due regard for the safety of all  
25 persons, no shall these provisions protect the driver

1 from the consequences of his reckless disregard for the  
2 safety of Valley others.

3 Q. And that's obviously a legal term reckless  
4 disregard.

5 A. Right.

6 Q. I seem to be losing my voice here. Tell me  
7 what your understanding of the legal definition of  
8 reckless disregard is.

9 A. Acting in a way with -- there's some intent,  
10 there's knowledge of what you're doing, that it's  
11 unreasonable. It's a different standard from  
12 negligence, where you should have known what you were  
13 doing was dangerous. But now you know, what I'm doing  
14 is dangerous, and I'm going to continue pursuing, even  
15 though it's a traffic violator.

16 Q. Okay. So let's talk about knowing it was  
17 dangerous. Everything a cop does out in the street when  
18 he attempts an arrest can be dangerous. Right?

19 A. Yes.

20 Q. And cops know it's dangerous in the general  
21 sense. Correct?

22 A. Correct.

23 Q. But would you agree that reckless disregard  
24 is more than that?

25 A. It's acting with an intent.



1 Q. To do what?

2 A. In this case, acting with an intent to  
3 pursue this violator no matter what happened.

4 Q. And do you think that's what these cops did?

5 A. Yes.

6 Q. Pursued him no matter what happened?

7 A. Yes.

8 Q. How do you get there?

9 A. The end result.

10 Q. We all know what the end result was. It was  
11 extremely unfortunate.

12 A. It might end in someone's death, but I'm  
13 going to keep doing it. I've got to get this violator.  
14 That's reckless disregard right there. That's the very  
15 definition of it.

16 Q. But would you agree that any pursuit could  
17 theoretically result in somebody's death?

18 A. Yes. But society will accept that if it's  
19 someone that society needs to be protected from. They  
20 will give you extra leeway, and we kind of talked about  
21 this earlier today. I'm talking about the homicide  
22 suspect, the robbery suspect, the domestic violence  
23 suspect.

24 Q. Okay. So your definition of reckless  
25 disregard is knowing, at least in a general sense, that

1 it was dangerous to continue to pursue this individual?

2 A. Yes.

3 Q. All right. Kind of a run-on sentence. It  
4 goes on: Acted with reckless disregard for the safety  
5 and welfare of the public, including Mr. Zamudio and De  
6 La Fuente. Officer Putnam or his supervisor should have  
7 terminated the pursuit when Mr. Sena increased his  
8 speeds dramatically and began committing more dangerous  
9 violations.

10 I want to break that down. We all know that  
11 Mr. Sena was speeding. You've seen the video, you've  
12 seen the police reports.

13 A. Right.

14 Q. When did he increase his speed dramatically?

15 A. The highest speeds were over the 16th Street  
16 bridge, from what I could tell. He was so fast at that  
17 point that, at least from my initial view of the video,  
18 he was pretty out of video range. There's also the  
19 crest of the hill there.

20 Q. All right. We can certainly agree, although  
21 dramatically is a bit of an adjective, but we can  
22 certainly agree, I think, that he was speeding at  
23 approximately 70 miles an hour when he crashed.

24 A. As far as I know, based on what I read, yes.

25 Q. Anywhere prior to that moment, when he runs

1 the red light and crests the curve, that he increased  
2 his speeds dramatically?

3 A. I think on the video I saw -- and it's also  
4 combined with, you can hear Poore's motor as he's  
5 driving. I don't know what he's driving. To me it  
6 sounds like a V6, but it might be a V8. But in any  
7 case, you can see -- that's more my viewpoint.

8 So when you see and hear him accelerating  
9 his police vehicle, and I think when you compare it to,  
10 again, what can I see of Mr. Sena, admittedly a little  
11 bit hard to see at times, because he's increasing his  
12 speed dramatically -- again, the word I use there -- in  
13 order to try to get away from the officers. But it  
14 seemed like he had several attempts to speed up his  
15 vehicle as he would make a turn, hit the gas and try to  
16 take off again.

17 We'll probably talk about it here in a  
18 little bit. But they tried the PIT maneuver a couple  
19 times when Putnam could get close enough to him. It  
20 didn't work. But you keep seeing the truck speeding off  
21 and the officers again having to accelerate quickly in  
22 order to keep up with him. So those are some of the  
23 dramatic speeds I'm talking about.

24 Q. Well, dramatic is an adjective. Would you  
25 agree that, up until they got to the bridge that we have

1 spoken about, it was really closer to what you might  
2 call a moderate speed pursuit?

3 A. I don't think I could fairly classify it as  
4 moderate right now.

5 Q. Let me put it slightly differently.  
6 Mr. Sena was in a 25, 30-mile-an-hour zone, and he would  
7 speed until he came to a turn, and then he would by  
8 definition have to slow down.

9 A. Yes.

10 Q. In order to make the turn. Then he would  
11 speed up again, and he would turn again, and this went  
12 on for a few minutes.

13 A. Yeah. There was that neighborhood there.  
14 Right.

15 Q. So momentarily he would speed up, and he  
16 would slow down and speed up and slow down. Would you  
17 agree that the only time that he got over approximately  
18 50 miles an hour was when he got on that street and took  
19 off over the bridge?

20 A. At this point I'm unaware if there was any  
21 speeds over 50 miles an hour during that twisting,  
22 turning neighborhood section that you and I are  
23 discussing. Certainly the greater speeds over 50 miles  
24 an hour occurred on the 16th Street bridge as he had the  
25 straightaway there. I couldn't say for sure if there

1 was anything over 50 in that earlier part.

2 Q. Let me go on a little bit here. You  
3 continue: And began committing more dangerous traffic  
4 violations.

5 Could you please tell us what you mean by  
6 that?

7 A. The speeding and the stop signs.

8 Q. So the first time he ran a stop sign, which,  
9 even if it was 35 miles an hour, you believe these  
10 officers should have terminated the pursuit?

11 A. When it seemed clear that he was trying to  
12 get away, yes.

13 Q. This is kind of a circular question.

14 A. I know.

15 Q. I thought I was hearing you say before that,  
16 when he ran a stop sign, that was when they should have  
17 terminated, because it, quote, became clear?

18 A. I was answering more along the lines that,  
19 when it became clear that Mr. Sena was trying to get  
20 away, that's the time to call off that pursuit. Then  
21 you have to ask, What crime am I pursuing this guy for?  
22 And now I'm making the conscious decision, Am I going to  
23 continue this pursuit, yes or no? And the answer was  
24 yes.

25 Q. Because -- you say it became clear sometime.

1 A. Right.

2 Q. And then later you say it's reckless  
3 disregard because it became clear?

4 A. Yes.

5 Q. When he began committing more dangerous  
6 traffic violations?

7 A. Yes. Going through stop signs and speeding.

8 Q. And you say that would be speeding and  
9 running stop signs?

10 A. Yes.

11 Q. So at the time of the first stop sign, they  
12 should have terminated the pursuit?

13 A. We'd have to go back to the video so we  
14 could break it down stop sign by stop sign. I can't  
15 really do that at this minute, but I'm happy to do that  
16 if you want me to.

17 Q. I just started to move down, and you say,  
18 Mainly running stop signs. The pursuit should have  
19 terminated within one or two blocks of these increased  
20 dangers. He ran a stop sign, ran another stop sign,  
21 that's when they should have terminated?

22 A. Yes.

23 Q. Okay. Then you say: Because it was clear  
24 that the danger to the public greatly outweighed the  
25 danger of letting Mr. Sena, a mere traffic violator,

1           escape arrest.

2                   A.   Yes.

3                   Q.   Now, let's break that down.  Again, there's  
4           that word, clear.  We've already spoken about the  
5           weighing that officers have to go to.  When did it  
6           become clear?  Or better -- I'm sorry.  Scratch that.  
7           How do you know it became clear?

8                   A.   I believe the officer wrote in his report,  
9           which again, I don't have access to right now, but when  
10          it became clear to the officer, and he wrote that  
11          Mr. Sena is trying to get away from him, I think you  
12          have to leave some leeway and give the officers the  
13          benefit of the doubt that sometimes when you try a  
14          traffic stop, people don't always pull over right away.  
15          There are several reasons why they don't.  They're  
16          confused, they're scared, they don't have a place to  
17          park, they're nervous.  Or they could be intoxicated and  
18          they don't even realize that a police officer is behind  
19          them.  They're unaware of their surroundings.

20                   It's reasonable for the officers to follow  
21          for a couple blocks, like, does this guy even know we're  
22          here?  That's what I was trying to describe.  When you  
23          see him beginning to increase speeds and running stop  
24          signs, okay, he knows we're here.  This is not just a  
25          mistake or being unaware on his part.  He's actually

1           trying to get away from us. So I can't answer that for  
2           them, but I can apply my own standard to it, and when I  
3           see it, that's the time to stop the pursuit.

4           Q. And it being the running of the stop signs?

5           A. That is certainly, yes, one indicator that  
6           says, this guy really knows we're here, and wow, he's  
7           really accelerating, and he's blowing stop signs and  
8           taking that corner unsafely. He's trying to get away  
9           from me. There's a minute when that light's going to  
10          come on and you're trying to do a traffic stop, and you  
11          realize someone's trying to get away from you.

12          Q. And that's the moment you're supposed to  
13          terminate?

14          A. I would say yes. Then you start to look at,  
15          what am I pursuing this guy for? What's the totality of  
16          the circumstances? You look back, what's my initial  
17          violation? What am I trying to do here? Should I  
18          continue this pursuit or should I stop it? And that's  
19          when I say, you should stop it.

20          Q. And by not stopping it at that moment in  
21          time, that's when it becomes reckless disregard. Is  
22          that what you're saying?

23          A. Especially, yes, the longer it goes on.

24          Q. But the minute the first stop sign was run,  
25          you're saying that it's your opinion my guys are in



1 reckless disregard?

2 A. I think we need to go back and look at the  
3 video for that, and I need to see the whole video, and  
4 then I can give you a better answer on that question.

5 Q. Let me ask this. Would you -- are you  
6 saying that you don't know when reckless disregard  
7 began?

8 A. It begins after the officers realize that  
9 Mr. Sena's not going to stop, and he's going to try to  
10 get away from them. To continue pursuing at that point  
11 would be reckless disregard for the safety of others.

12 Q. As you sit here, do you think that happened  
13 when they got to the bridge?

14 A. I think it occurred before the bridge.

15 Q. Can you tell us when?

16 A. As I've tried to explain, I can't give you  
17 that definite moment. If we watched the video, I would  
18 point out when I would call it off, let's say if I was  
19 an officer. I might even say, if I were a supervisor,  
20 here's when I would call it off.

21 Q. All right. In the last clause there: This  
22 pursuit should have been terminated within one or two  
23 blocks of these increased dangers.

24 Do you see that sentence?

25 A. Yes.

1 Q. You then say: It was clear that the danger  
2 to the public greatly outweighed the danger of letting  
3 Mr. Sena, a mere traffic violator, escape arrest.

4 A. Yes.

5 Q. Why is he a mere traffic violator?

6 A. He'd only committed a traffic violation at  
7 that point. So that's what he is.

8 Q. Well, officers are allowed to pursue on  
9 probable cause. Correct?

10 A. Are officers allowed to pursue on probable  
11 cause?

12 Q. A DUI. Let's make it even clearer.

13 A. Are officers allowed to pursue on probable  
14 cause? Well, if we look at the Nampa Police Department  
15 manual, it might be discouraged. I think we discussed  
16 that before, but not prohibited.

17 Q. Well, you -- officers stop, everywhere in  
18 the country, DUIs? They only have probable cause. So  
19 that's allowed. Right? You can stop a guy on probable  
20 cause.

21 A. I always said that I didn't have probable  
22 cause until I've been up to the window, and maybe I've  
23 combined with some observations, some odor, a field  
24 sobriety test, and upon that point do I then determine  
25 probable cause. Are you talking about reasonable

1 suspicion?

2 Q. Indeed I am. You actually hit it for me.  
3 You got there. Yes. Let's go to that. It is not  
4 illegal, immoral, or against policy to stop a car with  
5 reasonable suspicion of DUI. We can certainly agree on  
6 that?

7 A. Agreed.

8 Q. All right. Now, every stop starts with a  
9 guy who exhibits -- or a woman, exhibits a potential to  
10 be DUI. Correct? Such as weaving, running a stop sign,  
11 you name it. There are all kinds of reasons somebody  
12 might attempt to stop a vehicle. Correct?

13 MR. MORTIMER: Object to the form.

14 THE WITNESS: Really long question.

15 MR. MORTIMER: Go ahead.

16 THE WITNESS: Is the question, can an  
17 officer stop a violator? Is that what I'm hearing?

18 BY MR. KANE:

19 Q. Yes.

20 A. Yes. They can.

21 Q. So the term, "mere traffic violator," does  
22 that include DUI?

23 A. They didn't have knowledge that he was DUI  
24 at that point, so that's why I put in a mere traffic  
25 violator.

1 Q. But they certainly had reasonable suspicion,  
2 didn't they?

3 A. He left the scene at that bar that we talked  
4 about, and then he stopped in the road and then he left.  
5 Is that a reasonable suspicion for DUI? I would say  
6 it's a reasonable suspicion for a traffic violation.  
7 You might -- again, lot of experience in this area of  
8 DUIs. You might think that it could be a DUI, but you  
9 never knew for sure. So is it a suspicion? Sure.  
10 Absolutely. It's a reasonable suspicion this guy might  
11 be drunk. He left the scene of a bar. He stopped in  
12 the road, and now he's weaving. That's why I said the  
13 officers had a reasonable suspicion to make that traffic  
14 stop. Yes.

15 Q. Yeah. First of all, he didn't just stop in  
16 the road. He stopped for 20 to 30 seconds, after  
17 leaving a very, very well-known DUI bar. Okay?

18 A. Yes.

19 Q. Can you accept that?

20 A. I don't know about really well-known DUI  
21 bar. But it's a bar, sure.

22 Q. All right. So that, in and of itself, would  
23 be a reasonable suspicion, would it not?

24 A. I would say for the traffic violation only.

25 Q. So you disagree that it might be reasonable

1 suspicion for a DUI at midnight, coming out of a bar?

2 A. It's a very subjective description that  
3 we're weighing there. One officer might say you don't  
4 have reasonable suspicion for DUI there, one officer  
5 might.

6 But you want my opinion. Is it reasonable  
7 suspicion for a DUI? Here's exactly how I would term  
8 it. I have reasonable suspicion for a traffic stop.  
9 Now, if I go up to the window and I get the telltale  
10 odor and some of the signs, now I'm on to reasonable  
11 suspicion for DUI.

12 Q. Okay.

13 A. So at first I'm total traffic stop, knowing  
14 that there's a possibility DUI, but not reasonable  
15 suspicion for it.

16 Q. All right. How about this. He now runs a  
17 stop sign and tries to get away from you. Do you think  
18 that's reasonable suspicion for DUI?

19 A. No. At this point now I think the guy's  
20 trying to get away. He might be wanted for something.  
21 A DUI is still a possibility. You never know, why is  
22 that guy running from us. You don't know. But your  
23 guesses now expand.

24 Q. All right. But I'm sticking to the, "mere  
25 traffic violator." He's beyond that. Right? When he

1 runs the stop sign?

2 A. I'd say he's still a traffic violator at  
3 that point.

4 Q. How about eluding?

5 A. Yeah. Then he gets to eluding. Right.  
6 We've now upped it, where he's taken those definite  
7 steps as defined in the Nampa Police policy, to take the  
8 steps to get away from the officers, yes. Now you're up  
9 to eluding.

10 Q. All right. So would you agree that running  
11 a stop sign, deliberately running stop sign, is  
12 dangerous to the public?

13 A. Yes.

14 Q. And not only the individuals, but also their  
15 property?

16 A. Yes.

17 Q. All right. What is your understanding of  
18 the law of eluding in Idaho?

19 A. That if you take any -- I think their policy  
20 is kind of based on it. If you're taking those  
21 affirmative actions in order to try to get away from the  
22 officer, then you're taking efforts to elude the  
23 officer. You're increasing your speed, you're running  
24 through stop signs, you're refusing to stop for that  
25 audible or visual signal from the officer.

1 Q. And what is your understanding of what the  
2 penalty for eluding is in Idaho?

3 A. Eluding is a misdemeanor, if I am  
4 remembering correctly.

5 Q. If I told you that the law is that if you  
6 endanger the public, it's a felony, would you --

7 A. I think this was a section about that, and  
8 they defined it, if you were going a certain mile an  
9 hour over the speed limit. Things like that.

10 Q. I had it printed, now I can't find it.

11 A. It's Policy 313.2.

12 Q. Well, if I told you that it was endangering  
13 the public, that's when it's at felony level, would you  
14 agree with me that what Mr. Sena was doing was  
15 endangering the public?

16 MR. MORTIMER: Object to the  
17 characterization. Misstates 49-1404.

18 BY MR. KANE:

19 Q. Go ahead with my question, sir.

20 A. One more time on the question, then.

21 Q. Would you agree that endangering the public  
22 was what Mr. Sena was doing?

23 A. Yes.

24 Q. If I told you that that is enough to get you  
25 to felony eluding, would you disagree with me?

1           A. I would not disagree.

2           Q. All right. So now we don't have a mere  
3 traffic violator anymore. We have a felon. Right?

4           A. Again, coming from Seattle, we don't count  
5 the eluding part of that. We look at what was the  
6 reason for the initial stop.

7           Q. But in Nampa --

8           A. That's what the officers are trying to  
9 protect the public from.

10          Q. In Nampa it is not unreasonable, illegal, or  
11 against policy to attempt to stop a felony eluder. So  
12 would you agree that that is more than a mere traffic  
13 violator?

14          A. Yes.

15          Q. Going onto the next paragraph: My review of  
16 the above-listed information revealed a complete lack of  
17 Officer Putnam's and Officer Poore's consideration of  
18 the known risks and inherent dangers to the public  
19 during a pursuit compared to the known risks and  
20 inherent dangers to the public if they let Mr. Sena, a  
21 traffic violator, go.

22                 Now, you don't just say lack. You say a  
23 complete lack.

24          A. Yes.

25          Q. How do you get there?



1           A. They're going to pursue this guy at all  
2 costs, and all he did was stop in the road. Those two  
3 do not equate. We can't pursue and force someone into  
4 whatever action they're going to take. You as the  
5 officer have to be responsible, knowing that your  
6 actions are then getting an action from the driver. And  
7 if the only thing we have is a, in my words, a traffic  
8 violator --

9           Q. Actually, those are your words. Not mine.

10          A. They are my words. And they don't -- they  
11 show me an officer that is thinking, I'm going to get  
12 this guy no matter what. I don't care that it's just a  
13 traffic violation. I'm going to pursue him no matter  
14 what. If he's going to go faster and faster, if he's  
15 going to drive through neighborhoods, he's going to blow  
16 stop signs, he's going to speed, he's going to go 70  
17 miles an hour over the bridge, we're still going,  
18 because this guy committed a traffic violation. That's  
19 a complete lack of understanding of what the danger the  
20 subject poses to the public, as opposed to how much  
21 danger comes from a pursuit. The equation is so unequal  
22 I'm baffled by it. I'm really baffled.

23          Q. Well, we just agreed that he was engaging in  
24 a felony, and we just agreed that it's dangerous to the  
25 public. So how do you know they didn't take those

1 considerations into account?

2 A. I don't know what's in their mind. I really  
3 don't, and I'm still baffled by it. I can't believe  
4 that someone would engage in a pursuit that goes that  
5 fast and that long for someone that committed a traffic  
6 violation. It just doesn't make sense to me. That's  
7 the complete lack of understanding. There's an  
8 unawareness there that what I might be doing is  
9 dangerous. They seem to have no recognition of it.

10 Especially, I read their deposition  
11 testimony too, and there's no understanding of, what's  
12 the worst that happens if I let this guy go? Well,  
13 someone doesn't get a traffic ticket. What's the worst  
14 that can happen if I let him keep going?

15 Q. How about if a felon escapes?

16 A. We saw the result.

17 Q. Okay. Isn't it true that what you're doing  
18 here is your putting yourself in the minds of these  
19 officers?

20 A. Absolutely.

21 Q. You really can't --

22 A. Sorry, Mike. I was talking over you.

23 Q. You can't know what they're thinking.

24 Right?

25 A. No. I have to view it from the standpoint

1 of a reasonable officer.

2 Q. All right. So on 8 here, the second  
3 sentence: Officers should consider the known crime or  
4 suspected crime involved.

5 Now, would you agree, or do you disagree,  
6 that a suspected crime of DUI occurred?

7 A. As we talked about, that's one of the  
8 possibilities that surely could come to your mind as an  
9 officer, seeing a guy leave the bar and then stop in the  
10 road for 20 to 30 seconds.

11 Q. That's a suspected crime.

12 A. Yes.

13 Q. Then we consider the known crime, at least  
14 the running of the stop sign, is felony eluding. Right?

15 A. I don't consider that -- that's a result of  
16 the police stop and the increasing speed and the lights  
17 and siren, that the guy keeps going. I don't really  
18 consider that the known crime. The known crime is the  
19 violation.

20 Q. Why isn't it a known crime? It was right in  
21 front of the officers.

22 A. Right. Again, this is my opinion, and part  
23 of it comes from Seattle. But just because someone runs  
24 from you doesn't mean you can chase them at all costs  
25 and cause danger to the public. You have to look at,

1 really, what are you stopping this guy for? What did he  
2 do?

3 Q. Well, let's go on.

4 A. He stopped in the middle of the road.  
5 That's why you're stopping him. It's as a result of the  
6 police action of continuing to pursue that then the guy  
7 engages in his felony eluding.

8 Q. Let's go on, because I think we're maybe  
9 talking past each other. You said: There was no crimes  
10 committed by Mr. Sena prior to Officer Putnam's  
11 initiation of the pursuit.

12 A. Yes.

13 Q. We can all agree on that.

14 A. Yes.

15 Q. But can we agree he was also being stopped  
16 for a reason, which was that he was at least reasonably  
17 likely to be DUI?

18 A. I think I differed with you on this a little  
19 bit previously. I think that's one possibility that you  
20 certainly would consider. As I were to make this  
21 traffic stop, I might think this guy might be drunk, but  
22 then again, he might have dropped something on the floor  
23 and he had to stop and pick it up before continuing on  
24 his way. There's any number of reasons, but you are  
25 correct, DUI might be one of those possibilities I would

1 be examining upon making that traffic stop.

2 Q. So you then say: The officer engaged in the  
3 pursuit for only minor traffic violations, failing to  
4 use turn signals.

5 A. Yes.

6 Q. Well, that's how it started. Right?

7 A. Yes.

8 Q. But within a minute or two it was no longer  
9 only a minor traffic violation. Right?

10 A. Yes. At that point where he begins his  
11 eluding and he's trying to get away from the police,  
12 yes.

13 Q. Sure. It goes to an even higher level of  
14 suspicion for DUI, and eventually, not very quickly, --  
15 almost immediately, goes into felony eluding. Right?

16 A. Yes.

17 Q. All right. So this is a little unfair to  
18 say that they engaged in the pursuit, in the sense of  
19 the entire pursuit, for only minor traffic violations.  
20 Right?

21 A. No. I think that's fair. You have to look  
22 back at what was the reason, why are you trying to stop  
23 this guy? What did he do? What could you testify to?  
24 The reason I stopped him is because he stopped in the  
25 middle of the road. Right? You're not supposed to do

1 that. Oh, now he's not using his turn signal. Now I've  
2 got another reason to stop him. Those are the reasons  
3 that you're trying to stop this violator.

4 Again, I agree, DUI might be one of the  
5 things you're considering at that point, particularly  
6 leaving the bar. So those are all things you're  
7 thinking of as you're trying to get this violator  
8 stopped.

9 We've got a couple things going here. Sure,  
10 my experience as a DUI officer immediately leads me to  
11 think he might be DUI, because I don't have probable  
12 cause at that point. But it might be reasonable to  
13 think, this is one of the things that I might find when  
14 I'm up at the window.

15 Q. So as the pursuit continues, there is more  
16 reason to stop him, because he's running a risk to the  
17 public. Right?

18 A. No. I'd have to disagree. Because then now  
19 you're considering, what's the risk to the public with  
20 the driving that he's doing right now, versus the risk  
21 to the public that's going to come because I continued  
22 to pursue.

23 Q. I hear --

24 A. You have to understand that balance, and I  
25 don't believe they did.

1           Q. I know you say that, but what I'm focusing  
2 on is this sentence: They didn't pursue for only minor  
3 traffic violations.

4           They pursued for other reasons, especially  
5 as the pursuit continued. Right?

6           A. I can say -- I'm in agreement with you --  
7 again, we can't put myself right in their mind, but it  
8 certainly seems apparent that they wanted to stop  
9 Mr. Sena for his initial traffic violations, and then  
10 certainly, as he continues his violations, now he's  
11 eluding, he's trying to get away, that they now want to  
12 stop him even more. I think that's probably a good  
13 answer or the best answer I can give you on that. I  
14 agree with you. I can't completely go into their mind.  
15 I can give you my opinion, but that's what seems to be  
16 apparent.

17          Q. All right. So if you can't get into their  
18 mind, why do you say there's no evidence that the  
19 officers compared the immediate need for capturing  
20 Mr. Sena for committing minor traffic violations against  
21 the risk of pursuing Mr. Sena at all costs?

22          A. Because they kept going without a single  
23 thought, you know how this might end up?

24          Q. How do you know that?

25          A. It never seems -- if it had entered their

1 mind -- again, if I could go back and give them a scale  
2 and say, okay, you have this traffic violation. Now, it  
3 might end that the guy would stop. It might end in a  
4 pursuit that results in death. What should you do? And  
5 let them weigh that back and forth. Now, they don't  
6 know it at the time, but boy, you've got to have that  
7 mindset. You've got to think about the public you're  
8 sworn to protect.

9 Q. How do you know they didn't do that?

10 A. Because they kept going. They kept going,  
11 Mike. Now matter how fast he goes, they kept going.

12 Q. Well, Chief, he didn't get to high speeds  
13 until he got to the bridge. Isn't that true?

14 MR. MORTIMER: Object. Vague and ambiguous.  
15 Go ahead.

16 THE WITNESS: I think he was going faster  
17 than those neighborhoods are designed for.

18 BY MR. KANE:

19 Q. That's probably true. You don't know what  
20 was in their minds, do you?

21 A. I don't what?

22 Q. You don't know what was in their minds.

23 A. The officers?

24 Q. Yes.

25 A. No. I'm actually baffled. I really am.



1 Q. Now, it was night. You've seen the videos.  
2 There wasn't much traffic, there wasn't much pedestrian  
3 traffic. Any reason to believe they didn't take that  
4 into consideration?

5 A. Well, again, reading their depositions, I  
6 don't think they even saw -- most of the vehicular  
7 traffic was on 16th, on the bridge.

8 Q. All right.

9 A. I think I counted 11 cars. And they thought  
10 there was only 1 or 2. One of the officers did. Yeah.  
11 So it doesn't seem like they fully recognized how many  
12 people were out and about at that time of night.

13 Q. 11 moving?

14 A. That's as many as I counted. In the initial  
15 neighborhood pursuit, I didn't see any -- I don't think  
16 I saw -- I can't swear to it. I can look back at my  
17 notes and see if I saw anyone prior. Most of the  
18 vehicular traffic was on 16th. I think that's fair to  
19 say.

20 Q. All right. So how do you know they didn't  
21 take into account of the lower traffic?

22 A. They said they did. They talked about  
23 speeds and the time of night and that there's not many  
24 people out, and therefore not much danger. But there  
25 were people out, there was danger.

1 Q. We're not talking about Seattle here. We're  
2 talking about Nampa.

3 A. Agreed.

4 Q. And so how do you know there's more danger?

5 A. Look at the end result. Obviously there was  
6 other people out. We know there was people out. I saw  
7 them on the video, and unfortunately saw the people at  
8 the end result.

9 Q. You can't base what happened to these  
10 unfortunate people on how many cars there are. There is  
11 obviously some cars. Right?

12 A. Yeah. I think that was my point, is that  
13 the officers seemed to think because there's not many  
14 people out here, therefore we can continue the pursuit.  
15 They were not considering the safety needs of the people  
16 that are out there.

17 Q. You say in this sentence, and I'll kind of  
18 circle the area here, that: The officers now are  
19 pursuing him at all costs.

20 Not Mr. Sena getting away at all costs, like  
21 you said before, but the officers pursuing at all costs.

22 A. Right.

23 Q. How do you get there?

24 A. How do you value a human life? What's the  
25 cost of that?

1 Q. That's the end result of Mr. Sena's  
2 behavior, but --

3 A. Right.

4 Q. -- how do you know what the officers are  
5 thinking as they're pursuing him at all costs?

6 A. I think we've talked about this before. I  
7 can't say specifically what's in their mind, but it  
8 seems to me the best way to answer that is that they did  
9 not consider those costs. They didn't think about the  
10 safety of others, they didn't think about those people  
11 that might end, you know, in a tragic way in a crash.  
12 So when I say all costs, it's like, we got to get this  
13 guy, we got to stop him. The part I'm still baffled by.

14 That reasoning doesn't resonate with me. My  
15 mind is having a hard time processing why we would  
16 continue to go after that guy for a traffic violation.  
17 If you told me he was a felon and a danger to others  
18 because he robbed a bank, sure. If he was a homicide  
19 suspect, sure. But all he was was a traffic violator.

20 Did he commit felony eluding when he ran  
21 from the officers? I'd have to look at the statute.  
22 You say he did. I'll take your word for it. But again,  
23 what's his danger to society? The initial traffic stop  
24 is traffic violations. By continuing to pursue him,  
25 he's now committing felony eluding. It's almost like

1 the officers are helping him in his effort to speed  
2 faster and faster.

3 Because of their actions, he's now engaging  
4 in such a deadly force situation that he now basically  
5 obliterates this car when he hits them, he's going so  
6 fast with his truck. At all costs? Man, I wish they  
7 had considered that, but they didn't.

8 Q. Well, let's speak about that. You have  
9 reviewed the video, you've reviewed the police reports.  
10 You know that at the last red light before the bridge,  
11 Mr. Sena ran that at very high speed. Correct?

12 A. Yes.

13 Q. And you know that the officers stopped  
14 because there was an oncoming vehicle. Correct?

15 A. No --

16 Q. Crossing vehicle. I'm sorry.

17 A. I can't say for sure. If I go back and look  
18 at it right now, I can give a definitive answer on that.  
19 But I'm looking at body-cam video and video on my  
20 computer screen, so he not that's big. I can't give you  
21 those details right now.

22 Q. I'm going to ask you to assume that that is  
23 what happened. That when the officers came to the red  
24 light, they stopped. All right?

25 A. I'm fine with that assumption.

1 Q. All right. And I want you to assume that  
2 Mr. Sena continued at high speed, and I want you to  
3 assume that he was in the process of running another red  
4 light when he killed these poor people. All right?

5 A. Right. Yes.

6 Q. And I want you to also assume that by the  
7 time the officers got over the bridge, the accident was  
8 over. Okay?

9 A. I think I heard them talking -- that I can  
10 tell you a little bit about, because I did hear it on  
11 the video. I think they said, Oh -- I can't remember  
12 their exact words, but, Oh, looks like a crash, or,  
13 Stopped here, some comment like that. I think that over  
14 the crest of that bridge, they didn't see the actual  
15 collision.

16 Q. So I want you to further assume that when  
17 they saw Mr. Sena go over the hill, that bridge at high  
18 speed, that they knew the chase was over.

19 A. I can't say that.

20 Q. I'm asking you to, because that's what the  
21 testimony is going to be.

22 A. Okay.

23 Q. Would you agree that, for all intents and  
24 purposes, by the time they got to the light at the 16th  
25 Street bridge, and watched him drive off at high speed,

1 and stopped, the chase was terminated?

2 MR. MORTIMER: Objection. Incomplete  
3 hypothetical, assumes facts not in evidence. Go ahead.

4 THE WITNESS: No. I would disagree, based  
5 on hearing the siren, lights, and the speed, they're  
6 still assuming that the pursuit is active.

7 BY MR. KANE:

8 Q. But it's not active anymore. They're  
9 stopped. Right?

10 MR. MORTIMER: Objection. Incomplete  
11 hypothetical, assumes facts not in evidence, and  
12 frankly, Mike, they don't stop, if you go watch the  
13 video.

14 MR. KANE: Well, they slow down to the point  
15 of stopping.

16 BY MR. KANE:

17 Q. They didn't chase him through the red light.  
18 Are you telling me the chase wasn't terminated?

19 A. Yes. I'm telling you the chase was not  
20 terminated at that point. Until officers turn off  
21 lights and sirens, you probably hear something on the  
22 radio, We lost him, we don't know where he went, his  
23 last known direction was this. We don't get that that I  
24 can hear. There was a lot of sirens going on, but that  
25 seems apparent.

1 Q. So as long as the lights are still on, the  
2 pursuit doesn't stop?

3 A. In my opinion, the officers were still  
4 pursuing. They did slow down, Sena got a big lead on  
5 them over the bridge, but as far as I could tell, they  
6 arrived seconds after. That pursuit's still going, as  
7 far as I could tell.

8 Q. Do you know what speed they were going over  
9 the bridge?

10 A. No, not offhand.

11 Q. So even if it isn't a stop because they  
12 still had their lights and sirens on, isn't the effect  
13 the same? They --

14 A. No.

15 Q. They came to a light, they didn't continue  
16 through it. He takes off, he's now way ahead of them,  
17 he's driving 70 miles an hour or more. Isn't the stop,  
18 for all intents and purposes, terminated?

19 A. No.

20 MR. MORTIMER: Before you answer, I'm going  
21 to object. Incomplete hypothetical, assumes facts not  
22 in evidence. Go ahead.

23 THE WITNESS: No. The pursuits are still in  
24 effect from what I saw. They're still hoping to catch  
25 that guy. You can tell from continuing in the pursuit.

1 A pursuit, you can be right on someone's bumper, you can  
2 be quite a ways away. The point is, someone's trying to  
3 get away from you and a police officer is still trying  
4 to catch up. Yes, it's still going.

5 BY MR. KANE:

6 Q. So was it reckless disregard for them to  
7 slow down at the red lights?

8 A. No. I'm glad they slowed there.

9 Q. And then after they were able to get safely  
10 through and continue, was that reckless disregard?

11 A. I think that whole pursuit was reckless  
12 disregard, yes.

13 Q. That wasn't my question.

14 A. Your question was, is it still reckless at  
15 the bridge, past the light? Yes.

16 Q. Slow down.

17 A. I'm sorry. I was answering your question, I  
18 thought.

19 Q. Let's try again. They're at the light,  
20 meaning my cops. And the guy keeps going, he's over the  
21 hill. They can't see him anymore. Was it reckless  
22 disregard to then later follow?

23 A. Yes.

24 Q. Why?

25 A. Because this pursuit should never have taken



1 place in the first place. Any part of this pursuit,  
2 going after a traffic violator, anything that endangered  
3 the life of the public, based on a traffic violator, is  
4 reckless disregard. Absolutely.

5 Q. So I want to see if I can pin you down on  
6 that. If a guy, a police officer, is in a pursuit of a  
7 felon, and it gets called off by the police supervisor,  
8 and he stops, the guy then that is being pursued goes  
9 over a hill and kills somebody, it's reckless disregard  
10 because they first engaged in a pursuit? Is that what  
11 you're saying?

12 A. That's a very strange way of looking at it.  
13 So you're going to say -- let me make sure I understand  
14 the question correctly. We're going into a hypothetical  
15 pursuit. Not this pursuit?

16 Q. Sure.

17 A. In a hypothetical pursuit, you're saying the  
18 officer stopped, turned off the lights, siren, the  
19 pursuit's over, and the guy keeps going.

20 Q. It was terminated. It was terminated.

21 A. It was terminated. Okay. Right. So then  
22 you'd look at, why was the guy running from the police,  
23 and was he trying to get away? Did the police cause the  
24 actions of this driver to continue to try to increase  
25 speeds no matter what? And again, my words, at all

1 costs. At all costs he keeps going, thinking, I've got  
2 to run from the police, there's no way I'm stopping.

3 You know what, I can't -- I'm trying, but I  
4 can't define that on a purely hypothetical basis.  
5 Again, you're going to have to look at the results of  
6 this. Was it 10 seconds or 10 minutes? There's a big  
7 difference and there's everywhere in between. So how do  
8 we define that hypothetical situation? Certainly the  
9 police own the part of that that we pursued this guy,  
10 and because of our efforts to stop him, he kept going.

11 I guess I'm almost out of the hypothetical.  
12 Again, I'm back to our real facts that we're having  
13 here. I'll try to answer your question. This pursuit  
14 shouldn't have happened. Anything beyond where we  
15 realized, Hey, our guy's not stopping, this is  
16 dangerous, shut it down.

17 Q. And you don't think that's what happened at  
18 that light?

19 A. No. I don't think they shut it down. No.  
20 I think they're still involved in that pursuit.

21 Q. But for all intents and purposes it was shut  
22 down, wasn't it?

23 A. I think it slowed temporarily because of the  
24 light, but no, the pursuit's still going.

25 Q. Okay. Looking through the rest to see if I

1 have any questions. Most of the rest seems to be pretty  
2 much the same as what we've already talked about. You  
3 were making assumptions about what my cops were  
4 thinking. Right?

5 A. I tried to view it from the standpoint,  
6 again, of the reasonable officer, what's reasonable  
7 versus what's unreasonable. And in my lengthy  
8 supervisory career of what I would train someone on and  
9 what I would find, I just said it, what's reasonable,  
10 what's unreasonable.

11 Q. And if you're looking at 18 here on the  
12 screen, last sentence: Officer Putnam's emphasis and  
13 almost complete reliance on the relatively minimal  
14 amount of traffic for the basis of continuing was  
15 unreasonable and reckless.

16 A. Yes.

17 Q. And you understand that recklessness is a  
18 mental state. Correct?

19 A. I do.

20 Q. You're putting yourself into Putnam's mind?

21 A. It's a mental state of mind combined with  
22 actions. There, he's 30 miles an hour over.

23 Q. Actually, well, let's go with that.

24 A. Okay.

25 Q. That happens on 16th Street?

1 A. Yes.

2 Q. The felony happened at 16th Street?

3 A. Right.

4 Q. Tell you what I'm going to do. I printed  
5 this damned statute, and now I can't find it. I want to  
6 make sure we're on the same page. We've been at it for  
7 a while. Let's take five minutes?

8 (A break was taken.)

9 BY MR. KANE:

10 Q. I'm going to refer you to paragraph 19, and  
11 I want to work through that with you. You say, again,  
12 the original stop was for a very minor traffic  
13 violation.

14 A. Correct.

15 Q. Even when the suspect fled he was only  
16 committing a misdemeanor?

17 A. Yes.

18 Q. Pursuant to Idaho Code 49-14042, this can be  
19 upgraded to a felony if the suspect gets 30 miles per  
20 hour over the posted speed limit, causes damage to the  
21 property of another, or bodily injury to another, drives  
22 his vehicle in a madder -- maybe manner there -- to  
23 endanger or likely endanger the property of another or  
24 the person of another or leaves the state.

25 So you've quoted the whole statute.

1           A. I don't know if I've quoted it. That's a  
2 bit of my interpretation.

3           Q. I'll read to you to.

4           A. I can look it up.

5           Q. I've got it right here: An operator who  
6 violates the provisions of Subsection 1, which is  
7 illegal, and while doing so, A, travels in excess of  
8 30 miles per hour above the posted speed limit.

9                       That's one. B, causes damage to the  
10 property of another or bodily injury to another.

11          A. Yes.

12          Q. C, drives his vehicle in a manner as to  
13 endanger or likely to endanger the property of another  
14 or the person of another.

15          A. Yes.

16          Q. We've already agreed that running the stop  
17 sign, the very first stop sign, was driving in a manner  
18 as to endanger or likely endanger the property of  
19 another or the person of another. Right?

20          A. I think we had a lot of back and forth on  
21 that.

22          Q. We did.

23          A. As I remember.

24          Q. But you also do agree, have agreed already,  
25 that running a stop sign is a danger to the public?

1           A. I did agree on that point, yes. But to your  
2 other point, I'm not sure we completely agreed on that.

3           Q. Quickly, I just read you the statute.

4           A. Yes.

5           Q. Do you agree that running several stop signs  
6 and a red light is endangering the public?

7           A. Yes, I do.

8           Q. Do you agree that the felony of eluding  
9 occurred when he began running stop signs?

10          A. Yeah.

11          Q. Okay. That's all I need.

12                 MR. MORTIMER: Mike, if the witness can  
13 finish his answer.

14 BY MR. KANE:

15           Q. I'll give him a chance, but let me follow it  
16 up immediately with another question. Would you simply  
17 agree that to say the felony did not occur until he got  
18 over 30 miles an hour is flat wrong? This paragraph is  
19 wrong?

20          A. My paragraph that I wrote?

21          Q. Yeah.

22          A. So I wrote: Even when the suspect fled he  
23 was only committing a misdemeanor.

24                 I think we just talked about the Idaho Code,  
25 and that eluding is a misdemeanor, and it can be

1 upgraded to felony, and we also went over the different  
2 conditions that makes it a felony. So in answer to your  
3 question, I think we get to felony level when he's going  
4 over the bridge. I think you and I both agreed on that.

5 Q. But you don't agree that by running the  
6 various stop signs, and there was one red light before  
7 this one, that it was felony eluding?

8 A. By this definition that I'm reading here,  
9 I'm going to go back to the actual law, which I just  
10 pulled up, because I think that's the best way to look  
11 at these things is actually -- again, my quick paragraph  
12 summary there tries to put it into short form. I guess  
13 I could have quoted the full law. If we talk about  
14 eluding: The person knew or should have know the  
15 visual/audible signal given by the peace officer was  
16 intended to bring the pursued vehicle to a stop.

17 If you violate Subsection 1, and if you do  
18 any of the following, then it's a felony. So again, A,  
19 traveling in excess of 30 miles an hour above the posted  
20 speed limit.

21 So yes, when he goes over the bridge,  
22 apparently we show -- they show that he's 70 miles an  
23 hour, so there we go.

24 B, causes a damage to property of another or  
25 bodily injury. Well, that doesn't happen until the end.

1           C, drives a vehicle in a manner as to  
2           endanger or likely endanger the property of another or  
3           the person of another.

4           I could see that one as, some might  
5           define -- and I'll get to my definition, some might  
6           define that the way he was driving through the stop  
7           signs and through the -- not using his signal and  
8           speeding and things like that, might endanger or likely  
9           to endanger.

10           However, I do believe that I also have to  
11           study this and look at the intent of the legislature  
12           when they write it, and what they're saying is most of  
13           this stuff is misdemeanor, and we'll get to felony level  
14           if we do this. So I think to endanger or likely  
15           endanger the property of another or person of another,  
16           we have to see some vehicles nearly struck, or a  
17           pedestrian who starts to cross the crosswalk and jumps  
18           out of the way as Sena drives through, or something like  
19           that.

20           So I think, looking again, I'm going to go  
21           with that interpretation. That again, looking at the  
22           intent of this law. What are they trying to define?  
23           They're moving it to felony level if you nearly hit  
24           someone or you do hit someone. That's where they're  
25           judging this from a felony level as opposed to



1 misdemeanor level. That's my interpretation of it.

2 Q. So you reject the notion that running stop  
3 signs and a red light, all prior to this last red light,  
4 you reject the notion that those are endangering the  
5 public?

6 A. No. Again, looking at the law that we just  
7 read, I think, sure, running stop signs, always  
8 dangerous. Speeding, always dangerous. Right? We  
9 could also say just driving down the street even obeying  
10 the law is dangerous. Right? Most collisions  
11 occur near home. But by the judging of the law and the  
12 way I read it -- and everyone might have their own  
13 interpretation -- mine is, most of this stuff is  
14 misdemeanor level until we get to these felony levels,  
15 A, B, C, and D. C is certainly defined as now he's  
16 hitting someone or likely to hit someone.

17 And I did see that prior to this eluding  
18 piece. Particularly as we almost talk about two  
19 sections of this pursuit. Right? The pursuit through  
20 the neighborhood where we're looking at stop signs, we  
21 don't really see that many people or vehicles and things  
22 like that, as opposed to the busy arterial when he gets  
23 onto 16th, and now the speed really gets higher. I  
24 think that's where the felony occurs.

25 Q. You don't think -- all right. So you're not

1 prepared to admit that maybe you went a little over the  
2 top in 19? Even though I just read you the statute?  
3 You're still not willing to concede?

4 A. No. Reading the statute, and now that I've  
5 done that, I've been over it two or three times, let's  
6 look back at my paragraph: Again, the original stop was  
7 for a very minor traffic violation.

8 Q. Let me make it easy for you.

9 A. Okay.

10 Q. Go to the word "So." Do you see where my  
11 little marker is?

12 A. Yes.

13 Q. Read that out loud.

14 A. So the felony aspect, if applicable, would  
15 have only been for his high speeds on 16th Avenue South  
16 and the resulting crash and loss of life, manslaughter.

17 Q. Now, you were sticking with this, that it is  
18 only a felony on 16th Avenue South?

19 A. Agreed. And I think that was my earlier  
20 interpretation as I read the law, and now as I look at  
21 what I've written here, I think they're in alignment,  
22 absolutely. I'm in agreement with the law, the way it's  
23 written, my interpretation of it, and my paragraph. The  
24 felony occurs when the high speeds occur and there's  
25 people that are now in danger as shown by the crash.

1 Q. I'm looking to see if there's any more I  
2 want to visit with you about. We've already gone over a  
3 lot about what was in my officers' minds. I want to  
4 focus you on 23.

5 A. Um-hum.

6 Q. Unfortunately -- do you see where my marker  
7 is?

8 A. Yes.

9 Q. Only upon seeing the end result did he  
10 consider that he should not have continued this  
11 dangerous pursuit.

12 How do you know that? How do you know that?

13 A. To best answer that question, I think I  
14 would have to go back and examine the prior deposition  
15 testimony that I read, and then I think I could offer  
16 you the best answer to your question. It's a valid  
17 question, and I think in order to do that I need to look  
18 at the deposition and determine if there was something  
19 in there that made me say, Okay, finally, upon realizing  
20 that a crash has occurred, that there's a high level of  
21 danger involved in this pursuit.

22 Q. You're not able to answer the question as  
23 you sit here right now?

24 A. Not what we're looking at right here.

25 Q. You can see that maybe it's a little unfair

1 editorialization?

2 A. I would wait to confirm that. If I read  
3 that report again, and I don't see anything in there,  
4 then --

5 Q. You'll let us know?

6 A. I think in answering your question, I might  
7 want to revisit that statement again. But I need to  
8 look at that full thing in order to best answer your  
9 question.

10 Q. So the supervisor you speak about here, when  
11 do you think they should have called this off, the  
12 pursuit off?

13 A. It's a little hard to hear the radio traffic  
14 because of the sirens, so I would love to get an actual  
15 copy of the radio traffic from dispatch. I think that's  
16 the best way to hear the vocalizations, and who's  
17 answered what and who's saying what. From what I could  
18 hear of this pursuit and the radio traffic, I did not  
19 hear any supervisor call this off.

20 So again, if we look at my standard, what's  
21 reasonable for these officers to do is to try to stop  
22 Mr. Sena. Absolutely a valid traffic stop. But now  
23 he's refusing to stop, and committing traffic  
24 violations. We've moved into the area of eluding, and  
25 it seems clear that Mr. Sena's intent was to get away

1 from the officers. That's the point to call it off.

2 Q. But you can't say when that would have been  
3 as you sit here now?

4 A. I think to best answer that, I would want to  
5 look at the individual, you and I sit down, look at it  
6 and go, Here's where I would say. I need to hear all  
7 the radio, watch the video at the same time, try to put  
8 those two together, and as we listen to it, I'd go, you  
9 know what? This guy's not stopping. And if they  
10 haven't said it, my question would be, What's the  
11 original crime? He's a traffic violator. Let him go.  
12 So I can't say for a bright line where that is right  
13 now, but that's my reasoning that I would use in order  
14 to determine where that point was.

15 Q. Okay. A little bit later from that  
16 paragraph. And by the way, in here you're speaking  
17 about Officer Poore's deposition, to kind of focus you  
18 little bit.

19 A. Yes.

20 Q. You say: There is no indication that the  
21 officer considered the risk of the public because of the  
22 pursuit, compared to the risk to the public if the  
23 suspect was not apprehended.

24 Do you see that?

25 A. Yes.

1           Q. We've already talked about, these are your  
2           interpretations as to what was in his mind. But I want  
3           to go to the next: In other words, the suspect posed no  
4           danger to the community.

5                     Do you stand by that statement?

6           A. Yes. He's leaving the bar and he stops in  
7           the road, and then he doesn't use his turn signal. And  
8           then he drives on. We have to evaluate, what's the --  
9           and then we start the pursuit -- sorry, we start the  
10          traffic stop, which then leads to the pursuit. So then  
11          you have to look at, what's the danger to the public  
12          from that initial stop there? Did he rear-end anyone?  
13          Did anyone have to stop shortly behind him? Did his  
14          signaling cause someone to drive erratically? So what's  
15          the danger level of those initial infractions?  
16          Extremely low or next to nothing.

17                    Again, I couldn't see the traffic stop, I  
18          couldn't see the stopping in the road, but I didn't see  
19          any danger to the public until the speeds increased and  
20          now he's trying to get away from the officer.

21          Q. Okay. I hear that. Obviously when he's  
22          sitting there in the road, stopped for 20 to 30 seconds,  
23          we don't know -- or the officers don't know if he's  
24          asleep at the wheel, drunk out of his mind,  
25          hallucinating. I understand that. I suppose we could

1 make an argument that being in the road, stopped, is a  
2 danger to the public.

3 But passing that, this paragraph here,  
4 talking about the supervisor stepping in to call off the  
5 pursuit, and the shift commander's responsibility for  
6 the pursuit, in the context of the whole pursuit, not  
7 just the first 10 seconds. Do you agree? There would  
8 have been nothing to call off for him to sit in the  
9 road. Right?

10 A. I agree with you on that. Calling off would  
11 have occurred later when he has a vehicle not stopping  
12 for him.

13 Q. So when you say the suspect posed no danger  
14 to the community, you don't mean to say that never  
15 during this pursuit was he posing a danger to the  
16 community. Only when he was stopped in the road?

17 A. It's a really long question, but let me make  
18 sure I understand this correctly.

19 Q. Do you want me to restate it?

20 A. Possibly. I don't have any indication of  
21 that. Was he a danger when he's eluding the officers?  
22 I would say yes. Does that answer your question?

23 Q. Yeah, it does. So we have to take the,  
24 "posed no danger," in the context of just the initial  
25 reason for the stop. Not the entire pursuit. Right?

1           A. One more time on that question.

2           Q. We have to take your language, "The suspect  
3 posed no danger to the community," in context. What you  
4 really mean to say, there was no danger to the community  
5 when he was in the road, and that's the reason they lit  
6 him up. Right?

7           A. In other words, the suspect posed no danger  
8 to the community and risk to the community was much  
9 greater due to the pursuit.

10           I'll stand by that statement. When he's  
11 driving and he stops in the road, again, I haven't seen  
12 it, but I saw no elements of danger present in that. I  
13 did see a traffic violation, yes. But the danger  
14 element, I didn't see anything in the officer's report  
15 that indicated something dangerous happened as he left  
16 that bar. I saw that a traffic violation occurred. But  
17 was there an element of danger? I didn't see it.

18           Q. I get that. But again, this paragraph is in  
19 context of the entire pursuit. You aren't saying that  
20 it posed no danger to the community at any time during  
21 the pursuit, are you?

22           A. It's hard to decipher your question, because  
23 you're speaking in the negative.

24           Q. All right. Let me try it again. I'll make  
25 it easier.



1           A. Okay.

2           Q. Are you saying the suspect posed no danger  
3 to the community during this pursuit?

4           A. No. I'm not saying that.

5           Q. Thank you.

6           A. Agreed.

7           Q. You -- you've been a cop forever. You've  
8 been involved in situations, like all cops, that are  
9 probably -- that require split-second determinations.  
10 And sometimes those determinations are the subject of  
11 inquiry after the fact. Right?

12          A. Yes.

13          Q. Happens all the time.

14          A. It does.

15          Q. Every day out there on the street. Are you  
16 telling me you're blaming my cops for the death of these  
17 people?

18          A. They never considered what possibly could  
19 happen as a result of pursuing this guy, my words, "at  
20 all costs." Again, we talked about this before, but  
21 let's try and answer your question. It seems like -- it  
22 seems to me, and again, I've reviewed these for years  
23 and years, that they never considered this might end  
24 badly. And they only seemed to consider that, because  
25 it's nighttime, we can pursue. It's much safer than

1 during the day. We can pursue this guy.

2 Yeah. It's a traffic violation, but we can  
3 pursue this. That's the thought process that, again, I  
4 view this as, this is unreasonable. This is not the  
5 way -- they forgot about protecting the public. What  
6 are we protecting them from? Stuff like this. These  
7 types of things should not happen. And unfortunately,  
8 when you pursue at all costs, we're not considering the  
9 costs. There was no consideration of a possible loss of  
10 life if I keep going after this traffic violation.

11 Q. So you're saying my cops killed Evan's  
12 clients?

13 MR. MORTIMER: Objection. Calls for a legal  
14 conclusion. Go ahead.

15 THE WITNESS: No. They were killed,  
16 clearly, by Mr. Sena.

17 BY MR. KANE:

18 Q. Are you saying my cops are responsible for  
19 the deaths of these poor people?

20 A. Yes. Absolutely. Police officers have a  
21 higher standard. And you have to understand that our  
22 actions have consequences, and we can't do simply  
23 everything that comes to mind in order to get a  
24 violator. You have to consider consequences. And as I  
25 read those depositions and I saw this pursuit as best I

1 could, and I read the reports, there doesn't seem to be  
2 any consideration that there's any consequence.

3 The only thing I saw them talk about seemed  
4 to be that, you know, it's night, there's not many  
5 people out here. Unfortunately, that's a short-sighted  
6 view of public safety. There are people out at night.  
7 Clearly there were. We can see that there were as a  
8 result of the crash. So seems like they never  
9 considered that. I wish they had.

10 Q. So your last sentence here, 29: The deaths  
11 of Mr. Zamudio and Ms. De La Fuente are prima facie  
12 evidence that there were significant hazards to  
13 uninvolved motorists.

14 Would you agree that in any pursuit there is  
15 always a chance of uninvolved motorists?

16 A. Yes.

17 Q. Always.

18 A. Officers realize that. There's always a  
19 chance.

20 Q. And that's why every pursuit has to be  
21 weighed, no matter where it is, what time of day, always  
22 has to be weighed, because there's always a chance of  
23 some poor innocent person being injured. Right?

24 A. Right. You have to weigh the elements of  
25 what you're trying to catch versus, what's the end

1 result that could happen if I engage in whatever actions  
2 I'm doing? Yes.

3 Q. And you conclude that there was simply no  
4 weighing, by either my cops or their supervisor.

5 A. In reading the depositions, I saw several  
6 references to, Well, it's nighttime and there's not many  
7 people out here, and the roads, I think, are dry. And  
8 that means we can pursue.

9 There's no consideration for anyone else  
10 that's out there. There are other people on the road at  
11 that time. Clearly there are, and you see the result of  
12 that.

13 Q. Well, there's more than the depositions.  
14 You had the videos, the reports --

15 A. Right.

16 Q. -- reviews. From all that, you conclude  
17 there was never any weighing of the danger?

18 A. Even when asked about the policy, no one  
19 ever talked about the danger to the public because of  
20 the risk of a pursuit. There was no mention of it. And  
21 I can only -- this is an assumption on my part -- but as  
22 I read that I was like, how come no one recognizes these  
23 things are dangerous? And the safety of others was  
24 never considered. They only kept coming back to, It's  
25 safe at night, the roads are dry, there's not many

1 people, I can do this.

2 There wasn't that consideration of, Well,  
3 why am I doing this? You've got to consider, What's the  
4 risk to the public if this person gets away? If it's a  
5 traffic violator, let him go. If it's something  
6 serious, you know, society will give leeway. Right?  
7 Society doesn't want people killed over traffic  
8 violators. They understand, though, that there are  
9 risks that police officers undertake on a daily basis.  
10 You and I have discussed this, and those risks are  
11 acceptable if the officer's actions are reasonable.  
12 People say, Okay, I understand. But in this case, there  
13 was no consideration for those people.

14 Q. Would you say it never even crossed their  
15 mind?

16 A. I didn't see --

17 MR. MORTIMER: Objection. Calls for pure  
18 speculation. Go ahead.

19 THE WITNESS: I didn't see much  
20 consideration in those deposition statements that I read  
21 that it crossed their mind, no. And that's what I'm  
22 bothered by.

23 BY MR. KANE:

24 Q. Is it your opinion that they never  
25 considered the danger to the public and realized that

1 they should terminate the pursuit?

2 A. I think I remember reading about what we can  
3 pursue for, and it just seems like the department has a  
4 philosophy of, We go after everyone. You know, you're  
5 kind of asking for a summary of what I read. That was  
6 my interpretation of what I was reading, that no one  
7 considers that, because of my actions, someone might  
8 die.

9 Q. Okay. Do you think Mr. Sena bears any  
10 responsibility in this?

11 A. Absolutely.

12 Q. Can you put a percentage on it?

13 MR. MORTIMER: Objection. Calls for a legal  
14 conclusion. Go ahead.

15 THE WITNESS: Now you're getting into my  
16 wife's -- she's an attorney. Her line of work is civil  
17 defense and accidents and weighing, you know, money and  
18 balancing. I hesitate from a police officer's  
19 standpoint to get into those negotiations that she's  
20 involved in. So no. I can't really put a percentage on  
21 it. Certainly he bears some responsibility here.

22 But I would say that an officer has a  
23 responsibility to be above that. And you have to think  
24 for the other person, and think, Am I playing a part  
25 here? Are my actions leading to this? Again, I said it

1 before, there seems to be no consideration that  
2 there might be tragedy at the end of this. There's no  
3 consideration of, What am I doing right now? What am I  
4 going after? I'm going after a traffic violator. This  
5 is not the crime of the century. And if it were, I'd  
6 give you a lot of leeway for it, but not for a traffic  
7 violator.

8 BY MR. KANE:

9 Q. I agree it may not have started as the crime  
10 of the century, but it certainly ended as one for these  
11 people. You're saying they never appreciated the  
12 danger, never appreciated the danger and chose to  
13 continue?

14 A. Let's just say I'm going on kind of a  
15 summary here of what I remember of their testimony in  
16 those depositions. And my overall interpretation of  
17 that -- so you know, again, I hesitate to use the word  
18 "never." Right? If we went back and looked at those  
19 testimonies and went over it with a fine-toothed comb, I  
20 think we could probably find some ideas that they had  
21 some consideration of danger.

22 But my only observation of this, though,  
23 there seemed to be more of an effort to get this traffic  
24 violator at all costs, and very little -- I won't go  
25 into absolutes either -- very little consideration for

1 the safety of the public that they're sworn to protect.

2 Q. So if Mr. Sena had stopped at that 16th  
3 Avenue light, these people would be alive today, would  
4 they not?

5 MR. MORTIMER: Objection. Speculation.

6 BY MR. KANE:

7 Q. He killed them. Right?

8 THE WITNESS: I believe I proceed with the  
9 question, even though he has an objection?

10 MR. MORTIMER: Go ahead. I apologize. Go  
11 ahead, yes.

12 THE WITNESS: Yeah. If he'd stopped at the  
13 bottom, taking a guess here, but if he'd stopped going  
14 up that hill, pulled over to the side of the road --  
15 some people do that -- yeah, I would say those people  
16 would still be alive. They would have made it through  
17 the intersection.

18 BY MR. KANE:

19 Q. These cops were a quarter of a mile away  
20 when that fatal collision occurred. The difference  
21 between two intersections is 4/10 of a mile. You're  
22 telling me, in your opinion, even though they were that  
23 far away, stopped at a light, they still killed  
24 Mr. Mortimer's clients?

25 A. I think I testified in the hearing today



1           that I Mr. Sena killed them, but their actions caused  
2           his action, and they were unaware that what they were  
3           doing has a chain reaction event. They pursued  
4           unnecessarily, recklessly, with disregard for others'  
5           safety. So there's a part that they in played this,  
6           absolutely.

7                        As police officers, we have to think. We  
8           can't just say that it's all the defendant, it's all on  
9           him. Right? Reasonableness says, you know what, what  
10          I'm doing right now is pretty unsafe, and keep going and  
11          keep going and keep going. Because we saw the end  
12          result. That's why I said it's prima facie. It  
13          verifies itself right then and there. By continuing  
14          this pursuit, we look at the end result.

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

16                       MR. MORTIMER: Nothing for me. Read and  
17          sign, please.

18                       COURT REPORTER: Do you each need a copy of  
19          the transcript?

20                       MR. MORTIMER: An electronic for me, please,  
21          yes.

22                       MR. KANE: Minuscript form for me, electric.

23                       (Deposition concluded at 4:59 p.m.)

24                       (Signature was requested.)

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CERTIFICATE OF WITNESS

I, DAVID T. SWEENEY, being first duly sworn, depose and say:

That I am the witness named in the foregoing deposition, consisting of pages 1 through 137; that I have read said deposition and know the contents thereof; that the questions contained therein were propounded to me; and that the answers contained therein are true and correct, except for any changes that I may have listed on the Change Sheet attached hereto.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
DAVID T. SWEENEY

SUBSCRIBED AND SWORN to before me this  
\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
NAME OF NOTARY PUBLIC

RESIDING AT \_\_\_\_\_

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CHANGE SHEET FOR DAVID T. SWEENEY

Page\_\_\_ Line \_\_\_ Reason for Change

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REPORTER'S CERTIFICATE

I, DIANA KILPATRICK, CSR No. 727, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me, or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 6th day of August, 2021.



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DIANA KILPATRICK, CSR, RPR  
Notary Public  
Hailey, Idaho 83333

My Commission expires January 13, 2023

	<b>4:4,7</b>	<b>96:4;99:22;100:22;102:4;</b>	<b>10:2;12:12;43:11;50:9;</b>
/	<b>across (1)</b> 70:17	<b>103:7;104:1;105:5;107:22;</b>	<b>101:15;107:25;114:11;</b>
/// (1) 33:25	<b>act (1)</b> 29:2	<b>112:19;113:25;114:5,12;</b>	<b>115:13;121:18</b>
—	<b>acted (4)</b> 72:14;75:22;79:14;82:4	<b>115:6;116:11;119:11,18;</b>	<b>alone (2)</b> 56:4;78:11
— (1) 138:12	<b>Acting (3)</b> 80:9,25;81:2	<b>120:20,21;121:6;122:6;</b>	<b>along (3)</b> 5:6;8:2;85:18
<b>A</b>	<b>action (10)</b> 26:20;38:3;40:15;43:24; 50:6;54:11;97:4,6;100:6; 137:2	<b>124:3,7,20;126:17;128:11,</b>	<b>although (2)</b> 4:21;82:20
<b>abandoned (1)</b> 14:7	<b>actions (34)</b> 16:13,15;19:2;25:22;26:5, 12;30:2;33:6,11;38:8,19;	<b>134:25;135:17</b>	<b>always (16)</b> 15:15;35:7;37:9;38:24;
<b>abiding (1)</b> 47:23	39:3;42:23;45:7,11;46:17;	<b>against (7)</b> 22:23;53:14;62:2;78:9;	40:11;45:6,10;87:14;90:21;
<b>abilities (2)</b> 9:9;59:3	49:5;50:1;54:11,16;55:19;	91:4;96:11;103:20	121:7,8;131:15,17,18,21,22
<b>ability (7)</b> 35:8;38:1;45:24;57:8,8,9, 10	61:24;73:7;94:21;97:6;	<b>agencies (2)</b> 50:16;51:1	<b>ambiguous (1)</b> 104:14
<b>able (7)</b> 33:7;46:1;48:11;50:24; 71:16;112:9;123:22	108:3;113:24;115:22;	<b>ago (2)</b> 10:10;61:25	<b>among (1)</b> 41:7
<b>above (3)</b> 117:8;119:19;134:23	130:22;132:1;133:11;134:7, 25;137:1	<b>agree (46)</b> 12:6;13:4;26:18,20;27:20;	<b>amongst (1)</b> 46:19
<b>above-listed (1)</b> 96:16	<b>activate (1)</b> 28:5	28:9;32:1,15;34:16;56:1,5,8;	<b>amount (1)</b> 115:14
<b>absent (2)</b> 35:20;50:15	<b>activated (2)</b> 27:9,15	58:6;59:11;60:2;62:8;66:5;	<b>analysis (5)</b> 20:11,15;67:20;68:2;71:5
<b>absolute (2)</b> 29:2;65:22	<b>active (2)</b> 110:6,8	70:4;73:10;80:23;81:16;	<b>and/or (3)</b> 14:13;25:17;27:10
<b>Absolutely (17)</b> 37:10;38:13;42:8;45:13;	<b>actual (5)</b> 26:13;67:10;109:14;	82:20,22;83:25;84:17;91:5;	<b>answered (5)</b> 64:12;76:2,5,13;124:17
47:8,15;50:5;56:5;61:25;	119:9;124:14	94:10;95:14,21;96:12,99:5;	<b>anymore (4)</b> 29:8;96:3;110:8;112:21
92:10;98:20;113:4;122:22;	<b>actually (19)</b> 9:22;15:17;17:10;18:3,7;	100:13,15;102:4;103:14;	<b>apart (1)</b> 47:10
124:22;130:20;134:11;137:6	50:10;64:2,19,24;65:4;	109:23;117:24;118:1,5,8,17;	<b>apologize (4)</b> 8:13;62:18,21;136:10
<b>absolutes (1)</b> 135:25	74:14;76:16;77:24;87:25;	119:5;127:7,10;131:14;	<b>apparent (5)</b> 73:12,17;103:8,16;110:25
<b>academy (1)</b> 6:25	91:2;97:9;104:25;115:23;	135:9	<b>apparently (2)</b> 37:18;119:22
<b>accelerate (1)</b> 83:21	119:11	<b>Agreed (10)</b> 91:7;97:23,24;106:3;	<b>appears (2)</b> 42:22;52:4
<b>accelerating (2)</b> 83:8;88:7	<b>adjective (2)</b> 82:21;83:24	117:16,24;118:2;119:4;	<b>applicable (1)</b> 122:14
<b>accept (2)</b> 81:18;92:19	<b>Administration (1)</b> 67:18	122:19;129:6	<b>apply (2)</b> 13:16;88:2
<b>acceptable (1)</b> 133:11	<b>admit (1)</b> 122:1	<b>agreement (7)</b> 4:12,13,17,18,20;103:6;	<b>appreciated (2)</b> 135:11,12
<b>accepted (1)</b> 12:4	<b>admittedly (1)</b> 83:10	122:22	<b>apprehend (2)</b> 27:10;53:15
<b>access (4)</b> 66:11;67:8;78:17;87:9	<b>adopted (6)</b> 50:12,16;51:1,4,8;52:18	<b>ahead (23)</b> 34:11,19,20;48:23;60:7,7;	<b>apprehended (1)</b> 125:23
<b>accident (2)</b> 22:6;109:7	<b>advance (1)</b> 75:10	66:18,19;68:25;75:3;76:2,	<b>apprehending (1)</b> 10:18
<b>accidental (1)</b> 22:19	<b>affidavit (3)</b> 7:23;75:18;78:8	13;91:15;95:19;104:15;	<b>approach (1)</b> 40:19
<b>accidents (4)</b> 21:25;22:4,18;134:17	<b>affirmative (1)</b> 94:21	110:3;111:16,22;130:14;	<b>appropriate (1)</b> 72:4
<b>account (2)</b> 98:1;105:21	<b>afternoon (1)</b> 62:22	133:18;134:14;136:10,11	<b>Approximately (5)</b> 19:9;20:11;24:3;82:23;
<b>acknowledge (2)</b>	<b>Again (69)</b> 21:2;22:21,24;24:12;	<b>air (4)</b> 18:15;30:10;47:18;48:6	84:17
	31:15,18;36:8;37:5;38:24;	<b>alarmed (2)</b> 41:17,18	<b>area (4)</b> 8:2;92:7;106:18;124:24
	40:4;41:16,19;43:3,20;44:1, 12,22;46:18;48:14;49:4;	<b>alarming (2)</b> 42:10,11	<b>areas (1)</b> 31:10
	54:8;58:21;59:2,15;60:7;	<b>alignment (1)</b> 122:21	<b>arena (1)</b>
	74:3;76:19;77:16;83:10,12, 16,21;84:11,11;87:3,9;92:7;	<b>alive (2)</b> 136:3,16	
		<b>allow (4)</b> 11:22;44:12;49:11;50:2	
		<b>allows (4)</b> 40:8,10;60:3;61:23	
		<b>almost (9)</b>	

<p>49:20 <b>argue (2)</b> 30:9;55:20 <b>argument (1)</b> 127:1 <b>armed (1)</b> 24:5 <b>around (11)</b> 10:6,19;13:18;14:23;38:7; 39:16;46:1;48:18,21;54:7; 72:24 <b>arrangement (1)</b> 4:11 <b>arrest (8)</b> 9:6;15:20;22:24;55:6; 59:17;80:18;87:1;90:3 <b>arresting (3)</b> 11:5,12;14:1 <b>arrests (1)</b> 13:18 <b>arrived (3)</b> 23:12,24;111:6 <b>arrow (1)</b> 52:22 <b>arterial (1)</b> 121:22 <b>articulable (2)</b> 31:14,19 <b>articulate (1)</b> 38:2 <b>aside (1)</b> 41:8 <b>asleep (1)</b> 126:24 <b>aspect (3)</b> 16:11;58:18;122:14 <b>assigned (1)</b> 17:16 <b>assignment (1)</b> 12:2 <b>assignments (1)</b> 10:5 <b>assist (2)</b> 10:23;24:16 <b>assistance (1)</b> 4:22 <b>assume (8)</b> 7:4;9:14;60:24;108:22; 109:1,3,6,16 <b>assumes (3)</b> 110:3,11;111:21 <b>assuming (1)</b> 110:6 <b>assumption (2)</b> 108:25;132:21 <b>assumptions (1)</b> 115:3 <b>Athay (1)</b> 61:3 <b>attached (1)</b> 138:11 <b>attempt (2)</b> 91:12;96:11</p>	<p><b>attempted (1)</b> 72:9 <b>attempting (2)</b> 55:6;78:24 <b>attempts (2)</b> 80:18;83:14 <b>attend (3)</b> 7:4;62:19,24 <b>attended (1)</b> 7:4 <b>attention (1)</b> 63:2 <b>attitude (2)</b> 20:4,7 <b>attorney (1)</b> 134:16 <b>attorneys (1)</b> 4:3 <b>audible (2)</b> 25:17;94:25 <b>audio (2)</b> 66:24;67:10 <b>August (2)</b> 7:16;52:21 <b>authority (1)</b> 47:20 <b>authorized (8)</b> 7:10;8:15;25:15;27:8; 55:4,10;62:3;79:23 <b>automatically (1)</b> 62:9 <b>available (3)</b> 40:7;62:22;76:18 <b>Avenue (3)</b> 122:15,18;136:3 <b>average (1)</b> 26:25 <b>avoid (4)</b> 43:24;73:4,18,19 <b>aware (3)</b> 18:25;38:6;60:20 <b>away (31)</b> 20:23;30:3;55:10;73:8; 75:8,10;78:24;83:13;85:12, 20;87:11,14;88:1,8,11; 89:10;93:17,20;94:8,21; 101:11;103:11;106:20; 112:2,3;113:23;124:25; 126:20;133:4;136:19,23</p>	<p>15:8;40:17 <b>badgering (1)</b> 76:12 <b>badly (1)</b> 129:24 <b>baffled (5)</b> 97:22,22;98:3;104:25; 107:13 <b>balance (5)</b> 32:11;33:3;53:19,21; 102:24 <b>balancing (2)</b> 53:13;134:18 <b>ban (1)</b> 37:1 <b>bank (8)</b> 21:4,7,8;33:9;38:6;46:20; 47:1;107:18 <b>banned (1)</b> 50:14 <b>Bar (13)</b> 65:8,9,13;92:3,11,17,21, 21;93:1;99:9;102:6;126:6; 128:16 <b>bars (1)</b> 65:14 <b>base (1)</b> 106:9 <b>Based (15)</b> 12:1;20:16;21:20;26:10, 12;32:5;39:3;45:3;46:17; 52:4;57:6;82:24;94:20; 110:4;113:3 <b>basic (1)</b> 18:13 <b>basically (2)</b> 14:10;108:4 <b>basis (5)</b> 70:16;74:22;114:4; 115:14;133:9 <b>bearing (1)</b> 60:24 <b>bears (2)</b> 134:9,21 <b>beat (2)</b> 9:3;68:13 <b>became (19)</b> 11:15;16:3,7;19:13;45:21; 72:12,19;73:12;75:1,19; 78:11;79:4,13;85:17,19,25; 86:3;87:7,10 <b>become (6)</b> 42:10;43:17;75:12,23; 76:9;87:6 <b>becomes (5)</b> 16:9;43:19,22;77:8;88:21 <b>began (5)</b> 82:8;85:3;86:5;89:7;118:9 <b>begin (3)</b> 5:2;9:5;28:9 <b>beginning (2)</b> 12:18;87:23 <b>begins (3)</b></p>	<p>44:8;89:8;101:10 <b>behavior (4)</b> 32:12;38:21,21;107:2 <b>behind (4)</b> 47:16;50:5;87:18;126:13 <b>belabor (1)</b> 77:6 <b>below (3)</b> 28:16;56:1,8 <b>benefit (3)</b> 20:10,14;87:13 <b>besides (1)</b> 68:14 <b>best (16)</b> 20:2;42:13;60:16;76:14, 15;78:14,20;103:13;107:8; 119:10;123:13,16;124:8,16; 125:4;130:25 <b>better (6)</b> 18:22;34:16;52:12;53:3; 87:6;89:4 <b>beyond (7)</b> 12:21;58:24;68:10;78:2; 79:3;93:25;114:14 <b>bias (2)</b> 33:20;34:16 <b>big (4)</b> 18:10;108:20;111:4;114:6 <b>bigger (2)</b> 17:1;51:19 <b>bit (16)</b> 10:6;14:23;55:15;60:12; 63:8;72:1,18;82:21;83:11, 18;85:2;100:19;109:10; 117:2;125:15,18 <b>blaming (1)</b> 129:16 <b>blanche (1)</b> 55:9 <b>blanket (4)</b> 38:25;40:5;45:13;48:7 <b>block (1)</b> 77:19 <b>blocks (3)</b> 86:19;87:21;89:23 <b>blow (1)</b> 97:15 <b>blowing (2)</b> 78:25;88:7 <b>bodily (3)</b> 116:21;117:10;119:25 <b>body-cam (1)</b> 108:19 <b>body-worn (6)</b> 7:20;66:14,16;74:4;76:19, 22 <b>bone (1)</b> 66:4 <b>bones (1)</b> 53:2 <b>Both (9)</b> 17:21;26:23;27:14;28:8; 46:24;49:23;56:25;70:15;</p>
	<b>B</b>		
	<p><b>back (34)</b> 9:16;10:9;11:22;13:9,20; 14:20;16:21;23:19;31:17; 38:19;41:20;43:2;44:18; 62:13,20;65:23;69:4;70:13; 73:24;86:13;88:16;89:2; 101:22;104:1,5;105:16; 108:17;114:12;117:20; 119:9;122:6;123:14;132:24; 135:18 <b>bad (2)</b></p>		

<p>119:4 <b>bothered (1)</b> 133:22 <b>bottom (2)</b> 52:22;136:13 <b>boy (1)</b> 104:6 <b>brain (2)</b> 29:12;54:8 <b>brake (1)</b> 48:2 <b>brakes (1)</b> 54:15 <b>braking (1)</b> 50:6 <b>brand (3)</b> 6:14,18;23:20 <b>break (8)</b> 41:2,5;63:13;72:18;82:10; 86:14;87:3;116:8 <b>breath (1)</b> 15:23 <b>bridge (20)</b> 73:6;82:16;83:25;84:19, 24;89:13,14;97:17;104:13; 105:7;108:10;109:7,14,17, 25;111:5,9;112:15;119:4,21 <b>briefly (1)</b> 7:12 <b>bright (4)</b> 40:5;43:21;58:3;125:12 <b>bring (5)</b> 55:23;59:6;60:11;63:18; 119:16 <b>broadcast (1)</b> 18:14 <b>broke (1)</b> 46:23 <b>brought (1)</b> 69:7 <b>building (1)</b> 46:23 <b>built (1)</b> 6:12 <b>bumper (1)</b> 112:1 <b>Bureau (1)</b> 69:23 <b>burglar (1)</b> 47:2 <b>burglary (1)</b> 46:23 <b>businesses (1)</b> 24:6 <b>busy (1)</b> 121:22</p>	<p>15:15,25;16:1,17;18:16,20; 21:22;23:21;30:21;44:9; 45:3,22;49:20;54:8;62:13; 73:1;78:2;84:2;85:20;89:18, 20;124:19;125:1;127:4,8 <b>called (19)</b> 11:8;21:16;22:1,12;23:5,6; 28:10;30:14;31:1;42:14; 43:5;47:11;49:15,19;65:3; 73:21;77:1;113:7;124:11 <b>calling (6)</b> 19:3;23:7;31:12;45:8; 63:15;127:10 <b>calls (5)</b> 7:23;62:10;130:13; 133:17;134:13 <b>came (10)</b> 12:23;20:2;23:12;29:4; 59:9;67:21;69:25;84:7; 108:23;111:15 <b>camera (5)</b> 66:16,21;74:4;76:19,22 <b>can (86)</b> 5:9;15:8;23:11;24:19,21, 22,24;25:14;28:2;33:10,13; 34:12;38:3,4,4,5,17;42:22; 48:23;49:2;54:6,7;55:13; 58:8;60:7,10,16;62:20; 63:18;68:19;69:6;70:16; 73:8,18;76:15,21,21,22; 77:24;78:20,23;79:6;80:18; 82:20,21;83:4,7,10;88:2; 89:4,15;90:19;91:5,16,20; 92:19;98:14;99:24;100:13, 15;103:6,13,15;105:16; 106:14;108:18;109:9; 110:24;111:25;112:1,1; 113:5;116:18;117:4;118:12, 25;123:25;129:25;130:1,2; 131:7;132:8,21;133:1;134:2, 12 <b>Canyon (1)</b> 7:18 <b>capabilities (9)</b> 46:2,6,7;56:18;57:1,4,10; 58:25;59:3 <b>capable (2)</b> 48:17,19 <b>captain (1)</b> 47:21 <b>capture (2)</b> 73:4,19 <b>captured (1)</b> 37:14 <b>capturing (2)</b> 38:5;103:19 <b>car (12)</b> 24:7;46:11;48:1,9,12,16, 24;50:6;67:11;76:20;91:4; 108:5 <b>care (2)</b> 28:4;97:12 <b>career (10)</b></p>	<p>8:25;9:19;11:14;12:16; 16:7;17:5,9;34:21;47:5; 115:8 <b>careless (1)</b> 55:8 <b>car-jacked (1)</b> 24:7 <b>carried (1)</b> 35:19 <b>carry (1)</b> 32:20 <b>cars (4)</b> 65:25;105:9;106:10,11 <b>carte (1)</b> 55:9 <b>Case (22)</b> 8:3;13:6;34:23,25;35:1,7, 10,10;36:18;43:13;44:14; 51:10;60:23;61:2,4,8,25; 67:3;77:5;81:2;83:7;133:12 <b>cases (14)</b> 29:10;32:6;34:17;36:20; 38:3,9;51:12;60:20;61:9; 62:5;70:3,5,14;71:6 <b>catch (4)</b> 21:3;111:24;112:4;131:25 <b>cause (14)</b> 4:25;7:24;43:18;90:9,11, 14,18,20,22,25;99:25; 102:12;113:23;126:14 <b>caused (3)</b> 14:16;59:9;137:1 <b>causes (3)</b> 116:20;117:9;119:24 <b>caveat (1)</b> 23:3 <b>caveats (1)</b> 60:16 <b>cease (1)</b> 37:12 <b>century (2)</b> 135:5,10 <b>certain (7)</b> 27:25;31:10,25;37:19; 42:4;58:7;95:8 <b>Certainly (15)</b> 26:19;76:4;82:20,22; 84:23;88:5;91:5;92:1; 100:20;103:8,10;114:8; 121:15;134:21;135:10 <b>certainty (1)</b> 65:22 <b>CERTIFICATE (1)</b> 138:1 <b>certified (3)</b> 6:21;7:5;12:19 <b>chain (1)</b> 137:3 <b>chance (5)</b> 25:8;118:15;131:15,19,22 <b>change (5)</b> 13:6;16:3;19:24;71:16; 138:11</p>	<p><b>changed (2)</b> 19:14;21:11 <b>changes (2)</b> 20:17;138:10 <b>characterization (1)</b> 95:17 <b>charged (1)</b> 37:20 <b>chase (7)</b> 56:25;99:24;109:18;110:1, 17,18,19 <b>chasing (1)</b> 57:11 <b>chat (1)</b> 4:22 <b>check (2)</b> 65:16;68:25 <b>checking (1)</b> 68:22 <b>chief (11)</b> 6:17;13:24;19:18;20:9,12; 32:25;47:22;52:9;63:15,16; 104:12 <b>chief's (1)</b> 20:16 <b>chose (1)</b> 135:12 <b>circle (1)</b> 106:18 <b>circular (1)</b> 85:13 <b>circumstances (6)</b> 13:5;32:1;54:4,7;58:8; 88:16 <b>citation (1)</b> 11:21 <b>cite (1)</b> 67:17 <b>cities (1)</b> 51:4 <b>centizens (1)</b> 53:10 <b>city (10)</b> 10:19;18:25;31:5,10; 39:14;50:18,22;64:3,23; 65:17 <b>civil (1)</b> 134:16 <b>class (1)</b> 16:2 <b>classes (1)</b> 7:3 <b>classify (1)</b> 84:3 <b>clause (1)</b> 89:21 <b>clear (26)</b> 43:22;62:16;65:20;72:12, 19;75:1,19,23;76:9;77:8,10; 78:11;79:4,13;85:11,17,19, 25;86:3,23;87:4,6,7,10;90:1; 124:25 <b>clearer (1)</b></p>
<b>C</b>			
<p><b>CAD (2)</b> 66:22;67:7 <b>call (29)</b> 5:14,22;10:23;11:18;</p>			

<p>90:12 <b>Clearly (4)</b> 46:25;130:16;131:7; 132:11 <b>click (1)</b> 68:11 <b>clients (2)</b> 130:12;136:24 <b>close (2)</b> 79:10;83:19 <b>closer (1)</b> 84:1 <b>Code (2)</b> 116:18;118:24 <b>codes (2)</b> 8:1,14 <b>coincides (1)</b> 25:6 <b>collectively (1)</b> 56:10 <b>Collision (12)</b> 8:3,3;20:22;22:3;23:5,15, 17;24:17,19;35:3;109:15; 136:20 <b>collisions (7)</b> 16:20,20,22;23:11,18; 34:22;121:10 <b>comb (1)</b> 135:19 <b>combined (3)</b> 83:4;90:23;115:21 <b>coming (6)</b> 32:22;34:15;40:14;93:1; 96:4;132:24 <b>command (1)</b> 32:9 <b>Commander (10)</b> 5:22,23;6:7;16:4;17:7,22, 25;24:12;44:15;52:1 <b>commander's (1)</b> 127:5 <b>comment (1)</b> 109:13 <b>COMMISSION (1)</b> 138:24 <b>commit (1)</b> 107:20 <b>committed (6)</b> 29:16;33:6;90:6;97:18; 98:5;100:10 <b>committing (8)</b> 82:8;85:3;86:5;103:20; 107:25;116:16;118:23; 124:23 <b>common (4)</b> 15:5;47:23,24;51:1 <b>commonly (1)</b> 17:24 <b>communities (2)</b> 32:23;34:18 <b>community (9)</b> 126:4;127:14,16;128:3,4, 8,8,20;129:3</p>	<p><b>compare (1)</b> 83:9 <b>compared (3)</b> 96:19;103:19;125:22 <b>complete (5)</b> 96:16,23;97:19;98:7; 115:13 <b>completed (1)</b> 7:24 <b>completely (3)</b> 12:8;103:14;118:2 <b>component (1)</b> 27:24 <b>computer (1)</b> 108:20 <b>concede (1)</b> 122:3 <b>concern (3)</b> 54:18;59:9,21 <b>concerned (4)</b> 13:20;53:16;56:17;58:18 <b>concerning (4)</b> 54:17,21;56:15;58:4 <b>concerns (6)</b> 53:5;57:13,16;58:19;59:7; 62:7 <b>conclude (2)</b> 132:3,16 <b>concluded (1)</b> 137:23 <b>conclusion (3)</b> 62:11;130:14;134:14 <b>conditions (10)</b> 39:7,11;41:9;42:6;44:24; 56:19,21;65:16,21;119:2 <b>conducting (1)</b> 12:15 <b>configuring (1)</b> 68:6 <b>confirm (1)</b> 124:2 <b>confused (2)</b> 69:12;87:16 <b>conscious (1)</b> 85:22 <b>consent (1)</b> 4:10 <b>consequence (1)</b> 131:2 <b>consequences (3)</b> 80:1;130:22,24 <b>consider (16)</b> 33:1,4;38:9;44:14;56:25; 57:8;99:3,13,15,18;100:20; 107:9;123:10;129:24; 130:24;133:3 <b>consideration (12)</b> 96:17;105:4;130:9;131:2; 132:9;133:2,13,20;135:1,3, 21,25 <b>considerations (2)</b> 46:9;98:1 <b>considered (12)</b></p>	<p>27:15;52:7;55:15;56:3,10; 108:7;125:21;129:18,23; 131:9;132:24;133:25 <b>considering (5)</b> 20:12;102:5,19;106:15; 130:8 <b>considers (1)</b> 134:7 <b>consisting (1)</b> 138:6 <b>constitutes (1)</b> 8:19 <b>contained (2)</b> 138:8,9 <b>contents (1)</b> 138:7 <b>context (5)</b> 45:18;127:6,24;128:3,19 <b>continue (25)</b> 21:19;27:6;28:10;31:11, 18;45:4;47:14;49:12;72:20; 73:13;75:21,24;76:10;80:14; 82:1;85:3,23;88:18;89:10; 106:14;107:16;111:15; 112:10;113:24;135:13 <b>continued (5)</b> 21:19;102:21;103:5; 109:2;123:10 <b>continues (3)</b> 29:10;102:15;103:10 <b>continuing (10)</b> 27:25;37:11;44:3;72:11; 100:6,23;107:24;111:25; 115:14;137:13 <b>continuous (1)</b> 28:8 <b>contract (2)</b> 6:15,16 <b>contradict (2)</b> 65:13,15 <b>control (1)</b> 47:25 <b>conversation (1)</b> 52:14 <b>cop (5)</b> 9:25;49:20;61:20;80:17; 129:7 <b>cops (12)</b> 59:25;79:14;80:20;81:4; 112:20;115:3;129:8,16; 130:11,18;132:4;136:19 <b>copy (2)</b> 124:15;137:18 <b>corner (1)</b> 88:8 <b>correctly (4)</b> 22:10;95:4;113:14;127:18 <b>cost (4)</b> 20:10,14;73:7;106:25 <b>costs (28)</b> 32:11,15;48:8;72:14,21, 21;73:3,14;75:21,25;76:10; 79:14;97:2;99:24;103:21;</p>	<p>106:19,20,21;107:5,9,12; 108:6;114:1,1;129:20;130:8, 9;135:24 <b>counsel (2)</b> 4:10;25:7 <b>count (1)</b> 96:4 <b>counted (2)</b> 105:9,14 <b>country (2)</b> 70:18;90:18 <b>County (2)</b> 7:18;61:3 <b>couple (12)</b> 11:25;12:5;14:9;15:4,7; 17:6;24:7;25:9;30:5;83:18; 87:21;102:9 <b>course (3)</b> 15:20;37:17;41:4 <b>COURT (6)</b> 4:3;38:15;73:11;75:17; 78:9;137:18 <b>courts (2)</b> 21:2;61:10 <b>cover (1)</b> 69:10 <b>covered (1)</b> 67:12 <b>COVID-19 (1)</b> 7:2 <b>coworkers (1)</b> 18:17 <b>crash (13)</b> 13:15;22:15,19;23:21; 24:1;25:6;48:25;107:11; 109:12;122:16,25;123:20; 131:8 <b>crashed (1)</b> 82:23 <b>crashes (4)</b> 67:21,22;68:3;71:6 <b>created (2)</b> 19:21;66:11 <b>creates (1)</b> 26:12 <b>crest (2)</b> 82:19;109:14 <b>crests (1)</b> 83:1 <b>crime (22)</b> 8:20;18:10;19:6;26:21; 33:4,6,14;41:24;43:4;56:14; 85:21;99:3,4,6,11,13,18,18, 20;125:11;135:5,9 <b>crimes (2)</b> 21:20;100:9 <b>criminals (1)</b> 21:2 <b>critical (1)</b> 54:2 <b>cross (1)</b> 120:17 <b>crossed (2)</b></p>
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<p>133:14,21 <b>Crossing (1)</b> 108:16 <b>crosswalk (1)</b> 120:17 <b>cues (1)</b> 18:21 <b>culture (2)</b> 32:2,5 <b>curious (2)</b> 10:7;69:4 <b>curtailed (1)</b> 19:22 <b>curve (1)</b> 83:1 <b>CV (2)</b> 9:17;14:23</p>	<p>131:21;138:12,17 <b>days (1)</b> 9:16 <b>day-to-day (1)</b> 16:25 <b>De (2)</b> 82:5;131:11 <b>deadly (1)</b> 108:4 <b>dealing (1)</b> 70:24 <b>deals (1)</b> 61:8 <b>death (5)</b> 53:12;81:12,17;104:4; 129:16 <b>deaths (3)</b> 68:5;130:19;131:10 <b>December (2)</b> 6:17,17 <b>decide (1)</b> 40:15 <b>deciding (3)</b> 46:13;54:1;56:10 <b>decipher (1)</b> 128:22 <b>decision (10)</b> 35:15;39:3;40:8;48:4; 54:2,6,14;75:13;77:4;85:22 <b>decisions (1)</b> 14:16 <b>declaration (1)</b> 63:18 <b>declarations (1)</b> 6:5 <b>dedicated (1)</b> 13:25 <b>deeper (1)</b> 71:7 <b>defendant (1)</b> 137:8 <b>defense (1)</b> 134:17 <b>define (9)</b> 43:20;76:24;78:3;79:18; 114:4,8;120:5,6,22 <b>defined (4)</b> 79:20;94:7;95:8;121:15 <b>defines (1)</b> 27:7 <b>definite (2)</b> 89:17;94:6 <b>Definitely (2)</b> 43:16;69:24 <b>definition (9)</b> 25:14;26:4,8;80:7;81:15, 24;84:8;119:8;120:5 <b>Definitions (1)</b> 25:13 <b>definitive (1)</b> 108:18 <b>deliberately (1)</b> 94:11</p>	<p><b>Department (23)</b> 6:10,12,15,19;7:19,21,22; 8:5,6;12:4;14:5,14;16:22; 24:21,25;51:17;53:18;58:16; 62:2;69:22;75:22;90:14; 134:3 <b>departments (1)</b> 47:23 <b>Department's (1)</b> 58:5 <b>depending (1)</b> 19:5 <b>depose (1)</b> 138:3 <b>DEPOSITION (14)</b> 4:1,9;7:14,24,25;63:25; 98:10;123:14,18;125:17; 133:20;137:23;138:6,7 <b>depositions (5)</b> 105:5;130:25;132:5,13; 135:16 <b>deps (1)</b> 5:3 <b>Deputy (1)</b> 63:16 <b>derelict (1)</b> 49:9 <b>describe (1)</b> 87:22 <b>described (1)</b> 70:12 <b>description (2)</b> 18:13;93:2 <b>desert (1)</b> 39:15 <b>designed (1)</b> 104:17 <b>despite (2)</b> 36:24,25 <b>detail (2)</b> 6:6;9:2 <b>details (2)</b> 68:7;108:21 <b>detecting (3)</b> 10:17,22;12:14 <b>detention (2)</b> 55:6;59:17 <b>determination (1)</b> 37:3 <b>determinations (2)</b> 129:9,10 <b>determine (6)</b> 8:19;47:13;49:16;90:24; 123:18;125:14 <b>determined (2)</b> 19:18;30:1 <b>developed (1)</b> 11:18 <b>diagram (1)</b> 64:9 <b>Diana (1)</b> 26:1 <b>die (2)</b></p>	<p>70:7;134:8 <b>differed (1)</b> 100:18 <b>difference (4)</b> 32:14;37:6;114:7;136:20 <b>differences (2)</b> 61:22,22 <b>different (17)</b> 10:4;13:4;14:13;17:15; 23:13;34:25;39:17;40:19; 44:11;46:20;52:11;62:4; 71:14,15;75:4;80:11;119:1 <b>differentiate (2)</b> 68:2,21 <b>differently (1)</b> 84:5 <b>difficult (2)</b> 49:22;54:3 <b>direct (1)</b> 19:2 <b>directing (1)</b> 11:3 <b>direction (2)</b> 40:19;110:23 <b>directly (2)</b> 24:18;45:25 <b>dirt (1)</b> 64:2 <b>disagree (7)</b> 61:16;92:25;95:25;96:1; 99:5;102:18;110:4 <b>discipline (4)</b> 35:21,23;37:4;38:15 <b>discourage (2)</b> 58:11,15 <b>discouraged (4)</b> 58:1,4,8;90:15 <b>discuss (1)</b> 59:19 <b>discussed (3)</b> 30:24;90:15;133:10 <b>discussing (1)</b> 84:23 <b>disobeyed (1)</b> 35:24 <b>disobeying (1)</b> 35:25 <b>dispatch (3)</b> 66:23;67:9;124:15 <b>dispatcher (1)</b> 18:15 <b>disregard (27)</b> 15:19;38:22;61:9;72:15; 75:22;79:15,19,20;80:1,4,8, 23;81:14,25;82:4;86:3; 88:21;89:1,6,11;112:6,10,12, 22;113:4,9;137:4 <b>division (1)</b> 12:3 <b>document (7)</b> 64:1;66:23,24,25;67:7,24; 69:15 <b>documents (2)</b></p>
<b>D</b>			
<p><b>daily (2)</b> 70:16;133:9 <b>damage (3)</b> 116:20;117:9;119:24 <b>damned (1)</b> 116:5 <b>danger (48)</b> 20:13;29:22;30:1;37:13, 24;44:13;47:7;58:14;70:20, 23;86:24,25;90:1,2;97:19, 21;99:25;105:24,25;106:4; 107:17,23;117:25;122:25; 123:21;126:4,11,15,19; 127:2,13,15,21,24;128:3,4,7, 12,13,17,20;129:2;132:17, 19;133:25;135:12,12,21 <b>dangerous (27)</b> 19:19;21:1,21;22:17,24; 33:16;71:10,22;80:13,14,17, 18,20;82:1,8;85:3;86:5; 94:12;97:24;98:9;114:16; 121:8,8,10;123:11;128:15; 132:23 <b>Dangers (5)</b> 67:15;86:20;89:23;96:18, 20 <b>data (1)</b> 71:7 <b>date (1)</b> 76:17 <b>DATED (1)</b> 138:12 <b>dates (1)</b> 71:6 <b>daughter (1)</b> 5:19 <b>Dave (1)</b> 4:18 <b>DAVID (6)</b> 4:1,23;5:24;6:3;138:3,15 <b>day (11)</b> 9:22;15:15;39:19;47:11; 68:20;73:24;129:15;130:1;</p>	<p><b>decisions (1)</b> 14:16 <b>declaration (1)</b> 63:18 <b>declarations (1)</b> 6:5 <b>dedicated (1)</b> 13:25 <b>deeper (1)</b> 71:7 <b>defendant (1)</b> 137:8 <b>defense (1)</b> 134:17 <b>define (9)</b> 43:20;76:24;78:3;79:18; 114:4,8;120:5,6,22 <b>defined (4)</b> 79:20;94:7;95:8;121:15 <b>defines (1)</b> 27:7 <b>definite (2)</b> 89:17;94:6 <b>Definitely (2)</b> 43:16;69:24 <b>definition (9)</b> 25:14;26:4,8;80:7;81:15, 24;84:8;119:8;120:5 <b>Definitions (1)</b> 25:13 <b>definitive (1)</b> 108:18 <b>deliberately (1)</b> 94:11</p>	<p><b>Department (23)</b> 6:10,12,15,19;7:19,21,22; 8:5,6;12:4;14:5,14;16:22; 24:21,25;51:17;53:18;58:16; 62:2;69:22;75:22;90:14; 134:3 <b>departments (1)</b> 47:23 <b>Department's (1)</b> 58:5 <b>depending (1)</b> 19:5 <b>depose (1)</b> 138:3 <b>DEPOSITION (14)</b> 4:1,9;7:14,24,25;63:25; 98:10;123:14,18;125:17; 133:20;137:23;138:6,7 <b>depositions (5)</b> 105:5;130:25;132:5,13; 135:16 <b>deps (1)</b> 5:3 <b>Deputy (1)</b> 63:16 <b>derelict (1)</b> 49:9 <b>describe (1)</b> 87:22 <b>described (1)</b> 70:12 <b>description (2)</b> 18:13;93:2 <b>desert (1)</b> 39:15 <b>designed (1)</b> 104:17 <b>despite (2)</b> 36:24,25 <b>detail (2)</b> 6:6;9:2 <b>details (2)</b> 68:7;108:21 <b>detecting (3)</b> 10:17,22;12:14 <b>detention (2)</b> 55:6;59:17 <b>determination (1)</b> 37:3 <b>determinations (2)</b> 129:9,10 <b>determine (6)</b> 8:19;47:13;49:16;90:24; 123:18;125:14 <b>determined (2)</b> 19:18;30:1 <b>developed (1)</b> 11:18 <b>diagram (1)</b> 64:9 <b>Diana (1)</b> 26:1 <b>die (2)</b></p>	<p>70:7;134:8 <b>differed (1)</b> 100:18 <b>difference (4)</b> 32:14;37:6;114:7;136:20 <b>differences (2)</b> 61:22,22 <b>different (17)</b> 10:4;13:4;14:13;17:15; 23:13;34:25;39:17;40:19; 44:11;46:20;52:11;62:4; 71:14,15;75:4;80:11;119:1 <b>differentiate (2)</b> 68:2,21 <b>differently (1)</b> 84:5 <b>difficult (2)</b> 49:22;54:3 <b>direct (1)</b> 19:2 <b>directing (1)</b> 11:3 <b>direction (2)</b> 40:19;110:23 <b>directly (2)</b> 24:18;45:25 <b>dirt (1)</b> 64:2 <b>disagree (7)</b> 61:16;92:25;95:25;96:1; 99:5;102:18;110:4 <b>discipline (4)</b> 35:21,23;37:4;38:15 <b>discourage (2)</b> 58:11,15 <b>discouraged (4)</b> 58:1,4,8;90:15 <b>discuss (1)</b> 59:19 <b>discussed (3)</b> 30:24;90:15;133:10 <b>discussing (1)</b> 84:23 <b>disobeyed (1)</b> 35:24 <b>disobeying (1)</b> 35:25 <b>dispatch (3)</b> 66:23;67:9;124:15 <b>dispatcher (1)</b> 18:15 <b>disregard (27)</b> 15:19;38:22;61:9;72:15; 75:22;79:15,19,20;80:1,4,8, 23;81:14,25;82:4;86:3; 88:21;89:1,6,11;112:6,10,12, 22;113:4,9;137:4 <b>division (1)</b> 12:3 <b>document (7)</b> 64:1;66:23,24,25;67:7,24; 69:15 <b>documents (2)</b></p>

<p>7:13;8:12 <b>domestic (1)</b> 81:22 <b>done (7)</b> 9:11;16:10;33:22;34:4; 55:23;58:10;122:5 <b>door (1)</b> 79:9 <b>doubt (3)</b> 65:20;71:9;87:13 <b>down (32)</b> 20:14;28:16;29:8;36:13, 14;37:11;43:7;44:1;46:3; 52:21;54:23;57:21;65:4; 72:18;77:23;82:10;84:8,16, 16;86:14,17;87:3;110:14; 111:4;112:7,16;113:5; 114:16,19,22;121:9;125:5 <b>downtown (1)</b> 39:16 <b>drag (1)</b> 48:18 <b>dramatic (2)</b> 83:23,24 <b>dramatically (5)</b> 82:8,14,21;83:2,12 <b>DRE (4)</b> 12:12,12,17,19 <b>drive (9)</b> 28:7;29:11,12;33:13; 78:24;79:24;97:15;109:25; 126:14 <b>driver (21)</b> 11:17,20,24;13:23;21:21; 25:17,19;27:10;30:12;31:12, 15,21;36:17,21;42:22;48:23; 57:1;79:23,25;97:6;113:24 <b>drivers (11)</b> 10:18,22;11:5,13;13:18; 14:1;29:11,14;30:3;32:3; 39:24 <b>driver's (1)</b> 57:7 <b>drives (5)</b> 116:21;117:12;120:1,18; 126:8 <b>driving (31)</b> 9:7;13:17;21:6;29:10,22; 30:4,15,18,20;32:24;33:21; 36:6;39:19;43:13;46:6;48:1, 19;50:6;57:2,9,10;59:3;71:9; 83:5,5;102:20;111:17; 117:17;120:6;121:9;128:11 <b>dropped (1)</b> 100:22 <b>drove (4)</b> 12:25;64:4,16,17 <b>Drug (1)</b> 12:17 <b>drunk (22)</b> 10:18;11:5,13,17,20,24; 13:18,23;14:1;29:11,14; 31:14,21;32:2,24;33:21;</p>	<p>36:17,21;39:24;92:11; 100:21;126:24 <b>dry (5)</b> 58:16;65:21;66:4;132:7,25 <b>due (7)</b> 7:2;20:18;28:4,7,11;79:24; 128:9 <b>DUI (58)</b> 10:11,14,22;11:8,16,16; 12:2,7,7,12,20;13:5,9;14:3,8, 19;15:2,11,18;17:7,10; 28:25;29:5,9;30:6;34:17; 35:21;36:17;39:22;41:24; 59:12;60:1;71:6,9,18;90:12; 91:5,10,22,23;92:5,8,17,20; 93:1,4,7,11,14,18,21;99:6; 100:17,25;101:14;102:4,10, 11 <b>DUIs (12)</b> 12:14;14:11;15:4,7,19; 16:5;29:3,21;31:25;65:14; 90:18;92:8 <b>duly (2)</b> 4:24;138:3 <b>during (18)</b> 10:5,13,21;17:9,17;21:25; 22:4;23:17;41:9;49:13; 65:17;71:6;84:21;96:19; 127:15;128:20;129:3;130:1 <b>duties (3)</b> 7:8;15:11;49:9 <b>duty (8)</b> 10:17,25;11:4;16:3;46:16; 53:15;61:14;79:24</p>	<p>94:22;114:10 <b>egregious (1)</b> 38:21 <b>either (3)</b> 21:16;132:4;135:25 <b>electric (1)</b> 137:22 <b>electronic (1)</b> 137:20 <b>element (4)</b> 70:20,23;128:14,17 <b>elements (2)</b> 128:12;131:24 <b>else (9)</b> 4:17,19,21;11:22;40:20; 54:18;57:19;71:16;132:9 <b>elude (3)</b> 42:23;44:9;94:22 <b>eluder (1)</b> 96:11 <b>eluding (33)</b> 8:19;25:13,14;26:4,9,16, 21;27:10;31:6;43:19,23; 94:4,5,9,18;95:2,3,25;96:5; 99:14;100:7;101:11,15; 103:11;107:20,25;118:8,25; 119:7,14;121:17;124:24; 127:21 <b>emanate (1)</b> 65:14 <b>Emergency (8)</b> 8:15;10:24;25:16;27:8; 28:5,8;62:19;79:23 <b>emphasis (4)</b> 13:21;14:2;18:10;115:12 <b>employment (1)</b> 7:1 <b>encourage (1)</b> 15:18 <b>end (19)</b> 14:16;47:11;81:9,10,12; 103:23;104:3,3;106:5,8; 107:1,11;119:25;123:9; 129:23;131:25;135:2; 137:11,14 <b>endanger (13)</b> 95:6;116:23,23;117:13,13, 18,18;120:2,2,8,9,14,15 <b>endangered (1)</b> 113:2 <b>endangering (5)</b> 95:12,15,21;118:6;121:4 <b>ended (8)</b> 6:16;20:21;22:14;23:15; 24:8,10,19;135:10 <b>ending (1)</b> 22:2 <b>enforce (1)</b> 15:2 <b>enforcement (23)</b> 6:24;7:5,10;8:25;9:19; 10:11,14;12:9,13,21;15:11; 17:4,8,11;19:23;32:12;33:7,</p>	<p>14;38:3,9;47:23;53:11;70:16 <b>enforcement's (1)</b> 53:15 <b>engage (7)</b> 21:5,6;28:10,11;38:2;98:4; 132:1 <b>engaged (7)</b> 21:14;28:6;33:15;43:21; 101:2,18;113:10 <b>engages (1)</b> 100:7 <b>engaging (4)</b> 30:4,15;97:23;108:3 <b>enough (2)</b> 83:19;95:24 <b>entered (1)</b> 103:25 <b>entire (4)</b> 9:19;101:19;127:25; 128:19 <b>entries (1)</b> 38:5 <b>equal (1)</b> 32:10 <b>equate (1)</b> 97:3 <b>equation (1)</b> 97:21 <b>equipment (1)</b> 28:5 <b>equivalency (1)</b> 6:25 <b>erratic (2)</b> 9:8;13:1 <b>erratically (1)</b> 126:14 <b>escape (3)</b> 31:24;87:1;90:3 <b>escapes (1)</b> 98:15 <b>especially (5)</b> 46:17;70:17;88:23;98:10; 103:4 <b>essence (1)</b> 53:16 <b>evade (2)</b> 55:6;59:17 <b>evaluate (8)</b> 35:12;54:6,11,16;55:18; 77:3,9;126:8 <b>Evan (4)</b> 4:16;60:23;63:5;66:25 <b>Evan's (1)</b> 130:11 <b>evasive (3)</b> 25:22;26:5,19 <b>even (42)</b> 17:23;26:12;29:8,18; 30:10;31:6;37:20;42:3,14; 43:10;46:19,22;48:6,22; 57:3,6;70:2,20,21,22,24; 71:22;72:12;75:19;80:14; 85:9;87:18,21;89:19;90:12;</p>
<b>E</b>			
<p><b>earlier (10)</b> 11:14;25:7;30:24;32:7; 46:11;64:4;75:7;81:21;85:1; 122:19 <b>early (3)</b> 14:24;47:5;71:19 <b>Earth (2)</b> 65:3,6 <b>easier (4)</b> 5:6;17:3;61:18;128:25 <b>Eastern (2)</b> 51:3,5 <b>easy (2)</b> 76:24;122:8 <b>editorialization (1)</b> 124:1 <b>effect (8)</b> 4:9;26:14;29:8,18,21; 52:21;111:12,24 <b>effective (2)</b> 20:5,8 <b>efficient (2)</b> 11:19,23 <b>effort (3)</b> 27:9;108:1;135:23 <b>efforts (2)</b></p>	<p><b>encourage (1)</b> 15:18 <b>end (19)</b> 14:16;47:11;81:9,10,12; 103:23;104:3,3;106:5,8; 107:1,11;119:25;123:9; 129:23;131:25;135:2; 137:11,14 <b>endanger (13)</b> 95:6;116:23,23;117:13,13, 18,18;120:2,2,8,9,14,15 <b>endangered (1)</b> 113:2 <b>endangering (5)</b> 95:12,15,21;118:6;121:4 <b>ended (8)</b> 6:16;20:21;22:14;23:15; 24:8,10,19;135:10 <b>ending (1)</b> 22:2 <b>enforce (1)</b> 15:2 <b>enforcement (23)</b> 6:24;7:5,10;8:25;9:19; 10:11,14;12:9,13,21;15:11; 17:4,8,11;19:23;32:12;33:7,</p>		

101:13;103:12;105:6; 111:11;116:15;118:22; 121:9;122:2;132:18;133:14; 136:9,22	<b>expired (1)</b> 67:1	<b>fatalities (1)</b> 70:8	43:25;72:9,14,21;73:14; 75:21,24;76:10;79:13
<b>event (1)</b> 137:3	<b>EXPIRES (1)</b> 138:24	<b>FBI (1)</b> 69:24	<b>fleeing (3)</b> 53:11;55:7;62:1
<b>events (1)</b> 11:2	<b>explain (2)</b> 49:2;89:16	<b>feel (1)</b> 66:7	<b>flesh (1)</b> 53:2
<b>eventually (2)</b> 73:6;101:14	<b>expose (1)</b> 53:10	<b>feeling (1)</b> 40:17	<b>floor (1)</b> 100:22
<b>everyone (3)</b> 62:22;121:12;134:4	<b>Extended (2)</b> 57:23,24	<b>felon (8)</b> 44:8,14;48:11;62:1;96:3; 98:15;107:17;113:7	<b>fo (1)</b> 19:5
<b>everywhere (2)</b> 90:17;114:7	<b>extensively (2)</b> 52:3,7	<b>felonies (10)</b> 21:12,18;37:18,19;42:1; 44:16,17,20;46:19,24	<b>focus (3)</b> 48:22;123:4;125:17
<b>evidence (5)</b> 103:18;110:3,11;111:22; 131:12	<b>extra (1)</b> 81:20	<b>felons (1)</b> 22:24	<b>focusing (1)</b> 103:1
<b>exact (4)</b> 76:25;77:2,12;109:12	<b>extreme (3)</b> 48:14,15;49:1	<b>felony (40)</b> 21:20;26:23;44:8,10,12, 22;45:5,18;46:18,19;48:6,8; 50:15;95:6,13,25;96:11; 97:24;99:14;100:7;101:15; 107:20,25;116:2,19;118:8, 17;119:1,2,3,7,18;120:13,23, 25;121:14,24;122:14,18,24	<b>follow (7)</b> 31:11;33:13;35:4;64:13; 87:20;112:22;118:15
<b>exactly (7)</b> 20:19;26:17;37:16;39:12; 57:5;58:10;93:7	<b>extremely (2)</b> 81:11;126:16	<b>few (2)</b> 23:11;84:12	<b>following (5)</b> 25:20;28:20;42:16;56:9; 119:18
<b>exam (1)</b> 49:1	<b>F</b>	<b>fictional (1)</b> 49:5	<b>follows (2)</b> 4:25;55:14
<b>EXAMINATION (1)</b> 5:12	<b>faced (2)</b> 14:11;77:3	<b>field (2)</b> 12:15;90:23	<b>foot (1)</b> 48:2
<b>examine (1)</b> 123:14	<b>facie (2)</b> 131:11;137:12	<b>finally (2)</b> 50:10;123:19	<b>footage (4)</b> 7:18,19,20;66:12
<b>examining (2)</b> 40:13;101:1	<b>fact (5)</b> 35:8;36:19;47:4;65:8; 129:11	<b>find (12)</b> 5:6;15:23;20:9;48:12; 53:3;55:24;56:15;95:10; 102:13;115:9;116:5;135:20	<b>forbidden (1)</b> 29:2
<b>example (5)</b> 15:8;41:11,13;48:14;62:5	<b>factor (6)</b> 42:8;43:14,16,17;45:15,22	<b>fine (9)</b> 5:8,24;6:6;9:4;26:15; 54:19,20;69:19;108:25	<b>force (4)</b> 4:8;34:22;97:3;108:4
<b>examples (1)</b> 17:6	<b>factors (17)</b> 29:25;39:6;40:2,13;41:7, 15;42:4;43:3;44:2,5;45:3; 47:13;55:14,17;56:2,9,16	<b>firearm (1)</b> 24:5	<b>foregoing (2)</b> 79:22;138:5
<b>except (1)</b> 138:10	<b>facts (15)</b> 31:14,19;35:12;37:2,9; 38:2,7;39:2;40:6;75:13;77:3; 110:3,11;111:21;114:12	<b>First (23)</b> 4:24;6:25;9:22;17:20; 18:8;20:2;41:23;51:10; 52:25;67:3;72:3;73:20; 74:18;85:8;86:11;88:24; 92:15;93:13;113:1,10; 117:17;127:7;138:3	<b>forever (1)</b> 129:7
<b>exception (1)</b> 29:16	<b>failed (1)</b> 68:3	<b>fish (1)</b> 118:13	<b>forget (2)</b> 25:23;61:5
<b>excess (2)</b> 117:7;119:19	<b>failing (3)</b> 42:17;69:24;101:3	<b>fine-toothed (1)</b> 135:19	<b>forgot (1)</b> 130:5
<b>execute (1)</b> 46:4	<b>fair (5)</b> 12:20;17:8;47:14;101:21; 105:18	<b>finish (1)</b> 118:13	<b>form (5)</b> 15:23;17:14;91:13; 119:12;137:22
<b>Exercise (1)</b> 28:4	<b>fairly (2)</b> 62:20;84:3	<b>firearm (1)</b> 24:5	<b>forth (2)</b> 104:5;117:20
<b>Exhibit (5)</b> 26:1,2;51:14,18;67:25	<b>falls (1)</b> 40:23	<b>firearm (1)</b> 24:5	<b>found (2)</b> 53:24;62:7
<b>exhibits (2)</b> 91:9,9	<b>familiar (7)</b> 14:15;31:3;51:5,22;60:19; 64:2,4	<b>firearm (1)</b> 24:5	<b>frankly (1)</b> 110:12
<b>exited (1)</b> 66:17	<b>far (6)</b> 7:1;13:20;82:24;111:5,7; 136:23	<b>firearm (1)</b> 24:5	<b>freeway (5)</b> 50:21,23;64:17,18,24
<b>exits (1)</b> 64:19	<b>fast (8)</b> 29:12;30:7;49:7;73:6; 82:16;98:5;104:11;108:6	<b>firearm (1)</b> 24:5	<b>frequent (1)</b> 19:13
<b>expand (1)</b> 93:23	<b>faster (6)</b> 45:23;97:14,14;104:16; 108:2,2	<b>firearm (1)</b> 24:5	<b>friends (1)</b> 14:10
<b>expected (1)</b> 41:8	<b>fatal (3)</b> 67:22;71:6;136:20	<b>firearm (1)</b> 24:5	<b>front (4)</b> 8:11;45:25;48:13;99:21
<b>experience (5)</b> 15:6;35:8;49:25;92:7; 102:10		<b>firearm (1)</b> 24:5	<b>Fuente (2)</b> 82:6;131:11
<b>Expert (2)</b> 12:18;36:17		<b>firearm (1)</b> 24:5	<b>full (4)</b> 69:19,19;119:13;124:8
<b>expertise (2)</b> 11:12,19		<b>firearm (1)</b> 24:5	<b>fully (1)</b> 105:11
		<b>firearm (1)</b> 24:5	<b>fully-commissioned (1)</b> 6:23

<p><b>fun (1)</b> 11:2 <b>further (2)</b> 4:6;109:16</p>	<p>66:3 <b>guard (1)</b> 9:25 <b>guess (17)</b> 15:25;20:2;23:21,23; 27:13;33:20;44:7;52:25; 57:6;60:16;67:20;68:19,20; 71:1;114:11;119:12;136:13</p>	<p><b>hard (8)</b> 10:10;42:12;43:7;74:7; 83:11;107:15;124:13;128:22 <b>harm (2)</b> 44:3;58:1 <b>hate (1)</b> 33:20 <b>hazards (1)</b> 131:12 <b>head (4)</b> 27:22;36:10;77:9,13 <b>hear (24)</b> 18:24;32:13;34:3;36:16; 42:15;43:12;50:18;67:11; 77:24;78:6,6;79:10;83:4,8; 102:23;109:10;110:21,24; 124:13,16,18,19;125:6; 126:21 <b>heard (2)</b> 14:9;109:9 <b>hearing (10)</b> 7:17;36:24;38:15;44:7; 48:5;74:20;85:15;91:17; 110:5;136:25 <b>hears (1)</b> 49:8 <b>hearsay (1)</b> 14:17 <b>heart (1)</b> 36:9 <b>heavily (2)</b> 16:11;18:1 <b>hell (1)</b> 76:5 <b>help (1)</b> 24:15 <b>helpful (1)</b> 66:8 <b>helping (1)</b> 108:1 <b>helps (1)</b> 44:21 <b>here's (3)</b> 89:20;93:7;125:6 <b>hereto (1)</b> 138:11 <b>hesitant (1)</b> 35:6 <b>hesitate (2)</b> 134:18;135:17 <b>Hey (7)</b> 15:7,22;18:16;30:10; 35:11;55:22;114:15 <b>HGN (1)</b> 12:15 <b>high (8)</b> 104:12;108:11;109:2,17, 25;122:15,24;123:20 <b>higher (7)</b> 27:3,4;32:10;46:2;101:13; 121:23;130:21 <b>highest (1)</b> 82:15</p>	<p><b>highly (1)</b> 71:10 <b>high-speed (1)</b> 21:6 <b>Highway (6)</b> 13:15;30:24,25;48:18; 67:17;69:23 <b>hill (5)</b> 82:19;109:17;112:21; 113:9;136:14 <b>hinted (1)</b> 15:10 <b>hired (2)</b> 6:17;7:3 <b>hit (8)</b> 23:20;54:15;62:1;83:15; 91:2;120:23,24;121:16 <b>hits (1)</b> 108:5 <b>hitting (1)</b> 121:16 <b>Hmm (1)</b> 68:18 <b>hold (1)</b> 21:2 <b>home (1)</b> 121:11 <b>homicide (2)</b> 81:21;107:18 <b>honest (1)</b> 36:15 <b>hope (7)</b> 12:6;17:1;28:1;44:5;50:7; 63:15,17 <b>hopefully (3)</b> 18:21;38:23;62:13 <b>hoping (1)</b> 111:24 <b>Horizontal (1)</b> 12:15 <b>horrible (1)</b> 13:14 <b>hour (24)</b> 30:23,25;48:10,17,20; 49:6;50:9;53:20;63:3,10; 82:23;84:18,21,24;85:9; 95:9;97:17;111:17;115:22; 116:20;117:8;118:18; 119:19,23 <b>hours (2)</b> 11:25,25 <b>house (2)</b> 33:10,10 <b>human (1)</b> 106:24 <b>hypothetical (8)</b> 110:3,11;111:21;113:14, 17;114:4,8,11</p>
<b>G</b>		<p><b>game (1)</b> 18:22 <b>gas (2)</b> 48:2;83:15 <b>gave (3)</b> 17:5;20:16;41:13 <b>Gaze (1)</b> 12:15 <b>general (6)</b> 21:16;43:5;51:21;52:2; 80:20;81:25 <b>generalization (1)</b> 41:16 <b>Generally (4)</b> 19:3;27:5;34:24;50:21 <b>generate (1)</b> 18:15 <b>geography (1)</b> 64:11 <b>Getaway (3)</b> 65:8,9,13 <b>gets (8)</b> 65:4;75:11;94:5;113:7; 116:19;121:22,23;133:4 <b>given (3)</b> 41:14;47:22;119:15 <b>glad (1)</b> 112:8 <b>goal (1)</b> 62:21 <b>goes (12)</b> 47:17;54:10,10,13;82:4; 88:23;98:4;101:13,15; 104:11;113:8;119:21 <b>good (7)</b> 14:5;25:12;33:14;36:14; 40:11;53:17;103:12 <b>Google (6)</b> 8:1;64:8;65:1,3,6;66:7 <b>granted (2)</b> 47:21;58:2 <b>Great (6)</b> 7:7,12;8:24;14:2;15:21; 46:16 <b>greater (8)</b> 21:9;30:19;46:22,25; 61:23;70:9;84:23;128:9 <b>greatest (3)</b> 47:16;50:4,7 <b>greatly (2)</b> 86:24;90:2 <b>gross (3)</b> 26:24;27:3;30:19 <b>ground (1)</b> 9:3 <b>guarantee (1)</b></p>	<p><b>hard (8)</b> 10:10;42:12;43:7;74:7; 83:11;107:15;124:13;128:22 <b>harm (2)</b> 44:3;58:1 <b>hate (1)</b> 33:20 <b>hazards (1)</b> 131:12 <b>head (4)</b> 27:22;36:10;77:9,13 <b>hear (24)</b> 18:24;32:13;34:3;36:16; 42:15;43:12;50:18;67:11; 77:24;78:6,6;79:10;83:4,8; 102:23;109:10;110:21,24; 124:13,16,18,19;125:6; 126:21 <b>heard (2)</b> 14:9;109:9 <b>hearing (10)</b> 7:17;36:24;38:15;44:7; 48:5;74:20;85:15;91:17; 110:5;136:25 <b>hears (1)</b> 49:8 <b>hearsay (1)</b> 14:17 <b>heart (1)</b> 36:9 <b>heavily (2)</b> 16:11;18:1 <b>hell (1)</b> 76:5 <b>help (1)</b> 24:15 <b>helpful (1)</b> 66:8 <b>helping (1)</b> 108:1 <b>helps (1)</b> 44:21 <b>here's (3)</b> 89:20;93:7;125:6 <b>hereto (1)</b> 138:11 <b>hesitant (1)</b> 35:6 <b>hesitate (2)</b> 134:18;135:17 <b>Hey (7)</b> 15:7,22;18:16;30:10; 35:11;55:22;114:15 <b>HGN (1)</b> 12:15 <b>high (8)</b> 104:12;108:11;109:2,17, 25;122:15,24;123:20 <b>higher (7)</b> 27:3,4;32:10;46:2;101:13; 121:23;130:21 <b>highest (1)</b> 82:15</p>
<b>H</b>		<p><b>half (4)</b> 50:9;53:20;63:10;77:21 <b>hallucinating (1)</b> 126:25 <b>hand (3)</b> 13:21;25:16;47:18 <b>handle (3)</b> 11:21;16:22;63:5 <b>hands (1)</b> 16:10 <b>hang (3)</b> 72:24;75:15;79:11 <b>hangs (1)</b> 58:16 <b>happen (13)</b> 19:12;21:12;40:3;42:22; 48:13;50:18;62:14;70:16; 98:14;119:25;129:19;130:7; 132:1 <b>happened (11)</b> 35:9;60:2;81:3,6;89:12; 106:9;108:23;114:14,17; 116:2;128:15 <b>happening (2)</b> 43:8,11 <b>happens (3)</b> 98:12;115:25;129:13 <b>happy (4)</b> 5:5;27:23;68:23;86:15</p>	<p><b>hits (1)</b> 108:5 <b>hitting (1)</b> 121:16 <b>Hmm (1)</b> 68:18 <b>hold (1)</b> 21:2 <b>home (1)</b> 121:11 <b>homicide (2)</b> 81:21;107:18 <b>honest (1)</b> 36:15 <b>hope (7)</b> 12:6;17:1;28:1;44:5;50:7; 63:15,17 <b>hopefully (3)</b> 18:21;38:23;62:13 <b>hoping (1)</b> 111:24 <b>Horizontal (1)</b> 12:15 <b>horrible (1)</b> 13:14 <b>hour (24)</b> 30:23,25;48:10,17,20; 49:6;50:9;53:20;63:3,10; 82:23;84:18,21,24;85:9; 95:9;97:17;111:17;115:22; 116:20;117:8;118:18; 119:19,23 <b>hours (2)</b> 11:25,25 <b>house (2)</b> 33:10,10 <b>human (1)</b> 106:24 <b>hypothetical (8)</b> 110:3,11;111:21;113:14, 17;114:4,8,11</p>
<b>I</b>		<p><b>IA (1)</b> 8:4</p>	

<p><b>Idaho (20)</b> 7:17;8:1,3,14,18;27:3,18, 20;51:7,10,11;60:19,21; 61:19;63:16;79:21;94:18; 95:2;116:18;118:24</p> <p><b>idea (2)</b> 10:13;32:8</p> <p><b>ideas (1)</b> 135:20</p> <p><b>illegal (3)</b> 91:4;96:10;117:7</p> <p><b>images (1)</b> 8:2</p> <p><b>immediate (1)</b> 103:19</p> <p><b>immediately (6)</b> 27:10;31:2;55:14;101:15; 102:10;118:16</p> <p><b>immoral (1)</b> 91:4</p> <p><b>important (3)</b> 35:7;37:9;69:3</p> <p><b>impression (1)</b> 9:18</p> <p><b>inadequate (1)</b> 52:15</p> <p><b>inappropriate (2)</b> 32:6;36:18</p> <p><b>in-car (6)</b> 7:18,19;66:12,14,21;74:5</p> <p><b>Incident (4)</b> 8:6;38:18,25;47:25</p> <p><b>include (2)</b> 70:11;91:22</p> <p><b>included (1)</b> 73:5</p> <p><b>including (2)</b> 8:4;82:5</p> <p><b>Incomplete (3)</b> 110:2,10;111:21</p> <p><b>increase (3)</b> 82:14;87:23;113:24</p> <p><b>increased (6)</b> 26:19;82:7;83:1;86:19; 89:23;126:19</p> <p><b>Increases (2)</b> 25:21;26:4</p> <p><b>increasing (5)</b> 42:24;73:16;83:11;94:23; 99:16</p> <p><b>Indeed (1)</b> 91:2</p> <p><b>independent (2)</b> 58:1;61:11</p> <p><b>indicate (2)</b> 4:12,15</p> <p><b>indicated (1)</b> 128:15</p> <p><b>indication (2)</b> 125:20;127:20</p> <p><b>indicator (1)</b> 88:5</p> <p><b>individual (9)</b></p>	<p>35:1;40:24;45:2;47:13; 49:6,14;74:22;82:1;125:5</p> <p><b>individually (1)</b> 56:9</p> <p><b>individuals (2)</b> 9:6;94:14</p> <p><b>influence (1)</b> 71:10</p> <p><b>information (4)</b> 18:14;23:3;25:4;96:16</p> <p><b>informational (1)</b> 69:11</p> <p><b>informative (1)</b> 13:19</p> <p><b>infractions (1)</b> 126:15</p> <p><b>inherent (3)</b> 44:13;96:18,20</p> <p><b>inherently (2)</b> 19:19;33:16</p> <p><b>initial (11)</b> 18:10;74:6;82:17;88:16; 96:6;103:9;105:14;107:23; 126:12,15;127:24</p> <p><b>initially (2)</b> 67:2;74:5</p> <p><b>Initiate (7)</b> 55:3,4,20;56:11;59:15; 72:4,8</p> <p><b>initiation (1)</b> 100:11</p> <p><b>injure (1)</b> 30:18</p> <p><b>injured (2)</b> 46:21;131:23</p> <p><b>injures (1)</b> 20:22</p> <p><b>injury (4)</b> 53:12;116:21;117:10; 119:25</p> <p><b>innocent (2)</b> 53:10;131:23</p> <p><b>in-person (1)</b> 4:9</p> <p><b>inquiry (1)</b> 129:11</p> <p><b>insert (1)</b> 46:18</p> <p><b>inspired (1)</b> 13:15</p> <p><b>insult (1)</b> 63:21</p> <p><b>intended (1)</b> 119:16</p> <p><b>intent (7)</b> 30:18;80:9,25;81:2; 120:11,22;124:25</p> <p><b>intentionally (1)</b> 22:17</p> <p><b>intents (4)</b> 9:18;109:23;111:18; 114:21</p> <p><b>interacted (1)</b></p>	<p>16:8</p> <p><b>interest (2)</b> 21:8,9</p> <p><b>interested (1)</b> 13:17</p> <p><b>interesting (2)</b> 6:20;16:6</p> <p><b>interfere (1)</b> 5:5</p> <p><b>interior (2)</b> 66:16;76:20</p> <p><b>interpret (1)</b> 55:13</p> <p><b>interpretation (8)</b> 117:2;120:21;121:1,13; 122:20,23;134:6;135:16</p> <p><b>interpretations (1)</b> 126:2</p> <p><b>intersection (1)</b> 136:17</p> <p><b>intersections (1)</b> 136:21</p> <p><b>into (28)</b> 9:3;15:17;22:22;25:23; 46:23;50:22;56:12;59:18,20; 60:8;64:2;68:7;71:7;78:9; 97:3;98:1;101:15;103:14,17; 105:4,21;113:14;115:20; 119:12;124:24;134:15,19; 135:25</p> <p><b>intoxicated (1)</b> 87:17</p> <p><b>investigate (2)</b> 15:19;23:24</p> <p><b>investigating (3)</b> 10:18;11:12;43:4</p> <p><b>involve (2)</b> 70:5,8</p> <p><b>involved (15)</b> 16:11;18:1,17;23:4,16; 24:17;40:15;46:8;67:15; 74:6;99:4;114:20;123:21; 129:8;134:20</p> <p><b>involving (5)</b> 22:6;23:10;36:21;57:25; 69:22</p> <p><b>irresponsible (1)</b> 50:3</p> <p><b>issue (11)</b> 11:21;13:13;16:18;36:1,8, 12;37:3,4;58:9;59:16;60:4</p> <p><b>issues (7)</b> 20:18;25:16;52:1;53:5; 59:18,19;60:8</p>	<p><b>joins (1)</b> 76:23</p> <p><b>Joseph (1)</b> 7:17</p> <p><b>judge (2)</b> 38:19;79:6</p> <p><b>judgement (1)</b> 59:20</p> <p><b>judging (2)</b> 120:25;121:11</p> <p><b>judgment (4)</b> 37:25;60:8;75:18;78:9</p> <p><b>July (3)</b> 65:17;66:3;72:12</p> <p><b>jump (2)</b> 5:7;10:6</p> <p><b>jumping (1)</b> 14:22</p> <p><b>jumps (1)</b> 120:17</p> <p><b>jurisdiction (1)</b> 51:7</p> <p><b>jurisdictions (1)</b> 50:12</p> <p><b>Justice (2)</b> 69:22,23</p> <p><b>justifiable (1)</b> 19:4</p> <p><b>justification (1)</b> 28:17</p>
<b>K</b>			
<p><b>KANE (44)</b> 4:20,20;5:1,8,11,13;25:3, 25;26:3;34:1,8,14;41:6; 51:15;61:6,7;62:14,24;63:3, 5,10,12,14;68:1;75:14;76:4, 7;78:5;91:18;95:18;104:18; 110:7,14,16;112:5;116:9; 118:14;130:17;133:23; 135:8;136:6,18;137:15,22</p> <p><b>keep (11)</b> 27:9;48:23;63:15;81:13; 83:20,22;98:14;130:10; 137:10,11,11</p> <p><b>keeps (4)</b> 99:17;112:20;113:19; 114:1</p> <p><b>kept (6)</b> 103:22;104:10,10,11; 114:10;132:24</p> <p><b>kill (1)</b> 70:6</p> <p><b>killed (9)</b> 13:23;46:21;109:4;130:11, 15;133:7;136:7,23;137:1</p> <p><b>kills (2)</b> 20:22;113:9</p> <p><b>kind (31)</b> 6:20;13:15,16;14:18,20, 22;16:2,10,25;29:25;37:6; 38:24;39:17;41:16;42:24;</p>			
<b>J</b>			
<p><b>jack (1)</b> 46:11</p> <p><b>job (5)</b> 9:13,25;16:15;36:14;46:14</p> <p><b>jobs (2)</b> 71:15,16</p>			

<p>44:18,21;60:25;64:13;69:11; 70:13;74:5,7;81:20;82:3; 85:13;94:20;106:17;125:17; 134:5;135:14 <b>kinds (2)</b> 68:3;91:11 <b>knew (4)</b> 11:18;92:9;109:18;119:14 <b>knowing (5)</b> 31:6;80:16;81:25;93:13; 97:5 <b>knowledge (9)</b> 61:11;64:9,10;65:7,9,12; 68:21;80:10;91:23 <b>known (12)</b> 11:15;12:24;56:13;80:12; 96:18,19;99:3,13,18,18,20; 110:23 <b>knows (3)</b> 74:1;87:24;88:6</p>	<p>56:24,25;134:25 <b>leads (2)</b> 102:10;126:10 <b>learn (1)</b> 13:16 <b>learned (2)</b> 34:24;66:7 <b>least (14)</b> 9:2,6;17:10;28:9;36:25; 37:19;43:9;61:2;68:21; 71:19;81:25;82:17;99:13; 100:16 <b>leave (6)</b> 10:19;62:21;63:6;68:19; 87:12;99:9 <b>leaves (1)</b> 116:24 <b>leaving (3)</b> 92:17;102:6;126:6 <b>led (1)</b> 12:1 <b>leeway (5)</b> 61:23;81:20;87:12;133:6; 135:6 <b>left (7)</b> 14:13;47:12;54:15;92:3,4, 11;128:15 <b>legal (7)</b> 26:8;39:22;62:11;80:3,7; 130:13;134:13 <b>legislature (1)</b> 120:11 <b>legitimate (1)</b> 12:8 <b>lengthy (1)</b> 115:7 <b>less (5)</b> 19:13,13;31:10;51:5;63:4 <b>letter (2)</b> 8:10;57:20 <b>letting (2)</b> 86:25;90:2 <b>level (15)</b> 8:19;9:2;19:5;33:5;70:22; 95:13;101:13;119:3;120:13, 23,25;121:1,14;123:20; 126:15 <b>levels (3)</b> 17:15;46:20;121:14 <b>Lexipol (6)</b> 51:22;52:2,4,7,14,23 <b>liable (1)</b> 49:4 <b>Lieutenant (10)</b> 5:24,25;16:8,12,24;17:22, 23;24:13;44:15;47:21 <b>lieutenants (2)</b> 19:23;24:17 <b>life (5)</b> 20:18;106:24;113:3; 122:16;130:10 <b>light (19)</b> 38:10,20;83:1;108:10,24;</p>	<p>109:4,24;110:17;111:15; 112:15,19;114:18,24;118:6; 119:6;121:3,3;136:3,23 <b>lights (22)</b> 25:16;27:8,14,20;28:8; 36:2,3,7;42:15,21;43:7;47:3, 6;72:9;74:14;99:16;110:5, 21;111:1,12;112:7;113:18 <b>light's (1)</b> 88:9 <b>likely (10)</b> 35:25;36:11;100:17; 116:23;117:13,18;120:2,8, 14;121:16 <b>limit (6)</b> 29:13;30:23;95:9;116:20; 117:8;119:20 <b>limited (1)</b> 7:2 <b>limits (1)</b> 28:1 <b>line (10)</b> 9:18,18;17:9;36:8;40:5; 43:21;56:17;58:3;125:12; 134:16 <b>line-of-duty (1)</b> 68:5 <b>lines (1)</b> 85:18 <b>link (7)</b> 68:11,15,16;69:7,16;70:1; 78:16 <b>list (1)</b> 28:21 <b>listed (1)</b> 138:10 <b>listen (8)</b> 18:4,8;37:2,9;42:18;48:4; 77:23;125:8 <b>listening (1)</b> 18:22 <b>lists (1)</b> 74:14 <b>lit (1)</b> 128:5 <b>little (23)</b> 10:6;14:23;52:22;53:16; 54:21;55:8;58:18;65:10; 72:18;83:10,18;85:2;100:18; 101:17;109:10;122:1,11; 123:25;124:13;125:15,18; 135:24,25 <b>living (2)</b> 71:12,13 <b>locality (1)</b> 64:11 <b>locations (1)</b> 64:7 <b>long (7)</b> 29:5;59:5,5;91:14;98:5; 111:1;127:17 <b>longer (7)</b> 46:3;53:1;54:10,12;63:8;</p>	<p>88:23;101:8 <b>long-time (1)</b> 14:19 <b>look (51)</b> 5:18,20;12:21;13:6;27:23; 35:1;38:19;39:2;40:6;41:19; 43:3;54:20;57:23;58:20; 65:23;68:11;69:7;71:7; 73:24;74:8,21,22,23;75:12; 76:21;77:24;88:14,16;89:2; 90:14;96:5;99:25;101:21; 105:16;106:5;107:21; 108:17;113:22;114:5;117:4; 119:10;120:11;122:6,20; 123:17;124:8,20;125:5,5; 126:11;137:14 <b>looked (5)</b> 8:18,23;67:4;68:5;135:18 <b>looking (28)</b> 6:5,11;8:12;16:13;18:17; 31:17;36:20;41:20,22;50:13, 25;57:18;68:16;69:25;70:17; 76:16;77:16;79:21;108:19; 113:12;114:25;115:11; 120:20,21;121:6,20;123:1,24 <b>looks (3)</b> 6:11;28:22;109:12 <b>lose (1)</b> 33:17 <b>losing (1)</b> 80:6 <b>loss (2)</b> 122:16;130:9 <b>lost (2)</b> 48:20;110:22 <b>lot (22)</b> 11:4;17:3;24:8;26:10; 29:11;30:24;32:8,9;34:21; 39:15;46:7,13;53:2,19; 64:10;69:21;76:20;92:7; 110:24;117:20;123:3;135:6 <b>loud (2)</b> 13:4;122:13 <b>love (1)</b> 124:14 <b>low (2)</b> 70:20;126:16 <b>lower (1)</b> 105:21 <b>LT (2)</b> 18:21;31:21</p>
<b>L</b>			
<p><b>La (2)</b> 82:6;131:11 <b>lack (7)</b> 52:11;53:3;96:16,22,23; 97:19;98:7 <b>land (1)</b> 44:19 <b>language (5)</b> 20:15;55:21,24;69:10; 128:2 <b>larger (1)</b> 63:19 <b>last (15)</b> 6:2,3;14:9;35:2;53:20; 65:21;67:2;69:8;78:23; 89:21;108:10;110:23; 115:12;121:3;131:10 <b>late (1)</b> 13:10 <b>later (7)</b> 23:12,24;30:10;86:2; 112:22;125:15;127:11 <b>law (39)</b> 6:23;7:5,10;8:25;9:19; 12:9;17:4;20:21;21:7;26:11, 11,13;27:13;32:12;33:7,14; 38:3,8;40:8,10;47:23;53:10, 14,15;60:19;61:15,22,23; 70:16;94:18;95:5;119:9,13; 120:22;121:6,10,11;122:20, 22 <b>laws (1)</b> 15:2 <b>lawsuits (1)</b> 38:16 <b>layout (1)</b> 64:3 <b>lead (1)</b> 111:4 <b>leading (3)</b></p>	<p>38:10,20;83:1;108:10,24;</p>	<p>46:3;53:1;54:10,12;63:8;</p>	<p>18:21;31:21</p>
<b>M</b>			
<p><b>madder (1)</b> 116:22 <b>main (1)</b> 32:7 <b>Mainly (1)</b> 86:18 <b>makes (1)</b> 119:2 <b>making (7)</b></p>			

<p>37:2;48:3;58:25;78:25; 85:22;101:1;115:3 <b>Man (1)</b> 108:6 <b>maneuver (1)</b> 83:18 <b>maneuvers (1)</b> 75:9 <b>manner (6)</b> 4:11;9:8;116:22;117:12, 17;120:1 <b>manslaughter (1)</b> 122:16 <b>Manual (4)</b> 24:25,25;35:4;90:15 <b>many (19)</b> 14:4;17:18;19:9;24:3; 31:4;39:13;51:1;61:25; 63:24;71:14;105:11,14,23; 106:10,13;121:21;131:4; 132:6,25 <b>Map (3)</b> 65:1;66:7,9 <b>Maps (1)</b> 64:8 <b>March (3)</b> 6:18;9:21,21 <b>marked (6)</b> 26:1,2;51:14,17;66:10; 67:25 <b>marker (2)</b> 122:11;123:6 <b>Mary (3)</b> 5:15,17,20 <b>match (2)</b> 19:20;68:15 <b>matches (1)</b> 68:16 <b>matter (8)</b> 21:21;81:3,6;97:12,13; 104:11;113:25;131:21 <b>may (7)</b> 4:21;15:10;19:8,8;52:13; 135:9;138:10 <b>maybe (15)</b> 10:6;20:10;23:12,20; 31:17;36:5;55:13;57:6;77:1, 1;90:22;100:8;116:22;122:1; 123:25 <b>mean (17)</b> 8:9;22:6;33:10,14;45:8; 48:6,10;61:14,20;62:9,25; 64:16;72:21;85:5;99:24; 127:14;128:4 <b>Meaning (5)</b> 20:19;26:25;30:17;39:11; 112:20 <b>means (5)</b> 18:4;37:17;73:3;79:19; 132:8 <b>media (1)</b> 13:22 <b>member (2)</b></p>	<p>11:16;14:19 <b>memory (1)</b> 69:24 <b>memos (1)</b> 16:18 <b>mental (2)</b> 115:18,21 <b>mention (4)</b> 57:12;58:21;59:2;132:20 <b>mentioned (2)</b> 20:9;22:1 <b>mere (8)</b> 86:25;90:3,5;91:21,24; 93:24;96:2,12 <b>merely (1)</b> 32:14 <b>merits (1)</b> 40:24 <b>Michael (1)</b> 7:17 <b>mid-2000s (1)</b> 20:3 <b>middle (4)</b> 5:7;39:15;100:4;101:25 <b>midnight (1)</b> 93:1 <b>might (63)</b> 11:25;13:22;14:17;15:18; 19:2,5;21:2,13,15,18;22:25; 30:23;31:17;34:23;38:17; 42:18;43:13;47:4;49:3; 53:21;54:14;61:25;68:6; 69:21;77:11,16,17,18,20; 81:12;83:6;84:1;89:19; 90:15;91:12;92:7,8,10,25; 93:3,5,20;98:8;100:21,21,22, 25;102:4,11,12,13;103:23; 104:3,3;107:11;120:4,5,8; 121:12;124:6;129:23;134:7; 135:2 <b>Mike (9)</b> 4:20;56:6,8;62:16;78:1; 98:22;104:11;110:12;118:12 <b>mile (4)</b> 77:21;95:8;136:19,21 <b>miles (19)</b> 30:23,24;48:9,17,19;49:6; 82:23;84:18,21,23;85:9; 97:17;111:17;115:22; 116:19;117:8;118:18; 119:19,22 <b>mind (18)</b> 46:8;49:15;71:9;98:2; 99:8;103:7,14,18;104:1; 107:7,15;115:20,21;126:2, 24;130:23;133:15,21 <b>minds (4)</b> 98:18;104:20,22;123:3 <b>mindset (1)</b> 104:7 <b>mine (2)</b> 97:9;121:13 <b>minimal (1)</b></p>	<p>115:13 <b>minor (11)</b> 20:20;23:22;33:14;70:21; 101:3,9,19;103:2,20;116:12; 122:7 <b>Minuscrypt (1)</b> 137:22 <b>minute (6)</b> 45:4;62:13;86:15;88:9,24; 101:8 <b>minutes (4)</b> 25:9;84:12;114:6;116:7 <b>Mischaracterizes (1)</b> 33:23 <b>misdemeanor (18)</b> 21:22;26:23,24;27:1; 28:23;29:15,17;37:1;44:19; 71:18,23;95:3;116:16; 118:23,25;120:13;121:1,14 <b>misdemeanors (2)</b> 27:3;57:25 <b>missed (2)</b> 16:10;19:9 <b>Misstates (2)</b> 75:2;95:17 <b>mistake (3)</b> 36:9,10;87:25 <b>moderate (2)</b> 84:2,4 <b>moment (12)</b> 12:22;24:22;37:7;49:20; 62:21;76:25;77:12;78:4; 82:25;88:12,20;89:17 <b>momentarily (1)</b> 84:15 <b>money (1)</b> 134:17 <b>monitor (2)</b> 17:16;19:10 <b>monitored (1)</b> 17:23 <b>monitoring (13)</b> 18:1,4,20,23;19:1;22:5,14; 23:7,9,11,14,14;24:9 <b>months (1)</b> 7:1 <b>moon (1)</b> 65:21 <b>more (40)</b> 9:13;13:16;16:5,9;17:24, 25;26:12,25;34:13;35:25; 36:11;45:21;50:11;53:2,21; 54:10,13;61:17;66:9;68:7, 10,24;69:11,18;80:24;82:8; 83:7;85:3,18;86:5;95:20; 96:12;102:15;103:12;106:4; 111:17;123:1;128:1;132:13; 135:23 <b>morning (1)</b> 10:20 <b>MORTIMER (31)</b> 4:16,16;5:3,9;33:23;34:5, 11;61:5;62:10,16;63:6,11;</p>	<p>75:2;76:1,6,11;91:13,15; 95:16;104:14;110:2,10; 111:20;118:12;130:13; 133:17;134:13;136:5,10; 137:16,20 <b>Mortimer's (1)</b> 136:24 <b>most (16)</b> 14:12;17:4;18:23;32:19; 47:22;50:16;63:16;64:9; 65:14;70:21;105:6,17;115:1; 120:12;121:10,13 <b>mostly (1)</b> 67:12 <b>motion (2)</b> 75:18;78:9 <b>motivate (1)</b> 15:16 <b>motivator (1)</b> 13:17 <b>motor (2)</b> 54:2;83:4 <b>motorists (2)</b> 131:13,15 <b>mouth (1)</b> 47:10 <b>move (6)</b> 5:6;16:24;54:19;57:19,21; 86:17 <b>moved (1)</b> 124:24 <b>moving (3)</b> 28:1;105:13;120:23 <b>much (16)</b> 11:21;17:9;21:9;25:11; 42:1,15;48:22;67:5;97:20; 105:2,2,24;115:2;128:8; 129:25;133:19 <b>musings (1)</b> 58:13 <b>must (3)</b> 54:2;55:14;70:4 <b>myself (5)</b> 13:16;19:23;59:16;60:8; 103:7</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>N18-36876 (1)</b> 8:7 <b>name (7)</b> 4:13;6:1,2,3;11:6;91:11; 138:20 <b>named (1)</b> 138:5 <b>Nampa (30)</b> 7:19,21,22;8:5,5;24:23; 25:6;26:17;50:10;51:17; 52:17;53:18;58:5;64:3,11, 13,22,25;65:14,17;66:3; 72:14;73:13;75:21;79:14; 90:14;94:7;96:7,10;106:2 <b>narrows (1)</b></p>
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<p>45:25 <b>National (2)</b> 67:17;69:22 <b>near (1)</b> 121:11 <b>nearly (2)</b> 120:16,23 <b>need (24)</b> 21:3;31:13,18;41:2;53:7; 54:6;60:10;62:19,20;68:13; 73:24;74:11;76:16;77:22; 78:6;79:10;89:2,3;103:19; 118:11;123:17;124:7;125:6; 137:18 <b>needed (3)</b> 10:24;24:16;30:10 <b>needs (4)</b> 32:11;33:1;81:19;106:15 <b>negative (1)</b> 128:23 <b>negligence (4)</b> 30:19;60:22;61:15;80:12 <b>negligent (2)</b> 61:20;62:9 <b>negotiations (1)</b> 134:19 <b>neighborhood (5)</b> 31:1;84:13,22;105:15; 121:20 <b>neighborhoods (2)</b> 97:15;104:17 <b>nervous (1)</b> 87:17 <b>Nevada (1)</b> 39:15 <b>nevertheless (1)</b> 39:21 <b>new (4)</b> 6:14,18;23:20;35:10 <b>news (2)</b> 13:22;39:1 <b>next (4)</b> 69:1;96:15;126:3,16 <b>night (15)</b> 10:20;13:19;14:1,11;31:9; 39:19;65:17,21;78:23;105:1, 12,23;131:4,6;132:25 <b>nighttime (2)</b> 129:25;132:6 <b>nobody (1)</b> 4:17 <b>non-university (1)</b> 7:8 <b>North (2)</b> 11:13;24:9 <b>NOTARY (1)</b> 138:20 <b>notes (3)</b> 54:21;57:18;105:17 <b>notice (1)</b> 35:11 <b>noticed (1)</b> 52:25</p>	<p><b>notion (2)</b> 121:2,4 <b>number (7)</b> 10:4;33:17;42:21;46:2; 70:15;71:6;100:24 <b>numbers (2)</b> 20:14;69:24 <b>Nystagmus (1)</b> 12:16</p> <p style="text-align: center;"><b>O</b></p> <p><b>obeying (1)</b> 121:9 <b>object (7)</b> 5:5,7;76:11;91:13;95:16; 104:14;111:21 <b>Objection (14)</b> 33:23;34:3,5;62:10;75:2; 76:1,12;110:2,10;130:13; 133:17;134:13;136:5,9 <b>objections (3)</b> 4:11;5:4,10 <b>obliterates (1)</b> 108:5 <b>observation (1)</b> 135:22 <b>observations (1)</b> 90:23 <b>observe (1)</b> 38:1 <b>obstinate (1)</b> 60:14 <b>obvious (1)</b> 39:10 <b>Obviously (7)</b> 60:17;70:4,19;80:3;106:5, 11;126:21 <b>occupant (1)</b> 70:9 <b>occur (7)</b> 19:25;37:18;38:18;77:15; 118:17;121:11;122:24 <b>occurred (8)</b> 84:24;89:14;99:6;118:9; 123:20;127:11;128:16; 136:20 <b>occurring (1)</b> 54:14 <b>occurs (4)</b> 76:23;77:12;121:24; 122:24 <b>odor (2)</b> 90:23;93:10 <b>off (46)</b> 19:4;21:16,23;22:1,12; 23:5,6,8;27:22;28:10;30:14, 21;31:2,12;42:14;43:5;44:9; 45:8,22;47:11;49:15,19; 55:19;63:12;64:19;73:21; 77:1;78:2;83:16,20;84:19; 85:20;89:18,20;109:25; 110:20;111:16;113:7,18,</p>	<p>124:11,12,19;125:1;127:4,8, 10 <b>offender (3)</b> 20:23;40:9;59:3 <b>offer (4)</b> 11:12;67:4;73:23;123:15 <b>offhand (1)</b> 111:10 <b>office (4)</b> 30:10;45:22;66:20;79:10 <b>Officer (113)</b> 5:23;6:21;7:9,18,20,20,23, 24;8:6;10:11,15,25;11:16, 17;12:7,21;13:14;15:6,14; 16:19;17:8,10;18:9,14;19:3, 6;21:13,17;22:7,8,11,21; 23:4,20;25:15;27:7;28:11; 30:3,9;31:13;33:7,16;36:5; 37:20;38:9,11,22;40:7,12; 41:7;42:3,15;43:18,25; 44:11;45:6,10;47:11,12,13, 15;48:19;49:2,14;50:2; 55:22,22;57:3;58:16;62:1,8; 71:14;72:8;73:4,9,12;74:4, 13,19;75:10;76:22;77:14; 79:7;82:6;87:8,10,18;89:19; 91:17;93:3,4;94:22,23,25; 96:17,17;97:5,11;99:1,9; 100:10;101:2;102:10;112:3; 113:6,18;115:6,12;119:15; 125:17,21;126:20;134:22 <b>officer' (1)</b> 76:21 <b>officers (80)</b> 10:16;11:3;13:6;14:12,18; 15:11,17;16:9,14;19:21; 24:8;28:6,17,19;29:9;30:6,8; 32:9;33:17;35:2,21;37:12, 23,25;44:25;46:12;50:2; 53:11,13,22;55:4,9;58:15; 59:20;66:13;68:7;76:9;77:5, 7;78:11;79:5;83:13,21; 85:10;87:5,12,20;89:8;90:8, 10,13,17;92:13;94:8;96:8; 98:19;99:3,21;103:19; 104:23;105:10;106:13,18, 21;107:4,21;108:1,13,23; 109:7;110:20;111:3;124:21; 125:1;126:23;127:21; 130:20;131:18;133:9;137:7 <b>officers' (1)</b> 123:3 <b>officer's (13)</b> 18:1;25:19;38:19;39:3; 43:21;46:8;56:22;61:24; 65:23;66:2;128:14;133:11; 134:18 <b>offices (2)</b> 42:23;50:19 <b>official (1)</b> 16:1 <b>officially (1)</b> 51:16</p>	<p><b>often (3)</b> 19:12;26:11;50:18 <b>OJ (1)</b> 71:3 <b>Once (1)</b> 79:13 <b>oncoming (1)</b> 108:14 <b>one (73)</b> 4:19,21;8:10;13:6;14:3,10, 18;15:11;17:4,14;18:15,20; 23:5,19,22;24:4,19,23;25:24; 28:19;29:16;30:7,8;31:17, 22,23;34:12;35:21;39:7; 43:9;44:5;45:15,24;46:25; 47:17;48:18;50:11;54:17; 57:8;59:14;60:25;61:2,4,17; 62:13;65:13;66:9,14,14; 74:1;77:12,19;86:19;88:5; 89:22;93:3,4;95:20;99:7; 100:19,25;102:4,13;105:10; 117:9;119:6,7;120:4;128:1; 132:18,22;134:6;135:10 <b>one-officer (1)</b> 68:8 <b>one-page (1)</b> 69:15 <b>ones (6)</b> 8:23;10:7;21:19;47:16; 56:24,24 <b>Only (41)</b> 14:17;21:12,17;23:18; 24:4,18;37:18;42:1;43:24; 44:16,20;59:8;64:7;65:10; 66:16;67:11;69:15;74:4; 79:6;84:17;90:6,18;92:24; 94:14;97:7;101:3,9,19; 103:2;105:10;116:15; 118:23;122:15,18;123:9; 127:16;129:24;131:3; 132:21,24;135:22 <b>on-screen (1)</b> 50:13 <b>onto (2)</b> 96:15;121:23 <b>open (1)</b> 79:9 <b>opening (1)</b> 7:3 <b>operating (2)</b> 25:15;27:7 <b>operation (3)</b> 11:24;16:25;59:1 <b>operations (2)</b> 17:22;24:13 <b>operator (1)</b> 117:5 <b>opined (1)</b> 36:16 <b>opinion (17)</b> 67:5;72:3,7;73:10,20,23; 74:1,18;75:23;78:1;88:25; 93:6;99:22;103:15;111:3;</p>
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<p>133:24;136:22 <b>opinions (2)</b> 74:9;77:22 <b>opportunities (1)</b> 71:15 <b>opportunity (2)</b> 15:16;47:10 <b>opposed (3)</b> 97:20;120:25;121:22 <b>ops (1)</b> 17:23 <b>order (22)</b> 8:19;11:9;18:15;21:7; 30:3;33:7;35:14,24,25;40:9; 42:23;55:18;75:9;78:14; 83:13,22;84:10;94:21; 123:17;124:8;125:13;130:23 <b>Oregon (12)</b> 6:7,9,16,19,24;7:6,11; 9:22;32:20;35:19;43:10;52:8 <b>original (3)</b> 116:12;122:6;125:11 <b>others (12)</b> 8:17,21;15:9,16;20:16; 34:22;38:18;80:2;89:11; 107:10,17;132:23 <b>others' (2)</b> 35:9;137:4 <b>ourselves (1)</b> 11:8 <b>out (39)</b> 11:23;13:4;16:25;20:2,25; 24:10;29:4;33:3;35:3;46:12, 24;48:11;52:11;57:19;58:16; 64:20;68:22,25;70:13;80:17; 82:18;89:18;93:1;105:12,24, 25;106:6,6,14,16;114:11; 120:18;122:13;126:24; 129:15;131:5,6;132:7,10 <b>outright (1)</b> 58:7 <b>outweighed (2)</b> 86:24;90:2 <b>outweighs (2)</b> 37:13,24 <b>over (45)</b> 6:6;7:13;8:13;10:10; 18:14;19:10,13;30:9;31:5; 32:20;35:19;42:20;73:6; 82:15;84:17,19,21,23;85:1; 87:14;95:9;97:17;98:22; 109:7,8,13,17,18;111:5,8; 112:20;113:9,19;115:22; 116:20;118:18;119:1,4,21; 122:1,5;123:2;133:7;135:19; 136:14 <b>overall (1)</b> 135:16 <b>overriding (1)</b> 45:22 <b>overturned (1)</b> 29:19 <b>own (6)</b></p>	<p>40:23;49:15;57:8;88:2; 114:9;121:12</p> <p style="text-align: center;"><b>P</b></p> <p><b>pace (1)</b> 27:9 <b>page (4)</b> 37:12;53:8;62:6;116:6 <b>pages (1)</b> 138:6 <b>parades (1)</b> 11:2 <b>paragraph (13)</b> 67:15;69:8;71:25;96:15; 116:10;118:18,20;119:11; 122:6,23;125:16;127:3; 128:18 <b>park (1)</b> 87:17 <b>parking (1)</b> 22:22 <b>part (16)</b> 11:14;12:8;32:19;38:22; 43:19;64:23;85:1;87:25; 96:5;99:22;107:13;113:1; 114:9;132:21;134:24;137:5 <b>participating (1)</b> 4:3 <b>particular (4)</b> 37:16;57:14;66:6;69:25 <b>particularly (3)</b> 31:9;102:5;121:18 <b>parties (1)</b> 4:10 <b>passing (1)</b> 127:3 <b>password (1)</b> 67:1 <b>past (3)</b> 78:21;100:9;112:15 <b>Patrol (17)</b> 5:22;6:7;10:23;11:11,14; 13:14;14:20,24;15:13;17:6, 10,21,24;23:4;50:19,20;68:8 <b>patrols (1)</b> 68:8 <b>PD (6)</b> 9:20;20:5;32:2;72:14; 73:13;79:14 <b>peace (1)</b> 119:15 <b>pedestrian (2)</b> 105:2;120:17 <b>pedestrians (2)</b> 39:13,21 <b>penalty (3)</b> 27:4,4;95:2 <b>pending (1)</b> 62:15 <b>people (38)</b> 15:7;24:6,7;32:8;33:1; 39:16,18;42:19;70:5,12;</p>	<p>87:14;105:12,24,25;106:6,6, 7,10,14,15;107:10;109:4; 121:21;122:25;129:17; 130:19;131:5,6;132:7,10; 133:1,7,12,13;135:11;136:3, 15,15 <b>per (2)</b> 116:19;117:8 <b>perceive (1)</b> 46:1 <b>percent (1)</b> 66:4 <b>percentage (2)</b> 134:12,20 <b>Perfect (1)</b> 7:12 <b>performance (2)</b> 34:23;56:18 <b>perhaps (1)</b> 39:10 <b>period (7)</b> 10:5,13;17:17;19:10; 31:16,23;32:18 <b>permission (1)</b> 48:7 <b>person (14)</b> 33:6;43:22,23;56:23; 57:10;116:24;117:14,19; 119:14;120:3,15;131:23; 133:4;134:24 <b>persons (3)</b> 28:7,12;79:25 <b>philosophical (2)</b> 58:9,12 <b>philosophy (1)</b> 134:4 <b>photographs (1)</b> 65:4 <b>physically (3)</b> 4:4;48:13;49:3 <b>pick (3)</b> 44:8;47:10;100:23 <b>picture (1)</b> 17:1 <b>piece (1)</b> 121:18 <b>pin (3)</b> 22:22;36:13;113:5 <b>pinned (1)</b> 36:14 <b>PIT (1)</b> 83:18 <b>place (7)</b> 35:20;46:21;53:19;60:1; 87:16;113:1,1 <b>placed (1)</b> 47:20 <b>plain (1)</b> 33:22 <b>play (1)</b> 73:25 <b>played (1)</b> 137:5</p>	<p><b>playing (1)</b> 134:24 <b>Please (8)</b> 4:12,15;6:1;76:8;79:18; 85:5;137:17,20 <b>pm (1)</b> 137:23 <b>point (47)</b> 7:5;12:16;16:12,17;24:13; 39:5;40:1,21;43:6,9,11;48:5; 57:5;67:5;68:20;70:1;73:17; 75:7,12;76:23;77:6,25;78:1, 21,21;79:1,2;82:17;84:20; 89:10,18;90:7,24;91:24; 93:19;94:3;101:10;102:5,12; 106:12;110:14,20;112:2; 118:1,2;125:1,14 <b>points (1)</b> 25:21 <b>Police (68)</b> 6:8,9,14,16,18,21;7:8,19, 21,22;8:5,6,16;12:3;14:5; 16:7,22;20:7,24;24:21,24,25; 25:15;26:10;27:8;40:12,15; 51:17;52:1;53:18;54:8,11; 58:2,5,25;60:19,21;61:10,14; 65:10,23;67:15;71:13;74:2, 13;75:22;78:15;79:23;82:12; 83:9;87:18;90:14;94:7; 99:16;100:6;101:11;108:9; 112:3;113:6,7,22,23;114:2,9; 130:20;133:9;134:18;137:7 <b>policies (10)</b> 26:10;50:12,25;52:2;58:3; 60:20,21;61:10,10,22 <b>Policy (66)</b> 7:21,22;14:16;19:14,22; 20:17;21:11;24:21;25:5; 26:16;27:6,14;29:4,7,21; 30:13;32:17,20;35:3,16,18; 36:24,25;37:16;41:22,25,25; 51:4,8,17;52:10,11,17;53:1, 2,4,13,24;55:8,20;57:17; 58:18,19;59:5,6,10,10,11,13, 24;60:3,6,9;61:14,14,19,24; 62:2,7,8;91:4;94:7,19;95:11; 96:11;132:18 <b>Poor (4)</b> 72:14;109:4;130:19; 131:23 <b>Poore (9)</b> 7:18;8:1;66:13,20;73:13; 74:6,19;75:21;76:22 <b>Poore's (3)</b> 83:4;96:17;125:17 <b>portion (1)</b> 70:10 <b>posed (7)</b> 126:3;127:13,24;128:3,7, 20;129:2 <b>poses (1)</b> 97:20 <b>posing (1)</b></p>
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<p>127:15 <b>position (1)</b> 49:24 <b>positions (1)</b> 63:16 <b>possibilities (2)</b> 99:8;100:25 <b>possibility (3)</b> 93:14,21;100:19 <b>possible (3)</b> 31:6;41:3;130:9 <b>possibly (4)</b> 17:22;22:22;127:20; 129:18 <b>posted (3)</b> 116:20;117:8;119:19 <b>potential (2)</b> 60:1;91:9 <b>power (1)</b> 9:6 <b>powers (1)</b> 7:8 <b>practice (1)</b> 33:15 <b>Precinct (10)</b> 11:13,15,16;14:24;15:3, 17,21;23:13;24:9,10 <b>preliminary (1)</b> 7:16 <b>preparation (1)</b> 7:15 <b>prepare (1)</b> 7:13 <b>prepared (1)</b> 122:1 <b>present (3)</b> 4:5,14;128:12 <b>presented (3)</b> 35:14;38:7;39:2 <b>presume (1)</b> 9:7 <b>pretty (9)</b> 11:21;17:9;25:10;41:25; 48:15;50:14;82:18;115:1; 137:10 <b>previously (1)</b> 100:19 <b>prima (2)</b> 131:11;137:12 <b>primarily (3)</b> 8:14;20:12;52:9 <b>primary (7)</b> 8:23;10:17,21,25;11:4; 53:12;66:15 <b>print (1)</b> 69:19 <b>printed (2)</b> 95:10;116:4 <b>prior (8)</b> 9:24;37:2;82:25;100:10; 105:17;121:3,17;123:14 <b>Pro (1)</b> 8:4</p>	<p><b>proactivity (1)</b> 11:11 <b>probable (9)</b> 7:23;90:9,10,13,18,19,21, 25;102:11 <b>probably (12)</b> 21:22;30:25;36:7;48:22; 65:13;67:1;83:17;103:12; 104:19;110:21;129:9;135:20 <b>problem (9)</b> 12:8;13:9,11,25;16:19; 31:1;54:5,25;59:4 <b>proceed (1)</b> 136:8 <b>proceeding (3)</b> 4:4,5,6 <b>proceeds (1)</b> 27:9 <b>process (9)</b> 11:24;37:5,7;38:14,15,16; 77:13;109:3;130:3 <b>processing (2)</b> 29:12;107:15 <b>producers (1)</b> 52:11 <b>program (2)</b> 12:17;14:8 <b>progress (1)</b> 16:7 <b>prohibit (3)</b> 58:7,11,13 <b>prohibited (2)</b> 58:4;90:16 <b>promoted (1)</b> 15:6 <b>pronounced (1)</b> 72:22 <b>proper (1)</b> 16:14 <b>property (10)</b> 9:7;94:15;116:21,23; 117:10,13,18;119:24;120:2, 15 <b>proportion (1)</b> 50:4 <b>propounded (1)</b> 138:8 <b>protect (7)</b> 33:2;46:14,17;79:25;96:9; 104:8;136:1 <b>protected (1)</b> 81:19 <b>protecting (3)</b> 56:14;130:5,6 <b>provide (1)</b> 53:13 <b>provided (1)</b> 71:14 <b>provisions (3)</b> 79:22,25;117:6 <b>public (53)</b> 19:20;20:13,23,24;29:6, 23;30:1,31:10;32:11;33:16;</p>	<p>37:13,24;44:13;46:15,17; 47:7;53:14;56:14;79:16; 82:5;86:24;90:2;94:12;95:6, 13,15,21;96:9,18,20;97:20, 25;99:25;102:17,19,21; 104:7;113:3;117:25;118:6; 121:5;125:21,22;126:11,19; 127:2;130:5;131:6;132:19; 133:4,25;136:1;138:20 <b>Puget (2)</b> 50:16;51:1 <b>pull (4)</b> 15:17;42:20;67:13;87:14 <b>pulled (4)</b> 25:5;69:9;119:10;136:14 <b>pure (1)</b> 133:17 <b>purely (2)</b> 62:10;114:4 <b>Purpose (3)</b> 53:9,12;64:6 <b>purposes (4)</b> 9:19;109:24;111:18; 114:21 <b>pursuant (2)</b> 70:19;116:18 <b>pursue (41)</b> 21:1;28:17;29:2,9;32:2,11; 37:19;40:9;41:14;44:12; 46:14;48:8,11;49:6,16; 50:20;54:1;55:10;56:23; 59:25;72:9,11;78:21;81:3; 82:1;90:8,10,13;97:1,3,13; 100:6;102:22;103:2;107:24; 129:25;130:1,3,8;132:8; 134:3 <b>pursued (9)</b> 70:5,9,12;81:6;103:4; 113:8;114:9;119:16;137:3 <b>pursuing (24)</b> 18:9,11;20:20;21:3;32:14, 14;34:17;35:21;36:17;37:1; 43:6;44:13;59:12;77:10; 80:14;85:21;88:15;89:10; 103:21;106:19,21;107:5; 111:4;129:19 <b>pursuit (143)</b> 8:2,4;18:2,25;19:4,4,7,14, 19;20:21,24;21:6,14,15; 22:5;23:5,6,9,17,21;24:1,8, 10,21;27:7,15;28:6,10,19; 30:14,21;31:12,20;32:17; 33:12;35:2,15;37:12,13; 40:1,2,24;41:9;43:18;44:4, 22;45:5,13;46:9,10;47:4,12; 49:5,14;50:18,22;55:3,5,23; 56:11,19,20,24;57:16;58:1; 59:15;60:15;64:9,14;66:10, 20;70:22,25;71:1;73:22; 74:7,19;76:23;77:4,8;78:18; 79:2;81:16;82:7;84:2;85:10, 20,23;86:12,18;88:3,18; 89:22;96:19;97:21;98:4;</p>	<p>100:11;101:3,18,19;102:15; 103:5;104:4;105:15;106:14; 110:6;111:2,25;112:1,11,25; 113:1,6,10,15,15,17;114:13, 20;121:19,19;123:11,21; 124:12,18;125:22;126:9,10; 127:5,6,6,15,25;128:9,19,21; 129:3;130:25;131:14,20; 132:20;134:1;137:14 <b>pursuit-related (4)</b> 67:21,22;68:3;70:8 <b>pursuits (25)</b> 7:22;17:17;19:9,18,21,21; 20:5,7;21:12;22:14;28:22; 32:23;33:21;34:23;38:4; 45:18;50:14;53:10;54:12; 57:23,24;67:16;68:17;77:1; 111:23 <b>pursuit's (8)</b> 42:14;43:5,8,10,25;111:6; 113:19;114:24 <b>put (14)</b> 13:3;14:20;47:9;60:16; 67:24;73:7;78:8;84:5;91:24; 103:7;119:12;125:7;134:12, 20 <b>Putnam (17)</b> 7:20,21,24,25;66:13,15; 72:4,8,14;73:5,12;74:4,13, 19;75:21;82:6;83:19 <b>Putnam's (4)</b> 96:17;100:10;115:12,20 <b>putting (2)</b> 98:18;115:20</p>
<b>Q</b>			
<p><b>qualify (1)</b> 11:9 <b>quarter (2)</b> 65:21;136:19 <b>quick (3)</b> 18:13;78:25;119:11 <b>quickly (10)</b> 19:2;54:3,6,14;62:20,25; 69:7;83:21;101:14;118:3 <b>quite (4)</b> 50:18;63:8;70:3;112:2 <b>quote (2)</b> 29:6;85:17 <b>quoted (5)</b> 69:8,10;116:25;117:1; 119:13</p>			
<b>R</b>			
<p><b>radio (9)</b> 18:4;66:23;67:9;77:23; 110:22;124:13,15,18;125:7 <b>ran (8)</b> 67:20;75:1;85:8,16;86:20, 20;107:20;108:11 <b>range (1)</b></p>			

82:18 <b>rank (3)</b> 32:10,10;47:22 <b>rather (1)</b> 10:7 <b>reaction (1)</b> 137:3 <b>read (28)</b> 6:12;7:15;9:17;14:6; 27:18;55:11;59:9;60:5; 69:19;76:21;82:24;98:10; 117:3;118:3;121:7,12;122:2, 13,20;123:15;124:2;130:25; 131:1;132:22;133:20;134:5; 137:16;138:7 <b>reading (8)</b> 37:17;73:2;105:5;119:8; 122:4;132:5;134:2,6 <b>reads (1)</b> 56:21 <b>ready (2)</b> 59:19;63:17 <b>real (1)</b> 114:12 <b>realize (5)</b> 60:1;87:18;88:11;89:8; 131:18 <b>realized (4)</b> 22:13;79:9;114:15;133:25 <b>realizing (1)</b> 123:19 <b>really (34)</b> 14:15;20:18;29:11;36:10; 42:14;43:8;48:22;52:12; 58:9;61:8;64:5,6;67:4;69:3, 4,6;76:19;84:1;86:15;88:6,7; 91:14;92:20;97:22;98:2,21; 99:17;100:1;104:25;121:21, 23;127:17;128:4;134:20 <b>rear-end (1)</b> 126:12 <b>reason (15)</b> 25:5;26:15;30:21;42:13; 52:13;61:16;96:6;100:16; 101:22,24;102:2,16;105:3; 127:25;128:5 <b>reasonable (40)</b> 25:18;33:11;38:10,10,20; 39:4;40:10,16,18;45:7;49:3, 7;55:5,18;72:8;77:14;79:7; 87:20;90:25;91:5;92:1,5,6, 10,13,23,25;93:4,6,8,10,14, 18;99:1;102:12;115:6,6,9; 124:21;133:11 <b>reasonableness (7)</b> 38:20;53:21,22;54:9,9; 55:18;137:9 <b>reasonably (3)</b> 48:11;56:13;100:16 <b>reasoning (3)</b> 38:1;107:14;125:13 <b>reasons (6)</b> 19:19;87:15;91:11;	100:24;102:2;103:4 <b>reassigned (1)</b> 14:12 <b>recent (1)</b> 15:5 <b>reckless (32)</b> 30:4,8,15;32:12;38:22; 43:13;61:8;72:15;75:22; 79:15,19,20;80:1,3,8,23; 81:14,24;82:4;86:2;88:21; 89:1,6,11;112:6,10,11,14,21; 113:4,9;115:15 <b>recklessly (1)</b> 137:4 <b>recklessness (1)</b> 115:17 <b>recognition (4)</b> 12:7,13,18;98:9 <b>recognize (4)</b> 48:21;58:14;63:22,25 <b>recognized (1)</b> 105:11 <b>recognizes (1)</b> 132:22 <b>reconvene (1)</b> 63:7 <b>record (5)</b> 4:13;6:1,7;39:11;63:12 <b>red (13)</b> 47:3,6;74:14;83:1;108:10, 23;109:3;110:17;112:7; 118:6;119:6;121:3,3 <b>reduced (1)</b> 45:24 <b>reengage (1)</b> 62:23 <b>refer (2)</b> 53:8;116:10 <b>referee (1)</b> 34:9 <b>references (1)</b> 132:6 <b>refused (2)</b> 26:20;73:3 <b>refuses (2)</b> 25:22;26:5 <b>refusing (7)</b> 42:17;43:23,24;71:2; 73:18;94:24;124:23 <b>regard (3)</b> 28:7,11;79:24 <b>regarding (1)</b> 60:21 <b>regular (1)</b> 17:11 <b>reinstate (1)</b> 76:12 <b>reject (2)</b> 121:2,4 <b>related (1)</b> 4:24 <b>relation (1)</b> 56:19	<b>relatively (2)</b> 23:22;115:13 <b>relevant (3)</b> 8:1,8,14 <b>reliance (1)</b> 115:13 <b>relieve (1)</b> 79:22 <b>rely (3)</b> 35:8;78:15,17 <b>relying (1)</b> 74:5 <b>remember (20)</b> 8:22;13:14;15:4,7;20:1; 22:2,10;23:4;25:10;29:18; 30:5;35:24;65:24,24;68:4; 69:25;109:11;117:23;134:2; 135:15 <b>remembering (1)</b> 95:4 <b>remotely (3)</b> 4:6,7,25 <b>render (2)</b> 75:13;77:3 <b>repeat (1)</b> 59:15 <b>Report (14)</b> 8:3;65:11,23;69:9,19,20, 25;74:13;76:21;78:15,17; 87:8;124:3;128:14 <b>REPORTER (2)</b> 4:3;137:18 <b>reporting (2)</b> 4:6,12 <b>reports (5)</b> 8:6;82:12;108:9;131:1; 132:14 <b>requested (1)</b> 137:24 <b>requesting (1)</b> 12:1 <b>require (2)</b> 63:2;129:9 <b>requirement (1)</b> 36:3 <b>requires (1)</b> 6:24 <b>research (1)</b> 69:21 <b>reserve (2)</b> 5:4,10 <b>RESIDING (1)</b> 138:22 <b>resonate (1)</b> 107:14 <b>resource (1)</b> 15:21 <b>response (2)</b> 7:23;25:19 <b>responsibilities (3)</b> 10:14,23;49:11 <b>responsibility (13)</b> 10:21;17:11;24:14;45:6;	47:16,19;49:18,23;50:7; 127:5;134:10,21,23 <b>responsible (7)</b> 11:1;24:18;45:11;50:1; 52:9;97:5;130:18 <b>rest (2)</b> 114:25;115:1 <b>restate (1)</b> 127:19 <b>restrictive (1)</b> 26:12 <b>result (18)</b> 35:23;38:17;81:9,10,17; 98:16;99:15;100:5;106:5,8; 107:1;123:9;129:19;131:8; 132:1,11;137:12,14 <b>resulting (1)</b> 122:16 <b>results (2)</b> 104:4;114:5 <b>rethink (1)</b> 40:18 <b>retired (2)</b> 9:21;14:13 <b>revealed (1)</b> 96:16 <b>review (13)</b> 8:5;16:9,12;25:8;35:9; 37:5,7;38:14;66:12,23;67:9; 74:15;96:15 <b>REPORTER (2)</b> 7:13;25:9;35:2;52:18; 61:1;66:22;67:2;108:9,9; 129:22 <b>reviewing (1)</b> 34:22 <b>reviews (2)</b> 34:23;132:16 <b>revisit (1)</b> 124:7 <b>Rich (1)</b> 61:3 <b>right (155)</b> 5:21,25;6:13;9:11,13;11:6; 12:14;14:7,25;17:13,19; 20:4,11;23:1,25;24:1,24; 25:1,12,12;27:16,22,24;29:3, 15,18,25;32:18;35:13,22; 36:20,23;37:4,17,21;39:19; 40:16;41:12,14;42:2,8; 46:20;47:7;49:21;51:13; 52:6,20,21;54:15;55:3,4,16, 24;56:1,4,5,8;58:12,13;60:3; 66:14;67:13;68:10;69:5,9; 70:2,10;71:4,21,23;75:8,13; 77:17;78:10,16;79:8;80:5, 18;81:14;82:3,13,20;84:4, 14;86:1;87:9,14;89:21; 90:19;91:8;92:22;93:16,24, 25;94:5,10,17;96:2,3;98:24; 99:2,14,20,22;101:6,9,15,17, 20,25;102:17,20;103:5,7,17; 105:8,20;106:11,22;107:3;
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<p>108:18,21,24;109:1,4,5; 110:9;112:1;113:21;115:4; 116:3;117:5,19;121:8,10,19, 25;123:23,24;125:12;127:9, 25;128:6,24;129:11;131:23, 24;132:15;133:6;135:3,18; 136:7;137:9,10,13</p> <p><b>risk (23)</b> 19:20;20:22,24;21:5;29:6; 37:12,21,24;44:13;45:15; 46:22,25;53:11;57:25; 102:16,19,20;103:21;125:21, 22;128:8;132:20;133:4</p> <p><b>risks (6)</b> 45:12;49:15;96:18,19; 133:9,10</p> <p><b>road (19)</b> 39:14,22;92:4,12,16;97:2; 99:10;100:4;101:25;126:7, 18,22;127:1,9,16;128:5,11; 132:10;136:14</p> <p><b>roads (2)</b> 132:7,25</p> <p><b>robbed (1)</b> 107:18</p> <p><b>robber (7)</b> 21:4,7,8;33:9;38:6;46:20; 47:1</p> <p><b>robbery (1)</b> 81:22</p> <p><b>roll (1)</b> 15:15</p> <p><b>room (6)</b> 4:5,14,17,19,21;42:20</p> <p><b>route (3)</b> 8:2;64:13;66:10</p> <p><b>rule (1)</b> 29:17</p> <p><b>rules (1)</b> 4:9</p> <p><b>rumor (1)</b> 14:18</p> <p><b>run (5)</b> 73:21;74:15,18;88:24; 114:2</p> <p><b>running (25)</b> 42:25;47:2,6;73:5,16;86:9, 18;87:23;88:4;91:10;93:22; 94:10,11,23;99:14;102:16; 109:3;113:22;117:16,25; 118:5,9;119:5;121:2,7</p> <p><b>run-on (1)</b> 82:3</p> <p><b>runs (5)</b> 11:2;82:25;93:16;94:1; 99:23</p> <p><b>Ryan (1)</b> 7:25</p>	<p><b>safely (1)</b> 112:9</p> <p><b>safer (1)</b> 129:25</p> <p><b>safety (19)</b> 20:18;28:7,12;33:1;44:2; 53:14;67:17;69:23;79:15,24; 80:2;82:4;89:11;106:15; 107:10;131:6;132:23;136:1; 137:5</p> <p><b>same (18)</b> 4:8;22:9;33:12;34:5; 37:11;46:10,13;54:1;62:6; 77:2,5,25;79:8,12;111:13; 115:2;116:6;125:7</p> <p><b>saw (23)</b> 13:24;39:1;64:8;65:10; 66:16,17;78:24,25;83:3; 98:16;105:6,16,17;106:6,7; 109:17;111:24;128:12,16; 130:25;131:3;132:5;137:11</p> <p><b>saying (20)</b> 13:24;21:23;34:2;41:24; 43:15;49:18;74:21;88:22,25; 89:6;113:11,17;120:12; 124:17;128:19;129:2,4; 130:11,18;135:11</p> <p><b>scale (1)</b> 104:1</p> <p><b>scared (3)</b> 29:12;42:20;87:16</p> <p><b>scenario (1)</b> 30:13</p> <p><b>scene (7)</b> 16:15;23:12;24:11,14; 36:6;92:3,11</p> <p><b>Scope (2)</b> 53:9;64:20</p> <p><b>Scratch (1)</b> 87:6</p> <p><b>screen (7)</b> 5:15,16;25:2;28:1;54:23; 108:20;115:12</p> <p><b>Seattle (43)</b> 6:22;9:16,20;10:1,19;12:3; 13:10,15,20;14:7;20:5; 21:11;24:5,21,24;25:14; 26:11,16;28:18,23;30:23; 31:3,7,16;32:2;35:18;36:24; 39:16,18;41:20,21;42:13; 43:9;44:11,22;45:19;46:12; 53:2;62:1;71:13;96:4;99:23; 106:1</p> <p><b>Seattle's (2)</b> 14:11;19:14</p> <p><b>second (4)</b> 66:20;75:15;79:11;99:2</p> <p><b>seconds (6)</b> 92:16;99:10;111:6;114:6; 126:22;127:7</p> <p><b>section (8)</b> 29:4;53:25;54:1;57:14,20; 59:14;84:22;95:7</p>	<p><b>sections (4)</b> 60:6,9,11;121:19</p> <p><b>security (1)</b> 9:25</p> <p><b>seeing (6)</b> 13:14;57:18;73:16;83:20; 99:9;123:9</p> <p><b>seem (7)</b> 15:4;53:18;78:2;80:6; 98:9;105:11;131:1</p> <p><b>Seemed (11)</b> 32:12;60:24;72:22;73:2, 17;83:14;85:11;106:13; 129:24;131:3;135:23</p> <p><b>Seems (20)</b> 20:2;32:25;55:8,11;56:25; 58:15;67:2;77:10;103:8,15, 25;107:8;110:25;115:1; 124:25;129:21,22;131:8; 134:3;135:1</p> <p><b>Sena (41)</b> 7:17;26:17;72:9,11,22,23, 23,24;73:1,2,17;74:1;75:8; 77:8;78:24;82:7,11;83:10; 84:6;85:19;86:25;87:11; 90:3;95:14,22;96:20;100:10; 103:9,20,21;106:20;108:11; 109:2,17;111:4;120:18; 124:22;130:16;134:9;136:2; 137:1</p> <p><b>S-e-n-a (1)</b> 73:1</p> <p><b>Sena's (3)</b> 89:9;107:1;124:25</p> <p><b>send (3)</b> 16:19,21,23</p> <p><b>sense (4)</b> 80:21;81:25;98:6;101:18</p> <p><b>senses (1)</b> 40:14</p> <p><b>sent (3)</b> 25:7;60:23;66:25</p> <p><b>sentence (11)</b> 56:3;72:4;79:9,12;82:3; 89:24;99:3;103:2;106:17; 115:12;131:10</p> <p><b>separate (1)</b> 12:3</p> <p><b>Sergeant (15)</b> 10:17;14:24;15:5,14,15, 22;16:15;17:6,21,25;18:18, 18,21;23:14;47:21</p> <p><b>sergeants (6)</b> 16:9;18:23;19:23;23:6; 24:17;32:9</p> <p><b>series (2)</b> 55:14;56:2</p> <p><b>serious (3)</b> 53:12;57:25;133:6</p> <p><b>serve (1)</b> 33:2</p> <p><b>set (1)</b> 15:8</p>	<p><b>several (8)</b> 11:15;17:18;29:16;45:24; 83:14;87:15;118:5;132:5</p> <p><b>severe (1)</b> 14:11</p> <p><b>severely (1)</b> 19:22</p> <p><b>Shall (6)</b> 7:15;28:6;56:2,10;79:22, 25</p> <p><b>sharing (2)</b> 25:1;50:14</p> <p><b>Sheet (1)</b> 138:11</p> <p><b>shift (1)</b> 127:5</p> <p><b>shoot (3)</b> 24:7;33:10;47:1</p> <p><b>shooting (1)</b> 70:13</p> <p><b>shootings (1)</b> 38:4</p> <p><b>short (2)</b> 39:1;119:12</p> <p><b>shortage (1)</b> 14:11</p> <p><b>shorten (1)</b> 52:13</p> <p><b>shortly (1)</b> 126:13</p> <p><b>short-sighted (2)</b> 55:11;131:5</p> <p><b>shot (3)</b> 46:12,21;62:1</p> <p><b>shoulder (1)</b> 62:2</p> <p><b>show (6)</b> 11:11;15:7;76:20;97:11; 119:22,22</p> <p><b>shown (1)</b> 122:25</p> <p><b>shut (6)</b> 29:8;43:6;44:1;114:16,19, 21</p> <p><b>side (1)</b> 136:14</p> <p><b>sidewalks (1)</b> 39:14</p> <p><b>sign (22)</b> 23:20;73:20;74:18;75:1; 85:8,16;86:11,14,14,20,20; 88:24;91:10;93:17;94:1,11, 11;99:14;117:17,17,25; 137:17</p> <p><b>signal (7)</b> 25:17,19;94:25;102:1; 119:15;120:7;126:7</p> <p><b>signaling (1)</b> 126:14</p> <p><b>signals (1)</b> 101:4</p> <p><b>signature (2)</b> 64:1;137:24</p>
<b>S</b>			
<p><b>safe (1)</b> 132:25</p>			

<p><b>signed (1)</b> 78:8</p> <p><b>significant (3)</b> 32:13;65:14;131:12</p> <p><b>significantly (1)</b> 53:1</p> <p><b>signs (29)</b> 18:21;29:13;36:7;42:25; 43:12;47:3,7;48:21;73:5,16; 74:14;78:25;85:7;86:7,9,18; 87:24;88:4,7;93:10;94:24; 97:16;118:5,9;119:6;120:7; 121:3,7,20</p> <p><b>similar (5)</b> 50:13,17;51:2;59:4;71:5</p> <p><b>simply (6)</b> 31:11;32:24;34:18; 118:16;130:22;132:3</p> <p><b>Simpson (1)</b> 71:3</p> <p><b>single (2)</b> 70:24;103:22</p> <p><b>siren (14)</b> 25:16;27:9,14,21;28:8; 35:5;36:2,4;42:16,21;67:12; 99:17;110:5;113:18</p> <p><b>sirens (6)</b> 43:7;72:8;110:21,24; 111:12;124:14</p> <p><b>sit (8)</b> 74:17;77:23;78:10;89:12; 123:23;125:3,5;127:8</p> <p><b>sitting (2)</b> 76:16;126:22</p> <p><b>situation (3)</b> 38:7;108:4;114:8</p> <p><b>situations (1)</b> 129:8</p> <p><b>slightest (1)</b> 48:24</p> <p><b>slightly (1)</b> 84:5</p> <p><b>slow (9)</b> 46:3;54:23;84:8,16,16; 110:14;111:4;112:7,16</p> <p><b>slowed (2)</b> 112:8;114:23</p> <p><b>slowly (2)</b> 29:11,22</p> <p><b>slow-moving (1)</b> 30:12</p> <p><b>small (4)</b> 27:24;31:16,23;57:20</p> <p><b>snippet (1)</b> 39:1</p> <p><b>sobriety (2)</b> 12:15;90:24</p> <p><b>societal (2)</b> 21:8,9</p> <p><b>society (7)</b> 21:4;46:25;81:18,19; 107:23;133:6,7</p> <p><b>solely (1)</b> 28:19</p>	<p><b>solve (1)</b> 33:4</p> <p><b>somebody (3)</b> 22:22;91:11;113:9</p> <p><b>somebody's (1)</b> 81:17</p> <p><b>somehow (1)</b> 52:14</p> <p><b>someone (23)</b> 13:23;20:22;29:10;36:1; 42:16;43:20;46:21,23;55:22; 63:25;81:19;97:3;98:4,5,13; 99:23;115:8;120:24,24; 121:16,16;126:14;134:7</p> <p><b>someone's (7)</b> 55:10,17;59:17;81:12; 88:11;112:1,2</p> <p><b>sometime (2)</b> 6:25;85:25</p> <p><b>sometimes (11)</b> 16:18;19:2;22:17;48:6; 50:17,23;54:8;58:2;61:23; 87:13;129:10</p> <p><b>somewhat (2)</b> 38:12;58:12</p> <p><b>soon (3)</b> 7:3;22:13;74:25</p> <p><b>sorry (14)</b> 8:11;22:12;26:1;34:19; 41:2;44:15;56:6;62:12; 66:18;87:6;98:22;108:16; 112:17;126:9</p> <p><b>sort (1)</b> 31:24</p> <p><b>Sound (3)</b> 50:16;51:1;61:1</p> <p><b>sounds (5)</b> 35:19;48:5;49:9;53:17; 83:6</p> <p><b>South (2)</b> 122:15,18</p> <p><b>space (1)</b> 22:22</p> <p><b>speak (6)</b> 8:24;31:25;60:20;61:9; 108:8;124:10</p> <p><b>speaking (3)</b> 39:6;125:16;128:23</p> <p><b>special (5)</b> 11:6;12:11;13:9,11,21</p> <p><b>specific (2)</b> 31:19;53:8</p> <p><b>specifically (6)</b> 50:20;55:21;60:6;68:10; 77:15;107:7</p> <p><b>speculation (2)</b> 133:18;136:5</p> <p><b>sped (1)</b> 30:14</p> <p><b>speed (43)</b> 25:22;26:5,19;29:13;30:2, 23;33:13;41:1,9;42:7,11,15,</p>	<p>25;43:3,14;44:5;45:16,21; 46:3;73:15;82:14;83:12,14; 84:2,7,11,15,16;94:23;95:9; 97:16;99:16;108:1,11;109:2, 18,25;110:5;111:8;116:20; 117:8;119:20;121:23</p> <p><b>speeding (11)</b> 31:11;73:5;79:1;82:11,22; 83:20;85:7;86:7,8;120:8; 121:8</p> <p><b>speeds (18)</b> 18:12;43:12;56:19;58:24; 70:20;82:8,15;83:2,23; 84:21,23;87:23;104:12; 105:23;113:25;122:15,24; 126:19</p> <p><b>spell (1)</b> 6:1</p> <p><b>spelled (1)</b> 6:3</p> <p><b>spent (1)</b> 64:24</p> <p><b>spent (2)</b> 34:21;53:20</p> <p><b>split-second (1)</b> 129:9</p> <p><b>spoke (1)</b> 42:6</p> <p><b>spoken (2)</b> 84:1;87:4</p> <p><b>sporting (1)</b> 11:2</p> <p><b>squad (9)</b> 10:16;11:8,17;12:2,7; 13:25;14:3;15:17;16:21</p> <p><b>Stacy (1)</b> 61:5</p> <p><b>staff (3)</b> 7:3;9:13;32:10</p> <p><b>staffing (1)</b> 11:2</p> <p><b>stages (1)</b> 71:19</p> <p><b>stand (3)</b> 47:18;126:5;128:10</p> <p><b>standard (8)</b> 9:8;38:24;54:9;77:14; 80:11;88:2;124:20;130:21</p> <p><b>standards (4)</b> 38:12;47:24;50:17;51:2</p> <p><b>standing (1)</b> 56:3</p> <p><b>standpoint (9)</b> 16:12;32:22;45:11;58:5; 59:10;79:7;98:25;115:5; 134:19</p> <p><b>stands (1)</b> 40:23</p> <p><b>start (8)</b> 20:6;21:14;55:19;72:3; 73:16;88:14;126:9,9</p> <p><b>started (5)</b> 14:3;67:3;86:17;101:6;</p>	<p>135:9</p> <p><b>starting (4)</b> 6:14,18;9:22;53:17</p> <p><b>starts (2)</b> 91:8;120:17</p> <p><b>State (23)</b> 6:7,9,16,19,24;7:11,17; 9:23;26:9,11,11,13;43:10; 50:19,20;52:8;61:22,23; 62:3;79:19;115:18,21; 116:24</p> <p><b>stated (2)</b> 28:22;63:24</p> <p><b>statement (5)</b> 5:2;38:25;124:7;126:5; 128:10</p> <p><b>statements (1)</b> 133:20</p> <p><b>states (1)</b> 32:23</p> <p><b>spend (1)</b> 4:12</p> <p><b>statistics (3)</b> 69:22,23;70:17</p> <p><b>statute (7)</b> 27:18;107:21;116:5,25; 118:3;122:2,4</p> <p><b>statutes (3)</b> 8:8,18;79:21</p> <p><b>stay (1)</b> 44:16</p> <p><b>Steering (1)</b> 50:5</p> <p><b>step (1)</b> 18:22</p> <p><b>stepping (2)</b> 16:25;127:4</p> <p><b>steps (2)</b> 94:7,8</p> <p><b>sticking (2)</b> 93:24;122:17</p> <p><b>still (44)</b> 29:17;33:11;35:12;37:18; 38:14,14,15,16;43:4;44:18; 47:19;48:3;49:4,22;50:1,20; 54:1,7,16;58:8;60:4;62:22; 71:2,22;93:21;94:2;97:17; 98:3;107:13;110:6;111:1,3, 6,12,23,24;112:3,4,14; 114:20,24;122:3;136:16,23</p> <p><b>stipulate (1)</b> 5:9</p> <p><b>stipulated (1)</b> 5:11</p> <p><b>stipulations (1)</b> 5:2</p> <p><b>stole (1)</b> 46:24</p> <p><b>stood (1)</b> 57:19</p> <p><b>stop (127)</b> 9:9;21:7;22:17;23:20; 25:18,22;26:5,20;33:5,8;</p>
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<p>36:7;42:17,20,25;43:12,18, 22,23;46:3;47:2,6;48:13; 64:5;70:21;71:2;72:5,13,20; 73:3,5,16,18,20;74:14,18; 75:1,20,24;77:4,9,11;78:12, 25;79:2;85:7,8,16;86:7,9,11, 14,14,18,20,20;87:14,23; 88:3,4,7,10,18,19,24;89:9; 90:17,19;91:4,8,10,12,17; 92:14,15;93:8,13,17;94:1,11, 11,24,24;96:6,11;97:2,16; 99:9,14,16;100:21,23;101:1, 22;102:2,3,16;103:8,12; 104:3;107:13,23;110:12; 111:2,11,17;114:10;116:12; 117:16,17,25;118:5,9;119:6, 16;120:6;121:2,7,20;122:6; 124:21,22,23;126:10,12,13, 17;127:25</p> <p><b>stopped (26)</b> 11:17;13:17;74:19;77:7, 19;92:4,11,16;100:4,15; 101:24,24;102:8;108:13,24; 109:13;110:1,9;113:18; 126:22;127:1,16;136:2,12, 13,23</p> <p><b>stopping (14)</b> 21:8,9;44:4;71:12;73:19; 88:20;100:1,5;110:15;114:2, 15;125:9;126:18;127:11</p> <p><b>stops (4)</b> 30:6;113:8;126:6;128:11</p> <p><b>storage (1)</b> 46:23</p> <p><b>stories (1)</b> 13:22</p> <p><b>straight (1)</b> 48:24</p> <p><b>straightaway (1)</b> 84:25</p> <p><b>straight-shot (1)</b> 48:18</p> <p><b>strange (1)</b> 113:12</p> <p><b>street (14)</b> 11:23;29:13;30:22;48:21; 73:6;80:17;82:15;84:18,24; 109:25;115:25;116:2;121:9; 129:15</p> <p><b>streets (4)</b> 39:14,19;65:4;66:1</p> <p><b>strictly (1)</b> 59:10</p> <p><b>strip (1)</b> 48:19</p> <p><b>struck (2)</b> 22:20;120:16</p> <p><b>studied (2)</b> 52:3,6</p> <p><b>study (1)</b> 120:11</p> <p><b>stuff (4)</b> 67:14;120:13;121:13;</p>	<p>130:6</p> <p><b>stupid (1)</b> 22:13</p> <p><b>subject (2)</b> 97:20;129:10</p> <p><b>subjective (4)</b> 38:12;77:17,22;93:2</p> <p><b>SUBSCRIBED (1)</b> 138:16</p> <p><b>subsection (3)</b> 58:22;117:6;119:17</p> <p><b>suggesting (1)</b> 38:13</p> <p><b>summary (5)</b> 75:18;78:9;119:12;134:5; 135:15</p> <p><b>Sunday (1)</b> 75:17</p> <p><b>supervise (2)</b> 15:20;63:2</p> <p><b>supervising (1)</b> 16:16</p> <p><b>supervision (1)</b> 49:25</p> <p><b>supervisor (18)</b> 16:14;21:17;45:8;47:20, 24;49:8,10,18;63:1;77:18, 20;82:6;89:19;113:7;124:10, 19;127:4;132:4</p> <p><b>supervisor's (1)</b> 49:23</p> <p><b>supervisory (2)</b> 47:25;115:8</p> <p><b>supplements (1)</b> 8:4</p> <p><b>suppose (2)</b> 16:6;126:25</p> <p><b>supposed (3)</b> 62:14;88:12;101:25</p> <p><b>supposedly (1)</b> 49:24</p> <p><b>Sure (31)</b> 5:11;9:1;10:8;12:24;14:6; 37:6;39:18;42:5;47:6;50:24; 53:17;60:17;66:10;70:21; 75:16;76:5;84:25;92:9,9,21; 101:13;102:9;107:18,19; 108:17;113:13,16;116:6; 118:2;121:7;127:18</p> <p><b>surely (1)</b> 99:8</p> <p><b>surface (1)</b> 37:1</p> <p><b>surroundings (1)</b> 87:19</p> <p><b>suspect (21)</b> 22:18;24:5;37:14;46:11, 23;55:6;57:4;62:20;81:22, 22,23;107:19;116:15,19; 118:22;125:23;126:3; 127:13;128:2,7;129:2</p> <p><b>suspected (5)</b> 56:14;59:12;99:4,6,11</p>	<p><b>suspect's (1)</b> 56:23</p> <p><b>suspicion (17)</b> 91:1,5;92:1,5,6,9,10,13,23; 93:1,4,7,8,11,15,18;101:14</p> <p><b>SWAT (3)</b> 22:16,21;38:5</p> <p><b>swear (1)</b> 105:16</p> <p><b>swearing (1)</b> 47:18</p> <p><b>SWEENEY (8)</b> 4:1,18,23;5:15,17;6:3; 138:3,15</p> <p><b>S-w-e-e-n-e-y (1)</b> 6:4</p> <p><b>sworn (8)</b> 4:7,24;5:25;33:2;104:8; 136:1;138:3,16</p>	<p>20:10;22:19;33:20;35:6; 42:10;52:12;53:3,21;80:3; 91:21;93:7</p> <p><b>termed (2)</b> 14:17;22:18</p> <p><b>Terminate (3)</b> 57:20;88:13;134:1</p> <p><b>terminated (14)</b> 82:7;85:10,17;86:12,19, 21;89:22;110:1,18,20; 111:18;113:20,20,21</p> <p><b>test (2)</b> 15:24;90:24</p> <p><b>testified (2)</b> 4:25;136:25</p> <p><b>testify (1)</b> 101:23</p> <p><b>testimonies (1)</b> 135:19</p> <p><b>testimony (7)</b> 4:8;33:24;75:3;98:11; 109:21;123:15;135:15</p> <p><b>tests (1)</b> 12:15</p> <p><b>theoretically (1)</b> 81:17</p> <p><b>therefore (2)</b> 105:24;106:14</p> <p><b>therein (2)</b> 138:8,9</p> <p><b>thereof (1)</b> 138:7</p> <p><b>Thinking (10)</b> 13:4;36:9,10;46:10;97:11; 98:23;102:7;107:5;114:1; 115:4</p> <p><b>though (9)</b> 22:20;51:20;71:22;80:15; 122:2;133:8;135:22;136:9, 22</p> <p><b>thought (11)</b> 8:12;31:14;32:5;41:13; 57:11;77:12;85:15;103:23; 105:9;112:18;130:3</p> <p><b>thousands (1)</b> 13:18</p> <p><b>threat (1)</b> 39:22</p> <p><b>threatening (2)</b> 24:6,6</p> <p><b>three (3)</b> 18:17;71:19;122:5</p> <p><b>throw (1)</b> 74:8</p> <p><b>thus (1)</b> 58:25</p> <p><b>ticket (2)</b> 15:24;98:13</p> <p><b>times (10)</b> 28:11;31:4,9;38:6;39:19; 42:19;63:24;83:11,19;122:5</p> <p><b>tipping (2)</b> 40:1,21</p>
<b>T</b>			
		<p><b>tactical (1)</b> 46:9</p> <p><b>tactics (2)</b> 22:23;40:18</p> <p><b>talk (18)</b> 10:6;18:3;38:3,4,4,5;39:6; 45:21;46:5;56:22;60:9,25; 67:14;80:16;83:17;119:13; 121:18;131:3</p> <p><b>talked (30)</b> 11:5;12:17;14:9,20;17:24; 32:8;36:3;42:24;43:2;46:10; 55:16;56:13;58:20;59:4,14, 16;60:5;68:4;71:18;75:6; 81:20;92:3;99:7;105:22; 107:6;115:2;118:24;126:1; 129:20;132:19</p> <p><b>talking (31)</b> 8:13,15,20;19:3;23:7; 30:13;31:15,24;39:25;44:1, 10,16;53:20;54:12;55:21; 61:9;64:7;67:3,6,6;70:4; 75:5;81:21;83:23;90:25; 98:22;100:9;106:1,2;109:9; 127:4</p> <p><b>talks (2)</b> 28:4;69:18</p> <p><b>tape (1)</b> 77:23</p> <p><b>task (1)</b> 37:25</p> <p><b>technically (1)</b> 21:14</p> <p><b>telling (6)</b> 14:18;31:20;110:18,19; 129:16;136:22</p> <p><b>telltale (1)</b> 93:9</p> <p><b>temporarily (1)</b> 114:23</p> <p><b>term (11)</b></p>	

<p><b>Title (3)</b> 8:15;69:13;79:21 <b>today (4)</b> 76:17;81:21;136:3,25 <b>together (4)</b> 68:6;73:25;74:9;125:8 <b>told (8)</b> 55:22;61:13;74:25;76:25; 95:5,12,24;107:17 <b>took (7)</b> 25:9;26:19;53:19;54:21; 55:19;73:4;84:18 <b>top (3)</b> 25:12;27:22;122:2 <b>tort (1)</b> 60:21 <b>total (1)</b> 93:13 <b>totality (2)</b> 13:5;88:15 <b>totally (1)</b> 17:5 <b>touched (2)</b> 32:7;38:24 <b>town (1)</b> 64:20 <b>traffic (94)</b> 8:1,14;10:16,25;11:1,3,3; 12:2;13:25;16:21;18:4; 21:10,15;31:6;33:12;39:7, 11;40:2,41:8;42:6;44:24; 45:15;67:17;69:23;70:21,25; 71:1;72:5;80:15;85:3;86:6, 25;87:14;88:10;90:3,5,6; 91:21,24;92:6,13,24;93:8,13, 25;94:2,96:3,12,21;97:7,13, 18;98:5,13;100:21;101:1,3,9, 19;103:3,9,20;104:2;105:2,3, 7,18,21;107:16,19,23,24; 113:2,3;115:14;116:12; 122:7;124:13,15,18,22,23; 125:11;126:10,17;128:13, 16;130:2,10;133:5,7;135:4,6, 23 <b>tragedy (1)</b> 135:2 <b>tragic (1)</b> 107:11 <b>train (5)</b> 15:11,16,18;16:20;115:8 <b>trained (1)</b> 12:21 <b>training (13)</b> 12:12,14;16:1,11,17,23; 19:22;20:15;36:1,8,12;37:3; 49:25 <b>training-intensive (1)</b> 16:5 <b>transcript (4)</b> 7:16,25,25;137:19 <b>traveling (1)</b> 119:19 <b>travels (1)</b></p>	<p>117:7 <b>Travis (1)</b> 8:1 <b>treated (1)</b> 61:10 <b>tried (4)</b> 49:17;83:18;89:16;115:5 <b>tries (2)</b> 93:17;119:12 <b>troubling (1)</b> 55:25 <b>truck (2)</b> 83:20;108:6 <b>true (5)</b> 45:10;98:17;104:13,19; 138:9 <b>truth (2)</b> 4:24;47:19 <b>try (21)</b> 24:20;30:9;40:19;47:9; 49:1;60:10;61:18;73:4;75:9; 83:13,15;87:13;89:9;94:21; 112:19;113:24;114:13; 124:21;125:7;128:24;129:21 <b>trying (53)</b> 20:1;22:24;30:4,6;33:4,5; 35:17;36:6,13,15;40:15; 42:12;43:21;44:6;49:22; 50:8;54:20;55:10;56:23; 59:15,17;60:7,14,14;68:20; 74:23;75:8;76:15;77:6; 78:19;85:11,19;87:11,22; 88:1,8,10,11,17;93:20;96:8; 101:11,22;102:3,7;103:11; 112:2,3;113:23;114:3; 120:22;126:20;131:25 <b>turn (11)</b> 46:4;48:3,24;83:15;84:7, 10,11;101:4;102:1;110:20; 126:7 <b>turned (1)</b> 113:18 <b>turning (1)</b> 84:22 <b>turns (2)</b> 42:15;79:1 <b>twice (2)</b> 59:6,6 <b>twisting (1)</b> 84:21 <b>two (17)</b> 8:23;18:16;20:25;22:20; 23:18;31:18;68:6;71:19; 75:4;86:19;89:22;97:2; 101:8;121:18;122:5;125:8; 136:21 <b>two-officer (1)</b> 68:8 <b>two-week (1)</b> 6:25 <b>type (4)</b> 38:2;54:11;66:1;68:9 <b>types (2)</b></p>	<p>29:10;130:7 <b>Typically (1)</b> 5:3  <b>U</b>  <b>uh-oh (2)</b> 18:21;40:17 <b>ultimately (1)</b> 52:8 <b>Um-hum (1)</b> 123:5 <b>unaware (4)</b> 84:20;87:19,25;137:2 <b>unawareness (1)</b> 98:8 <b>under (6)</b> 4:9;26:16;30:13;37:19; 54:3;71:10 <b>underline (1)</b> 69:1 <b>Understood (2)</b> 34:10;75:6 <b>undertake (1)</b> 133:9 <b>unequal (1)</b> 97:21 <b>unfair (2)</b> 101:17;123:25 <b>unfortunate (2)</b> 81:11;106:10 <b>unfortunately (4)</b> 106:7;123:6;130:7;131:5 <b>uninvolved (2)</b> 131:13,15 <b>unit (2)</b> 11:7;14:5 <b>units (1)</b> 14:13 <b>University (7)</b> 6:8,9,19;9:7,23;43:10;52:8 <b>unless (4)</b> 29:15;47:11;49:14,19 <b>unmute (1)</b> 5:7 <b>unnecessarily (1)</b> 137:4 <b>unpredictable (1)</b> 54:3 <b>unreasonable (10)</b> 48:12;49:10;75:12;78:3; 80:11;96:10;115:7,10,15; 130:4 <b>unsafe (2)</b> 59:1;137:10 <b>unsafely (1)</b> 88:8 <b>unusual (3)</b> 13:1;28:14;35:20 <b>unwise (1)</b> 34:24 <b>up (51)</b> 5:5;7:3;8:18;18:18,19,19,</p>	<p>22;19:20;22:14;24:8;25:12; 27:23;30:14;31:11;33:10; 46:21;47:1,12;49:14,19; 54:23;55:23;59:6,9;60:11; 63:19;67:13,21;68:13;69:7, 9,25;74:8;83:14,22,25;84:11, 15,16;90:22;93:9;94:8; 100:23;102:14;103:23; 112:4;117:4;118:16;119:10; 128:6;136:14 <b>upgraded (2)</b> 116:19;119:1 <b>upon (5)</b> 32:5;90:24;101:1;123:9,19 <b>upped (1)</b> 94:6 <b>use (21)</b> 15:15;20:10;22:16,23,25; 28:8;33:20;34:15,22,24; 35:5,6;36:2,3;49:1;65:6; 83:12;101:4;125:13;126:7; 135:17 <b>used (5)</b> 6:15;22:12;36:1;41:11; 56:18 <b>useful (1)</b> 66:9 <b>using (7)</b> 22:21;37:25;49:5;52:7; 55:17;102:1;120:7 <b>usual (2)</b> 9:8;13:13 <b>utilize (2)</b> 52:9;54:7  <b>V</b>  <b>V18002134 (1)</b> 8:4 <b>V6 (1)</b> 83:6 <b>V8 (1)</b> 83:6 <b>Vague (1)</b> 104:14 <b>valid (2)</b> 123:16;124:22 <b>Valley (1)</b> 80:2 <b>value (1)</b> 106:24 <b>valve (1)</b> 31:25 <b>various (2)</b> 74:14;119:6 <b>vehicle (47)</b> 7:22;8:3;12:22,23,25; 17:16;18:11,13;22:21;25:16, 18;27:8;30:2;46:2,7;53:10; 54:2;55:7;56:22,23;57:1,4,7, 9;58:25;66:17,17,21;68:16; 70:9;72:13,20;73:15,19; 76:18;78:25;79:23;83:9,15;</p>
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<p>91:12;108:14,16;116:22; 117:12;119:16;120:1;127:11 <b>Vehicles (11)</b> 8:16;9:9;22:17,20,25; 39:13,22,22;56:18;120:16; 121:21 <b>vehicular (2)</b> 105:6,18 <b>verifies (1)</b> 137:13 <b>versus (10)</b> 20:23;36:9;37:7;44:4; 61:3,22,24;102:20;115:7; 131:25 <b>video (34)</b> 4:15;5:3;7:18,19,20;66:15, 21;73:24;74:5,8,22;75:7; 76:16,18;77:16,25;78:18,18, 23;82:11,17,18;83:3;86:13; 89:3,3,17;106:7;108:9,19,19; 109:11;110:13;125:7 <b>videos (2)</b> 105:1;132:14 <b>view (8)</b> 17:1;52:14;77:13;82:17; 98:25;115:5;130:4;131:6 <b>viewpoint (1)</b> 83:7 <b>violate (3)</b> 21:7;62:8;119:17 <b>violated (1)</b> 61:15 <b>violates (1)</b> 117:6 <b>violating (1)</b> 61:19 <b>violation (21)</b> 21:15;61:13;70:25;71:2; 88:17;90:6;92:6,24;97:13, 18;98:6;99:19;101:9;104:2; 107:16;116:13;122:7; 128:13,16;130:2,10 <b>violations (12)</b> 20:21;82:9;85:4;86:6; 101:3,19;103:3,9,10,20; 107:24;124:24 <b>violator (32)</b> 21:10;33:5,18;43:22;46:5; 60:10;80:15;81:3,13;86:25; 90:3,5;91:17,21,25;93:25; 94:2;96:3,13,21;97:8;102:3, 7;107:19;113:2,3;125:11; 130:24;133:5;135:4,7,24 <b>violators (4)</b> 53:11,15;57:24;133:8 <b>violence (2)</b> 57:25;81:22 <b>vision (1)</b> 45:25 <b>visit (1)</b> 123:2 <b>visual (2)</b> 25:17;94:25</p>	<p><b>visual/audible (1)</b> 119:15 <b>vocalizations (1)</b> 124:16 <b>voice (2)</b> 25:16;80:6 <b>voluntarily (5)</b> 72:13,20;75:20,24;78:12 <b>vs (1)</b> 7:17</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>Wait (2)</b> 23:19;124:2 <b>waiting (1)</b> 34:3 <b>waive (1)</b> 4:11 <b>walk (2)</b> 17:19;18:6 <b>wall (1)</b> 22:23 <b>Washington (8)</b> 26:9,21;27:4,13;50:12,19; 51:3,6 <b>watch (8)</b> 15:12;16:4;17:7,22,25; 24:12;110:12;125:7 <b>watched (3)</b> 78:23;89:17;109:25 <b>way (30)</b> 13:4;15:25;16:16;17:4; 20:25;22:25;25:10;35:12; 51:19;55:13;59:5;60:16; 73:7;74:10;75:5;80:9; 100:24;107:8,11;111:16; 113:12;114:2;119:10;120:6, 18;121:12;122:22;124:16; 125:16;130:5 <b>ways (1)</b> 112:2 <b>weapon (1)</b> 62:19 <b>weather (2)</b> 65:16;66:1 <b>weaving (2)</b> 91:10;92:12 <b>weeds (1)</b> 72:1 <b>weigh (6)</b> 42:4;45:12;47:13;49:15; 104:5;131:24 <b>weighed (3)</b> 52:10;131:21,22 <b>weighing (9)</b> 37:20;40:13;53:22;60:9; 87:5;93:3;132:4,17;134:17 <b>welfare (2)</b> 79:15;82:5 <b>well-known (3)</b> 67:16;92:17,20 <b>well-taken (1)</b></p>	<p>39:5 <b>weren't (3)</b> 10:11;22:18,19 <b>West (2)</b> 14:24;15:2 <b>wet (3)</b> 65:25,25;66:1 <b>whack (1)</b> 20:25 <b>what's (31)</b> 18:9,12;20:22;31:20; 38:10,20;40:1;41:23;45:25; 48:4;55:18;88:15,16;98:2, 11,13;102:19;106:24;107:7, 23;115:6,7,9,10;124:20; 125:10;126:8,11,14;131:25; 133:3 <b>wheel (4)</b> 47:17;48:24;50:5;126:24 <b>whole (6)</b> 78:18;79:10;89:3;112:11; 116:25;127:6 <b>who's (2)</b> 124:16,17 <b>wife's (1)</b> 134:16 <b>willing (3)</b> 37:2;47:1;122:3 <b>window (5)</b> 46:12;70:13;90:22;93:9; 102:14 <b>wish (2)</b> 108:6;131:9 <b>wishes (1)</b> 6:19 <b>within (7)</b> 6:25;11:24;31:16;35:16; 86:19;89:22;101:8 <b>without (6)</b> 28:17;31:12;50:24;71:1; 77:16;103:22 <b>witness (25)</b> 4:7,18;34:6,12;62:12,18; 63:1,4,8;75:4;76:3,14;91:14, 16;104:16;110:4;111:23; 118:12;130:15;133:19; 134:15;136:8,12;138:1,5 <b>woman (1)</b> 91:9 <b>woo-hoo (1)</b> 45:8 <b>word (9)</b> 20:6;34:15,16;66:2;83:12; 87:4;107:22;122:10;135:17 <b>words (12)</b> 16:4;18:9;34:25;47:9; 97:7,9,10;109:12;113:25; 126:3;128:7;129:19 <b>work (14)</b> 4:22;10:19,20;12:2;15:14; 18:7;24:22;33:2;34:22;35:9; 69:5;83:20;116:11;134:16 <b>worked (2)</b></p>	<p>11:14;12:4 <b>working (3)</b> 11:1;20:1;78:17 <b>worst (2)</b> 98:12,13 <b>wow (1)</b> 88:6 <b>write (2)</b> 59:6;120:12 <b>written (2)</b> 122:21,23 <b>wrong (10)</b> 12:12;32:24;33:22;34:18; 35:11;44:8;47:17;53:3; 118:18,19 <b>wrote (4)</b> 87:8,10;118:20,22</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year (4)</b> 25:6;33:17;64:5;67:3 <b>years (12)</b> 10:3,10;11:15;12:5;14:4; 19:10,14;23:19;61:25;71:16; 129:22,23 <b>yep (1)</b> 55:9 <b>yield (2)</b> 25:18;42:17</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>Zamudio (2)</b> 82:5;131:11 <b>zone (1)</b> 84:6</p> <hr/> <p style="text-align: center;"><b>1</b></p> <hr/> <p><b>1 (7)</b> 25:13;26:1,2;105:10; 117:6;119:17;138:6 <b>10 (3)</b> 114:6,6;127:7 <b>11 (2)</b> 105:9,13 <b>13.031-POL (1)</b> 25:13 <b>137 (1)</b> 138:6 <b>14 (2)</b> 65:17;72:12 <b>140 (4)</b> 48:9,17,19;49:6 <b>14th (1)</b> 66:3 <b>15th (1)</b> 9:21 <b>16th (12)</b> 73:6;82:15;84:24;105:7, 18;109:24;115:25;116:2; 121:23;122:15,18;136:2</p>
---	---	--	---



<p><b>18 (2)</b> 7:1;115:11 <b>19 (2)</b> 116:10;122:2 <b>1988 (1)</b> 23:20 <b>1996 (1)</b> 67:21</p>	<p><b>30-mile-an-hour (1)</b> 84:6 <b>313 (2)</b> 7:21;51:17 <b>313.1 (1)</b> 53:9 <b>313.1.2 (1)</b> 55:1 <b>313.2 (1)</b> 95:11 <b>313.2.1 (2)</b> 54:22;55:2 <b>313.2.3 (1)</b> 58:21 <b>314 (1)</b> 7:22 <b>34 (2)</b> 10:3;23:19 <b>35 (5)</b> 30:21,23,24,25;85:9</p>	<p>82:23;97:16;111:17; 119:22</p>	
<p style="text-align: center;"><b>2</b></p>		<p style="text-align: center;"><b>8</b></p>	
<p><b>2 (5)</b> 46:2;51:14,18;71:15; 105:10 <b>2/3 (1)</b> 70:8 <b>2:15 (1)</b> 63:11 <b>20 (4)</b> 10:10;92:16;99:10;126:22 <b>2000s (1)</b> 14:24 <b>2001 (2)</b> 15:6;19:11 <b>2012 (3)</b> 68:17;69:9,12 <b>2013 (3)</b> 68:17;69:10,12 <b>2015 (3)</b> 16:8;67:21;69:11 <b>2017 (5)</b> 25:5;26:16;37:16;52:21; 65:17 <b>2018 (2)</b> 7:16;72:12 <b>2019 (1)</b> 16:4 <b>2021 (2)</b> 9:21;10:2 <b>212 (1)</b> 18:20 <b>23 (1)</b> 123:4 <b>25 (5)</b> 31:22;41:11,17;42:9;84:6 <b>29 (1)</b> 131:10 <b>2-minute (1)</b> 41:2</p>	<p style="text-align: center;"><b>4</b></p> <p><b>4 (4)</b> 11:25;37:12;42:3;79:22 <b>4/10 (1)</b> 136:21 <b>4:00 (1)</b> 10:20 <b>4:59 (1)</b> 137:23 <b>40 (3)</b> 19:11;22:1;77:1 <b>49-1404 (1)</b> 95:17 <b>49-14042 (1)</b> 116:18 <b>49-623 (2)</b> 8:15;79:21</p> <p style="text-align: center;"><b>5</b></p> <p><b>5 (1)</b> 67:15 <b>50 (5)</b> 30:20;84:18,21,23;85:1 <b>500 (1)</b> 13:18</p> <p style="text-align: center;"><b>6</b></p>	<p style="text-align: center;"><b>9</b></p> <p><b>90 (1)</b> 66:4 <b>90s (1)</b> 13:10 <b>96 (1)</b> 69:10 <b>98 (1)</b> 10:10 <b>99 (3)</b> 10:10;13:15;30:24</p>	
<p style="text-align: center;"><b>3</b></p>			
<p><b>3 (4)</b> 25:21;46:5;67:25;71:16 <b>3:15 (1)</b> 63:7 <b>3:30 (1)</b> 63:7 <b>30 (15)</b> 19:11;21:25;31:22;41:11, 17;42:9;77:1;92:16;99:10; 115:22;116:19;117:8; 118:18;119:19;126:22</p>	<p><b>6 (3)</b> 10:16;11:25;71:25 <b>6,000 (2)</b> 67:22;70:3</p> <p style="text-align: center;"><b>7</b></p>		
	<p><b>7 (1)</b> 7:16 <b>7:00 (1)</b> 10:19 <b>70 (4)</b></p>		