

1 STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
2 BRANCH 1

3 STATE OF WISCONSIN,

4 PLAINTIFF,

JURY TRIAL

TRIAL - DAY 11

5 vs.

Case No. 05 CF 381

6 STEVEN A. AVERY,

7 DEFENDANT.

8 **DATE:** FEBRUARY 26, 2007

9 **BEFORE:** Hon. Patrick L. Willis
10 Circuit Court Judge

11 **APPEARANCES:** KENNETH R. KRATZ
Special Prosecutor
12 On behalf of the State of Wisconsin.

13 THOMAS J. FALLON
Special Prosecutor
14 On behalf of the State of Wisconsin.

15 NORMAN A. GAHN
Special Prosecutor
16 On behalf of the State of Wisconsin.

17 DEAN A. STRANG
Attorney at Law
18 On behalf of the Defendant.

19 JEROME F. BUTING
Attorney at Law
20 On behalf of the Defendant.

21 STEVEN A. AVERY
Defendant
22 Appeared in person.

23 **TRANSCRIPT OF PROCEEDINGS**

24 Reported by Diane Tesheneck, RPR

25 Official Court Reporter

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11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES PAGE

SHERRY CULHANE

Cross-Examination by ATTORNEY BUTING 3

Redirect Examination by ATTORNEY GAHN 153

NICK STAHLKE

Direct Examination by ATTORNEY GAHN 198

EXHIBITS MARKED OFFERED ADMITTED

341	29	197	198
342	31	197	198
343	37		
345	78	197	198
346	127	197	198
347	143	197	198
348	168	197	198

1 THE COURT: At this time the Court calls
2 the State of Wisconsin vs. Steven Avery, Case No. 05
3 CF 381. We're here this morning for a continuation
4 of the trial in this matter. Will the parties state
5 their appearances for the record, please.

6 ATTORNEY KRATZ: Good morning, Judge. The
7 State appears by Special Prosecutors Ken Kratz, Norm
8 Gahn and Tom Fallon.

9 ATTORNEY STRANG: Good morning. As well,
10 Steven Avery is in person and Dean Strang and Jerome
11 Buting representing.

12 THE COURT: All right. Before we begin, I
13 would like to commend the jurors for all getting
14 here on time this morning. When I called the Clerk
15 to notify you last night that we would be having
16 court today, I didn't expect as much snow as I found
17 when I got up this morning. I appreciate the fact,
18 I'm sure you made an effort to get to the bus stop
19 on time.

20 When we left off on Friday, I believe
21 the defense was about to begin its
22 cross-examination of Ms Culhane; is that correct?

23 ATTORNEY BUTING: That is correct, your
24 Honor.

25 THE COURT: All right. You can have the

1 witness brought in and begin.

2 **SHERRY CULHANE**, called as a witness
3 herein, having been first duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please be seated. Please state
6 your name and spell your last name for the record.

7 THE WITNESS: Sherry Culhane,
8 C-u-l-h-a-n-e.

9 THE COURT: All right. Mr. Buting, you may
10 begin.

11 ATTORNEY BUTING: Thank you, Judge.

12 **CROSS-EXAMINATION**

13 BY ATTORNEY BUTING:

14 Q. Good morning, ma'am.

15 A. Good morning.

16 Q. I want to pick up on where you left off on
17 Friday, and that is your opinions, series of
18 opinions about the stains that you found in the
19 RAV4. Okay, are you with me?

20 A. Mm-hmm.

21 Q. Your opinion, over and over to Mr. Gahn was, do
22 you have an opinion to a reasonable degree of
23 scientific certainty as to whether Mr. Avery is
24 the source of the DNA found in stains one, two,
25 three, whatever it was, right?

1 A. Right.

2 Q. And what you are really saying is, that as far as
3 you can tell, Mr. Avery is the original source of
4 the DNA that you find in those stains, correct?

5 A. I'm saying that his profile was consistent with
6 what I found in the stains.

7 Q. Right. But what you are not saying is anything
8 about how his DNA found its way inside the RAV4,
9 are you?

10 A. No.

11 Q. Your tests aren't designed to tell us how his DNA
12 found it's way into the location where you
13 ultimately swabbed, are they?

14 A. No.

15 Q. What you are looking for is a DNA profile, and if
16 you find it, then you compare it to a known
17 reference sample, in this case, Mr. Avery, right?

18 A. Right.

19 Q. But if someone else planted Mr. Avery's DNA, or
20 blood, or both, inside that vehicle, you wouldn't
21 know that from these tests, would you?

22 A. No.

23 Q. So you cannot tell this jury, with any degree of
24 certainty, scientific or otherwise, that Steven
25 Avery was, himself, ever inside that vehicle, can

1 you?

2 A. No.

3 Q. No meaning correct?

4 A. That's correct.

5 Q. All right. You also talked about contamination,
6 and I think you used the word unintentional
7 contamination; do you recall a discussion about
8 that?

9 A. Yes, I do.

10 Q. All of the quality controls that you set up
11 inside the Wisconsin Crime Lab are designed to
12 deal with evidence after it arrives at your lab,
13 correct?

14 A. That's correct.

15 Q. You can't do anything about contamination that
16 might occur to evidence before it gets to your
17 lab, right?

18 A. That's correct.

19 Q. And that would be true for unintentional
20 contamination such as an officer who's sloppy at
21 the scene when he's picking up whatever evidence
22 it may be?

23 A. That's correct.

24 Q. Your tests and your quality control doesn't --
25 can't account for that, right?

1 A. Right.

2 Q. And that also would be true as to intentional
3 contamination that occurred before it gets to
4 your lab as well, right?

5 A. Correct.

6 Q. Once again, so you have no way, through your
7 quality control tests, controlling whether or not
8 there's some intentional, deliberate tampering
9 with the evidence that goes -- that takes place
10 before it gets to your lab?

11 A. That's correct.

12 Q. So if the evidence had been intentionally
13 contaminated or tampered with, before it got to
14 your lab, your tests will not show that; isn't
15 that right?

16 A. That's correct.

17 Q. Now, I'm assuming that you would agree with me on
18 this, that normally evidence that you receive
19 from a -- an agency that is police is -- you are
20 assuming that when you get it that the -- that
21 there's good integrity with that evidence, right?

22 A. Correct.

23 Q. That is, you trust the police to be honest and
24 fair in an investigation, generally, right?

25 A. Correct.

1 Q. Just as we and the jury would trust you and other
2 members of the Wisconsin Crime Lab to be honest
3 and fair in your investigation?

4 A. That's correct.

5 Q. And the reason that we can normally be
6 comfortable with that assumption, with regard to
7 your Crime Lab, is that you would never knowingly
8 assign an analyst to examine case evidence who
9 had some connection to a suspect, would you?

10 A. No.

11 Q. And I'm sure, for instance, you, yourself, if you
12 had been deposed as a witness in a lawsuit
13 brought by a suspect, you would not volunteer to
14 be the person who runs the tests in that case,
15 would you?

16 A. No.

17 Q. And you would -- If you knew that one of your
18 other analysts was also similarly situated with
19 regard to a suspect, you would not assign that
20 analyst to be handling the evidence and making
21 the tests that are done in the case, would you?

22 A. Not if they had a personal attachment to anyone
23 in the case, no.

24 Q. Sure. Because it's important for you that your
25 lab be objective in its results, correct?

1 A. Correct.

2 Q. And you are aware -- you said that you go to
3 meetings, forensic scientists test meetings and
4 that sort of thing, right?

5 A. Correct.

6 Q. You are aware that some labs in other parts of
7 the country have had trouble with that, right,
8 where analysts have been actually accused of
9 falsifying results?

10 ATTORNEY GAHN: Your Honor, I will object
11 at this time to the relevancy of other labs.

12 ATTORNEY BUTING: Well, I think it goes to
13 her procedures here.

14 THE COURT: I'm going to sustain the
15 objection. I think the point has been made.

16 Q. (By Attorney Buting)~ Well, would you agree with
17 me that if somebody in your lab was so
18 predisposed, it would be very easily -- very easy
19 for that person to frame a suspect?

20 ATTORNEY GAHN: Objection, your Honor, to
21 the form of the question and it calls for
22 speculation.

23 THE COURT: I'm going to sustain the
24 objection. I will allow this line of questioning,
25 but the hypothetical fact scenario will have to be a

1 little bit more specific.

2 Q. (By Attorney Buting)~ If somebody in your lab
3 wanted to monkey with the evidence and plant it
4 in a way that deliberately framed a suspect, that
5 could be done, couldn't it?

6 ATTORNEY GAHN: Objection, your Honor, as
7 to what he means by monkeying with the evidence.

8 THE COURT: It's sustained.

9 Q. (By Attorney Buting)~ If somebody wanted to take
10 and deliberately contaminate evidence, once it
11 got to your lab, deliberately contaminate
12 evidence, and let's say, put or mix a reference
13 sample from the suspect, with actual evidence in
14 the case, that could be done, couldn't it?

15 A. It's possible that that could be done, but --

16 Q. Sure.

17 A. -- in my opinion that wouldn't happen.

18 Q. Of course not. Because you take steps to be sure
19 that the person assigned to the case would have
20 no such inclination to do so; isn't that right?

21 A. That's correct.

22 Q. And you take steps to be sure that the person
23 assigned to the case has no stake in the outcome
24 of the testing itself or the case?

25 ATTORNEY GAHN: Objection, your Honor,

1 vague question.

2 ATTORNEY BUTING: If she needs
3 clarification she can ask.

4 THE COURT: Yeah, she can answer that.

5 THE WITNESS: I'm sorry, could you repeat
6 that.

7 Q. You take steps to be sure that the person
8 assigned to a case has no stake in the outcome of
9 the case or the test?

10 A. That's correct.

11 Q. All right. And, indeed, it's your assumption
12 that when evidence comes to you from a police
13 agency, it's your assumption that the police have
14 also taken similar stakes -- or similar steps to
15 make sure that nobody connected with the suspect
16 has been involved in the collection of the
17 evidence, isn't it?

18 ATTORNEY GAHN: Objection, your Honor,
19 speculation.

20 ATTORNEY BUTING: Asking for her
21 assumption.

22 THE COURT: She can answer.

23 A. Okay. Obviously, I don't know any of this for a
24 fact, but I would make the assumption that
25 evidence came in from the police agency was --

1 maintained integrity.

2 Q. And collected from somebody who had no connection
3 to the case, you would hope?

4 A. Yes.

5 Q. Okay. Now, in this case, I believe you said that
6 some of your duties involve case flow and case
7 management, right?

8 A. Correct.

9 Q. Does that also involve assigning particular
10 analysts to a particular case?

11 A. Yes.

12 Q. But in this case, you assigned yourself?

13 A. Correct.

14 Q. All right. And that's a decision that you make,
15 and yours alone?

16 A. Most of the time, sometimes my supervisor makes
17 that decision but, in this case, I made the
18 decision.

19 Q. All right. Mr. Gahn pointed out that you were
20 actually the analyst who did the tests that
21 resulted in exoneration of Mr. Avery in 2003,
22 right?

23 A. Correct.

24 Q. And you did that because -- in part, because
25 newer, more accurate DNA results -- or tests had

1 been developed that actually excluded Mr. Avery
2 as the source of a pubic hair?

3 A. Correct, at the time the original case was
4 worked, DNA was not available.

5 Q. Okay. But I want to get into just a little bit
6 about what that involved. What you tested were
7 pubic hairs that were found, essentially, on --
8 in the area of the victim's privates, right?

9 A. From her pubic area, yes.

10 Q. These are combings that are done to find any
11 possible pubic hairs from the assailant?

12 A. Correct.

13 Q. And your test in 2003 absolutely, positively,
14 excluded Mr. Avery as the source of one of those
15 hairs, right?

16 A. Correct.

17 Q. There was no question about that, right?

18 A. Correct.

19 Q. And it included -- or matched, a fellow by the
20 name of Gregory Allen, right?

21 A. Yes.

22 Q. And you knew that Allen was no friend of the
23 victim, so that his pubic hair shouldn't be found
24 where they were, right?

25 A. I really didn't have any knowledge of whether she

1 knew him or not, no.

2 Q. Okay. But you knew that his hairs -- or that his
3 DNA profile was registered in CODIS.

4 A. That's correct.

5 Q. And that, in fact, he was already in prison at
6 the time of 2003 when you did this test?

7 A. That's correct.

8 Q. In prison for a rape that he committed after, or
9 while Mr. Avery sat in prison for Mr. Allen's
10 crime.

11 A. That's correct.

12 Q. Now, what Mr. Gahn didn't have you point out,
13 though, let's get into a few other things;
14 although you were the one who exonerated -- or
15 whose test exonerated Mr. Avery, the evidence sat
16 at your lab for more than a year before you got
17 around to doing the test that did exonerate him,
18 right?

19 A. That's correct.

20 Q. And one of the things that you in fact said you
21 do is control priorities and case flow of what
22 gets tested when, right?

23 A. Correct.

24 Q. So, had you done that test as soon as it came in,
25 the evidence being in September of 2002, I

1 believe, Mr. Avery would have been exonerated
2 then, wouldn't he?

3 A. Correct.

4 Q. So Mr. Avery sat for another year, in prison,
5 because of the delays that resulted in your Crime
6 Lab; isn't that right?

7 A. Correct.

8 Q. Another thing Mr. Gahn didn't point out is
9 another irony in this case. Not only were you
10 involved in the 2003 exoneration of Mr. Avery,
11 but you were also involved in the 1985 conviction
12 of Mr. Avery, weren't you?

13 A. I worked evidence on that case, yes.

14 Q. And you testified as a witness for the
15 prosecution at trial in that case, didn't you?

16 A. Yes, I testified.

17 Q. In fact, the trial where he had 16 alibi
18 witnesses and was convicted included your expert
19 opinion regarding some hairs that had been found
20 and were offered by the prosecution to somehow
21 link Mr. Avery to that crime; isn't that right?

22 A. To be perfectly honest, I do not remember my
23 entire testimony from 1985.

24 Q. Well, I have it here, if you need to refer to it.
25 But I don't know that we'll get into that much

1 detail.

2 A. Okay.

3 Q. I just want the jury to understand a little
4 background, okay?

5 A. Sure.

6 Q. You do recall that you testified, generally, in
7 those terms, right?

8 A. Yes.

9 Q. Okay. And just so we understand, there were no
10 DNA tests back in 1985?

11 A. Correct.

12 Q. You were testifying about a type of so-called
13 science known as microscopic hair comparison
14 analysis, right?

15 A. Correct.

16 Q. And the theory behind that science, in 1985, was
17 that you could take a microscope with two fields
18 and that you could put one hair underneath one
19 microscope field and another hair under the
20 other, and you could examine the two of them
21 together, correct?

22 A. Correct.

23 Q. And the theory being that you could -- you
24 present this to the jury anyway, that you could
25 make some conclusions about how similar,

1 dissimilar, or consistent one hair was to the
2 other?

3 A. Correct.

4 Q. And I don't mean to be jumping all over you, you
5 were not the only person in the country doing
6 this kind of testimony in 1985, right?

7 A. That's correct.

8 Q. Forensic labs all over the country were bringing
9 in experts to testify to juries about this kind
10 of science, right?

11 A. Correct.

12 Q. Including the FBI, right?

13 A. Yes.

14 Q. Now, with the advent of DNA, the forensic
15 community discovered something about those tests,
16 right?

17 A. Correct.

18 Q. They discovered that those conclusions or
19 opinions that were being drawn by the experts,
20 such as yourself, were really not all that
21 reliable, didn't they?

22 A. Correct. They have been proven to be much less
23 specific than DNA analysis.

24 Q. All right. And even wrong on occasions, right?

25 A. Correct.

1 Q. So, for instance, in the 1985 trial of Mr. Avery,
2 there were some hairs found, head hairs I think,
3 found on a T-shirt that he was wearing on the day
4 of this poor woman's rape, right?

5 A. I don't recall exactly.

6 Q. Well, okay. Do you recall giving an opinion that
7 one hair found on Mr. Avery's T-shirt appeared to
8 be similar to or consistent with a head hair
9 standard of the victim in that case?

10 A. No, I don't recall exactly. I'm assuming it's in
11 my report, but I don't have independent
12 recollection of that.

13 Q. Would you like to take a moment to review --

14 A. Yes, sir.

15 Q. -- a portion of your transcript?

16 A. Yes, sir, I can.

17 ATTORNEY GAHN: Your Honor, at this time I
18 just question the relevancy of this to the testimony
19 that Ms Culhane gave in this case, the relevancy in
20 this 1985 case.

21 THE COURT: Mr. Buting.

22 ATTORNEY BUTING: Mr. Gahn tried to present
23 her as a totally unbiased witness for them, in the
24 event that because she -- her test in 2003 resulted
25 in the exoneration, I think the jury needs to hear

1 that she's also testified the other way for the
2 prosecution at the beginning of the trial.

3 THE COURT: As I understand your line of
4 questioning, it's an attack on the methodology that
5 was used at the time, not on her credibility.

6 ATTORNEY BUTING: Also a question on her
7 opinion and the validity of her opinions.

8 THE COURT: No, I'm going to sustain the
9 objection.

10 ATTORNEY BUTING: All right.

11 Q. (By Attorney Buting)~ Let's do it this way.
12 Would you agree with me that at least -- that
13 hair comparison, microscopic hair comparison,
14 so-called forensic science, is one example of how
15 science is not necessarily or -- or our
16 understanding of science is not necessarily
17 infallible, is it?

18 A. No. With respect to hair analysis, that was a
19 much less objective criteria than what we use
20 today. That was more subjective and open to
21 interpretation -- personal interpretation. The
22 science that we use now, today, with DNA, is much
23 more objective and much more reliable.

24 Q. Okay. But at the time you were presenting
25 testimony you expressed it in terms of a

1 reasonable degree of scientific certainty, didn't
2 you?

3 A. In 1985, I do not remember how I stated that.

4 Q. Well, in general, whether in Mr. Avery's case or
5 any of the other cases where you presented this
6 kind of hair comparison testimony, you presented
7 opinions to juries or to Courts, to a reasonable
8 degree of scientific certainty, didn't you?

9 ATTORNEY GAHN: Objection, your Honor,
10 relevancy and asked and answered.

11 THE COURT: Sustained.

12 ATTORNEY BUTING: As to which, asked and
13 answered or relevance?

14 THE COURT: To relevancy.

15 ATTORNEY BUTING: All right.

16 Q. (By Attorney Buting)~ When you talked about DNA
17 and what it is and how it's examined, you
18 mentioned -- Oh, by the way, before I leave that,
19 to your knowledge, your lab isn't going around
20 doing those kind of -- providing that kind of
21 testimony anymore, hair comparison testimony
22 anymore, are you?

23 A. No.

24 Q. And neither is the FBI, right?

25 A. I'm not sure about that.

1 Q. Okay. But going back to DNA, you said that --
2 and I don't have your -- the power point slides,
3 but I think the jury can probably recall them --
4 you showed this double helix kind of spiral thing
5 being unwound and bracketing off certain areas of
6 it, right?

7 A. Correct.

8 Q. And you talked about a part that was considered a
9 gene and a part that is not a gene, or something
10 like that?

11 A. I referred to the parts that do not function as
12 genes, and they are referred to as genetic
13 markers.

14 Q. Okay. And -- Well, I don't know if you got into
15 this or not, but let's just briefly touch on
16 this. When we're talking about genetics, you
17 recognize that certain genes are inherited by
18 everybody, right? The genes, for instance, that
19 make humans have two eyes instead of one, right?

20 A. Correct.

21 Q. Two arms instead of one?

22 A. Correct.

23 Q. Or two legs, right?

24 A. Yes.

25 Q. There were certain genes that are common to

1 everybody, unless there is some sort of birth
2 defect or genetic mutation, right?

3 A. Correct.

4 Q. And so, if you find a gene that says -- that
5 determines that this individual should have two
6 eyes, or two legs, or two arms, that's kind of
7 meaningless in terms of identifying a suspect,
8 isn't it?

9 A. Well, first of all, we don't even look at those
10 portions at all.

11 Q. I understand.

12 A. So it's irrelevant.

13 Q. But if you were to look at genes that everybody
14 has and find them in a profile, that would be
15 meaningless?

16 A. Correct.

17 Q. For your purposes?

18 A. Yes.

19 Q. As you would say, that would have zero
20 discriminating power?

21 A. Correct.

22 Q. Okay. And other more common types of genes,
23 however, are sort of individually inherited.
24 Like the gene that would say what color your hair
25 should be, may be different from what someone

1 else has, right?

2 A. Yes.

3 Q. Or what your eye color may be, right?

4 A. Correct.

5 Q. Or how tall or how short you are, ultimately,

6 going to be when you grow up?

7 A. Correct.

8 Q. Those are sort of more individual genetic

9 characteristics that are inherited at different

10 rates in the population?

11 A. Correct.

12 Q. Same thing with whether you are Type A, or Type B

13 blood, or Type O positive, or whatever?

14 A. Correct.

15 Q. And there are data banks, then, statistics that

16 can say, you know, what are the odds, or what are

17 the chances of finding, you know, a random man

18 population, somebody with blue eyes?

19 A. I don't know about that. I don't know if there's

20 a --

21 Q. You are a serologist, so let me focus on that.

22 There are statistics that talk about -- that tell

23 you what percentage of the population is Type A

24 blood?

25 A. Correct.

1 Q. And type B and so forth, right?

2 A. Yes.

3 Q. And those are well-known statistics that have
4 been developed over years of study?

5 A. Yes.

6 Q. Now, in fact, we know, or we're learning, what
7 genes actually determine someone to be -- to have
8 certain characteristics, physical or biological
9 characteristics, right?

10 A. Yes.

11 Q. Some diseases we're finding are based on a
12 particular gene someone may have, for instance?

13 A. Yes.

14 Q. Now, with DNA tests, you talked about this area
15 that's not really what you call a gene, but you
16 called it a genetic marker, right?

17 A. Correct.

18 Q. And it's an area of the DNA that's -- appears to
19 be, I think you used the term hyper variable; do
20 you recall that?

21 A. I don't recall using that term, but it is -- it's
22 extremely variable in those regions, that's
23 correct.

24 Q. Okay. But you also said that we don't know what
25 those -- what that portion of the DNA is even

1 about, why it's there, do we?

2 A. No.

3 Q. We don't know what it does, why we would have a
4 marker that would be the D21, blah, blah, blah,
5 number that you come up with in these tests?

6 A. That's correct.

7 Q. These are just things that we think, at our
8 current level of scientific knowledge, are rather
9 unique from one person to the next, when you put
10 them altogether?

11 A. Well, they are variable and that's the important
12 part of them, they vary from individual to
13 individual. Scientists don't know what their
14 function is, but for forensics, the important
15 part is that they are different from person to
16 person.

17 Q. Okay. But if science later determines that they
18 are not completely, independently inherited, that
19 they are linked together, that would really make
20 a difference for you, wouldn't it?

21 A. Yes.

22 Q. Because all of these 1 in a quintillion, or 1 in
23 a billion numbers you come up with are based on
24 the assumption that each one of those 16 numbers
25 on your power point slides are inherited

1 completely independent of each other?

2 A. That's correct.

3 Q. That is, if someone has a D21 16, they are not
4 necessarily going to be -- also have a VWA 12?

5 A. That's correct.

6 Q. All right. Let's talk about the testing process
7 just a little bit first, then we'll get into it
8 in more detail. The jury, I think, needs to
9 understand that the tests that you do in your
10 lab, or anyone does in your lab, are not what we
11 would call double blind tests?

12 A. Could you define what you mean by that.

13 Q. Or even blind tests, you never heard that term?

14 A. I have heard the term before, I'm not exactly
15 sure how you are using the term. If you could
16 define that for me.

17 Q. Well, okay. Let's say, on a proficiency test
18 that you get, that's sent to you from some lab,
19 outside lab, you have no idea what you are
20 testing, right?

21 A. Correct.

22 Q. You have no idea what's the suspect sample,
23 what's the elimination sample. You don't know
24 any of that when you do the tests, right?

25 A. Well, on a proficiency test, we know what the

1 suspect and we know what the victim are.

2 Q. Okay. So, those aren't completely blind either.

3 Let me give you an example what I mean by blind.

4 Someone gives you a sample, two reference

5 standards. And you have no idea who the suspect

6 is and who the extremely unlikely elimination

7 sample is?

8 A. Okay.

9 Q. All right. And then you get an evidence sample,

10 that's also unknown at that time?

11 A. Correct.

12 Q. If you just got those three samples and you are

13 just testing them, you have no idea which is

14 which, that's what I mean by blind testing?

15 A. Okay.

16 Q. All right. That's not what you do in your lab?

17 A. No.

18 Q. In your lab, when you get a reference sample, you

19 know -- in fact, you usually know the name of the

20 person whose reference sample you are dealing

21 with?

22 A. Yes.

23 Q. So when you test Mr. Avery's DNA sample, you knew

24 it was Mr. Avery who you were testing?

25 A. Yes.

1 Q. Or Delores Avery in her case?

2 A. Yes.

3 Q. Or Allen Avery in his case, right?

4 A. Correct.

5 Q. And you know that, and not only do you know who

6 it is you are testing, but you have some idea

7 whether they are considered a suspect in the case

8 or not?

9 A. That's correct.

10 Q. You know that because you talk with police and

11 prosecutors?

12 A. That in part and it comes into the laboratory

13 with a suspect and a victim's name.

14 Q. Oh, okay. So when you get it, you already know

15 who the suspect is?

16 A. If there is a suspect, yes.

17 Q. And in this case, there was a suspect and the

18 name given to that person was Steven Avery, when

19 it came to your lab; isn't that right?

20 A. Yes.

21 Q. Not only that, you get messages, phone messages

22 and phone conversations, in this case with

23 Mr. Fassbender, right?

24 A. Yes.

25 Q. And he kind of gives you a heads up on what to

1 look for and, you know, what happened, what they
2 think happened in the case, or at the scene?

3 A. Correct.

4 Q. And in this case, you got a number of phone calls
5 and messages from Mr. Fassbender, kind of early
6 on in the testing, right?

7 A. Yes.

8 (Exhibit No. 341 marked for identification.)

9 Q. I'm showing you Exhibit 341, does that look --
10 does that form look familiar to you?

11 A. Yes.

12 Q. This is something that's called a case
13 communication record?

14 A. Yes.

15 Q. Something that you use in your lab?

16 A. Correct.

17 Q. And what you do is, when you get a phone call
18 from somebody, you will keep jotting notes as to
19 the gist of the conversation?

20 A. That's correct.

21 Q. And did you do that in this case?

22 A. Yes.

23 Q. Is that your initials at the top?

24 A. Yes.

25 Q. Let me put this up on the ELMO. There we go.

1 All right. I apologize for the delay. Up on the
2 screen, now, is Exhibit 341. And this is one of
3 those phone messages that you got from, in this
4 case, Mr. Fassbender, correct?

5 A. Yes.

6 Q. You've got a place to indicate that, where it
7 says you check incoming, Fassbender's name, and
8 the date of this is November 11th of 2005,
9 correct?

10 A. Yes.

11 Q. And the very first thing that is indicated on
12 here is, he is telling you that there's some
13 evidence that is going to be coming or is already
14 here, right?

15 A. Yes.

16 Q. Here meaning at your lab?

17 A. Correct.

18 Q. And he says there's going to be a couple of items
19 from the house and the garage, right?

20 A. Right.

21 Q. And then he says -- or you wrote down, I assume
22 that's him telling you -- try to put her in his
23 house or garage, correct?

24 A. Correct.

25 Q. So you are being told, before you do any of these

1 tests, that Mr. Fassbender wants you to come up
2 with results that put Teresa Halbach in
3 Mr. Avery's house or garage; isn't that right?

4 A. I had that information, but that had no bearing
5 on my analysis at all.

6 Q. Of course not, but that's what you are being told
7 to do?

8 A. That was information in the investigation.

9 Q. That's what Mr. Fassbender told you he hoped you
10 would be able to do with your tests; isn't that
11 right?

12 A. Yeah, I assume so.

13 Q. Okay. You also had some emails with Mr. Kratz,
14 correct?

15 A. Yes.

16 Q. Actually, before we get to that, let me do one
17 more here.

18 (Exhibit No. 342 marked for identification.)

19 Q. I'm showing you Exhibit 342, would you be able to
20 identify that for us?

21 A. Yes.

22 Q. That's another one of those case communication
23 records?

24 A. Yes.

25 Q. But this one, though, is dated December 15th?

1 A. Correct.

2 Q. Concerns another phone conversation with
3 Mr. Fassbender?

4 A. Yes.

5 Q. Mind if I put it up on the ELMO now?

6 A. No.

7 Q. This is, again, an incoming call where
8 Mr. Fassbender is calling you, right?

9 A. Yes.

10 Q. Now, the first entry we should clarify a little
11 bit, it says swab keys and collect swabs, no need
12 to analyze at this time, right?

13 A. Correct.

14 Q. Just so we're not confused, the jury is not
15 confused, that is not in reference to this Toyota
16 key that was brought to you earlier, right?

17 A. Correct.

18 Q. That was a completely separate test that was
19 done. This is some other keys that they brought
20 to you?

21 A. Yes, this was referencing some additional keys.

22 Q. It also says, like a couple days later, four days
23 later, that Mr. Fassbender wants you to swab
24 handcuffs and leg irons, right?

25 A. Yes.

1 Q. As well as the license plates from the RAV 4 and
2 to check the .22 caliber gun, Item DD, for any
3 indication of the victim's blood on the barrel,
4 right?

5 A. Yes.

6 Q. And also to swab the trigger guard area to
7 compare with Steve Avery?

8 A. Correct.

9 Q. And we'll get into this with a little more detail
10 with some of the other things first, but as long
11 as we're at these phone messages, let me just
12 clear this up. You did do that in this case,
13 right?

14 A. Yes.

15 Q. You swabbed the handcuffs and the leg irons?

16 A. Yes.

17 Q. And you found no DNA of Teresa Halbach on those
18 items, did you?

19 A. No.

20 Q. And you swabbed the license plates and you found
21 no usable DNA that you could draw any conclusions
22 from, right?

23 A. Right.

24 Q. And you checked the Item DD, .22 caliber gun,
25 that's a rifle, right?

1 A. Yes.

2 Q. You looked for any blood of the victim on the
3 barrel, right?

4 A. Correct.

5 Q. You found no DNA of Teresa Halbach on that
6 barrel?

7 A. Correct.

8 Q. You looked at the trigger guard as well, not just
9 the trigger guard, but the trigger itself?

10 A. Yes.

11 Q. You swabbed both, right?

12 A. Yes.

13 Q. And you found no DNA of Mr. Avery, right?

14 A. Correct.

15 Q. Okay. And as to the handcuffs and leg irons, you
16 did find some DNA on it, though, didn't you?

17 A. Yes, I did.

18 Q. You found Mr. Avery's own DNA?

19 A. In a mixture sample, yes.

20 Q. In a mixture with some other male, right?

21 A. I can't tell for sure whether it was a male or a
22 female.

23 Q. Well, it wasn't a mixture with Teresa Halbach?

24 A. Correct.

25 Q. And the fact that you found DNA of any kind on

1 the handcuffs, is an indication to you that they
2 hadn't been wiped down with bleach, isn't it?

3 A. That would be correct.

4 Q. Okay. And you, of course, had no idea, way of
5 knowing how old that DNA that you did find, from
6 Mr. Avery, on those handcuffs or leg irons was,
7 right?

8 A. Right.

9 Q. That's one thing about DNA, when you find a
10 profile, you can't tell when it is -- or when it
11 was originally deposited, correct?

12 A. Yes, that's correct.

13 Q. You find DNA sometimes in mummies thousands of
14 years old.

15 A. That's correct.

16 Q. Okay. Now, I have used the term elimination
17 samples today. I don't believe you used that
18 term yesterday -- or Friday; do you recall?

19 A. I don't recall.

20 Q. With Mr. Gahn, you referred to samples as
21 exemplars or reference samples, correct?

22 A. Correct.

23 Q. That's because the term elimination samples has a
24 meaning behind it, that the others don't?

25 A. That's correct.

1 Q. Elimination sample is something that you refer to
2 when you are just trying to eliminate somebody as
3 a source?

4 A. Correct. That would be -- excuse me -- that
5 would be a situation where it was a case and
6 perhaps you knew that someone's DNA was there
7 ahead of time, and the elimination sample, for
8 instance in a sexual assault case, and someone
9 had consensual sex, then you would have an
10 elimination standard from that consensual sex
11 partner.

12 Q. Right. So in that circumstance, there would
13 be -- it's just sort of assumed, there's really
14 no question or doubt, that the sample that you
15 are looking at has nothing to do with the case?

16 A. It just helps us sort that out if we find a
17 mixture of DNA. An elimination sample would help
18 us sort out who the possible contributors are.

19 Q. Right. With the understanding that that person
20 you are trying to eliminate is not a suspect?

21 A. Correct.

22 Q. Okay.

23 ATTORNEY GAHN: Your Honor, the State would
24 like to be heard on this outside the presence of the
25 jury.

1 THE COURT: Very well, at this time we'll
2 excuse the members of the jury for the Court to hear
3 argument. Again, members of the jury do not discuss
4 the case or any portion of the testimony you heard
5 today, on your break. You are excused.

6 (Jury not present.).

7 THE COURT: You may be seated.

8 ATTORNEY BUTING: May I go ahead and mark
9 this so we know what we're talking about. I will
10 mark this one because it's not highlighted.

11 (Exhibit No. 343 marked for identification.)

12 ATTORNEY BUTING: Just by way of
13 explanation, what I'm attempting to do at this point
14 is show Ms Culhane an email that she received. I
15 guess it's from Mr. Kratz. I do not intend to
16 actually offer this into -- Well, I don't intend all
17 the content of this email to come into this case, or
18 to be sent to the jury, but I do wish one particular
19 line of it where Mr. Kratz is telling the witness
20 certain samples that he refers to as elimination
21 samples. That's my only purpose. I don't know if
22 counsel objects to that limited use.

23 THE COURT: Mr. Gahn.

24 ATTORNEY GAHN: Can I see that again,
25 please.

1 ATTORNEY BUTING: I don't know if we need
2 to send the witness out at this point. If there's
3 any lengthy argument, we will otherwise.

4 THE COURT: I guess I'm anticipating the
5 objection, if it's what I'm thinking it's going to
6 be I don't know that it's necessary to send the
7 witness out, but I will defer to the attorneys on
8 that one.

9 ATTORNEY GAHN: Our position, your Honor,
10 is that this email is dated February 7, 2006, and
11 this is well after charges being brought in the
12 Criminal Complaint against Mr. Avery. This is
13 clearly work product on the part of Mr. Kratz. He's
14 talking to his witness, Ms Culhane, and basically
15 talking trial strategy, how to go about the case,
16 testing certain exemplars, or items of evidence, and
17 it's just clearly a work product.

18 ATTORNEY BUTING: Judge, first of all, if
19 it is work product, that privilege is waived by
20 turning it over in discovery, in my view. But I'm
21 not really getting into work product. And I'm
22 sensitive to that concern and I don't usually like
23 to use emails in court at all. But here, I'm simply
24 using it for one limited purpose, and that is her
25 understanding of the characterization of specific

1 samples as being elimination samples.

2 Those are Chuck, Earl, and Bobby. And
3 that's really all I want to get into with this
4 particular document.

5 THE COURT: Seems to me that point can be
6 made without reference to this document.

7 ATTORNEY BUTING: If she can recall it and
8 if she can say she's aware that they were described
9 in those terms, sure, we can do that.

10 THE COURT: Does the State have any
11 objection of letting the witness take a look at the
12 email before she testifies and then we can bring the
13 jury back in without introducing the email?

14 ATTORNEY GAHN: That's fine.

15 THE COURT: All right.

16 ATTORNEY GAHN: As long as Mr. Kratz is not
17 going to be mentioned in your question that Chuck,
18 Earl, and Earl's samples were -- could be considered
19 elimination samples. That's all you want to say?

20 ATTORNEY BUTING: We could just say
21 submitted by the State, whether it's police or
22 prosecution is -- is not disclosed.

23 THE COURT: I may be wrong, but I thought
24 there's been evidence already about elimination
25 samples taken from other members of the Avery

1 family. So I don't think the subject matter is a
2 problem. And I don't see a need to phrase the
3 question such that it would involve any
4 attorney/client work product. So let's have the
5 witness take a look at the email, if she needs it to
6 refresh her memory, and I then think the question
7 can be asked without suggesting that it involves a
8 conversation with the attorneys.

9 All right. Mr. Buting, I think you can
10 retrieve the document now, I believe the witness
11 has reviewed it.

12 ATTORNEY BUTING: Okay. Are we ready to
13 go?

14 ATTORNEY GAHN: Are there additional emails
15 that you intend --

16 ATTORNEY BUTING: No, this is all.

17 ATTORNEY GAHN: Could I just look at that
18 one more time?

19 ATTORNEY BUTING: Sure. There are other
20 items that I'm not going to introduce.

21 ATTORNEY GAHN: We're ready to proceed,
22 your Honor.

23 THE COURT: All right. Mr. Buting, do you
24 want to retrieve the document you gave the witness.

25 ATTORNEY BUTING: Yes. And just so the

1 record is clear, I'm not going to offer this as an
2 exhibit. It's been marked, for the record, but this
3 will be one of those where it's just part of the
4 record, but it's not evidence in this trial.

5 THE COURT: Very well.

6 ATTORNEY BUTING: Is that fair? Okay.

7 (Jury present.)

8 THE COURT: You may be seated. Mr. Buting,
9 you may continue.

10 ATTORNEY BUTING: Thank you, your Honor.

11 Q. (By Attorney Buting)~ Now, Ms Culhane, you
12 received a number of samples, not just
13 Mr. Avery's, to compare the various pieces of
14 possible evidence in the case, right?

15 A. Correct.

16 Q. And when you received a sample -- that is a DNA
17 standard of Chuck Avery -- first let me establish
18 that you did. You received an exemplar standard
19 of Chuck Avery, Earl Avery, and Bobby Dassey,
20 right?

21 A. Yes.

22 Q. Among some others?

23 A. Yes.

24 Q. Like the parents, Mr. and Mrs. Avery --

25 A. Yes.

1 Q. -- right? And when you received those samples,
2 you were asked to do a profile for each of them,
3 right?

4 A. Yes.

5 Q. And when you were asked to do a profile for each
6 of them, those samples were referred to you as
7 elimination standards, correct?

8 A. Yes.

9 Q. Which to your mind, and your understanding, would
10 seem to indicate that you were not to consider
11 any one of those three, Chuck, Earl, or Bobby, as
12 suspects?

13 A. That's not entirely correct. When I'm submitted
14 a standard, it doesn't really matter if you call
15 it an elimination standard, or a reference
16 sample, if it fits the profile, the evidence
17 sample, then it's reported on. If it's a match,
18 it's reported on. Whether it's submitted as an
19 elimination sample or as a reference standard,
20 it's interpreted in exactly the same way.

21 So, if any of those elimination samples,
22 or reference samples, are excluded, no matter
23 what the evidence is, and no matter what you call
24 them, then that's how it would be reported.

25 Q. Sure. So if you get something that is told to

1 you by the police as an elimination standard, and
2 it hits, it matches some kind of crime scene
3 evidence, you are going to report that, of
4 course, right?

5 A. Yes.

6 Q. But the very fact that the items come to you with
7 that designation, elimination standard, tells you
8 something about what the police theory, or what
9 they believe those samples relate to, whether
10 they are a suspect or not?

11 A. Correct.

12 Q. Okay. Let me go back for a minute and talk about
13 your background. I don't recall what exhibit it
14 is that is your curriculum vitae, but I just want
15 to clarify a few things. You have got a
16 bachelor's degree in biological science; is that
17 right?

18 A. Yes.

19 Q. And you actually went to two colleges, though.
20 Your first college was Millsaps, M-i-l-l-s-a-p-s,
21 College in Jackson, Mississippi?

22 A. Yes.

23 Q. You went there for just two years?

24 A. Yes.

25 Q. And then you transferred to Mississippi College

1 to complete your undergraduate education, right?

2 A. Correct.

3 Q. Are you originally from that area, is that why
4 you were going to school down there?

5 A. Yes, I'm from Jackson.

6 Q. Okay. And then you got your bachelor of science
7 in 1978?

8 A. Yes.

9 Q. You did not go on and get a master's degree,
10 right?

11 A. Correct.

12 Q. Never in all your years since, have you gone back
13 to try and get a master's?

14 A. That's correct.

15 Q. I don't see anything in your CV that shows that
16 you worked as a research scientist, right?

17 A. No, I didn't.

18 Q. You have little or no publications in the field?

19 A. No, I have no publications.

20 Q. Okay. And I don't see in here that you do any
21 kind of public speaking, or teaching to other
22 forensic scientists, outside of your own lab, in
23 Wisconsin?

24 A. Actually, I did present a paper at one of the
25 Promega User's Meetings, because we were involved

1 in the original validation of the Power Point 16
2 Kit. And I did present a paper at that meeting.

3 Q. Okay. But that's the only time?

4 A. That's correct.

5 Q. And we'll talk a little bit more about validation
6 in a few minutes. It's not really clear to me
7 what jobs you had before you came to Wisconsin.
8 Was it just working at the Jefferson Parish
9 Sheriff's Office Crime Lab, or did you have some
10 other employment between 1978 and 1984?

11 A. No, I worked at the Jefferson Parish Crime Lab
12 for two and a half, three years, I don't remember
13 exactly, then I came to Wisconsin. And then
14 after a year I was in Wisconsin, I was hired by
15 the Crime Lab.

16 Q. Okay. And now it's been 23 years that you have
17 been on the job at the Wisconsin Crime Lab?

18 A. That's correct.

19 Q. And your current title is DNA Technical Unit
20 Leader?

21 A. Yes.

22 Q. A position that you were appointed to in 1997?

23 A. Yes.

24 Q. Now, is that a position that requires -- Well,
25 obviously, doesn't require a master's degree,

1 right?

2 A. Actually, it does. At the time -- time frame
3 when I was appointed to this position, the DNA
4 Advisory Board offered, was referred to as a
5 waiver for individuals who had a certain amount
6 of experience in forensics. In order to get that
7 waiver, I had to go back to school and take
8 molecular biology, statistics, and bio-chemistry
9 classes, which were all at UW Madison or online.

10 Q. Okay.

11 A. So those requirements were filled. Now, anyone
12 after a certain period of time, it does require a
13 masters.

14 Q. Okay. So you were sort of grandfathered in with
15 this other way of getting some additional
16 educational miles, right?

17 A. Right. And because of my experience.

18 Q. Okay. So it's kind of a seniority thing, too,
19 because you have been there longer than most
20 people?

21 A. Because I have experience, that's correct.

22 Q. Okay. Now, this current position as technical
23 leader, you discussed as having some
24 administrative duties, right?

25 A. Yes.

1 Q. And also some training duties?

2 A. Yes.

3 Q. And then, also, some actual DNA testing?

4 A. Correct.

5 Q. Can you tell me what percentage of your job
6 involves each?

7 A. Probably 70 percent is actual case work. The
8 duties with training varies according to how many
9 people we have in training. When everyone is
10 trained and there are no new analysts, then I
11 don't have any training responsibilities. But
12 when we hire a new analyst, then I do spend a
13 considerable amount of time training them.
14 Overall, I would guess 70 percent is spent on
15 case work.

16 Q. So about 30 percent less case load, generally,
17 than the other analysts?

18 A. That's correct.

19 Q. Okay. Let's talk about quality control, what you
20 know about it in your lab, and just in general.
21 You talked a lot about accreditation, right?

22 A. Yes.

23 Q. How important that is?

24 A. Yes.

25 Q. How rigorous the process is, right?

1 A. Yes.

2 Q. And one part of that is -- in fact, a big part of
3 it, is these outside auditors, whatever you want
4 to call them, outside overseers, look at the
5 protocols that you are using to do certain tests,
6 right?

7 A. Yes.

8 Q. And the -- there's various, I assume, accrediting
9 type boards in different forensic fields?

10 A. I believe there are several different accrediting
11 institutions depending on what type of work.
12 There's one for paternity testing. Most forensic
13 labs have an ASCLD accreditation.

14 Q. Okay. And certainly part of that is DNA
15 protocols, right?

16 A. Yes.

17 Q. But more than that, it's also what other kind of
18 test protocols your lab is following?

19 A. Are you referring to other sections?

20 Q. Yes, other sections.

21 A. Yes, each section has their own protocols. And
22 then we have lab-wide quality control standards
23 that everyone follows, basically the same.

24 Q. Okay. So, for instance, fingerprints, whatever
25 that's called, identification division?

1 A. Yes.

2 Q. They have a specific protocol or number of steps
3 they follow in order to come to a conclusion,
4 right?

5 A. Correct.

6 Q. Ballistics the same way?

7 A. Yes.

8 Q. DNA, the same way?

9 A. Yes.

10 Q. And like trace -- let's say, one subsection of
11 the trace division seems to be like volatile
12 chemicals?

13 A. I believe so.

14 Q. So, in other words, there's -- in order for --
15 let's say someone comes -- brings in evidence
16 from an arson, and the Crime Lab is asked to do
17 these chemicals tests to determine whether there
18 might be volatile chemicals like gasoline or
19 something like that?

20 A. I believe so.

21 Q. Okay. And there's a protocol that they have to
22 follow in order to do that test?

23 A. Yes.

24 Q. And these protocols are developed after a lengthy
25 process, right?

1 A. Correct.

2 Q. They are peer reviewed?

3 A. Yes.

4 Q. And peer reviewed means that they are published
5 so that other scientists, even in other parts of
6 the country or world, can also try the same
7 protocol and see if they get the same result?

8 A. Yes.

9 Q. They want to replicate, they want to be able to
10 do the very same tests elsewhere and find that
11 the results are valid and reliable?

12 A. That's correct. And it also allows laboratories
13 to compare results and exchange information.

14 Q. Okay. And that's really -- that's part of the
15 scientific process?

16 A. Right.

17 Q. Just in general, the whole idea that someone
18 comes up with a theory, until it can be tested
19 and repeated by others, it's just a theory,
20 right?

21 A. Yes.

22 Q. And it becomes science after others have been
23 able to test the theory over and over and
24 replicate it, right?

25 A. Yes.

1 Q. And sometimes that can take years before
2 something rises to the level where it's
3 considered science in the community, right?

4 A. That would be correct.

5 Q. And that's true of protocols, a protocol is a
6 plan, basically, a plan or method in which to
7 test some item to get to a particular end result;
8 would that be fair?

9 A. Yes.

10 Q. And those can take years, certainly months,
11 sometimes years, to test over, and over, and
12 over, to be sure that others can get the same
13 results?

14 A. Well, most of the time, when we're introducing a
15 new protocol, it has been tested by -- like if
16 the company that would provide the reagents and
17 the equipment that we use to test it. And that
18 would be a development validation.

19 In our laboratory, we don't necessarily
20 go through a developmental validation, which
21 would be more like research. We basically test
22 it to make sure that it works in our laboratory.
23 And that doesn't really take years.

24 Q. Sure. But the development by the -- in your
25 example was a reagent, or use of a reagent. But

1 development by that chemical lab can take quite a
2 while?

3 A. Yes.

4 Q. And you don't pick it up as something to use in
5 your lab until it's already been -- until you are
6 satisfied that it's been tested, retested, and
7 it's a valid reagent.

8 A. Correct.

9 Q. Now, these audits you mention, these audits are
10 something that are done for government labs as
11 well as private labs, right?

12 A. I believe so.

13 Q. So, it's not like government labs are somehow
14 exempt from the usual examination of auditors
15 just because they are government, right?

16 A. Right.

17 Q. We don't just say, you know, we're the
18 government, trust us?

19 A. That's correct.

20 Q. You guys have to prove your validity, your
21 reliability, scientifically, like any other lab?

22 A. Correct.

23 Q. That's true of the Wisconsin State Crime Lab,
24 right?

25 A. Yes.

1 Q. It's true of all government labs that you are
2 aware of?

3 A. If you're accredited -- We all have to follow the
4 same rules if you are accredited by ASCLD.

5 Q. Okay. And this whole accreditation process
6 involves auditors at the very beginning getting
7 the protocols, the test plans, and reviewing
8 those before they ever get to your lab, right?

9 A. That's correct.

10 Q. And only then, if those protocols pass the peer
11 review, at least that level of peer review from
12 outside auditors, do they even take the next step
13 of coming to your lab?

14 A. Well, our protocols are set in place and they are
15 given to the auditors so that they are familiar
16 with our procedures before they come to the lab.
17 And then, when they come to the lab, they verify
18 that we're following our protocols.

19 Q. So if you came up with a brand new protocol,
20 never before done anywhere in the country, and
21 you sent it off to these auditors and it had
22 never been peer reviewed, what do you think they
23 would say?

24 ATTORNEY GAHN: Very speculative, no
25 foundation.

1 THE COURT: I'm going to sustain the
2 objection. I think this might be more related to
3 some other issue that doesn't involve this witness.

4 ATTORNEY BUTING: Well, I think this
5 witness can testify, she's a scientist that was
6 involved with quality control in her lab. I think I
7 should be allowed to explore her understanding and
8 knowledge of the development of protocols.

9 THE COURT: I don't think it's specifically
10 related enough for the topic for which it's being
11 introduced to be relevant, so I'm sustaining the
12 objection.

13 Q. (By Attorney Buting)~ Okay. Have you ever, in
14 your lab, submitted a brand new protocol for a
15 test that had never been done anywhere else in
16 the country?

17 A. I can only speak to what's been done in DNA. I
18 don't have knowledge of any of the other sections
19 or what they have done. In DNA, the protocols
20 that we use have been peer reviewed and
21 validated, developmental as well as the internal
22 validation.

23 Q. All right. And so you are comfortable with the
24 protocols because of that.

25 A. Yes.

1 Q. And you would not submit a brand new protocol,
2 never done before, for your DNA test, and expect
3 to pass accreditation with that, would you?

4 ATTORNEY GAHN: Objection, your Honor, to
5 the form of the question.

6 THE COURT: Sustained.

7 Q. (By Attorney Buting)~ All right. So let me move
8 on a little bit. Your auditors come after they
9 get the protocols and they check out the lab,
10 right?

11 A. Yes.

12 Q. They check out the analysts, by way of
13 proficiency tests?

14 A. Correct.

15 Q. And they also check out security and that whole
16 process?

17 A. Yes.

18 Q. Like chain of custody?

19 A. Correct.

20 Q. Let's talk about that for a moment. Wisconsin's
21 Crime Lab's chain of custody procedure, I believe
22 you testified the agency submits it, usually
23 police, bring it into your lab, some central
24 gathering person, right?

25 A. Yes.

1 Q. What do you call them?

2 A. We have three evidence specialists.

3 Q. And what they do is, they look at the evidence.

4 You said they make sure it's sealed, right?

5 A. Yes.

6 Q. They give it one of these numbers, or you call

7 them numbers but they are often letters, right?

8 A. Well, a lab number refers to the whole case, and

9 then an item designation and a letter.

10 Q. Okay. So the lab number in this case is -- well,

11 I don't expect you to have it memorized, but it's

12 M05-2467.

13 A. Yes.

14 Q. Okay. Then you do have it memorized. And then

15 as the items come in they get named, or

16 designated, item A, B, C, all the way through the

17 alphabet?

18 A. Right.

19 Q. Then they start getting called AA, AB, AC all the

20 way through the alphabet that way?

21 A. Yes.

22 Q. Where do they go after that, B?

23 A. BA.

24 Q. BB, BC, BD, and you keep on going.

25 A. Right.

1 Q. And in this case, probably you got higher
2 designations than any other case that's ever come
3 to your lab?

4 A. I believe that's correct.

5 Q. Three hundred fifty you said, right?

6 A. About that, yes.

7 Q. And when that happens, when it first comes in,
8 this evidence specialist not only gives it a
9 designation, but then fills out some kind of form
10 that verifies the evidence has come into the lab,
11 right?

12 A. Yes.

13 Q. And at the end of the case, or whatever, at
14 whatever point your lab decides to send the
15 evidence back to the submitting agency, they
16 submit another -- or fill out another form,
17 right?

18 A. Yes.

19 Q. And that form is called an Evidence Release
20 Return Form?

21 A. Yes.

22 ATTORNEY GAHN: Again, your Honor, we're
23 going to have to be heard on this.

24 THE COURT: All right. Members of the
25 jury, I think what I will do at this time is excuse

1 you for your morning break. And we'll resume with
2 testimony after the break is complete. I will
3 remind you, again, not to discuss this matter during
4 the break. Jury is excused.

5 (Jury not present.)

6 THE COURT: You may be seated.

7 ATTORNEY BUTING: Excuse the witness,
8 please.

9 THE COURT: I'm going to excuse the witness
10 right now. You are excused. Mr. Gahn.

11 ATTORNEY GAHN: Your Honor, Mr. Buting has
12 presented a form here from the -- used by the Crime
13 Lab. It's an Evidence Release Return Form. But,
14 again, I guess I would like to see an offer of proof
15 of where are we going with this 1985 case. This had
16 to do with the 1985 case, when that evidence was
17 returned, to whom it was returned, and I just fail
18 to see the relevancy of going down this road at this
19 point.

20 THE COURT: Can somebody give me a copy of
21 the offered exhibit?

22 ATTORNEY BUTING: Should I mark it?

23 THE COURT: I think we should mark it.

24 ATTORNEY GAHN: My understanding, your
25 Honor, is they have stated their defense, it's this

1 planting of the blood vial. And this has nothing to
2 do with the blood vial, or anything remotely
3 connected.

4 ATTORNEY BUTING: Judge, what it is is a
5 record regularly kept in the course of her business.
6 She's going to be able to easily identify it. She's
7 talked about the 2003 exoneration. It shows that
8 Mr. Avery's buccal swabs --

9 THE COURT: Is your microphone on?

10 ATTORNEY BUTING: Yes. It shows that
11 Mr. Avery's buccal swabs, that used to be in the
12 custody of the Crime Lab, were sent back to the
13 Manitowoc County Sheriff's Department in 2003.

14 THE COURT: All right. I had understood
15 that the blood that was in the Clerk's Office was
16 going to be the subject of the defense. How does
17 this exhibit relate to that defense?

18 ATTORNEY BUTING: Well, this witness has
19 testified that there's DNA found on items that she
20 said she didn't see any blood, which could have come
21 from buccal swabs. So she's already testified to
22 that, so it's in play, whether or not the Manitowoc
23 Sheriff's Department had any of Mr. Avery's DNA in
24 another form, which they did.

25 THE COURT: Do we know if these items,

1 which on their face at least, say they are sealed,
2 are still sealed somewhere in the Sheriff's
3 Department Office?

4 ATTORNEY BUTING: That would be the subject
5 of testimony later, I suspect. But at this point,
6 all I'm doing is showing that they are not still at
7 the Crime Lab, that they were sent back to the
8 submitting agency, in this case, Detective Remiker.

9 THE COURT: Mr. Gahn.

10 ATTORNEY GAHN: Well, your Honor, I guess I
11 don't understand what's happening here. Is -- Now,
12 are we switching that the planting did not come from
13 the blood, but the planting now came from the buccal
14 swabs of Steven Avery? Is that what the defense is
15 stating now? Are they switching and changing their
16 theory of defense, that it's no longer from the
17 blood vial that's in the Clerk's Office, but now the
18 planting took place with buccal swabs of Steven
19 Avery? Now this is new --

20 ATTORNEY BUTING: Judge, this is not new.
21 We have alleged -- Look, they brought up, on direct,
22 that there was DNA that she discovered that she said
23 did not appear to come from blood. So it had to
24 come from another source. This is another source,
25 that according to this record at least, was sent

1 back to Manitowoc County Sheriff's Department. And
2 we will tie it up later when we establish that it is
3 in fact still in the Manitowoc Sheriff's Department,
4 or at least it was as of October -- or November 5th,
5 whatever, 2005.

6 ATTORNEY GAHN: Your Honor, I guess their
7 offer of proof in this case, which the Court
8 required, and in their offer of proof, it was the
9 planting was done by the blood vial. Simple as
10 that. That was it. Now they are going off on this
11 buccal swab now, that the planting may have come
12 from there. And I don't --

13 ATTORNEY BUTING: Judge, I don't mean to
14 cut counsel off, but it is in response to testimony
15 they elicited here, that some of it, some of the DNA
16 apparently did not come from blood. Now, we have a
17 right to respond to that and this is a response. It
18 is not an explanation for the blood in the RAV 4.

19 THE COURT: Right.

20 ATTORNEY BUTING: Maybe an explanation for
21 some of the other.

22 THE COURT: My recollection is that the
23 previous contested hearing involved the blood vial.
24 I don't know that I was asked to rule on anything
25 other than the vial. I believe the evidence first

1 came up at that point, that there was some DNA
2 evidence of Mr. Avery, apparently not from blood,
3 that was found, if I recall correctly, on the Toyota
4 key and on the hood latch.

5 And so I don't think I can say that this
6 exhibit would not be relevant. The State is free
7 to show in rebuttal or as part of it's
8 case-in-chief that these samples are still sealed
9 somewhere in the Sheriff's Office. I think it is
10 relevant. So after we get back from our break, I
11 will allow the defense to pursue this matter.

12 ATTORNEY BUTING: Thank you. What time did
13 you say?

14 THE COURT: Let's come back in 15 minutes.

15 ATTORNEY BUTING: All right. Thank you.

16 (Recess taken.)

17 (Jury present.)

18 THE COURT: At this time the witness can be
19 brought back into the courtroom. Attorney Buting,
20 you may resume.

21 ATTORNEY BUTING: Thank you, your Honor.

22 **CROSS-EXAMINATION CONTD.**

23 BY ATTORNEY BUTING:

24 Q. Now, Ms Culhane, we were talking about, before
25 the break, about this process that you go through

1 when -- your lab goes through when evidence is
2 brought in from the agency and, actually, also,
3 when it's returned to the agency, correct?

4 A. Yes.

5 Q. I'm showing you Exhibit 344, can you identify
6 that?

7 A. Yes, this is a copy of our -- the forms that we
8 fill out when we send evidence back to the
9 agency.

10 Q. Okay. And this is a regular record that's used
11 by your lab in the course of business,
12 day-to-day?

13 A. Yes.

14 Q. Okay. And it's meant, as part of a chain of
15 custody, to document where evidence goes, who has
16 it at any given time?

17 A. Right.

18 Q. When you're done with it, you want to make sure
19 it's clear you are done with it, it is no longer
20 your responsibility, from that point on?

21 A. Right.

22 Q. All right. I'm just going to put up here, on the
23 ELMO, Exhibit 344. And this has a case number on
24 it, rather old case number, right?

25 A. Yes, that's actually the agency number. I would

1 recognize it by our lab number, which is on the
2 other side.

3 Q. I'm sorry, let's move over here.

4 A. There you go.

5 Q. And the 85 -- M85, 85 refers to the year of the
6 case that it's submitted to you?

7 A. Yes.

8 Q. So that would be 1985?

9 A. Yes.

10 Q. So this is actually an Evidence Release Form
11 relating to Mr. Avery's 1985 conviction, right?

12 A. Correct.

13 Q. And the last item number, W, designated W, at the
14 bottom there, says one sealed envelope
15 containing -- I always call it buccal, is it
16 buccal?

17 A. Buccal.

18 Q. Buccal. Containing buccal swabs reportedly
19 recovered from Steven Avery, right?

20 A. Yes.

21 Q. And by this form, what you are saying is that --
22 moving it to show the date here -- the date is
23 October 13th of 2003, right.

24 A. Could you slide it over just a little bit?

25 Q. Sure. Let me zoom out of it, maybe we can see.

1 Does that help?

2 A. Yeah. It was released from our lab on September
3 25th, 2003.

4 Q. Okay.

5 A. And it was signed for at Manitowoc Sheriff's
6 Department on 10/13/03?

7 Q. And the name of the person who is signing it is
8 Detective Remiker, or Dave Remiker?

9 A. It appears to be.

10 Q. Manitowoc Sheriff's Department, right?

11 A. Yes.

12 Q. That's the printed name and then there's a
13 signature next to it, which I assume you can't
14 identify yourself?

15 A. No.

16 Q. Do you know Mr. Remiker?

17 A. No.

18 Q. Okay. So, what this document tells you, then, is
19 that on -- in September of 2003, you returned
20 Mr. Avery's buccal swab reference sample to the
21 Manitowoc County Sheriff's Department?

22 A. Yes.

23 Q. Okay. Now, back to the internal chain of
24 custody. When the evidence first comes in to
25 this evidence specialist; we saw a name up there,

1 Sue Glitchel, I think it was?

2 A. Gitchel, yes.

3 Q. G-l-i --

4 A. G-i-t-c-h-e-l.

5 Q. G-i-t-c-h-e-l. Fran Lutz is another one?

6 A. Mm-hmm.

7 Q. L-u-t-z?

8 A. Yes.

9 Q. Anyway, they take it and they put it in some sort
10 of communal storage room; is that what happens?

11 A. Yes.

12 Q. And that's a locked room?

13 A. Yes.

14 Q. That only certain people can come and go?

15 A. That's correct.

16 Q. Those people include the individual DNA analysts,
17 right?

18 A. No.

19 Q. No?

20 A. No, it's only evidence specialists, the
21 supervisors, and our director.

22 Q. So when you need to go work on something that's a
23 part of evidence that's been brought in, you have
24 to go check in with the evidence custodian?

25 A. Yes. And we request evidence and then they bring

1 it to -- there's a window there, they bring it to
2 us, and then we take custody of it.

3 Q. Okay. And somewhere it's marked that you now
4 have custody of it, rather than the central
5 storage?

6 A. Yes.

7 Q. Okay. And then when you take it, you or any of
8 the analysts take it into your possession, you
9 bring it over to your lab bench?

10 A. Yes.

11 Q. Do you have some sort of storage lockers there?

12 A. Yes, in the front part of our lab bench.

13 Q. And can you just describe what those are, what
14 they look like?

15 A. The front of our lab bench, they are probably
16 about this deep and maybe, I don't know, 3,
17 6 feet long. And they have shelves in them.

18 Q. The lab benches are about 6 feet long?

19 A. Well, I don't remember. There's shelving inside
20 there and they are on the front of our lab bench
21 where we do our work space. And then on the
22 front we have cabinets that we can put evidence
23 in.

24 Q. Okay. And is there more than one on each bench?

25 A. The benches in the lab are T-shaped. There's one

1 analyst on each side. I have -- Each analyst has
2 two cupboards for storage.

3 Q. Okay. When you say cupboards for storage, these
4 are like drawers?

5 A. No, you just open the door and there's shelving.

6 Q. Okay. There's shelves underneath the bench you
7 are actually working on?

8 A. Yes.

9 Q. That's the lab bench where you are doing certain
10 tests?

11 A. Yes.

12 Q. Extractions usually?

13 A. Yes.

14 Q. Okay. And are these cupboards or these shelves
15 you are talking about, are they -- they have
16 doors on them?

17 A. Yes.

18 Q. Are they like open wire mesh kind of doors?

19 A. No, they are regular locked wooden doors.

20 Q. Solid doors?

21 A. Yes.

22 Q. And they have locks on them?

23 A. Yes.

24 Q. And there's two separate shelves, or two separate
25 cupboards?

1 A. There's two shelves in each cupboard and there's
2 two separate cupboards.

3 Q. Okay. And each analyst has two of those?

4 A. Yes.

5 Q. And that's so that if you are working on one big
6 case, you don't mix up the items from that case
7 with some other case you are working on?

8 A. Yes, it's just storage space for evidence that's
9 being worked.

10 Q. So you wouldn't mix one case -- evidence from one
11 case that you are working and put it in the same
12 cupboard with another?

13 A. No. We do store several cases, but the cases
14 are -- the items of evidence within the case are
15 packaged and sealed.

16 Q. Sure. All right. So you -- you do try and keep
17 the evidence from one case all together?

18 A. We try, yes. But we have several cases in that
19 area at the same time.

20 Q. Okay. And so in this case, when you would be
21 working on any of the evidence in this case, you
22 would try and keep all of the evidence that's not
23 up on the bench, you would try and keep it all in
24 one cupboard?

25 A. Yes.

1 Q. All right. And is the key that only you have to
2 the cupboard, or do all the analysts keys work on
3 the same cupboard?

4 A. All the analysts have a key.

5 Q. And the key works for all of these cupboards?

6 A. Yes.

7 Q. So you could open up someone else's cupboard?

8 A. Yes.

9 Q. Or they could open up yours?

10 A. Yes.

11 Q. Okay. Not that you would want to, but I'm just
12 trying to establish that for the record?

13 A. Right.

14 Q. Now, when you take evidence out of your cupboard
15 and start working it on your bench, is it always
16 put back at the end of the day and locked in the
17 cupboard?

18 A. No.

19 Q. Sometimes you have tests and things that work
20 overnight, right?

21 A. Yes.

22 Q. All right. Now, in this case, you worked a
23 little bit differently with regard to the RAV 4
24 stains, because you are the one who actually took
25 them in?

1 A. That's correct.

2 Q. So instead of the police department delivering
3 swabs of these stains, that you would then check
4 out from the evidence custodian, it didn't work
5 that way?

6 A. Right.

7 Q. What happened was, on November 7th, I believe?

8 A. Yes.

9 Q. Monday, you come down to the garage and you see
10 there's this RAV 4 there, Toyota RAV 4?

11 A. Right.

12 Q. And you are there after Mr. Groffy, right?

13 A. Yes.

14 Q. He's already done his photographs and processing
15 before you ever touch it?

16 A. Right.

17 Q. And you testified that you took a number of those
18 swabs, a number of stain swabs. You mentioned a
19 -- I forget what the last number -- actually the
20 last number was A-23, right?

21 A. I believe so, yeah.

22 Q. So you actually took 23 swabs in different areas,
23 some of them the same areas?

24 A. No. I only took -- someone else was processing
25 it for ident, I believe. And that's where the

1 23, I didn't take 23 swabs.

2 Q. I see what you are saying. So what you are
3 saying is, you took A-1, A-2, A-3, A-4, up to
4 where, 12?

5 A. A-12, I believe.

6 Q. Okay. And then Mr. Riddle, Michael Riddle?

7 A. Yes.

8 Q. He's the fingerprint guy?

9 A. Right.

10 Q. He examined it. And when he would find
11 fingerprints on it, he would give those a
12 designation like A-13 or A-14.

13 A. Right. Actually, I worked up through A-14.

14 Q. Okay. And then there is a stain, a swab that you
15 took, though, that's designated A-23?

16 A. Correct.

17 Q. And that's because Mr. Riddle found something he
18 thought maybe you should take a look at and swab.

19 A. Yes.

20 Q. So Mr. Riddle found something, fingerprints or
21 whatever, that he designated A-15 through A-22?

22 A. I assume so.

23 Q. Okay. And you came in and did this last one?

24 A. Yes.

25 Q. Okay. And then you took all these swabs, you

1 said they were in like a test tube holder, to
2 dry?

3 A. Yes.

4 Q. Did you package them there at the bench in the
5 garage, or did you take it back to your
6 department, your bench, to package?

7 A. I believe I packaged them in the garage.

8 Q. So they were dry already?

9 A. No, I put them in the coin envelope and I left
10 the envelope open.

11 Q. Okay. And these swabs, just so we're clear,
12 they're like Q-tips?

13 A. Yes.

14 Q. Longer?

15 A. Essentially, yes.

16 Q. Okay. So then you took the swabs that you found
17 from the RAV 4, the 14, and you brought them
18 directly to your lab bench?

19 A. Yes.

20 Q. And then into your storage locker?

21 A. Actually, they were on my lab bench while they
22 air dried -- or they were in the coin envelopes
23 on my lab bench, overnight, while they air dried.

24 Q. Okay. And, then, once they were dried and you
25 were -- Well, you did some tests with them, I'm

1 sure. But once you were done with doing those
2 first round of tests in November, you put them in
3 your storage locker?

4 A. Yes, they were sealed up and put away.

5 Q. You didn't return them or place them in central
6 storage?

7 A. I can look. I don't recall exactly when I --

8 Q. Why don't you look. Why don't you look at -- you
9 have the Chain of Custody Report?

10 A. Yes.

11 Q. Look at Page 1 of 50?

12 A. I'm sorry, what items?

13 Q. It's the Chain of Custody Report, just look at
14 the first page.

15 A. Okay.

16 Q. First page lists A, A-1, 2, 3, 4, 5 -- I'm sorry,
17 4-A.

18 A. Yes.

19 Q. Right?

20 A. Right.

21 Q. And A-1, A-2, A-3, were all determined to be
22 Teresa Halbach's DNA, if you recall?

23 A. That's correct.

24 Q. Those were the swabs from the blood in the back,
25 and the rear of the cargo?

1 A. And four.

2 Q. And four as well. Okay.

3 A. Yes.

4 Q. And those were in your custody until when?

5 A. April 3rd, 2006.

6 Q. Okay. And so, then, on that date, you returned

7 them to the central storage area with the

8 evidence specialist?

9 A. Correct.

10 Q. But from November up to April 3rd, they were

11 sitting in your storage area of your lab bench?

12 A. Sealed, yes.

13 Q. Yes. But in that same compartment all together?

14 A. That's correct.

15 Q. With whatever other evidence you had on the Avery

16 case, all in that same cupboard, right?

17 A. Correct.

18 Q. Okay. Then, if you look ahead maybe to Page 38

19 of your Chain of Custody Report, directing your

20 attention to Item FL as in Larry, FL?

21 A. Yes.

22 Q. Now, you previously testified about that, that's

23 the bullet fragment?

24 A. Yes.

25 Q. Right?

1 A. Yes.

2 Q. That's the one that you say you found Teresa
3 Halbach's DNA on?

4 A. Correct.

5 Q. That came into your lab on what date?

6 A. March 16, 2006.

7 Q. And it came into your custody from that central
8 room on what date?

9 A. March 28, 2006.

10 Q. Okay. And then you actually started working on
11 it the next day, March 29th; isn't that right?
12 Do you need to refer to your case notes?

13 A. Yes, I do.

14 Q. That's fine.

15 A. I began -- I began -- I screened the evidence on
16 March 29th, '06.

17 Q. Okay. And, then, one of the things you do in
18 that -- first thing is you open it up and take a
19 look at it, right?

20 A. Yes.

21 Q. You unseal the -- whatever it is, and in this
22 case it was like a little plastic bag, right?

23 A. Right.

24 Q. And you then began -- we'll talk about it more
25 later, but at that point you began the process of

1 extraction amplification and, ultimately,
2 figuring out a profile?

3 A. Yes.

4 Q. And that's the test that we later -- we heard
5 later, at some point in the process, was
6 contaminated with your DNA?

7 A. That's correct.

8 Q. Proficiency tests are something that you take
9 about every year or so?

10 A. Twice a year.

11 Q. Twice a year. And they involve you doing --
12 testing a sample that's sent to you by some
13 outside private company?

14 A. Yes.

15 Q. And those are just pass/fail, right?

16 A. No.

17 Q. You get a grade, A, B, C?

18 A. Well, you -- I suppose they are pass/fail, but
19 it's not -- you are required to put the types
20 down and they are -- also you are required to
21 actually record the types that you develop and
22 then there are several interpretation questions
23 on there. Could the sample contribute to this
24 evidence sample? Could the sample from the
25 victim contribute to the evidence sample? So we

1 actually have to record our types and do some
2 interpretation.

3 (Exhibit No. 345 marked for identification.)

4 Q. I'm showing you now Exhibit 345, can you identify
5 that for the record?

6 A. Yes. This is a copy of the -- Once we sent our
7 answers back to the company, then they send us
8 documentation as to whether our types are
9 consistent with the types that should be on the
10 case --

11 Q. All right.

12 A. -- test.

13 Q. And, then, this actual report that you have in
14 your hand is something that's filled out by
15 supervisors in your lab?

16 A. Well, yes.

17 Q. Okay. That report isn't prepared by this outside
18 company, that's prepared by someone in your lab,
19 right?

20 A. Yes.

21 Q. And on this particular one, it has a number of
22 boxes -- in fact, they all have a number of boxes
23 where they say -- well, let's look at the main
24 ones. Technical performance on this one was
25 accepted, right?

1 A. Right.

2 Q. But on this particular one, it also has some
3 comments. What does that mean? What are the
4 comments on this?

5 A. I'm not sure. I don't recall that test, so I
6 really -- I'm not sure what is meant by that.

7 Q. Let's look at the date for a minute. The date is
8 April 7th of '06?

9 A. Correct.

10 Q. Actually, if you look up here, the test is --
11 looks like you completed the test on March 1st?

12 A. Yes.

13 Q. And then it was received -- compilation received
14 by the a lab or something on --

15 A. Yes.

16 Q. -- on April 4th?

17 A. Yes.

18 Q. So this is really right about the time that you
19 are doing this test on the alleged bullet
20 fragment in Mr. Avery's case, right?

21 A. Yes.

22 Q. And often these results or comment sections are
23 blank. They don't say anything. They just check
24 acceptable or not acceptable, right?

25 A. Sometimes. Sometimes there's a comment.

1 Q. And this one indicates some what, a mistake that
2 you made?

3 A. I don't believe so, no.

4 Q. It's referring to a non-sperm fraction with a
5 mixture of victim and semen donor is what that
6 says.

7 A. Like I said, I can't really comment because I
8 don't remember the specific proficiency test.

9 Q. And that's not your handwriting?

10 A. No.

11 Q. But it is your -- also your supervisor's
12 signature at the bottom?

13 A. Yes.

14 Q. And your signature on April 10th of '06?

15 A. Right.

16 Q. Okay. But you don't ever recall seeing this?

17 A. Well, obviously I saw it, because I signed it.

18 Q. Sure.

19 A. But, no, I don't independently recall.

20 Q. Okay. Would it be fair to say that the Wisconsin
21 Crime Lab has a pretty heavy case load of DNA,
22 your section, the DNA unit?

23 A. Yes.

24 Q. You have gotten a lot of publicity about it
25 lately?

1 A. Yes.

2 Q. Became an issue in the last election for the
3 Attorney General for the State of Wisconsin,
4 right?

5 A. Apparently.

6 Q. Well, you were in the lab and you are part of
7 management to some degree, right?

8 A. Not really. I'm not really part of management.
9 I have some management duties, but I'm not really
10 considered management.

11 Q. Okay. But part of those duties are case work,
12 case flow, and case management?

13 A. Right.

14 Q. And priority, right?

15 A. Yes.

16 Q. So you are certainly aware that the case load has
17 been going up, and up, and up, at the Crime Lab?

18 A. Yes.

19 Q. And that you are getting calls from prosecutors
20 and police all the time, asking you to, please,
21 do these -- get these results in yesterday?

22 A. Correct.

23 Q. They want them fast?

24 A. Yes.

25 Q. And so there's some pressure on the analyst to

1 get the job done?

2 A. Of course.

3 Q. Okay. And that's important for a number of
4 reasons, for instance, you don't want a suspect
5 in a case, who's DNA has already been sent to
6 you, to be out running around committing new
7 crimes, when if you can get to your tests
8 quicker, you might be able to link him to
9 something and get him off the streets?

10 A. That's correct.

11 Q. It's also important, because you do some
12 post-conviction tests as well?

13 A. Yes.

14 Q. And you don't want an innocent man sitting in
15 prison longer than necessary, while his DNA
16 sample sits in your office, unanalyzed, because
17 of backlog?

18 A. Correct.

19 Q. And just to give the jury some estimate or some
20 understanding of the numbers here, correct me if
21 I'm wrong, but my understanding is that your --
22 the DNA Unit's backlog of work, approximately
23 tripled between 2003 and 2005; would that be
24 about right?

25 A. I believe that's right.

1 Q. If I gave you the number that your backlog of
2 cases that you were working on in 2003 was 478,
3 and as of 2005 it had gone to 1,375; does that
4 sound about right?

5 A. I don't remember the exact numbers, but when you
6 are talking about DNA cases, you are talking
7 about the Madison Lab and the Milwaukee Lab.

8 Q. Sure.

9 A. So, we're not just talking about one laboratory.
10 And if those numbers were what was quoted, I
11 assume that's correct. I don't recall exactly.

12 Q. So when Mr. Avery's case came to your lab, it
13 came to your lab at a time when there was already
14 this huge backlog that had just ballooned or
15 exploded over the last two years, or tripled?

16 A. That's correct.

17 Q. This case, then, put an enormous demand on your
18 resources, right?

19 A. Yes.

20 Q. Three hundred and fifty submissions to the
21 overall Crime Lab, all the different sections,
22 right?

23 A. Correct.

24 Q. One hundred eighty just to the DNA Unit?

25 A. That's correct.

1 Q. And so while all these -- while these 180 pieces
2 of evidence were in your lab to be analyzed in
3 the Avery case, your analysts were also working
4 very hard to reduce that backlog and deal with
5 all the other submissions that kept coming in?

6 A. That's correct.

7 Q. Would you agree that there was, given the case
8 load, there was a shortage of analysts, in 2005,
9 in your lab?

10 A. Yes.

11 Q. The Madison Lab?

12 A. Yes.

13 Q. And that you were trying to bring new ones on
14 board, that's part of the idea was to -- your
15 function, was to help train new people?

16 A. That's correct.

17 Q. But you said that takes some time, nearly a year,
18 to train somebody new, right?

19 A. Right.

20 Q. And the way you trained them, let's talk about
21 2005 and 2006, you had a number of new analysts
22 that were sort of under your wings, right?

23 A. Yes.

24 Q. And you would train them by -- kind of like you
25 see on doctor shows, where you have the main

1 doctor and the interns following along, right,
2 like ducklings?

3 A. Sure.

4 Q. They follow you around to wherever you go?

5 A. Part of their training --

6 Q. Okay.

7 A. -- involved that.

8 Q. And part of that training would mean they would
9 follow you when you went up to your lab bench to
10 do something?

11 A. Sometimes.

12 Q. Okay.

13 A. Not that often. Most -- A lot of their training
14 revolves around lectures, and reading, and
15 running their own samples. And some of the
16 trainees in this case were coming from other
17 laboratories, so they had quite a bit of training
18 already. So it wasn't totally following me
19 around.

20 Q. All right. But there were some -- certainly some
21 aspects of the training that required them, these
22 trainees, to be with you when you are actually
23 doing tests at your lab bench?

24 A. Yes.

25 Q. And so you could demonstrate for them how to do

1 it, right?

2 A. Yes.

3 Q. Okay. Now, that means, however, that there were
4 more people than usual surrounded around a lab
5 bench when you are doing your tests?

6 A. Yes, on a limited basis.

7 Q. Sure. You try and limit it, and you are not
8 trying to contaminate anything, of course, right?

9 A. Right.

10 Q. But the more people around an evidence bench, or
11 lab bench with evidence on it, the greater the
12 risk of contamination, right?

13 A. Yes.

14 Q. Did you ever have any trainee actually do a hands
15 on test in this case?

16 A. No.

17 Q. Even under your supervision?

18 A. No.

19 Q. You did it all?

20 A. Yes.

21 Q. And they just watched?

22 A. Yes.

23 Q. And that was especially true on the day that you
24 were testing the bullet?

25 A. Yes.

1 Q. Item FL?

2 A. Yes.

3 Q. The trainee's were around you.

4 A. Well, there were two -- two trainees sitting by
5 my work space watching the beginning portion of
6 the extraction.

7 Q. Okay. We'll talk more about that in a moment.
8 All right. I apologize for the delay. I'm going
9 to show you what's marked Exhibit 308 and 307.
10 Just take a moment to orient yourself.

11 A. Okay.

12 Q. Okay.

13 A. Mm-hmm.

14 Q. Let me put these up on the screen. Tell me what
15 these are pictures of. Can you tell me what this
16 Item 307 is a picture of?

17 A. That's the rear of the RAV 4, our item A.

18 Q. Okay. And that is in the Crime Lab garage?

19 A. Yes.

20 Q. And you recognize the location?

21 A. Yes.

22 Q. And this particular photograph shows the rear of
23 the RAV 4, with the wheel cover and the cargo
24 door, right?

25 A. Yes.

1 Q. And if I zoom in on this a little bit, does this
2 depict the door handle for the tailgate, or
3 whatever you want to call it, the rear door?

4 A. Yes.

5 Q. Cargo door. That's the area that Mr. Riddle was
6 working on for fingerprints, correct?

7 A. I believe so, yes.

8 Q. And that's the area where he said, hey, maybe --
9 there's something here maybe you want to take a
10 look at that?

11 A. Yes.

12 Q. That's the item, then, that became A-23?

13 A. Yes.

14 Q. And you tested that, with a swab, for DNA, right?

15 A. Yes.

16 Q. And you did not find Mr. Avery's DNA on that
17 swab, did you?

18 A. No.

19 Q. And, so, if Mr. Kratz, in his opening statement,
20 told this jury, with a power point slide, right
21 up here showing that, with the circle around that
22 rear door, and said that that would -- there
23 would be evidence that Mr. Avery's DNA was on
24 that door handle, that would be wrong, wouldn't
25 it?

1 A. Based on my results, I didn't find Steven Avery's
2 DNA on that sample.

3 Q. In fact, you found Mr. Avery's DNA nowhere on the
4 rear of that vehicle at all, correct?

5 A. Correct.

6 Q. Even more so, you never found Mr. Avery's DNA
7 anywhere around the outside of any of the door
8 handles of that vehicle, did you?

9 A. No. But I -- I didn't test any of the exterior
10 doors.

11 Q. And you later received some swabs of the interior
12 door handles, didn't you?

13 A. Yes.

14 Q. And you did not find Mr. Avery's DNA on that, did
15 you?

16 A. No.

17 Q. You found Teresa Halbach's DNA on at least one of
18 them, right?

19 A. Right.

20 Q. You testified, though, to finding six apparent
21 blood stains, and all of them were, essentially,
22 in the passenger compartment area. This is in
23 November we're talking about. Okay.

24 A. Mm-hmm.

25 Q. All of those were in that passenger compartment

1 area of the RAV 4, right?

2 A. Exactly which ones are you referring to, because

3 there were several -- there were stains

4 throughout the car.

5 Q. Sure. And that's why I want to get clear.

6 A. Okay.

7 Q. Would you go to your -- Do you have some

8 handwritten notes of --

9 A. Yes, I do.

10 Q. -- where you found those stains on November 7th?

11 A. Yes.

12 Q. You want to take a moment and refresh your

13 recollection on those.

14 A. Are we talking about stains throughout the car,

15 or stains consistent with each individual, or --

16 I'm not sure what your question is.

17 Q. Let's talk about the stains that you say your

18 tests showed were Mr. Avery's DNA, or had Mr.

19 Avery's DNA on them?

20 A. Okay.

21 Q. You found them several places in the driver's

22 seat?

23 A. Yes.

24 Q. And the ignition on the dash?

25 A. Yes.

1 Q. And the seat right next to the driver's seat, the
2 front passenger seat, right?

3 A. Yes.

4 Q. And then you found one in the rear passenger
5 door, on the right side, as you open the door.
6 There's a little ledge.

7 A. Panel, yes.

8 Q. Okay. But you found none of Mr. Avery's DNA on
9 any stains in the rear cargo area of that
10 vehicle, did you?

11 A. No.

12 Q. None on the outside handle of the cargo door?

13 A. That's correct.

14 Q. None on the inside handle of the cargo door?

15 A. Correct.

16 Q. And, in fact, where you found those six stains in
17 November, of 2005, November 7th --

18 A. Yes.

19 Q. -- the ones that were attributed later, to
20 Mr. Avery's DNA, one could have planted simply by
21 opening two doors in that vehicle?

22 A. I really can't comment on that.

23 Q. Okay. You have got -- if someone was to plant
24 Mr. Avery's blood in that vehicle, to get to
25 those six stains, they would need to open the

1 driver's door, right?

2 A. Yes.

3 Q. Likely, or the passenger door on the front?

4 A. Yes.

5 Q. From either one, but more likely the driver's
6 door, you could reach the location where all of
7 the stains were found in that front seat area?

8 A. Except for the rear passenger door.

9 Q. I'm getting to that. Okay? The first five that
10 you found were all in that front compartment?

11 A. Yes.

12 Q. Front seat compartment?

13 A. Yes.

14 Q. Reachable by opening one door, right?

15 A. Yes.

16 Q. And, then, the only other stain that you found
17 there was in the rear passenger door that could
18 also be accessed simply by opening that one door?

19 A. Yes.

20 Q. So if somebody was to plant Mr. Avery's blood in
21 that vehicle, before you got it on November -- in
22 November, all of those stains you found could
23 have been done by simply opening two doors?

24 A. Yes.

25 Q. Now, many months later, April I believe it was,

1 you got a swab that was told to you was a hood
2 latch swab?

3 A. Correct.

4 Q. That was not tested, or did not come from your
5 test in November?

6 A. Right.

7 Q. And you weren't present when it was taken, by
8 whomever, sometime before it arrived at your lab?

9 A. No, I was not.

10 Q. And you didn't do a presumptive test for blood,
11 right?

12 A. Correct.

13 Q. You didn't see any blood particularly visible on
14 the swab, right?

15 A. Right.

16 Q. But it was discolored?

17 A. Yes.

18 Q. Dirty, might possibly have had some residue of
19 blood mixed in with the dirt and grime and
20 whatever else was on the swab, right?

21 A. It's possible, but there was no visual
22 indication.

23 Q. And you often -- well, not often, but you do
24 sometimes find blood without visibly seeing it,
25 right?

1 A. Yes.

2 Q. And your presumptive tests will usually indicate
3 that?

4 A. Correct.

5 Q. But you didn't actually do one here, on this hood
6 swab, right?

7 A. Correct.

8 Q. So you can't rule out the source of that DNA
9 being a blood drop or a blood smudge of some
10 sort, can you?

11 A. No. I can --

12 Q. That's fine.

13 A. I can say that it wasn't a visible --

14 Q. Sure. But you can't rule out that blood may have
15 been the source?

16 A. A very trace amount, yes.

17 Q. Because this was a low amount, you say, right?

18 A. Well, the entire swab was a low amount of DNA and
19 that's why I didn't test it for presumptive,
20 because I didn't want to waste any of the sample
21 on a presumptive test.

22 Q. Okay. We'll get to that in just a moment here.
23 You also testified very, very briefly, I think,
24 about Item B, which is Mr. Avery's own Pontiac
25 Grand Am --

1 A. Yes.

2 Q. -- right?

3 A. Yeah.

4 Q. And you did test a number of stains or swabs that
5 came to you, or did you actually get them
6 yourself?

7 A. I collected them.

8 Q. You collected them, okay. And overall you found
9 Mr. Avery's DNA on those swabs, right?

10 A. Yes.

11 Q. Not at all unusual to find one's own DNA on one's
12 own possessions?

13 A. Correct.

14 Q. You didn't find Teresa Halbach's DNA on any of
15 those items, or anywhere in Item B, the Pontiac
16 Grand AM, did you?

17 A. No.

18 Q. And you certainly were looking for that if that
19 was -- right, that was part of your test, part of
20 your examination?

21 A. Well, I just processed the blood samples and they
22 were what they were.

23 Q. And they were not Teresa's?

24 A. Correct.

25 Q. Okay. Let's turn to the key. Would this be

1 something that you would consider that had trace
2 levels of DNA?

3 A. I guess it depends on how you define trace.

4 Q. Let's say a relatively low amount of DNA in this
5 particular instance?

6 A. Yes.

7 Q. If you could look at your notes maybe, refresh
8 your recollection. I'm going to ask you in a
9 moment about that. If you can give me some
10 estimate, from your records, about just what the
11 volume or level of DNA you found on that key was?
12 Okay?

13 A. Yes.

14 Q. Now, I believe you testified that there was no
15 blood visible on this item either?

16 A. Correct.

17 Q. But, again, you didn't do a presumptive test?

18 A. No, I did not.

19 Q. What you did was, you took a swab, a Q-tip,
20 moistened with this distilled water, right?

21 A. Yes.

22 Q. And you rubbed it all the way around, both sides,
23 top, bottom, whatever, of the black plastic part
24 of the key?

25 A. Correct.

1 Q. And the swab, I think in this instance you said
2 was not discolored?

3 A. That's correct.

4 Q. Now, when you tested this swab from the key, you
5 used the entire amount. You used the entire
6 swab, didn't you?

7 A. Yes.

8 Q. Normally, you will try and just cut a swab in
9 half, use half, save half?

10 A. Yes, if there's enough, yes.

11 Q. But this particular test, just by looking at it,
12 looking at the item you were dealing with, you
13 thought you couldn't do that.

14 A. Well, I felt that being what we refer to as a
15 touched item, and there being no visible
16 indication of a biological fluid like blood,
17 that, yes, I would probably have a low amount to
18 start with.

19 Q. Okay. So when I call something trace, I'm
20 talking about this small amount of DNA that may
21 be transferred by something less than the usual
22 bodily fluids of blood, or -- well, let's just
23 stick with blood.

24 A. Yes. I mean, it all depends on the stain. There
25 are touched items that have lots and lots of DNA

1 present. Some touched items don't have that
2 much. It just depends on who touches them and
3 what the item is. So to generalize all touched
4 items with the term trace amounts, I'm not sure
5 that's accurate.

6 Q. All right. You said you keep up with the
7 literature in your field, right?

8 A. I try.

9 Q. And I take it, then, that you have read a report,
10 a study by Ray Wickenheiser?

11 A. I don't remember the name, may I see it.

12 Q. Sure. I'm not going to actually mark it, but
13 take a moment and look at it and see if you maybe
14 recognize this article, or the study it refers
15 to.

16 A. Yes, I believe I have read this.

17 Q. Okay. And this -- basically, this is an article
18 published in 2002, says at the bottom, right?

19 A. Yes.

20 Q. And the title is, Trace DNA: A Review Discussion
21 of Theory and Application of the Transfer of
22 Trace Quantities of DNA Through Skin Contact,
23 right?

24 A. Yes.

25 Q. This article, among other things, talks about

1 some of the different theories about how one
2 actually transfers DNA by touch or by skin.

3 A. Yes.

4 Q. And there's different theories. Some people
5 think that it's really just a transfer of some
6 bodily fluids, somebody who rubs their eyes, like
7 this, maybe gets some tears on it, then picks
8 something up, right?

9 A. Well, anytime you touch your body and you have
10 cells on your hands, then that would be a way to
11 transfer it.

12 Q. Sure. Or if you touch your mouth, you know,
13 something like that, you have got your fingers to
14 your mouth and then you touch something, you may
15 be transferring DA (sic) through little bits of
16 saliva, right?

17 A. Well, again, you are talking about skin. I mean,
18 even just your hands are going to slough off
19 skin, so you don't have to really touch your
20 face, you just touch something with your hands
21 you will leave --

22 Q. But you are aware, though, that there is kind of
23 a dispute in the field of people that are
24 studying this, as to whether or not the cells,
25 just the epithelial cells that you are shedding

1 from your fingers alone is enough to produce a
2 DNA result or profile, or whether, in fact, what
3 really is happening is you are transferring some
4 bodily fluid to your fingers and then touching it
5 and transferring it that way?

6 A. I understand there's probably different opinions,
7 but the bottom line is, if you touch something
8 with your hand, or any part of your body, and you
9 leave cells, it has the potential for our DNA
10 profile.

11 Q. Okay. And I don't know if you had a chance to
12 look at your notes yet?

13 A. Yes.

14 Q. Can you tell me approximately -- if I told you
15 that the amount recovered in that swab of the key
16 was somewhere between -- somewhere around 20
17 nanograms of DNA, would that be a ballpark?

18 A. No.

19 Q. What do you come up with?

20 A. Well, actually, in the whole sample, you may be
21 right. My quantitation is .17 for one
22 microliter.

23 Q. Sure. But you have to add volume to it and --

24 A. And the total amount of the extract was probably
25 around 30 to 35 microliters.

1 Q. Okay. So a little bit more than what I said.

2 A. Yes.

3 Q. You are familiar with tests of liquid blood would
4 have DNA in the amount of over 20,000 nanograms,
5 something like that?

6 A. I don't recall exact numbers, no.

7 Q. And how about buccal or buccal swabs, are you
8 aware that they have, generally, anywhere from
9 couple thousand maybe, 2,000, 3,000?

10 A. Again, I don't recall exact numbers.

11 Q. Let me show you another study, see if you
12 recognize that. It's a study by Henry Lee
13 (phonetic), Karl Ladd (phonetic), does that look
14 at all familiar?

15 A. No, I have never read this.

16 Q. Okay. Have you read anything that tells you, or
17 that's made some kind of determination of what
18 the volume of -- or in terms of nanograms, what
19 the amount of DNA one would typically find in a
20 buccal swab.

21 A. Sure. I just don't recall the exact number.

22 Q. Okay.

23 A. But it's obviously much more DNA in a buccal swab
24 or a blood sample. Those are rich sources of
25 DNA, so there's going to be a lot of DNA there.

1 Q. Sure. And if one was to take a buccal swab and
2 rub it on the key in this case, it might transfer
3 30, 35 nanograms of DNA?

4 A. I have no idea.

5 Q. Well, would that be an unreasonable amount, or
6 reasonable?

7 A. I really -- There's no way for me to comment on
8 that. And there's no -- you may transfer a lot
9 of DNA, you may not transfer very much at all.

10 Q. Okay.

11 A. There's really no way to answer that.

12 Q. Would it be fair to say that the DNA volume or
13 amount that you found on that key was not very
14 much?

15 A. No, it was a low level, yes. That's correct.

16 Q. Low level. If one was to rub a toothbrush up
17 against a key, that might also transfer some low
18 level amount of DNA to the key, right?

19 A. That would be possible, however, in my experience
20 toothbrushes are not a real good source of DNA.
21 It's very difficult to get a profile from a
22 toothbrush.

23 Q. That's when you test the toothbrush itself. But
24 in terms of transferring just 30 to 35 nanograms
25 of DNA, that could be done by rubbing a

1 toothbrush on it, potentially?

2 A. Like I said, it's possible but.

3 Q. And it's also possible to get that amount by
4 rubbing a buccal swab against the key as well,
5 right?

6 A. Yes.

7 Q. There are many ways, many personal items that
8 someone might rub against a key that might also
9 shed and deposit a low amount of DNA like such as
10 you found on this key?

11 A. Yes, it's possible.

12 Q. Okay. And from looking at this key, and your
13 swab, and the evidence you found, you cannot tell
14 whether the DNA that was found on that key was
15 planted there by somebody or not, can you?

16 A. No.

17 Q. And, indeed, if somebody did plant the DNA on
18 that key that you determined -- that you found in
19 your tests, it would look much like what you
20 found?

21 A. Yes.

22 Q. Okay. Now, you found no mixture of DNA on that
23 key, right?

24 A. Right.

25 Q. You did not find any DNA of Teresa Halbach on

1 that key, did you?

2 A. That's correct.

3 Q. A car key that presumably she handled and used
4 daily, right?

5 A. Correct.

6 Q. And you did swab all the way around the key?

7 A. Yes.

8 Q. Now, there are some studies in the Wickenheiser
9 report, for instance, that talk about how the
10 last person who touches an item may leave the
11 major portion of DNA that's left on there?

12 A. Yes.

13 Q. But most often when that happens, there's still a
14 mixture and there's a minor contributor as well,
15 right?

16 A. No, I -- I would disagree with that. In some
17 cases, yes. It's very difficult. There's no way
18 to really predict that. If you have someone
19 who's a good shedder and sheds a lot of DNA, when
20 they touch something, a lot of studies show that
21 that is going to be --the last person is going to
22 be the DNA you pick up. If you don't shed a lot
23 of DNA, then you may not find any at all.

24 Q. What you found on this key was not a lot of DNA,
25 right?

1 A. Correct.

2 Q. Turn to page 448 of that article, I'm going to
3 ask you to agree or disagree with this.

4 A. Yes.

5 Q. Paragraph begins, as the sensitivity, do you see
6 that?

7 A. Yes.

8 Q. About half way down?

9 A. Mm-hmm.

10 Q. Do you agree or disagree with this statement:
11 Although case experience has found that the
12 handled object bears the profile of the most
13 recent handler, many more mixed profiles will be
14 recovered if commonly handled objects are
15 examined, doorknobs, handles, light switches,
16 ignition switches, and doorbells have all yielded
17 DNA profiles. And then there's a table that's
18 referred to.

19 A. Yes.

20 Q. You agree with that?

21 A. In many of the cases, yes, but not all the time.

22 Q. Okay. Let's go to the bullet for a minute, just
23 to clear up a couple of things. The bullet that
24 you, tested you didn't get it until April, or
25 March actually. right?

1 A. Yes, that's correct.

2 Q. And to the eye, you didn't see any blood visible?

3 A. That's correct.

4 Q. But you didn't do a presumptive test?

5 A. Right.

6 Q. And, in fact, did you do a swab at all?

7 A. No.

8 Q. This is one where you put it into a buffer and
9 sort of dissolved the amount, right?

10 A. Yes, I washed it.

11 Q. So you can't really say whether the DNA on that
12 bullet came from blood or some other source, can
13 you?

14 A. All that I can say is it was nucleated cells.

15 Q. Which could mean blood or any other sources?

16 A. Right.

17 Q. Let's talk about some specific results that you
18 did get and we haven't heard. Out of all the
19 tests that you did, 180 items that you looked at,
20 came into your lab, right?

21 A. Yes.

22 Q. No DNA of Teresa Halbach's was ever found on any
23 item that was indicated it came from Mr. Avery's
24 house, correct?

25 A. That's correct.

1 Q. No DNA of Teresa Halbach was ever found on any
2 swabs of Mr. Avery's car?

3 A. Correct.

4 Q. No DNA of Teresa Halbach was ever found on any
5 item, or on the surface inside his Ford F350
6 pickup?

7 A. I don't believe I examined the pickup.

8 Q. Okay. And no DNA was found of Teresa Halbach's
9 on any item, any item in that garage, detached
10 garage next to Steven Avery, with the exception
11 of that one bullet, FL?

12 A. Correct.

13 Q. In a test that you admit showed contamination,
14 correct?

15 A. In the control, not the evidence.

16 Q. In the test, correct?

17 A. As I said, in the control, not the evidence.

18 Q. All right. We'll pursue that later, but it will
19 probably have to be after lunch. But let's go
20 through some of the items. You never found any
21 of Teresa Halbach's DNA on any kind of mattress
22 or bedding, did you?

23 A. I don't believe I examined any mattress or
24 bedding.

25 Q. Okay. So none of that was even sent to you,

1 right?

2 A. Correct.

3 Q. You never found any DNA of Teresa Halbach's on
4 any carpet in his house, did you?

5 A. No.

6 Q. There were some stains that were sent to you that
7 I want to make clear the jury isn't confused
8 about, though. There was a stain that was found
9 that appeared to be a blood drop on the bathroom
10 floor, right?

11 A. There were several items on the bathroom floor.
12 I don't know which one you are referring to.

13 Q. Let's put them all together. All the bathroom
14 items, the floor, the vanity, the sink, whatever,
15 right?

16 A. Mm-hmm.

17 Q. You tested all of those?

18 A. Correct.

19 Q. None of them had Teresa Halbach's blood on them,
20 did they?

21 A. No.

22 Q. You also tested, there were some drops that were
23 found on a molding of a door near the bathroom or
24 bedroom, right?

25 A. Yes.

1 Q. No DNA of Teresa Halbach, right?

2 A. Correct.

3 Q. You tested the headboard of a bed, right?

4 A. Yes.

5 Q. You tested the footboard of a bed?

6 A. Just the headboard, I believe.

7 Q. Do you have your reports with you?

8 A. Yes, I do.

9 Q. All right. I stand corrected, looks like you

10 tested several items, several areas of the

11 headboard, right?

12 A. Yes.

13 Q. The legs, the spindle things, right?

14 A. Yes.

15 Q. No DNA of Teresa Halbach?

16 A. Correct.

17 Q. You tested stains that were recovered from the

18 nightstand in Mr. Avery's bedroom, right?

19 A. I don't recall if I looked at stains from a

20 nightstand.

21 Q. May 8th report, second page, Item HX and Z.

22 A. That's correct, you're right.

23 Q. No DNA from Teresa Halbach?

24 A. Correct.

25 Q. You also tested outlet covers, and light

1 switches, from Mr. Avery's house?

2 A. Yes.

3 Q. No DNA from Teresa Halbach?

4 A. That's correct.

5 Q. And you tested the handcuffs and leg irons?

6 A. That's correct.

7 Q. None of Teresa Halbach's DNA found on either of
8 those items?

9 A. That's correct.

10 Q. Which we decided -- which you said earlier,
11 clearly had not been cleaned off with bleach or
12 something because they had a mixture of other
13 people's DNA on it?

14 A. That's correct.

15 Q. Then you examined many knives that were sent to
16 you, right?

17 A. Yes.

18 Q. I see at least seven just in the May 8th report,
19 right?

20 A. Yes.

21 Q. No DNA of Teresa Halbach's?

22 A. Correct.

23 Q. In the garage -- Actually, Judge, I don't know
24 what time you want to break for lunch. I may
25 have yet another 10 or 15 minutes on this part of

1 it before I move so.

2 THE COURT: All right. I didn't know how
3 long this part was going to go. If that's the case,
4 we'll take our lunch break at this time. Members of
5 the jury, do not discuss the case or any of this
6 morning's testimony during your lunch break.

7 (Jury not present.)

8 THE COURT: You may be seated. Counsel,
9 let's report back about 1:00 then.

10 ATTORNEY BUTING: Okay. Thank you.

11 (Noon recess taken.)

12 (Jury present.)

13 THE COURT: Mr. Buting, you may resume your
14 cross-examination.

15 ATTORNEY BUTING: Thank you, your Honor.

16 **CROSS-EXAMINATION CONTD.**

17 BY ATTORNEY BUTING:

18 Q. All right. Ms Culhane, you were talking about
19 all of the items in the house that you looked at.
20 And would it be fair to say that you were not
21 able to -- as Mr. Fassbender requested -- put her
22 in his house?

23 A. That's correct.

24 Q. So then you looked at the garage as well, not
25 sequentially, but at some point you were looking

1 at the garage?

2 A. Yes.

3 Q. And they sent you a number of stains. I'm going
4 to show you a couple of exhibits that were
5 introduced earlier, take a look at them and then
6 I will put them up on the screen.

7 A. Okay.

8 Q. Okay. I'm showing you Exhibit 247 first, a
9 number of evidence markers there. We had
10 testimony that -- where all those one, two,
11 three, up to eight, I believe, swabs were taken?
12 Okay?

13 A. Yes.

14 Q. And you tested those swabs, right?

15 A. I assume so.

16 Q. Well, if you need to refer to your notes, you did
17 find some DNA on garage floor stains in this
18 case, right?

19 A. Yes, I was submitted a number of swabs and I gave
20 them my item designations when they came in. I
21 was not -- I didn't actually collect them.

22 Q. Okay. I understand. But you did indicate,
23 looking now at your March 31st report -- if you
24 need to refer to it that's fine -- a number of
25 items, question stain, reportedly recovered from

1 the garage floor, right?

2 A. Yes.

3 Q. You have got Item G through P described that way?

4 A. Yes.

5 Q. And they have different tag numbers associated
6 with them. Those are the tag numbers from the --
7 presumably the law enforcement people who
8 submitted them?

9 A. Correct.

10 Q. And when you tested those, you found out that six
11 of them had DNA -- had Mr. Avery's own DNA?

12 A. Yes, that's correct.

13 Q. Now, if you are getting a DNA reading off of
14 swabs, that must mean -- or correct me if I'm
15 wrong -- that no one had tried to clean that area
16 with bleach before the swabs were taken, right?

17 A. I really -- I don't know.

18 Q. Okay. Let me ask it this way, that was poorly
19 phrased. Looking at this exhibit on the screen
20 right now, which is a photograph of the garage,
21 if somebody had cleaned that garage floor with
22 bleach before the police came, you would not
23 expect to find any DNA would you?

24 A. If it was cleaned thoroughly enough and the
25 bleach destroyed all the DNA, no, I wouldn't.

1 Q. Okay. But in this case, you did find DNA. You
2 found Mr. Avery's own DNA?

3 A. That's correct.

4 Q. And, again, it's not unusual, nothing sinister
5 about finding one's own DNA in one's own
6 property, is it?

7 A. No.

8 Q. And then later in the case, return to your
9 December report, and, actually, you can see part
10 of it in this exhibit up there, you see that
11 crack that runs along the left side?

12 A. Yes.

13 Q. I will put on Exhibit 237 right now, to show it a
14 little better. See that crack that sort of runs
15 north/south in this garage?

16 A. Yes.

17 Q. It's your understanding that law enforcement
18 actually took a jackhammer into this garage and
19 tore up concrete chunks, right?

20 A. That was my understanding.

21 Q. And they did that because they thought, well, if
22 the victim had been killed here, perhaps her
23 blood would have soaked into those cracks, right?

24 A. I assume so.

25 Q. And so this crack was divided into a bunch of

1 different concrete chunks, that were later sent
2 to you?

3 A. The swabs from the chunks were, yes.

4 Q. Okay. I apologize, the swabs from the chunks.
5 And in your December report, there was actually
6 -- my gosh, almost three full pages of swabs,
7 right?

8 A. Correct.

9 Q. Did you find Teresa Halbach's DNA on any of those
10 swabs?

11 A. No, I did not.

12 Q. You did find Mr. Avery's DNA on one of them
13 though, right?

14 A. Correct.

15 Q. Now, you also looked, or asked to look, we saw
16 that message earlier, at the -- at .22 rifle
17 swabs that were taken from it, right?

18 A. Yes.

19 Q. And the purpose there was not to see if you would
20 find Teresa Halbach's DNA, but to see if you
21 would find Mr. Avery's DNA, right?

22 A. Was that item DD?

23 Q. Yes.

24 A. I believe I was requested to look for possible
25 blood on the barrel part and DNA from the trigger

1 area.

2 Q. And you found neither, correct?

3 A. That's correct.

4 Q. You did not find Mr. Avery's DNA on that weapon
5 anywhere, did you?

6 A. On the trigger guard is the only place I swabbed,
7 but, no, I didn't.

8 Q. And you did not find Teresa Halbach's DNA
9 anywhere on the barrel either?

10 A. Correct.

11 Q. Are you familiar with close -- close, almost
12 contact-type shootings?

13 A. I don't know what you mean by that.

14 Q. Are you familiar with the term blow back?

15 A. Yes.

16 Q. You know that if someone shoots another human
17 being with a gun, that's very close to them,
18 there may be blow back spatter of blood onto that
19 weapon?

20 A. I assume that's possible.

21 Q. Well, that's what you were looking for?

22 A. I was simply looking for blood stains, yes.

23 Q. On the barrel?

24 A. Correct.

25 Q. And you found none?

1 A. Correct.

2 Q. You also were asked to look at license plates
3 that were recovered?

4 A. Yes.

5 Q. Two of them, right?

6 A. Yes.

7 Q. Two of them that, at least your understanding
8 was, were the license plates originally on that
9 RAV 4?

10 A. That was my understanding, yes.

11 Q. And you didn't find Mr. Avery's DNA on that, did
12 you?

13 A. No, I did not.

14 Q. By the way, in all of this evidence that you have
15 tested, all of it, some of it we heard you found
16 Mr. Avery's DNA, things in his own garage or his
17 own house, right?

18 A. Yes.

19 Q. Did you ever find any DNA of a gentleman named
20 Brendan Dassey, anywhere, in all of your tests?

21 A. No, I did not.

22 Q. Not one shred, right?

23 A. No, I did not find his DNA.

24 Q. And you had his profile?

25 A. Yes, I did.

1 Q. All right. I want to talk about contamination.
2 All right?
3 A. Yes, sir.
4 Q. You are aware it can happen?
5 A. Yes.
6 Q. In a lab. It's happened in your lab, you know
7 that?
8 A. Yes.
9 Q. And we talked about contamination that may occur
10 before it ever gets to your lab, intentional or
11 otherwise, right?
12 A. Right.
13 Q. But you are involved in quality control at your
14 own lab?
15 A. That's correct.
16 Q. Are you like the head honcho there, in charge of
17 quality control?
18 A. No, I just monitor the quality control in our
19 unit.
20 Q. The DNA unit?
21 A. Correct.
22 Q. So, you are responsible for making sure that the
23 quality that comes out of your DNA unit is good?
24 A. Correct.
25 Q. And because DNA is very small, and relatively

1 easily contaminated, you take steps to try and
2 prevent that, right?

3 A. Yes.

4 Q. You mentioned a couple of them, but, for
5 instance, you have seen instances where, during a
6 test, material from one case may end up getting
7 contaminated into another case?

8 A. Yes, that's happened.

9 Q. Okay. You try to minimize that. That last one,
10 idea or example I gave you, would be called
11 cross-contamination, right?

12 A. Yes.

13 Q. Okay. So the analysts wear, you mentioned,
14 gloves?

15 A. Yes.

16 Q. Um, lab coats?

17 A. Yes.

18 Q. Glasses?

19 A. Yes.

20 Q. And you said you bleach down the instruments in
21 the test areas before -- in between tests?

22 A. That's correct.

23 Q. At least you try to. And you try and -- You
24 mentioned this amplification room, you try and
25 stay out of that, or you know, or when you are

1 working in there, stay in there, and do your
2 test, and be done, right?

3 A. Correct.

4 Q. And despite all this, all these precautions, the
5 Wisconsin Crime Lab still experiences the
6 phenomena of contamination, does it not?

7 A. Correct.

8 Q. Now, there's some things -- other things you
9 could do. For instance, you could wear masks,
10 like surgeons do, right?

11 A. Correct.

12 Q. You don't?

13 A. No.

14 Q. You could use disposable lab coats that you throw
15 out once you move from one room to the next,
16 right?

17 A. We do have different lab coats that we use from
18 one room to the next. We have a different lab
19 coat for the amplification room than our work
20 area.

21 Q. Okay. All right. But you don't change lab coats
22 when you work from one case to the next?

23 A. No, we don't.

24 Q. And you don't use -- are you familiar with
25 something called biological containment hood?

1 A. Yes.

2 Q. They're like a -- almost like a range that you --
3 that someone would see in their home, with a hood
4 bent over it?

5 A. Yes.

6 Q. And it's got a work space inside of it?

7 A. Yes.

8 Q. And it has filtered air circulating through it?

9 A. Yes.

10 Q. And it's designed to prevent outside contaminants
11 from coming in?

12 A. Yes, and we have two of those hoods that we use
13 to set up our amplification. After our samples
14 were processed, we set those up in a hood very
15 much like that.

16 Q. Okay. But when you are working on extractions
17 and that sort of thing you don't --

18 A. Correct.

19 Q. -- use those kinds of hoods, right?

20 A. Correct.

21 Q. It's just out on your table or your bench as you
22 are working, right?

23 A. Right.

24 Q. And right next to you in this T, at the other
25 end, may be one more analyst or two more

1 analysts?

2 A. One more analyst.

3 Q. Okay. Now, since you know that there's a
4 potential for contamination, you use what's
5 called controls, to try and minimize that, or
6 catch it if it happens, right?

7 A. Right.

8 Q. These are internal controls, right?

9 A. Well, yes, they are controls that we set up with
10 each -- with different phases of the examination.

11 Q. Okay. And just want to take a moment to explain
12 to the jury how this works. You actually have,
13 when you run any kind of a DNA test, start to
14 finish, you run what's called a positive control
15 at the same time, goes through the whole
16 sequence?

17 A. No, sir. We have -- The positive control that
18 you may be referring to is our amplification
19 control. And that's only introduced in the
20 amplification part of the process.

21 Q. Okay. I stand corrected. But that positive
22 control, basically, is a known DNA profile that
23 you expect to get as it goes through the test,
24 right?

25 A. Yes.

1 Q. And you go through the test and you don't get
2 that profile, you know something is wrong?

3 A. Correct.

4 Q. And then you also have what is called a negative
5 control, which is supposed to go through and do
6 what?

7 A. Well, we have two samples that could be
8 considered negative controls. We call the first
9 one a manipulation control. And that's the one
10 we set up with the extraction. And that is
11 carried through the entire procedure. We have an
12 additional negative control that is introduced in
13 the amplification process. And that's carried
14 through the last part of the procedure.

15 Q. Okay. Well, let's talk about that one just for
16 the moment, just to get rid of it. That negative
17 control you introduced in the amplification
18 process only?

19 A. Yes.

20 Q. And if it goes all the way through and comes up
21 with something other than zero, you know
22 something is wrong?

23 A. Correct.

24 Q. But back at the extraction part, you motioned
25 with your hands, there's sort of like an item

1 that's about the size of a brick maybe, that you
2 put these samples in and run it through?

3 A. Well, we set our samples up in a test tube rack,
4 and they are different sizes.

5 Q. Okay. And so they are altogether sitting in a
6 rack, and go through some machine, is that it,
7 when you extract them?

8 A. No, these extractions are all done manually, by
9 the analyst. And you set them up, your evidence
10 samples, one in each tube, and then at the end of
11 the process you add a tube that is a negative
12 control with all of the reagents that you added
13 into your sample.

14 Q. Okay. And that negative control you are talking
15 about is what you call manipulation control?

16 A. Yes.

17 Q. But what I'm getting at is, when you run this
18 whole block of samples through, whatever machine
19 it is you do, there's more than one case in it,
20 right? Often?

21 A. In the extraction procedure, no. When we amplify
22 -- or I mean, I'm sorry, when we quantitate,
23 there can be more cases batched together. And
24 then when we amplify, we amplify them singly in a
25 set, and then it's put on the instrument in

1 batches.

2 Q. Okay. So the first thing, this extraction thing
3 that you do by -- manually, you then get a
4 reading and it tells you whether there's any DNA
5 that's worth even pursuing, right?

6 A. That's part of the quantitation, yes.

7 Q. Okay. Well, if there is enough, then you
8 quantify it, do that test, and then go into
9 amplification?

10 A. The quantitation part tells us if there is
11 enough. If there is enough, then we continue.
12 If not, we stop there.

13 Q. Okay. So this manipulation control that you are
14 talking about is supposed to be zero, right?

15 A. Yes.

16 Q. It's supposed to be -- When you go through the
17 test, it is supposed to show no human DNA
18 whatsoever, correct?

19 A. Correct.

20 Q. And the reason you call it a control is because
21 if you do the test, and at the end you find out,
22 hey, there's something in here, then that's a
23 clue that there is contamination, right?

24 A. Yes.

25 Q. Okay. Now, contamination of evidence samples is

1 harder to detect than these contaminations of the
2 controls, right?

3 A. Not necessarily, depends.

4 Q. Well, with the control, if it comes back anything
5 other than zero, you know there's something
6 contaminating it, right?

7 A. Right.

8 Q. With an evidence sample, if it comes back with
9 DNA, if that DNA had been contaminated, you
10 wouldn't necessarily know that?

11 A. Correct. If it had been contaminated with the
12 same type of DNA, that's correct. However, if
13 it's been contaminated with another type, or the
14 analyst, or another source of the DNA, it would
15 show up as a mixture of DNA and we would be able
16 to separate that out.

17 Q. Well, it would show up as a mixture if the
18 original piece of evidence had any DNA that was
19 testable -- detectable, right?

20 A. Yes.

21 Q. A lot of these samples you will test and you
22 don't find any DNA on them, right?

23 A. Right. And at that point, we wouldn't go any
24 further.

25 Q. Sure. But if that sample that has really no DNA

1 on it, gets contaminated in this process, with
2 some other DNA, from it's own case or another
3 case, you wouldn't necessarily know it when you
4 go through this test, would you?

5 A. No.

6 Q. Meaning correct?

7 A. Yeah, that's correct.

8 Q. Because at the end, you would get a profile, on
9 the piece of evidence, and you would assume that
10 that profile must be from the suspect, or must
11 somehow be related to the case, right?

12 A. Correct.

13 Q. You wouldn't know that it had been contaminated
14 before it even went through?

15 A. Correct.

16 Q. Okay. Now, you keep a log of these kinds of
17 contamination incidents, correct?

18 A. Yes.

19 ATTORNEY BUTING: I'm going to mark this.

20 I have already shown counsel.

21 (Exhibit No. 346 marked for identification.)

22 Q. We'll call this Wisconsin Crime Lab's
23 Contamination Log. I think you changed the names
24 a couple times, but that's Exhibit 346. Can you
25 identify that.

1 A. Yes, these are copies from the logs that we keep
2 in the lab.

3 Q. Okay. And the first few pages are in a different
4 format. They are like a full page, each deals
5 with one incident, correct?

6 A. Yes.

7 Q. But as you get back a little bit farther, really,
8 just before August of this past year, August '06,
9 it's more of a log with numerous incidents on
10 each page --

11 A. Yes.

12 Q. -- right?

13 A. Yes, we changed our forms.

14 Q. Okay. You will need this with you so you can
15 refer to it. Did you bring a copy of that with
16 you, by the way, in your own file?

17 A. No.

18 Q. Okay. You don't normally keep that in your files
19 when you come to court?

20 A. No.

21 Q. Now, what your policy at the lab is, whenever you
22 run through these tests and you find a
23 contamination such as a manipulation control
24 contamination, you make a note of it in this log?

25 A. Yes.

1 Q. And you put the date, the case number, the type
2 of error detected, the analyst, and then there's
3 some corrective action that's taken?

4 A. Yes.

5 Q. But, again, that, of course, is only in those
6 manipulation or those control cases where you can
7 see clearly that there's contamination because
8 it's something other than zero?

9 A. Correct.

10 Q. Now, despite the best efforts of the analysts and
11 their supervisors, sometimes no explanation can
12 be found for the contamination; is that fair?

13 A. Yes.

14 Q. Sometimes it's rather obvious, like in your case
15 in this instance, that your DNA is found in a
16 control and then it's assumed that somehow you
17 contaminated it yourself, the analyst, right?

18 A. Right.

19 Q. But other times it's baffling, somehow or
20 another, something was contaminated and no one
21 can figure out how or why?

22 A. Correct.

23 Q. I want you to take a minute and look at this
24 exhibit that's in front of you. It's a 24 month
25 period, basically, from November of '04 --

1 actually, December of '04 to December of '06.

2 Could you count the number of errors -- You said
3 earlier that you believe there were 89 errors
4 since 2001.

5 A. Right.

6 Q. Do you remember that?

7 A. Yes.

8 Q. Would you count how many contamination incidents
9 are recorded in that 24 month period from 2004 to
10 2006.

11 A. Fifty.

12 Q. All right. Take a minute and count how many you
13 have, how many errors, contamination errors, you
14 report, yourself, in that 2 month period -- 24
15 month period? I believe I counted 44 errors, but
16 you must have found some more.

17 A. Seven.

18 Q. Actually, if you look at the third to the last
19 page, begins, it has three there, starting March
20 of '04. That's all right, never mind. So you
21 count 7, 7 out of 50.

22 A. Yes.

23 Q. I counted 8, but maybe I miscounted. You said
24 there's about 10 analysts?

25 A. Anywhere from 10 to 12.

1 Q. Okay. So, if there's 50 errors, the average, if
2 spread evenly, should be five errors a person,
3 right?

4 A. That depends on how many cases each analyst
5 works.

6 Q. That's true. You, though, have 7 out of 50,
7 which is more than the average, if you divide it
8 evenly, correct?

9 A. But not all those analysts work the same number
10 of cases.

11 Q. That's true. However, some of them are
12 full-time --

13 A. They are all full-time.

14 Q. -- doing nothing but DNA. All of them.

15 A. They are all full-time.

16 Q. They are all full-time, and you are not. You are
17 70 percent; 70 percent of your time is doing DNA
18 testing, that's what you told us, right?

19 A. That's correct.

20 Q. So we have all these other analysts who are
21 working full-time, more cases than you, and yet
22 you have a higher error rate than anyone.

23 A. No, actually, I believe if you look at the
24 numbers, I'm one of the higher producing analysts
25 as far as number of cases.

1 Q. Well, I don't see those numbers, but I do see
2 that you are the highest producing contamination
3 person in this log; isn't that right?

4 ATTORNEY GAHN: Objection, your Honor, this
5 is argumentative.

6 THE COURT: Sustained. I will ask that you
7 rephrase the question.

8 Q. (By Attorney Buting)~ Isn't it true that for this
9 two month -- two year period, you have one of the
10 highest contamination records of anybody at the
11 Wisconsin Crime Lab in Madison?

12 A. I don't know, I haven't counted up all the other
13 instances of other people. So I really don't
14 know how many each analyst has.

15 Q. Well, take a moment and look if you like.

16 A. Do you want me to count up for each analyst?

17 Q. I want you to see if there's anybody who has more
18 errors in that 20 more -- 24 month period than
19 you?

20 ATTORNEY GAHN: Your Honor, I'm going to
21 object at this point to the relevancy of this,
22 number one. But, also, I think, foundationally,
23 what the other analysts -- I don't know how this
24 witness can testify to the causes or why there was
25 contamination in other analyst's cases.

1 THE COURT: I think that's a matter for
2 redirect. I'm going to allow the question.

3 Q. (By Attorney Buting)~ Would you agree with me
4 that you have more errors in that 20 month -- 24
5 month period than anybody?

6 A. If you counted them up and your numbers are
7 correct, then I agree with you.

8 Q. Now, let's look at -- Why don't you look at just
9 the months of September and August of 2006, count
10 how many errors there are total and how many of
11 them are yours?

12 A. September and August?

13 Q. Yes.

14 A. 2006.

15 Q. These are all the big sheets, right, full page
16 ones?

17 A. Yes, there's only one.

18 Q. There's eight errors in September and August
19 total for the lab, right?

20 A. Oh, I thought you said for me.

21 Q. Well, let's just talk about first for the lab?

22 A. Oh, for the lab. Five.

23 Q. Go to the next page that has a log of several,
24 August 1st, August 3rd --

25 A. I'm sorry, you're at five, okay.

1 Q. August 1st, August 3rd, August 28th, 29th,
2 September 6th, September 14th. And on the second
3 page, another on August 3rd and another on
4 August 29th.

5 A. Seven.

6 Q. Okay. You come up with seven, two of which are
7 yours. Look at September 6th.

8 A. Yes.

9 Q. And look at August 1st?

10 A. I don't have that.

11 Q. I'm sorry. You're right, there's a page missing
12 from this exhibit. I'll correct that, but here's
13 a photocopy of apparently a page I didn't have in
14 this exhibit, shows an August 1st entry.

15 A. Okay.

16 Q. With an error from you, right?

17 A. Yes.

18 Q. So in that two month period, two of the seven
19 errors were made by you?

20 A. Yes.

21 Q. And in October and November of 2006, I count
22 eight of these sheets, eight errors?

23 A. Total.

24 Q. Total, right? So in the lab, in the four month
25 period of October, November, September, and

1 August, you have got 15 errors already, just in
2 that one little period of time, right?

3 A. Yes.

4 Q. Would you agree with me that the contamination
5 error rate has been going up in the Crime Lab
6 over the last few years?

7 A. Yes.

8 Q. Okay. Now, look, just for a moment, at some of
9 these contaminations so we can talk about what
10 kind of contaminations there are. Would you turn
11 to one that's entered on October 18th of 2006.
12 Do you see the October 18th?

13 A. Yes.

14 Q. Case No. W06-1209?

15 A. Yes.

16 Q. Okay. Now, this is not a mistake or an error
17 contamination by you, but you did sign off at the
18 bottom of it as the DNA Technical Unit leader,
19 right?

20 A. Correct.

21 Q. So you are familiar with what happens here when
22 your analysts make -- do a test; they find
23 contamination; they have to do one of these
24 reports; you review it and the supervisor reviews
25 it, right?

1 A. Correct.

2 Q. And this is an instance of cross-contamination
3 between two completely different cases, is it
4 not?

5 A. Yes.

6 Q. And the corrective measure for this particular
7 analyst is that she or he, I don't know who it
8 is, is going to try not to extract high level DNA
9 samples near in space in time to low level DNA
10 samples?

11 A. Correct.

12 Q. So that one was apparently explained. Now, if
13 you look at the very next page, different case
14 W05-1876?

15 A. Yes.

16 Q. Do you see that one?

17 A. Yes.

18 Q. Description of the contamination here is believed
19 to have been a problem with labeling. Hold on,
20 I'm sorry, it's the next page, W05-140?

21 A. Yes.

22 Q. This is a contamination where it was concluded
23 that it's possible the samples were actually
24 switched or mislabeled during the test process?

25 A. Yes, it's possible.

1 Q. And the corrective measure is specifically to
2 limit distractions and to limit cases working at
3 one time in order to prevent errors, correct?

4 A. Yes.

5 Q. Distractions like you faced when you tested that
6 bullet with trainees around you?

7 A. No, I believe she was referring to distractions
8 like phone calls and questions and.

9 Q. Okay. There's also something called carryover,
10 as another kind of contamination, right?

11 A. Yes.

12 Q. And that's referred to in the very next incident.
13 And that's where it's possible for DNA from a
14 prior test, to actually carryover into the one
15 you are doing, through the instruments somehow,
16 right?

17 A. No. Are you talking about the one dated 10/8?

18 Q. Well, yeah, but there's a number that talk about
19 carryover. I'm just asking in general.

20 A. Carryover in this instance would be to carryover
21 in the same case, not case to case, into the
22 control, from one sample to another into the
23 control.

24 Q. Okay. Let's turn to your error noted on
25 September 6 of '06?

1 A. Yes.

2 Q. This is another one where you developed your
3 profile from a swabbing of evidence, Item A?

4 A. Yes.

5 Q. This was evidence, not a control?

6 A. That's correct.

7 Q. You contaminated evidence in this instance, did
8 you not?

9 A. With my own DNA.

10 Q. With your own DNA?

11 A. Correct.

12 Q. And you even entered it into CODIS, which is the
13 big national data base?

14 A. Right.

15 Q. As a female DNA that somebody could hit on?

16 A. Right. And because we have a system in the lab
17 to catch this, we have profiles of everybody in
18 the lab, my profile included. So this was
19 resolved because it obviously hit on myself and
20 it was removed.

21 Q. But it wasn't even detected until you ran your
22 own profile through CODIS, as if you were some
23 suspect, right?

24 A. It was detected when we ran it through the
25 system, yes.

1 Q. That's right. And so you had to then remove it
2 from the whole CODIS system, otherwise you would
3 look like you are some suspect?

4 A. That's correct.

5 Q. Let's turn to two pages further down,
6 August 28th, analyst is K.W., right?

7 A. Yes.

8 Q. This is an example where a partial female profile
9 was developed in a control and the analyst was
10 completely unable to determine the origin of that
11 profile, right?

12 A. Correct.

13 Q. It wasn't her -- I'm sorry, I'm assuming it's a
14 her, looks like, do you know K.W.?

15 A. Right.

16 Q. Okay. It was not her DNA, right?

17 A. Correct.

18 Q. And it was not carryover, right?

19 A. Correct.

20 Q. It was determined as contamination that simply is
21 unexplainable?

22 A. That's correct.

23 Q. The very one right before that, I believe it's
24 Karen Daily; is that right? August 29th?

25 A. Yes.

1 Q. This one is actually a duplicate. If you look at
2 the page, the first page of the running log.
3 A. Okay.
4 Q. I'm sorry, it's the second page of the running
5 log that starts June 6th?
6 A. Yes.
7 Q. See, at the very bottom there, it says
8 August 29th?
9 A. Yes.
10 Q. It says K.D.D., that's Karen Daily?
11 A. Yes.
12 Q. Another contamination in which she's finding
13 alleles, some of which are similar to her and
14 some of which are not?
15 A. Correct.
16 Q. A source that is completely unknown?
17 A. That's correct.
18 Q. And, finally, turn to March 16th of '06; do you
19 see this page?
20 A. Yes.
21 Q. This is not you, right?
22 A. Correct.
23 Q. It's initialed M.R.S., it's a completely
24 different case, right?
25 A. Yes.

1 Q. You weren't involved in the testing of that -- in
2 that experiment at all?

3 A. Not that I recall, no.

4 Q. And yet this analyst found a partial profile in
5 the control that was consistent with you?

6 A. That's correct.

7 Q. You ended up contaminating someone else's test?

8 A. That's correct. My profile, partial profile,
9 wasn't complete, so I'm assuming it was
10 consistent with mine throughout.

11 Q. All right. Now, your big profile, I'm sorry,
12 protocol, that I think was entered even, as an
13 exhibit, it recognizes that there may be some
14 contamination in these tests, right?

15 A. Yes.

16 Q. And it says, it's got specific rules about what
17 you can do, when you get a contamination?

18 A. Yes.

19 Q. And one of those rules in the protocol is, if you
20 get a contaminated control, it forbids you from
21 making a call to include somebody as the person
22 in that DNA, right?

23 A. Yes.

24 Q. It tells you, that if you go through these tests
25 and the manipulation control is contaminated,

1 that you are to report it as inconclusive for
2 matched purposes?

3 A. Correct.

4 Q. Now, here, you ran this test on the bullet and
5 you got a result that shows the manipulation
6 control was contaminated, right?

7 A. Correct.

8 Q. And according to protocol, you should have not
9 said that that was Teresa Halbach's DNA on the
10 bullet, your protocol told you that you were to
11 report it as inconclusive; isn't that right?

12 A. Yes.

13 Q. But if that happens, usually what you do is you
14 try and re-extract it and run it again?

15 A. Yes.

16 Q. But in this case, it was a one time deal, you put
17 that bullet into a buffer and you took whatever
18 sample there was and you ran it off?

19 A. Yes.

20 Q. So you could not redo the test?

21 A. That's correct.

22 Q. And if the test came back inconclusive, you would
23 not be able to put Teresa Halbach in Mr. Avery's
24 garage at any time, right, like Mr. Fassbender
25 asked?

1 A. There were reasons why --

2 Q. I will get to that.

3 A. There were reasons why this profile was reported
4 on.

5 Q. We'll talk about that. But my point is this, out
6 of all these tests that you have done --

7 A. Right.

8 Q. -- not one single test put Teresa Halbach in Mr.
9 Avery's garage?

10 A. That's correct.

11 Q. Except for this bullet.

12 A. That's correct.

13 Q. And this is the only one, right?

14 A. Yes.

15 Q. And you couldn't retest it, so you either had to
16 call it inconclusive or else deviate from your
17 protocol.

18 A. That's correct.

19 ATTORNEY BUTING: Let's mark this exhibit.

20 (Exhibit No. 347 marked for identification.)

21 Q. I now show you Exhibit 347, can you identify
22 that?

23 A. Yes.

24 Q. And what is it?

25 A. It's a copy of our deviation request form in our

1 laboratory.

2 Q. Okay. And this is a form that, if you want to
3 deviate from your protocol in any way, you have
4 to -- or any analyst has to fill out this form
5 and it's to be reviewed by two people, right?

6 A. It's to be reviewed by the Technical Unit Leader
7 and approved by the supervisor.

8 Q. Okay. And the Technical Unit person is who?

9 A. Myself, in our lab, and Gretchen DeGroot in the
10 Milwaukee lab.

11 Q. Okay. So you had one person sign this, one
12 person review this, and that is Gretchen DeGroot,
13 right?

14 A. That's correct.

15 Q. You went all the way to the Milwaukee Lab to get
16 approval to deviate from your protocol in order
17 to make a call that says Teresa Halbach's DNA is
18 on that bullet, right?

19 A. No, sir. I discussed this with my supervisor in
20 the laboratory. In fact, I discussed it with
21 numerous analysts in the laboratory. And, yes, I
22 did talk to Gretchen about it. Since this was a
23 technical matter, and Gretchen and I are more in
24 tune to the technical issues, she is the one I
25 would have, as well as the peer reviewer who

1 reviewed my case, that I would have talked to
2 first, and I did talk to Marie, my supervisor.

3 Q. You are familiar with the protocol?

4 A. Yes, I am.

5 Q. Record should reflect you are looking at Exhibit
6 310, right?

7 A. Yes.

8 Q. There you go. All right. In this section of
9 your protocol, it says interpretation of STR
10 results, right?

11 A. Yes.

12 Q. That's the heading and it talks about how it's a
13 matter of professional judgment and expertise,
14 right?

15 A. Yes.

16 Q. And it recognizes that maybe some situations may
17 not fit a preset rule?

18 A. Correct.

19 Q. Gives some latitude for that, right?

20 A. Right.

21 Q. But it also says, any deviations must be
22 documented in written form, prior to peer review;
23 in those situations any deviations must be
24 approved by the technical leader and the
25 supervisor, right?

1 A. Correct.

2 Q. The exhibit in front of you, which is the unit
3 deviation form, does not have any approval from
4 the supervisor, does it?

5 A. It has no signature, but I did discuss it with
6 her and she did approve it.

7 Q. But she didn't sign anything, is that what you
8 are saying?

9 A. Apparently it was an oversight.

10 Q. Okay. All right. Thank you. Now, this kind of
11 a deviation from protocol is a pretty unusual
12 thing in your lab, right?

13 A. Yes.

14 Q. You don't do it very often?

15 A. Right.

16 Q. Twenty-three years you have been there, right?

17 A. Yes.

18 Q. This is the only time in your entire career you
19 have ever filed a deviation of protocol so that
20 you could make a call and include somebody, isn't
21 it?

22 A. Yes.

23 Q. This case is the only time, right?

24 A. Yes.

25 Q. So, when Mr. Gahn asked you on direct whether --

1 when you did the exclusion of Mr. Avery in 2003,
2 whether you followed the same steps there that
3 you followed here, that's not entirely true, is
4 it?

5 A. I don't understand what you mean.

6 Q. When you did the test that excluded Mr. Avery,
7 proved he was wrongly convicted in 2003, you did
8 not have to deviate from any protocol to make
9 that call, did you?

10 A. No, because our protocol doesn't require any
11 deviation for an exclusion --

12 Q. That's right.

13 A. -- no matter what.

14 Q. I'm sorry?

15 A. No matter what.

16 Q. Right. But there was no -- you didn't have to
17 deviate anyway, you had no contamination in his
18 test?

19 A. Right. The protocols that I followed were all in
20 the same -- I mean, they were all in place. That
21 deviation was available if I had needed it. The
22 request to make it was available.

23 Q. But you didn't need to?

24 A. No, I didn't.

25 Q. But in this case you did?

1 A. That's correct.

2 Q. The one and only case in 23 years you did, right?

3 A. This kind of deviation, first of all, in this
4 context, we're talking about DNA evidence. And
5 we haven't been doing DNA evidence for 23 years.
6 So --

7 Q. Well, you have been doing it since 1997?

8 A. No. 19 -- Yeah, 1996, you are right.

9 Q. Okay. Ten years, then, 50,000 -- 60,000 tests is
10 what you have told Mr. Gahn, in your lab?

11 A. Yes.

12 Q. And whatever portion of that is yours, you have
13 never filed a request to deviate from the
14 protocol in order to make a call and say that's
15 her DNA, until this case?

16 A. That's correct, because we have never -- I have
17 never had this situation before.

18 Q. Turn to your reports, please. Do you have those
19 in front of you?

20 A. Yes.

21 Q. I'm showing you Exhibit 314. Let's talk about it
22 in terms of exhibit numbers, okay. Is that your
23 report that's dated May 8, 2006?

24 A. Yes, it is.

25 Q. And that is the report that says -- gives a

1 result of this test of the bullet?

2 A. Correct.

3 Q. Correct?

4 A. Yes.

5 Q. Now, these reports are very important, right?

6 A. Yes.

7 Q. These are your final reports?

8 A. Yes.

9 Q. For that test? They are signed by yourself?

10 A. Correct.

11 Q. And by Marie Beth Varriale?

12 A. Correct.

13 Q. Who's the supervisor of the lab, your unit?

14 A. Yes.

15 Q. And she's signing it as the designee for the

16 Attorney General of the State of Wisconsin,

17 correct?

18 A. Yes.

19 Q. That's how important these reports are. They are

20 from the Attorney General.

21 A. That's correct.

22 Q. And you know how these reports are used, correct?

23 A. Yes.

24 Q. Courts rely on them?

25 A. Yes.

1 Q. Juries rely on them?

2 A. Yes.

3 Q. Prosecutors and police rely on them?

4 A. Yes.

5 Q. Defense attorneys rely on them?

6 A. That's correct.

7 Q. Now, on Page 2 of your report -- I'm sorry, it's
8 page 4, you have a sentence in there, at the end
9 of the first paragraph, that says -- Actually,
10 the first paragraph says the profile is developed
11 from the bullet fragment --

12 (Court reporter asked the attorney to repeat.)

13 ATTORNEY BUTING: I'm sorry.

14 Q. The profiles developed from the bullet fragment,
15 Item FL, in the interior driver's door handle,
16 Item IG, are consistent with the profile
17 developed from the Pap smear, Item EF, reportedly
18 collected from Teresa Halbach. And then it
19 refers to a prior report.

20 And then the last sentence, the
21 manipulation control extracted with the bullet
22 fragment, Item FL, contains DNA that is
23 consistent with this analyst?

24 A. Correct.

25 Q. All right. At no time, in this report, do you

1 ever disclose, that in order to make that
2 finding, you had to deviate from a protocol, did
3 you?

4 A. No.

5 Q. Anyone reading this report would never know that,
6 in order for you to make that call and say that
7 that's Teresa Halbach's DNA, you had to do
8 something you have never done in your career as a
9 Crime Lab analyst, right?

10 A. Without discovery, no.

11 Q. So, if a defense attorney, or Court, didn't dig
12 through all of those mass of papers that you have
13 there and find this unit one page report, no one
14 would ever know that, in order for you to make
15 that call in this case, you had to do something
16 you have never done before?

17 A. The deviation that I requested was appropriate
18 for this situation. And the results that I
19 reported were correct. And that's why the
20 deviation was requested. All my data supported
21 the deviation, it was okayed --

22 Q. But --

23 A. -- and it was reported.

24 Q. -- ma'am, you did not disclose, in that report,
25 that official report, that Courts, and juries,

1 and judges, and lawyers, and everybody else
2 relies on, you did not disclose that in order to
3 make that call you had to do something so rare
4 you have never done it before, did you?

5 A. No, I did not.

6 Q. And you didn't put that in there because if you
7 did, you wouldn't be able to satisfy
8 Mr. Fassbender's request that you put Teresa
9 Halbach in Steven Avery's garage, right?

10 A. That's not correct.

11 Q. Let's close with this. Other than that bullet,
12 all your other tests, none of them put Teresa
13 Halbach, ever, in his garage, or his house, or
14 any of his vehicles, right?

15 A. Correct.

16 Q. Thank you.

17 THE COURT: We're going to take a 10 minute
18 break at this time. And then we'll resume.

19 (Jury not present.)

20 THE COURT: You may be seated. All right.
21 Counsel, I will see you in 10 minutes.

22 ATTORNEY BUTING: Ten, you said?

23 THE COURT: Yes, I'm giving the court
24 reporter a break. We'll take another one before the
25 afternoon is over.

1 (Recess taken.)

2 THE COURT: Mr. Gahn, do you have any
3 questions on redirect?

4 ATTORNEY GAHN: Yes, your Honor.

5 THE COURT: You may begin.

6 ATTORNEY GAHN: Thank you, sir.

7 **REDIRECT EXAMINATION**

8 BY ATTORNEY GAHN:

9 Q. Ms Culhane, will you explain to the jurors
10 exactly what it is that goes into a report, a
11 final report that you file in a case?

12 A. The content of the report is usually everything
13 that we examined, of all the items submitted,
14 exactly what we examined; a description of the
15 technology that we're using; the types --
16 sometimes, not always -- the actual types go into
17 the report; and then our results, with reference
18 to our profiles we developed, whether they are
19 inconsistent or consistent; and a final
20 conclusion.

21 Q. You indicated in your report when you read about
22 the bullet, Item FL, that Teresa Halbach's
23 profile was contained on that bullet, correct?

24 A. That's correct.

25 Q. And you also indicated in your report that your

1 profile was contained in the control; is that
2 correct?

3 A. Yes.

4 Q. And your request for deviation, was that in all
5 of your notes?

6 A. Yes.

7 Q. Were you hiding anything from anyone?

8 A. No.

9 Q. And anyone reading your report would have seen
10 that your profile was in the control, correct?

11 A. Yes.

12 Q. And wouldn't that cause them to ask further
13 questions about that?

14 ATTORNEY BUTING: Objection, speculation.

15 THE COURT: Sustained.

16 Q. (By Attorney Gahn)~ But further information about
17 your profile in the control was contained in all
18 of your notes?

19 A. That's correct.

20 Q. And did you turn your notes over to the defense
21 in this case?

22 A. Yes.

23 Q. Similarly, with the contamination log that
24 Mr. Buting showed you, you turned your
25 contamination log over to the defense, correct?

1 A. Correct.

2 Q. And, again, what is the purpose of the
3 contamination log?

4 A. Several different purposes, actually. We use it
5 to troubleshoot, to find out if we're having a
6 systemic problem in the lab, to make sure that
7 our reagents are clean, to make sure that we
8 haven't inadvertently contaminated our reagents
9 or something and that way we would be introducing
10 DNA into our samples. That's one function.

11 The other function is to troubleshoot
12 each situation as it happens. If you further
13 look at that contamination log, I would guess
14 99 percent of the instances that we had were
15 resolved, either by reworking the case, or by the
16 fact that the evidence was actually an
17 elimination or it excluded someone. So it,
18 basically, provides us with the information to,
19 if we have those instances, to troubleshoot and
20 try and find out what happened in that particular
21 case.

22 Q. Do the inspectors see the contamination log?

23 A. Yes.

24 Q. And I think you testified that every five years
25 you are up for your accreditation?

1 A. Yes.

2 Q. And when was the last time you received your
3 accreditation?

4 A. May of 2006.

5 Q. And did the accrediting board members see your
6 contamination log?

7 A. Yes.

8 Q. And did they express any concerns about it?

9 A. No.

10 Q. Every two years you have an audit?

11 A. Yes.

12 Q. And did the auditors see your contamination log?

13 A. Yes.

14 Q. Did anyone express any concerns at that point?

15 A. Not to my knowledge.

16 Q. Why is it good practice to keep a contamination
17 log?

18 A. Because it happens. Any type of lab work where
19 you have human beings doing the work, the
20 possibility for these types of contamination are
21 going to happen. It's unavoidable.

22 The techniques that we're working with
23 are extremely sensitive. And, actually, that's
24 why they are so useful. They are very sensitive
25 because they do pick up on small amounts of DNA.

1 But taking that into account, you also
2 have to realize that contamination is going to
3 happen. And it's interpreted and dealt with on a
4 case by case basis.

5 Q. Does the scientific community recognize that
6 contamination is a possibility or a risk in the
7 DNA PCR testing process?

8 A. Yes.

9 Q. And have studies been conducted about the
10 contamination risks using this type of
11 methodology?

12 A. Yes.

13 Q. Is it well documented that there are risks of
14 contamination with this type of technology?

15 A. Yes.

16 Q. Do the manufacturers of the kits and the
17 equipment that you have in your laboratory
18 recognize contamination?

19 A. Yes, they do.

20 Q. Have they conducted validation studies about
21 this?

22 A. I assume so, I'm not 100 percent familiar with
23 that.

24 ATTORNEY BUTING: Objection, I move to
25 strike the answer.

1 THE COURT: Court will order the answer
2 stricken.

3 Q. (By Attorney Gahn)~ And, again, would you explain
4 to the jurors why this testing methodology is so
5 sensitive and the ability to -- the ability it
6 has to pick up trace amounts of DNA?

7 A. The PCR reaction that we use to copy all of these
8 genetic markers that I'm talking about works on
9 very small pieces of DNA. So, if you have DNA
10 that has been compromised by environmental
11 factors such as heat, UV light; if you have
12 substrates like soil, or wood, or things like
13 that that may compromise the sample; PCR is very
14 good for that. Because even though the DNA is
15 chewed up a little bit, there's still usually
16 enough there to amplify or make a whole lot of
17 copies. So this amplification process gives us a
18 lot of material, after it's completed, to work
19 with.

20 Because of that fact, it also amplifies
21 very, very small amounts of DNA, so, such as in
22 this case, my DNA -- my DNA being introduced into
23 the negative control, even though it was a very,
24 very small amount, the technique was sensitive
25 enough to pick that up.

1 Q. Would you explain to the jurors the exact set up
2 of your evidence and your control during an
3 extraction?

4 A. I have a test tube rack in front of me. And say,
5 for instance, I'm doing three evidence samples,
6 so I'm going to have three separate tubes labeled
7 with the number and the item designation for each
8 item of evidence. And then I'm going to have a
9 fourth tube that's referred to as the
10 manipulation control.

11 As I sample each one of my samples,
12 depending on whether it's a cutting or what the
13 evidence is, if it's a cutting, I will cut a
14 portion of the swab or material off, put it into
15 the tube and close the cap; clean my scissors and
16 forceps off; go to the next item, put it in the
17 tube, close the cap. I do that for all the
18 evidence items.

19 And, then, the control, I actually just
20 add to the liquid the buffers that cause the
21 reaction to happen. And that all takes place on
22 my bench top, in a test tube rack; I have a piece
23 of white paper down on my desk.

24 Q. Now, while you were performing this extraction
25 what else were you doing? Were you training

1 anyone?

2 A. Concerning the bullet, right?

3 Q. Yes, concerning the bullet.

4 A. Concerning the bullet, this was a little bit
5 unusual, because there was nothing to cut. And
6 there was nothing -- I didn't feel like, by
7 swabbing it, that I would get enough DNA off of
8 the item, so I actually put the entire bullet
9 into the tube, with my reagents, and washed all
10 the DNA off that was on that tube.

11 Because this was a little unusual, most
12 of our samples are swabbings or cuttings, I had
13 two of our newer analysts sit next to my
14 workbench and watch me. And as I was doing it, I
15 was explaining what I was doing and why I was
16 doing it. And I felt like I was far enough away
17 from my workbench so that my talking wouldn't
18 interfere; but, obviously, that was incorrect.

19 Q. If when -- If your DNA profile had been on the
20 bullet, would that have changed anything?

21 A. Yes.

22 Q. Please explain that to the jurors?

23 A. If my DNA had been on the evidence sample, I
24 would have reported that as a mixture of DNA from
25 myself and Teresa Halbach and I would have done a

1 statistical analysis referred to as a likelihood
2 ratio. That type of contamination is different
3 than what actually happened.

4 Q. If your -- If the control in this case had
5 contained a DNA profile that was unrecognizable
6 to you, would that have changed anything?

7 A. Yes.

8 Q. Please explain that to the jury.

9 A. I would not have requested a deviation because it
10 would not have been appropriate; it would have
11 been inconclusive, just like our protocol calls
12 for.

13 Q. Explain to the jurors why you felt that deviation
14 was appropriate in this situation.

15 A. First of all, there were a couple of reasons, my
16 DNA was in the control, not the evidence sample.
17 And because I was the analyst using it --
18 processing it, I knew what the source of the DNA
19 was. And I felt this was probative evidence, and
20 I felt it was appropriate simply -- primarily
21 because it was my own DNA and it was in the
22 evidence sample.

23 Had it been any other profile, had it
24 been mixed with the sample, again, I would have
25 reported it, but I would have reported it as a

1 mixture, and all the information would have been
2 in my report just like it was in this report.

3 All the information was there, but I
4 felt it was appropriate because I could not go
5 back and re-extract. I was stuck with what I
6 had; I couldn't redo anything to remedy the
7 situation. And I felt it was probative evidence,
8 so I reported it.

9 Q. Did the presence of your DNA profile in the
10 control, in any way, cause the presence of Teresa
11 Halbach's DNA profile on the bullet?

12 A. No.

13 Q. Was there any mixture on the bullet?

14 A. No.

15 Q. Who's profile did you find on the bullet?

16 A. It was a single source of DNA, meaning from one
17 person, and it was consistent with Teresa
18 Halbach.

19 Q. And the control in this case contained your
20 profile?

21 A. Correct.

22 Q. I believe you testified on direct examination
23 that since January 1st of 2001, the Crime Lab has
24 analyzed -- was it over 50,000 samples?

25 A. Correct.

1 Q. And did you also testify that you have logged,
2 since that time, 89 instances of contamination?

3 A. That's correct.

4 Q. Mr. Buting asked you about the work that you did
5 on the exoneration of Steven Avery?

6 A. Yes.

7 Q. Explain, again, to the jurors, what samples you
8 were analyzing for that exoneration?

9 A. I was examining pubic hairs that were originally
10 submitted back in '85. In 1985 we did a
11 microscopic comparison of hairs. That was
12 state-of-the-art, that's what every crime lab
13 did.

14 At the time, I made no statement about
15 the pubic hair combings because, microscopically,
16 I could not tell the difference between the
17 victim and the suspect's pubic hairs. So if I
18 couldn't tell the difference I certainly couldn't
19 tell if any of these pubic hairs were foreign, so
20 that was inconclusive.

21 When I was asked by Project Innocence to
22 go back and look at these hairs, they were all
23 mounted on microscope slides that I had
24 originally mounted them on in 1985. I removed
25 the cover slip; I took the hairs off; I washed

1 the hairs; and I attempted to extract DNA from
2 them.

3 You probably remember me telling you
4 that the type of DNA testing that we're doing is
5 only appropriate if you have nucleated cells. So
6 the hair shaft, we couldn't get DNA from, it had
7 to be the root of the hair, if there was some
8 skin attached to it.

9 And in this case I extracted 11 hairs,
10 two of them did have cellular material; one was
11 consistent with a woman and one was consistent
12 with a male.

13 Q. In 2003, were you qualified to do DNA testing?

14 A. Yes.

15 Q. Tell the jurors about the potential for getting a
16 DNA profile from the root of a single hair?

17 A. Traditionally --

18 ATTORNEY BUTING: Objection, this is
19 irrelevant, I think.

20 THE COURT: Well, there were some questions
21 on cross about it, I will allow her to explain what
22 she did.

23 A. In most cases, again, unless there is cellular
24 material attached to the root of the hair, we
25 don't have a lot of success with nuclear hair --

1 I mean nuclear DNA off of -- which is the type of
2 DNA we're doing, off of hair, in general. To get
3 DNA off of a hair that old, that was mounted on a
4 microscope slide, was pretty unusual.

5 Q. And is this sort of a one shot chance when you
6 are doing one hair?

7 A. Yes.

8 Q. There are no second chances going back?

9 A. No.

10 Q. And you developed a DNA profile from that one
11 single hair didn't you?

12 A. Yes.

13 Q. Mr. Buting stated that the profile you developed
14 from that one single hair was responsible to free
15 Mr. Avery; is that correct?

16 A. Yes.

17 Q. And you ran that profile through the data bank
18 and it hit on an individual by the name of
19 Gregory Allen; is that correct?

20 A. Yes.

21 Q. Ms Culhane, if by chance your DNA profile had
22 been in the control of that case, would you have
23 not reported Gregory Allen as the person with the
24 profile on the hair?

25 A. No, I would have requested a deviation from our

1 protocol because --

2 ATTORNEY BUTING: Objection, speculation
3 here.

4 THE COURT: No, I think there actually were
5 some questions about this on cross, so I'm going to
6 allow it.

7 A. I would have requested a deviation in that
8 particular case too because I couldn't go back
9 and redo that hair. I had one shot, and if I got
10 contamination, and it would have been my DNA in
11 the manipulation control, I would have requested
12 a deviation.

13 Q. So requesting deviations are very rare, aren't
14 they?

15 A. Yes.

16 Q. But the circumstances of this case required you
17 to request a deviation, correct?

18 A. Yes.

19 Q. There was no going back, a second chance, was
20 there?

21 A. No.

22 Q. Just like when you analyzed the one hair in 2003,
23 that resulted in Steven Avery's freedom?

24 ATTORNEY BUTING: Objection, no comparison.

25 THE COURT: It's been asked and answered.

1 Sustained.

2 Q. (By Attorney Gahn)~ Now, Ms Culhane, Mr. Buting
3 handed you, before, Exhibit 344, and I will have
4 it brought up to you in just a moment. But this
5 was an exhibit that listed the buccal swab of
6 Steven Avery being returned to the Manitowoc
7 County Sheriff's Department; is that correct?

8 A. Yes.

9 Q. I would like you to take another look at that.

10 A. Yes, this is a copy of our receipt.

11 Q. And first off, did you ever have a vial of Steven
12 Avery's blood in your laboratory?

13 A. No.

14 Q. So what did you use to make your comparisons, the
15 standard that you used in 2003?

16 A. A buccal swab.

17 Q. Of Steven Avery?

18 A. Yes.

19 Q. And it's listed on that exhibit?

20 A. Yes.

21 Q. And what happens when you are finished with a
22 case, explain to the jurors how it's packaged up
23 and how it is sent back to the submitting agency?

24 A. When I finish with a case, it's put pack in the
25 original container and it's sealed with evidence

1 tape, or whatever tape we have in the laboratory,
2 usually evidence tape. And our initial -- my
3 initials are across the seal.

4 Q. And if that envelope that you returned the buccal
5 swabs in was still in that condition today, would
6 you be able to recognize it?

7 A. I believe so.

8 (Exhibit No. 348, marked for identification.)

9 Q. By looking at the envelope, will you be able to
10 tell whether your initials are on it?

11 A. If my initials are on there, I will recognize
12 them.

13 ATTORNEY BUTING: Can I see it, please?

14 ATTORNEY GAHN: What's the exhibit number?

15 DETECTIVE WIEGERT: 348.

16 Q. (By Attorney Gahn)~ Detective Wiegert is going to
17 hand you what has been marked as Exhibit 348 and
18 ask if that has any markings on the outside of
19 the envelope that you recognize?

20 A. Yes, it does.

21 Q. Explain what the markings are for the jury.

22 A. This is the evidence tape we use in the
23 laboratory. Those are my initials. And this is
24 also the label for our case number.

25 Q. May the record reflect that she's pointing to the

1 blue label on the exhibit.

2 THE COURT: Mr. Buting, I'm going to have
3 to ask you if you agree, since I really can't see
4 very well.

5 ATTORNEY BUTING: Point to it.

6 THE COURT: It is a blue label. Looks like
7 a blue label.

8 ATTORNEY BUTING: Sure.

9 THE COURT: All right. The record will so
10 reflect.

11 A. And my initials are also across that label.

12 Q. Would you open up that envelope?

13 ATTORNEY BUTING: Objection, hold on, I
14 don't want --

15 THE COURT: I'm going to sustain the
16 objection. The defense may have the right to ask
17 questions on recross that might pertain to the
18 current state of the envelope. I will let you
19 address opening it after recross is finished. Fair
20 enough?

21 ATTORNEY BUTING: Sure.

22 THE COURT: Okay.

23 Q. (By Attorney Gahn)~ Does the case number on that
24 exhibit correspond to the case number on the --
25 on Exhibit, is it 344, the transmittal evidence

1 form?

2 A. Yes, it does.

3 ATTORNEY GAHN: Your Honor, at this point,
4 I will turn Ms Culhane over to Mr. Buting, if he
5 wishes to voir dire the witness on this point. And
6 I would like to have the opportunity to resume this
7 line of questioning.

8 ATTORNEY BUTING: No, I think he can finish
9 his cross (sic) and if there's any --

10 THE COURT: Stop. I'm going to excuse the
11 jury for a couple minutes here. We'll bring you
12 back in a few minutes.

13 (Jury not present.)

14 THE COURT: All right. You may be seated.

15 ATTORNEY BUTING: Can I take a look at this
16 a little bit closer?

17 THE COURT: By all means.

18 ATTORNEY BUTING: Okay. Do you want me to
19 discuss this now?

20 THE COURT: Well --

21 ATTORNEY BUTING: I can --

22 THE COURT: The reason I excused the jury
23 was, I assume that this is the envelope that the
24 buccal swabs were sent back to the sheriff's
25 department, you are asking to open it so she can say

1 that, presumably, yes, these are the buccal swabs,
2 they are in the same condition they were when I sent
3 them back?

4 ATTORNEY GAHN: No, there will be inside
5 this, the envelope that she packaged them in, which
6 will be all completely sealed with her initials on
7 it from the Crime Lab and show that it has not been
8 opened or tampered with.

9 THE COURT: Okay. So her initials aren't
10 on the --

11 ATTORNEY BUTING: They are.

12 THE COURT: -- Federal express?

13 ATTORNEY GAHN: They are.

14 THE COURT: There was testimony earlier
15 about her sealing something, putting her initials on
16 it. I guess what I'm getting at is, is this the
17 document she sealed, or is there another document
18 inside that's the document that's sealed?

19 ATTORNEY GAHN: Yes, inside.

20 ATTORNEY BUTING: Well, Judge, let me just
21 make a point, for the record. I don't know what's
22 inside, I haven't opened this document. But I can
23 tell that as you face the -- as you are looking at
24 the front with the label on it, the left edge of it
25 has been slit open at some point. The cardboard you

1 can see is cut and there is a piece of tape.

2 I don't know if we should excuse the
3 witness at this point. Well, I think -- that's
4 okay. There is a piece of larger tape sealing
5 it, but if you look closely, there's also just
6 another little piece of scotch tape that could
7 very easily be peeled back without any damage
8 noted and potentially gain access to the inside
9 of that.

10 I don't know what's inside, but that
11 left hand seal, or left hand side of the
12 envelope, does not appear to be sealed with any
13 kind of evidence tape. Do you see the little
14 piece of scotch tape I'm referring to?

15 THE COURT: I see a piece of scotch tape on
16 there.

17 ATTORNEY GAHN: Your Honor, we could open
18 this outside the presence of the jury. Open it right
19 now, see what's inside there.

20 ATTORNEY BUTING: I want the jury to see
21 that it's just sealed with a piece of scotch tape,
22 just like what they are going to see a little later.
23 When does scotch tape become proper evidence sealing
24 material? To me this looks like yet another exhibit
25 with Mr. Avery's DNA in it, that has a seal of

1 nothing more than scotch tape.

2 ATTORNEY GAHN: Your Honor, what's
3 happening here is what we tried to work out, I
4 think, in our pre-trial motions. We're getting back
5 into this **Richardson** frame-up, the defense initially
6 gives an offer of proof that the planting was done
7 by the blood vial in the Manitowoc County Clerk of
8 Court's Office. And that changes today and now the
9 implication is the buccal swab of Steven Avery was
10 used to do the planting of the evidence.

11 This causes us to have to respond to
12 this. This is outside the scope of what his
13 offer of proof was. I believe it all was outside
14 the scope of what the Court ruled would be the
15 parameters in this case under **Richardson** and
16 under **Denny**. And we have to respond to this.

17 THE COURT: All right.

18 ATTORNEY BUTING: With regard to that. Can
19 I just quickly respond. The difference here is that
20 this witness has testified that some of the DNA
21 appears to have come from a non-blood source. Now,
22 given that, we have a right to respond and show what
23 other sources might be, that's what this is.

24 THE COURT: I have already allowed you to
25 pursue that. I'm looking at the address label on

1 this document and this is from the Department of
2 Corrections, Stanley Correctional Institution, to
3 Marie Beth Varriale at the Crime Lab. You know, if
4 that's the case, it's not very surprising that it
5 was opened. I thought, initially, that this was the
6 envelope from which it was sent from the Crime Lab
7 back to the Sheriff's Department.

8 ATTORNEY BUTING: It is.

9 THE COURT: Before I rule on whether or not
10 the jury should see it in its current condition or
11 make any conclusions about it, I think we have to
12 know what it is, if it came from -- if this is the
13 original label, and it came from the crime lab.
14 It's not going be too surprising that it's been
15 opened and closed again.

16 ATTORNEY GAHN: Correct. The critical
17 piece of evidence is what is going to be inside that
18 envelope and that will be the buccal swabs that Ms
19 Culhane used to do the exoneration testing for the
20 Innocence Project in 2003. And what we want to
21 show, your Honor, is that these were not reopened
22 and used to wipe on a key or a hood latch.

23 THE COURT: Is this -- So this isn't the
24 envelope that you're attempting to show to the jury
25 was sealed with her initials on it and has never

1 been opened since?

2 ATTORNEY GAHN: No, your Honor.

3 THE COURT: Does that change anything for
4 the defense, Mr. Buting?

5 ATTORNEY BUTING: Well, in order to get to
6 whatever is inside, one would have to first open
7 that envelope, as I understand it. And what I'm
8 saying, as I look at it right now, is that that
9 envelope appears, yeah, it's been opened. And I
10 understand that what happened is that probably came
11 from the Crime Lab -- I'm sorry, from the prison, to
12 the Crime Lab, they tested it, put it back in the
13 same envelope, and returned it to Mr. Remiker.

14 THE COURT: All right. Let's do this. Let
15 me suggest this, what if you present this to the
16 witness, as is, ask her questions, and have her
17 explain anything about its condition. And before it
18 gets opened, I will give Mr. Buting an opportunity
19 to provide a description to the jury of its current
20 condition, including the scotch tape, and you can
21 be -- the State can be asked if you agree with that
22 description.

23 ATTORNEY BUTING: Okay.

24 THE COURT: Fair enough, Mr. Buting?

25 ATTORNEY BUTING: Sure, no problem.

1 THE COURT: All right. Someone can come
2 back up and pick up the envelope. We'll bring the
3 jurors back in. Mr. Wiegert.

4 DETECTIVE WIEGERT: Would you like me to
5 give it to the witness, Judge?

6 THE COURT: Sure.

7 (Jury present.)

8 THE COURT: You may be seated. And,
9 Mr. Gahn, you may resume your redirect.

10 Q. (By Attorney Gahn)~ Ms Culhane, could you explain
11 and describe to the jurors exactly what is on
12 that envelope and how it is packaged and what
13 information will be helpful in determining its
14 basic chain of custody?

15 A. It's an express mail package that was sent to the
16 Crime Lab. Again, when it came into the
17 laboratory, it got a case number and our bar
18 coding system, and it was signed by whoever
19 receipted the case. And, then, at some point was
20 opened and I believe resealed with my initials
21 and evidence tape.

22 Q. And when that arrived at the Crime Lab and you
23 opened it, it contained evidence to be analyzed
24 in the case of the exoneration of Steven Avery?

25 A. Yes.

1 Q. Do you know what that evidence was?

2 A. No, I don't. I would have to open this.

3 Q. Can you tell by your seal whether it has an item
4 number?

5 A. No, it doesn't have an item number; I have a case
6 number.

7 Q. But contained inside that envelope, you believe,
8 is the exhibit that you examined?

9 A. Yes, I believe so.

10 ATTORNEY GAHN: If Mr. Buting has any
11 questions.

12 THE COURT: Are you about to ask the
13 witness to open the envelope?

14 ATTORNEY GAHN: Yes, I would like her to
15 open the envelope.

16 THE COURT: All right. I think before she
17 does that, I believe Mr. Buting wanted some
18 information placed on the record about its
19 condition. And after he gives that description, I
20 will ask if the State agrees.

21 ATTORNEY BUTING: All right.

22 THE COURT: Perhaps, Mr. Buting, you can
23 take it to the prosecution table, so as you are
24 describing it, all attorneys will have a chance to
25 look at it.

1 ATTORNEY BUTING: Well, I think -- isn't
2 the witness going to -- can't I ask her to explain
3 what it is, so I'm not the witness who is
4 testifying.

5 THE COURT: If you wish to ask some
6 questions now, I believe that was the State's
7 original request. I thought you objected to it, but
8 if you want to and the State agrees, go right ahead.

9 ATTORNEY BUTING: Sure, I mean, I would
10 rather do it that way so that --

11 THE COURT: Counsel, is that correct?
12 Mr. Gahn?

13 ATTORNEY GAHN: That's fine, your Honor.

14 THE COURT: All right. Mr. Buting, go
15 ahead.

16 ATTORNEY BUTING: Okay. Just, we don't
17 know what's inside at this point, but on the left
18 side of the envelope, as you are facing the label.

19 THE WITNESS: Mm-hmm.

20 ATTORNEY BUTING: Does it appear at some
21 point it was opened?

22 THE WITNESS: Yes.

23 ATTORNEY BUTING: And then there's a piece
24 of tape, sort of a wide piece of tape that says
25 State Crime Lab?

1 THE WITNESS: Yes.

2 ATTORNEY BUTING: And it has an initial
3 over it?

4 THE WITNESS: Yes.

5 ATTORNEY BUTING: Would you look on top of
6 that -- By the way, this tape that says State Crime
7 Lab, it's a clear tape?

8 THE WITNESS: Yes.

9 ATTORNEY BUTING: But it has your label in
10 red?

11 THE WITNESS: Yes.

12 ATTORNEY BUTING: And that's your little
13 initials?

14 THE WITNESS: Yes.

15 ATTORNEY BUTING: That little black thing
16 right there?

17 THE WITNESS: Yes.

18 ATTORNEY BUTING: If you look on top of
19 that, doesn't it appear that there's a piece of
20 small scotch tape that appears to be closing it?

21 THE WITNESS: Yes, it does.

22 ATTORNEY BUTING: And, your Honor, I would
23 ask, if she's going to open it, rather than cut it
24 with a knife, I would ask that she peel off that
25 piece of scotch tape and see if its accessible that

1 way.

2 THE COURT: Any objection?

3 ATTORNEY GAHN: No, your Honor.

4 THE COURT: All right. Do you understand
5 the request?

6 THE WITNESS: I think so.

7 THE COURT: All right. If you can peel
8 off --

9 THE WITNESS: Peel this tape off?

10 THE COURT: Just the thin piece of
11 scotch --

12 ATTORNEY BUTING: Just the scotch tape, not
13 your evidence tape.

14 THE WITNESS: All right. I can't really
15 get it all off.

16 THE COURT: Do you prefer it peeled off or
17 use a letter opener that would leave the scotch tape
18 on, in two pieces, one on each side?

19 ATTORNEY BUTING: Well, what I would rather
20 see is, is if by taking the scotch tape off one can
21 open it. It looks like -- Is that what you have
22 done.

23 THE WITNESS: That's what I just took off.

24 ATTORNEY BUTING: Okay. And if you peel
25 off this last little bit, does it appear to -- I

1 don't know if we're going to be able to tell if this
2 is torn off. Just go ahead and open it. I would
3 just slit it along that edge.

4 THE WITNESS: Should I cut it along this
5 opening here?

6 THE COURT: Do you want us to use a letter
7 opener or something?

8 ATTORNEY BUTING: She has a little knife.

9 THE WITNESS: I do have this.

10 THE COURT: All right. Sounds like both
11 parties are agreeable, so go ahead.

12 ATTORNEY BUTING: Record should reflect
13 inside of the postal envelope is another manila
14 envelope that appeared to be unsealed. And now you
15 have pulled out something that was inside of that.

16 THE WITNESS: Would you like for me to
17 describe it?

18 THE COURT: Mr. Gahn?

19 Q. (By Attorney Gahn)~ Yes, if you would describe
20 what's in the envelope.

21 THE COURT: Go ahead.

22 A. This is a manila envelope, says Marie Beth
23 Varriale. These are my markings, my initials,
24 the lab number and the item designation. This is
25 actually samples that are used to collect data

1 bank samples. It's just a kit that we have.

2 Inside the kit is a sealed white
3 envelope with the laboratory case label and item
4 designation, W, my initials. And then this is
5 the -- this is a cut that I made when I took the
6 sample out and it's been resealed with my
7 initials across it.

8 Q. Explain a little more to the jury exactly what
9 that contains and when you sealed it and how you
10 sealed it.

11 A. When samples are collected for the Wisconsin
12 State -- the CODIS System, the data base,
13 convicted offender samples, these preprinted kits
14 are used. It says Wisconsin DNA Data Bank. and
15 sometimes there are also other police agencies
16 will sometimes use these to collect standards
17 from individuals.

18 So there's some paper -- there's some
19 documentation here as to where this kit came from
20 and there's some instructions here if you were
21 going to submit this to the data bank. There is
22 a place for a fingerprint on here, which I really
23 don't know anything about.

24 But I received it in this condition,
25 with this -- this was completely sealed. And we

1 placed our bar code from the lab across the top
2 here and I signed and initialed and dated it.
3 And, then, when I took my sample out, I cut along
4 the top edge here.

5 The swabs are actually inside this white
6 envelope here. This is just a piece of paper
7 that's stuck to the envelope. So the swabs are
8 inside this envelope.

9 When I took my sample, I split the top
10 and pulled out the swabs, sampled the swabs, put
11 it back, and sealed -- resealed it, this is the
12 evidence tape in the lab, and initialed it.

13 Q. And can you tell if that is the buccal swab that
14 corresponds to, I believe, Exhibit 344, where the
15 evidence was turned over, signed for by Detective
16 Remiker?

17 A. Yes. They both have the same Lab No. M85-1051,
18 and they both have the item designation of W.

19 Q. I would like you to describe the condition of
20 those buccal -- of the buccal swabs, right now.

21 A. I can feel in here, there appears to be one swab
22 in here. And all the edges are sealed and this
23 is the seal -- this was cut open at one time when
24 I took my sample and then I resealed it back.
25 And this is the seal that I placed on it. And

1 appears to be exactly the way it was when I put
2 it on there.

3 Q. Has that been -- Does it appear to be tampered
4 with in any way?

5 A. No.

6 Q. Are there any seals broken that where someone
7 could remove that buccal swab and use it to rub
8 on a key and plant evidence of Steven Avery?

9 A. None of the seals are broken.

10 Q. And can you tell on what date you sealed that
11 envelope and sent it back to the Manitowoc County
12 Sheriff's Department?

13 A. Not by the markings on here, no.

14 Q. Can you tell when you sealed it yourself?

15 A. Not by these markings, no.

16 Q. Does Exhibit, is it 344, tell you when you sent
17 it back -- or 348, I'm sorry?

18 A. 344 is the evidentiary release form and it was
19 returned on September 25, 2003.

20 Q. And it would have been returned on September 25,
21 2003, in the condition that you just described
22 for the jurors?

23 A. Yes.

24 Q. And today, as you look at that, does it appear to
25 have been tampered or opened in any way?

1 A. No.

2 ATTORNEY GAHN: Thank you, that's all I
3 have.

4 THE COURT: Mr. Buting, any recross?

5 ATTORNEY BUTING: Sure. There's always
6 something.

7 **RECROSS-EXAMINATION**

8 BY ATTORNEY BUTING:

9 Q. Back to this deviation request form for a moment,
10 you said -- you didn't go through the
11 contamination log, but you just said you would
12 guess that maybe 90 percent get resolved, meaning
13 90 percent of the contamination errors can be
14 determined?

15 A. Actually I said, or I meant to say, everything is
16 resolved somehow. Probably 99 percent are
17 resolved by re-extracting. There are several
18 instances that samples were not re-extracted,
19 simply because they were exclusions; in other
20 words, the evidence sample excluded the alleged
21 suspect, so if it's an exclusion then that's the
22 end of it.

23 Q. Yes. As a matter of fact, the protocol does
24 specifically allow, when there's a contamination
25 in a manipulation control, it does still allow

1 you to make a exclusion?

2 A. Correct.

3 Q. But not an inclusion?

4 A. Right.

5 Q. Explain the difference between an inclusion and
6 exclusion?

7 A. When you are excluding someone, like if I have a
8 evidence sample and I have a reference sample,
9 and the profiles do not match, they are not the
10 same, then, that reference sample is excluded.
11 That person is not the source of the evidence
12 sample. An inclusion is, if I have an evidence
13 sample and a reference sample, and the profiles
14 are the same, they are consistent with one
15 another, that's referred to as an inclusion.

16 Q. All right. And the reason why you can still use
17 these contaminated tests to exclude somebody is
18 because an exclusion is the absence of something,
19 that is lacking, the evidence does not have the
20 profile that the defendant or the suspect would
21 be, right?

22 A. Right.

23 Q. Whereas, an inclusion, when there is a
24 contamination, there's concern that there's
25 something may be added to it that shouldn't be

1 there, and that it may be because it's added that
2 it includes somebody?

3 A. Correct.

4 Q. So they are treated differently in the protocol?

5 A. Correct.

6 Q. And page, the very next page from where we were
7 looking before in the protocol, the E2 -- for
8 some reason my pages aren't numbered. Starts on
9 the top of evaluation of controls?

10 A. Yeah.

11 Q. Okay.

12 A. This page, right.

13 Q. Yeah, okay. Very first paragraph says that -- it
14 talks about how manipulation controls may reveal
15 the presence of contamination, right?

16 A. Correct.

17 Q. And what it specifically says is if -- if you're
18 -- if this control -- manipulation control
19 exhibits identifiable allele peaks, that means,
20 basically, a DNA profile, right?

21 A. Right.

22 Q. Then the DNA specimens that are extracted along
23 with that control, in other words, the evidence
24 sample that's being done, along with your
25 control?

1 A. Correct.

2 Q. The DNA specimen will be considered inconclusive
3 for match purposes, right?

4 A. Correct.

5 Q. That's the rule that your lab has?

6 A. Right.

7 Q. And you said about 99 percent of the time they
8 are re-extracted. In fact, do you know whether
9 you might be the only lab analyst ever, at the
10 Crime Lab, to ask for a deviation from the
11 protocol in order to include somebody?

12 A. No, I'm not.

13 Q. Do you see any in that control -- in that
14 contamination log?

15 A. No, but this was before that. We did have a
16 deviation before the instances in the
17 contamination log.

18 Q. Okay. Before you started keeping track?

19 A. Yes.

20 Q. From your memory you recall that?

21 A. Yes, I do.

22 Q. Okay. But there's no record of it.

23 A. Not in this documentation, no.

24 Q. Okay. And you said that you felt that it was
25 appropriate to deviate because you felt this was

1 probative evidence, right?

2 A. Correct.

3 Q. That means you make a judgment -- a value
4 judgment about whether this evidence is important
5 in this case, right?

6 A. We do that every piece of evidence we look at, on
7 every case.

8 Q. That's right, because it's not a blind test, like
9 we talked about earlier, right?

10 A. That's the way we work. That's the way any Crime
11 Lab works cases.

12 Q. That's the way you work. And in this case
13 Mr. Fassbender asked you to try to put Teresa
14 Halbach in the defendant's garage or house,
15 right?

16 A. As I said before, in your request from the
17 investigator, had no bearing whatsoever on my
18 examination or my results.

19 Q. No bearing whatsoever?

20 A. That's correct.

21 Q. And yet, for the first time in your career, you
22 deviate from a protocol to include -- to find one
23 piece of evidence, the only piece of evidence in
24 this entire case that links Teresa Halbach to
25 Mr. Avery's garage or house, you deviated from

1 the protocol so that you could call her on that
2 one piece of evidence, right?

3 ATTORNEY GAHN: Your Honor, argumentative.

4 THE COURT: The objection is sustained.

5 Q. (By Attorney Buting)~ You contaminated -- Your
6 results showing that you contaminated this
7 bullet, you got the results on April 3rd; is that
8 right?

9 A. I would have to check. Actually, April 6th.

10 Q. Okay. April 6th. And you were aware, I believe,
11 because your lab objected to it, that the defense
12 filed a motion to assure fair forensic testing to
13 allow the defense to have a witness there when
14 you do any tests that would result in using up
15 all the evidence?

16 ATTORNEY GAHN: Objection, your Honor,
17 relevancy.

18 THE COURT: I'm sustaining the objection,
19 not on relevancy, but on the grounds it's beyond the
20 scope of recross.

21 Q. (By Attorney Buting)~ Well, in any event, because
22 you used up all of the sample, not only could you
23 not re-extract it, the defense had no opportunity
24 to retest that, did we?

25 A. You didn't have any opportunity to test the

1 original item, but my extracts are available for
2 retesting.

3 Q. Did you retest them?

4 A. No.

5 Q. Why not?

6 A. Because my results from my quantitation show that
7 there was DNA in the manipulation control --

8 Q. You're telling me --

9 A. I would have gotten the same thing.

10 Q. You are telling me that you get a test that
11 requires that you go to so far as to deviate from
12 the protocol when you could have simply retested
13 the same extract?

14 A. There was nothing different about it. Retesting
15 it would not have changed anything.

16 Q. Because it was contaminated already.

17 A. Because the DNA was introduced during the
18 extraction process.

19 Q. Because it was -- That's right, therefore, the
20 extract was contaminated already; isn't that
21 right?

22 A. The control was contaminated with the my DNA, not
23 the extract.

24 Q. So, rather than retest, you went out on a limb
25 and made this request, that you have never made

1 before in your life, so that you could give
2 Mr. Fassbender what he wanted, some evidence that
3 would link Teresa Halbach to that --

4 ATTORNEY GAHN: Objection, your Honor, to
5 the form of the question.

6 THE COURT: Objection is sustained.

7 Q. (By Attorney Buting)~ You talked about 50,000
8 samples, I think you brought that up again. The
9 thing about contamination is, once you find a
10 contaminated sample, it doesn't matter what the
11 percentage of other cases that you -- where you
12 have contamination, does it?

13 A. Yes.

14 Q. Well, it doesn't matter whether this is one in
15 50,000, or whether this is the 89th in 50,000,
16 it's a test that you know is contaminated, right?

17 A. Are you referring to the bullet?

18 Q. Yeah.

19 A. Yes, I know it's contaminated with my DNA.

20 Q. So whether it is a unusual or rare circumstance
21 in the big picture or not, doesn't matter because
22 you have a case where you know there was
23 contamination; it's one of the incidents that
24 need to be reported?

25 A. Correct.

1 Q. The 2003 case, just so nobody is confused, the
2 pubic hair that you found comingled with the
3 victim's pubic hairs was not just a man, it was
4 Gregory Allen, right?

5 A. Correct.

6 Q. And you knew, from discussions with the police,
7 that Gregory Allen, in fact, was a suspect in
8 that very case, from the very beginning?

9 A. No, I did not.

10 ATTORNEY GAHN: Your Honor, this is
11 beyond -- far beyond the scope of our redirect.

12 THE COURT: Mr. Buting?

13 ATTORNEY BUTING: It's not beyond the
14 scope, he just brought it up, he talked about it.

15 THE COURT: He did bring it up, but the
16 question about whether he's a suspect is beyond the
17 scope, so I'm going to sustain the objection on that
18 basis.

19 Q. (By Attorney Buting)~ In any event, he was in the
20 data bank and it hit on him, right?

21 A. Correct.

22 Q. And it excluded Mr. Avery, right?

23 A. Yes.

24 Q. Without any kind of deviation from protocols,
25 right?

1 A. Yes, that's correct.

2 Q. It was a standard test that proved he was
3 excluded?

4 A. That's correct.

5 Q. The bottom line is, in this case, if you had
6 followed the protocol of your own lab, and you
7 would have had to file a report that says any DNA
8 tests on that bullet were inconclusive, right?

9 A. Without a deviation, which our protocol does
10 allow for, yes.

11 Q. Ma'am, the question is, if you had followed the
12 protocol and not requested a deviation, your
13 report would have said, the DNA on that bullet
14 was inconclusive?

15 A. Correct.

16 ATTORNEY BUTING: That's all your Honor.

17 THE COURT: Anything else Mr. Gahn?

18 ATTORNEY GAHN: Just a couple questions,
19 your Honor.

20 **FURTHER REDIRECT EXAMINATION**

21 BY ATTORNEY GAHN:

22 Q. Ms Culhane, why do scientists allow for deviation
23 in protocols?

24 A. Because every situation, each case that we work
25 and every situation, is different. And sometimes

1 there are circumstances that warrant deviating
2 from the stated protocol.

3 Q. And did this situation with the bullet warrant
4 deviation from the protocol?

5 A. In my opinion, yes.

6 Q. And why?

7 A. Because my DNA was not in the evidence sample, it
8 was only in the control, and it was a source that
9 I could track. It was me. It was introduced
10 when I was handling the tubes. It had no
11 bearing, no scientific bearing on the type of the
12 evidence sample at all. It was no mixture. It
13 was a single source sample that was consistent
14 with Teresa Halbach, and for those reasons I felt
15 it was appropriate.

16 Q. And did the fact of your profile being in the
17 control in this case have any impact whatsoever
18 on Teresa Halbach's DNA being on the bullet?

19 ATTORNEY BUTING: Objection, been asked and
20 answered.

21 THE COURT: Sustained.

22 ATTORNEY GAHN: I have no further
23 questions.

24 ATTORNEY BUTING: Just one quick response
25 here.

FURTHER RECROSS-EXAMINATION

1
2 BY ATTORNEY BUTING:

3 Q. So, now we understand that you know how that
4 bullet -- how that control test was contaminated,
5 because it was you handling the tubes; is that
6 your testimony? Didn't you say earlier that you
7 were training and talking and were too close to
8 the bench?

9 A. That's correct. And I believe that's why it was
10 introduced.

11 Q. You just said --

12 A. By handling --

13 Q. -- a moment ago --

14 A. -- I meant handling the evidence, and that
15 includes everything I did in reference to that
16 evidence.

17 Q. And that includes the bullet sample too, right?
18 Handling that, the evidence you are talking about
19 is the sample with the bullet in it -- DNA in it,
20 right?

21 A. Of course I had to handle it --

22 Q. Of course.

23 A. -- to extract it.

24 Q. Of course. So when you say you know where this
25 came from, you don't know where this came from.

1 You don't know whether it came because you were
2 spitting too close as you were talking, or
3 whether you were handling it and got it off on
4 your hands; you don't know how that control was
5 contaminated, do you?

6 A. The fact is, it was my DNA.

7 Q. Ma'am, you don't know how that control became
8 contaminated, do you?

9 A. Not 100 percent for sure, no.

10 Q. Just like many other incidents reported in the
11 log, where it is undetermined how contamination
12 occurred --

13 ATTORNEY GAHN: Objection, argumentative.

14 THE COURT: Court is going to sustain the
15 objection. And we're just plowing the same ground
16 here so I'm going to excuse the witness.

17 ATTORNEY BUTING: I'm done anyway. Thank
18 you, Judge.

19 THE COURT: Members of the jury, we'll take
20 our afternoon break at this time. Again, I will
21 remind you not to discuss the case during the break.

22 (Jury not present.)

23 ATTORNEY BUTING: Judge, I would move the
24 introduction of all the exhibits that we filed.

25 THE COURT: All right. I think there were

1 some exhibits produced by both sides; do -- are both
2 parties asking for their exhibits to be admitted?

3 ATTORNEY GAHN: Yes, your Honor.

4 THE COURT: All right. Everything that was
5 introduced today, then, is admitted.

6 ATTORNEY BUTING: With the exception of
7 343, which I think we just marked.

8 THE COURT: That's right there was one that
9 was specifically requested not to be admitted.

10 Okay.

11 (Recess taken.)

12 THE COURT: At this time the State may call
13 its next witness.

14 ATTORNEY GAHN: The State will call Nick
15 Stahlke to the stand.

16 THE COURT: All right.

17 THE CLERK: Please raise your right hand.

18 **NICK STAHLKE**, called as a witness

19 herein, having been first duly sworn, was

20 examined and testified as follows:

21 THE CLERK: Please be seated. Please state
22 your name and spell your last name for the record.

23 THE WITNESS: Nick Stahlke, Stahlke is
24 spelled, S-t-a-h-l-k-e.

25 **DIRECT EXAMINATION**

1 BY ATTORNEY GAHN:

2 Q. Mr. Stahlke, how are you employed?

3 A. I'm a forensic scientist with the State of
4 Wisconsin Crime Laboratory?

5 Q. Which Crime Laboratory is this?

6 A. Madison.

7 Q. And what is your position there?

8 A. Currently I'm the forensic science training
9 coordinator.

10 Q. And could you tell the jurors a little bit about
11 your formal educational background, please.

12 A. Yes, I have a bachelor's in science degree and
13 medical technology, with a minor in chemistry.

14 Q. And what are your current duties and
15 responsibilities at the Crime Lab?

16 A. As a forensic science training coordinator, I'm
17 responsible for a course that the Crime Lab puts
18 on, which is the evidence -- basic evidence
19 technician course. It -- I also then am
20 responsible for coordinating the instructors, the
21 curriculum, and I critique those particulars,
22 those particular trainers.

23 I also am responsible for the Field
24 Response Training Program within the State of
25 Wisconsin. I make sure that we have an on call

1 roster to cover the statewide program for -- on a
2 24 hour basis.

3 I also examine bloodstains for -- for
4 the interpretation of those stains and I am a
5 team leader with the field response program where
6 we trans -- or we will respond to crime scenes.

7 Q. As to the bloodstain patterns that you said was
8 one of your duties and responsibilities, have you
9 attended any specialized schools dealing with
10 bloodstain pattern analysis?

11 A. Yes, it's a requirement that anybody that does
12 any bloodstain pattern analysis has a minimum of
13 40 years -- 40 hour course. And in 1988, I
14 attended a 40 hour course. I, again, attended a
15 course that was entitled Advance Crime Scene
16 Examination; however, it was also a bloodstain
17 course, or ultimately was a bloodstain course.
18 So, I have attended two 40 hour bloodstain
19 courses.

20 Q. And what experience do you have in the area of
21 bloodstain pattern analysis?

22 A. Well, I got my first training -- or 40 hour
23 course in '88, so I have had 19 years of
24 experience looking at stains and interpreting
25 those stains.

1 Q. Have you given lectures or taught on subjects
2 related to bloodstain pattern interpretation?

3 A. Yes, I have.

4 Q. And have you conducted workshops related to that
5 field?

6 A. Yes, I have.

7 Q. Could you explain some of those to the jurors?

8 A. There was a Wisconsin Association of
9 Identification, asked me to present a lecture on
10 that subject and I also had a workshop associated
11 with that lecture. I also gave a -- taught at
12 the North Idaho College, which was a program for
13 incoming or new recruits as far as law
14 enforcement recruits. It was a Criminal Justice
15 Program there in the North Idaho College.

16 I routinely monitor or -- crime scenes,
17 then, also at the Death Investigation School,
18 which is put on by the Department of Justice's
19 Division of Criminal Investigation.

20 Q. I believe you stated that you had been involved
21 in the interpretation of blood stain patterns for
22 19 years; is that correct?

23 A. Yes.

24 Q. Have you testified in courts of law in Wisconsin
25 as an expert in interpreting bloodstain patterns?

1 A. Yes, I have.

2 Q. And how many times have you done so?

3 A. About 10 times.

4 Q. Have you ever been rejected as an expert in
5 bloodstain pattern analysis?

6 A. No, I have not.

7 Q. What I would like you to do is, could you just
8 describe to the jurors the different types of
9 determinations that can be made from bloodstain
10 patterns.

11 A. Bloodstains, when they are present at a scene,
12 basically freezes that scene on that particular
13 moment in time when blood is shed. You can
14 determine the position of the bleeding victim, if
15 the victim is bleeding.

16 You can possibly determine the movement
17 of that victim. You can determine the possible
18 position of the assailant or the attacker. You
19 might possibly be able to determine movement of
20 the attacker as well.

21 In some cases, you can determine the
22 type of weapon that was used. If it was a
23 bludgeoning or a beating, you may be able to
24 determine the minimum number of blows that was
25 inflicted to the victim.

1 Some of the reasons for looking at
2 stains is not only to determine those positions,
3 or those things that I already described, but you
4 might be able to confirm or refute statements
5 given by witnesses, using the analysis of
6 bloodstain patterns. Or you can determine the
7 difference between, and distinguish the
8 difference between, suicide or homicide,
9 possibly.

10 Q. Are there different types of bloodstain patterns?

11 A. Yes, there is.

12 Q. Will you please explain to the jury what they
13 are?

14 A. Well, basically there's three categories of
15 bloodstains. There are the passive stains. You
16 have the projected stains. And you also have
17 the -- I forget the third category. Passive
18 contact -- oh, excuse me -- contact type transfer
19 stains.

20 Q. And can you determine by looking at a bloodstain
21 pattern how it was deposited?

22 A. Yes, you can.

23 Q. And what specific experiments or tests have you
24 yourself conducted and performed in bloodstain
25 pattern analysis?

1 A. Well, in the 40 hour course, it's very heavy in
2 practical exercise, because the whole idea of the
3 course is to give you experience in seeing these
4 types of stains. And so the practical experience
5 is, then, you use different types of weapons; you
6 put victims in different positions; and you try
7 all the possible scenarios you can imagine or
8 think of that you might run into or encounter at
9 a crime scene.

10 Q. And by performing these tests or experiments
11 yourself, how do these help you perform your job?

12 A. Well, obviously, if you have seen these types of
13 stains before and you know how they were
14 constructed, or how they were manufactured,
15 through practical experience, you can then relate
16 those same experiences to a crime scene itself.

17 Q. I'm going to show you what has been marked
18 previously as Exhibit 289 and ask if you -- it's
19 a photograph -- recognize that photograph?

20 A. Yes, I recognize this.

21 Q. And how do you recognize that?

22 A. This is the '99 -- blue '99 RAV4 that was in our
23 second bay, or middle bay, in our Crime
24 Laboratory in Madison.

25 Q. When did you first observe it?

1 A. Monday, November 7th, 2005.

2 Q. And what involvement did you have with the
3 examination of this RAV4?

4 A. I was asked to analyze the bloodstain patterns
5 that may have been present in this vehicle.

6 Q. What was the first thing you did, when you saw
7 the vehicle and began your processing?

8 A. Well, the first thing I do is an external -- on a
9 vehicle such as this, I do an external
10 examination of the vehicle. So, I typically will
11 find a point on a car. It may be the front, left
12 corner, or the driver's door and I do a walk
13 around, typically in a counter clockwise pattern,
14 looking for any possible stains that are on --
15 present on the exterior. And what I look for is
16 anything that appears to be a bloodstain. But if
17 it's the proper color and shape, then I have a
18 presumptive test done to determine that it
19 probably is blood, then.

20 Q. And did you make any observations during your
21 external view and examination of the RAV4?

22 A. I did not observe any stains on the exterior.

23 Q. Then after the exterior examination, what would
24 you do next?

25 A. Then we move to the interior of the vehicle.

1 Q. And did you make any observations in the interior
2 of the vehicle?

3 A. Yes. I typically will start at the driver's
4 compartment. And inside a driver's compartment,
5 I saw what appeared to be three contact stains.

6 Q. Mr. Stahlke, Mr. Fallon is going to bring you a
7 pile of photographs that have already been marked
8 as exhibits in this case. And if you could keep
9 them in that order and I would ask you to take
10 the first photograph and read off what exhibit
11 number it is, please.

12 A. Exhibit No. 290.

13 Q. And is that photograph that you have being shown
14 on the big screen here that the jurors are
15 looking at?

16 A. Yes, it is.

17 Q. Could you describe for the jurors what you
18 observed in this photograph?

19 A. This is an intermediate view of the passenger's
20 compartment. On this particular photograph, you
21 can see a red brown stain on the driver's seat.

22 Q. Would it be helpful if we were to zoom in on that
23 for you?

24 A. Sure.

25 Q. And do you have a laser pointer up there?

1 A. No, I do not.

2 Q. We'll have one in a moment. And could you point
3 out to the jurors where you observed this
4 particular stain. Is there anything else that
5 you observed in the -- this compartment of the
6 vehicle?

7 A. Yes. Well, this particular stain, however, it is
8 a bit of a thick stain, so it's a little thicker
9 than your normal contact transfer stain. There
10 were two other areas in this passenger
11 compartment that I saw stains.

12 Q. Before we go to those, could you describe the
13 type of stain this is?

14 A. This is -- I would call this a contact transfer
15 type stain; however, it was thicker than your
16 average transfer stain. So I'm kind of bordering
17 on that being a passive drop, which is a drop
18 that falls to that surface. And it's thicker
19 because it's -- it's -- it has fallen there, as
20 opposed to a bloody surface contacting that
21 particular unstained surface.

22 Q. Is this what you call an individual stain, did
23 you say?

24 A. It can be, yes.

25 Q. And could you explain, just amplify a bit more

1 for the jurors what you mean by contact transfer
2 stain?

3 A. A contact transfer stain is the transfer of blood
4 from a bloody object, or bloody item, or blood
5 source, onto an unstained surface.

6 Q. Would you look at the next exhibit that we have
7 and just read the exhibit number and describe
8 what that is for the jurors.

9 A. Exhibit 292, this is the -- yes, there's a --
10 this is the passenger's front seat or the front
11 seat on the passenger side of the vehicle. And
12 in this seat, or on this seat is a water bottle,
13 a cassette -- or excuse me -- a CD holder, hard
14 plastic, and I believe that's a perfume bottle, I
15 can't tell you for sure.

16 Q. Did you observe any bloodstain patterns in this
17 area of the RAV4?

18 A. Yes, I did.

19 Q. And could you describe them for the jurors and
20 where they are?

21 A. The CD box or container would have had
22 bloodstains on the surface of it.

23 Q. Would it be helpful for you if we were to zoom in
24 on this for you to identify it?

25 A. Sure.

1 Q. Can you use your laser pointer to point out the
2 area that you observed these bloodstains.

3 A. Well, you can see some here, but there were
4 stains throughout, basically covering 50 percent
5 of the surface of this CD box, but you can see
6 this is the most obvious stain on this photo.

7 Q. Was there anywhere else that you observed
8 bloodstain patterns?

9 A. In the vehicle, yes.

10 Q. No, in this photograph. Let's zoom back out now,
11 please.

12 A. There was another stain on the front, left
13 portion of that seat cushion.

14 Q. And can you point out where that was located?

15 A. Yes.

16 Q. And we could zoom up to that area?

17 A. If you can, it's right in this area here.

18 Q. You may not --

19 A. More to the right, yeah, right there.

20 Q. And could you describe for the jurors what type
21 of stain that was that you observed?

22 A. Contact transfer.

23 Q. Again, what do you mean by a contact transfer
24 stain?

25 A. Again, a bloody source, a bloody item, a bloody

1 object coming in contact with an unstained
2 surface.

3 Q. I would like you to look at the next exhibit and
4 identify it and describe it for the jurors.

5 A. This is Exhibit 291.

6 Q. And did you observe any -- Sorry, let me back up
7 here. Is the photograph on the large screen a
8 photograph that you have in your hand?

9 A. Yes, it is.

10 Q. Could you describe -- point out, on the large
11 screen, the bloodstain pattern that you observed
12 here?

13 A. Right here.

14 Q. And would you describe that for the jurors and
15 tell what type of stain that is.

16 A. And this is a contact transfer stain; again, a
17 bloody object, or item, coming in contact with an
18 unstained surface.

19 Q. We'll zoom in on this so the jurors can get a
20 good look at that. And, again -- Once again,
21 what do you mean by a bloody contact transfer?

22 A. It would be an object that has blood on it, that
23 transferred that blood from that surface onto a
24 non-stained or unstained surface.

25 Q. I would like you to look at the next photograph

1 and identify the exhibit number?

2 A. Exhibit 193.

3 Q. And I would like you to tell the jurors whether
4 this -- the photograph you have in your hand is
5 being shown on the big screen?

6 A. Yes, it is.

7 Q. And this -- I would like to ask you whether you
8 have an opinion, to a reasonable degree of
9 scientific certainty, whether this cut to the
10 hand is consistent with being the bloody object
11 that came in contact with the dashboard, by the
12 ignition switch of the RAV4?

13 ATTORNEY STRANG: Objection, foundation,
14 personal knowledge, and entirely speculative. He
15 has no idea on the timing of this.

16 THE COURT: I'm going to sustain the
17 objection. I think at this point the witness has
18 testified about expertise in blood transfer, but I
19 don't think anything has been established about this
20 photo.

21 Q. (By Attorney Gahn)~ Could the bloodstain that you
22 observed on the dashboard of Teresa Halbach's
23 RAV4, have come from a cut to a finger?

24 A. Yes.

25 ATTORNEY STRANG: Objection, this is beyond

1 the scope of the disclosure under 971.03 as well,
2 your Honor.

3 THE COURT: I'm going to have to ask you to
4 elaborate on that, Mr. Strang.

5 ATTORNEY STRANG: This is -- the opinion he
6 is being asked to express is not one included in the
7 report or otherwise disclosed pursuant to discovery
8 request.

9 ATTORNEY GAHN: Your Honor, I believe that
10 the witness has testified what a contact transfer
11 bloodstain pattern is, that being a bloody source
12 coming into contact with a surface that doesn't have
13 blood on it. I'm simply asking if a cut such as
14 this is consistent with being the bloody source
15 coming in contact with the dashboard.

16 ATTORNEY STRANG: Well, your Honor, I mean,
17 to the extent that if someone is bleeding they can
18 drop blood or brush it, we don't need an expert to
19 tell the jury that; that's entirely within the canon
20 of ordinary experience and nothing from an expert is
21 helpful on that point.

22 THE COURT: I guess I would like to hear a
23 few more questions about his experience in this
24 area. So far we have heard something about three
25 kinds of blood transfers, but that's about when you

1 observe a transfer on another surface. But I think
2 that's all I heard.

3 Q. (By Attorney Gahn)~ Mr. Stahlke, could you
4 explain, what is your experience with examining
5 contact transfer bloodstains.

6 A. Contact transfer bloodstains is a -- it can be a
7 transfer of a pattern. You can see in some
8 stains the outline of a particular -- of the
9 particular item that is bloody contacting a --
10 the unstained surface. And in some cases, you
11 can see the pattern or detail from the bloodied
12 item that has been transferred, then, onto an
13 unstained surface.

14 Q. And have you been to crime scenes and examined
15 contact transfer stains?

16 A. Yes, I have.

17 Q. Do you know how many you have been to?

18 A. Well, I have been to approximately 200 field
19 responses. Of those, then, over 100 crime
20 scenes. And in every scene that has blood
21 present, I examine the stains to determine
22 whether or not there would be any additional
23 information that would be gained from those
24 stains that would be helpful in this
25 investigation.

1 Q. Do you also examine photographs of bloodstains?

2 A. Yes.

3 Q. And do those help, are you able to interpret
4 bloodstain patterns from the photographs?

5 A. Yes. Many times we're asked by agencies that
6 have processed their own scenes and taken their
7 photographs and then realized that maybe they
8 could gain some knowledge or some valuable
9 information from those stains. And this would be
10 after the fact and we have been often asked to
11 look at photographs to analyze this bloodstain.

12 Q. And will those photographs include contact
13 transfer stains?

14 A. Yes, they do.

15 ATTORNEY STRANG: Your Honor, this may be a
16 good time to take up a subject out of the jury's
17 presence.

18 THE COURT: All right. The Court is going
19 to excuse the jury for a few minutes.

20 (Jury not present.)

21 THE COURT: Are you asking for the witness
22 to be excused? You can step outside. Mr. Strang.

23 ATTORNEY STRANG: Your Honor, I will tender
24 the Court a copy of the report that we received from
25 Mr. Stahlke and a copy of his resume as well. It's

1 a two page report. Nothing in that report suggests
2 that the State intended to elicit from this proposed
3 expert an opinion tying any particular injury to the
4 blood patterns that he's testifying he observed.

5 I don't know how he possibly could do
6 that either without knowing personally, A, when
7 this photograph was taken and, B, the likelihood
8 that it was actively bleeding at any relevant
9 time, which I think is probably well beyond his
10 expertise. So, this goes beyond disclosure that
11 the State has provided and gets into something
12 both of which we don't have notice and of which
13 his own expertise or even personal knowledge is
14 questionable.

15 And, finally, the point is simply that,
16 you could get a cut and may drop -- you may be
17 dripping blood, or you may leave a bloodstain if
18 you brush your cut against something. Again,
19 that's -- that's not a subject requiring expert
20 testimony at all.

21 THE COURT: Mr. Gahn.

22 ATTORNEY GAHN: Well, your Honor, I think
23 the report speaks for itself. If you look under
24 observations on page one of Mr. Stahlke's report.
25 States that on the second -- beginning with the

1 second sentence, contact transfer stains were
2 present on the driver's seat cushion, the passenger
3 seat cushion, and on the dashboard near the ignition
4 switch.

5 ATTORNEY STRANG: And that's fine, nobody
6 questions his ability to describe what a contact
7 transfer stain or, you know, a passive stain, or
8 swipe, or any other type of pattern looks like. The
9 issue is tying it to any particular source.

10 ATTORNEY GAHN: If I may finish, the next
11 sentence states that these stains are the result of
12 a bloody source coming into direct contact with
13 those surfaces. That's what I asked him in his
14 opinion. Is this cut consistent with the bloody
15 source coming in contact with it. That's all I
16 asked.

17 ATTORNEY STRANG: Not when that photo taken
18 it's not.

19 THE COURT: Yeah, I think the -- reading
20 the report, the conclusion is that the bloodstains,
21 or at least a couple of them, were consistent with
22 an individual who was actively bleeding. I haven't
23 heard the answer yet, from the witness, so I wasn't
24 sure where you were going. But if the witness was
25 going to say that the particular pattern of the

1 stain near the ignition matched this particular cut,
2 it appears to me that would be going beyond what I
3 see here in the report.

4 If you want to ask the witness if
5 whoever this is, if this person had been sitting
6 in the vehicle and had that cut at a time when it
7 was actively bleeding, could that have caused the
8 bloodstains, I think that's something that's
9 within his expertise, that is contained -- or
10 that is within the conclusions that he drew in
11 the report. But I think that's about as far as
12 he can go.

13 ATTORNEY GAHN: We did not intend to go any
14 further, your Honor.

15 THE COURT: And, Mr. Strang, I don't know
16 if you object to that, or if that's inconsistent
17 with what you are saying or not.

18 ATTORNEY STRANG: No, if he is trying to
19 link the blood patterns he saw, to this photograph,
20 we don't have notice of that and he is not qualified
21 to do it. Neither does he have the foundation,
22 since that doesn't appear to be something that's
23 bleeding. And, you know, he has no idea when the
24 photo was taken or when the cut may have been
25 actively bleeding, none that I know of. And that

1 would have been the purpose of notice.

2 THE COURT: What exactly are you proposing
3 to ask him, Mr. Gahn?

4 ATTORNEY GAHN: Just when I asked him the
5 questions, whether he has an opinion, to a
6 reasonable degree of scientific certainty whether
7 this cut is consistent with being the bloody object
8 that came in contact with the dashboard by the
9 ignition switch. And I can add, if it were actively
10 bleeding, if this cut were actively bleeding, could
11 this be the source, the bloody source, coming in
12 contact with the dashboard.

13 THE COURT: Mr. Strang.

14 ATTORNEY STRANG: Again, there's just
15 nothing in the report that suggests that this
16 witness was going to try to link a stain to any
17 possible injury on Steven Avery or anyone else. And
18 I -- Again, I don't know how he would possibly do
19 that, other than a hypothetical, if it were actively
20 bleeding. Sure, but he doesn't know. Beyond -- I
21 can't -- What hand is this, this looks to me like a
22 left hand. Is that what that is?

23 ATTORNEY GAHN: Sergeant Bill Tyson
24 testified that this was the right hand of Steven
25 Avery.

1 ATTORNEY STRANG: Where's the thumb. Maybe
2 if it's being held like this, I suppose if the cuts
3 on the outside of the right finger. Sure looks like
4 a left hand from here. The point is, your Honor, we
5 don't have any foundation for any of this, from this
6 witness let alone notice.

7 THE COURT: All right. As I think about
8 it, I think I agree with the defense on this one.
9 He can testify -- he's already testified that it
10 came from a cut that was actively bleeding, the jury
11 has already seen this photo. They can determine if
12 it looks like a cut that was at one time actively
13 bleeding.

14 I just don't think for the witness'
15 level of expertise there is really much he can
16 add to that so I'm going to sustain the defense's
17 objection. Anything else before we bring the
18 jury back in? If not, if someone can bring the
19 witness back in, we'll bring in the jurors.

20 THE COURT: Mr. Gahn, before they come in,
21 any idea how long your direct is likely to go? Are
22 you hoping to finish it today?

23 ATTORNEY GAHN: Yes. We would also like
24 to -- hopefully we can finish the cross today too
25 because Mr. Stahlke has a appointment tomorrow

1 morning.

2 ATTORNEY STRANG: I don't know -- I don't
3 know where this is --

4 THE COURT: Well, we'll wait and see.

5 ATTORNEY STRANG: -- this is going, so.

6 (Jury present.)

7 THE COURT: You may be seated. And
8 Mr. Gahn you may continue.

9 **DIRECT EXAMINATION CONTD**

10 BY ATTORNEY GAHN:

11 Q. Mr. Stahlke, this pattern that you observed on
12 the dashboard of Teresa Halbach's RAV4, is this
13 pattern consistent with someone who could be
14 actively bleeding on their right hand?

15 A. Yes, it's consistent with that.

16 Q. I would ask if you could pick up the next
17 exhibit, please, and identify it for the jurors?

18 A. Exhibit 294.

19 Q. And what does that show, please?

20 A. This is the passenger side, rear entry, or the
21 threshold of the door frame.

22 Q. And does the photograph on the big screen
23 accurately reflect that photograph?

24 A. Yes, it does.

25 Q. And did you observe any bloodstain patterns to

1 this area?

2 A. Yes, I did.

3 Q. Would it be helpful if we zoom in?

4 A. Sure.

5 Q. Could you describe for the jurors what type of
6 bloodstain this is?

7 A. This is a stain that is indicative of passive
8 bleeding; it's a passive drop.

9 Q. And what do you mean by passive drop?

10 A. Passive drop is a particle of blood, or a drop of
11 blood that is only influenced by the gravity, or
12 the force of gravity.

13 Q. And is this type of drop consistent with being
14 left by a person who is actively bleeding?

15 A. Yes, it is.

16 Q. I'm going to ask you to look at the next exhibit,
17 identify the exhibit number.

18 A. Exhibit 295.

19 Q. And does the photo on the big screen reflect that
20 exhibit?

21 A. Yes, it does.

22 Q. Describe for the jurors what you observed here?

23 A. This is the rear cargo area of the Toyota RAV4.
24 This would be a view looking through the back
25 entry door and looking at the passenger side just

1 behind the right rear seat. In this area, there
2 are numerous stains and they all are basically
3 described as contact transfer stains.

4 Q. Would you look at the next exhibit, please,
5 identify it.

6 A. Exhibit 296?

7 Q. Yes.

8 A. This view is a close up view depicting the same
9 stains that we saw on the previous exhibit,
10 Exhibit 295.

11 Q. And describe these stains that you observed to
12 this portion of the vehicle.

13 A. These are contact transfer stains, a bloody
14 object coming in contact with an unstained
15 surface. And there is a stain in this grouping
16 of stains that is a classic stain for as far as a
17 transfer contact stain.

18 Q. Would you describe that for the jurors.

19 A. This stain right here has a wave like appearance
20 to it. It is indicative of bloody hair
21 transferring the blood from those -- from that
22 head here onto this surface.

23 Q. And how can you tell that?

24 A. Well, it has this crescent shaped or wavy
25 appearance to it. And this is just a classic

1 example of bloody hair transferring onto an
2 unstained surface. It is -- has enough blood
3 there that it also shows a bit of a flow pattern
4 off of the bottom of that. But you can see that
5 it is thicker here and it -- as it -- the length
6 draws out, it comes to a point. This is -- is
7 indicative of blood hair -- bloody hair transfer.

8 Q. Would you look at the next exhibit, please?

9 A. Exhibit 297.

10 Q. And does this photograph show what you're -- the
11 exhibit that you have in your hand?

12 A. Yes, it is.

13 Q. And, again, did you observe any other bloodstain
14 patterns?

15 A. Yes, I did.

16 Q. Would you please describe those for the jurors.

17 A. These stains here, as well, are all contact
18 transfer variety of stains. And along the base
19 of this is a flow patterns which is indicative of
20 a passive stain -- or type of a passive stain,
21 whereas gravity is the only thing that is
22 influencing it.

23 So there's enough blood that has
24 contacted this surface that it will drain on its
25 own, with the gravity, only gravity influencing

1 that stain. Along the base of this is pretty
2 heavily stained and it appears that it's all
3 contact transfer.

4 Q. Based upon the combination of these stains, that
5 you observed in the rear cargo area, are they
6 consistent with a body with bloody hair being
7 present?

8 A. Yes, they are.

9 Q. Did you examine the threshold area of the RAV4?

10 A. Yes, I did.

11 Q. And when I ask you to pick up the next exhibit,
12 next photograph, identify the exhibit, please.

13 A. Exhibit 298.

14 Q. And is that the exhibit that is being shown on
15 the big screen?

16 A. Yes, it is.

17 Q. Would you describe for the jurors your
18 observations of the threshold area of the RAV4?

19 ATTORNEY STRANG: Maybe we can -- Where are
20 we? What threshold area? I wonder if we can orient
21 it.

22 A. I can explain that. It's the cargo door, or the
23 rear door of the RAV4. So, if this is the cargo
24 area at the top of the -- this photograph, this
25 would be the opening to the rear -- rear end of

1 this vehicle. And this being the threshold, and
2 I will use this as the general term, as far as
3 the threshold, but this -- this threshold had not
4 only transfer contact stains, but it also had
5 impact stains.

6 Q. Could you point out for the jurors the -- we can
7 even zoom in here for you -- where you observed
8 the different stains and describe them again,
9 please.

10 A. This is an example of an impact stain.
11 There's -- this is transfer. If you want to
12 rotate more to the right. More staining right in
13 here that would be indicative of a transfer. And
14 then right -- as -- right there, more contact
15 transfer. And these stains actually are -- this
16 stain right here can be caused by -- as a swipe
17 pattern, which is a bloody object that has come
18 in contact with an unstained surface that is
19 showing motion. So a swipe will show motion of
20 that bloody source.

21 Q. Just for the record, Mr. Stahlke, I would like
22 you to identify each of these stains. Could you
23 point out the impact stain that you observed?

24 A. The most obvious impact stain would be this stain
25 right here. Impact stains are generally circular

1 or elliptical. They show that a particle of
2 blood or a drop of blood that has been in flight,
3 has been airborne, and when it contacts a surface
4 or impacts that surface, it leaves a stain that's
5 either circular or elliptical indicating the
6 angle of impact. This is a transfer stain.

7 Q. Just stop for one moment. May the record reflect
8 that when Mr. Stahlke pointed to the impact
9 stain, it was a bloodstain that was at the top of
10 what he referred to as the threshold area and to
11 the left of what appears to be a screw or a bolt
12 in that threshold area.

13 THE COURT: Does the defense agree?

14 ATTORNEY STRANG: Sure. But, you know,
15 really all of this is for the jury.

16 THE COURT: All right. All right. The
17 record will so reflect.

18 A. Additional stains are present are contact
19 transfer variety. Here to the left of that bolt
20 and to the right of the bolt here.

21 Q. And I think you also indicated that you observed
22 what were swipe patterns?

23 A. Yes. And that's down and to the right, in
24 relationship to that bolt.

25 Q. Thank you. Did you also -- Would you look at the

1 next exhibit, identify it, please.

2 A. Exhibit 299.

3 Q. And does the photograph you have in your hand,
4 that exhibit, is that being displayed on the big
5 screen?

6 A. Yes, it is.

7 Q. And did you observe any bloodstain patterns to --
8 I'm sorry, please, describe what this photograph
9 shows.

10 A. This is the rear door of the RAV4. And when --
11 This is the type of door that has a hinge on its
12 side so it opens like a regular car door, but on
13 the rear end of the vehicle. This is the
14 interior panel of that door.

15 Q. And did you observe any bloodstain patterns on
16 the interior panel of the rear cargo area?

17 A. Yes, I did.

18 Q. And could you explain those for the jurors and we
19 would be more than happy to zoom in on any stains
20 you would like.

21 A. There were a number of impact stains on the rear
22 panel of this door and some of the stains had
23 associated flow patterns.

24 Q. Could you use the laser pointer and point these
25 out for the jurors and describe them.

1 A. If you want to zoom in right here. This is some
2 of the better stains as far as groupings. Okay.
3 That's good. You can see here, these are impact
4 stains; they are circular or near circular. And,
5 then, some of these stains have a flow pattern,
6 meaning they had enough quantity or volume that
7 once they impacted the surface, gravity
8 influenced them and drew that blood down -- down
9 toward the ground. So this is an example of a
10 impact stain with an associated flow pattern and
11 this one as well and these are all impact stains.

12 Q. Were there any other type of stains on the door
13 area that you observed?

14 A. No.

15 Q. And are you able -- Were you able to determine
16 how those would be deposited, the ones that you
17 observed, the impact stains with the flow
18 pattern?

19 A. Yes, I have seen these stains at other scenes
20 where -- where we assume that a bloody object was
21 being handled and that these stains -- or this
22 blood was -- was -- appeared to have been flung
23 off or released from a bloody object.

24 Q. Would that be consistent with a body with bloody
25 hair being put into the back of this vehicle?

1 A. Yes, it would. And in this particular case,
2 this -- these stains don't necessarily require
3 the -- the bloody hair component; however, it is
4 consistent with a bloody object such as a body
5 being comploded (phonetic) into the rear end of
6 this vehicle.

7 Q. If you would look at your next exhibit, please,
8 and identify that.

9 A. Exhibit 300.

10 Q. And is the photograph on the big screen, is that
11 the same one you have with you?

12 A. Yes, it is.

13 Q. Could you describe what this is?

14 A. This is an overall view of the rear cargo area or
15 storage area of this RAV4.

16 Q. Did you make any measurements to this rear cargo
17 area?

18 A. Yes, I did.

19 Q. What area did you measure and could you give
20 those dimensions to the jury.

21 A. I measured from door frame to door frame. And it
22 was 42 inches.

23 Q. And would a five-foot-six slender woman fit in
24 the back in the cargo area?

25 A. Yes, it would.

1 Q. Did you do any other examination or processing of
2 this vehicle, besides the bloodstains?

3 A. We were asked to give the odometer reading on the
4 vehicle.

5 Q. And what did you do to obtain the odometer
6 reading?

7 A. Well, looking at the instrument panel, we
8 couldn't determine what the odometer reading was,
9 since there appeared to have been a dead battery.

10 Q. And what -- Did you check any further as to
11 whether there was a dead battery?

12 A. Yes. We thought we needed to charge the battery
13 so we opened up the hood of the vehicle and
14 discovered that the battery cables had been
15 disconnected.

16 Q. Would you look at the next exhibit that you have,
17 identify it, please.

18 A. Exhibit 302.

19 Q. And what does that exhibit show?

20 A. This is the disconnected battery cable.

21 Q. Is that how you observed it when you opened up
22 the hood?

23 A. Yes, it is.

24 Q. It was you who opened up the hood, correct?

25 A. That's correct.

1 Q. How did you do that?

2 A. Released the interior latch on the vehicle and
3 then opened up the hood, releasing the latch on
4 the hood, or the front of the vehicle. And
5 propped it open with its -- its a -- with a prop,
6 I guess, on the hood itself and saw this battery.

7 Q. And what did you determine by looking at the
8 battery?

9 A. Well, that -- that was the reason for the problem
10 with no power to the instrument panel, is that
11 the battery was disconnected.

12 Q. And when you opened up the hood of the RAV4, were
13 you wearing gloves?

14 A. Yes.

15 Q. What type of gloves were you wearing?

16 A. Latex.

17 Q. I would like you to look at the next exhibit,
18 please, identify it.

19 A. Exhibit 303.

20 Q. And is this the exhibit that you have in your
21 hand, being shown on the big screen?

22 A. Yes, it is.

23 Q. And has this been identified to you as the
24 vehicle owned by Steven Avery, a 1993 Grand Am?

25 A. Yes.

1 Q. Did you process this vehicle for any blood stain
2 pattern analysis?

3 A. Yes, I did.

4 Q. And did you find any bloodstains in it?

5 A. Yes, I did.

6 Q. Will you look at the next exhibit, please,
7 identify it.

8 A. Exhibit 305.

9 Q. And is Exhibit 305 reflected on the big screen?

10 A. Yes, it is.

11 Q. And could you point out for the jurors any
12 bloodstain patterns that you observed in this
13 vehicle?

14 A. This seems to be zoomed in a bit, can we zoom
15 out. Yes, there's stains present in this
16 particular photograph. There's some stains on
17 the backside of this gear shift here. And two
18 circular stains, one here and one here. Now, off
19 this photo, that you can't see, are additional
20 stains, right along here, on the passenger side
21 of the center console.

22 Q. Do the blood stain patterns that you observed in
23 this 1993 Grand Am, are they consistent with the
24 operation of this Grand Am by a person who was
25 actively bleeding?

1 A. Yes, they are.

2 Q. And the bloodstain patterns that you observed in
3 Teresa Halbach's RAV4, are those consistent with
4 the operation of the RAV4 by a person who is
5 actively bleeding?

6 A. Yes, they are.

7 ATTORNEY GAHN: That's all I have. Thank
8 you, Judge.

9 THE COURT: All right. Members of the
10 jury, it's almost 4:30, since I'm sure you got up a
11 little early this morning, it's a good enough reason
12 to let you go a little early today. I will remind
13 you not to discuss this matter among yourselves or
14 with anyone else and we'll see you tomorrow morning.

15 (Jury not present.)

16 THE COURT: You may be seated. Counsel, I
17 will ask you to see me in chambers a little after
18 8:30 again tomorrow morning to let me know what we
19 will be doing.

20 ATTORNEY FALLON: Yes, Judge, could we put
21 another matter on the record at this time.

22 THE COURT: Sure.

23 ATTORNEY FALLON: In light of this
24 afternoon, or should I say this morning's
25 developments, the State would like to renew a motion

1 previously made and ruled upon by the Court. And
2 that is, again, we would renew our **Richardson** motion
3 for disclosure and evidence, if there is to be any
4 more frame-up allegations, or should we say wild
5 speculation, that we at least be given notice and a
6 new offer of proof with respect to that type of
7 evidence.

8 This morning's example, the buccal swabs
9 or buccal swabs, is a perfect example of evidence
10 not covered by the original offer of proof and
11 the Court had already noted that any such
12 evidence should be the subject of at least
13 pre-trial notice. Obviously, that's not possible
14 since we're in trial at the moment. But the
15 existence of those swabs and those conditions was
16 well known to the defense and disclosed.

17 So if there was to be any more
18 **Richardson** evidence, then we would demand a
19 notice, and an offer of proof, and a ruling
20 outside the presence of the jury, before it is
21 presented to the jury. We have that ruling from
22 the Court. It did not include the buccal swabs,
23 it included only the blood vial. We will be
24 certainly hearing more about that in the next
25 couple of days.

1 But any other evidence, we renew our
2 motion to exclude and prohibit that evidence. As
3 this morning's example demonstrated, there was no
4 basis and no reason to present that evidence
5 today. It's entirely irrelevant. Conjecture,
6 speculation, and wild accusation, that's all it
7 was. We object.

8 THE COURT: Mr. Buting.

9 ATTORNEY BUTING: Judge, then the State has
10 to give advance notice of any of their theories and
11 any type of evidence that their expert will testify
12 ahead of time. And in this instance they elicited
13 an opinion from an expert, that was not in the
14 report, in which she was saying -- they had her try
15 to say that this DNA on the key, for instance,
16 was -- she didn't like my use of the word trace, I
17 can't remember what word she used -- but they tried
18 to raise an issue that somehow it could not have
19 come from a blood source.

20 So they brought into the trial a
21 completely different issue. We were simply
22 responding to that, and that's going to happen,
23 if they bring in, you know, additional opinions
24 like this one. You know, this is not irrelevant
25 the jury can draw from it what they want, but it

1 was a relatively minor point, given the length of
2 the whole cross-examination, so I don't see that
3 it's worth arguing too much about.

4 I don't know that there's going to be
5 anything else at this point, that I'm aware of,
6 but if some other witness comes up here and
7 presents some kind of testimony that may require
8 it, then I think it's fair game.

9 THE COURT: All right. Mr. Fallon, I'm not
10 going to hear from you, because you are going to win
11 this one. I know from conferences in chambers
12 before that the State had already made the point
13 when the blood vial thing came up first, that the
14 key, and I believe the hood latch, were alleged to
15 involve DNA that did not consist of blood.

16 I let the defense evidence in today
17 about the buccal swabs, but I agree with the
18 State that although -- although I would have
19 determined it was relevant had we had a
20 **Richardson** hearing about it, that if there is any
21 other **Richardson** type evidence that the defense
22 intends to introduce, I'm going to require from
23 this point forward that the State get advance
24 notice of it. And that if the State objects, the
25 Court has a chance to evaluate it for whether or

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not it is admissible as frame-up evidence.

I think that the defense had notice ahead of time that the State was claiming that there was some DNA evidence which the State could not say didn't come from blood, as we heard from the expert witness today, but didn't appear to be. I assume that was the reason why the defense sought to introduce the buccal swab evidence, which I did let in.

But I think the State's point is well taken, they are entitled to notice if there's any other evidence like that that the defense will be seeking to introduce. Anything else before we adjourn today?

ATTORNEY KRATZ: You wanted us in chambers, Judge, is that what you said?

THE COURT: Before trial tomorrow morning.

ATTORNEY KRATZ: Oh, I'm sorry. That's fine. Thank you.

THE COURT: All right. We'll see you tomorrow morning.

(Proceedings concluded.)

1 STATE OF WISCONSIN)
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2 COUNTY OF MANITOWOC)

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I, Diane Tesheneck, Official Court Reporter for Circuit Court Branch 1 and the State of Wisconsin, do hereby certify that I reported the foregoing matter and that the foregoing transcript has been carefully prepared by me with my computerized stenographic notes as taken by me in machine shorthand, and by computer-assisted transcription thereafter transcribed, and that it is a true and correct transcript of the proceedings had in said matter to the best of my knowledge and ability.

Dated this 21st day of November, 2007.

Diane Tesheneck, RPR
Official Court Reporter

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'04 [3] 129/25 130/1 130/20	200 [1] 213/18	4
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130/1 137/25 140/18	2002 [2] 14/25 98/18	40 [6] 200/13 200/13 200/14
'85 [1] 163/10	2003 [21] 12/21 13/13 14/6 15/10	200/18 200/22 204/1
'88 [1] 200/23	18/24 59/7 59/13 64/23 65/3	42 [1] 229/22
'99 [2] 204/22 204/22	65/19 82/23 83/2 147/1 147/7	44 [1] 130/15
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11th [1] 30/8	26 [1] 1/8	205/1
12 [4] 26/4 72/4 72/5 130/25	28 [1] 76/9	8
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127 [1] 2/12	28th [2] 134/1 139/6	89 [2] 130/3 163/2
13 [1] 72/12	29 [1] 2/10	89th [1] 192/15
13th [1] 64/23	290 [1] 206/12	8:30 [1] 233/18
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1978 [2] 44/7 45/10	305 [2] 232/8 232/9	AA [1] 56/19
198 [7] 2/8 2/10 2/11 2/12 2/12	307 [2] 87/9 87/16	AB [1] 56/19
2/13 2/13	308 [1] 87/9	ability [4] 158/5 158/5 216/6
1984 [1] 45/10	31 [1] 2/11	238/14
1985 [14] 15/11 15/23 16/10 16/16	310 [1] 145/6	absence [1] 186/18
17/6 18/1 18/20 20/3 58/15 58/16	314 [1] 148/21	absolutely [1] 13/13
64/8 64/11 163/10 163/24	31st [1] 112/23	AC [1] 56/19
1988 [1] 200/13	341 [4] 2/10 29/8 29/9 30/2	acceptable [2] 79/24 79/24
1993 [2] 231/24 232/23	342 [3] 2/11 31/18 31/19	accepted [1] 78/25
1996 [1] 148/8	343 [3] 2/11 37/11 198/7	access [1] 172/8
1997 [2] 45/22 148/7	344 [7] 63/5 63/23 167/3 169/25	accessed [1] 92/18
1:00 then [1] 111/9	183/14 184/16 184/18	accessible [1] 179/25
1st [6] 79/11 133/24 134/1 134/9	345 [3] 2/12 78/3 78/4	according [3] 47/8 60/25 142/8
134/14 162/23	346 [3] 2/12 127/21 127/24	account [2] 6/25 157/1
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20 [3] 100/16 132/18 133/4	184/17	
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	3rd [6] 75/5 75/10 133/24 134/1	

A		
<p>accredited [2] 53/3 53/4 accrediting [3] 48/8 48/10 156/5 accurate [2] 12/25 98/5 accurately [1] 220/23 accusation [1] 235/6 accused [1] 9/8 across [4] 168/3 169/11 182/7 183/1 action [1] 129/3 actively [13] 215/8 216/22 217/7 217/25 218/9 218/10 218/19 219/10 219/12 220/14 221/14 232/25 233/5 actual [5] 10/13 47/3 47/7 78/13 153/16 actually [55] 9/8 12/20 13/1 24/7 31/16 37/16 43/19 44/24 46/2 63/2 63/25 64/10 68/7 70/24 71/19 71/22 72/13 73/21 76/10 77/21 78/1 79/10 85/22 86/14 94/5 95/5 98/12 99/2 100/20 105/25 110/23 112/21 114/9 114/18 115/5 122/12 130/1 130/18 131/23 136/23 137/14 140/1 150/9 155/4 155/16 156/23 159/19 160/8 161/3 166/4 181/25 183/5 185/15 190/9 225/15 add [5] 100/23 124/11 159/20 218/9 219/16 added [3] 124/12 186/25 187/1 additional [8] 32/21 40/14 46/15 123/12 213/22 226/18 232/19 235/23 address [2] 169/19 173/25 adjourn [1] 237/14 administrative [1] 46/24 admissible [1] 237/1 admit [1] 107/13 admitted [4] 2/9 198/2 198/5 198/9 advance [3] 200/15 235/10 236/23 advent [1] 17/14 Advisory [1] 46/4 afternoon [3] 152/25 197/20 233/24 again [35] 7/6 32/7 37/3 37/24 57/22 58/3 58/14 96/17 99/17 101/10 114/4 129/5 142/14 155/2 158/3 161/24 163/7 164/23 174/15 176/16 192/8 197/20 200/14 209/23 209/25 210/16 210/20 210/20 215/18 218/14 218/18 223/13 225/8 233/18 234/2 against [5] 38/12 102/17 103/4 103/8 215/18 agencies [2] 182/15 214/5 agency [11] 7/19 11/13 11/25 55/22 57/15 60/8 63/2 63/3 63/9 63/25 167/23 ago [1] 196/13 agree [15] 7/17 9/16 19/12 84/7 105/3 105/10 105/20 133/3 133/7 135/4 169/3 175/21 219/8 226/13 236/17 agreeable [1] 181/11 agrees [2] 177/20 178/8 ahead [10] 36/7 37/8 75/18 178/8 178/15 181/2 181/11 181/21 235/12 237/3 air [3] 73/22 73/23 121/8 airborne [1] 226/3</p>	<p>alibi [1] 15/17 allegations [1] 234/4 alleged [4] 60/21 79/19 185/20 236/14 allele [1] 187/19 alleles [1] 140/13 Allen [7] 13/20 13/22 28/3 165/19 165/23 193/4 193/7 Allen's [1] 14/9 allow [10] 9/24 62/11 133/2 164/21 166/6 185/24 185/25 190/13 194/10 194/22 allowed [2] 54/7 173/24 allows [1] 50/12 almost [4] 115/6 116/11 121/2 233/10 alone [3] 12/15 100/1 219/6 along [10] 85/1 114/11 181/3 181/4 183/3 187/22 187/24 223/18 224/1 232/20 alphabet [2] 56/17 56/20 already [22] 14/5 28/14 30/13 39/24 52/5 59/21 71/14 73/8 82/5 83/13 85/18 127/20 135/1 173/24 191/16 191/20 203/3 206/7 219/9 219/11 234/11 236/12 although [4] 14/14 105/11 236/18 236/18 altogether [2] 25/10 124/5 always [4] 64/15 70/15 153/16 185/5 among [3] 41/22 98/25 233/13 amount [20] 46/5 47/13 94/16 94/17 94/18 96/4 97/5 97/17 97/20 100/15 100/24 101/4 101/19 102/5 102/13 102/18 103/3 103/9 106/9 158/24 amounts [4] 98/4 156/25 158/6 158/21 amplification [10] 77/1 119/24 120/19 121/13 122/18 122/20 123/13 123/17 125/9 158/17 amplifies [1] 158/20 amplify [5] 124/21 124/24 124/24 158/16 207/25 analysis [12] 16/14 17/23 19/18 31/5 161/1 200/10 200/12 200/21 202/5 203/5 203/25 232/2 analyst [26] 8/8 8/20 12/20 47/12 68/1 68/1 69/3 81/25 121/25 122/2 124/9 126/14 129/2 129/17 131/4 132/14 132/16 136/7 139/6 139/9 141/4 144/4 150/23 151/9 161/17 188/9 analyst's [1] 132/25 analysts [24] 8/18 9/8 12/10 47/10 47/17 55/12 66/16 67/8 70/2 70/4 84/3 84/8 84/21 119/13 122/1 129/10 130/24 131/9 131/20 131/24 132/23 135/22 144/21 160/13 analyze [3] 32/12 205/4 214/11 analyzed [4] 84/2 162/24 166/22 176/23 analyzing [1] 163/8 angle [1] 226/6 another [37] 15/4 15/8 15/9 16/19 31/22 32/2 57/16 57/16 59/24 60/24 60/24 66/5 69/12 101/11 110/25 116/16 119/7 126/13 126/14 127/2 129/20 134/3 134/3 137/10 137/22 138/2 140/12 152/24 167/9 171/17 172/6 172/24</p>	<p>181/13 186/15 209/12 213/1 233/21 answer [6] 11/4 11/22 102/11 157/25 158/1 216/23 answered [4] 20/10 20/13 166/25 195/20 answers [1] 78/7 anticipating [1] 38/4 anybody [4] 132/10 132/17 133/5 200/11 anymore [2] 20/21 20/22 anyone [11] 8/22 26/10 46/11 131/22 151/5 154/7 154/9 156/14 160/1 218/17 233/14 anything [25] 5/7 6/15 44/15 59/2 61/24 79/23 86/8 101/16 126/4 146/7 154/7 160/20 161/6 162/6 175/3 175/17 182/23 191/15 194/17 205/16 207/4 211/19 219/17 236/5 237/13 anytime [1] 99/9 anyway [4] 16/24 66/9 147/17 197/17 anywhere [10] 53/20 54/15 89/7 95/15 101/8 116/5 116/9 117/20 130/25 209/7 apologize [3] 30/1 87/8 115/4 apparent [1] 89/20 apparently [6] 61/16 62/2 81/5 134/13 136/12 146/9 appear [9] 60/23 172/12 178/20 179/19 180/25 184/3 184/24 217/22 237/6 appearance [2] 222/19 222/25 appearances [2] 1/11 3/5 appeared [7] 1/22 18/7 108/9 181/14 206/5 228/22 230/9 appears [12] 3/7 24/18 65/9 173/21 175/9 179/20 183/21 184/1 205/16 217/2 224/2 226/11 Application [1] 98/21 appointed [2] 45/22 46/3 appointment [1] 219/25 appreciate [1] 3/17 appropriate [8] 151/17 161/10 161/14 161/20 162/4 164/5 188/25 195/15 approval [2] 144/16 146/3 approve [1] 146/6 approved [2] 144/7 145/24 approximately [3] 82/22 100/14 213/18 April [10] 75/5 75/10 79/8 79/16 80/14 92/25 105/24 190/7 190/9 190/10 April 10th [1] 80/14 April 3rd [2] 75/5 75/10 April 6th [1] 190/9 area [41] 13/8 13/9 24/14 24/18 33/6 44/3 69/19 75/7 75/11 88/5 88/8 89/22 90/1 91/9 92/7 113/15 116/1 120/20 200/20 208/17 209/2 209/16 209/17 212/24 221/1 221/23 222/1 224/5 224/9 224/18 224/20 224/24 226/10 226/12 227/16 228/13 229/14 229/15 229/17 229/19 229/24 areas [6] 21/5 71/22 71/23 109/10 119/21 207/10 arguing [1] 236/3 argument [2] 37/3 38/3 argumentative [3] 132/5 190/3 197/13</p>

A
arms [2] 21/21 22/6
around [17] 14/17 20/19 82/6 85/4
85/14 85/19 86/4 86/10 87/3
88/21 89/7 96/22 100/16 100/25
104/6 137/6 205/13
arrived [2] 93/8 176/22
arrives [1] 6/12
arson [1] 49/16
art [1] 163/12
article [4] 98/14 98/17 98/25 105/2
ASCLD [2] 48/13 53/4
asked [27] 20/10 20/12 40/7 42/2
42/5 49/16 61/24 115/15 117/2
142/25 146/25 150/12 163/4
163/21 166/25 175/21 189/13
195/19 201/9 205/4 212/6 214/5
214/10 216/13 216/16 218/4 230/3
asking [7] 11/20 81/20 137/19
170/25 198/2 212/13 214/21
aspects [1] 85/21
assailant [2] 13/11 202/18
assault [1] 36/8
assign [2] 8/8 8/19
assigned [4] 10/19 10/23 11/8
12/12
assigning [1] 12/9
assisted [1] 238/10
associated [4] 113/5 201/10
227/23 228/10
Association [1] 201/8
assume [14] 30/21 31/12 48/8
65/13 72/22 83/11 112/15 114/24
116/20 127/9 157/22 170/23
228/20 237/7
assumed [2] 36/13 129/16
assuming [5] 7/17 7/20 18/10
139/13 141/9
assumption [6] 8/6 11/11 11/13
11/21 11/24 25/24
assure [1] 190/12
attached [2] 164/8 164/24
attachment [1] 8/22
attack [1] 19/4
attacker [2] 202/18 202/20
attempted [1] 164/1
attempting [2] 37/13 174/24
attended [4] 200/9 200/14 200/14
200/18
attention [1] 75/20
attorney [12] 1/17 1/19 2/4 2/5 2/8
40/4 62/19 81/3 149/16 149/20
150/12 151/11
attorney/client [1] 40/4
attorneys [4] 38/7 40/8 150/5
177/24
attributed [1] 91/19
audit [1] 156/10
auditors [8] 48/3 52/14 53/6 53/12
53/15 53/21 55/8 156/12
audits [2] 52/9 52/9
August [18] 128/8 128/8 133/9
133/12 133/18 133/24 133/24
134/1 134/1 134/1 134/3 134/4
134/9 134/14 135/1 139/6 139/24
140/8
August 1st [3] 134/1 134/9 134/14
August 28th [2] 134/1 139/6
August 29th [3] 134/4 139/24
140/8
August 3rd [2] 134/1 134/3
available [4] 13/4 147/21 147/22

191/1
average [3] 131/1 131/7 207/16
AVERY [52] 1/6 1/21 3/2 3/10 4/23
5/3 5/17 5/25 12/21 13/1 13/14
14/9 14/15 15/1 15/4 15/10 15/12
15/21 18/1 27/24 28/1 28/3 28/18
33/7 34/13 35/6 38/12 39/25
41/17 41/19 41/19 41/24 60/14
60/19 62/2 64/19 75/15 84/3
107/10 147/1 147/6 163/5 165/15
167/6 167/17 173/9 176/24 184/8
193/22 218/17 218/25 231/24
Avery's [46] 5/19 18/7 20/4 27/23
31/3 34/18 41/13 59/8 59/11
59/23 64/11 65/20 79/20 83/12
88/16 88/23 89/1 89/3 89/6 89/14
90/18 90/19 91/8 91/20 91/24
92/20 94/24 95/9 106/23 107/2
109/18 110/1 113/11 114/2 115/12
115/21 116/4 117/11 117/16
142/23 143/9 152/9 166/23 167/12
172/25 189/25
aware [10] 9/2 9/6 39/8 53/2 81/16
99/22 101/8 118/4 190/10 236/5
away [2] 74/4 160/16

B
BA [1] 56/23
bachelor [1] 44/6
bachelor's [2] 43/16 199/12
back [55] 16/10 21/1 39/13 43/12
44/12 46/7 57/15 59/12 60/7 61/1
62/10 62/14 62/19 63/8 65/23
70/16 73/5 74/24 78/7 111/9
116/14 116/18 123/24 126/4 126/8
128/7 142/22 162/5 163/10 163/22
165/8 166/8 166/19 167/23 170/12
170/24 171/3 172/7 173/4 174/7
175/12 176/2 176/3 183/11 183/24
184/11 184/17 185/9 209/10 210/6
219/18 219/19 221/24 228/25
229/24
background [3] 16/4 43/13 199/11
backlog [5] 82/17 82/22 83/1
83/14 84/4
backside [1] 232/17
baffling [1] 129/19
bag [1] 76/22
Ballistics [1] 49/6
ballooned [1] 83/14
ballpark [1] 100/17
bank [5] 165/17 182/1 182/14
182/21 193/20
banks [1] 23/15
bar [2] 176/17 183/1
barrel [6] 33/3 34/3 34/6 115/25
116/9 116/23
base [4] 138/13 182/12 223/18
224/1
based [4] 24/11 25/23 89/1 224/4
basic [2] 176/14 199/18
basically [13] 38/14 48/23 51/6
51/21 98/17 122/22 129/25 155/18
187/20 202/12 203/14 209/4 222/2
basis [5] 86/6 157/4 193/18 200/2
235/4
batched [1] 124/23
batches [1] 125/1
bathroom [4] 108/9 108/11 108/13
108/23
battery [8] 230/9 230/11 230/12
230/14 230/20 231/6 231/8 231/11
bay [2] 204/23 204/23

BB [1] 56/24
BC [1] 56/24
BD [1] 56/24
bearing [5] 31/4 189/17 189/19
195/11 195/11
bears [1] 105/12
beating [1] 202/23
became [3] 81/2 88/12 197/7
because [69] 8/24 10/18 12/24
12/24 15/5 18/24 25/22 28/10
35/23 37/10 44/25 46/17 46/19
46/21 52/15 54/24 70/24 72/17
80/7 80/17 82/11 82/16 90/2
94/17 94/20 110/12 114/21 118/25
125/20 127/8 129/7 138/16 138/19
147/10 148/16 152/6 156/18
156/25 158/14 158/20 160/5
160/11 161/9 161/17 161/21 162/4
163/15 166/1 166/8 185/19 186/18
187/1 188/25 189/8 190/11 190/21
191/6 191/16 191/17 191/19
192/21 194/24 195/7 196/5 197/1
204/2 207/19 219/25 236/10
become [1] 172/23
becomes [1] 50/22
bed [2] 109/3 109/5
bedding [2] 107/22 107/24
bedroom [2] 108/24 109/18
before [52] 1/9 3/12 6/16 7/3 7/10
7/13 14/16 20/18 26/14 30/25
31/16 39/12 45/7 51/1 53/8 53/16
53/20 55/2 62/24 71/15 92/21
93/8 111/1 113/16 113/22 118/10
119/21 127/14 128/8 139/23
148/17 151/16 152/4 152/24 167/3
174/9 175/17 177/16 187/7 188/15
188/16 188/18 189/16 192/1
204/13 207/12 219/17 219/20
234/20 236/12 237/13 237/17
began [5] 76/15 76/15 76/24 76/25
205/7
begin [5] 3/12 3/21 4/1 4/10 153/5
beginning [5] 19/2 53/6 87/5
193/8 215/25
begins [2] 105/5 130/19
behalf [5] 1/12 1/14 1/16 1/18
1/20
behind [3] 16/16 35/24 222/1
being [37] 14/25 16/23 17/19 21/5
30/25 31/6 38/11 39/1 54/10 69/9
94/9 97/14 97/15 116/17 158/22
167/6 187/24 195/16 195/18
206/13 207/17 211/5 211/10 212/6
212/11 212/14 218/7 219/2 221/13
224/6 224/14 225/1 227/4 228/21
228/25 229/5 231/21
beings [1] 156/19
believe [49] 3/20 12/5 15/1 35/17
40/10 43/9 48/10 49/13 49/20
52/12 55/21 57/4 61/25 71/7
71/21 71/25 72/5 73/7 80/3 82/25
88/7 92/25 96/14 98/16 107/7
107/23 109/6 112/11 115/24 130/3
130/15 131/23 137/7 139/23
162/22 168/7 173/13 176/20 177/7
177/9 177/17 178/6 183/14 190/10
196/9 201/20 208/14 212/9 236/14
believed [1] 136/18
bench [23] 67/9 67/12 67/15 67/20
67/24 68/6 68/9 69/23 70/15 73/4
73/6 73/18 73/21 73/23 75/11
85/9 85/23 86/5 86/10 86/11
121/21 159/22 196/8

<p>B</p> <p>benches [2] 67/18 67/25 bent [1] 121/4 besides [1] 230/2 best [2] 129/10 238/13 Beth [3] 149/11 174/3 181/22 better [2] 114/14 228/2 between [9] 45/10 82/23 100/16 119/21 136/3 163/16 186/5 203/7 203/8 beyond [10] 190/19 193/11 193/11 193/13 193/16 211/25 215/9 215/10 217/2 218/20 big [15] 48/2 69/5 133/15 138/13 141/11 192/21 206/14 211/5 220/22 221/19 224/15 227/4 229/10 231/21 232/9 Bill [1] 218/23 billion [1] 25/23 bio [1] 46/8 bio-chemistry [1] 46/8 biological [4] 24/8 43/16 97/16 120/25 biology [1] 46/8 birth [1] 22/1 bit [21] 10/1 13/5 26/7 32/11 45/5 55/8 64/24 70/23 85/17 88/1 101/1 128/7 158/15 160/4 170/16 180/25 199/10 207/8 207/25 223/3 232/14 bits [1] 99/15 black [2] 96/23 179/15 blah [3] 25/4 25/4 25/4 blank [1] 79/23 bleach [6] 35/2 110/11 113/16 113/22 113/25 119/20 bleeding [18] 202/14 202/15 212/17 215/8 216/22 217/7 217/23 217/25 218/10 218/10 218/20 219/10 219/13 220/14 221/8 221/14 232/25 233/5 blind [6] 26/11 26/13 27/2 27/3 27/14 189/8 block [1] 124/18 blood [79] 5/20 23/13 23/24 33/3 34/2 59/1 59/2 59/15 59/20 60/13 60/17 60/23 61/9 61/16 61/18 61/23 62/2 74/24 89/21 91/24 92/20 93/10 93/13 93/19 93/24 94/9 94/9 94/14 95/21 96/15 97/16 97/22 97/23 101/3 101/24 106/2 106/12 106/15 108/9 108/19 114/23 115/25 116/18 116/22 167/12 173/7 173/21 201/21 202/13 205/19 208/3 208/4 210/22 210/23 211/18 212/13 212/18 212/25 213/20 215/4 215/17 217/19 221/10 221/11 222/21 223/2 223/7 223/23 226/2 226/2 228/8 228/22 232/1 232/22 234/23 235/19 236/13 236/15 237/5 bloodied [1] 213/11 bloodstain [33] 200/7 200/10 200/12 200/16 200/17 200/18 200/21 201/2 201/25 202/5 202/9 203/6 203/10 203/20 203/24 205/4 205/16 208/16 209/8 210/11 211/21 212/11 214/4 214/11 215/17 220/25 221/6 223/13 226/9 227/7 227/15 232/12 233/2 bloodstains [12] 200/3 202/11 203/15 208/22 209/2 213/5 213/6</p>	<p>214/1 216/20 217/8 230/2 232/4 bloody [28] 207/20 208/4 208/4 209/25 209/25 209/25 210/17 210/21 211/10 212/11 212/14 213/9 216/12 216/14 218/7 218/11 222/13 222/20 223/1 223/7 224/6 225/17 225/20 228/20 228/23 228/24 229/3 229/4 blow [2] 116/14 116/18 blows [1] 202/24 bludgeoning [1] 202/23 blue [5] 23/18 169/1 169/6 169/7 204/22 board [3] 46/4 84/14 156/5 boards [1] 48/9 Bobby [3] 39/2 41/19 42/11 bodily [3] 97/22 99/6 100/4 body [5] 99/9 100/8 224/6 228/24 229/4 bolt [4] 226/11 226/19 226/20 226/24 bordering [1] 207/16 both [9] 5/20 34/11 96/22 181/10 183/17 183/18 198/1 198/1 215/12 bottle [2] 208/12 208/14 bottom [9] 64/14 80/12 96/23 98/18 100/7 135/18 140/7 194/5 223/4 box [2] 208/21 209/5 boxes [2] 78/22 78/22 bracketing [1] 21/5 BRANCH [2] 1/1 238/5 brand [3] 53/19 54/14 55/1 break [13] 37/5 58/1 58/2 58/4 62/10 62/25 110/24 111/4 111/6 152/18 152/24 197/20 197/21 Brendan [1] 117/20 brick [1] 124/1 briefly [2] 21/15 94/23 bring [15] 39/12 55/23 66/25 67/1 67/9 84/13 128/15 170/11 176/2 193/15 206/6 219/17 219/18 219/19 235/23 bringing [1] 17/8 brings [1] 49/15 broken [2] 184/6 184/9 brought [14] 4/1 8/13 32/16 32/19 38/11 60/21 62/19 63/2 66/23 73/17 167/4 192/8 193/14 235/20 brown [1] 206/21 brush [2] 212/18 215/18 buccal [3] 59/8 59/11 59/21 60/13 60/18 61/11 64/15 64/16 64/17 64/18 64/18 65/20 101/7 101/7 101/20 101/23 102/1 103/4 167/5 167/16 168/4 170/24 171/1 173/9 174/18 183/13 183/20 183/20 184/7 234/8 234/9 234/22 236/17 237/8 buffer [2] 106/8 142/17 buffers [1] 159/20 bullet [37] 75/23 79/19 86/24 105/22 105/23 106/12 107/11 137/6 142/4 142/10 142/17 143/11 144/18 149/1 150/11 150/14 150/21 152/11 153/22 153/23 160/2 160/3 160/4 160/8 160/20 162/11 162/13 162/15 190/7 192/17 194/8 194/13 195/3 195/18 196/4 196/17 196/19 bunch [1] 114/25 bus [1] 3/18 business [2] 59/5 63/11</p>	<p>BUTING [27] 1/19 2/4 3/11 4/9 18/21 40/9 40/23 41/8 58/11 62/19 111/13 154/24 163/4 165/13 167/2 169/2 170/4 175/4 175/18 175/24 177/10 177/17 177/22 178/14 185/4 193/12 235/8</p> <p>C</p> <p>C-u-l-h-a-n-e [1] 4/8 cabinets [1] 67/22 cable [1] 230/20 cables [1] 230/14 caliber [2] 33/2 33/24 called [16] 3/14 4/2 16/12 19/14 24/16 29/12 48/25 56/19 57/19 119/10 120/25 122/5 122/14 123/4 137/9 198/18 calling [1] 32/8 calls [6] 3/1 9/21 29/4 81/19 137/8 161/11 cannot [2] 5/23 103/13 canon [1] 212/19 cap [2] 159/15 159/17 car [6] 90/4 90/14 104/3 107/2 205/11 227/12 cardboard [1] 171/25 career [3] 146/18 151/8 189/21 carefully [1] 238/8 cargo [14] 74/25 87/23 88/5 91/9 91/12 91/14 221/23 224/5 224/22 224/23 227/16 229/14 229/16 229/24 carpet [1] 108/4 carried [2] 123/11 123/13 carryover [6] 137/9 137/14 137/19 137/20 137/20 139/18 case [158] 1/5 3/2 5/17 8/8 8/14 8/21 8/23 10/14 10/19 10/23 10/24 11/8 11/9 12/3 12/5 12/6 12/6 12/10 12/12 12/17 13/3 14/21 15/9 15/13 15/15 18/9 18/19 18/20 20/4 28/1 28/3 28/7 28/17 28/22 29/2 29/4 29/12 29/21 30/4 31/22 33/12 36/5 36/8 36/15 37/4 37/17 38/15 41/14 47/7 47/15 47/16 56/8 56/10 57/1 57/2 57/13 58/15 58/16 60/8 61/7 62/8 63/23 63/24 64/6 69/6 69/6 69/7 69/10 69/11 69/14 69/17 69/20 69/21 70/22 75/16 76/12 76/22 78/10 79/20 80/21 81/11 81/12 81/12 81/16 82/5 83/12 83/17 84/3 84/7 85/16 86/15 102/2 105/11 111/3 111/5 112/18 114/1 114/8 119/6 119/7 120/22 124/19 127/2 127/3 127/11 129/1 129/14 135/14 136/13 137/21 137/21 137/21 140/24 142/16 145/1 146/23 147/25 148/2 148/15 151/15 153/11 154/21 155/15 155/21 157/4 157/4 158/22 161/4 162/19 164/9 165/22 166/8 166/16 167/22 167/24 168/24 169/23 169/24 173/15 174/4 176/17 176/19 176/24 177/5 182/3 189/5 189/7 189/12 189/24 192/22 193/1 193/8 194/5 194/24 195/17 197/21 206/8 229/1 case-in-chief [1] 62/8 cases [22] 20/5 69/13 69/13 69/18 83/2 83/6 104/17 105/21 124/23 129/6 131/4 131/10 131/21 131/25 132/25 136/3 137/2 164/23 189/11</p>
---	---	--

<p>C</p> <p>cases... [3] 192/11 202/21 213/10 cassette [1] 208/13 catch [2] 122/6 138/17 categories [1] 203/14 category [1] 203/17 cause [3] 154/12 159/20 162/10 caused [2] 217/7 225/16 causes [2] 132/24 173/11 CD [3] 208/13 208/21 209/5 cells [6] 99/10 99/24 99/25 100/9 106/14 164/5 cellular [2] 164/10 164/23 center [1] 232/21 central [5] 55/23 67/4 74/5 75/7 76/7 certain [11] 21/5 21/17 21/25 24/8 37/20 38/16 46/5 46/12 48/5 66/14 68/9 certainly [7] 48/14 51/10 81/16 85/20 95/18 163/18 234/24 certainty [6] 4/23 5/24 20/1 20/8 211/9 218/6 certify [1] 238/6 CF [2] 1/5 3/3 chain [8] 55/18 55/21 63/14 65/23 74/9 74/13 75/19 176/14 chambers [3] 233/17 236/11 237/15 chance [6] 100/11 165/5 165/21 166/19 177/24 236/25 chances [2] 23/17 165/8 change [2] 120/21 175/3 changed [5] 127/23 128/13 160/20 161/6 191/15 changes [1] 173/8 changing [1] 60/15 characteristics [3] 23/9 24/8 24/9 characterization [1] 38/25 charge [2] 118/16 230/12 charges [1] 38/11 check [10] 30/7 33/2 55/9 55/12 55/15 66/24 71/3 79/23 190/9 230/10 checked [1] 33/24 chemical [1] 52/1 chemicals [3] 49/12 49/17 49/18 chemistry [2] 46/8 199/13 chewed [1] 158/15 chief [1] 62/8 Chuck [5] 39/2 39/17 41/17 41/19 42/11 chunks [4] 114/19 115/1 115/3 115/4 circle [1] 88/21 CIRCUIT [3] 1/1 1/10 238/5 circular [5] 225/25 226/5 228/4 228/4 232/18 circulating [1] 121/8 circumstance [2] 36/12 192/20 circumstances [2] 166/16 195/1 claiming [1] 237/3 clarification [1] 11/3 clarify [2] 32/10 43/15 classes [1] 46/9 classic [2] 222/16 222/25 clean [3] 113/15 155/7 159/15 cleaned [3] 110/11 113/21 113/24 clear [9] 33/12 41/1 45/6 63/19 73/11 90/5 105/23 108/7 179/7 clearly [4] 38/13 38/17 110/11 129/7</p>	<p>Clerk [2] 3/14 173/7 Clerk's [2] 59/15 60/17 client [1] 40/4 clockwise [1] 205/13 close [9] 116/11 116/11 116/17 152/11 159/15 159/17 196/7 197/2 222/8 closed [1] 174/15 closely [1] 172/5 closer [1] 170/16 closing [1] 179/20 clue [1] 125/23 coat [1] 120/19 coats [4] 119/16 120/14 120/17 120/21 code [1] 183/1 coding [1] 176/18 CODIS [5] 14/3 138/12 138/22 139/2 182/12 coin [2] 73/9 73/22 collect [4] 32/11 112/21 181/25 182/16 collected [5] 12/2 95/7 95/8 150/18 182/11 collection [1] 11/16 college [5] 43/20 43/21 43/25 201/12 201/15 colleges [1] 43/19 color [3] 22/24 23/3 205/17 combination [1] 224/4 combings [2] 13/10 163/15 comes [12] 11/12 28/12 49/15 50/18 57/7 65/24 118/23 123/20 126/4 126/8 223/6 236/6 comfortable [2] 8/6 54/23 comfort [13] 30/13 53/13 84/5 85/16 121/11 210/1 210/17 212/12 212/15 216/12 216/15 218/11 222/14 comingled [1] 193/2 commend [1] 3/13 comment [5] 79/22 79/25 80/7 91/22 102/7 comments [2] 79/3 79/4 committed [1] 14/8 committing [1] 82/6 common [2] 21/25 22/22 commonly [1] 105/14 communal [1] 66/10 communication [2] 29/13 31/22 community [3] 17/15 51/3 157/5 company [4] 51/16 77/13 78/7 78/18 compare [4] 5/16 33/7 41/13 50/13 comparison [7] 16/13 19/13 19/13 20/6 20/21 163/11 166/24 comparisons [1] 167/14 compartment [10] 75/13 89/22 89/25 92/10 92/12 206/4 206/4 206/20 207/5 207/11 compilation [1] 79/13 Complaint [1] 38/12 complete [3] 44/1 58/2 141/9 completed [2] 79/11 158/18 completely [11] 25/18 26/1 27/2 32/18 136/3 139/10 140/16 140/23 171/6 182/25 235/21 comploded [1] 229/5 component [1] 229/3 compromise [1] 158/13 compromised [1] 158/10 computer [1] 238/10 computer-assisted [1] 238/10</p>	<p>computerized [1] 238/9 concern [2] 38/22 186/24 concerning [3] 160/2 160/3 160/4 concerns [3] 32/2 156/8 156/14 concluded [2] 136/22 237/22 conclusion [3] 49/3 153/20 216/20 conclusions [5] 16/25 17/18 33/21 174/11 217/10 concrete [2] 114/19 115/1 condition [9] 168/5 171/2 174/10 175/17 175/20 177/19 182/24 183/19 184/21 conditions [1] 234/15 conducted [4] 157/9 157/20 201/4 203/24 conferences [1] 236/11 confirm [1] 203/4 confused [4] 32/14 32/15 108/7 193/1 Conjecture [1] 235/5 connected [2] 11/15 59/3 connection [2] 8/9 12/2 consensual [2] 36/9 36/10 consider [2] 42/10 96/1 considerable [1] 47/13 considered [7] 21/8 28/7 39/18 51/3 81/10 123/8 188/2 consist [1] 236/15 consistent [28] 5/5 17/1 18/8 78/9 90/15 141/5 141/10 150/16 150/23 153/19 162/17 164/11 164/11 186/14 195/13 211/10 212/14 216/14 216/21 218/7 220/13 220/15 221/13 224/6 228/24 229/4 232/23 233/3 console [1] 232/21 constructed [1] 204/14 contact [39] 98/22 116/12 203/18 203/18 206/5 207/9 207/14 208/1 208/3 209/22 209/23 210/1 210/16 210/17 210/21 211/11 212/10 212/12 212/15 213/5 213/6 213/15 214/12 216/1 216/6 216/12 216/15 218/8 218/12 222/3 222/13 222/14 222/17 223/17 224/3 225/4 225/14 225/18 226/18 contact-type [1] 116/12 contacted [1] 223/24 contacting [2] 207/20 213/9 contacts [1] 226/3 contained [8] 153/23 154/1 154/17 161/5 162/19 176/23 177/7 217/9 container [2] 167/25 208/21 containing [2] 64/15 64/18 containment [1] 120/25 contains [2] 150/22 182/9 contaminants [1] 121/10 contaminate [3] 10/10 10/11 86/8 contaminated [28] 7/13 77/6 119/1 119/7 126/9 126/11 126/13 127/1 127/13 129/17 129/20 138/7 141/20 141/25 142/6 155/8 186/17 190/5 190/6 191/16 191/20 191/22 192/10 192/16 192/19 196/4 197/5 197/8 contaminating [2] 126/6 141/7 contamination [65] 6/5 6/7 6/15 6/20 7/3 86/12 107/13 118/1 118/9 119/11 120/6 122/4 125/23 125/25 127/17 127/23 128/23 128/24 129/7 129/12 130/8 130/13 132/2 132/10 132/25 135/4 135/17 135/23 136/2 136/18 136/22</p>
--	---	--

C

contamination... [34] 137/10
 139/20 140/12 141/14 141/17
 147/17 154/23 154/25 155/3
 155/13 155/22 156/6 156/12
 156/16 156/20 157/2 157/6 157/10
 157/14 157/18 161/2 163/2 166/10
 185/11 185/13 185/24 186/24
 187/15 188/14 188/17 192/9
 192/12 192/23 197/11
contaminations [3] 126/1 135/9
 135/10
CONTD [3] 62/22 111/16 220/9
content [2] 37/17 153/12
contested [1] 61/23
context [1] 148/4
continuation [1] 3/3
continue [3] 41/9 125/11 220/8
contribute [2] 77/23 77/25
contributor [1] 104/14
contributors [1] 36/18
control [63] 6/24 7/7 14/21 47/19
 48/22 54/6 107/15 107/17 118/13
 118/17 118/18 122/14 122/17
 122/19 122/22 123/5 123/9 123/12
 123/17 124/12 124/14 124/15
 125/13 125/20 126/4 128/23 129/6
 129/16 137/22 137/23 138/5 139/9
 141/5 141/20 141/25 142/6 150/21
 154/1 154/10 154/17 158/23 159/2
 159/10 159/19 161/4 161/16
 162/10 162/19 165/22 166/11
 185/25 187/18 187/18 187/23
 187/25 188/13 191/7 191/22 195/8
 195/17 196/4 197/4 197/7
controlling [1] 7/7
controls [8] 6/10 122/5 122/8
 122/9 123/8 126/2 187/9 187/14
conversation [3] 29/19 32/2 40/8
conversations [1] 28/22
convicted [3] 15/18 147/7 182/13
conviction [3] 15/11 64/11 82/12
coordinating [1] 199/20
coordinator [2] 199/9 199/16
copies [2] 128/1 158/17
copy [9] 58/20 63/7 78/6 128/15
 143/25 158/7 167/10 214/24
 214/25
corner [1] 205/12
correct [285]
corrected [2] 109/9 122/21
Correctional [1] 174/2
Corrections [1] 174/2
corrective [3] 129/3 136/6 137/1
correctly [1] 62/3
correspond [1] 169/24
corresponds [1] 183/14
could [80] 10/5 10/14 10/15 11/5
 16/17 16/18 16/20 16/23 16/24
 26/12 26/15 33/21 39/18 39/20
 40/17 59/20 64/24 70/7 70/9
 77/23 77/24 85/25 91/20 92/6
 92/17 92/22 96/7 102/25 106/15
 120/9 120/9 120/14 123/7 130/2
 138/15 142/20 146/20 162/4
 163/16 172/6 172/17 176/10 184/7
 190/1 190/22 191/12 192/1 195/9
 199/10 201/7 202/7 206/8 206/17
 207/2 207/12 207/25 208/19
 209/16 209/20 210/10 211/21
 213/3 214/8 215/5 215/16 217/7
 218/10 220/13 220/16 221/5 225/6

225/22 227/18 227/24 229/13
 229/19 232/11 233/20 235/18
 237/4
couldn't [10] 10/5 10/14 97/13
 143/15 162/6 163/18 163/18 164/6
 166/8 230/8
counsel [7] 37/22 61/14 111/8
 127/20 152/21 178/11 233/16
count [7] 130/2 130/8 130/12
 130/21 132/16 133/9 134/21
count up [1] 132/16
counted [4] 130/15 130/23 132/12
 133/6
counter [1] 205/13
country [6] 9/7 17/5 17/8 50/6
 53/20 54/16
COUNTY [8] 1/1 59/13 61/1 65/21
 167/7 173/7 184/11 238/2
couple [12] 30/18 32/22 101/9
 105/23 112/4 119/4 127/24 161/15
 170/11 194/18 216/21 234/25
course [22] 10/18 31/6 35/4 43/4
 59/5 63/11 82/2 86/8 129/5
 196/21 196/22 196/24 199/17
 199/19 200/13 200/14 200/15
 200/17 200/17 200/23 204/1 204/3
courses [1] 200/19
court [24] 1/1 1/10 1/25 3/1 3/16
 37/2 38/23 61/7 128/19 150/12
 151/11 152/23 158/1 173/14
 197/14 214/18 214/24 234/1
 234/11 234/22 236/25 238/4 238/5
 238/19
Court's [1] 173/8
courtroom [1] 62/19
courts [4] 20/7 149/24 151/25
 201/24
cover [3] 87/23 163/25 200/1
covered [1] 234/10
covering [1] 209/4
covers [1] 109/25
crack [3] 114/11 114/14 114/25
cracks [1] 114/23
credibility [1] 19/5
crestent [1] 222/24
crime [52] 6/11 8/2 8/7 14/10 15/5
 15/21 43/2 45/9 45/11 45/15
 45/17 49/16 52/23 55/21 58/12
 59/12 60/7 80/21 81/17 83/21
 87/18 120/5 127/22 132/11 135/5
 151/9 162/23 163/12 171/7 174/3
 174/6 174/13 175/11 175/12
 176/16 176/22 178/25 179/6
 188/10 189/10 199/4 199/5 199/15
 199/17 200/6 200/15 201/16 204/9
 204/16 204/23 213/14 213/19
crimes [1] 82/7
Criminal [3] 38/12 201/14 201/19
criteria [1] 19/19
critical [1] 174/16
critique [1] 199/21
cross [13] 2/4 3/22 4/12 62/22
 111/14 111/16 119/11 136/2
 164/21 166/5 170/9 219/24 236/2
cross-contamination [2] 119/11
 136/2
cross-examination [7] 2/4 3/22
 4/12 62/22 111/14 111/16 236/2
CULHANE [17] 2/3 3/22 4/2 4/7
 18/19 37/14 38/14 41/11 62/24
 111/18 153/9 165/21 167/2 170/4
 174/19 176/10 194/22
cupboard [9] 69/1 69/12 69/24

70/2 70/3 70/7 70/14 70/17 75/16
cupboards [6] 68/2 68/3 68/14
 68/25 69/2 70/5
current [7] 25/8 45/19 46/22
 169/18 174/10 175/19 199/14
Currently [1] 199/8
curriculum [2] 43/14 199/21
cushion [3] 209/13 216/2 216/3
custodian [2] 66/24 71/4
custody [13] 55/18 55/21 59/12
 63/15 65/24 67/2 67/4 74/9 74/13
 75/4 75/19 76/7 176/14
cut [23] 61/14 97/8 159/13 160/5
 172/1 179/23 181/4 182/5 183/3
 183/23 211/9 211/23 212/13
 215/16 215/18 216/14 217/1 217/6
 217/24 218/7 218/10 219/10
 219/12
cuts [1] 219/2
cutting [2] 159/12 159/13
cuttings [1] 160/12
CV [1] 44/15

D

D21 [2] 25/4 26/3
DA [1] 99/15
daily [3] 104/4 139/24 140/10
damage [1] 172/7
dash [1] 90/24
dashboard [7] 211/11 211/22
 212/15 216/3 218/8 218/12 220/12
Dassey [2] 41/19 117/20
data [9] 23/15 138/13 151/20
 165/17 181/25 182/12 182/14
 182/21 193/20
date [11] 1/8 30/8 64/22 64/22
 75/6 76/5 76/8 79/7 79/7 129/1
 184/10
dated [6] 31/25 38/10 137/17
 148/23 183/2 238/15
Dave [1] 65/8
day [8] 1/4 18/3 63/12 63/12 70/16
 76/11 86/23 238/15
day-to-day [1] 63/12
days [3] 32/22 32/22 234/25
DD [3] 33/2 33/24 115/22
dead [2] 230/9 230/11
deal [3] 6/12 84/4 142/16
dealing [3] 27/20 97/12 200/9
deals [1] 128/4
dealt [1] 157/3
DEAN [2] 1/17 3/10
Death [1] 201/17
December [5] 31/25 114/9 115/5
 130/1 130/1
December 15th [1] 31/25
decided [1] 110/10
decides [1] 57/14
decision [3] 12/14 12/17 12/18
deep [1] 67/16
defect [1] 22/2
defendant [5] 1/7 1/18 1/20 1/21
 186/20
defendant's [1] 189/14
defense [25] 3/21 58/25 59/16
 59/17 60/14 60/16 62/11 150/5
 151/11 154/20 154/25 169/16
 173/5 175/4 190/11 190/13 190/23
 219/8 226/13 234/16 236/16
 236/21 237/2 237/7 237/12
defense's [1] 219/16
defer [1] 38/7
define [3] 26/12 26/16 96/3

D		
degree [11] 4/22 5/23 20/1 20/8 43/16 44/9 45/25 81/7 199/12 211/8 218/6	developmental [2] 51/20 54/21 developments [1] 233/25	61/15 62/1 66/16 74/22 76/3 77/6 80/21 80/22 82/5 82/15 82/22 83/6 83/24 88/14 88/16 88/23 89/2 89/3 89/6 89/14 89/17 90/18 90/19 91/8 91/20 94/8 94/18 95/9 95/11 95/14 96/2 96/4 96/11 97/20 97/25 98/20 98/22 99/2 100/2 100/9 100/17 101/4 101/19 101/23 101/25 101/25 102/3 102/9 102/12 102/18 102/20 102/25 103/9 103/14 103/17 103/22 103/25 104/11 104/19 104/22 104/23 104/24 105/17 106/11 106/22 107/1 107/4 107/8 107/21 108/3 109/1 109/15 109/23 110/3 110/7 110/13 110/21 112/17 113/11 113/11 113/13 113/23 113/25 114/1 114/2 114/5 115/9 115/12 115/20 115/21 115/25 116/4 116/8 117/11 117/16 117/19 117/23 118/20 118/23 118/25 122/13 122/22 125/4 125/17 126/9 126/9 126/12 126/14 126/15 126/18 126/22 126/25 127/2 129/15 131/14 131/17 135/18 136/8 136/9 137/13 138/9 138/10 138/15 139/16 141/22 142/9 144/17 148/4 148/5 148/15 150/22 151/7 155/10 156/25 157/7 158/6 158/9 158/9 158/14 158/21 158/22 158/22 160/7 160/10 160/19 160/23 160/24 161/5 161/16 161/18 161/21 162/9 162/11 162/16 164/1 164/4 164/6 164/13 164/16 165/1 165/2 165/3 165/10 165/21 166/10 172/25 173/20 182/14 187/20 187/22 188/2 191/7 191/17 191/22 192/19 194/7 194/13 195/7 195/18 196/19 197/6 235/15 236/15 237/4
DeGroot [2] 144/9 144/12 delay [2] 30/1 87/8 delays [1] 15/5 deliberate [1] 7/8 deliberately [3] 10/4 10/10 10/11 delivering [1] 71/2 Delores [1] 28/1 demand [2] 83/17 234/18 demonstrate [1] 85/25 demonstrated [1] 235/3 Denny [1] 173/16 department [16] 59/13 59/23 60/3 61/1 61/3 65/6 65/10 65/21 71/2 73/6 167/7 170/25 174/1 174/7 184/12 201/18 depending [2] 48/11 159/12 depends [5] 96/3 97/24 98/2 126/3 131/4 depict [1] 88/2 depicting [1] 222/8 deposed [1] 8/12 deposit [1] 103/9 deposited [3] 35/11 203/21 228/16 describe [25] 67/13 176/11 181/17 181/19 183/19 202/8 206/17 207/12 208/7 208/19 209/20 210/4 210/10 210/14 216/6 221/5 221/22 222/11 222/18 223/16 224/17 225/8 227/8 227/25 229/13 described [5] 39/8 113/3 184/21 203/3 222/3 describing [1] 177/24 description [5] 136/18 153/14 175/19 175/22 177/19 designated [4] 56/16 64/13 72/15 72/21 designation [8] 43/7 56/9 57/9 72/12 159/7 181/24 182/4 183/18 designations [2] 57/2 112/20 designed [3] 5/11 6/11 121/10 designee [1] 149/15 desk [1] 159/23 despite [2] 120/4 129/10 destroyed [1] 113/25 detached [1] 107/9 detail [4] 16/1 26/8 33/9 213/11 detect [1] 126/1 detectable [1] 126/19 detected [3] 129/2 138/21 138/24 Detective [6] 60/8 65/8 168/15 168/16 176/4 183/15 determination [1] 101/17 determinations [1] 202/9 determine [18] 24/7 49/17 139/10 202/14 202/16 202/17 202/19 202/21 202/24 203/2 203/6 203/20 205/18 213/21 219/11 228/15 230/8 231/7 determined [5] 74/21 103/18 139/20 185/14 236/19 determines [2] 22/5 25/17 determining [1] 176/13 develop [1] 77/21 developed [11] 13/1 24/4 49/24 138/2 139/9 150/10 150/14 150/17 153/18 165/10 165/13 development [4] 51/18 51/24 52/1 54/8	deviate [10] 143/16 144/3 144/16 147/8 147/17 148/13 151/2 188/25 189/22 191/11 deviated [1] 189/25 deviating [1] 195/1 deviation [25] 143/25 146/3 146/11 146/19 147/11 147/21 148/3 151/17 151/20 151/21 154/4 161/9 161/13 165/25 166/7 166/12 166/17 185/9 188/10 188/16 193/24 194/9 194/12 194/22 195/4 deviations [3] 145/21 145/23 166/13 Diane [3] 1/24 238/4 238/19 difference [7] 25/20 163/16 163/18 173/19 186/5 203/7 203/8 different [30] 22/25 23/9 25/15 48/9 48/10 71/22 83/21 99/1 99/4 100/6 113/5 115/1 120/17 120/18 122/10 124/4 128/3 136/3 136/13 140/24 155/4 161/2 191/14 194/25 202/8 203/10 204/5 204/6 225/8 235/21 differently [2] 70/23 187/4 difficult [2] 102/21 104/17 dig [1] 151/11 dimensions [1] 229/20 dire [1] 170/5 direct [8] 2/8 60/21 146/25 162/22 198/25 216/12 219/21 220/9 directing [1] 75/19 directly [1] 73/18 director [1] 66/21 dirt [1] 93/19 Dirty [1] 93/18 disagree [3] 104/16 105/3 105/10 disclose [3] 151/1 151/24 152/2 disclosed [3] 39/22 212/7 234/16 disclosure [3] 212/1 215/10 234/3 discolored [2] 93/16 97/2 disconnected [3] 230/15 230/20 231/11 discovered [4] 17/15 17/18 60/22 230/14 discovery [3] 38/20 151/10 212/7 discriminating [1] 22/20 discuss [7] 37/3 58/3 111/5 146/5 170/19 197/21 233/13 discussed [3] 46/23 144/19 144/20 discussion [2] 6/7 98/20 discussions [1] 193/6 diseases [1] 24/11 displayed [1] 227/4 disposable [1] 120/14 dispute [1] 99/23 dissimilar [1] 17/1 dissolved [1] 106/9 distilled [1] 96/20 distinguish [1] 203/7 distractions [3] 137/2 137/5 137/7 divide [1] 131/7 divided [1] 114/25 division [3] 48/25 49/11 201/19 DNA [227] 4/24 5/4 5/8 5/11 5/15 5/19 12/25 13/4 14/3 16/10 17/14 17/23 19/22 20/16 21/1 24/14 24/18 24/25 27/23 33/17 33/21 34/5 34/13 34/16 34/18 34/25 35/5 35/9 35/13 36/6 36/17 41/16 45/19 46/3 47/3 48/14 49/8 54/17 54/19 55/2 59/19 59/23 60/22	document [11] 39/4 39/6 40/10 40/24 63/15 65/18 171/17 171/17 171/18 171/22 174/1 documentation [3] 78/8 182/19 188/23 documented [2] 145/22 157/13 doesn't [14] 6/24 42/14 45/25 51/23 54/3 147/10 177/5 179/19 192/10 192/14 192/21 212/12 217/22 218/20 doing [25] 14/17 17/5 20/20 60/6 68/9 74/1 77/11 79/19 85/23 86/5 131/14 131/17 137/15 148/5 148/7 156/19 159/5 159/25 160/14 160/15 160/16 164/4 165/2 165/6 233/19 done [34] 8/21 10/5 10/14 10/15 13/10 14/24 32/19 52/10 53/20 54/15 54/17 54/19 55/2 61/9 63/18 63/19 71/14 74/1 82/1 92/23 102/25 120/2 124/8 143/6 151/8 151/16 152/4 160/25 173/6 180/22 187/24 197/17 202/2 205/18 donor [1] 80/5 door [35] 68/5 87/24 88/2 88/3 88/5 88/22 88/24 89/7 89/12 91/5 91/5 91/12 91/14 92/1 92/3 92/6 92/8 92/14 92/17 92/18 108/23 150/15 205/12 220/21 221/25 224/22 224/23 227/10 227/11 227/12 227/14 227/22 228/12

<p>D</p> <p>door... [2] 229/21 229/21</p> <p>doorbells [1] 105/16</p> <p>doorknobs [1] 105/15</p> <p>doors [7] 68/16 68/18 68/19 68/20 89/10 91/21 92/23</p> <p>double [2] 21/4 26/11</p> <p>doubt [1] 36/14</p> <p>down [13] 30/21 35/2 44/4 58/18 71/9 77/20 105/8 119/20 139/5 159/23 226/23 228/8 228/8</p> <p>drain [1] 223/24</p> <p>draw [2] 33/21 235/25</p> <p>drawers [1] 68/4</p> <p>drawn [1] 17/19</p> <p>draws [1] 223/6</p> <p>drew [2] 217/10 228/8</p> <p>dried [3] 73/22 73/23 73/24</p> <p>dripping [1] 215/17</p> <p>driver's [10] 90/21 91/1 92/1 92/5 150/15 205/12 206/3 206/4 206/21 216/2</p> <p>drop [12] 94/9 108/9 207/17 207/17 212/18 215/16 221/8 221/9 221/10 221/10 221/13 226/2</p> <p>drops [1] 108/22</p> <p>dry [2] 73/2 73/8</p> <p>ducklings [1] 85/2</p> <p>duly [2] 4/3 198/19</p> <p>duplicate [1] 140/1</p> <p>during [8] 58/3 111/6 119/5 136/24 159/2 191/17 197/21 205/20</p> <p>duties [8] 12/6 46/24 47/1 47/8 81/9 81/11 199/14 200/8</p>	<p>155/17</p> <p>elliptical [2] 226/1 226/5</p> <p>ELMO [3] 29/25 32/5 63/23</p> <p>else [16] 5/19 23/1 54/15 71/24 93/20 143/16 152/1 159/25 194/17 207/4 209/7 218/17 219/17 233/14 236/5 237/13</p> <p>else's [2] 70/7 141/7</p> <p>elsewhere [1] 50/10</p> <p>email [6] 37/14 37/17 38/10 39/12 39/13 40/5</p> <p>emails [3] 31/13 38/23 40/14</p> <p>employed [1] 199/2</p> <p>employment [1] 45/10</p> <p>encounter [1] 204/8</p> <p>end [13] 51/7 57/13 70/16 119/6 121/25 124/10 125/21 127/8 150/8 185/22 224/25 227/13 229/5</p> <p>ended [1] 141/7</p> <p>enforcement [3] 113/7 114/17 201/14</p> <p>enormous [1] 83/17</p> <p>enough [17] 54/10 97/10 100/1 113/24 125/7 125/11 125/11 158/16 158/25 160/7 160/16 169/20 175/24 223/2 223/23 228/6 233/11</p> <p>entered [3] 135/11 138/12 141/12</p> <p>entire [8] 15/23 94/18 97/5 97/5 123/11 146/18 160/8 189/24</p> <p>entirely [5] 42/13 147/3 211/14 212/19 235/5</p> <p>entitled [2] 200/15 237/11</p> <p>entry [4] 32/10 134/14 220/20 221/25</p> <p>envelope [32] 64/14 73/9 73/10 168/4 168/9 168/19 169/12 169/18 170/23 171/5 172/12 174/6 174/18 174/24 175/7 175/9 175/13 176/2 176/12 177/7 177/13 177/15 178/18 181/13 181/14 181/20 181/22 182/3 183/6 183/7 183/8 184/11</p> <p>envelopes [1] 73/22</p> <p>environmental [1] 158/10</p> <p>epithelial [1] 99/25</p> <p>equipment [2] 51/17 157/17</p> <p>error [6] 129/2 131/22 134/16 135/5 135/16 137/24</p> <p>errors [16] 130/2 130/3 130/13 130/13 130/15 131/1 131/2 132/18 133/4 133/10 133/18 134/19 134/22 135/1 137/3 185/13</p> <p>especially [1] 86/23</p> <p>essentially [3] 13/7 73/15 89/21</p> <p>establish [3] 41/17 61/2 70/12</p> <p>established [1] 211/19</p> <p>estimate [2] 82/19 96/10</p> <p>evaluate [1] 236/25</p> <p>evaluation [1] 187/9</p> <p>even [19] 17/24 22/9 24/25 26/13 50/5 53/12 86/17 89/6 99/18 107/25 125/5 127/14 138/12 138/21 141/12 158/14 158/23 215/13 225/7</p> <p>evenly [2] 131/2 131/8</p> <p>event [3] 18/24 190/21 193/19</p> <p>ever [19] 5/25 53/8 54/13 57/2 71/15 80/16 86/14 106/22 107/1 107/4 117/19 118/10 146/19 151/1 151/14 152/13 167/11 188/9 202/4</p> <p>every [9] 77/9 155/24 156/10 163/12 189/6 189/7 194/24 194/25</p>	<p>213/2</p> <p>everybody [5] 21/18 22/1 22/13 138/17 152/1</p> <p>everyone [2] 47/9 48/23</p> <p>everything [4] 153/12 185/15 196/15 198/4</p> <p>evidence [145] 6/12 6/16 6/21 7/9 7/12 7/18 7/21 8/8 8/20 10/3 10/7 10/10 10/12 10/13 11/12 11/17 11/25 14/15 14/25 15/13 27/9 30/13 38/16 39/24 41/4 41/14 42/16 42/23 43/3 49/15 56/2 56/3 57/8 57/10 57/15 57/19 58/13 58/16 61/25 62/2 63/1 63/8 63/15 64/10 65/24 65/25 66/20 66/23 66/24 66/25 67/22 69/8 69/10 69/14 69/17 69/21 69/22 70/14 71/4 75/8 75/15 76/15 77/24 77/25 84/2 86/10 86/11 88/23 103/13 107/15 107/17 112/9 117/14 124/9 125/25 126/8 126/18 127/9 138/3 138/5 138/7 148/4 148/5 155/16 159/2 159/5 159/8 159/13 159/18 160/23 161/16 161/19 161/22 162/7 167/25 168/2 168/22 169/25 172/13 172/23 173/10 174/17 176/21 176/23 177/1 180/13 183/12 183/15 184/8 185/20 186/8 186/11 186/12 186/19 187/23 189/1 189/4 189/6 189/23 189/23 190/2 190/15 192/2 195/7 195/12 196/14 196/16 196/18 199/18 199/18 234/3 234/7 234/9 234/12 234/18 235/1 235/2 235/4 235/11 236/16 236/21 237/1 237/4 237/8 237/12</p> <p>evidentiary [1] 184/18</p> <p>exact [5] 83/5 101/6 101/10 101/21 159/1</p> <p>exactly [14] 18/5 18/10 26/14 42/20 45/13 74/7 83/11 90/2 153/10 153/14 176/11 182/8 184/1 218/2</p> <p>examination [26] 2/4 2/5 2/8 3/22 4/12 52/14 62/22 95/20 111/14 111/16 122/10 153/7 162/22 185/7 189/18 194/20 196/1 198/25 200/16 205/3 205/10 205/21 205/23 220/9 230/1 236/2</p> <p>examine [6] 8/8 16/20 200/3 213/21 214/1 224/9</p> <p>examined [12] 4/4 20/17 72/10 105/15 107/7 107/23 110/15 153/13 153/14 177/8 198/20 213/14</p> <p>examining [2] 163/9 213/4</p> <p>example [11] 19/14 27/3 51/25 119/10 139/8 223/1 225/10 228/9 234/8 234/9 235/3</p> <p>Except [2] 92/8 143/11</p> <p>exception [2] 107/10 198/6</p> <p>exchange [1] 50/13</p> <p>exclude [2] 186/17 235/2</p> <p>excluded [9] 13/1 13/14 42/22 147/6 155/17 185/20 186/10 193/22 194/3</p> <p>excluding [1] 186/7</p> <p>exclusion [6] 147/1 147/11 185/21 186/1 186/6 186/18</p> <p>exclusions [1] 185/19</p> <p>excuse [11] 36/4 37/2 57/25 58/7 58/9 170/10 172/2 197/16 203/18 208/13 214/19</p>
<p>E</p> <p>E2 [1] 187/7</p> <p>each [25] 25/24 26/1 42/2 42/5 47/6 48/21 67/24 68/1 68/1 69/1 69/3 90/15 122/10 124/10 128/4 128/10 131/4 132/14 132/16 155/12 159/7 159/11 180/18 194/24 225/22</p> <p>Earl [4] 39/2 39/18 41/19 42/11</p> <p>Earl's [1] 39/18</p> <p>earlier [8] 32/16 110/10 112/5 115/16 130/3 171/14 189/9 196/6</p> <p>early [3] 29/5 233/11 233/12</p> <p>easily [4] 9/18 59/6 119/1 172/7</p> <p>easy [1] 9/18</p> <p>edge [3] 171/24 181/3 183/4</p> <p>edges [1] 183/22</p> <p>education [1] 44/1</p> <p>educational [2] 46/16 199/11</p> <p>EF [1] 150/17</p> <p>effort [1] 3/18</p> <p>efforts [1] 129/10</p> <p>eight [4] 112/11 133/18 134/22 134/22</p> <p>eighty [1] 83/24</p> <p>either [9] 27/2 92/5 96/15 110/7 116/9 143/15 155/15 215/6 226/5</p> <p>elaborate [1] 212/4</p> <p>election [1] 81/2</p> <p>elicit [1] 215/2</p> <p>elicited [2] 61/15 235/12</p> <p>eliminate [2] 36/2 36/20</p> <p>elimination [19] 26/23 27/6 35/16 35/23 36/1 36/7 36/10 36/17 37/20 39/1 39/19 39/24 42/7 42/15 42/19 42/21 43/1 43/7</p>		

E	explained [1] 136/12 explaining [1] 160/15 explanation [4] 37/13 61/18 61/20 129/11 exploded [1] 83/15 explore [1] 54/7 express [5] 156/8 156/14 171/12 176/15 212/6 expressed [1] 19/25 extent [1] 212/17 exterior [4] 89/9 205/15 205/22 205/23 external [3] 205/8 205/9 205/21 extract [11] 100/24 124/7 136/8 142/14 162/5 164/1 190/23 191/13 191/20 191/23 196/23 extracted [5] 150/21 164/9 185/18 187/22 188/8 extracting [1] 185/17 extraction [9] 77/1 87/6 123/10 123/24 124/21 125/2 159/3 159/24 191/18 extractions [3] 68/12 121/16 124/8 extracts [1] 191/1 extremely [3] 24/22 27/6 156/23 eye [2] 23/3 106/2 eyes [4] 21/19 22/6 23/18 99/6	field [8] 16/19 44/18 98/7 99/23 199/23 200/5 201/5 213/18 fields [2] 16/17 48/9 fifty [3] 57/5 83/20 130/11 figure [1] 129/21 figuring [1] 77/2 file [3] 128/16 153/11 194/7 filed [4] 146/19 148/13 190/12 197/24 files [1] 128/18 fill [3] 57/16 63/8 144/4 filled [2] 46/11 78/14 fills [1] 57/9 filtered [1] 121/8 final [3] 149/7 153/11 153/19 finally [2] 140/18 215/15 find [45] 5/4 5/16 13/10 22/4 22/14 34/16 35/5 35/9 35/13 36/16 50/10 72/10 88/16 89/1 89/14 93/24 95/11 95/14 101/19 103/25 104/23 112/17 113/23 114/1 115/9 115/12 115/20 115/21 116/4 116/8 117/11 117/19 117/23 125/21 126/22 128/22 135/22 151/13 155/5 155/20 162/15 189/22 192/9 205/11 232/4 finding [6] 23/17 24/11 89/20 114/5 140/12 151/2 fine [7] 39/14 76/14 94/12 112/24 178/13 216/5 237/19 finger [2] 211/23 219/3 fingerprint [2] 72/8 182/22 fingerprints [4] 48/24 72/11 72/20 88/6 fingers [3] 99/13 100/1 100/4 finish [6] 122/14 167/24 170/8 216/10 219/22 219/24 finished [2] 167/21 169/19 first [39] 4/3 22/9 26/7 30/11 32/10 33/10 38/18 41/17 43/20 57/7 61/25 65/24 74/2 74/14 74/16 76/18 92/9 112/8 123/8 125/2 128/3 133/21 140/2 145/2 148/3 150/9 150/10 161/15 167/11 175/6 187/13 189/21 198/19 200/22 204/25 205/6 205/8 206/10 236/13 fit [2] 145/17 229/23 fits [1] 42/16 five [6] 92/9 131/2 133/22 133/25 155/24 229/23 five-foot-six [1] 229/23 FL [7] 75/20 75/20 87/1 107/11 150/15 150/22 153/22 flight [1] 226/2 floor [6] 108/10 108/11 108/14 112/17 113/1 113/21 flow [9] 12/6 14/21 81/12 223/3 223/19 227/23 228/5 228/10 228/17 fluid [2] 97/16 100/4 fluids [2] 97/22 99/6 flung [1] 228/22 focus [1] 23/21 follow [5] 49/3 49/22 53/3 85/4 85/9 followed [5] 147/2 147/3 147/19 194/6 194/11 following [4] 48/18 53/18 85/1 85/18 follows [3] 4/4 48/23 198/20 foot [1] 229/23 footboard [1] 109/5
excused [5] 37/5 58/4 58/10 170/22 214/22 exemplar [1] 41/18 exemplars [2] 35/21 38/16 exempt [1] 52/14 exercise [1] 204/2 exhibit [87] 29/8 29/9 30/2 31/18 31/19 37/11 41/2 43/13 58/21 59/17 62/6 63/5 63/23 78/3 78/4 87/9 112/8 113/19 114/10 114/13 127/21 127/24 129/24 134/12 134/14 141/13 143/19 143/20 143/21 145/5 146/2 148/21 148/22 167/3 167/5 167/19 168/8 168/14 168/17 169/1 169/24 169/25 172/24 177/8 183/14 184/16 204/18 206/10 206/12 208/6 208/7 208/9 210/3 210/5 211/1 211/2 220/17 220/18 221/16 221/17 221/18 221/20 222/4 222/6 222/9 222/10 223/8 223/9 223/11 224/11 224/12 224/13 224/14 227/1 227/2 227/4 229/7 229/9 230/16 230/18 230/19 231/17 231/19 231/20 232/6 232/8 232/9 Exhibit 237 [1] 114/13 Exhibit 247 [1] 112/8 Exhibit 289 [1] 204/18 Exhibit 291 [1] 210/5 Exhibit 295 [2] 221/18 222/10 Exhibit 296 [1] 222/6 Exhibit 297 [1] 223/9 Exhibit 298 [1] 224/13 Exhibit 299 [1] 227/2 Exhibit 300 [1] 229/9 Exhibit 302 [1] 230/18 Exhibit 303 [1] 231/19 Exhibit 305 [1] 232/8 Exhibit 314 [1] 148/21 Exhibit 341 [2] 29/9 30/2 Exhibit 342 [1] 31/19 Exhibit 346 [1] 127/24 Exhibit 347 [1] 143/21 exhibits [7] 2/9 112/4 187/19 197/24 198/1 198/2 206/8 existence [1] 234/15 exonerate [1] 14/17 exonerated [3] 14/14 14/15 15/1 exoneration [8] 12/21 15/10 18/25 59/7 163/5 163/8 174/19 176/24 expect [5] 3/16 55/2 56/11 113/23 122/23 experience [13] 46/6 46/17 46/21 102/19 105/11 200/20 200/24 204/3 204/4 204/15 212/20 212/23 213/4 experiences [2] 120/5 204/16 experiment [1] 141/2 experiments [2] 203/23 204/10 expert [10] 15/18 201/25 202/4 212/18 212/20 215/3 215/19 235/11 235/13 237/6 expertise [6] 145/13 211/18 215/10 215/13 217/9 219/15 experts [2] 17/9 17/19 explain [22] 122/11 153/9 158/3 159/1 160/22 161/8 161/13 163/7 164/21 167/22 168/21 175/17 176/10 178/2 182/8 186/5 201/7 203/12 207/25 213/4 224/22 227/18		
F	F350 [1] 107/5 face [3] 60/1 99/20 171/23 faced [1] 137/5 facing [1] 178/18 fact [26] 3/17 9/25 11/24 14/5 14/20 15/17 24/6 27/19 34/25 43/6 48/2 61/3 78/22 89/3 91/16 100/2 106/6 144/20 155/16 158/20 185/23 188/8 193/7 195/16 197/6 214/10 factors [1] 158/11 fail [3] 58/17 77/15 77/18 fair [12] 7/24 8/3 41/6 51/8 80/20 102/12 111/20 129/12 169/19 175/24 190/12 236/8 fallen [1] 207/19 FALLON [4] 1/13 3/8 206/6 236/9 falls [1] 207/18 falsifying [1] 9/9 familiar [10] 29/10 53/15 101/3 101/14 116/11 116/14 120/24 135/21 145/3 157/22 family [1] 40/1 far [11] 5/2 131/25 160/16 191/11 193/11 201/13 212/24 217/11 222/16 225/2 228/2 farther [1] 128/7 Fassbender [12] 28/23 29/5 30/4 31/1 31/9 32/3 32/8 32/23 111/21 142/24 189/13 192/2 Fassbender's [2] 30/7 152/8 fast [1] 81/23 FBI [2] 17/12 20/24 FEBRUARY [2] 1/8 38/10 Federal [1] 171/12 feel [2] 160/6 183/21 feet [2] 67/17 67/18 fellow [1] 13/19 felt [10] 97/14 160/16 161/13 161/19 161/20 162/4 162/7 188/24 188/25 195/14 female [3] 34/22 138/15 139/8 few [8] 14/13 43/15 45/6 128/3 135/6 170/12 212/23 214/19	

F	GAHN [24] 1/15 2/5 2/8 3/8 4/21 12/19 14/12 15/8 18/22 35/20 37/23 58/10 60/9 146/25 148/10 153/2 176/9 178/12 181/18 194/17 215/21 218/3 219/20 220/8 gain [2] 172/8 214/8 gained [1] 213/23 game [1] 236/8 garage [25] 30/19 30/23 31/3 71/9 73/5 73/7 87/18 107/9 107/10 110/23 111/24 112/1 112/17 113/1 113/20 113/21 114/15 114/18 117/16 142/24 143/9 152/9 152/13 189/14 189/25 gasoline [1] 49/18 gathering [1] 55/24 gave [6] 18/19 40/24 83/1 112/19 119/10 201/11 gear [1] 232/17 gene [6] 21/9 21/9 22/4 22/24 24/12 24/15 general [9] 20/4 47/20 50/17 81/3 137/19 149/16 149/20 165/2 225/2 generalize [1] 98/3 generally [5] 7/24 16/6 47/16 101/8 225/25 genes [7] 21/12 21/17 21/18 21/25 22/13 22/22 24/7 genetic [5] 21/12 22/2 23/8 24/16 158/8 genetics [1] 21/16 gentleman [1] 117/19 gets [9] 6/16 7/3 7/10 14/22 99/7 118/10 127/1 175/18 215/11 getting [13] 3/13 38/21 46/15 53/6 56/19 81/19 92/9 113/13 119/6 124/17 164/15 171/16 173/4 gist [1] 29/19 Gitchel [1] 66/2 give [13] 27/3 56/6 58/20 72/11 82/19 96/9 175/18 176/5 192/1 204/3 229/19 230/3 235/10 given [9] 28/18 53/15 63/16 84/7 173/22 201/1 203/5 234/5 236/1 gives [8] 27/4 28/25 57/8 145/19 148/25 158/17 173/6 177/19 giving [2] 18/6 152/23 Glasses [1] 119/18 Glitchel [1] 66/1 gloves [3] 119/14 231/13 231/15 goes [9] 7/9 9/12 63/1 63/15 122/15 122/23 123/20 153/10 215/10 going [80] 9/14 9/23 19/8 20/19 21/1 23/6 26/4 30/13 30/18 38/5 39/17 40/20 41/1 43/3 44/4 54/1 56/24 57/23 58/9 58/15 58/18 59/6 59/16 61/10 63/22 81/17 87/8 96/8 98/12 99/18 101/25 104/21 104/21 105/2 111/3 112/3 127/19 132/20 133/2 135/5 136/8 152/17 156/21 157/2 159/6 159/8 165/8 166/5 166/19 168/16 169/2 169/15 170/10 172/22 174/14 174/17 178/2 179/23 181/1 182/21 193/17 197/14 197/16 204/17 206/6 211/16 212/3 214/18 216/24 216/25 217/2 218/16 219/16 220/5 221/16 235/22 236/4 236/10 236/10 236/22 gone [2] 44/12 83/3 good [14] 3/6 3/9 4/14 4/15 7/21 102/20 104/19 118/23 156/16	158/14 210/20 214/16 228/3 233/11 gosh [1] 115/6 gotten [2] 80/24 191/9 government [5] 52/10 52/13 52/15 52/18 53/1 grade [1] 77/17 Grand [5] 94/25 95/16 231/24 232/23 232/24 grandfathered [1] 46/14 gravity [6] 221/11 221/12 223/21 223/25 223/25 228/7 greater [1] 86/11 Gregory [5] 13/20 165/19 165/23 193/4 193/7 Gretchen [4] 144/9 144/12 144/22 144/23 grime [1] 93/19 Groffy [1] 71/12 ground [2] 197/15 228/9 grounds [1] 190/19 grouping [1] 222/15 groupings [1] 228/2 grow [1] 23/6 guard [4] 33/6 34/8 34/9 116/6 guess [12] 37/15 38/4 47/14 58/14 60/10 61/6 96/3 155/13 171/16 185/12 212/22 231/6 gun [3] 33/2 33/24 116/17 guy [1] 72/8 guys [1] 52/20
G	G-i-t-c-h-e-l [2] 66/4 66/5 G-l-i [1] 66/3	H hadn't [1] 35/2 hair [36] 13/2 13/23 16/13 16/18 16/19 17/1 18/7 18/8 19/13 19/13 19/18 20/6 20/21 22/24 163/15 164/6 164/7 164/16 164/24 164/25 165/2 165/3 165/6 165/11 165/14 165/24 166/9 166/22 193/2 222/20 223/1 223/7 223/7 224/6 228/25 229/3 hairs [16] 13/7 13/11 13/15 14/2 15/19 18/2 18/2 163/9 163/11 163/17 163/19 163/22 163/25 164/1 164/9 193/3 Halbach [22] 31/2 33/17 34/5 34/23 103/25 107/1 107/4 109/1 109/15 109/23 110/3 142/23 143/8 150/18 152/9 152/13 160/25 162/18 189/14 189/24 192/3 195/14 Halbach's [23] 74/22 76/3 89/17 95/14 106/22 107/8 107/21 108/3 108/19 110/7 110/21 115/9 115/20 116/8 142/9 144/17 151/7 153/22 162/11 195/18 211/22 220/12 233/3 half [5] 45/12 97/9 97/9 97/9 105/8 hand [17] 78/14 100/8 168/17 172/11 172/11 198/17 210/8 211/4 211/10 218/21 218/22 218/24 219/4 220/14 223/11 227/3 231/21 handcuffs [6] 32/24 33/15 34/15 35/1 35/6 110/5 handed [1] 167/3 handle [6] 88/2 88/24 91/12 91/14 150/15 196/21 handled [4] 104/3 105/12 105/14 228/21 handler [1] 105/13 handles [3] 89/8 89/12 105/15

H	193/10 194/16 194/19 198/3 212/2 212/9 212/16 214/15 214/23 215/22 217/14 219/4 hood [15] 62/4 93/1 94/5 120/25 121/3 121/14 174/22 230/13 230/22 230/24 231/3 231/4 231/6 231/12 236/14 hoods [2] 121/12 121/19 hope [1] 12/3 hoped [1] 31/9 hopefully [1] 219/24 hoping [1] 219/22 hot [1] 110/11 hour [6] 200/2 200/13 200/14 200/18 200/22 204/1 house [12] 30/19 30/23 31/3 106/24 108/4 110/1 111/19 111/22 117/17 152/13 189/14 189/25 however [9] 22/23 86/3 102/19 126/12 131/11 200/16 207/7 207/15 229/3 huge [1] 83/14 human [3] 116/16 125/17 156/19 humans [1] 21/19 hundred [3] 57/5 83/20 83/24 HX [1] 109/21 hyper [1] 24/19 hypothetical [2] 9/25 218/19	imagine [1] 204/7 impact [13] 195/17 225/5 225/10 225/23 225/24 225/25 226/6 226/8 227/21 228/3 228/10 228/11 228/17 impacted [1] 228/7 impacts [1] 226/4 implication [1] 173/9 important [9] 8/24 25/11 25/14 47/23 82/3 82/11 149/5 149/19 189/4 in [627] inadvertently [1] 155/8 inches [1] 229/22 incident [2] 128/5 137/12 incidents [5] 127/17 128/9 130/8 192/23 197/10 inclination [1] 10/20 include [7] 66/16 141/21 146/20 188/11 189/22 214/12 234/22 included [5] 13/19 15/18 138/18 212/6 234/23 includes [3] 187/2 196/15 196/17 including [2] 17/12 175/20 inclusion [5] 186/3 186/5 186/12 186/15 186/23 incoming [3] 30/7 32/7 201/13 inconclusive [9] 142/1 142/11 142/22 143/16 161/11 163/20 188/2 194/8 194/14 inconsistent [2] 153/19 217/16 incorrect [1] 160/18 indeed [2] 11/11 103/17 independent [2] 18/11 26/1 independently [2] 25/18 80/19 indicate [4] 30/6 42/10 94/2 112/22 indicated [5] 30/11 106/23 153/21 153/25 226/21 indicates [1] 80/1 indicating [1] 226/5 indication [4] 33/3 35/1 93/22 97/16 indicative [5] 221/7 222/20 223/7 223/19 225/13 individual [9] 22/5 23/8 25/12 25/13 66/16 90/15 165/18 207/22 216/22 individually [1] 22/23 individuals [2] 46/5 182/17 infallible [1] 19/17 inflicted [1] 202/25 influenced [2] 221/11 228/8 influencing [2] 223/22 223/25 information [11] 31/4 31/8 50/13 154/16 155/18 162/1 162/3 176/13 177/18 213/23 214/9 inherited [5] 21/17 22/23 23/9 25/18 25/25 initial [2] 168/2 179/2 initialed [3] 140/23 183/2 183/12 initially [2] 173/5 174/5 initials [15] 29/23 168/3 168/10 168/11 168/23 169/11 171/6 171/9 171/15 174/25 176/20 179/13 181/23 182/4 182/7 injury [2] 215/3 218/17 Innocence [2] 163/21 174/20 innocent [1] 82/14 inside [25] 5/8 5/20 5/25 6/11 67/19 91/14 107/5 121/6 171/4 171/18 171/19 171/22 172/8 172/10 172/19 174/17 175/6 177/7
I	I'll [1] 134/12 I'm [108] 3/18 5/5 7/17 8/11 9/14 9/23 11/5 18/10 19/8 20/25 26/14 29/9 31/19 37/13 38/4 38/5 38/20 38/21 38/23 40/20 41/1 42/13 44/5 54/1 54/11 58/9 60/6 63/5 63/22 64/3 70/11 73/25 74/12 74/16 78/4 79/5 79/6 81/8 81/9 82/21 87/8 90/16 92/9 96/8 97/19 98/4 98/12 105/2 112/3 112/8 113/14 124/17 124/22 127/19 131/24 132/20 133/2 133/25 134/11 136/20 137/19 139/13 139/13 140/4 141/9 141/11 147/14 148/21 150/7 150/13 152/23 157/22 158/8 159/5 159/6 159/8 166/5 169/2 169/15 170/10 171/16 172/14 173/25 175/7 175/11 178/3 184/17 188/12 190/18 193/17 197/16 197/17 199/3 199/8 199/16 204/17 207/16 211/16 212/3 212/13 219/16 221/16 227/8 233/10 236/5 236/9 236/22 237/18 Idaho [2] 201/12 201/15 idea [14] 26/19 26/22 27/5 27/13 28/6 35/4 50/17 84/14 102/4 119/10 204/2 211/15 217/23 219/21 ident [1] 71/25 identifiable [1] 187/19 identification [9] 29/8 31/18 37/11 48/25 78/3 127/21 143/20 168/8 201/9 identified [1] 231/23 identify [20] 31/20 59/6 63/5 65/14 78/4 127/25 143/21 208/24 210/4 211/1 220/17 221/17 222/5 224/12 225/22 227/1 229/8 230/17 231/18 232/7 identifying [1] 22/7 IG [1] 150/16 ignition [6] 90/24 105/16 211/12 216/3 217/1 218/9	

I
inside... [7] 178/17 181/13 181/15 182/2 183/5 183/8 206/4
inspectors [1] 155/22
instance [19] 8/11 18/1 21/18 24/12 36/8 48/24 82/4 96/5 97/1 104/9 119/5 120/9 129/15 136/2 137/20 138/7 159/5 235/12 235/15
instances [7] 119/5 132/13 155/14 155/19 163/2 185/18 188/16
instead [3] 21/19 21/21 71/2
Institution [1] 174/2
institutions [1] 48/11
instructions [1] 182/20
instructors [1] 199/20
instrument [3] 124/25 230/7 231/10
instruments [2] 119/20 137/15
integrity [2] 7/21 12/1
intend [4] 37/15 37/16 40/15 217/13
intended [1] 215/2
intends [1] 236/22
intentional [3] 7/2 7/8 118/10
intentionally [1] 7/12
interfere [1] 160/18
interior [7] 89/11 150/15 205/25 206/1 227/14 227/16 231/2
intermediate [1] 206/19
internal [3] 54/21 65/23 122/8
interns [1] 85/1
interpret [1] 214/3
interpretation [8] 19/21 19/21 77/22 78/2 145/9 200/4 201/2 201/21
interpreted [2] 42/20 157/3
interpreting [2] 200/24 201/25
introduce [4] 40/20 236/22 237/8 237/13
introduced [10] 54/11 112/5 122/19 123/12 123/17 158/22 191/17 195/9 196/10 198/5
introducing [3] 39/13 51/14 155/9
introduction [1] 197/24
investigation [6] 7/24 8/3 31/8 201/17 201/19 213/25
investigator [1] 189/17
involve [6] 12/6 12/9 40/3 54/3 77/11 236/15
involved [11] 11/16 13/6 15/10 15/11 44/25 54/6 61/23 85/7 118/13 141/1 201/20
involvement [1] 205/2
involves [3] 40/7 47/6 53/6
irons [5] 32/24 33/15 34/15 35/6 110/5
irony [1] 15/9
irrelevant [4] 22/12 164/19 235/5 235/24
issue [5] 54/3 81/2 216/9 235/18 235/21
issues [1] 144/24
item [48] 33/2 33/24 51/7 56/9 56/16 64/13 75/20 87/1 87/16 87/17 88/12 94/24 95/15 96/15 97/12 97/15 98/3 104/10 106/23 107/5 107/9 107/9 109/21 112/20 113/3 115/22 123/25 138/3 150/15 150/16 150/17 150/22 153/22 159/7 159/8 159/16 160/8 177/3 177/5 181/24 182/3 183/18 191/1 208/4 209/25 210/17 213/9 213/12

items [26] 30/18 33/18 38/16 40/20 43/6 56/15 59/19 59/25 69/6 69/14 74/12 95/15 97/25 98/1 98/4 103/7 106/19 107/20 108/11 108/14 109/10 110/8 111/19 112/25 153/13 159/18
itself [6] 10/24 34/9 102/23 204/16 215/23 231/6
J
jackhammer [1] 114/18
Jackson [2] 43/21 44/5
January [1] 162/23
January 1st [1] 162/23
Jefferson [2] 45/8 45/11
JEROME [2] 1/19 3/10
job [4] 45/17 47/5 82/1 204/11
jobs [1] 45/7
jotting [1] 29/18
Judge [16] 1/10 3/6 4/11 38/18 59/4 60/20 61/13 110/23 171/20 176/5 197/18 197/23 233/8 233/20 235/9 237/16
judges [1] 152/1
judgment [3] 145/13 189/3 189/4
jumping [1] 17/4
June [1] 140/5
June 6th [1] 140/5
juries [4] 17/9 20/7 150/1 151/25
jurors [37] 3/13 153/9 158/4 159/1 160/22 161/13 163/7 164/15 167/22 176/3 176/11 184/22 199/10 201/7 202/8 206/14 206/17 207/3 208/1 208/8 208/19 209/20 210/4 210/14 210/19 211/3 219/19 220/17 221/5 221/22 222/18 223/16 224/17 225/6 227/18 227/25 232/11
jury [56] 1/4 5/23 8/1 16/3 16/24 18/25 21/3 26/8 32/14 36/25 37/2 37/3 37/6 37/18 39/13 41/7 57/25 58/4 58/5 62/17 82/19 88/20 108/7 111/5 111/7 111/12 122/12 152/19 161/8 168/21 170/11 170/13 170/22 172/18 172/20 174/10 174/24 175/19 176/7 182/8 197/19 197/22 203/12 212/19 214/19 214/20 219/10 219/18 220/6 226/15 229/20 233/10 233/15 234/20 234/21 235/25
jury's [1] 214/16
Justice [1] 201/14
Justice's [1] 201/18
K
K.D.D [1] 140/10
K.W [2] 139/6 139/14
Karen [2] 139/24 140/10
Karl [1] 101/13
keep [11] 29/18 56/24 69/16 69/22 69/23 98/6 127/16 128/1 128/18 156/16 206/8
keeping [1] 188/18
Ken [1] 3/7
KENNETH [1] 1/11
kept [2] 59/5 84/5
key [29] 32/16 62/4 70/1 70/4 70/5 95/25 96/11 96/24 97/4 100/15 102/2 102/13 102/17 102/18 103/4 103/8 103/10 103/12 103/14 103/18 103/23 104/1 104/3 104/6 104/24 174/22 184/8 235/15 236/14

keys [4] 32/11 32/19 32/21 70/2
killed [1] 114/22
kind [29] 17/6 17/9 20/6 20/20 20/20 21/4 22/6 28/25 29/5 34/25 43/2 44/21 46/18 48/17 57/9 68/18 84/24 99/22 101/17 107/21 122/13 135/10 137/10 146/10 148/3 172/13 193/24 207/16 236/7
kinds [3] 121/19 127/16 212/25
kit [4] 45/2 182/1 182/2 182/19
kits [2] 157/16 182/13
knife [2] 179/24 181/8
knives [1] 110/15
knowing [2] 35/5 215/6
knowingly [1] 8/7
knowledge [10] 13/25 20/19 25/8 54/8 54/18 156/15 211/14 214/8 215/13 238/14
known [5] 5/16 16/13 24/3 122/22 234/16
KRATZ [8] 1/11 3/7 31/13 37/15 37/19 38/13 39/16 88/19
L
L-u-t-z [1] 66/7
lab [143] 6/11 6/12 6/17 7/4 7/10 7/14 8/2 8/7 8/25 9/17 10/2 10/11 14/16 15/6 20/19 26/10 26/10 26/18 26/19 27/16 27/18 28/19 29/15 30/16 44/22 45/9 45/11 45/15 45/17 47/20 48/18 48/22 49/16 52/1 52/5 52/21 52/23 53/8 53/13 53/16 53/17 54/6 54/14 55/9 55/23 56/8 56/10 57/3 57/10 57/14 58/13 59/12 60/7 63/1 63/11 64/1 65/2 67/9 67/12 67/15 67/18 67/20 67/25 68/9 73/18 73/21 73/23 75/11 76/5 78/15 78/18 79/14 80/21 81/6 81/17 83/7 83/7 83/12 83/13 83/21 84/2 84/9 84/11 85/9 85/23 86/4 86/11 87/18 93/8 106/20 118/6 118/6 118/10 118/14 119/16 120/5 120/14 120/17 120/18 120/21 128/2 128/21 132/11 133/19 133/21 133/22 134/24 135/5 138/16 138/18 144/9 144/10 144/15 146/12 148/10 149/13 151/9 155/6 156/18 162/23 163/12 171/7 174/3 174/6 174/13 175/11 175/12 176/16 176/22 178/25 179/7 181/24 183/1 183/12 183/17 188/5 188/9 188/10 189/11 190/11 194/6 199/15 199/17
Lab's [2] 55/21 127/22
lab-wide [1] 48/22
label [11] 168/24 169/1 169/6 169/7 169/11 171/24 173/25 174/13 178/18 179/9 182/3
labeled [1] 159/6
labeling [1] 136/19
laboratories [2] 50/12 85/17
laboratory [16] 28/12 51/19 51/22 83/9 144/1 144/20 144/21 157/17 167/12 168/1 168/23 176/17 182/3 199/4 199/5 204/24
labs [8] 9/6 9/11 17/8 48/13 52/10 52/11 52/13 53/1
lacking [1] 186/19
Ladd [1] 101/13
large [2] 210/7 210/10
larger [1] 172/4
Larry [1] 75/20

L	<p> laser [3] 206/25 209/1 227/24 last [18] 3/15 4/6 64/13 71/19 71/20 72/23 81/2 83/15 104/10 104/21 119/9 123/14 130/18 135/6 150/20 156/2 180/25 198/22 latch [6] 62/4 93/2 174/22 231/2 231/3 236/14 lately [1] 80/25 later [15] 25/17 32/22 32/23 60/5 61/2 76/25 77/4 77/5 89/11 91/19 92/25 107/18 114/8 115/1 172/22 Latex [1] 231/16 latitude [1] 145/19 law [6] 1/17 1/19 113/7 114/17 201/13 201/24 lawsuit [1] 8/12 lawyers [1] 152/1 leader [6] 45/20 46/23 135/18 144/6 145/24 200/5 learning [1] 24/6 least [12] 19/12 53/11 60/1 60/25 61/4 89/17 110/18 117/7 119/23 216/21 234/5 234/12 leave [6] 20/18 99/21 100/9 104/10 180/17 215/17 leaves [1] 226/4 lecture [2] 201/9 201/11 lectures [2] 85/14 201/1 ledge [1] 91/6 Lee [1] 101/12 left [16] 3/20 4/16 73/9 104/11 114/11 171/24 172/11 172/11 178/17 205/11 209/12 218/22 219/4 221/14 226/11 226/19 leg [5] 32/24 33/15 34/15 35/6 110/5 legs [3] 21/23 22/6 109/13 length [2] 223/5 236/1 lengthy [2] 38/3 49/24 less [4] 17/22 19/19 47/16 97/21 let's [35] 10/12 14/13 19/11 21/15 26/6 26/17 40/4 47/19 49/10 49/15 55/20 62/14 64/3 78/23 79/7 84/20 90/17 95/25 96/4 97/22 105/22 106/17 107/19 108/13 111/9 123/15 133/8 133/21 137/24 139/5 143/19 148/21 152/11 175/14 209/10 letter [3] 56/9 180/17 181/6 letters [1] 56/7 letting [1] 39/11 level [10] 25/8 51/2 53/11 96/11 102/15 102/16 102/18 136/8 136/9 219/15 levels [1] 96/2 license [4] 33/1 33/20 117/2 117/8 life [1] 192/1 light [4] 105/15 109/25 158/11 233/23 likelihood [2] 161/1 215/7 likely [3] 92/3 92/5 219/21 limb [1] 191/24 limit [3] 86/7 137/2 137/2 limited [3] 37/22 38/24 86/6 line [6] 9/24 19/3 37/19 100/7 170/7 194/5 link [5] 15/21 82/8 192/3 217/19 218/16 linked [1] 25/19 links [1] 189/24 liquid [2] 101/3 159/20 </p>	<p> listed [2] 167/5 167/19 lists [1] 74/16 literature [1] 98/7 little [36] 10/1 13/5 16/3 26/7 32/10 33/9 44/18 45/5 55/8 64/24 70/23 76/22 88/1 91/6 99/15 101/1 114/14 128/7 135/2 158/15 160/4 160/11 170/16 172/6 172/13 172/22 179/12 179/15 180/25 181/8 182/8 199/10 207/8 233/11 233/12 233/17 load [4] 47/16 80/21 81/16 84/8 located [1] 209/14 location [3] 5/12 87/20 92/6 locked [3] 66/12 68/19 70/16 locker [2] 73/20 74/3 lockers [1] 67/11 locks [1] 68/22 log [20] 127/16 127/23 128/9 128/24 132/3 133/23 140/2 140/5 154/23 154/25 155/3 155/13 155/22 156/6 156/12 156/17 185/11 188/14 188/17 197/11 logged [1] 163/1 logs [1] 128/1 long [6] 33/10 39/16 67/17 67/18 111/3 219/21 longer [5] 46/19 60/16 63/19 73/14 82/15 looked [7] 34/2 34/8 106/19 109/19 111/19 111/24 115/15 looking [25] 5/15 36/15 95/18 97/11 97/12 103/12 111/25 112/23 113/19 116/21 116/22 145/5 168/9 171/23 173/25 187/7 200/24 203/1 203/20 205/14 206/15 221/24 221/25 230/7 231/7 looks [10] 79/11 109/9 139/14 169/6 172/24 180/21 216/8 218/21 219/3 219/12 lot [13] 47/21 80/24 85/13 101/25 102/8 104/19 104/20 104/22 104/24 126/21 158/16 158/18 164/25 lots [2] 97/25 97/25 low [9] 94/17 94/18 96/4 97/17 102/15 102/16 102/17 103/9 136/9 lunch [4] 107/19 110/24 111/4 111/6 Lutz [1] 66/5 </p>	<p> 146/20 147/8 147/22 148/14 151/1 151/6 151/14 152/3 155/6 155/7 158/16 167/14 171/21 174/11 186/1 189/3 199/25 205/20 206/1 229/16 makes [1] 12/16 making [3] 8/20 118/22 141/21 male [3] 34/20 34/21 164/12 man [3] 23/17 82/14 193/3 management [6] 12/7 81/7 81/8 81/9 81/10 81/12 manila [2] 181/13 181/22 manipulation [14] 123/9 124/15 125/13 128/23 129/6 141/25 142/5 150/21 159/10 166/11 185/25 187/14 187/18 191/7 MANITOWOC [12] 1/1 59/13 59/22 61/1 61/3 65/5 65/10 65/21 167/6 173/7 184/11 238/2 manually [2] 124/8 125/3 manufactured [1] 204/14 manufacturers [1] 157/16 many [18] 47/8 92/25 103/7 103/7 105/13 105/21 110/15 130/8 130/12 130/13 131/4 132/14 133/10 133/10 197/10 202/2 213/17 214/5 March [9] 76/6 76/9 76/11 76/16 79/11 105/25 112/23 130/19 140/18 March 16 [1] 76/6 March 16th [1] 140/18 March 1st [1] 79/11 March 28 [1] 76/9 March 29th [1] 76/16 March 31st [1] 112/23 Marie [4] 145/2 149/11 174/3 181/22 mark [7] 37/8 37/10 58/22 58/23 98/12 127/19 143/19 marked [15] 2/9 29/8 31/18 37/11 41/2 67/3 78/3 87/9 127/21 143/20 168/8 168/17 198/7 204/17 206/7 marker [2] 24/16 25/4 markers [3] 21/13 112/9 158/8 markings [5] 168/18 168/21 181/23 184/13 184/15 masks [1] 120/9 mass [1] 151/12 master's [3] 44/9 44/13 45/25 masters [1] 46/13 match [3] 42/17 186/9 188/3 matched [3] 13/19 142/2 217/1 matches [1] 43/2 material [6] 119/6 158/18 159/14 164/10 164/24 172/24 matter [20] 3/4 40/1 42/14 42/22 42/23 58/3 62/11 133/1 144/23 145/13 147/13 147/15 185/23 192/10 192/14 192/21 233/13 233/21 238/7 238/13 mattress [2] 107/21 107/23 May 8 [1] 148/23 May 8th [1] 110/18 maybe [18] 61/20 64/25 67/16 72/18 75/18 88/8 88/9 96/7 98/13 99/7 101/9 124/1 130/23 145/16 185/12 214/7 219/1 224/19 mean [22] 17/4 26/12 27/3 27/14 61/13 79/3 85/8 97/24 99/17 106/15 113/14 116/13 124/22 147/5 147/20 165/1 178/9 208/1 </p>
M	<p> M-i-l-l-s-a-p-s [1] 43/20 M.R.S [1] 140/23 M05 [1] 56/12 M05-2467 [1] 56/12 M85 [2] 64/5 183/17 M85-1051 [1] 183/17 ma'am [4] 4/14 151/24 194/11 197/7 machine [3] 124/6 124/18 238/10 made [14] 3/18 9/15 12/17 39/6 80/2 101/17 134/19 163/14 182/5 191/25 191/25 202/9 234/1 236/12 Madison [6] 46/9 83/7 84/11 132/11 199/6 204/24 mail [1] 176/15 main [2] 78/23 84/25 maintained [1] 12/1 major [1] 104/11 make [33] 11/15 11/24 12/14 16/25 21/19 25/19 51/22 56/4 63/18 108/7 128/24 135/22 144/17 </p>		

<p>M</p> <p>mean... [4] 209/23 210/21 212/16 221/9</p> <p>meaning [7] 6/3 30/16 35/24 127/6 162/16 185/12 228/6</p> <p>meaningless [2] 22/7 22/15</p> <p>means [6] 10/7 50/4 86/3 170/17 187/19 189/3</p> <p>meant [4] 63/14 79/6 185/15 196/14</p> <p>measure [3] 136/6 137/1 229/19</p> <p>measured [1] 229/21</p> <p>measurements [1] 229/16</p> <p>medical [1] 199/13</p> <p>meeting [1] 45/2</p> <p>meetings [3] 9/3 9/3 44/25</p> <p>members [9] 8/2 37/2 37/3 39/25 57/24 111/4 156/5 197/19 233/9</p> <p>memorized [2] 56/11 56/14</p> <p>memory [2] 40/6 188/20</p> <p>mention [1] 52/9</p> <p>mentioned [6] 20/18 39/17 71/18 119/4 119/13 119/24</p> <p>mesh [1] 68/18</p> <p>message [1] 115/16</p> <p>messages [5] 28/21 28/21 29/5 30/3 33/11</p> <p>method [1] 51/6</p> <p>methodology [3] 19/4 157/11 158/4</p> <p>Michael [1] 72/6</p> <p>microliter [1] 100/22</p> <p>microliters [1] 100/25</p> <p>microphone [1] 59/9</p> <p>microscope [4] 16/17 16/19 163/23 165/4</p> <p>microscopic [3] 16/13 19/13 163/11</p> <p>microscopically [1] 163/15</p> <p>middle [1] 204/23</p> <p>might [15] 6/16 49/18 54/2 82/8 93/18 102/2 102/17 103/8 103/8 169/17 173/23 188/9 202/19 203/4 204/8</p> <p>miles [1] 46/16</p> <p>Millsaps [1] 43/20</p> <p>Milwaukee [3] 83/7 144/10 144/15</p> <p>mind [3] 32/5 42/9 130/20</p> <p>mine [1] 141/10</p> <p>minimize [2] 119/9 122/5</p> <p>minimum [2] 200/12 202/24</p> <p>minor [3] 104/14 199/13 236/1</p> <p>minute [6] 43/12 79/7 105/22 129/23 130/12 152/17</p> <p>minutes [7] 45/6 62/14 110/25 152/21 170/11 170/12 214/19</p> <p>miscounted [1] 130/23</p> <p>mislabeled [1] 136/24</p> <p>missing [1] 134/11</p> <p>Mississippi [2] 43/21 43/25</p> <p>mistake [2] 80/1 135/16</p> <p>mix [3] 10/12 69/6 69/10</p> <p>mixed [3] 93/19 105/13 161/24</p> <p>mixture [14] 34/19 34/20 34/23 36/17 80/5 103/22 104/14 110/12 126/15 126/17 160/24 162/1 162/13 195/12</p> <p>moistened [1] 96/20</p> <p>molding [1] 108/23</p> <p>molecular [1] 46/8</p> <p>moment [19] 18/13 55/20 87/7 87/10 90/12 94/22 96/9 98/13</p>	<p>122/11 123/16 132/15 135/8 167/4 185/9 196/13 202/13 207/2 226/7 234/14</p> <p>Monday [2] 71/9 205/1</p> <p>monitor [2] 118/18 201/16</p> <p>monkey [1] 10/3</p> <p>monkeying [1] 10/7</p> <p>month [10] 129/24 130/9 130/14 130/15 132/9 132/18 133/4 133/5 134/18 134/24</p> <p>months [3] 51/10 92/25 133/9</p> <p>morning [14] 3/3 3/6 3/9 3/14 3/17 4/14 4/15 58/1 220/1 233/11 233/14 233/18 237/17 237/21</p> <p>morning's [4] 111/6 233/24 234/8 235/3</p> <p>most [11] 12/16 46/19 48/12 51/14 85/13 104/13 105/12 160/11 164/23 209/6 225/24</p> <p>motion [6] 190/12 225/19 225/19 233/25 234/2 235/2</p> <p>motioned [1] 123/24</p> <p>motions [1] 173/4</p> <p>mounted [3] 163/23 163/24 165/3</p> <p>mouth [2] 99/12 99/14</p> <p>move [7] 55/7 64/3 111/1 120/15 157/24 197/23 205/25</p> <p>movement [2] 202/16 202/19</p> <p>moving [1] 64/22</p> <p>Mr [14] 5/3 13/14 14/15 18/21 27/23 40/23 88/23 90/18 142/24 143/8 147/6 185/4 193/12 213/3</p> <p>Mr. [138] 4/9 4/21 4/23 5/17 5/19 12/19 12/21 13/1 14/9 14/9 14/12 15/1 15/4 15/8 15/10 15/12 15/21 18/1 18/7 18/22 20/4 27/24 28/23 29/5 30/4 31/1 31/3 31/9 31/13 32/3 32/8 32/23 34/13 34/18 35/6 35/20 37/15 37/19 37/23 38/12 38/13 39/16 40/9 41/8 41/13 41/24 58/10 58/11 59/8 59/11 59/23 60/9 62/2 64/11 65/16 65/20 71/12 72/6 72/17 72/20 79/20 83/12 88/5 88/16 88/19 89/3 89/6 89/14 90/18 91/8 91/20 91/24 92/20 94/24 95/9 106/23 107/2 109/18 110/1 111/13 111/21 113/11 114/2 115/12 115/21 116/4 117/11 117/16 142/23 146/25 147/1 148/10 152/8 153/2 154/24 163/4 165/13 165/15 167/2 169/2 170/4 172/25 175/4 175/13 175/18 175/24 176/3 176/9 177/10 177/17 177/22 178/12 178/14 181/18 189/13 189/25 192/2 193/22 194/17 199/2 206/6 206/6 212/4 214/22 214/25 215/21 215/24 217/15 218/3 218/13 219/20 219/25 220/8 220/11 225/21 226/8 235/8 236/9</p> <p>Mr. Allen's [1] 14/9</p> <p>Mr. and [1] 41/24</p> <p>Mr. Avery [19] 4/23 5/17 12/21 13/1 14/9 15/1 15/4 15/10 15/12 15/21 18/1 27/24 34/13 35/6 38/12 62/2 147/1 165/15 193/22</p> <p>Mr. Avery's [38] 5/19 18/7 20/4 31/3 34/18 41/13 59/8 59/11 59/23 64/11 65/20 79/20 83/12 88/16 89/3 89/6 89/14 90/18 91/8 91/20 91/24 92/20 94/24 95/9 106/23 107/2 109/18 110/1 113/11 114/2 115/12 115/21 116/4 117/11</p>	<p>117/16 142/23 172/25 189/25</p> <p>Mr. Buting [19] 4/9 40/9 41/8 58/11 111/13 154/24 163/4 165/13 167/2 169/2 170/4 175/4 175/18 175/24 177/10 177/17 177/22 178/14 235/8</p> <p>Mr. Fallon [2] 206/6 236/9</p> <p>Mr. Fassbender [11] 28/23 29/5 30/4 31/1 31/9 32/3 32/8 32/23 111/21 189/13 192/2</p> <p>Mr. Fassbender's [1] 152/8</p> <p>Mr. Gahn [20] 4/21 12/19 14/12 15/8 18/22 35/20 37/23 58/10 60/9 146/25 148/10 153/2 176/9 178/12 181/18 194/17 215/21 218/3 219/20 220/8</p> <p>Mr. Groffy [1] 71/12</p> <p>Mr. Kratz [6] 31/13 37/15 37/19 38/13 39/16 88/19</p> <p>Mr. Remiker [2] 65/16 175/13</p> <p>Mr. Riddle [4] 72/6 72/17 72/20 88/5</p> <p>Mr. Stahlke [7] 199/2 206/6 214/25 219/25 220/11 225/21 226/8</p> <p>Mr. Stahlke's [1] 215/24</p> <p>Mr. Strang [4] 212/4 214/22 217/15 218/13</p> <p>Mr. Wiegert [1] 176/3</p> <p>Mrs. [1] 41/24</p> <p>Mrs. Avery [1] 41/24</p> <p>Ms [14] 3/22 18/19 37/14 38/14 41/11 62/24 111/18 153/9 165/21 167/2 170/4 174/18 176/10 194/22</p> <p>mummies [1] 35/13</p> <p>must [6] 113/14 127/10 127/10 130/16 145/21 145/23</p> <p>mutation [1] 22/2</p> <p>myself [3] 138/19 144/9 160/25</p> <p>N</p> <p>name [14] 4/6 4/6 13/20 27/19 28/13 28/18 30/7 65/7 65/12 65/25 98/11 165/18 198/22 198/22</p> <p>named [2] 56/15 117/19</p> <p>names [1] 127/23</p> <p>nanograms [5] 100/17 101/4 101/18 102/3 102/24</p> <p>national [1] 138/13</p> <p>near [5] 108/23 136/9 216/3 217/1 228/4</p> <p>nearly [1] 84/17</p> <p>necessarily [8] 19/15 19/16 26/4 51/19 126/3 126/10 127/3 229/2</p> <p>necessary [2] 38/6 82/15</p> <p>need [13] 15/24 32/11 38/1 40/2 66/22 76/12 91/25 112/16 112/24 128/14 147/23 192/24 212/18</p> <p>needed [2] 147/21 230/12</p> <p>needs [4] 11/2 18/25 26/8 40/5</p> <p>negative [7] 123/4 123/8 123/12 123/16 124/11 124/14 158/23</p> <p>neither [3] 20/24 116/2 217/21</p> <p>never [21] 8/7 26/13 44/12 53/20 53/22 54/15 55/2 89/6 101/15 107/20 108/3 130/20 148/13 148/16 148/17 151/5 151/8 151/16 152/4 174/25 191/25</p> <p>new [15] 47/10 47/12 51/15 53/19 54/14 55/1 60/19 60/20 82/6 84/13 84/15 84/18 84/21 201/13 234/6</p> <p>newer [2] 12/25 160/13</p> <p>next [35] 25/9 53/12 65/13 76/11</p>
--	---	--

N

next... [31] 91/1 107/10 120/15
120/18 120/22 121/24 133/23
136/13 136/20 137/12 159/16
160/13 187/6 198/13 205/24 208/6
210/3 210/25 216/10 220/16
221/16 222/4 223/8 224/11 224/12
227/1 229/7 230/16 231/17 232/6
234/24
NICK [4] 2/7 198/14 198/18 198/23
night [1] 3/15
nightstand [2] 109/18 109/20
No. [2] 31/18 78/3
No. 342 [1] 31/18
No. 345 [1] 78/3
nobody [3] 11/15 193/1 216/5
non [3] 80/4 173/21 210/24
non-blood [1] 173/21
non-sperm [1] 80/4
non-stained [1] 210/24
none [10] 91/8 91/12 91/14 107/25
108/19 110/7 116/25 152/12 184/9
217/25
Noon [1] 111/11
Norm [1] 3/7
normal [1] 207/9
normally [4] 7/18 8/5 97/8 128/18
NORMAN [1] 1/15
north [3] 114/15 201/12 201/15
north/south [1] 114/15
note [1] 128/24
noted [3] 137/24 172/8 234/11
notes [10] 29/18 76/12 90/8 96/7
100/12 112/16 154/5 154/18
154/20 238/9
nothing [11] 36/15 59/1 114/4
131/14 160/5 160/6 173/1 191/14
212/20 215/1 218/15
notice [11] 215/12 217/20 218/1
219/6 234/5 234/13 234/19 235/10
236/24 237/2 237/11
notify [1] 3/15
November [17] 30/8 61/4 71/7
74/2 75/10 89/23 90/10 91/17
91/17 92/21 92/22 93/5 129/25
134/21 134/25 205/1 238/15
November 5th [1] 61/4
November 7th [2] 71/7 91/17
nowhere [1] 89/3
nuclear [2] 164/25 165/1
nucleated [2] 106/14 164/5
number [48] 25/5 29/4 41/12 49/2
56/8 56/10 63/23 63/24 63/25
64/1 64/13 71/17 71/18 71/19
71/20 78/21 78/22 82/3 83/1
84/21 95/4 101/21 112/3 112/9
112/19 112/24 129/1 130/2 131/9
131/25 132/22 137/18 159/7
168/14 168/24 169/23 169/24
176/17 177/4 177/5 177/6 181/24
202/24 206/11 208/7 211/1 221/17
227/21
numbered [1] 187/8
numbers [15] 25/23 25/24 56/6
56/7 82/20 83/5 83/10 101/6
101/10 113/5 113/6 131/24 132/1
133/6 148/22
numerous [3] 128/9 144/21 222/2

O

object [16] 9/10 105/12 132/21
208/4 210/1 210/17 210/22 211/10

217/16 218/7 222/14 225/17
228/20 228/23 229/4 235/7
objected [2] 178/7 190/11
objection [35] 9/15 9/20 9/24 10/6
10/25 11/18 19/9 20/9 38/5 39/11
54/2 54/12 55/4 132/4 154/14
157/24 164/18 166/2 166/24
169/13 169/16 180/2 190/4 190/16
190/18 192/4 192/6 193/17 195/19
197/13 197/15 211/13 211/17
211/25 219/17
objective [3] 8/25 19/19 19/23
objects [3] 37/22 105/14 236/24
observations [4] 205/20 206/1
215/24 224/18
observe [9] 204/25 205/22 208/16
210/6 213/1 220/25 223/13 227/7
227/15
observed [22] 206/18 207/3 207/5
209/2 209/7 209/21 210/11 211/22
215/4 220/11 221/22 222/11 224/5
225/7 225/23 226/21 228/13
228/17 230/21 232/12 232/22
233/2
obtain [1] 230/5
obvious [3] 129/14 209/6 225/24
obviously [8] 11/23 45/25 80/17
101/23 138/19 160/18 204/12
234/13
occasions [1] 17/24
occur [2] 6/16 118/9
occurred [2] 7/3 197/12
October [6] 61/4 64/23 134/21
134/25 135/11 135/12
October 13th [1] 64/23
October 18th [1] 135/12
odds [1] 23/16
odometer [3] 230/3 230/5 230/8
off [35] 3/20 4/16 21/5 53/21
61/10 61/14 82/9 99/18 110/11
113/13 135/17 142/18 159/14
159/16 160/7 160/10 163/25 165/1
165/2 165/3 167/11 179/24 180/8
180/9 180/15 180/16 180/20
180/23 180/25 181/2 197/3 206/10
223/4 228/23 232/18
offender [1] 182/13
offer [10] 37/16 41/1 58/14 61/7
61/8 173/6 173/13 234/6 234/10
234/19
offered [4] 2/9 15/20 46/4 58/21
office [7] 45/9 59/15 60/3 60/17
62/9 82/16 173/8
officer [1] 6/20
official [4] 1/25 151/25 238/4
238/19
often [9] 56/7 79/22 85/13 93/23
93/23 104/13 124/20 146/14
214/10
oh [6] 20/18 28/14 133/20 133/22
203/18 237/18
okayed [1] 151/21
old [4] 35/5 35/14 63/24 165/3
once [9] 7/6 10/10 73/24 74/1 78/6
120/15 192/9 210/20 228/7
one's [4] 95/11 95/11 114/5 114/5
ones [6] 78/24 84/13 90/2 91/19
133/16 228/16
online [1] 46/9
only [34] 15/9 17/5 28/5 28/21
37/21 45/3 53/10 54/17 57/8
66/14 66/20 70/1 71/24 92/16
116/6 122/19 123/18 129/5 133/17

143/13 146/18 146/23 148/2 164/5
188/9 189/23 190/22 195/8 203/2
221/11 223/21 223/25 225/4
234/23
onto [6] 116/18 208/5 210/23
213/12 222/22 223/1
open [23] 19/20 68/5 68/18 70/7
70/9 73/10 76/18 91/5 91/25
169/12 170/25 171/25 172/17
172/18 175/6 177/2 177/13 177/15
179/23 180/21 181/2 183/23 231/5
opened [16] 171/8 171/22 174/5
174/15 175/1 175/9 175/18 176/20
176/23 178/21 184/25 230/13
230/21 230/24 231/3 231/12
opener [2] 180/17 181/7
opening [8] 88/19 91/21 92/14
92/18 92/23 169/19 181/5 224/25
opens [1] 227/12
operation [2] 232/24 233/4
opinion [13] 4/21 4/22 10/17
15/19 18/6 19/7 195/5 211/8
212/5 215/3 216/14 218/5 235/13
opinions [7] 4/17 4/18 17/19 19/7
20/7 100/6 235/23
opportunity [4] 170/6 175/18
190/23 190/25
opposed [1] 207/20
order [15] 46/6 49/3 49/14 49/22
137/3 144/16 148/14 151/1 151/6
151/14 152/2 158/1 175/5 188/11
206/9
ordinary [1] 212/20
orient [2] 87/10 224/20
origin [1] 139/10
original [9] 5/3 13/3 45/1 126/18
167/25 174/13 178/7 191/1 234/10
originally [5] 35/11 44/3 117/8
163/9 163/24
other [75] 8/1 8/18 9/6 9/11 14/13
16/20 17/2 19/1 20/5 22/22 26/1
32/19 33/10 34/20 39/25 40/19
44/21 45/10 46/15 47/17 48/17
48/19 48/20 49/14 50/5 50/5
52/21 54/3 54/18 57/2 61/21
61/25 64/2 69/7 75/15 84/5 85/16
92/16 98/25 106/12 106/15 110/12
120/8 121/24 123/21 126/5 127/2
129/8 129/19 131/20 132/12
132/13 132/23 132/25 152/11
152/12 155/11 161/23 173/23
182/15 185/19 187/23 192/11
197/10 207/10 216/8 218/19
223/13 228/12 228/19 230/1 235/1
236/6 236/21 237/12
others [5] 35/24 41/22 50/19
50/22 51/12
otherwise [5] 5/24 38/3 118/11
139/2 212/7
our [56] 19/15 25/7 38/9 51/19
51/22 53/14 53/16 53/18 62/10
63/7 64/1 65/2 66/21 67/12 67/15
67/20 67/21 78/1 78/6 78/8 87/17
100/9 111/4 118/18 120/19 121/13
121/13 122/18 124/3 128/13
143/25 143/25 144/9 147/10
153/17 153/18 155/7 155/8 155/10
160/12 160/13 161/11 165/25
167/10 168/2 168/24 173/4 176/17
183/1 193/11 194/9 197/20 204/22
204/23 234/2 235/1
outcome [2] 10/23 11/8
outlet [1] 109/25

O

outline [1] 213/8
outside [18] 26/19 36/24 44/22 48/3 48/4 53/12 77/13 78/17 89/7 91/12 121/10 168/18 172/18 173/12 173/13 214/22 219/3 234/20
over [26] 4/21 4/21 17/4 17/8 24/4 38/20 50/23 50/23 51/11 51/11 51/12 64/3 64/24 67/9 83/15 101/4 121/4 135/6 152/25 154/20 154/25 162/24 170/4 179/3 183/15 213/19
overall [4] 47/14 83/21 95/8 229/14
overnight [2] 70/20 73/23
overseers [1] 48/4
oversight [1] 146/9
own [24] 34/18 44/22 48/21 85/15 94/24 95/11 95/12 113/11 114/2 114/5 114/5 117/16 117/17 118/14 127/2 128/16 138/9 138/10 138/22 161/21 194/6 214/6 215/13 223/25
owned [1] 231/24

P

pack [1] 167/24
package [3] 73/4 73/6 176/15
packaged [5] 69/15 73/7 167/22 171/5 176/12
page [29] 2/2 74/11 74/14 74/16 75/18 105/2 109/21 128/4 128/10 130/19 133/15 133/23 134/3 134/11 134/13 136/13 136/20 140/2 140/2 140/4 140/19 150/7 150/8 151/13 187/6 187/6 187/12 215/1 215/24
pages [4] 115/6 128/3 139/5 187/8
panel [6] 91/7 227/14 227/16 227/22 230/7 231/10
Pap [1] 150/17
paper [5] 44/24 45/2 159/23 182/18 183/6
papers [1] 151/12
paragraph [4] 105/5 150/9 150/10 187/13
parameters [1] 173/15
parents [1] 41/24
Parish [2] 45/8 45/11
part [35] 12/24 21/8 21/9 25/12 25/15 28/12 38/13 41/3 48/2 48/2 48/14 50/14 62/7 63/14 66/23 67/12 81/6 81/8 81/11 84/14 85/5 85/8 95/19 95/19 96/23 100/8 110/25 111/3 114/9 115/25 122/20 123/14 123/24 125/6 125/10
partial [3] 139/8 141/4 141/8
particle [2] 221/10 226/1
particular [28] 12/9 12/10 24/12 37/18 39/4 51/7 78/21 79/2 87/22 96/5 97/11 136/6 155/20 166/8 199/22 202/12 206/20 207/4 207/7 207/21 213/8 213/9 215/3 216/9 216/25 217/1 229/1 232/16
particularly [1] 93/13
particulars [1] 199/21
parties [3] 3/4 181/11 198/2
partner [1] 36/11
parts [3] 9/6 21/11 50/5
pass [4] 53/10 55/3 77/15 77/18
pass/fail [2] 77/15 77/18
passenger [13] 89/22 89/25 91/2

91/4 92/3 92/8 92/17 207/10 208/11 216/2 220/20 221/25 232/20
passenger's [2] 206/19 208/10
passive [10] 203/15 203/17 207/17 216/7 221/7 221/8 221/9 221/10 223/20 223/20
past [1] 128/8
paternity [1] 48/12
Patrick [1] 1/9
pattern [22] 200/10 200/12 200/21 201/2 202/5 203/21 203/25 205/13 210/11 212/11 213/7 213/11 216/8 216/25 220/11 220/13 223/3 225/17 228/5 228/10 228/18 232/2
patterns [22] 200/7 201/21 201/25 202/10 203/6 203/10 205/4 208/16 209/8 214/4 215/4 217/19 220/25 223/14 223/19 226/22 227/7 227/15 227/23 232/12 232/22 233/2
PCR [3] 157/7 158/7 158/13
peaks [1] 187/19
peel [4] 179/24 180/7 180/9 180/24
peeled [2] 172/7 180/16
peer [8] 50/2 50/4 53/10 53/11 53/22 54/20 144/25 145/22
people [12] 46/20 47/9 66/14 66/16 84/15 86/4 86/10 99/4 99/23 113/7 132/13 144/5
people's [1] 110/13
percent [13] 47/7 47/14 47/16 131/17 131/17 155/14 157/22 185/12 185/13 185/16 188/7 197/9 209/4
percentage [3] 23/23 47/5 192/11
perfect [1] 234/9
perfectly [1] 15/22
perform [1] 204/11
performance [1] 78/24
performed [1] 203/24
performing [2] 159/24 204/10
perfume [1] 208/14
perhaps [3] 36/6 114/22 177/22
period [11] 46/12 129/25 130/9 130/14 130/15 132/9 132/18 133/5 134/18 134/25 135/2
person [31] 1/22 3/10 8/14 9/19 10/19 10/22 11/7 17/5 25/9 25/15 25/16 27/20 28/18 36/19 55/24 65/7 104/10 104/21 131/2 132/3 141/21 144/8 144/11 144/12 162/17 165/23 186/11 217/5 221/14 232/24 233/4
personal [5] 8/22 19/21 103/7 211/14 215/13
personally [1] 215/6
pertain [1] 169/17
phases [1] 122/10
phenomena [1] 120/6
phone [8] 28/21 28/22 29/4 29/17 30/3 32/2 33/11 137/8
phonetic [3] 101/13 101/13 229/5
photo [7] 209/6 211/20 216/17 217/24 219/11 221/19 232/19
photocopy [1] 134/13
photograph [24] 87/22 113/20 204/19 204/19 206/10 206/13 206/18 206/20 209/10 210/7 210/8 210/25 211/4 215/7 217/19 220/22 220/23 223/10 224/12 224/24 227/3 227/8 229/10 232/16

photographs [7] 71/14 206/7 214/1 214/4 214/7 214/11 214/12
phrase [1] 40/2
phrased [1] 113/19
physical [1] 24/8
pick [9] 4/16 52/4 104/22 156/25 158/6 158/25 176/2 220/16 224/11
picking [1] 6/21
picks [1] 99/7
pickup [2] 107/6 107/7
picture [2] 87/16 192/21
pictures [1] 87/15
piece [20] 126/18 127/9 159/22 172/1 172/4 172/6 172/14 172/15 172/21 174/17 178/23 178/24 179/19 179/25 180/10 183/6 189/6 189/23 189/23 190/2
pieces [4] 41/13 84/1 158/9 180/18
pile [1] 206/7
place [9] 7/9 30/6 53/14 60/18 74/5 116/6 147/20 159/21 182/22
placed [3] 177/18 183/1 183/25
places [1] 90/21
PLAINTIFF [1] 1/4
plan [2] 51/6 51/6
plans [1] 53/7
plant [5] 10/3 91/23 92/20 103/17 184/8
planted [3] 5/19 91/20 103/15
planting [8] 59/1 60/12 60/13 60/18 61/9 61/11 173/6 173/10
plastic [3] 76/22 96/23 208/14
plates [4] 33/1 33/20 117/2 117/8
play [1] 59/22
please [30] 3/5 4/5 4/5 37/25 58/8 81/20 148/18 160/22 161/8 168/13 198/17 198/21 198/21 199/11 203/12 206/11 209/11 220/17 220/19 222/4 223/8 223/16 224/12 225/9 227/1 227/8 229/7 230/17 231/18 232/6
plowing [1] 197/15
point [50] 9/15 14/12 15/8 21/2 25/25 37/13 38/2 39/5 45/1 57/14 58/19 60/5 62/1 63/20 76/25 77/5 88/20 111/25 126/23 132/21 143/5 156/14 169/5 170/3 170/5 171/21 171/25 172/3 176/19 178/17 178/21 205/11 207/2 209/1 209/14 210/10 211/17 212/21 215/15 219/4 223/6 225/6 225/23 227/24 232/11 236/1 236/5 236/12 236/23 237/10
pointed [2] 12/19 226/8
pointer [3] 206/25 209/1 227/24
pointing [1] 168/25
police [16] 7/19 7/23 11/12 11/13 11/25 28/10 39/21 43/1 43/8 55/23 71/2 81/20 113/22 150/3 182/15 193/6
policy [1] 128/21
Pontiac [2] 94/24 95/15
poor [1] 18/4
poorly [1] 113/18
population [3] 23/10 23/18 23/23
portion [9] 18/15 24/25 37/4 87/5 104/11 148/12 159/14 209/13 222/12
portions [1] 22/10
position [8] 38/9 45/22 45/24 46/3 46/22 199/7 202/14 202/18
positions [2] 203/2 204/6
positive [4] 23/13 122/14 122/17

<p>P</p> <p>positive... [1] 122/21</p> <p>positively [1] 13/13</p> <p>possession [1] 67/8</p> <p>possessions [1] 95/12</p> <p>possibility [2] 156/20 157/6</p> <p>possible [19] 10/15 13/11 36/18 41/14 93/21 102/19 103/2 103/3 103/11 115/24 116/20 136/23 136/25 137/13 202/17 204/7 205/14 218/17 234/13</p> <p>possibly [6] 93/18 202/16 202/19 203/9 215/5 218/18</p> <p>post [1] 82/12</p> <p>post-conviction [1] 82/12</p> <p>postal [1] 181/13</p> <p>potential [3] 100/9 122/4 164/15</p> <p>potentially [2] 103/1 172/8</p> <p>power [6] 21/2 22/20 25/25 45/1 88/20 231/10</p> <p>practical [3] 204/2 204/4 204/15</p> <p>practice [1] 156/16</p> <p>pre [2] 173/4 234/13</p> <p>pre-trial [2] 173/4 234/13</p> <p>precautions [1] 120/4</p> <p>predict [1] 104/18</p> <p>predisposed [1] 9/18</p> <p>prefer [1] 180/16</p> <p>prepared [3] 78/17 78/18 238/8</p> <p>preprinted [1] 182/13</p> <p>presence [7] 36/24 162/9 162/10 172/18 187/15 214/17 234/20</p> <p>present [30] 16/24 18/22 37/6 41/7 44/24 45/2 58/5 62/17 93/7 98/1 111/7 111/12 152/19 170/13 175/15 176/7 197/22 201/9 202/11 205/5 205/15 213/21 214/20 216/2 220/6 224/7 226/18 232/15 233/15 235/4</p> <p>presented [4] 20/5 20/6 58/12 234/21</p> <p>presenting [1] 19/24</p> <p>presents [1] 236/7</p> <p>preset [1] 145/17</p> <p>pressure [1] 81/25</p> <p>presumably [3] 104/3 113/7 171/1</p> <p>presumptive [7] 93/10 94/2 94/19 94/21 96/17 106/4 205/18</p> <p>pretty [4] 80/21 146/11 165/4 224/1</p> <p>prevent [3] 119/2 121/10 137/3</p> <p>previous [2] 61/23 222/9</p> <p>previously [3] 75/22 204/18 234/1</p> <p>primarily [1] 161/20</p> <p>printed [1] 65/12</p> <p>prior [3] 137/14 145/22 150/19</p> <p>priorities [1] 14/21</p> <p>priority [1] 81/14</p> <p>prison [6] 14/5 14/8 14/9 15/4 82/15 175/11</p> <p>private [2] 52/11 77/13</p> <p>privates [1] 13/8</p> <p>privilege [1] 38/19</p> <p>probably [13] 21/3 47/7 57/1 67/15 97/17 100/6 100/24 107/19 164/3 175/10 185/16 205/19 215/9</p> <p>probative [3] 161/19 162/7 189/1</p> <p>problem [5] 40/2 136/19 155/6 175/25 231/9</p> <p>procedure [4] 55/21 123/11 123/14 124/21</p> <p>procedures [2] 9/13 53/16</p>	<p>proceed [1] 40/21</p> <p>proceedings [3] 1/23 237/22 238/13</p> <p>process [19] 26/6 47/25 49/25 50/15 53/5 55/16 62/25 76/25 77/5 122/20 123/13 123/18 124/11 127/1 136/24 157/7 158/17 191/18 232/1</p> <p>processed [3] 95/21 121/14 214/6</p> <p>processing [5] 71/14 71/24 161/18 205/7 230/1</p> <p>produce [1] 100/1</p> <p>produced [1] 198/1</p> <p>producing [2] 131/24 132/2</p> <p>product [5] 38/13 38/17 38/19 38/21 40/4</p> <p>professional [1] 145/13</p> <p>proficiency [5] 26/17 26/25 55/13 77/8 80/8</p> <p>profile [50] 5/5 5/15 14/3 22/14 35/10 42/2 42/5 42/16 77/2 100/2 100/10 102/21 105/12 117/24 122/22 123/2 127/8 127/10 138/3 138/18 138/22 139/8 139/11 141/4 141/8 141/8 141/11 143/3 150/10 150/16 153/23 154/1 154/10 154/17 160/19 161/5 161/23 162/9 162/11 162/15 162/20 164/16 165/10 165/13 165/17 165/21 165/24 186/20 187/20 195/16</p> <p>profiles [7] 105/13 105/17 138/17 150/14 153/18 186/9 186/13</p> <p>program [5] 199/24 200/1 200/5 201/12 201/15</p> <p>prohibit [1] 235/2</p> <p>Project [2] 163/21 174/20</p> <p>projected [1] 203/16</p> <p>Promega [1] 44/25</p> <p>proof [8] 58/14 61/7 61/8 173/6 173/13 234/6 234/10 234/19</p> <p>prop [1] 231/5</p> <p>proper [2] 172/23 205/17</p> <p>property [1] 114/6</p> <p>proposed [1] 215/2</p> <p>proposing [1] 218/2</p> <p>propped [1] 231/5</p> <p>prosecution [5] 15/15 15/20 19/2 39/22 177/23</p> <p>Prosecutor [3] 1/11 1/13 1/15</p> <p>prosecutors [4] 3/7 28/11 81/19 150/3</p> <p>protocol [37] 49/2 49/21 50/7 51/5 51/15 53/19 54/14 55/1 141/12 141/19 142/8 142/10 143/17 144/3 144/16 145/3 145/9 146/11 146/19 147/8 147/10 148/14 151/2 161/11 166/1 185/23 187/4 187/7 188/11 189/22 190/1 191/12 194/6 194/9 194/12 195/2 195/4</p> <p>protocols [17] 48/5 48/15 48/18 48/21 49/24 51/5 53/7 53/10 53/14 53/18 54/8 54/19 54/24 55/9 147/19 193/24 194/23</p> <p>prove [1] 52/20</p> <p>proved [2] 147/7 194/2</p> <p>proven [1] 17/22</p> <p>provide [2] 51/16 175/19</p> <p>provided [1] 215/11</p> <p>provides [1] 155/18</p> <p>providing [1] 20/20</p> <p>pubic [11] 13/2 13/7 13/9 13/11 13/23 163/9 163/15 163/17 163/19 193/2 193/3</p>	<p>public [1] 44/21</p> <p>publications [2] 44/18 44/19</p> <p>publicity [1] 80/24</p> <p>published [2] 50/4 98/18</p> <p>pulled [2] 181/15 183/10</p> <p>purpose [5] 37/21 38/24 115/19 155/2 218/1</p> <p>purposes [4] 22/17 142/2 155/4 188/3</p> <p>pursuant [1] 212/7</p> <p>pursue [3] 62/11 107/18 173/25</p> <p>pursuing [1] 125/5</p> <p>put [44] 10/12 16/18 25/9 29/25 30/22 31/2 32/5 63/22 66/9 67/22 69/11 70/16 73/9 74/2 74/4 77/19 83/17 87/14 106/8 108/13 111/21 112/6 114/13 124/2 124/25 129/1 142/16 142/23 143/8 152/6 152/8 152/12 159/14 159/16 160/8 167/24 175/12 183/10 184/1 189/13 201/18 204/6 228/25 233/20</p> <p>puts [1] 199/17</p> <p>putting [1] 171/15</p> <p>Q</p> <p>Q-tip [1] 96/19</p> <p>Q-tips [1] 73/12</p> <p>qualified [2] 164/13 217/20</p> <p>quality [10] 6/10 6/24 7/7 47/19 48/22 54/6 118/13 118/17 118/18 118/23</p> <p>quantify [1] 125/8</p> <p>quantitate [1] 124/22</p> <p>quantitation [4] 100/21 125/6 125/10 191/6</p> <p>Quantities [1] 98/22</p> <p>quantity [1] 228/6</p> <p>question [17] 9/21 11/1 13/17 18/18 19/6 36/14 39/17 40/3 40/6 55/5 90/16 112/25 132/7 133/2 192/5 193/16 194/11</p> <p>questionable [1] 215/14</p> <p>questioning [3] 9/24 19/4 170/7</p> <p>questions [15] 77/22 137/8 153/3 154/13 164/20 166/5 169/17 175/16 177/11 178/6 194/18 195/23 212/23 216/6 218/5</p> <p>quick [1] 195/24</p> <p>quicker [1] 82/8</p> <p>quickly [1] 173/19</p> <p>quintillion [1] 25/22</p> <p>quite [2] 52/1 85/17</p> <p>quoted [1] 83/10</p> <p>R</p> <p>rack [4] 124/3 124/6 159/4 159/22</p> <p>raise [2] 198/17 235/18</p> <p>ran [5] 138/21 138/24 142/4 142/18 165/17</p> <p>random [1] 23/17</p> <p>range [1] 121/2</p> <p>rape [2] 14/8 18/4</p> <p>rare [3] 152/3 166/13 192/20</p> <p>rate [2] 131/22 135/5</p> <p>rates [1] 23/10</p> <p>rather [8] 25/8 63/24 67/4 129/14 178/10 179/23 180/19 191/24</p> <p>ratio [1] 161/2</p> <p>RAV [10] 33/1 61/18 70/23 71/10 71/10 73/17 87/17 87/23 90/1 117/9</p> <p>RAV4 [18] 4/19 5/8 204/22 205/3</p>
---	---	---

R		
<p>RAV4... [14] 205/21 208/17 211/12 211/23 220/12 221/23 224/9 224/18 224/23 227/10 229/15 231/12 233/3 233/4</p> <p>Ray [1] 98/10</p> <p>re [6] 142/14 162/5 185/17 185/18 188/8 190/23</p> <p>re-extract [3] 142/14 162/5 190/23</p> <p>re-extracted [2] 185/18 188/8</p> <p>re-extracting [1] 185/17</p> <p>reach [1] 92/6</p> <p>Reachable [1] 92/14</p> <p>reaction [2] 158/7 159/21</p> <p>read [7] 98/9 98/16 101/15 101/16 153/21 206/10 208/7</p> <p>reading [9] 85/14 113/13 125/4 151/5 154/9 216/19 230/3 230/6 230/8</p> <p>ready [2] 40/12 40/21</p> <p>reagent [3] 51/25 51/25 52/7</p> <p>reagents [5] 51/16 124/12 155/7 155/8 160/9</p> <p>real [1] 102/20</p> <p>realize [1] 157/2</p> <p>realized [1] 214/7</p> <p>really [35] 5/2 13/25 17/20 24/15 25/19 36/13 38/21 39/3 42/14 45/6 50/14 51/23 79/6 79/18 80/7 81/8 81/8 81/9 91/22 99/5 99/19 100/3 102/7 102/11 104/18 106/11 113/17 126/25 128/7 132/13 169/3 180/14 182/22 219/15 226/15</p> <p>rear [24] 74/25 87/17 87/22 88/3 88/22 89/4 91/4 91/9 92/8 92/17 220/20 221/23 222/1 224/5 224/23 224/25 224/25 227/10 227/13 227/16 227/21 229/5 229/14 229/16</p> <p>reason [9] 8/5 125/20 170/22 186/16 187/8 231/9 233/11 235/4 237/7</p> <p>reasonable [6] 4/22 20/1 20/7 102/6 211/8 218/6</p> <p>reasons [6] 82/4 143/1 143/3 161/15 195/14 203/1</p> <p>rebuttal [1] 62/7</p> <p>recall [25] 6/7 16/6 18/5 18/6 18/10 21/3 24/20 24/21 35/18 35/19 39/7 43/13 62/3 74/7 74/22 79/5 80/16 80/19 83/11 101/6 101/10 101/21 109/19 141/3 188/20</p> <p>receipt [1] 167/10</p> <p>receipted [1] 176/19</p> <p>receive [1] 7/18</p> <p>received [11] 37/14 41/12 41/16 41/18 42/1 79/13 79/13 89/11 156/2 182/24 214/24</p> <p>recent [1] 105/13</p> <p>recess [4] 62/16 111/11 153/1 198/11</p> <p>recognize [13] 21/17 64/1 87/20 98/14 101/12 157/5 157/18 168/6 168/11 168/19 204/19 204/20 204/21</p> <p>recognizes [2] 141/13 145/16</p> <p>recollection [4] 18/12 61/22 90/13 96/8</p> <p>record [25] 3/5 4/6 29/13 41/1 41/2 41/4 59/5 60/25 63/10 70/12 77/21 78/1 78/5 145/5 168/25</p>	<p>169/9 171/21 177/18 181/12 188/22 198/22 225/21 226/7 226/17 233/21</p> <p>recorded [1] 130/9</p> <p>records [3] 31/23 96/10 132/10</p> <p>recovered [6] 64/19 100/15 105/14 109/17 112/25 117/3</p> <p>recross [6] 169/17 169/19 185/4 185/7 190/20 196/1</p> <p>RECROSS-EXAMINATION [2] 185/7 196/1</p> <p>recruits [2] 201/13 201/14</p> <p>red [2] 179/10 206/21</p> <p>redirect [7] 2/5 133/2 153/3 153/7 176/9 193/11 194/20</p> <p>redo [3] 142/20 162/6 166/9</p> <p>reduce [1] 84/4</p> <p>refer [7] 15/24 36/1 76/12 97/14 112/16 112/24 128/15</p> <p>reference [17] 5/17 10/12 27/4 27/18 27/20 32/15 35/21 39/6 42/15 42/19 42/22 65/20 153/17 186/8 186/10 186/13 196/15</p> <p>referencing [1] 32/21</p> <p>referred [11] 21/11 21/12 35/20 42/6 46/4 105/18 137/12 159/9 161/1 186/15 226/10</p> <p>referring [8] 48/19 80/4 90/2 108/12 122/18 137/7 172/14 192/17</p> <p>refers [5] 37/20 56/8 64/5 98/14 150/19</p> <p>reflect [8] 145/5 168/25 169/10 181/12 220/23 221/19 226/7 226/17</p> <p>reflected [1] 232/9</p> <p>refresh [3] 40/6 90/12 96/7</p> <p>refute [1] 203/4</p> <p>regard [4] 8/6 8/19 70/23 173/18</p> <p>regarding [1] 15/19</p> <p>regions [1] 24/22</p> <p>registered [1] 14/3</p> <p>regular [3] 63/10 68/19 227/12</p> <p>regularly [1] 59/5</p> <p>rejected [1] 202/4</p> <p>relate [3] 43/9 59/17 204/15</p> <p>related [5] 54/2 54/10 127/11 201/2 201/4</p> <p>relating [1] 64/11</p> <p>relationship [1] 226/24</p> <p>relatively [3] 96/4 118/25 236/1</p> <p>release [4] 57/19 58/13 64/10 184/18</p> <p>released [3] 65/2 228/23 231/2</p> <p>releasing [1] 231/3</p> <p>relevance [1] 20/13</p> <p>relevancy [9] 9/11 18/18 18/19 20/10 20/14 58/18 132/21 190/17 190/19</p> <p>relevant [5] 54/11 62/6 62/10 215/8 236/19</p> <p>reliability [1] 52/21</p> <p>reliable [3] 17/21 19/23 50/11</p> <p>relies [1] 152/2</p> <p>rely [4] 149/24 150/1 150/3 150/5</p> <p>remedy [1] 162/6</p> <p>remember [10] 15/22 20/3 45/12 67/19 80/8 83/5 98/11 130/6 164/3 235/17</p> <p>Remiker [6] 60/8 65/8 65/8 65/16 175/13 183/16</p> <p>remind [3] 58/3 197/21 233/12</p> <p>remotely [1] 59/2</p>	<p>remove [2] 139/1 184/7</p> <p>removed [2] 138/20 163/24</p> <p>renew [3] 233/25 234/2 235/1</p> <p>reopened [1] 174/21</p> <p>repeat [2] 11/5 150/12</p> <p>repeated [1] 50/19</p> <p>rephrase [1] 132/7</p> <p>replicate [2] 50/9 50/24</p> <p>report [49] 18/11 43/3 74/9 74/13 75/19 78/13 78/17 98/9 104/9 109/21 110/18 111/9 112/23 114/9 115/5 130/14 142/1 142/11 148/23 148/25 150/7 150/19 150/25 151/5 151/13 151/24 151/25 153/10 153/11 153/12 153/17 153/21 153/25 154/9 162/2 162/2 194/7 194/13 212/7 214/24 215/1 215/1 215/23 215/24 216/20 217/3 217/11 218/15 235/14</p> <p>reported [15] 1/24 42/17 42/18 42/24 143/3 151/19 151/23 160/24 161/25 161/25 162/8 165/23 192/24 197/10 238/6</p> <p>reportedly [3] 64/18 112/25 150/17</p> <p>reporter [5] 1/25 150/12 152/24 238/5 238/19</p> <p>reports [7] 109/7 135/24 148/18 149/5 149/7 149/19 149/22</p> <p>representing [1] 3/11</p> <p>request [13] 66/25 143/25 147/22 148/13 152/8 154/4 166/17 178/7 180/5 185/9 189/16 191/25 212/8</p> <p>requested [10] 111/21 115/24 151/17 151/20 161/9 165/25 166/7 166/11 194/12 198/9</p> <p>requesting [1] 166/13</p> <p>require [6] 45/25 46/12 147/10 229/2 236/7 236/22</p> <p>required [5] 61/8 77/19 77/20 85/21 166/16</p> <p>requirement [1] 200/11</p> <p>requirements [1] 46/11</p> <p>requires [2] 45/24 191/11</p> <p>requiring [1] 215/19</p> <p>reseed [4] 176/20 182/6 183/11 183/24</p> <p>research [2] 44/16 51/21</p> <p>residue [1] 93/18</p> <p>resolved [5] 138/19 155/15 185/12 185/16 185/17</p> <p>resources [1] 83/18</p> <p>respect [2] 19/18 234/6</p> <p>respond [6] 61/17 173/11 173/16 173/19 173/22 200/6</p> <p>responding [1] 235/22</p> <p>response [5] 61/14 61/17 195/24 199/24 200/5</p> <p>responses [1] 213/19</p> <p>responsibilities [3] 47/11 199/15 200/8</p> <p>responsibility [1] 63/20</p> <p>responsible [5] 118/22 165/14 199/17 199/20 199/23</p> <p>result [7] 50/7 51/7 100/2 142/5 149/1 190/14 216/11</p> <p>resulted [4] 12/21 15/5 18/24 166/23</p> <p>results [18] 8/25 9/9 12/25 31/2 50/11 50/13 51/13 79/22 81/21 89/1 106/17 145/10 151/18 153/17 189/18 190/6 190/7 191/6</p> <p>resume [7] 58/1 62/20 111/13</p>

<p>R</p> <p>resume... [4] 152/18 170/6 176/9 214/25</p> <p>retest [4] 143/15 190/24 191/3 191/24</p> <p>retested [2] 52/6 191/12</p> <p>retesting [2] 191/2 191/14</p> <p>retrieve [2] 40/10 40/24</p> <p>return [4] 57/20 58/13 74/5 114/8</p> <p>returned [10] 58/17 58/17 63/3 65/19 75/6 167/6 168/4 175/13 184/19 184/20</p> <p>reveal [1] 187/14</p> <p>review [7] 18/13 53/11 53/11 98/20 135/24 144/12 145/22</p> <p>reviewed [8] 40/11 50/2 50/4 53/22 54/20 144/5 144/6 145/1</p> <p>reviewer [1] 144/25</p> <p>reviewing [1] 53/7</p> <p>reviews [1] 135/24</p> <p>revolves [1] 85/14</p> <p>reworking [1] 155/15</p> <p>rich [1] 101/24</p> <p>Richardson [6] 173/5 173/15 234/2 234/18 236/20 236/21</p> <p>rid [1] 123/16</p> <p>Riddle [5] 72/6 72/6 72/17 72/20 88/5</p> <p>rifle [2] 33/25 115/16</p> <p>right [438]</p> <p>rigorous [1] 47/25</p> <p>rises [1] 51/2</p> <p>risk [2] 86/12 157/6</p> <p>risks [2] 157/10 157/13</p> <p>road [1] 58/18</p> <p>room [7] 66/10 66/12 76/8 119/24 120/15 120/18 120/19</p> <p>root [3] 164/7 164/16 164/24</p> <p>roster [1] 200/1</p> <p>rotate [1] 225/12</p> <p>round [1] 74/2</p> <p>routinely [1] 201/16</p> <p>RPR [2] 1/24 238/19</p> <p>rub [4] 102/2 102/16 103/8 184/7</p> <p>rubbed [1] 96/22</p> <p>rubbing [2] 102/25 103/4</p> <p>rubs [1] 99/6</p> <p>rule [6] 61/24 94/8 94/14 145/17 174/9 188/5</p> <p>ruled [2] 173/14 234/1</p> <p>rules [3] 53/4 141/16 141/19</p> <p>ruling [2] 234/19 234/21</p> <p>run [7] 122/13 122/14 124/2 124/17 128/22 142/14 204/8</p> <p>running [4] 82/6 85/15 140/2 140/4</p> <p>runs [3] 8/14 114/11 114/14</p>	<p>75/16 122/15 126/12 131/9 137/21 147/2 147/20 171/2 175/13 183/17 186/10 186/14 191/9 191/13 197/15 204/16 222/8 229/11</p> <p>sample [60] 5/17 10/13 26/22 26/23 27/4 27/7 27/9 27/18 27/20 27/23 34/19 36/1 36/7 36/14 36/17 41/16 42/16 42/17 42/19 65/20 77/12 77/23 77/24 77/24 77/25 82/16 89/2 94/20 100/20 101/24 124/13 126/8 126/25 137/22 142/18 158/13 159/11 160/23 161/16 161/22 161/24 182/6 183/3 183/9 183/24 185/20 186/8 186/8 186/10 186/12 186/13 186/13 187/24 190/22 192/10 195/7 195/12 195/13 196/17 196/19</p> <p>sampled [1] 183/10</p> <p>samples [44] 27/12 35/17 35/20 35/21 35/23 37/20 37/21 39/1 39/1 39/18 39/19 39/25 41/12 42/1 42/6 42/21 42/22 43/9 62/8 85/15 95/21 121/13 123/7 124/2 124/3 124/10 124/18 125/25 126/21 136/9 136/10 136/23 155/10 159/5 159/11 160/12 162/24 163/7 181/25 182/1 182/11 182/13 185/18 192/8</p> <p>sat [3] 14/9 14/15 15/4</p> <p>satisfied [1] 52/6</p> <p>satisfy [1] 152/7</p> <p>save [1] 97/9</p> <p>saw [9] 65/25 80/17 115/15 205/6 206/5 207/11 217/19 222/9 231/6</p> <p>saying [10] 5/2 5/5 5/7 64/21 72/2 72/3 146/8 175/8 217/17 235/14</p> <p>says [25] 22/4 30/7 30/18 30/21 32/11 32/22 64/14 80/6 98/18 140/7 140/10 141/16 144/17 145/9 145/21 148/25 150/9 150/10 178/24 179/6 181/22 182/14 187/13 187/17 194/7</p> <p>scenario [1] 9/25</p> <p>scenarios [1] 204/7</p> <p>scene [9] 6/21 29/2 43/2 200/15 202/11 202/12 204/9 204/16 213/20</p> <p>scenes [6] 200/6 201/16 213/14 213/20 214/6 228/19</p> <p>school [3] 44/4 46/7 201/17</p> <p>schools [1] 200/9</p> <p>science [15] 16/13 16/16 17/10 19/14 19/15 19/16 19/22 25/17 43/16 44/6 50/22 51/3 199/8 199/12 199/16</p> <p>scientific [10] 4/23 5/24 20/1 20/8 25/8 50/15 157/5 195/11 211/9 218/6</p> <p>scientifically [1] 52/21</p> <p>scientist [3] 44/16 54/5 199/3</p> <p>scientists [5] 9/3 25/13 44/22 50/5 194/22</p> <p>scissors [1] 159/15</p> <p>scope [7] 173/12 173/14 190/20 193/11 193/14 193/17 212/1</p> <p>scotch [13] 172/6 172/14 172/15 172/21 172/23 173/1 175/20 179/20 179/25 180/11 180/12 180/17 180/20</p> <p>screen [15] 30/2 87/14 112/6 113/19 206/14 210/7 210/11 211/5 220/22 221/19 224/15 227/5</p>	<p>229/10 231/21 232/9</p> <p>screened [1] 76/15</p> <p>screw [1] 226/11</p> <p>seal [6] 168/3 172/11 172/25 177/3 183/23 183/25</p> <p>sealed [23] 56/4 60/1 60/2 62/8 64/14 69/15 74/4 75/12 167/25 171/6 171/17 171/18 172/12 172/21 174/25 182/2 182/9 182/10 182/25 183/11 183/22 184/10 184/14</p> <p>sealing [3] 171/15 172/4 172/23</p> <p>seals [2] 184/6 184/9</p> <p>seat [15] 90/22 91/1 91/1 91/2 92/7 92/12 206/21 208/10 208/11 208/12 208/12 209/13 216/2 216/3 222/1</p> <p>seated [11] 4/5 37/7 41/8 58/6 111/8 152/20 170/14 176/8 198/21 220/7 233/16</p> <p>second [8] 109/21 134/2 140/4 165/8 166/19 204/23 215/25 216/1</p> <p>section [3] 48/21 80/22 145/8</p> <p>sections [5] 48/19 48/20 54/18 79/22 83/21</p> <p>security [1] 55/15</p> <p>seeing [3] 80/16 93/24 204/3</p> <p>seeking [1] 237/13</p> <p>seem [1] 42/10</p> <p>seems [3] 39/5 49/11 232/14</p> <p>seen [5] 119/5 154/9 204/12 219/11 228/19</p> <p>semen [1] 80/5</p> <p>send [5] 38/2 38/6 57/14 63/8 78/7</p> <p>seniority [1] 46/18</p> <p>sensitive [5] 38/22 156/23 156/24 158/5 158/24</p> <p>sensitivity [1] 105/5</p> <p>sent [21] 26/18 37/18 53/21 59/12 60/7 60/25 77/12 78/6 82/5 107/25 108/6 110/15 112/3 115/1 167/23 170/24 171/2 174/6 176/15 184/11 184/16</p> <p>sentence [4] 150/8 150/20 216/1 216/11</p> <p>separate [6] 32/18 68/24 68/24 69/2 126/16 159/6</p> <p>September [13] 14/25 65/2 65/19 133/9 133/12 133/18 134/2 134/2 134/7 134/25 137/25 184/19 184/20</p> <p>September 14th [1] 134/2</p> <p>September 25 [2] 184/19 184/20</p> <p>September 6 [1] 137/25</p> <p>September 6th [1] 134/2</p> <p>sequence [1] 122/16</p> <p>sequentially [1] 111/25</p> <p>Sergeant [1] 218/23</p> <p>series [1] 4/17</p> <p>serologist [1] 23/21</p> <p>set [10] 6/10 53/14 121/13 121/14 122/9 123/10 124/3 124/9 124/25 159/1</p> <p>seven [5] 110/18 130/17 134/5 134/6 134/18</p> <p>several [12] 48/10 69/13 69/18 77/22 90/3 90/21 108/11 109/10 109/10 133/23 155/4 185/17</p> <p>sex [2] 36/9 36/10</p> <p>sexual [1] 36/8</p> <p>shaft [1] 164/6</p> <p>shape [1] 205/17</p> <p>shaped [2] 67/25 222/24</p>
<p>S</p> <p>S-t-a-h-l-k-e [1] 198/24</p> <p>said [37] 9/2 12/5 14/20 21/1 24/24 56/4 57/5 59/20 60/22 73/1 80/7 84/17 88/8 88/22 97/1 98/6 101/1 103/2 107/17 110/10 119/20 130/2 130/23 133/20 142/9 152/22 185/10 185/11 185/15 188/7 188/24 189/16 194/13 196/11 200/7 237/16 238/13</p> <p>saliva [1] 99/16</p> <p>same [33] 23/12 42/20 48/23 49/6 49/8 50/6 50/7 50/10 51/12 53/4 69/11 69/19 70/3 71/23 75/13</p>		

S		
<p>shed [3] 103/9 104/22 202/13 shedder [1] 104/19 shedding [1] 99/25 sheds [1] 104/19 sheets [2] 133/15 134/22 shelves [5] 67/17 68/6 68/14 68/24 69/1 shelving [2] 67/19 68/5 sheriff's [14] 45/9 59/13 59/23 60/2 61/1 61/3 62/9 65/5 65/10 65/21 167/7 170/24 174/7 184/12 SHERRY [3] 2/3 4/2 4/7 shift [1] 232/17 shirt [2] 18/3 18/7 shootings [1] 116/12 shoots [1] 116/16 short [1] 23/5 shortage [1] 84/8 shorthand [1] 238/10 shot [2] 165/5 166/9 should [18] 22/5 22/25 32/10 54/7 58/22 58/23 72/18 78/9 131/2 142/8 145/5 172/2 174/10 181/4 181/12 233/24 234/4 234/12 shouldn't [2] 13/23 186/25 show [24] 7/14 37/14 62/7 64/22 87/9 101/11 104/20 112/4 114/13 125/17 126/15 126/17 143/21 171/7 173/22 174/21 174/24 191/6 204/17 220/19 223/10 225/19 226/1 230/19 showed [4] 21/4 90/18 107/13 154/24 showing [10] 29/9 31/19 60/6 63/5 78/4 88/21 112/8 148/21 190/6 225/19 shown [5] 127/20 206/13 211/5 224/14 231/21 shows [9] 44/15 59/7 59/10 84/25 87/22 134/14 142/5 223/3 227/9 shred [1] 117/22 sic [2] 99/15 170/9 side [12] 64/2 68/1 91/5 114/11 172/11 178/18 180/18 208/11 220/20 221/25 227/12 232/20 sides [2] 96/22 198/1 sign [3] 135/17 144/11 146/7 signature [4] 65/13 80/12 80/14 146/5 signed [6] 65/5 80/17 149/9 176/18 183/2 183/15 signing [2] 65/7 149/15 similar [5] 11/14 11/14 16/25 18/8 140/13 similarly [2] 8/18 154/23 Simple [1] 61/9 simply [12] 38/23 91/20 92/18 92/23 116/22 139/20 161/20 185/19 191/12 212/13 215/15 235/21 since [13] 44/12 122/3 130/4 144/22 148/7 162/23 163/2 169/3 175/1 217/22 230/9 233/10 234/14 single [6] 143/8 162/16 164/16 165/11 165/14 195/13 singly [1] 124/24 sinister [1] 114/4 sink [1] 108/14 sir [6] 18/14 18/16 118/3 122/17 144/19 153/6 sit [1] 160/13</p>	<p>sits [1] 82/16 sitting [5] 75/11 82/14 87/4 124/5 217/5 situated [1] 8/18 situation [9] 36/5 148/17 151/18 155/12 161/14 162/7 194/24 194/25 195/3 situations [2] 145/16 145/23 six [5] 89/20 91/16 91/25 113/10 229/23 size [1] 124/1 sizes [1] 124/4 skin [5] 98/22 99/2 99/17 99/19 164/8 slender [1] 229/23 slide [3] 64/24 88/20 165/4 slides [3] 21/2 25/25 163/23 slip [1] 163/25 slit [2] 171/25 181/3 sloppy [1] 6/20 slough [1] 99/18 small [7] 97/20 118/25 156/25 158/9 158/21 158/24 179/20 smear [1] 150/17 smudge [1] 94/9 snow [1] 3/16 so-called [2] 16/12 19/14 soaked [1] 114/23 soil [1] 158/12 Solid [1] 68/20 somebody [20] 9/17 10/2 10/9 12/2 23/18 29/18 36/2 58/20 84/18 92/20 99/6 103/15 103/17 113/21 138/15 141/21 146/20 186/17 187/2 188/11 somehow [8] 15/20 52/13 127/11 129/16 129/19 137/15 185/16 235/18 someone [25] 5/19 22/25 24/7 24/12 26/3 27/4 36/8 49/15 50/17 70/7 71/24 78/18 91/23 103/8 104/18 116/16 121/3 141/7 155/17 176/1 184/6 186/7 212/17 219/18 220/13 someone's [1] 36/6 something [55] 17/15 21/9 29/12 29/15 36/1 42/25 43/8 49/19 51/2 52/4 52/10 66/22 72/17 72/20 77/8 78/14 79/14 82/9 85/10 88/9 96/1 97/19 97/21 99/8 99/13 99/14 99/20 100/7 101/5 104/20 110/12 120/25 123/2 123/21 123/22 125/22 126/5 129/8 129/20 137/9 151/8 151/15 152/3 155/9 171/15 181/7 181/15 185/6 186/18 186/25 212/24 215/11 215/18 217/8 217/22 sometime [1] 93/8 sometimes [15] 12/16 35/13 51/1 51/11 70/19 79/25 79/25 85/11 93/24 129/11 129/14 153/16 182/15 182/16 194/25 somewhere [5] 60/2 62/9 67/3 100/16 100/16 soon [1] 14/24 sorry [19] 11/5 64/3 74/12 74/16 124/22 133/25 134/11 136/20 139/13 140/4 141/11 147/14 150/7 150/13 175/11 184/17 210/6 227/8 237/18 sort [18] 9/4 22/1 22/23 23/8 36/13 36/16 36/18 46/14 66/9 67/11 84/22 94/10 106/9 114/14</p>	<p>121/17 123/25 165/5 178/24 sought [1] 237/8 sound [1] 83/4 Sounds [1] 181/10 source [30] 4/24 5/3 13/2 13/14 36/3 60/24 60/24 94/8 94/15 102/20 106/12 126/14 140/16 161/18 162/16 173/21 186/11 195/8 195/13 208/5 209/25 212/11 212/14 216/9 216/12 216/15 218/11 218/11 225/20 235/19 sources [3] 101/24 106/15 173/23 south [1] 114/15 space [5] 67/21 69/8 87/5 121/6 136/9 spatter [1] 116/18 speak [1] 54/17 speaking [1] 44/21 speaks [1] 215/23 Special [4] 1/11 1/13 1/15 3/7 specialist [3] 57/8 65/25 75/8 specialists [2] 56/2 66/20 specialized [1] 200/9 specific [8] 10/1 17/23 38/25 49/2 80/8 106/17 141/16 203/23 specifically [5] 54/9 137/1 185/24 187/17 198/9 specimen [1] 188/2 specimens [1] 187/22 speculation [6] 9/22 11/19 154/14 166/2 234/5 235/6 speculative [2] 53/24 211/14 spell [2] 4/6 198/22 spelled [1] 198/24 spend [1] 47/12 spent [1] 47/14 sperm [1] 80/4 spindle [1] 109/13 spiral [1] 21/4 spitting [1] 197/2 split [1] 183/9 spread [1] 131/2 ss [1] 238/1 STAHLKE [13] 2/7 198/15 198/18 198/23 198/23 199/2 206/6 213/3 214/25 219/25 220/11 225/21 226/8 Stahlke's [1] 215/24 stain [47] 71/18 72/14 92/16 97/24 108/8 112/25 201/21 206/21 207/4 207/7 207/8 207/9 207/13 207/15 207/16 207/22 208/2 208/3 209/6 209/12 209/21 209/24 210/15 210/16 216/7 216/7 217/1 218/16 221/7 222/15 222/16 222/17 222/19 223/20 223/20 224/1 225/10 225/16 225/23 225/24 225/24 226/4 226/6 226/9 228/10 232/1 232/22 stained [2] 210/24 224/2 staining [1] 225/12 stains [78] 4/18 4/24 5/4 5/6 70/24 71/3 89/21 90/3 90/10 90/14 90/15 90/17 91/9 91/16 91/25 92/7 92/22 95/4 108/6 109/17 109/19 112/3 112/17 116/22 200/4 200/24 200/25 203/2 203/15 203/16 203/19 204/4 204/13 205/14 205/22 206/5 207/11 209/4 213/8 213/15 213/21 213/24 214/9 214/13 216/1 216/11 222/2 222/3 222/9 222/11 222/13 222/16 223/17 223/18 224/4 225/4 225/5</p>

S	<p>study [5] 24/4 98/10 98/14 101/11 101/12</p> <p>studying [1] 99/24</p> <p>subject [7] 40/1 59/16 60/4 201/10 214/16 215/19 234/12</p> <p>subjective [1] 19/20</p> <p>subjects [1] 201/1</p> <p>submissions [2] 83/20 84/5</p> <p>submit [3] 55/1 57/16 182/21</p> <p>submits [1] 55/22</p> <p>submitted [9] 39/21 42/13 42/18 54/14 64/6 112/19 113/8 153/13 163/10</p> <p>submitting [3] 57/15 60/8 167/23</p> <p>subsection [1] 49/10</p> <p>substrates [1] 158/12</p> <p>success [1] 164/25</p> <p>such [12] 6/20 10/20 17/20 40/3 103/9 128/23 158/11 158/21 205/9 212/13 229/4 234/11</p> <p>Sue [1] 66/1</p> <p>suggest [1] 175/15</p> <p>suggesting [1] 40/7</p> <p>suggests [2] 215/1 218/15</p> <p>suicide [1] 203/8</p> <p>supervision [1] 86/17</p> <p>supervisor [8] 12/16 135/24 144/7 144/19 145/2 145/25 146/4 149/13</p> <p>supervisor's [1] 80/11</p> <p>supervisors [3] 66/21 78/15 129/11</p> <p>supported [1] 151/20</p> <p>suppose [2] 77/18 219/2</p> <p>supposed [4] 123/5 125/14 125/16 125/17</p> <p>surface [23] 107/5 207/18 207/20 207/21 208/5 208/22 209/5 210/2 210/18 210/23 210/24 212/12 213/1 213/10 213/13 222/15 222/22 223/2 223/24 225/18 226/3 226/4 228/7</p> <p>surfaces [1] 216/13</p> <p>surgeons [1] 120/10</p> <p>surprising [2] 174/4 174/14</p> <p>surrounded [1] 86/4</p> <p>suspect [27] 8/9 8/13 8/19 9/19 10/4 10/13 11/15 22/7 26/22 27/1 27/5 28/7 28/13 28/15 28/16 28/17 36/20 43/10 60/5 82/4 127/10 138/23 139/3 185/21 186/20 193/7 193/16</p> <p>suspect's [1] 163/17</p> <p>suspects [1] 42/12</p> <p>sustain [9] 9/14 9/23 19/8 54/1 169/15 193/17 197/14 211/16 219/16</p> <p>sustained [9] 10/8 20/11 55/6 132/6 154/15 167/1 190/4 192/6 195/21</p> <p>sustaining [2] 54/11 190/18</p> <p>swab [36] 32/11 32/23 33/6 61/11 65/20 72/14 72/18 88/14 88/17 93/1 93/2 93/14 93/20 94/6 94/18 96/19 97/1 97/4 97/6 97/8 100/15 101/20 101/23 102/1 103/4 103/13 104/6 106/6 159/14 167/5 167/16 173/9 183/13 183/21 184/7 237/8</p> <p>swabbed [5] 5/13 33/15 33/20 34/11 116/6</p> <p>swabbing [2] 138/3 160/7</p> <p>swabbings [1] 160/12</p> <p>swabs [45] 32/11 59/8 59/11 59/21 60/14 60/18 64/18 71/3 71/18</p>	<p>71/18 71/22 72/1 72/25 73/11 73/16 74/24 89/11 95/4 95/9 101/7 107/2 112/11 112/14 112/19 113/14 113/16 115/3 115/4 115/6 115/10 115/17 168/5 170/24 171/1 174/18 183/5 183/7 183/10 183/10 183/20 234/8 234/9 234/15 234/22 236/17</p> <p>swipe [4] 216/8 225/16 225/19 226/22</p> <p>switch [3] 211/12 216/4 218/9</p> <p>switched [1] 136/24</p> <p>switches [3] 105/15 105/16 110/1</p> <p>switching [2] 60/12 60/15</p> <p>sworn [2] 4/3 198/19</p> <p>system [5] 138/16 138/25 139/2 176/18 182/12</p> <p>systemic [1] 155/6</p>
		T
		<p>T-shaped [1] 67/25</p> <p>T-shirt [2] 18/3 18/7</p> <p>table [3] 105/17 121/21 177/23</p> <p>tag [2] 113/5 113/6</p> <p>tailgate [1] 88/2</p> <p>take [45] 10/9 10/18 10/22 11/7 16/17 18/13 39/11 40/5 46/7 51/1 51/10 51/23 52/1 53/12 66/9 67/2 67/7 67/8 70/14 72/1 72/18 73/5 76/18 77/8 87/10 88/9 90/12 98/9 98/13 102/1 111/4 112/5 119/1 122/11 129/23 130/12 132/15 152/17 152/24 167/9 170/15 177/23 197/19 206/9 214/16</p> <p>taken [17] 11/14 39/25 62/16 93/7 111/11 112/11 113/16 115/17 129/3 153/1 198/11 214/6 215/7 216/17 217/24 237/11 238/9</p> <p>takes [3] 7/9 84/17 159/21</p> <p>taking [2] 157/1 180/20</p> <p>talk [22] 23/22 26/6 28/10 43/12 45/5 47/19 55/20 76/24 84/20 87/7 90/17 104/9 106/17 118/1 123/15 133/21 135/9 137/18 143/5 144/22 145/2 148/21</p> <p>talked [11] 6/5 20/16 21/8 24/14 47/21 59/7 118/9 145/1 189/9 192/7 193/14</p> <p>talking [23] 21/16 37/9 38/14 38/15 62/24 68/15 83/6 83/6 83/9 89/23 90/14 97/20 99/17 111/18 124/14 125/14 137/17 148/4 158/8 160/17 196/7 196/18 197/2</p> <p>talks [3] 98/25 145/12 187/14</p> <p>tall [1] 23/5</p> <p>tampered [4] 7/13 171/8 184/3 184/25</p> <p>tampering [1] 7/8</p> <p>tape [27] 168/1 168/1 168/2 168/22 172/1 172/4 172/6 172/13 172/14 172/15 172/21 172/23 173/1 175/20 176/21 178/24 178/24 179/6 179/7 179/20 179/25 180/9 180/12 180/13 180/17 180/20 183/12</p> <p>taught [2] 201/1 201/11</p> <p>teaching [1] 44/21</p> <p>team [1] 200/5</p> <p>tears [1] 99/7</p> <p>technical [9] 45/19 46/22 78/24 135/18 144/6 144/8 144/23 144/24 145/24</p> <p>technician [1] 199/19</p>

T	49/17 50/10 55/13 68/10 70/19 73/25 74/2 77/8 82/7 82/12 85/23 86/5 90/18 94/2 101/3 103/19 106/19 117/20 119/21 128/22 141/14 141/24 143/6 148/9 152/12 186/17 190/14 194/8 203/23 204/10 Thank [15] 4/11 41/10 62/12 62/15 62/21 111/10 111/15 146/10 152/16 153/6 185/2 197/17 226/25 233/7 237/19 the buccal [1] 174/18 their [20] 3/5 25/13 48/21 58/25 60/1 60/15 61/6 61/8 85/5 85/13 85/15 99/6 121/3 129/11 198/2 214/6 214/6 220/14 235/10 235/11 theories [3] 99/1 99/4 235/10 theory [8] 16/16 16/23 43/8 50/18 50/19 50/23 60/16 98/21 there's [77] 7/8 7/21 23/19 30/12 30/18 36/13 38/2 39/24 48/8 48/12 49/14 49/21 59/19 65/12 67/1 67/19 67/25 68/5 68/6 68/24 69/1 69/1 71/10 79/25 81/25 88/9 91/6 97/10 99/4 100/6 101/25 102/7 102/8 102/11 104/13 104/14 104/17 105/17 120/8 122/3 123/25 124/19 125/4 125/22 126/5 129/2 129/7 130/24 131/1 132/17 133/17 133/18 134/11 137/9 137/18 158/15 170/9 172/5 178/23 179/19 182/18 182/18 182/20 185/5 185/24 186/24 186/24 188/22 203/14 208/9 218/14 223/23 225/11 232/15 232/16 236/4 237/11 thereafter [1] 238/11 therefore [1] 191/19 these [82] 5/21 13/10 25/5 25/7 25/22 30/25 33/11 48/3 49/17 49/24 52/9 52/9 53/21 56/6 59/25 62/8 68/3 68/14 68/14 70/5 71/3 72/25 73/11 79/22 81/21 81/21 84/1 84/1 85/21 87/14 87/15 120/4 122/8 124/2 124/8 126/1 126/21 127/16 128/1 128/22 131/20 133/15 134/22 135/9 135/23 141/14 141/24 143/6 149/5 149/7 149/19 149/22 156/20 158/7 163/19 163/22 171/1 174/21 181/23 182/13 182/16 184/15 186/17 204/3 204/10 204/11 204/12 209/2 216/11 222/11 222/13 223/17 224/4 225/15 225/22 227/24 228/3 228/5 228/11 228/19 228/21 229/2 they're [2] 73/12 121/2 thick [1] 207/8 thicker [4] 207/8 207/15 207/18 223/5 thin [1] 180/10 thing [19] 9/4 15/8 21/4 23/12 30/11 35/9 46/18 76/18 121/17 125/2 125/2 146/12 179/15 191/9 192/9 205/6 205/8 223/21 236/13 things [15] 14/13 14/20 25/7 33/10 43/15 70/19 76/17 98/25 105/23 109/13 117/16 120/8 120/8 158/12 203/3 think [59] 6/6 9/12 9/15 18/2 18/25 21/3 24/19 25/7 26/8 29/2 40/1 40/6 40/9 53/22 54/2 54/4 54/6 54/9 57/25 58/23 62/5 62/9	66/1 94/23 97/1 99/5 127/23 132/22 133/1 141/12 155/24 164/19 166/4 170/8 172/3 173/4 174/11 177/16 178/1 180/6 192/8 197/25 198/7 204/8 211/17 211/19 213/1 215/9 215/22 216/19 217/8 217/11 219/7 219/8 219/14 226/21 236/8 237/2 237/10 thinking [1] 38/5 third [2] 130/18 203/17 THOMAS [1] 1/13 thoroughly [1] 113/24 those [96] 5/4 13/14 16/7 17/15 17/18 20/20 22/9 23/8 24/3 24/22 24/25 25/24 27/2 27/12 30/3 31/22 33/17 35/6 39/2 39/9 41/3 42/1 42/6 42/11 42/21 43/9 46/11 51/10 53/8 53/10 66/16 67/13 69/3 71/17 72/11 74/1 74/24 75/4 77/15 81/11 83/10 89/25 90/10 90/13 91/16 91/25 92/22 95/9 95/15 101/24 108/17 110/8 112/10 112/14 113/6 113/10 114/23 115/9 121/12 121/14 121/19 129/5 129/6 131/9 132/1 141/19 145/23 148/18 151/12 155/19 168/23 183/20 195/14 199/21 199/22 200/4 200/25 201/7 203/2 203/3 204/16 207/12 213/19 213/23 214/3 214/9 214/12 216/13 222/21 223/16 227/18 228/16 229/20 233/3 234/15 234/15 those buccal [1] 183/20 though [12] 14/13 31/25 34/16 43/19 72/15 89/20 99/22 108/8 115/13 131/6 158/14 158/23 thought [8] 39/23 72/18 97/13 114/21 133/20 174/5 178/7 230/12 thousand [1] 101/9 thousands [1] 35/13 three [16] 4/25 27/12 42/11 45/12 56/2 57/5 83/20 112/11 115/6 130/19 146/16 159/5 159/6 203/14 206/5 212/24 threshold [9] 220/21 224/9 224/18 224/20 225/1 225/3 225/3 226/10 226/12 through [36] 7/6 51/20 56/16 56/20 62/25 63/1 72/13 72/21 98/22 99/15 107/20 113/3 121/8 122/15 122/23 123/1 123/5 123/11 123/14 123/20 124/2 124/6 124/18 125/16 127/4 127/14 128/22 137/15 138/22 138/24 141/24 151/12 165/17 185/10 204/15 221/24 throughout [4] 90/4 90/14 141/10 209/4 throw [1] 120/14 thumb [1] 219/1 tie [1] 61/2 time [65] 3/1 3/14 3/19 9/11 12/16 13/3 14/6 18/17 19/5 19/24 27/10 32/12 36/7 37/1 40/18 45/3 46/2 46/2 46/12 47/13 51/14 57/25 62/12 62/18 63/16 69/19 79/18 81/20 83/13 84/17 105/21 110/24 111/4 122/15 131/12 131/13 131/15 131/16 131/17 131/21 135/2 136/9 137/3 142/16 142/24 146/18 146/23 150/25 152/18 156/2 163/2 163/14 183/23 188/7 189/21 197/20 198/12 202/13
----------	--	---

T
time... [7] 214/16 215/9 217/6
 219/12 233/21 235/12 237/3
times [5] 127/24 129/19 202/2
 202/3 214/5
timing [1] 211/15
tip [1] 96/19
tips [1] 73/12
title [2] 45/19 98/20
today [16] 3/16 19/20 19/22 35/17
 37/5 168/5 173/8 184/24 198/5
 219/22 219/24 233/12 235/5
 236/16 237/6 237/14
together [6] 16/21 25/19 69/17
 75/13 108/13 124/23
told [10] 30/25 31/6 31/9 42/25
 88/20 93/1 100/14 131/18 142/10
 148/10
Tom [1] 3/8
tomorrow [5] 219/25 233/14
 233/18 237/17 237/21
took [19] 40/5 60/18 70/24 71/17
 71/22 71/24 72/3 72/15 72/25
 73/16 96/19 114/18 142/17 163/25
 180/23 182/5 183/3 183/9 183/24
toothbrush [4] 102/16 102/22
 102/23 103/1
toothbrushes [1] 102/20
top [11] 29/23 96/23 159/22 179/5
 179/18 183/1 183/4 183/9 187/9
 224/24 226/9
topic [1] 54/10
tore [1] 114/19
torn [1] 181/2
total [5] 100/24 133/10 133/19
 134/23 134/24
totally [2] 18/23 85/18
touch [10] 21/15 71/15 99/2 99/9
 99/12 99/14 99/19 99/20 100/7
 104/20
touched [4] 97/15 97/25 98/1 98/3
touches [2] 98/2 104/10
touching [1] 100/4
toward [1] 228/9
Toyota [4] 32/15 62/3 71/10
 221/23
trace [11] 49/10 49/11 94/16 96/1
 96/3 97/19 98/4 98/20 98/22
 158/6 235/16
track [2] 188/18 195/9
Traditionally [1] 164/17
train [3] 84/15 84/18 84/24
trained [2] 47/10 84/20
trainee [1] 86/14
trainee's [1] 87/3
trainees [4] 85/16 85/22 87/4
 137/6
trainers [1] 199/22
training [16] 47/1 47/8 47/9 47/11
 47/13 85/5 85/8 85/13 85/17
 85/21 159/25 196/7 199/8 199/16
 199/24 200/22
trans [1] 200/6
transcribed [1] 238/11
transcript [4] 1/23 18/15 238/8
 238/12
transcription [1] 238/11
transfer [40] 98/21 99/5 99/11
 102/2 102/8 102/9 102/17 203/18
 207/9 207/14 207/16 208/1 208/3
 208/3 209/22 209/23 210/16
 210/21 211/18 212/10 213/1 213/5

213/6 213/7 213/15 214/13 216/1
 216/7 222/3 222/13 222/17 223/7
 223/18 224/3 225/4 225/11 225/13
 225/15 226/6 226/19
transferred [4] 43/25 97/21 210/23
 213/12
transferring [6] 99/15 100/3 100/5
 102/24 222/21 223/1
transfers [2] 99/2 212/25
transmittal [1] 169/25
treated [1] 187/4
trial [14] 1/4 1/4 3/4 15/15 15/17
 18/1 19/2 38/15 41/4 173/4
 234/13 234/14 235/20 237/17
tried [4] 18/22 113/15 173/3
 235/17
trigger [6] 33/6 34/8 34/9 34/9
 115/25 116/6
tripled [2] 82/23 83/15
trouble [1] 9/7
troubleshoot [3] 155/5 155/11
 155/19
true [11] 6/19 7/2 51/5 52/23 53/1
 86/23 131/6 131/11 132/8 147/3
 238/12
trust [3] 7/23 8/1 52/18
try [23] 30/22 44/13 50/6 69/16
 69/18 69/22 69/23 86/7 97/8 98/8
 119/1 119/9 119/23 119/23 119/24
 122/5 136/8 142/14 155/20 189/13
 204/6 218/16 235/14
trying [6] 36/2 36/20 70/12 84/13
 86/8 217/18
tube [11] 73/1 124/3 124/10
 124/11 159/4 159/9 159/15 159/17
 159/22 160/9 160/10
tubes [3] 159/6 195/10 196/5
tune [1] 144/24
turn [9] 95/25 105/2 135/10
 137/24 139/5 140/18 148/18
 154/20 170/4
turned [2] 154/24 183/15
turning [1] 38/20
Twenty [1] 146/16
Twenty-three [1] 146/16
Twice [2] 77/10 77/11
two [46] 4/24 16/17 16/20 21/19
 21/21 21/23 22/5 22/6 22/6 27/4
 43/19 43/23 45/12 68/2 68/24
 68/24 69/1 69/2 69/3 83/15 87/4
 87/4 91/21 92/23 112/10 117/5
 117/7 121/12 121/25 123/7 132/9
 132/9 134/6 134/18 134/18 136/3
 139/5 144/5 156/10 160/13 164/10
 180/18 200/18 207/10 215/1
 232/17
tying [2] 215/3 216/9
type [35] 16/12 23/12 23/12 23/13
 23/23 24/1 48/9 48/11 116/12
 126/12 126/13 129/1 156/18
 157/10 157/14 161/2 164/4 165/1
 195/11 202/22 203/18 207/13
 207/15 209/20 210/15 216/8 221/5
 221/13 223/20 227/11 228/12
 231/15 234/6 235/11 236/21
types [14] 22/22 77/19 77/21 78/1
 78/8 78/9 153/15 153/16 156/20
 202/8 203/10 204/4 204/5 204/12
typically [4] 101/19 205/10 205/13
 206/3
Tyson [1] 218/23

U
ultimately [4] 5/13 23/5 77/1
 200/17
Um [1] 119/16
unable [1] 139/10
unanalyzed [1] 82/16
unavoidable [1] 156/21
unbiased [1] 18/23
under [7] 16/19 84/22 86/17
 173/15 173/16 212/1 215/23
undergraduate [1] 44/1
underneath [2] 16/18 68/6
understand [13] 16/3 16/9 19/3
 22/11 26/9 60/11 100/6 112/22
 147/5 175/7 175/10 180/4 196/3
understanding [12] 19/16 36/19
 38/25 42/9 54/7 58/24 82/20
 82/21 114/17 114/20 117/7 117/10
understood [1] 59/14
undetermined [1] 197/11
unexplainable [1] 139/21
unintentional [2] 6/6 6/19
unique [1] 25/9
unit [12] 45/19 80/22 83/24
 118/19 118/20 118/23 135/18
 144/6 144/8 146/2 149/13 151/13
Unit's [1] 82/22
unknown [2] 27/10 140/16
unless [2] 22/1 164/23
unlikely [1] 27/6
unreasonable [1] 102/5
unrecognizable [1] 161/5
unseal [1] 76/21
unsealed [1] 181/14
unstained [10] 207/21 208/5 210/1
 210/18 210/24 213/10 213/13
 222/14 223/2 225/18
until [7] 50/18 52/5 52/5 75/4
 105/24 138/21 148/15
unusual [7] 95/11 114/4 146/11
 160/5 160/11 165/4 192/20
unwound [1] 21/5
upon [2] 224/4 234/1
usable [1] 33/21
use [30] 19/19 19/22 29/15 37/22
 38/23 51/17 51/25 52/4 54/20
 97/9 120/14 120/17 120/24 121/12
 121/19 122/4 155/4 158/7 167/14
 168/22 180/17 181/6 182/16 184/7
 186/16 204/5 209/1 225/2 227/24
 235/16
used [21] 6/6 19/5 24/19 35/16
 35/17 58/12 59/11 63/10 97/5
 97/5 104/3 149/22 167/15 173/10
 174/19 174/22 181/25 182/14
 190/22 202/22 235/17
useful [1] 156/24
User's [1] 44/25
using [9] 24/21 26/15 38/24 48/5
 153/15 157/10 161/17 190/14
 203/5
usual [3] 52/14 86/4 97/21
usually [9] 27/19 38/22 55/22
 68/12 94/2 142/13 153/12 158/15
 168/2
UV [1] 158/11
UW [1] 46/9

V
vague [1] 11/1
valid [2] 50/11 52/7
validated [1] 54/21

V

validation [6] 45/1 45/5 51/18
51/20 54/22 157/20
validity [2] 19/7 52/20
valuable [1] 214/8
value [1] 189/3
vanity [1] 108/14
variable [3] 24/19 24/22 25/11
varies [1] 47/8
variety [2] 223/18 226/19
various [2] 41/13 48/8
Varriale [3] 149/11 174/3 181/23
vary [1] 25/12
vehicle [31] 5/20 5/25 89/4 89/8
91/10 91/21 91/24 92/21 205/5
205/7 205/9 205/10 205/25 206/2
207/6 208/11 209/9 217/6 222/12
225/1 227/13 228/25 229/6 230/2
230/4 230/13 231/2 231/4 231/24
232/1 232/13
vehicles [1] 152/14
verifies [1] 57/10
verify [1] 53/17
very [42] 9/18 9/18 30/11 37/1
41/5 43/6 50/10 53/6 53/24 84/4
94/16 94/23 94/23 102/9 102/13
102/21 104/17 116/17 118/25
121/14 136/13 137/12 139/23
140/7 146/14 149/5 156/24 158/9
158/13 158/21 158/21 158/23
158/24 166/13 169/4 172/7 174/4
187/6 187/13 193/8 193/8 204/1
vial [10] 59/1 59/2 60/17 61/9
61/23 61/25 167/11 173/7 234/23
236/13
victim [12] 13/23 18/9 27/1 34/2
77/25 80/5 114/22 163/17 202/14
202/15 202/17 202/25
victim's [4] 13/8 28/13 33/3 193/3
victims [1] 204/6
view [7] 38/20 205/21 206/19
221/24 222/8 222/8 229/14
visible [5] 93/13 94/13 96/15
97/15 106/2
visibly [1] 93/24
visual [1] 93/21
vitae [1] 43/14
voir [1] 170/5
volatile [2] 49/11 49/18
volume [5] 96/11 100/23 101/18
102/12 228/6
volunteer [1] 8/13
VWA [1] 26/4

W

W05 [2] 136/14 136/20
W05-140 [1] 136/20
W05-1876 [1] 136/14
W06 [1] 135/14
W06-1209 [1] 135/14
wait [1] 220/4
waived [1] 38/19
waiver [2] 46/5 46/7
walk [1] 205/12
want [38] 4/16 13/5 16/3 39/3
39/19 40/24 43/14 48/3 50/9 50/9
63/18 70/11 81/23 82/4 82/14
88/3 88/9 90/5 90/12 94/20 108/7
110/24 118/1 122/11 129/23
132/16 132/17 144/2 169/14
170/18 172/20 174/20 178/8 181/6
217/4 225/11 228/1 235/25

wanted [5] 10/3 10/9 177/17 192/2
237/15
wants [2] 31/1 32/23
warrant [2] 195/1 195/3
washed [3] 106/10 160/9 163/25
wasn't [7] 34/23 85/18 94/13
138/21 139/13 141/9 216/23
waste [1] 94/20
watch [1] 160/14
watched [1] 86/21
watching [1] 87/5
water [2] 96/20 208/12
wave [1] 222/19
wavy [1] 222/24
way [45] 5/8 5/12 7/6 10/4 19/1
19/11 20/18 35/4 37/12 42/20
46/15 49/6 49/8 55/12 56/16
56/20 56/20 71/5 84/20 96/22
99/10 100/5 102/7 102/11 104/6
104/17 105/8 113/3 113/18 117/14
123/20 128/16 144/3 144/15 155/9
162/10 178/10 179/6 180/1 184/1
184/4 184/25 189/10 189/10
189/12
ways [1] 103/7
we [188] 3/12 3/15 3/20 8/1 8/5
16/9 19/19 19/22 22/9 24/6 24/24
25/1 25/3 25/3 25/7 26/10 26/25
27/1 29/25 31/16 32/10 36/16
37/9 38/1 38/3 39/9 39/12 39/20
40/12 44/25 47/9 47/12 48/22
51/17 51/19 51/21 52/17 53/3
54/20 56/2 58/15 58/23 59/25
60/12 60/21 61/2 61/2 61/16
62/10 62/24 63/7 63/8 64/25
65/25 66/25 67/2 67/21 67/22
67/22 69/13 69/18 69/18 77/4
77/4 77/25 78/6 90/14 97/14
106/18 110/10 112/9 115/15
117/15 118/9 120/17 120/17
120/18 120/23 121/12 121/12
121/14 122/9 122/17 123/7 123/8
123/10 123/11 124/3 124/21
124/22 124/24 124/24 125/11
125/12 126/15 126/23 128/1
128/13 131/20 135/9 138/16
138/17 138/24 148/5 148/16
153/13 153/14 153/18 155/4 155/7
155/9 155/14 155/19 158/7 163/10
164/6 164/24 168/1 168/22 172/2
172/17 173/3 173/16 173/22
174/11 174/20 178/16 182/1
182/25 187/6 188/15 189/6 189/6
189/9 189/10 190/24 194/24 196/3
197/24 198/7 199/25 200/6 200/6
205/25 206/22 207/12 208/6
208/23 209/16 212/18 212/24
214/10 214/24 215/12 217/13
217/20 219/4 219/17 219/23
219/24 221/3 222/9 224/19 224/20
224/20 225/6 227/18 228/20 230/3
230/7 230/12 230/12 230/13
232/14 233/18 233/20 234/2 234/4
234/5 234/18 234/21 234/23 235/1
235/7 235/21 236/19 237/5 237/13
we'll [24] 15/25 26/7 33/9 37/1
45/5 58/1 76/24 87/7 94/22
107/18 111/4 127/22 143/5 152/18
152/24 170/11 176/2 197/19 207/2
210/19 219/19 220/4 233/14
237/20
we're [27] 3/3 21/16 24/6 24/11
32/14 33/11 37/9 40/21 51/14

52/17 53/18 57/22 73/11 83/9
89/23 148/4 152/17 153/15 155/5
156/22 164/4 165/2 173/4 181/1
197/15 214/5 234/14
weapon [3] 116/4 116/19 202/22
weapons [1] 204/5
wear [2] 119/13 120/9
wearing [3] 18/3 231/13 231/15
well-known [1] 24/3
went [6] 43/19 43/23 85/9 127/14
144/15 191/24
weren't [3] 15/12 93/7 141/1
what you're [1] 223/10
what's [14] 26/22 26/23 54/17
60/11 87/9 122/4 122/14 168/14
171/21 172/10 172/19 173/2
178/17 181/20
whatever [20] 4/25 6/21 23/13
48/3 48/24 57/13 57/14 61/5
72/21 75/15 76/21 88/3 93/20
96/23 108/14 124/18 142/17
148/12 168/1 175/6
whatsoever [4] 125/18 189/17
189/19 195/17
wheel [1] 87/23
when you [1] 153/21
whenever [1] 128/21
Where's [1] 219/1
whereas [2] 186/23 223/21
wherever [1] 85/4
whether [41] 4/23 7/7 13/25 20/4
23/12 28/7 34/21 39/21 42/18
43/9 49/17 59/22 78/8 99/24
100/2 103/14 106/11 125/4 146/25
147/2 153/18 159/12 168/10 174/9
177/3 188/8 189/4 192/14 192/15
192/20 193/16 197/1 197/3 211/3
211/7 211/9 213/22 218/5 218/6
230/11 236/25
while [8] 14/9 52/2 73/21 73/23
82/15 84/1 84/1 159/24
white [3] 159/23 182/2 183/5
who's [5] 6/20 82/5 104/19 149/13
162/15
whoever [2] 176/18 217/5
whole [11] 50/17 53/5 55/15 56/8
100/20 122/15 124/18 139/2
158/16 204/2 236/2
whom [1] 58/17
whomever [1] 93/8
whose [2] 14/15 27/20
Wickenheiser [2] 98/10 104/8
wide [2] 48/22 178/24
WIEGERT [4] 168/15 168/16 176/3
176/4
wild [2] 234/4 235/6
Willis [1] 1/9
win [1] 236/10
window [1] 67/1
wings [1] 84/22
wipe [1] 174/22
wiped [1] 35/2
wire [1] 68/18
WISCONSIN [28] 1/1 1/3 1/12 1/14
1/16 3/2 6/11 8/2 44/23 45/7
45/13 45/14 45/17 52/23 80/20
81/3 120/5 127/22 132/11 149/16
182/11 182/14 199/4 199/25 201/8
201/24 238/1 238/6
Wisconsin's [1] 55/20
wish [2] 37/18 178/5
wishes [1] 170/5
within [5] 69/14 199/24 212/19

W	149/9 184/14 203/24 204/11 yourselves [1] 233/13
within... [2] 217/9 217/10 without [9] 39/6 39/13 40/7 93/24 151/10 172/7 193/24 194/9 215/6 witness [43] 4/1 4/2 8/12 15/14 18/23 37/19 38/2 38/7 38/14 39/11 40/5 40/10 40/24 54/3 54/5 58/7 58/9 59/18 62/18 132/24 170/5 172/3 173/20 175/16 176/5 177/13 178/2 178/3 190/13 197/16 198/13 198/18 211/17 212/10 214/21 216/23 216/24 217/4 218/16 219/6 219/19 236/6 237/6 witness' [1] 219/14 witnesses [3] 2/2 15/18 203/5 woman [2] 164/11 229/23 woman's [1] 18/4 wonder [1] 224/20 wood [1] 158/12 wooden [1] 68/19 word [3] 6/6 235/16 235/17 words [3] 49/14 185/20 187/23 work [28] 38/13 38/17 38/19 38/21 40/4 47/7 47/15 48/11 66/22 67/21 70/2 70/19 71/4 81/11 82/22 87/5 120/19 120/22 121/6 131/9 156/18 156/19 158/18 163/4 173/3 189/10 189/12 194/24 workbench [2] 160/14 160/17 worked [7] 13/4 15/13 44/16 45/11 69/9 70/22 72/13 working [17] 45/8 68/7 69/5 69/7 69/11 69/21 70/15 76/10 83/2 84/3 88/6 120/1 121/16 121/22 131/21 137/2 156/22 works [6] 51/22 70/5 122/12 131/5 158/8 189/11 workshop [1] 201/10 workshops [1] 201/4 world [1] 50/6 worth [2] 125/5 236/3 wouldn't [14] 5/20 10/17 15/2 25/20 69/10 88/24 113/25 126/10 126/23 127/3 127/13 152/7 154/12 160/17 written [1] 145/22 wrong [7] 17/24 39/23 82/21 88/24 113/15 123/2 123/22 wrongly [1] 147/7 wrote [1] 30/21	Z zero [5] 22/19 123/21 125/14 126/5 129/8 zoom [12] 64/25 88/1 206/22 208/23 209/10 209/16 210/19 221/3 225/7 227/19 228/1 232/14 zoomed [1] 232/14
Y	
year [10] 14/16 15/4 45/14 64/5 77/9 77/10 77/11 84/17 128/8 132/9 years [21] 24/4 35/14 43/23 44/12 45/12 45/16 51/1 51/10 51/11 51/23 83/15 135/6 146/16 148/2 148/5 148/9 155/24 156/10 200/13 200/23 201/22 yesterday [2] 35/18 81/21 yet [7] 100/12 110/25 131/21 141/4 172/24 189/21 216/23 yielded [1] 105/16 you're [9] 53/3 63/18 109/22 133/25 134/11 174/24 187/17 191/8 223/10 You've [1] 30/6 yours [5] 12/15 70/9 133/11 134/7 148/12 yourself [12] 8/11 12/12 17/20 65/14 87/10 95/6 129/17 130/14	