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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE FIFTH APPELLATE DISTRICT

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**CERTIFIED  
TRANSCRIPT**

BOWE CLEVELAND, )  
Plaintiff/Respondent, ) VOLUME 20 of 22  
 ) Pages 2041 - 2120  
 ) Case No. S-1500-CV-279256  
vs. ) Court of Appeal No. F079926  
 )  
TAFT UNION HIGH SCHOOL ) Bakersfield, California  
DISTRICT, ET AL., )  
Defendant/Respondent. ) July 16, 2019  
 )

APPEAL FROM THE SUPERIOR COURT OF KERN COUNTY  
HON. DAVID LAMPE, JUDGE, DEPARTMENT 11

REPORTER'S TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

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Reported By: Virginia A. Greene, CSR 12270  
Official Court Reporter

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF KERN  
METROPOLITAN DIVISION  
HON. DAVID LAMPE, JUDGE, DEPARTMENT 11

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DISTRICT, ET AL., )  
) July 16, 2019  
Defendant. )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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20  
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22  
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24  
25  
26  
27  
28

**VOLUME 20**

**SESSIONS**

**PAGE**

**TUESDAY, JULY 16, 2019  
MORNING SESSION**

**2046**

**Plaintiff's Case**

**2046**

**TUESDAY, JULY 16, 2019  
AFTERNOON SESSION**

**2081**

**Closing Arguments**

**2081**

**Jury Instructions**

**2112**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VOLUME 20

CHRONOLOGICAL INDEX OF WITNESSES

WITNESSES:	PAGE
RUBY SKINNER (for the Plaintiff) DIRECT EXAMINATION BY MS. TRUJILLO	2047
BOWE CLEVELAND (for the Plaintiff) DIRECT EXAMINATION (RESUMED) BY MS. TRUJILLO	2062
CROSS-EXAMINATION BY MR. HERR	2075

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VOLUME 20

ALPHABETICAL INDEX OF WITNESSES

WITNESSES:	PAGE
CLEVELAND, BOWE (for the Plaintiff)	
DIRECT EXAMINATION (RESUMED) BY MS. TRUJILLO	2062
CROSS-EXAMINATION BY MR. HERR	2075
SKINNER, RUBY (for the Plaintiff)	
DIRECT EXAMINATION BY MS. TRUJILLO	2047

1                   BAKERSFIELD, CA; TUESDAY, JULY 16, 2019

2                                   MORNING SESSION

3           DEPARTMENT 11                   HON. DAVID LAMPE, JUDGE

4                                   --o0o--

5           THE COURT: We're in session. We're on the  
6 record in Cleveland versus Taft Union High School  
7 District. Counsel are present.

8                   Anything we need to take up before we have the  
9 jury in?

10           MR. RODRIGUEZ: We were having a discussion  
11 about the jury instructions, but I think that can wait  
12 until afterwards.

13           THE COURT: Perhaps, yeah. I'll work on those  
14 as well. Schedule. We have a witness out of order this  
15 morning.

16           MR. RODRIGUEZ: Yes. Dr. Skinner. And then  
17 Bowe Cleveland. And we were advised last night that the  
18 Defense is not putting on any witnesses.

19           THE COURT: All right. Let's have the jury  
20 in.

21                   Court is in session. I took roll. The jury  
22 is in the courtroom properly seated in the jury box.  
23 We're going to take a witness out of order.

24                   Plaintiff may call the next witness.

25           MS. TRUJILLO: Yes, Your Honor. Our next  
26 witness with the Court's permission is Dr. Ruby Skinner,  
27 please.

28           THE COURT: All right. Would you please step

1 through the wooden gate in front of you, walk to your  
2 left, walk all the way around those podiums. The  
3 podiums are for the lawyers. You'll be seated up  
4 before. But before you get there, would you stand there  
5 and take your oath from the clerk.

6 THE CLERK: You do solemnly swear that the  
7 testimony you shall give in this matter now pending  
8 before this court shall be the truth, the whole truth  
9 and nothing but the truth, so help you God?

10 THE WITNESS: Yes.

11 THE COURT: Please be seated. Would you sit  
12 forward and give your testimony toward that microphone.  
13 The base moves so you can -- don't be too close to it or  
14 it will start popping and making noises. And if you  
15 would state your first and last name.

16 THE WITNESS: Ruby Skinner.

17 THE COURT: Spell both names, please.

18 THE WITNESS: R-u-b-y, S-k-i-n-n-e-r.

19 THE COURT: Thank you.

20 Go ahead, counsel.

21 MS. TRUJILLO: Thank you, Your Honor.

22 RUBY SKINNER (for the Plaintiff)  
23 called as a witness, being first duly sworn,  
24 testified as follows:

25 DIRECT EXAMINATION

26 BY MS. TRUJILLO:

27 Q. Good morning, doctor.

28 A. Good morning.

1 Q. I want to ask you some questions. First I  
2 would like to start off with a little bit of background  
3 with you. Is that okay?

4 A. Yes.

5 Q. Thank you. First, can you tell us what do you  
6 do for a living?

7 A. I'm a trauma surgeon, a board certified trauma  
8 surgeon and general surgeon.

9 Q. And in order to become a trauma surgeon what  
10 kind of schooling education did you have to undergo?

11 A. After college, four years of college, there  
12 was four years of medical school. I did an additional  
13 five years of training in general surgery, added on to  
14 that three years of research and then two years of  
15 fellowship training in trauma and surgical critical  
16 care.

17 Q. Thank you. And you mentioned something about  
18 being board certified. Can you explain to us what that  
19 means, board certification?

20 A. What it means is that you've -- number one,  
21 you've completed your training. You've passed all of  
22 the appropriate tests and exams and you've established  
23 competency in your specialization in medicine, whatever  
24 it is.

25 Q. What areas are you board certified in?

26 A. I'm board certified in general surgery and  
27 surgical critical care.

28 Q. And being board certified, is that above and



1 beyond what someone who -- what an ordinary trauma  
2 surgeon would be?

3 A. It's expected. Most practicing surgeons are  
4 board certified.

5 Q. And how long have you been board certified?

6 A. I've been board certified since 2002. So that  
7 would be 17 years.

8 Q. Switching topics a little bit, experience.  
9 Have you worked -- was there a time that you worked as  
10 an attending at Kern Medical Center?

11 A. Yes.

12 Q. And what was the time period that you worked  
13 as an attending at Kern Medical?

14 A. It was more ten years, from 2008 until 2018.

15 Q. And let me back up for a moment. Are there  
16 certain ranks for doctors working at a hospital?

17 A. Yes.

18 Q. Okay. And an attending, where does that fall  
19 in the ranking?

20 A. That means that you are on the medical staff  
21 and you're not in training. Typically an attending is  
22 board certified. They don't have to be. That's  
23 basically it.

24 Q. Okay. As an attending would you oversee other  
25 doctors?

26 A. If it is a teaching hospital, Kern Medical is  
27 a teaching hospital, you oversee residents, medical  
28 students and other trainees.

1 Q. Back in January 2013 were you the chief of  
2 trauma in the department of surgery at Kern Medical?

3 A. Yes.

4 Q. And were you also the director of the surgical  
5 intensive care unit at Kern Medical?

6 A. Yes.

7 Q. Before you started your work at Kern Medical  
8 Center did you work as a trauma surgeon anywhere else?

9 A. Yes. In the greater Los Angeles area. And  
10 then also I started my career in Chicago at Northwestern  
11 University.

12 Q. Switching to a different topic, Bowe  
13 Cleveland. Back in January 2013, did you have a patient  
14 named Bowe Cleveland at Kern Medical Center?

15 A. Yes.

16 Q. Were you on call the day that Bowe was brought  
17 in on January 10th, 2013?

18 A. Yes.

19 Q. And specifically, were you covering the trauma  
20 surgery that day?

21 A. Yes.

22 Q. Was Bowe brought in by a helicopter?

23 A. Yes.

24 Q. When Bowe arrived to Kern Medical Center, was  
25 he determined to be hemodynamically unstable?

26 A. Yes.

27 Q. And can you tell us what does that mean,  
28 hemodynamically unstable?

1           A. What it means is a person's vital signs are  
2 unstable. So it can be caused by a number of things.  
3 But in his case it was due to blood loss or shock.

4           Q. And because of Bowe's condition, was he  
5 intubated?

6           A. Yes.

7           Q. And were there bilateral test tubes placed  
8 inside of Bowe?

9           A. Yes.

10          Q. What was the purpose for that?

11          A. Well, he had an injury, a gunshot wound to the  
12 right chest, and he was unstable. So in that scenario  
13 we place chest tubes to remove the blood, to determine  
14 where the patient is bleeding and things like that.

15          Q. When he was first brought in, were there blood  
16 transfusions initiated?

17          A. Yes.

18          Q. After Bowe's arrival, was Bowe then taken to  
19 the operating room?

20          A. Yes.

21          Q. During the first trip to the operating room,  
22 did you participate in his surgery?

23          A. Yes.

24          Q. And during this time did you discover a large  
25 liver laceration?

26          A. Yes.

27          Q. Was there also a large hole in Bowe's liver?

28          A. Yes.

1 Q. In terms of blood, did you see any blood come  
2 out from his liver?

3 A. Yes.

4 Q. Can you tell us or describe to us the amount  
5 that you saw?

6 A. It was a large amount. It was a very  
7 destructive large injury to the liver. The liver is a  
8 very vascular organ and when it's injured tends to bleed  
9 a lot.

10 Q. Moving to a different area, did you see any  
11 damage to Bowe's right lung?

12 A. There were injuries to the right lung as well.

13 Q. And can you describe what the injuries were to  
14 his right lung that you saw?

15 A. There were two different lacerations and there  
16 was some bruising and just kind of general damage to the  
17 lung.

18 Q. Was he bleeding from his lung?

19 A. Yes.

20 Q. And how many -- let me back up. Does a lung,  
21 does it have lobes?

22 A. Yes.

23 Q. And how many lobes does a lung have?

24 A. Three lobes on the right side.

25 Q. Just generally speaking what is a lobe?

26 A. It's a portion of an organ in the case for the  
27 lung that has its own unique blood supply. So each lobe  
28 has its own unique blood supply.

1 Q. And how many lobes was Bowe bleeding from?

2 A. Two.

3 Q. In order to control the bleeding to Bowe's  
4 lung, did you have to use sutures?

5 A. Yes.

6 Q. The chest wall, did you see any damage to  
7 Bowe's chest wall?

8 A. Yes. There was a large injury to the chest  
9 wall which was destructive.

10 Q. And was he bleeding from his chest wall?

11 A. Yes.

12 Q. Bowe's ribs on the right side, did you see any  
13 fractures?

14 A. There were multiple fractures adjacent to the  
15 injury.

16 Q. Now I want to switch to a different part of  
17 the body, the diaphragm. Can you tell us generally  
18 speaking what is the function of the diaphragm?

19 A. The diaphragm is a large muscle that separates  
20 the chest cavity from the abdominal cavity. And it  
21 moves up and down and it's important for breathing and  
22 respiration.

23 Q. Was Bowe's diaphragm damaged from the shotgun  
24 wound?

25 A. Yes.

26 Q. What was the damage that you saw to his  
27 diaphragm?

28 A. It was a large laceration of the diaphragm

1 that allowed the liver to then herniate up into the  
2 chest.

3 Q. And was Bowe's liver protruding through his  
4 diaphragm?

5 A. Yes.

6 Q. At the end of this first surgery, was there  
7 something called an intra-abdominal wound vac placed  
8 inside of Bowe?

9 A. Yes.

10 Q. Just can you explain to us what is an  
11 intra-abdominal wound vac?

12 A. Yeah. In a case like this, in a surgery like  
13 this, we did what is called damage control surgery. And  
14 so we got control of the surgical bleeding and then left  
15 his abdominal cavity open. We didn't close his  
16 abdominal cavity. And -- with the plan to return back  
17 and forth to the operating room as needed. So there is  
18 multiple ways to do that. One of the most current ways  
19 is to place a wound vac. Basically it's a vacuum  
20 beneath the muscles. And it keeps everything inside so  
21 none of the abdominal organs are protruding out. And  
22 then it also applies suction which then allows to  
23 continue to remove any debris or bleeding. So it allows  
24 us to determine if there is any ongoing bleeding and  
25 then it just keeps everything contained.

26 Q. Thank you. The next day, January 11th, did  
27 Bowe have to be taken back to the operating room?

28 A. Yes.

1 Q. And what was the reason for him going back to  
2 the operating room?

3 A. It was planned with this type of surgery. You  
4 take the patient back as needed. It's usually within 12  
5 to 24 hours. Sometimes sooner if you're concerned if  
6 there is still bleeding. We took him back to reinspect  
7 everything. We removed the packs which we used to  
8 control the bleeding in the liver and to control any  
9 additional bleeding, to remove any devitalized or dead  
10 tissue and then to kind of repack, place the wound vac  
11 again to return later.

12 Q. And you used the term packs or repacking.  
13 Does that mean like stuffing the area with some kind of  
14 gauze like material?

15 A. Yes.

16 Q. And what's the purpose of that?

17 A. In a destructive liver injury if you try to  
18 control all of the bleeding without packing the patient  
19 most likely will not make it. So a method that has  
20 evolved to deal with major liver injuries is to control  
21 some bleeding but also to place very tight packs to the  
22 area that serve to tamp it off or stop the bleeding and  
23 start the bleeding to clot and it enhances clotting in  
24 that area.

25 Q. After the second occasion that we just  
26 discussed, did you have any further involvement with  
27 Bowe's care?

28 A. Yes.

1 Q. And what was that involvement that you had?

2 A. I managed him during his whole hospital stay.  
3 But specifically he spent a long time in our surgical  
4 intensive care unit. So I provided the nonsurgical care  
5 in the ICU as well.

6 Q. And the reason why Bowe spent so much time in  
7 the ICU, was that because of the blood loss and damage  
8 to his organs?

9 A. Yes.

10 Q. Now, was there also a point in time where Bowe  
11 was required to -- or a ventilator or was required to  
12 help Bowe breathing?

13 A. Yes.

14 Q. And was that because of the overall impact of  
15 his injuries?

16 A. Yes.

17 Q. I want to move on to a different topic,  
18 hemorrhagic shock. Can you explain to us what is  
19 hemorrhagic shock?

20 A. It is extensive blood loss that causes a  
21 decline in one's vital signs. Particularly the blood  
22 pressure usually is very low. A person may have a very  
23 high or a very low heart rate. And this condition if  
24 not managed quickly can lead to death.

25 Q. Did Bowe have massive blood loss based on your  
26 observations?

27 A. Yes.

28 Q. How many liters of blood would someone Bowe's



1 size on average have?

2 A. About five liters.

3 Q. And when you first came into contact with  
4 Bowe, how many liters of blood was Bowe estimated to  
5 have lost?

6 A. We estimated about two liters from the  
7 surgery.

8 Q. The loss of blood supply to Bowe's tissue, can  
9 that lead to long term issues with infection?

10 A. Yes.

11 Q. I want to move on to a different topic,  
12 doctor. And that is aggressive resuscitation efforts,  
13 okay. In your treatment with Bowe when he was brought  
14 in, did you have to use aggressive resuscitation  
15 efforts?

16 A. Yes.

17 Q. And can you describe to us what you mean by  
18 aggressive resuscitation efforts?

19 A. What that typically means for trauma is  
20 massive resuscitation. And massive resuscitation is  
21 getting greater than ten units of blood products in  
22 24 hours. His requirements exceeded that.

23 Q. During your treatment of Bowe was there a time  
24 where you assisted with the removal of some of the  
25 gunshot pellets?

26 A. Yes.

27 Q. Were you able to remove some of the pellets  
28 inside of Bowe's liver?

1 A. Yes.

2 Q. How about his liver cavity?

3 A. Yes.

4 Q. And how about his chest?

5 A. Yes.

6 Q. Now, even though you were able to remove some  
7 of them, not all the pellets were removed from Bowe's  
8 body; is that right?

9 A. Yes.

10 Q. And was there a reason why it was not possible  
11 to remove the pellets?

12 A. Some of the pellets were deep within the  
13 organs and we typically don't go after pellets or  
14 bullets that are in areas of the body that we're not  
15 able to get to easily.

16 Q. And given that some of the pellets remain  
17 inside of Bowe's body, is there a risk they could  
18 migrate and be a source of infection?

19 MR. HERR: I'm going to object, Your Honor,  
20 this question calls for 2034.

21 THE COURT: Sustained.

22 BY MS. TRUJILLO:

23 Q. Doctor, did you have any discussions with Bowe  
24 about the remaining pellets inside his body and whether  
25 or not they posed -- they could pose a risk later on?

26 A. Yeah. We had open wounds that he went home  
27 with. And they were instructed to do local wound care  
28 and also told that there could be pus and dead tissue

1 and also more pellets that would extrude from these  
2 wounds.

3 Q. When you say extrude from these wounds, you  
4 mean come out?

5 A. Come out, yes.

6 Q. When Bowe was discharged from the hospital,  
7 was Bowe's abdomen able to be closed?

8 A. No. He had significant swelling so we were  
9 not able to close his abdominal muscles. We closed the  
10 skin, but his abdominal muscles were not closed. So  
11 essentially he had a hernia.

12 Q. So his skin was sewn up, but the muscles  
13 underneath were left unattached?

14 A. Yes.

15 Q. At the time that Bowe was discharged, would  
16 you describe him as very debilitated, meaning his  
17 muscles had started to go through atrophy?

18 A. Yes.

19 Q. Did he require any kind of device to help him  
20 with walking?

21 A. He was using a walker.

22 Q. In terms of nourishment, how would you  
23 describe him when he was discharged?

24 A. Very malnourished. Any person -- all patients  
25 that go through this type of injury are malnourished and  
26 it takes time for the body to kind of get back into  
27 balance if you will.

28 Q. When Bowe was discharged were there drains

1 that were also left in his abdomen at the time?

2 A. Yeah, there were drains that were left  
3 underneath the skin to drain to prevent infection.

4 Q. Also was there -- did you understand that --  
5 was there -- let me back up. Bile. Was there some sort  
6 of bile coming out of Bowe's chest during his treatment?

7 A. Yes, at one point there was.

8 Q. And what is bile?

9 A. Bile is a salt that is produced by the liver.  
10 And it's used for digestion in the intestine. And when  
11 there is a liver injury, the bile ducts secrete bile.  
12 So we leave drains around the liver to collect that.  
13 And because the diaphragm is right over the liver that  
14 bile can travel up through the diaphragm and into the  
15 chest. So he had bile coming out of his chest wound as  
16 well.

17 Q. I want to move on to a different topic,  
18 doctor. After Bowe was discharged, were there times  
19 that you would see him in clinic visits?

20 A. Yes.

21 Q. And one occasion when Bowe saw you during a  
22 clinic visit, did he report to you that he had a cyst on  
23 his gluteal area?

24 A. Yes.

25 Q. On his back side?

26 A. Yes.

27 Q. And did he tell you that he needed his dad to  
28 help him pack that open cyst?

1 A. Yes.

2 Q. Also during the clinic visits was there a time  
3 that Bowe reported to you that he continued to  
4 experience nightmares and insomnia?

5 A. Yes.

6 Q. Was there also a time that Bowe reported to  
7 you that he had abdominal pain on a ten out of ten scale  
8 that lasted for about three hours because he couldn't go  
9 to the bathroom?

10 A. Yes.

11 Q. On another clinic visit was there a time that  
12 an abscess in Bowe's abdomen was found?

13 A. Yes.

14 Q. And what is an abscess?

15 A. It's a collection of infected fluid or pus.

16 Q. And, doctor, last question. The injuries that  
17 you treated Bowe for, based on a reasonable degree of  
18 medical certainty, were those caused by the shotgun  
19 wound to his chest?

20 A. Yes.

21 Q. Thank you, doctor, I have no further  
22 questions.

23 A. Thank you.

24 MR. HERR: No questions. Thank you, doctor.

25 A. Thank you.

26 THE COURT: You're excused as a witness,  
27 released from the jurisdiction of the Court. You may  
28 step down. You're free to go.

1           A.    Okay.  Thank you.

2                    THE COURT:  And we're going to recall  
3   Mr. Cleveland to the stand.

4                    MS. TRUJILLO:  Yes, Your Honor.  Thank you.

5                    THE COURT:  Sir, if you would retake the  
6   witness stand.  And you remain under oath.  Thank you.  
7                    Go ahead, Ms. Trujillo.

8                    MS. TRUJILLO:  Thank you, Your Honor.

9                    BOWE CLEVELAND (for the Plaintiff)  
10                   having been previously duly sworn,  
11                    testified further as follows:

12                                DIRECT EXAMINATION (RESUMED)

13   BY MS. TRUJILLO:

14                    Q.  Good morning, Bowe.

15                    A.  Good morning.

16                    Q.  Yesterday when we left off I was going to  
17   switch topics.  And so if it's okay with you, I want to  
18   talk to you a little bit about compression stitches,  
19   okay?

20                    A.  Okay.

21                    Q.  When you left the hospital, did they sew you  
22   up, Bowe?

23                    A.  Just my skin.  They didn't put the muscle back  
24   yet.

25                    Q.  And how did they sew your skin back up?

26                    A.  Staples and then the compression stitches.

27                    Q.  How many -- the compression stitches, where  
28   were they at on your body?

1           A. On my stomach from my chest to my waistline  
2 pretty much.

3           Q. About how many compression stitches went down?

4           MR. HERR: I'm sorry to interrupt, Your Honor.  
5 I'm going to object. This is cumulative.

6           THE COURT: I'll permit it, but I'll keep your  
7 objection in mind. Without prejudice overruled as to  
8 that question.

9 BY MS. TRUJILLO:

10          Q. Bowe, let me ask you, did there come a time  
11 when those compression stitches had to be removed?

12          A. Yes.

13          Q. Can you describe to us that process and what  
14 you felt?

15          A. That -- getting those removed I think a little  
16 over a month later, besides being shot, that was  
17 probably the worst pain I've ever felt. That one, yeah,  
18 that was rough.

19          Q. And each compression stitch, was it taken out  
20 one by one?

21          A. Yes. They were knots so when you pull -- they  
22 were all scabbed up, each knot, 20 or 30 of them. And  
23 they had to be pulled out. So it had to break each scab  
24 and then snipped. And it was -- the wire was -- the  
25 stitches were very, very thick.

26          Q. Thank you. I'm going to move on to a  
27 different topic.

28          A. Okay.

1 Q. The pellets, I want to talk a little bit about  
2 the gunshot pellets. The pellets. Was there a time  
3 that they would come out of your body?

4 A. Yes.

5 Q. How long was that time period when they would  
6 come out of your body?

7 A. Like probably two years. About two years they  
8 would pop out or I'd cough them out.

9 Q. Did you ever ask any of your doctors why that  
10 would happen?

11 A. Yes.

12 Q. What did they tell you?

13 A. There was a lot in my chest and lung and  
14 liver, that most of them would stay there, some would  
15 work their way out over time.

16 Q. And did the doctors ever talk to you about  
17 future problems with the pellets?

18 A. In the beginning when we asked, my parents and  
19 I, their main concern was the lead migrating or moving  
20 and getting into my bloodstream somewhere down the road  
21 and that being bad.

22 Q. Bowe, I want to move on to a different topic  
23 now. And that was -- that's Cedars-Sinai, okay?

24 A. Okay.

25 Q. Was there a time that you were admitted to  
26 Cedars-Sinai in Los Angeles?

27 A. Yes.

28 Q. When was that?



1 A. Halloween day I think, 2013.

2 Q. And why did you have to go to Cedars-Sinai?

3 A. It wasn't to trick or treat. Sorry. I had an  
4 infection, a really bad infection, in my stomach from  
5 the corrective surgery to put my muscle back or the  
6 mesh.

7 Q. Was there a hole that developed in your  
8 stomach?

9 A. Yes.

10 Q. Did you start to get a fever?

11 A. I got very sick, yes. That was -- my mom took  
12 it upon herself to take me. I was -- the fever, I was  
13 -- I started to pass out a lot, and that's why she  
14 decided to take me.

15 Q. How long did you stay at Cedars-Sinai?

16 A. About two weeks.

17 Q. When you were at Cedars-Sinai, what did the  
18 doctors do to you?

19 A. They -- well, it was -- obviously it was an  
20 infection so they didn't know. The last thing they told  
21 me before they put me out was they didn't know if they  
22 could save the mesh and just have to cut the infection  
23 out or if they'd have to take it out, if my body was  
24 rejecting it, and I'd have to start all over again.

25 Q. So there were more surgeries at Cedars-Sinai;  
26 is that right?

27 A. Yes.

28 Q. And when you left Cedars-Sinai, did you leave

1 with an open wound?

2 A. Yes. They cut the infection out and it left a  
3 very -- I call it a crater kind of. It's a big hole in  
4 my stomach for several months. Eight months, maybe more  
5 it was open that I used a wound vac for and -- yeah.

6 Q. Were you able to see inside yourself?

7 A. Yeah. You could see the mesh and everything.  
8 It was inside for that time.

9 Q. I want to talk to you a little bit about a  
10 little bit of a different topic. Future surgeries. How  
11 do you feel about the need for future surgeries?

12 A. I'm good with what I've had done. If I don't  
13 have to have them, I won't.

14 Q. Why do you say that?

15 A. I think I've had enough to cover me a  
16 lifetime. And I really don't like going under  
17 anesthesia anymore. I never did. But yeah, no. It  
18 just -- it's scared me I'm going to wake up during it.  
19 I've always struggled with that.

20 Q. Do you have a bellybutton?

21 A. No.

22 Q. And do you know why you don't have a  
23 bellybutton?

24 A. Yes. When they cut the infection out, they  
25 took that portion of my stomach out.

26 Q. Bowe, nowadays, do you take anything for pain?

27 A. Most days I take a couple thousand -- usually  
28 2,000 milligrams of Ibuprofen or Tylenol or depends.

1 Q. To sleep, go to sleep nowadays, do you take  
2 anything?

3 A. Yes. It's like Nyquil or Benadryl. I don't  
4 usual get to sleep very easily. So that sometimes makes  
5 it easier.

6 Q. Before the shooting did you have any problem  
7 falling asleep?

8 A. No.

9 Q. I want to talk to you a little bit about  
10 washing hands. After the shooting was there a time  
11 where you washed your hands a lot?

12 A. A lot. Like I said earlier, with the  
13 infection, a lot of the surgeries I had did get infected  
14 despite trying to keep them clean and everything all the  
15 processes we went through trying to avoid infection. So  
16 I got pretty obsessed with washing my hands and trying  
17 to keep clean. One day I counted it was like 67 times  
18 in a day I washed my hands.

19 Q. And how about now? Have you been able to deal  
20 with that a little bit?

21 A. Yes. I don't wash my hands as often, but I  
22 still do have -- try to keep my hands clean as best I  
23 can a few times a day. Ten, maybe less. It depends.

24 Q. I want to switch gears to something else.

25 A. Okay.

26 Q. And I want to ask you a little bit about your  
27 move to Paso Robles, okay?

28 A. Okay.

1 Q. When you and your family moved to Paso Robles,  
2 how did you feel about that?

3 A. It was nice. It was nice to leave. Taft was  
4 difficult to live in after. So it was -- no one knew  
5 who I was in Paso Robles when I went there. Instead I  
6 wasn't just the kid who got shot. So I got to -- yeah.

7 Q. After the shooting but before you moved to  
8 Paso Robles, was there ever an occasion where a group of  
9 people recognized you and did something?

10 A. I guess you could say there was a little bit  
11 of, I don't know, heckling that happened. There was one  
12 occasion where a couple of guys -- I don't remember  
13 exactly where I was. But I didn't recognize them. They  
14 recognized me. And they waited for me to look away. I  
15 was outside my vehicle. And they slammed on the hood of  
16 their car to -- my guess was make it sound like a  
17 gunshot. And it startled me, yeah, and they started  
18 laughing. I didn't really understand it at the time.  
19 And I got back in the vehicle and my sister explained  
20 what she thought was going on because she saw it.

21 Q. After you moved to Paso Robles, did you start  
22 working somewhere?

23 A. Yes.

24 Q. Where was that?

25 A. It was the bowling alley there.

26 Q. And when you worked at the bowling alley, was  
27 there a time when a balloon popped?

28 A. Yes.

1 Q. And --

2 A. There -- it was pretty early on in working  
3 there. And it was bowling alley so there is birthday  
4 parties and balloons and stuff. And one just out of the  
5 blue happened. It happens all the time. It just  
6 popped. And I wasn't ready for it at all. So I kind of  
7 froze in my tracks and I just started thinking it was  
8 the same. I didn't move for a second. And I had to  
9 remove myself from the situation. I kind of went in the  
10 back and I just -- at that time I just curled up and  
11 just lost it for a few seconds.

12 Q. You got to stay in the break room for -- to  
13 compose yourself?

14 A. Yeah, for a few minutes, yeah.

15 Q. I want to move to a different topic, Bowe.

16 A. Okay.

17 Q. And I want to ask you about counseling, okay?

18 A. Okay.

19 Q. Are you going to counseling right now?

20 A. No.

21 Q. When is the last time you went to counseling?

22 A. I went for -- the last time was late 2015  
23 through 2016, early 2016.

24 Q. And was there a reason why you stopped going  
25 to counseling?

26 A. Yes.

27 Q. Can you share that with us?

28 A. Well, I don't like to talk about it, what had

1 happened, that much. So bringing it up every day and  
2 talking about the shooting and even just how to deal  
3 with it there is always something that goes along with  
4 it. So I just didn't want to keep going over it. If I  
5 could keep myself busy and not think about it, I was --  
6 just wanted to be normal at that age and just do  
7 everything normally. And I'd pick some things up from  
8 counseling so I just tried to take those things and cope  
9 as best as I could on my own.

10 Q. What are some of the tools that you were  
11 taught in counseling?

12 A. One of the most memorable ones was when I'm  
13 feeling stressed out or anxious to take myself to a  
14 different place mentally, which sounds pretty simple,  
15 but sometimes it isn't. So I was kind of shown a way to  
16 do that on an occasion that I've used a few times, and  
17 it's helped.

18 Q. After the shooting, Bowe, were there times  
19 that your relationship with your parents became  
20 strained?

21 A. Yes. After -- it didn't really get that way  
22 until we moved to Paso and settled down a little bit.

23 Q. So about a couple of years afterwards?

24 A. Yeah. Yeah, a year and a half, two years.

25 Q. Can you share with us what happened in  
26 connection with your relationship with your parents?

27 A. I think in a lot of ways it was just growing  
28 pains, me getting older. And once we had kind of gotten

1 to Paso Robles we were able to settle down and I wasn't  
2 having surgeries or having to go to the doctor every day  
3 so it was -- we didn't have time to really have the  
4 regular family bickering or arguing over whatever. So I  
5 think maybe that just kind of built up and kind of came  
6 out when we finally had a minute to breathe.

7 Q. Was there an occasion where you became upset  
8 with your dad?

9 A. Yeah. There was -- the big one -- what really  
10 happened, he got me in the truck and he brought me to --  
11 I don't remember where I thought we were going, but we  
12 didn't go. He took me to the local college, Cuesta, to  
13 sign me up to take GED courses. But that meant actually  
14 being in the classroom and on the campus.

15 Q. Are you still upset at your dad for doing  
16 this?

17 A. No, not anymore. I understood. Later I  
18 understood he was just trying to help.

19 Q. Did you actually sign up for the GED classes?

20 A. I did. Yeah, I did.

21 Q. Did you attend any of them?

22 A. Uh-huh. Yeah, for about almost a full school  
23 year. Six to nine months I went.

24 Q. And were you able to complete them?

25 A. No.

26 Q. Why is that?

27 A. I couldn't -- it was being in the classroom.  
28 Some days I could handle, but most I couldn't focus.

1 And it was -- I'd spend more time looking out the front  
2 door than I would the computer screen, so --

3 Q. I want to talk a little bit about your mom.  
4 During this time were there some hard times with your  
5 mom?

6 A. Yes. We struggled a little bit, yeah.

7 Q. And what were those things that you had going  
8 on between you and your mom?

9 A. I think the root of what it was, and it didn't  
10 really, like I said earlier, start until we really  
11 started to settle down was everything that we had been  
12 through as a family she just was so overprotective and  
13 wanting to be informed and know everything I was doing  
14 when I was getting older and trying to break away and do  
15 my own thing. It caused problems and us to push away  
16 from each other and argue and, you know, bicker. So  
17 that was what it really was, you know.

18 Q. When -- before the shooting, was your mom  
19 overprotective with you?

20 A. Yeah, she was. But it was reasonable. It was  
21 reasonable then. Yeah, of course.

22 Q. And then after the shooting?

23 A. It went up quite a bit. She was much more  
24 protective after that, yeah.

25 Q. The relationship between you and your mom, did  
26 it ever get better?

27 A. Yeah, it did. I moved out late 2016 and it  
28 gave us the space we needed, you know. I think we both



1 needed. And it helped our relationship a lot. It was  
2 -- it made being around each other more meaningful, so  
3 it really helped us out.

4 Q. I want to switch to a different topic, Bowe.

5 A. Okay.

6 Q. And have you ever seen the yearbook for the  
7 year that the school shooting happened?

8 A. Yes, I did. I saw it the following summer.

9 Q. Did something happen when you looked through  
10 it?

11 A. Two things. The first thing I noticed --  
12 obviously when you get your own yearbook, the first  
13 thing you do is look for yourself usually of course.  
14 And the first thing I noticed was that I wasn't in it.  
15 The second thing I noticed was that Bryan was.

16 Q. How did that make you feel?

17 A. Not good. It made me feel forgotten, pushed  
18 aside. I don't know. It didn't make me feel good.

19 Q. I need to ask you something about Bryan  
20 Oliver, okay?

21 A. Okay.

22 Q. Are you still afraid that Bryan is going to do  
23 something to you?

24 A. I used to be a lot more afraid. But, you  
25 know, I have to say I do -- he's been in prison for a  
26 while and still has a little bit to go. So possibly.  
27 So of course I can't help but think that why wouldn't he  
28 spend his time wanting to get out and finish what he

1 started or do it to someone else. Yeah, it worries me.

2 Q. When he comes up for parole, do you have any  
3 plans to go to the parole board?

4 A. Oh, yeah. Yes. My dad and I especially have  
5 talked about it, being there every step of the way.

6 Q. I want to talk to you about the present, okay,  
7 these days. You have a new job?

8 A. Yeah.

9 Q. And what does that involve, your new job, what  
10 do you do?

11 A. It's underground construction. We deal with  
12 utilities. I've been there for a little while now. So  
13 it's fun. It's really challenging and I get tired  
14 pretty easily and it kicks my butt. It makes me way  
15 sore. But it feels good to accomplish something, be a  
16 part of something.

17 Q. So you work through the pain?

18 A. I do my best. That's where the Ibuprofen  
19 comes into play in the mornings.

20 Q. Bowe, being up here having to talk about what  
21 happened with people, is it -- is this something that's  
22 a little bit uncomfortable for you?

23 A. Yeah. Massively, yes.

24 Q. Being in public are there times do you still  
25 feel like you need to look around and know your  
26 surroundings?

27 A. In a lot of places, yes. I'm still pretty  
28 hyper vigilant about my surroundings and keeping track

1 of what I'm doing and where I'm going.

2 Q. How about in here right now?

3 A. Here doesn't worry me as much. I mean there  
4 is decent security at the front gates. And my good  
5 buddy, Ron, over there, how can you not feel safe around  
6 Ron.

7 Q. Okay. I have no further questions. Thank  
8 you, Bowe.

9 A. You're welcome.

10 THE COURT: Mr. Herr?

11 MR. HERR: Thank you.

12 CROSS-EXAMINATION

13 BY MR. HERR:

14 Q. Good morning, Bowe.

15 A. Good morning.

16 Q. I just have a few questions for you. The last  
17 counselor you saw was Mary Cole?

18 A. Yes.

19 Q. Okay. And that was January 2016?

20 A. I'm not sure on the exact date I stopped  
21 seeing her. But it was early '16 when I stopped, yes.

22 Q. I'd like to ask you some questions about what  
23 you're doing now and how you're feeling now.

24 A. Okay.

25 Q. You currently live with your sister and  
26 another person?

27 A. A roommate, yeah.

28 Q. How long have you all been living together?

1           A. I've been there for about three years and my  
2 sister -- and as well as the roommate. And my sister  
3 for -- geez, almost a year now.

4           Q. And is it fair to say that this living  
5 arrangement is a positive one for you?

6           A. Yes.

7           Q. And you recently got a job doing what did you  
8 say underground construction?

9           A. Yeah. Yes.

10          Q. When did you get that job?

11          A. I started training before this year began.  
12 But my first day was the first of the year.

13          Q. So January 2019?

14          A. Yes.

15          Q. Are you past what I'll call sort of the  
16 probationary period?

17          A. Yes.

18          Q. Oh, good for you.

19          A. Thank you.

20          Q. And is this like an 8:00 to 5:00 job? What  
21 are the hours?

22          A. A little earlier than that. Usually 6:00 A.M.  
23 to usually when the job is done. But if we're lucky  
24 3:00. 3:00 or 4:00 P.M.

25          Q. And I apologize. I don't know exactly what  
26 you do. Could you tell the jury, you know, do you dig  
27 ditches? What exactly do you do in your job?

28          A. Yes. We do a bunch of stuff. We do -- well,

1 yes, we dig ditches of course by hand with excavators.  
2 We bore. We replace, fix, lay conduit pipe, things like  
3 that. Yeah, fix, repair roads that we've worked on to  
4 lay product.

5 Q. Are there any physical limitations on you  
6 doing the job? In other words, you can't lift more than  
7 ten pounds or anything like that?

8 A. For me or for the company?

9 Q. For you.

10 A. For me, no, not really.

11 Q. You said you actually dig ditches. Is that  
12 like with a shovel?

13 A. Yes.

14 Q. And have you ever used what's known as a  
15 jackhammer?

16 A. Yes.

17 Q. When you say a jackhammer, can you describe  
18 for us what you mean by that?

19 A. Yeah, just --

20 Q. It's the thing that goes --

21 A. It goes like that, yeah, to break concrete  
22 away or asphalt or, you know, whatever you need to break  
23 up, yeah.

24 Q. Is that a device that you actually use?

25 A. Yes.

26 Q. Okay. And in terms of your social life, have  
27 you had girlfriends?

28 A. I had one.

1 Q. Have or had?

2 A. Had.

3 Q. Okay. So is it fair to say that you currently  
4 don't have one?

5 A. Yes.

6 Q. Do you go out on occasion to restaurants or  
7 bars or that sort of thing?

8 A. Seldom. I don't go out very often.

9 Q. Okay.

10 A. To restaurants I'll go out to more often. But  
11 bars I don't usually frequent.

12 Q. When you say you go out seldom, can you give  
13 us an idea, once a month, a couple of times a month,  
14 something like that?

15 A. Probably two times a month, maybe three.

16 Q. Okay. And who do you usually go out to  
17 restaurants with two or three times a month?

18 A. My sister and parents. Sometimes a friend or  
19 two.

20 Q. Okay. And is it usually in the Paso Robles  
21 area?

22 A. Yes.

23 Q. Do you go on vacation?

24 A. No.

25 Q. Okay. You just work and that sort of thing?

26 A. Not anything big, but maybe a trip to the  
27 beach or something like that.

28 Q. Is it Pismo where you usually go?

1           A. No, I don't care for Pismo too much. Usually  
2 Avila or something like that. Just one of the closer  
3 beaches in San Luis.

4           Q. So is it fair to say that you're happy with  
5 your job, happy with your living environment at this  
6 time?

7           A. I love my job and where I live, yeah.

8           Q. In terms of your job, do you see this as sort  
9 of a short term or is it something that at least so far  
10 you think you'll be there for a while?

11          A. I haven't had a reason to not want to be there  
12 yet. So I see it as being something that I can  
13 continue, yeah, or that I want to.

14          Q. Okay. So in terms of the people you work  
15 with, there is nothing with them that you think creates  
16 any serious issues?

17          A. No. I get along well with most everyone I  
18 work with, yes.

19          Q. And in terms of the physical aspects of the  
20 job, are you comfortable with that?

21          A. I don't think I'll be able to do it a long  
22 time. It wears on me pretty good. But I want to give  
23 it a shot as long as I can.

24          Q. Okay. Great. Those are the questions I have.  
25 Thank you very much, Bowe.

26          A. You're welcome. Thank you.

27                MS. TRUJILLO: No further questions, Your  
28 Honor, thank you.

1           THE COURT: Thank you. You may step down.  
2           And you're a party to the proceedings. You're free to  
3           go or free to stay.

4           All right. Then with respect to this stage of  
5           the proceedings, other than confirming with the clerk  
6           that the admitted exhibits are appropriate, Plaintiff  
7           rests?

8           MR. RODRIGUEZ: Yes, Your Honor, we do at this  
9           time. Thank you.

10          THE COURT: And I understand, Mr. Herr, the  
11          Defense is not calling witnesses?

12          MR. HERR: I rest at this time also, Your  
13          Honor.

14          THE COURT: All right. Ladies and gentlemen,  
15          you've now heard all the evidence you're going to hear  
16          in this phase of the trial. We're going to take a  
17          recess. We'll be in recess until 10:30. So we'll get  
18          organized. Don't discuss the case or form or express  
19          any opinions.

20                       (Whereupon the noon recess was taken.)

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BAKERSFIELD, CA; TUESDAY, JULY 16, 2019

AFTERNOON SESSION

DEPARTMENT 11 HON. DAVID LAMPE, JUDGE

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THE COURT: We're in session. We're on the record in Cleveland versus Taft Union High School District.

Are we ready to proceed as soon as we have the jury accounted for?

MR. RODRIGUEZ: Yes, Your Honor, thank you.

MR. HERR: Your Honor, I don't think I have the current corrected version of our special instruction. What I have is still marked up.

(Discussion off the record.)

THE COURT: Let's bring the jury in.

We are in session. Counsel are present. The jury is present in the courtroom properly seated in the jury box. We're ready for argument with respect to this phase of the trial.

Mr. Rodriguez, your argument?

MR. RODRIGUEZ: Thank you, Your Honor. Good afternoon. As I mentioned before, this journey we started out together about a month ago, it's been quite a journey. We've had some ups and downs, some stops and some goes, lots of sidebars, too many sidebars. And -- but somehow together we've gotten this far. And we're going to get over the finish line together, okay.

So probably at some point in time in this part

1 of the trial you may have asked yourself what's my role  
2 here exactly, what is my job here, okay? And in order  
3 to find the answer to that question, we might have to go  
4 back to when we were little kids. Do you remember when  
5 we were in the first grade how would we start out each  
6 day in the first grade? We would stand up and we would  
7 face the flag and we'd put our hand over our heart and  
8 we would recite the Pledge of Allegiance. The answer to  
9 our question lies at the end of the Pledge of  
10 Allegiance. Do you remember how it ends? And justice  
11 for all. That's what your role, your job, is to do here  
12 is to do justice for all.

13 Now, what form will your justice take? Well,  
14 one thing we know, it won't be perfect justice. Because  
15 perfect justice would be what? Perfect justice would be  
16 if we had the power of the creator to make all this go  
17 away, that what happened that morning didn't happen.  
18 Can we do that? Of course not. So if it's not perfect  
19 justice, what form is our justice going to take?

20 In a civil trial, the form of justice that we  
21 do is compensation, damages, which is just a fancy word  
22 for money, money justice. That's what a civil jury  
23 does, money justice. Now, where does this idea, this  
24 concept, this notion, of compensation of damages of  
25 money justice come from? Does it come from a group of  
26 English men who gathered about 800 years ago, 1215,  
27 running England at the signing of the Magna Carta? No.  
28 Does it come from 1776, a bunch of lawyers gathered in

1 Philadelphia at the signing of the Declaration of  
2 Independence? No. So I offer this to you by  
3 historical, not that you're going to follow this, but in  
4 order for us to kind of get an idea of what some  
5 historical people have told us is that we go to the book  
6 of Exodus, Chapter 21. Chapter 21 of Exodus, most of us  
7 are familiar the part that say an eye for an eye and a  
8 tooth for a tooth. But that's not what we do, an eye  
9 for an eye, a tooth for tooth.

10 Now, because we don't do an eye for an eye,  
11 does that mean we turn a blind eye? No. But here's the  
12 part. If you continue reading Chapter 21 it talks about  
13 a man who owns an ox and that ox gets out. And he knows  
14 that this ox does this, and it goes to death a  
15 neighbor. It says that both the owner and the ox shall  
16 be put to death because it killed a neighbor. But if  
17 you continue reading, it basically says this. It says  
18 that if the owner of the ox pays the amount demanded by  
19 the victim, he will know redemption.

20 Maybe as a society, as a people, as a  
21 community, that's where this notion of compensation of  
22 damages of money justice comes from. Because through  
23 the midst of time why is it that we have 12 jurors. Is  
24 it because we have 12 disciples, 12 apostles? So as a  
25 community, as a people, that's where this notion comes  
26 from.

27 Now, specifically in a case like this it's  
28 going to be very similar to the first part. You're

1 going to get a questionnaire. And it is -- it's not --  
2 by the way, here's the good news. It's not five pages  
3 long and it's not 11 questions. It's two questions this  
4 time.

5 And the first one talks about past noneconomic  
6 losses, and I don't know if you can see, including  
7 physical pain, disfigurement, physical impairment, fear,  
8 depression and mental disorders. And the second page is  
9 future noneconomic damages. So that timeline, the date  
10 of the shooting, January 10th, 2013, to today's date,  
11 July 16th, that is called past. From July 16th forward  
12 2074, that's future.

13 So -- and before we dive in, I need to tell  
14 you that there are two rules, jury instructions, the  
15 law, that Judge Lampe will give you. And that is the  
16 same rules that applied in the first phase. Do you  
17 remember the one about the burden of proof more likely  
18 true than not applies here? Second part, nine out of  
19 12. Doesn't have to be the same nine for both, okay.  
20 Same rules.

21 Here's one of the jury instructions you're  
22 going to get. You must not consider -- it has to do  
23 with insurance. You must not consider whether any of  
24 the parties in this case has insurance. The presence or  
25 absence of insurance is totally irrelevant. You must  
26 decide this case based only on the law and the evidence.  
27 Do you see that lady over to the left? That's lady  
28 justice. Do you see what's over her eyes? Bind fold.

1 Why? Because the law says if you say well, let's see,  
2 if I'm getting information and the insurance is  
3 whatever, a hundred million dollars, you know what,  
4 that's what we're going to decide. The law says no,  
5 that's not fair. It's based on the facts, on the  
6 merits. That would be totally unfair.

7 On the other hand, like if there is no  
8 insurance you say well, if there is no insurance we'll  
9 give a free pass. Lady justice says we're blind to  
10 that. We just go on the merits. You're supposed to  
11 decide on the law and the evidence not on whether there  
12 is insurance or no insurance. Lady justice calls a ball  
13 a ball, a strike a strike. It's based on the facts and  
14 the evidence.

15 Here's another jury instruction rule that you  
16 folks will get, wealth of a party. In reaching a  
17 verdict, you may not consider the wealth or poverty of  
18 any party. The party's wealth or poverty is not  
19 relevant to any of the issues that you must decide.  
20 Think about that. Lady justice, blindfolded, okay.  
21 Why? If it turned out that the Defendant was a  
22 billionaire who made a hundred million dollars a day,  
23 you say oh, well, you know what, hundred million dollars  
24 a day, we make our verdict that, it's a drop in the  
25 bucket for this guy. He won't even feel it. So we'll  
26 do that. That would be totally unfair. It has to be on  
27 the facts, okay.

28 On the other hand, if the person didn't have

1 two nickels to rub together oh, well, we'll give him a  
2 free pass because he doesn't have it. The law says  
3 that's unfair also. Wealth of parties is irrelevant.  
4 You call a ball a ball. You call a strike a strike.  
5 It's on the merits. Does that make sense?

6 Now, this noneconomic damages, if you walk up  
7 to someone and you ask them what are the most prized  
8 possessions in your life, what is the most valuable  
9 thing in your life, most folks will say faith, family  
10 and good health. Those are the most valuable  
11 possessions. And the law says -- it breaks it down into  
12 very specific items. And here's what the law says in  
13 that regard. You're going to get this instruction. The  
14 amount of damages must include an award for each item of  
15 harm. The following are the specific items of  
16 noneconomic damages claimed by Bowe Cleveland. Physical  
17 pain, disfigurement, physical impairment, fear,  
18 depression, and mental disorders. Mental disorders --  
19 by the way, we'll get into detail. PTSD, OCD, that kind  
20 of thing. But there is others. There is like  
21 humiliation. You think a young man having his butt  
22 wiped by his parents might be somewhat humiliating? Or  
23 having a big scar and taking his shirt off, that might  
24 be embarrassing. But we didn't include those. We just  
25 included the six solid ones that we brought proof to you  
26 and evidence to you.

27 So then it goes on to say no fixed standard  
28 exists for deciding the amount of these noneconomic

1 damages. You must use your judgment to decide a  
2 reasonable amount based on the evidence and your common  
3 sense.

4 Let's talk about the word reasonable in this  
5 context. Does reasonable in this context mean  
6 moderately priced? Reasonable means what are the  
7 reasons. The good reasons, not the bad reasons. To  
8 recover for future harm Bowe Cleveland must prove that  
9 he is reasonably certain to suffer that harm. So the  
10 amount of damages must include an award for each item of  
11 harm. So you think well, let's just come up with a lump  
12 sum. I mean, eventually you have to add it up. But it  
13 must include an award for each item of harm.

14 Imagine 16-year-old Bowe Cleveland. He's  
15 walking down the street, alongside pulls a long black  
16 car with dark tinted glass and it pulls alongside him  
17 and stops. A man gets out. That man is wearing black  
18 suit, black tie, sunglasses, a fedora. And he walks up  
19 to Bowe and he says Bowe, I got a proposition for you.  
20 Here's my proposition. I'm going to take your good  
21 health away. I'm going to have somebody shoot you with  
22 a shotgun. You're going to come this close to dying.  
23 You're going to go through hell and you're going to have  
24 it for the rest of your life. Oh, by the way, here's an  
25 attache case, let me open it, it's full of money. Take  
26 it. Take it. How much do you want? What's a fair  
27 value of that? Bowe says I don't want it. I mean, I  
28 don't want it. You can keep it all. I want my health.

1 The man says well, you don't get it. Did I forget to  
2 mention that you don't have any choice? We're going to  
3 put you through this. The only choice you have is the  
4 fair value. But you don't have any choice. We're going  
5 to take it from you. We're going to take your good  
6 health from you. The only say you have is what's the  
7 fair value. Bowe says no, no, I just want to go home.  
8 Are you serious? He says I'm dead serious. I'm dead  
9 serious, serious as a heart attack. So how much is it  
10 going to be? What's the fair trade value for good  
11 health, these specific items.

12 So damages, past and future. The past from  
13 January 10th, the date of the shooting, until today's  
14 date, July 16th, 2019. It's about six-and-a-half years.  
15 I divided it up into two parts. Why? Because the first  
16 year was really intense. And then the other  
17 five-and-a-half years weren't as intense. And then  
18 future goes from today's date 54.5 years. So -- and it  
19 is these specific items of harm. And you'll get those  
20 two questions on past and future.

21 So let's review some of the evidence. What  
22 did the shotgun blast do to Bowe's body? By they way,  
23 everything I put up there, for example, that picture has  
24 got an exhibit number on it. You heard from the  
25 paramedic softball size hole in chest. You heard from  
26 Dr. Skinner, the doctor who came in this morning,  
27 multiple punctures to right lung, air trapped in chest  
28 cavity. The paramedic, he said the crunching noise.



1 Intestines and bowel protruding through the hernia.  
2 Bile leak. Dr. Skinner said the bile produced in the  
3 liver and it was going through the diaphragm up into the  
4 chest. Massive blood loss. Dr. Skinner said five  
5 liters of blood is normal. She said two liters while  
6 she was working on Bowe. The paramedic said one liter.  
7 That was three liters out of the body. That's what you  
8 call a massive blood loss. Fractured right ribs. Chest  
9 riddled with shotgun pellets, shredded diaphragm, torn  
10 liver. You heard from Dr. Skinner today about how she  
11 described it. They did damage control. They didn't  
12 know whether he was going to make it. How many surgical  
13 procedures did Bowe have to endure his first year? 31.  
14 What was the source of our information for that?  
15 Mr. Cleveland, Rob. He said I was there at every one of  
16 them.

17 Now, the Defense, they didn't ask him a single  
18 question. I asked him how did you know there were 31.  
19 Because I was there. That's my boy, and I was there.  
20 He wasn't asked a single question. They were major and  
21 minor. By they way, to Bowe, there wasn't such a thing  
22 as a minor surgery in his eyes. How many different  
23 medications did Bowe have to take during the first year?  
24 This is what I mean by the first year being really  
25 intense. There were pain medications, narcotics,  
26 Percocet, Darvocet, all these different things.  
27 Anti-depressants, tranquilizers, sleeping pills,  
28 antibiotics. And some of those medications were at

1 maximum dosage. You couldn't get any more. And we'll  
2 hear a little bit of detail later about that.

3 What organs did the shotgun pellets remain in?  
4 That's Exhibit 24-1. What we had is we had them  
5 colorized so it could be easier to see. Dr. Farr had  
6 that X-ray taken May 22nd, 2019, about a month and a  
7 half ago. By the way, do you see that there is also on  
8 the left side, left side, how deep did the shotgun  
9 pellets penetrate into him. Remember Dr. Farr said --  
10 he said -- Your Honor, may I walk through this area?

11 THE COURT: Yes, this is argument.

12 MR. RODRIGUEZ: Okay. Thank you. That's his  
13 spine. That's the front of his chest. So he's got  
14 pellets all the way back here. How many shotgun pellets  
15 still remain inside of Bowe? Numerous. Too many to  
16 count.

17 So getting back to what's the first line there  
18 of the instructions, the law that's given to you. The  
19 amount of damages must, not maybe, must include an award  
20 for each item of harm, okay. So -- and I broke up the  
21 past into that first year and then the next five years,  
22 okay. And those are the six items of harm.

23 Physical pain. We have to do the past first  
24 and then come back to the future. Past. I saw a red  
25 mist and it felt like a truck was sitting on my chest.  
26 You could see blood squirting out of his chest. He  
27 begged God to take him, that he couldn't take the pain  
28 anymore. The pellets migrated to the skin surface, this

1 is during that first year and the rest, to the surface  
2 causing ulcers and breaking through. Painful bowel  
3 movements. His wounds were stuffed with gauze and taped  
4 over and it became soaked with blood. After it became  
5 soaked with blood, the gauze had to be changed. Five or  
6 six times you're taking it off. Painful removal of  
7 compression stitches that held his -- just the skin.  
8 Remember the muscle underneath was not attached.  
9 Physical pain. The first -- that first week was  
10 intense. So physical pain. I thought about this long  
11 and hard. I thought, you know, we live in a world where  
12 as a society, as a people, as a community on prized  
13 possessions, paintings for sale sell for as much as  
14 hundreds of millions of dollars. Racehorses go for 50,  
15 60, 70 million. Physical pain. What is the fair value  
16 of that, of good health avoiding that? For the first  
17 year, 2 million. And then the rest of the  
18 five-and-a-half years up until today's date 500,000 a  
19 year. That would be 2,750,000. That's for the past for  
20 that one item of harm, physical pain. And by the way,  
21 you can't take these slides back so, yes, please take  
22 notes.

23 Disfigurement past. He was split open for  
24 eight months, could see his insides. Surgically cut  
25 abdomen leaves stomach muscles hanging loose. Shotgun  
26 pellets buried inside of him. Bellybutton displaced to  
27 the side. That was what they had to do to him. Is that  
28 disfigurement? This was when he was released from the

1 hospital. And they just stitched his skin together.  
2 That's his bellybutton over here. That's after  
3 Cedars-Sinai, the infection, he had to go Halloween,  
4 stayed there for two weeks. And that's afterwards. Is  
5 that disfigurement? Disfigurement for that first year,  
6 2 million. 500,000 after that for the next  
7 five-and-a-half years. That amount, 2,750,000.

8 Physical impairment. That's the third item,  
9 impairment. He had to be put -- his breathing was  
10 impaired, had to be put on a breathing machine and a  
11 tracheal tube inserted. Wound vac tubes sticking out  
12 impaired his movement. Muscle tissue after he had the  
13 bovine mesh that Dr. Dev did which was September of 2013  
14 about nine months later, said the muscle tissue grew  
15 into that mesh. The muscles grew into it, okay. Limits  
16 movements, feels tightness, never able to sleep through  
17 the night, sleep is impaired. At the beginning mom and  
18 dad had to help him with the bathroom. Physical  
19 impairment intense, the first year, 2 million. The next  
20 five-and-a-half years up until today's date 500,000 a  
21 year.

22 Fear. Because, remember, it says each item,  
23 there is six items of harm. Fear past. Fear of dying  
24 at the time he was shot. Remember, who did he ask for  
25 when he was on the floor? He asked for Jacob Lopez, his  
26 best friend, because he didn't want to die alone. He  
27 was scared to die alone. When he's at the hospital,  
28 when he comes to out of the coma, he's thinking that

1 Bryan Oliver is going to come to the hospital and finish  
2 him off. His dad said when he looked at him you could  
3 see tears coming down. Is that real fear? Fear of not  
4 surviving another surgery, might not wake up from  
5 anesthesia. Fear of infection. He knows all about  
6 infections. Fear. Because it says the amount of  
7 damages must include an award for each item of harm.  
8 Fear. That first year, 2 million. Next  
9 five-and-a-half, 2,750,000.

10 What psychological trauma was inflicted on  
11 Bowe? Let's clear one thing up right away. Acute  
12 stress disorder. What does that mean? That means --  
13 remember Dr. Albert Chen who testified by way of video.  
14 Acute stress disorder means you have all the symptoms of  
15 PTSD, but in the first 30 days you call it acute stress  
16 disorder. If you have the symptoms after that, then it  
17 becomes PTSD. I just wanted to make sure because the  
18 questions that were asked, you know, PTSD, OCD,  
19 depression. Depression. After surgery could not get  
20 out of bed, could not go to bathroom by himself, felt  
21 worthless, would cry so easy, so emotional and  
22 indecisive. His mom would ask if he wanted juice or  
23 water. He couldn't even decide. Since shooting he  
24 worries that people might not like him and feels they  
25 might end up shooting him. It's like if this person  
26 doesn't like me, I might wind up getting shot. Low self  
27 esteem. He would not apply for jobs because he thought  
28 they would not want him. And then the last one. Talk

1 about adding salt to the wound. The yearbook his junior  
2 year, he's not included in the yearbook. But guess who  
3 is? That might be a little depressing. Depression.  
4 \$2 million for the first year and 2,750,000 for the next  
5 five-and-a-half years.

6 The mental disorders, PTSD and OCD past.  
7 We've talked about the acute stress disorder first  
8 30 days. After being shot for years I was very nervous,  
9 noises would scare me and I would cry. Would have  
10 nightmares every night, would cry about not wanting to  
11 sleep. One time I stayed awake for three days. Avoids  
12 media because of the reports of school shootings.  
13 Unfortunately it happens way too much. The OCD. One  
14 time he didn't want to touch the remote, touch the TV.  
15 Every time he had to wash his hands. The counselor  
16 notices that his hands are just raw. When it comes to  
17 PTSD, this mental disorder, what did the psychiatrist  
18 say about whether Bowe had good days or not. This is a  
19 question that was asked by the Defense lawyer. Here's  
20 the answer. He was asked oh, he had good days. Isn't  
21 that what you reported? And here's what Dr. Fernandez  
22 said. And this is -- see, down there I put trial  
23 transcript. Virginia here gives us the transcription.  
24 It says I never really had the feeling he was having  
25 good days, no. In my work what you do is you see  
26 somebody, you see them a few weeks later to see how they  
27 are coping with the dose of medication that you have  
28 been prescribing. So you have to take into

1 consideration the whole context. How many tablets a day  
2 do they need to sleep? Because they report their  
3 sleeping well, that is correct. But at the time if  
4 they're using three tablets in order to do so, then I  
5 don't know if we can call that a good day or a good  
6 night. See, everything I say I want to back it up and  
7 give you the proof. What dosages did Bowe's  
8 psychiatrist prescribe to him? Here's what he testified  
9 to. So you can see when he left off on my last visit,  
10 this is January 17th, 2014, that's a year after the  
11 shooting. He was taking Zoloft, two tablets daily, 200  
12 milligrams, okay. He was taking Ativan three times a  
13 day. He was taking Trazadone, two tablets now, not one,  
14 of 50 milligrams, now two of a hundred milligrams here.  
15 And then he was also taking Klonopin. So one, two,  
16 three, four medications at his maximum dose. Maxed out  
17 a year later. Oh, what did the doctor therapist say  
18 about Bowe suffers from PTSD. In the opening statement  
19 I told you 59 times. We couldn't get a couple of  
20 doctors here so I took them out. This is what we  
21 presented to you. There was on the left side doctors,  
22 therapists who said he suffered from PTSD. On the other  
23 side Dr. Ashley told you that she had read the  
24 deposition of the psychologist hired by the other side  
25 who said that Bowe was a hypochondriac. And oh, by the  
26 way, he used the wrong DSM. You know, he used version  
27 four instead of five. So more likely true than not.  
28 Number of visits. So the amount of damages

1 must include an award for each item of harm. For that  
2 intense year, 2 million. For the next five-and-a-half  
3 years to today's date, 500,000 a year. So what's the  
4 total? 28,500,000.

5 So where does that go? In the first question  
6 on the verdict form. By the way, the first thing you  
7 need to do when you get back to the jury room, you've  
8 got to pick a new jury foreperson, okay. It goes there.

9 Future. Now we talk from today's date, July  
10 16th, 2019, 54.5 years, which is 2074. How do we know  
11 -- where is the evidence? Did you hear any evidence  
12 about the 54.5? Here's the jury instruction that Judge  
13 Lampe is going to give you. If you decide Bowe  
14 Cleveland has suffered damages -- and it goes on to say  
15 -- according to the bio statistics of the United States  
16 a 23-year-old male is expected to live another  
17 54.5 years. This published information is evidence.  
18 Everything I say to you I want to back it up. If I  
19 didn't have the doctors there, I took them off the  
20 chart, okay.

21 How long is 54.5 years? I think the best way  
22 to appreciate it is to look back 54.5 years, okay. And  
23 I'm old enough to remember this. I don't know if you  
24 folks are. But how long is 54.5 years? Looking back I  
25 still remember where I was when I heard the news that  
26 President Kennedy being assassinated. First Ford  
27 Mustang model released. Number one hit. I don't know  
28 if you have heard of it. I Want to Hold Your Hand by



1 The Beatles. GI Joe action figure released. Bell  
2 bottom pants were the fad. By the way, I've still got a  
3 pair of bell bottom pants. Martin Luther King, Jr.,  
4 wins the Nobel Peace Prize. That's how long it is.

5 Today is the best day of the rest of Bowe  
6 Cleveland's life. How do we know that? You don't need  
7 to be a rocket scientist. You think things are going to  
8 get better with the physical part? What did we hear  
9 Dr. Dev tell us? It's not a matter of if, it's when  
10 they need to fix the ventral right below the breast  
11 plate.

12 Okay. Now, you're not going to be asked to  
13 include -- and I'm not going to ask you because it's not  
14 part of the case about his lost earnings, about future  
15 medical, none of that. This is about the human losses.  
16 This is about good health, okay. That's why you didn't  
17 hear any evidence in that regard. Does that make sense?  
18 Okay. So it's not a matter of if, it's a matter of  
19 when. The amount of damages must include an award for  
20 each item of harm.

21 Now we go to the future. Chronic pain in  
22 chest, right lung area. Chronic means what? It's  
23 permanent. Was there any evidence presented against  
24 Dr. Dev or any of the doctors we put on? Was there any  
25 contradictive -- any dispute? You think if they had a  
26 doctor, they could find one that would come in and say  
27 he didn't have chronic, they wouldn't have brought him  
28 in? Chronic pain, soreness in stomach muscles, chronic

1 pain on right side. And Dr. Dev explained to you why  
2 that was the case. 2,000 milligram Ibuprofen taken  
3 daily. He said well, don't take the Ibuprofen. It's  
4 bad for you. It's bad for your liver and you don't have  
5 a good liver to begin with. What's the choice? He's  
6 going to stay home and feel sorry for yourself? He's  
7 damned if he does and he's damned if he doesn't. You go  
8 to work. Oh, by the way, you use a jackhammer from time  
9 to time. So you shouldn't go to work if it's that  
10 painful. Oh, you are going to work. You shouldn't be  
11 taking that Ibuprofen. What's the choice? You either  
12 take the Ibuprofen and mess up your already messed up  
13 liver or opioids. At times it feels like his flesh is  
14 being ripped off the bovine mesh. The scar  
15 contractures. So physical pain for the next 54.5, good  
16 health. What is that? 50,000 a year. Because it's not  
17 the same intensity as these six-and-a-half years. It's  
18 not as intense, but it's longer.

19 Disfigurement, the future. Crater scar runs  
20 up and down his middle. What did the doctor say,  
21 Dr. Dev? He said I can cut out and bring some, more but  
22 he'll still have a large scar. Bellybutton permanently  
23 removed because of surgeries. You know, what's the big  
24 deal with his bellybutton. You know what the big deal  
25 is, it's his. He has a right to control his life.  
26 Other people don't have the right to dictate to him.  
27 Shotgun pellets buried inside of his lung, liver, chest  
28 and back. Same thing, 50,000 from today's date up to

1 2074.

2 Physical impairment future. Because we're  
3 just talking about the future right now. Shortness of  
4 breath, tightness in chest. So impaired, feels like his  
5 flesh is being torn off, the bovine mesh. Impairment.  
6 Sleep is impaired. Needs TV on and Benadryl or Tylenol  
7 PM or Nyquil to fall asleep. Diarrhea. Food goes right  
8 through him. Limited in what he can eat and when.  
9 Eating is impaired. 50,000 times 54.5.

10 Fear future. The very first one that I put up  
11 there, fear. He doesn't live in fear? He lives with  
12 fear that when Bryan Oliver gets out of prison he's  
13 going to come and finish the job. He said my dad and I  
14 are going to do everything we can. Fear of not being  
15 liked by someone, afraid that they might shoot him.  
16 Fear of not having another surgery, of not surviving  
17 another surgery. Fear of infection. Are those  
18 realistic given what he's gone through, that fear of not  
19 surviving another surgery. Remember the doctor said,  
20 Dr. Dev said, you've got to have that surgery sooner or  
21 later. And Bowe said I'd rather pass on that until I  
22 absolutely have to do it, until I absolutely have to do  
23 it. 50,000 a year value of good health for the item of  
24 harm known as fear.

25 Depression future. Before shooting he was  
26 outgoing and funny. Now everything is different,  
27 nothing like he was before. Now he finds himself crying  
28 for no apparent reason, hard to keep a real

1 relationship, doesn't want to put his emotional baggage  
2 on anyone, feels like he missed out because he never got  
3 to walk across the stage for graduation. You heard from  
4 Dr. Ashley and some of the other folks about this. I'm  
5 not going to click back, but if we go back to fear, you  
6 heard him talk about fear. One of the things that he's  
7 concerned about is those lead pellets. As far as he's  
8 concerned, he was told that they'd get into the  
9 bloodstream, okay. Is that something he should worry  
10 about? Is that something he's worried about? I didn't  
11 put that on the slide. Same thing, 50,000 a year for  
12 the next until the year 2074.

13 Mental disorders in the future. I don't think  
14 that I will ever get a day where I don't remember it.  
15 Gets nervous at the movies and thinks someone might come  
16 in and shoot him. Some of these things are in the past  
17 and they continue. Like avoids media because of reports  
18 of school shootings. That's even before. So a number  
19 of these things go -- travel with him. Still hyper  
20 vigilant, aware of his surroundings. Now washes his  
21 hands ten times a day. That's the OCD. 50,000 for the  
22 next 54.5 years. The total, 16,350,000.

23 Now, that's less than over here the 28  
24 million. This is only six-and-a-half years, but this  
25 was much more intense. This one is not as intense, but  
26 the duration. So future noneconomic, 16,350,000. By  
27 the way, the PTSD, we heard from all the doctors that  
28 testified that it was permanent and will last the rest

1 of his life. Dr. Fernandez, Dr. Ashley, the  
2 psychologist and the psychiatrist. Was there anyone  
3 brought in to say different? Do you think if they could  
4 have found someone to come in and say something  
5 different they would have hesitated to bring someone in  
6 to testify otherwise? So the total is 44,850,000.  
7 That's a lot of money. But it's a lot of harm. It's a  
8 lot of harm.

9 After the Defense lawyer gets up and talks to  
10 you, I'll get another short brief period to address some  
11 of the things that might be brought up. Thank you for  
12 listening.

13 THE COURT: Thank you, Mr. Rodriguez.  
14 Mr. Herr, you're ready, you want a few moments?

15 MR. HERR: Yeah, could I just have a couple of  
16 minutes?

17 THE COURT: We'll give the jury an opportunity  
18 as well. Ladies and gentlemen, probably five or six  
19 minutes. But you may exit the courtroom while we  
20 prepare for the Defense argument. Don't discuss the  
21 case or form or express any opinions.

22 (A recess was taken.)

23 THE COURT: We're back in session on the  
24 record. Appearances are as previously noted. Let's  
25 have the jury in.

26 Court is in session. I took roll. The jury  
27 is in the courtroom properly seated in the jury box.

28 Mr. Herr, your closing argument?

1           MR. HERR: Thank you, Your Honor, and thank  
2 you, ladies and gentlemen. We've been together about a  
3 month now. And we're at the point in the process where  
4 you're going to decide an appropriate amount of damages  
5 to fully compensate Bowe Cleveland. And that's what I'm  
6 going to ask you to do. When we started this phase of  
7 the case I told you that Bowe Cleveland suffered a  
8 horrible injury. There is no dispute with that. There  
9 is no question that Bowe should be reasonably  
10 compensated. Reasonable is the important part of this  
11 process. He should not be compensated by who has the  
12 most Power Point presentations, who has sort of the  
13 slickest presentation of evidence. What the attorneys  
14 asked is not evidence. He should be compensated on what  
15 is the evidence.

16           And over the last month I've learned a couple  
17 of things. That, first of all, no amount of money will  
18 change what Bowe Cleveland went through. And no amount  
19 of money will change what he will go through. And what  
20 I would like you to do is consider the evidence and  
21 determine what's reasonable based on the evidence, not  
22 based on, you know, these slides you've just seen in the  
23 last 10 or 15 minutes or hour. I'm not going to take  
24 much of your time because I think the evidence is really  
25 clear on this point.

26           And the best evidence that you saw about Bowe  
27 Cleveland was this morning in this courtroom. You saw  
28 Bowe Cleveland. And Bowe Cleveland is not suffering to

1 the extent that the Plaintiff's attorney in presenting  
2 this case -- and I'll admit they put together a very  
3 polished presentation carefully crafted to try to elicit  
4 from you sympathy for Bowe Cleveland so that you award  
5 him \$44 million. And that's not really about Bowe  
6 Cleveland. You're not to award money for the  
7 Plaintiff's attorney. You're not to award money for  
8 Bowe Cleveland's family. You're not to award money to  
9 punish. Not to punish Rona Angelo or Kim Fields or Mark  
10 Shoffner. It's to come up with a reasonable figure to  
11 compensate Bowe Cleveland.

12 Now, there have been a number of occasions  
13 when I think the evidence has been overstated to you.  
14 And I'm going to just give you a couple of examples.  
15 First of all, I'm going to show you this photograph.  
16 This is the photograph that was presented to you and was  
17 presented to you today as to Bowe Cleveland. And it was  
18 only when I examined Dr. Dev as to the most recent  
19 photo, the photos that were taken in May of this year,  
20 shortly before the trial. These are the photographs.  
21 They're Exhibit 133-1, 2 and 3 that you can look at in  
22 the jury room. This is one photograph of Bowe  
23 Cleveland. Compare it to the photograph that the  
24 plaintiff presented. This is a second photograph of  
25 Bowe Cleveland, second set of photographs. And I'll  
26 just represent to you this is Dr. Dev's signature. You  
27 may recall that I asked him to sign this. But look at  
28 the photographs of Bowe today. And don't mistake what

1 I'm saying that he suffered a horrible injury,  
2 absolutely. But I think the evidence should be  
3 considered and considered objectively and reasonably and  
4 not so it elicits from you an emotional response so you  
5 award a huge amount of damages for the benefit of people  
6 other than Bowe Cleveland.

7 In fact, you may recall I asked Dr. Dev about  
8 the tattoo that's in the photograph. I thought it  
9 significant because if you look at this set of  
10 photographs you can tell there is no photograph -- or,  
11 excuse me, there is no tattoo on Plaintiff's  
12 Exhibit 9-20. And finally this is the second group of  
13 photographs that Dr. Dev took. And if you look at those  
14 photographs, again, what Bowe went through is horrible.  
15 And I'm not trying to downplay that. What I'm trying to  
16 point out is throughout the course of this trial there  
17 have been many, many occasions when the evidence has  
18 been presented in a particular way to evoke an emotional  
19 response from you, not the response of a rational,  
20 level-headed juror.

21 Another point that I think is very important  
22 in this case is this 31 surgeries. You've heard 31  
23 surgeries. And you heard from the doctor, the surgeons.  
24 You heard from the doctors who performed the surgery.  
25 Dr. Ruby Skinny. Dr. Ruby Skinner said I did two  
26 surgeries. You heard from Dr. Dev. Dr. Dev said I did  
27 two surgeries. We didn't hear from anybody from  
28 Cedars-Sinai. But assume there is a surgical procedure



1 there at Cedars-Sinai. Where are the doctors who are  
2 the doctors that did 31 surgeries? Now, you did hear in  
3 response to a leading question to Rob Cleveland, the  
4 father, that there were 31 procedures or surgeries. You  
5 heard Dr. Dev explain to you what's a surgery. Ladies  
6 and gentlemen, based on the evidence in this case, there  
7 is no evidence there were 31 surgeries. And, again,  
8 that is not to say what Bowe went through was  
9 tremendously painful, was a horrible experience. What  
10 I'm saying is the way the evidence has been presented to  
11 you is for purposes of getting you so you don't decide  
12 this based on an objective, reasonable review of the  
13 evidence in this case.

14 You need to keep in mind that there are  
15 strategies that attorneys follow. You know, they learn  
16 going -- how to present this evidence in a way to get  
17 the damages at a certain rate. For example, this notion  
18 that you have to award money for each and every element  
19 of the jury instruction, that's not what the jury  
20 instruction says. Here's an example of one of the jury  
21 instructions you're going to get. And this talks about  
22 what you're supposed to do when you consider the  
23 damages. It does not say you have to award money for  
24 each and every item. It says you must consider all of  
25 these factors. So, again, I tell you this not to say  
26 Bowe Cleveland didn't suffer all of these things. I'm  
27 telling you this because the way it's presented to you  
28 is to get you to believe you have to award \$2 million

1 for each and every one of those. That's the way  
2 plaintiff's attorneys can get you to a number like  
3 \$44 million. If you look at this instruction, you're to  
4 use your common sense to come up with a reasonable  
5 amount based on the evidence. And in that regard Bowe  
6 Cleveland must prove that he is reasonably certain to  
7 suffer that harm.

8 Now, the reason I think that is important is  
9 because according to Bowe Cleveland, according to Bowe  
10 Cleveland as of January 2016 he was no longer taking any  
11 prescriptive meds. As of January 2016 he stopped  
12 counseling. As of -- there is no treatment after  
13 January of 2016. The only treatment that -- the only  
14 time Bowe Cleveland went to see one of the doctors  
15 you've heard from is when the Plaintiff's attorney sent  
16 him to see Dr. Dev in May of this year. And if you  
17 remember Dr. Dev's testimony, at no time did he say it's  
18 reasonably certain that Bowe is going to have to have  
19 further future surgery. Now, you heard those types of  
20 questions asked of a number of people. These people who  
21 first saw Bowe as to whether it's reasonably certain  
22 that you thought he had PTSD and those types of things.  
23 That question was not asked of Dr. Dev as to whether  
24 it's reasonably certain that he needs to have the hernia  
25 repaired, because that's not the case. And if it was  
26 necessary for Bowe to have the surgery, he would have  
27 had the surgery. But you heard from Bowe that he -- you  
28 know, he's got a good job now. You listen to him, he

1 sounds good. He's doing construction for crying out  
2 loud. And I've got to believe that he's getting a lot  
3 of enjoyment, satisfaction out of that. And, again,  
4 that's not to say what he went through wasn't horrible.  
5 He absolutely did. But when you're considering the  
6 damages, this again is an instruction that's going to be  
7 given to you. And the last line in this instruction I  
8 think is very important. It indicates you must not  
9 speculate or guess in awarding damages.

10 Now, in this case I want to remind you as to  
11 what you're not to award. Because in this case -- in  
12 this case it's very easy to think Bowe has to have lost  
13 some wages or Bowe had some prior medical expenses or  
14 Bowe is going to have some medical expenses. And  
15 according to the law that Judge Lampe is going to give  
16 you, the plaintiff is not seeking economic damages in  
17 this case. So you are not to consider, not to consider,  
18 the following items in your calculation of damages. And  
19 that includes past medical expenses, future medical  
20 expenses, lost income, earnings, salary or wages,  
21 anticipated lost income, loss of ability to earn money,  
22 attorney's fees and costs of the litigation.

23 Now, I've struggled mightily with trying to  
24 figure out, you know, what is an appropriate number to  
25 fully compensate Bowe Cleveland in this case. And what  
26 I have done is -- and I don't have a fancy slide for it.  
27 But what I have done is I have calculated the period  
28 from 2013, the date of the shooting, until Bowe told us

1 all that he was no longer taking meds and was no longer  
2 having counseling. And that's 2015. And I tried to  
3 come up with a number. And I have to tell you I don't  
4 know what the correct number is. I just know no amount  
5 of money is going to give Bowe back what he lost. But I  
6 just came up with a number that I thought, you know,  
7 what would give Bowe some economic comfort for what he  
8 went through. And the numbers I have come up with --  
9 and I apologize for my handwriting. For 2012 through  
10 2015 if you give him \$365,000 a year, that's for two  
11 years, that gives Bowe 720 -- excuse me, \$730,000 for  
12 the period of time when he was treating, when Bowe was  
13 having counseling, when Bowe had to take these meds.  
14 And believe me, I think he absolutely needed those  
15 medicines. I think he needed that treatment, that  
16 therapy. But you notice most of the treatment Bowe  
17 received was in the first 60 days after the shooting.  
18 After that period of time most of Bowe's treatment  
19 ended. He did have the work done by Dr. Dev. And then  
20 as a result of that work he had an infection, which  
21 happens in these situations sadly, and he went to  
22 Cedars-Sinai. But that was the extent of it. You heard  
23 from Dr. Skinner. You heard from Dr. Dev.

24 So then I tried to come up with a number to  
25 cover Bowe after he stopped treating, after he stopped  
26 counseling, after he stopped taking the meds, up until  
27 today's date. And that's how I came up with \$50,000 a  
28 year. \$50,000 a year for four years is \$200,000. And

1 then that reflects past economic damages.

2 THE COURT: You mean noneconomic damages.

3 MR. HERR: I mean noneconomic damages. Thank  
4 you, Judge.

5 THE COURT: You're welcome.

6 MR. HERR: That's why he's the Judge, and I'm  
7 not. It's noneconomic damages. What's the future  
8 noneconomic damages? I thought about that. And I  
9 thought, you know, let's compensate Bowe for a period of  
10 time of ten years from the date of the shooting, from  
11 2013 through 2023. And in doing that I came up with  
12 \$50,000 a year for a number of \$200,000 for a grand  
13 total of \$1,130,000. And, again, I would not take that  
14 money to go through what he went through. But that's  
15 not what we're here to decide. We're here to decide  
16 what's a reasonable, appropriate amount of compensation  
17 in this case.

18 And, ladies and gentlemen, I would submit to  
19 you that \$44 million is nowhere near reasonable. And  
20 it's probably something that I think even Bowe would be  
21 embarrassed to hear is being pled for him in this case.  
22 Ladies and gentlemen, it has been a distinct privilege  
23 to work with you in this case. It's been a long trial.  
24 But please keep in mind your oath when you go into the  
25 jury room. Don't be swayed by passion or prejudice or  
26 by who put on the most Power Points or who had the  
27 slickest presentation. Please decide this evidence  
28 consistent with the law that Judge Lampe gives you and

1 what's your reasonable objective interpretation. Thank  
2 you very much.

3 THE COURT: Thank you, Mr. Herr.

4 Mr. Rodriguez, brief rebuttal?

5 MR. RODRIGUEZ: Yes. Thank you, Your Honor.  
6 Let me start off by saying this. The value of good  
7 health. The Defense just told you that the jury  
8 instruction doesn't say what I showed you. I'm going to  
9 put it on the ELMO as to what the jury instruction says.  
10 This is a copy of what you're going to get when you go  
11 back into the jury room. This is an exact copy of what  
12 you're going to get, except for my writing. It says the  
13 amount of damages must include an award for each item of  
14 harm that was caused. There it is in black and white.  
15 The Defense lawyer just got up and said oh, it's not for  
16 each item, and that's not what the jury instruction  
17 says. You're going to see a copy of this. You're going  
18 to have a copy of this jury instruction when you go back  
19 to deliberate. So I just wanted to correct that.  
20 That's just simply not the case.

21 You were told also first 60 days. I showed  
22 you -- everything I said I wanted to show you proof.  
23 Dr. Fernandez, I showed you January 14th of 2014, a year  
24 later, he's maxing Bowe out on the four medications  
25 okay. So everything that I showed up there, there is  
26 something to back it up. I don't put something up  
27 unless I got the beef to show for it, okay.

28 What's the reason why Bowe survived? He's a

1 victim because he survived. Three. One, he's a big  
2 boy, okay. Two, thank God it was birdshot not buckshot.  
3 His torso would have been blown off. And the third  
4 reason is Bowe is not a quitter. Does that mean he  
5 didn't hit rock bottom and have some bad times? But he  
6 got up, you know, and he's coping and he's doing.  
7 What's the alternative, for him to stay home? Does it  
8 hurt to go to work? Does it have to take  
9 2,000 milligrams? Does that sound like a whiner, a  
10 quitter to you? That's the kind of person we would be  
11 proud to have a neighbor, as a friend, as a member of  
12 our community.

13 And I'll leave you with this. Imagine after  
14 your verdict after you've gone back and followed the law  
15 -- that's all I'm asking you to do is follow the law.  
16 After your verdict a family friend, a member, friend, a  
17 media person is asking you about your verdict, here's  
18 what I want you to do or suggest to you. That you be  
19 proud, proud of your verdict, okay. That you follow the  
20 law. If you were lady justice, you had the blind folds  
21 on and you follow the rules. I'm never afraid of the  
22 verdict if the jurors follow the law. I showed you what  
23 the law is. I back it up every time I say something.  
24 And when you're talking to a friend, when you're talking  
25 to a neighbor, when you're talking to a family member,  
26 possibly a media person, our verdict showed what we as a  
27 community, we as the people, value good health at. We  
28 hold people responsible when they do that.

1 Accountability is the glue that keeps our society  
2 together.

3 It's been an honor to have somebody like Bowe.  
4 I couldn't ask for a bigger teddy bear. And thank you  
5 so much for the honor and respect that you showed every  
6 one of our witnesses. It's decent, and it's the right  
7 thing to do. Thank you.

8 THE COURT: All right. Thank you, counsel.

9 Members of the jury, you've now heard all the  
10 evidence in closing arguments of the attorneys on the  
11 issue of damages. It continues to be my duty to  
12 instruct you on the law that applies to this case. You  
13 must follow these instructions as I told you before as  
14 well as those that I previously gave you. You will have  
15 a copy of my new instructions with you when you go to  
16 the jury room to deliberate. I'm not going to repeat  
17 all the previous instructions that I gave you. All of  
18 the general instructions that I gave you previously  
19 about the evidence, witnesses and the burden of proof  
20 still apply. All of my instructions about your conduct  
21 still apply. If you do need copies of these earlier  
22 written instructions, please let me know.

23 I will now tell you the law that you must  
24 follow to reach your verdict on this issue of damages.  
25 You must follow the law exactly as I give it to you even  
26 if you disagree with it. If the attorneys have said  
27 anything different about what the law means, you must  
28 follow what I say. In reaching your verdict do not



1 guess what I think your verdict should be from something  
2 I may have said or done. You've already decided that  
3 the actions of Rona Angelo, Mark Shoffner, Marilyn  
4 Brown, Kim Fields, Mark Richardson, Bryan Oliver, Sheryl  
5 Oliver and Tyler Oliver caused harm to Bowe Cleveland.  
6 Now you must decide how much money will reasonably  
7 compensate Bowe Cleveland for the harm. This  
8 compensation is called damages. The amount of damages  
9 must include an award for each item of harm that was  
10 caused by Rona Angelo, Mark Shoffner, Marilyn Brown, Kim  
11 Fields, Mark Richardson, Bryan Oliver, Sheryl Oliver and  
12 Tyler Oliver's wrongful conduct even if the particular  
13 harm could not have been anticipated.

14 Bowe Cleveland does not have to prove the  
15 exact amount of damages that will provide reasonable  
16 compensation for the harm. However, you must not  
17 speculate or guess in awarding damages.

18 The following are the specific items of  
19 noneconomic damages claimed by Bowe Cleveland. Past and  
20 future physical pain, disfigurement, physical  
21 impairment, fear, depression and mental disorders. No  
22 fixed standard exists for deciding the amount of these  
23 damages. You must use your judgment to decide a  
24 reasonable amount based on the evidence and your common  
25 sense. To recover for future physical pain,  
26 disfigurement, physical impairment, fear, depression and  
27 mental disorders, Bowe Cleveland must prove that he is  
28 reasonably certain to suffer that harm. For future

1 physical pain, disfigurement, physical impairment, fear,  
2 depression and mental disorders, determine the amount in  
3 current dollars paid at the time of judgment that will  
4 compensate Bowe Cleveland for physical pain,  
5 disfigurement, physical impairment, fear, depression and  
6 mental disorders. This amount of noneconomic damages  
7 should not be reduced further to present cash value.

8 Plaintiff, Bowe Cleveland, is only seeking  
9 noneconomic damages against Defendants Taft Union High  
10 School District, Sheryl Oliver -- excuse me. Taft Union  
11 High School District, Rona Angelo, Marilyn Brown, Mark  
12 Shoffner, Kim Fields, Bryan Oliver, Sheryl Oliver and  
13 Tyler Oliver. Plaintiff is not seeking economic damages  
14 against these defendants.

15 Because Plaintiff is not seeking economic  
16 damages in this case, you are not to consider the  
17 following items in your calculation of damages. Costs  
18 of past medical expenses including but not limited to  
19 treatment, surgery and procedures for physical, mental  
20 or emotional conditions and/or complaints. Costs of  
21 future medical expenses including but not limited to  
22 treatment, surgery and procedures for physical, mental  
23 or emotional conditions and/or complaints, lost income  
24 earnings, salary and/or wages, anticipated loss of  
25 income earnings, salary and/or wages, loss of the  
26 ability to earn money, education, college costs,  
27 attorney's fees and costs of the litigation.

28 If you decide Bowe Cleveland has suffered

1 damages that will continue for the rest of his life, you  
2 must determine how long he will probably live.  
3 According to national vital statistics reports a  
4 23-year-old male is expected to live another 54.5 years.  
5 This is the average life expectancy. Some people live  
6 longer and others die sooner. This published  
7 information is evidence of how long a person is likely  
8 to live, but is not conclusive. In deciding a person's  
9 life expectancy you should also consider among other  
10 factors that person's health, habits, activities,  
11 lifestyle and occupation. The arguments of the  
12 attorneys are not evidence of damages. Your award must  
13 be based on your reasoned judgment applied to the  
14 testimony of the witnesses and the other evidence that  
15 has been admitted during the trial.

16 You must not consider whether any of the  
17 parties in this case has insurance. The presence or  
18 absence of insurance is totally irrelevant. You must  
19 decide this case based only on the law and the evidence.  
20 In reaching a verdict you may not consider the wealth or  
21 poverty of any party. The party's wealth or poverty is  
22 not relevant to any of the issues that you must decide.  
23 You must not include in your award any damages to punish  
24 or make an example of any of the defendants. Such  
25 damages would be punitive damages and they cannot be  
26 part of your verdict. You must award only the damages  
27 that fairly compensate Bowe Cleveland for his loss.

28 As I told you before, when you go to the jury

1 room the first thing you should do now is to choose a  
2 new presiding juror. The presiding juror should see to  
3 it that your discussions or orderly and that everyone  
4 has a fair chance to be heard. As I told you before, it  
5 is your duty to talk with one other in the jury room and  
6 to consider the views of all the jurors. Each of you  
7 must decide the case for yourself, but only after you  
8 have considered the evidence with the other members of  
9 the jury. Feel free to change your mind if you are  
10 convinced that your position should be different. You  
11 should all try to agree, but not do give up your honest  
12 beliefs just because others think differently.

13 As I mentioned before, please do not state  
14 your opinions too strongly at the beginning of your  
15 deliberations or immediately announce how you to plan to  
16 vote as it may interfere with an open discussion. Keep  
17 an open mind so that you and your fellow jurors can  
18 easily share ideas about the case. You should use your  
19 common sense and experience in deciding whether  
20 testimony is true and accurate. However, during your  
21 deliberations do not make any statements or provide any  
22 information to other jurors based on any special  
23 training or unique personal experiences that you may  
24 have had related to matters involved in this case. What  
25 you may know or have learned through your training or  
26 experience is not a part of the evidence received in  
27 this case.

28 As we did in the first phase I remind you that

1 sometimes jurors disagree or have questions about the  
2 evidence or about what the witnesses said in their  
3 testimony. If that happens, you may ask to have  
4 testimony read back to you. I will be sending back any  
5 exhibits that have been admitted into evidence. You may  
6 need further explanation about the laws that apply to  
7 the case. Write down your questions, give them to the  
8 bailiff as I instructed you previously.

9 Your decision must be based on your personal  
10 evaluation of the evidence presented in the case. And  
11 as we did before, I remind you that you may be asked in  
12 open court how you voted on each question. And while I  
13 know you would not do this, I'm required to advise you  
14 that you must not base your decision on chance such as a  
15 flip of a coin. And if you decide to award damages, you  
16 may not agree in advance to simply add the amount each  
17 juror thinks is right and then make the average your  
18 verdict.

19 Again, you may take breaks as we've been doing  
20 in the ordinary course of the Court's business. During  
21 those breaks you must not discuss the case with anyone,  
22 including each other, until all 12 of you and only the  
23 12 of you are back in the jury room.

24 All right. We'll give our bailiff a new oath  
25 to take charge of you for your deliberations in this  
26 phase of the trial.

27 (Swearing in the bailiff.)

28 THE BAILIFF: I do.

1 THE COURT: All right. Jurors one through 12,  
2 if you would go with our bailiff to the jury room.

3 All right. Ms. Reyna, you've been through  
4 this before. Thank you very much for your patience and  
5 your ability to serve as a juror in this case. You're  
6 an alternate juror. Just give your information to  
7 Veronica. You're free to go but you're not released yet  
8 until we call you and tell you that you're discharged.  
9 Continue to follow all my instructions about your  
10 conduct. Don't have any communication with anyone and  
11 don't form or express any opinions about this case.  
12 Thank you again.

13 MS. REYNA: Thank you, Your Honor.

14 THE COURT: All right. As I did previously,  
15 I'm handing the clerk of the court a packet of the most  
16 recent instructions. She'll make a copy and send it  
17 back to the jury for their use and a copy for me for  
18 reference, a copy of the packet of the jury question and  
19 request for assistance form and a copy of the special  
20 verdict.

21 I don't think there was any controversy with  
22 respect to most recent instructions. But I gave no  
23 instructions in the current phase, nor did I refuse any  
24 except -- over objection except as counsel will now  
25 state for the record.

26 Mr. Rodriguez?

27 MR. RODRIGUEZ: Nothing, Your Honor, thank  
28 you.

1 THE COURT: Mr. Herr?

2 MR. HERR: No objections, Your Honor.

3 THE COURT: Okay. Then the stipulation still  
4 applies that the jury may convene and may reconvene its  
5 deliberations in the ordinary course of business outside  
6 the presence of counsel and parties. And we're in  
7 recess.

8 MR. HERR: Thank you, Your Honor.

9 MS. TRUJILLO: Thank you, Your Honor.

10 MR. RODRIGUEZ: Thank you.

11 (Whereupon no further proceedings were heard  
12 in this matter on this date.)

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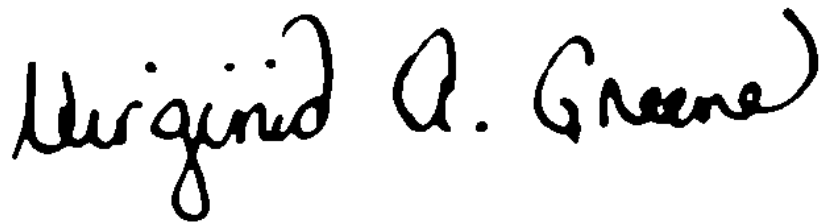
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1 STATE OF CALIFORNIA )  
2 ) SS.  
3 COUNTY OF KERN )

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5  
6 I, Virginia A. Greene, CSR No. 12270, Official  
7 Certified Shorthand Reporter of the State of California,  
8 Kern County Superior Court, do hereby certify that the  
9 foregoing transcript in the matter of BOWE CLEVELAND vs.  
10 TAFT UNION HIGH SCHOOL DISTRICT, ET AL., Case No.  
11 S-1500-CV-279256, July 16, 2019, consisting of pages  
12 numbered 2041 through 2120, inclusive, is a complete,  
13 true, and correct transcription of the stenographic  
14 notes as taken by me in the above-entitled matter.

15 Dated this 14th day of January, 2020.

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22 Virginia A. Greene, CSR  
23 Certified Shorthand Reporter No. 12270  
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<b>\$1,130,000</b> 2109:13	<b>17th</b> 2095:10	<b>3</b> 2103:21	<b>9-20</b> 2104:12
<b>\$2</b> 2094:4 2105:28	<u>2</u>	<b>30</b> 2063:22 2093:15 2094:8	<u>A</u>
<b>\$200,000</b> 2108:28 2109:12	<b>2</b> 2091:17 2092:6,19 2093:8 2096:2 2103:21	<b>31</b> 2089:13,18 2104:22 2105:2,4,7	<b>A.M.</b> 2076:22
<b>\$365,000</b> 2108:10	<b>2,000</b> 2066:28 2098:2 2111:9	<b>3:00</b> 2076:24	<b>abdomen</b> 2059:7 2060:1 2061:12 2091:25
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<b>\$50,000</b> 2108:27,28 2109:12	<b>20</b> 2063:22	<b>44,850,000</b> 2101:6	<b>ability</b> 2107:21 2114:26 2118:5
<b>\$730,000</b> 2108:11	<b>200</b> 2095:11	<b>4:00</b> 2076:24	<b>absciss</b> 2061:12,14
-	<b>2002</b> 2049:6	<u>5</u>	<b>absence</b> 2084:25 2115:18
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<u>1</u>	<b>2012</b> 2108:9	<b>50,000</b> 2098:16,28 2099:9,23 2100:11,21	<b>accomplish</b> 2074:15
<b>10</b> 2102:23	<b>2013</b> 2050:1,13,17 2065:1 2084:10 2092:13 2107:28 2109:11	<b>500,000</b> 2091:18 2092:6,20 2096:3	<b>Accountability</b> 2112:1
<b>10:30</b> 2080:17	<b>2014</b> 2095:10 2110:23	<b>54.5</b> 2088:18 2096:10, 12,17,21,22,24 2098:15 2099:9 2100:22 2115:4	<b>accounted</b> 2081:9
<b>10th</b> 2050:17 2084:10 2088:13	<b>2015</b> 2069:22 2108:2,10	<b>59</b> 2095:19	<b>accurate</b> 2116:20
<b>11</b> 2046:3 2081:3 2084:3	<b>2016</b> 2069:23 2072:27 2075:19 2106:10,11,13	<b>5:00</b> 2076:20	<b>action</b> 2097:1
<b>11th</b> 2054:26	<b>2018</b> 2049:14	<u>6</u>	<b>actions</b> 2113:3
<b>12</b> 2055:4 2083:23,24 2084:19 2117:22,23 2118:1	<b>2019</b> 2046:1 2076:13 2081:1 2088:14 2090:6 2096:10	<b>60</b> 2091:15 2108:17 2110:21	<b>activities</b> 2115:10
<b>1215</b> 2082:26	<b>2023</b> 2109:11	<b>67</b> 2067:17	<b>acute</b> 2093:11,14,15 2094:7
<b>133-1</b> 2103:21	<b>2034</b> 2058:20	<b>6:00</b> 2076:22	<b>add</b> 2087:12 2117:16
<b>14th</b> 2110:23	<b>2074</b> 2084:12 2096:10 2099:1 2100:12	<u>7</u>	<b>added</b> 2048:13
<b>15</b> 2102:23	<b>21</b> 2083:6,12	<b>70</b> 2091:15	<b>adding</b> 2094:1
<b>16</b> 2046:1 2075:21 2081:1	<b>22nd</b> 2090:6	<b>720</b> 2108:11	<b>additional</b> 2048:12 2055:9
<b>16,350,000</b> 2100:22,26	<b>23-year-old</b> 2096:16 2115:4	<u>8</u>	<b>address</b> 2101:10
<b>16-year-old</b> 2087:14	<b>24</b> 2055:5 2057:22	<b>800</b> 2082:26	<b>adjacent</b> 2053:14
<b>16th</b> 2084:11 2088:14 2096:10	<b>24-1</b> 2090:4	<b>8:00</b> 2076:20	<b>admit</b> 2103:2
<b>17</b> 2049:7	<b>28</b> 2100:23		<b>admitted</b> 2064:25 2080:6 2115:15 2117:5
	<b>28,500,000</b> 2096:4		<b>advance</b> 2117:16
			<b>advise</b> 2117:13

<b>advised</b> 2046:17	<b>apologize</b> 2076:25 2108:9	<b>attend</b> 2071:21	<b>baggage</b> 2100:1
<b>afraid</b> 2073:22,24 2099:15 2111:21	<b>apostles</b> 2083:24	<b>attending</b> 2049:10,13, 18,21,24	<b>bailiff</b> 2117:8,24,27,28 2118:2
<b>afternoon</b> 2081:2,22	<b>apparent</b> 2099:28	<b>attorney</b> 2103:1,7 2106:15	<b>BAKERSFIELD</b> 2046:1 2081:1
<b>age</b> 2070:6	<b>Appearances</b> 2101:24	<b>attorney's</b> 2107:22 2114:27	<b>balance</b> 2059:27
<b>aggressive</b> 2057:12, 14,18	<b>applied</b> 2084:16 2115:13	<b>attorneys</b> 2102:13 2105:15 2106:2 2112:10,26 2115:12	<b>ball</b> 2085:12,13 2086:4
<b>agree</b> 2116:11 2117:16	<b>applies</b> 2054:22 2084:18 2112:12 2119:4	<b>average</b> 2057:1 2115:5 2117:17	<b>balloon</b> 2068:27
<b>ahead</b> 2047:20 2062:7	<b>apply</b> 2093:27 2112:20, 21 2117:6	<b>Avila</b> 2079:2	<b>balloons</b> 2069:4
<b>air</b> 2088:27	<b>area</b> 2050:9 2052:10 2055:13,22,24 2060:23 2078:21 2090:10 2097:22	<b>avoid</b> 2067:15	<b>bars</b> 2078:7,11
<b>Albert</b> 2093:13	<b>areas</b> 2048:25 2058:14	<b>avoiding</b> 2091:16	<b>base</b> 2047:13 2117:14
<b>Allegiance</b> 2082:8,10	<b>argue</b> 2072:16	<b>avoids</b> 2094:11 2100:17	<b>based</b> 2056:25 2061:17 2084:26 2085:5,13 2087:2 2102:21,22 2105:6,12 2106:5 2113:24 2115:13,19 2116:22 2117:9
<b>alley</b> 2068:25,26 2069:3	<b>arguing</b> 2071:4	<b>awake</b> 2094:11	<b>basically</b> 2049:23 2054:19 2083:17
<b>allowed</b> 2054:1	<b>argument</b> 2081:18,20 2090:11 2101:20,28	<b>award</b> 2086:14 2087:10,13 2090:19 2093:7 2096:1 2097:19 2103:4,6,7,8 2104:5 2105:18,23,28 2107:11 2110:13 2113:9 2115:12,23,26 2117:15	<b>bathroom</b> 2061:9 2092:18 2093:20
<b>alongside</b> 2087:15,16	<b>arguments</b> 2112:10 2115:11	<b>awarding</b> 2107:9 2113:17	<b>beach</b> 2078:27
<b>alternate</b> 2118:6	<b>arrangement</b> 2076:5	<b>aware</b> 2100:20	<b>beaches</b> 2079:3
<b>alternative</b> 2111:7	<b>arrival</b> 2051:18	<b>awful</b> 2100:20	<b>bear</b> 2112:4
<b>amount</b> 2052:4,6 2083:18 2086:14,28 2087:2,10 2090:19 2092:7 2093:6 2095:28 2097:19 2102:4,17,18 2104:5 2106:5 2108:4 2109:16 2110:13 2113:8,15,22,24 2114:2,6 2117:16	<b>arrived</b> 2050:24	<b>awful</b> 2100:20	<b>Beatles</b> 2097:1
<b>and/or</b> 2114:20,23,24, 25	<b>Ashley</b> 2095:23 2100:4 2101:1	<b>awful</b> 2100:20	<b>bed</b> 2093:20
<b>anesthesia</b> 2066:17 2093:5	<b>asleep</b> 2067:7 2099:7	<b>awful</b> 2100:20	<b>beef</b> 2110:27
<b>Angeles</b> 2050:9 2064:26	<b>aspects</b> 2079:19	<b>awful</b> 2100:20	<b>began</b> 2076:11
<b>Angelo</b> 2103:9 2113:3, 10 2114:11	<b>asphalt</b> 2077:22	<b>awful</b> 2100:20	<b>begged</b> 2090:27
<b>announce</b> 2116:15	<b>assassinated</b> 2096:26	<b>awful</b> 2100:20	<b>begin</b> 2098:5
<b>Anti-depressants</b> 2089:27	<b>assistance</b> 2118:19	<b>awful</b> 2100:20	<b>beginning</b> 2064:18 2092:17 2116:14
<b>antibiotics</b> 2089:28	<b>assisted</b> 2057:24	<b>awful</b> 2100:20	<b>beliefs</b> 2116:12
<b>anticipated</b> 2107:21 2113:13 2114:24	<b>assume</b> 2104:28	<b>awful</b> 2100:20	<b>bell</b> 2097:1,3
<b>anxious</b> 2070:13	<b>Ativan</b> 2095:12	<b>awful</b> 2100:20	<b>bellybutton</b> 2066:20, 23 2091:26 2092:2 2098:22,24
<b>anymore</b> 2066:17 2071:17 2090:28	<b>atrophy</b> 2059:17	<b>awful</b> 2100:20	<b>Benadryl</b> 2067:3 2099:6
	<b>attache</b> 2087:25	<b>awful</b> 2100:20	<b>beneath</b> 2054:20
	<b>attached</b> 2091:8	<b>awful</b> 2100:20	<b>benefit</b> 2104:5
	<b>attack</b> 2088:9	<b>awful</b> 2100:20	
		<b>B</b>	
		<b>back</b> 2049:15 2050:1, 13 2052:20 2054:16,27 2055:1,4,6 2059:26 2060:5,25 2062:23,25 2065:5 2068:19 2069:10 2082:4 2090:14,17,24 2091:21 2095:6 2096:7,18,22,24 2098:28 2100:5 2101:23 2108:5 2110:11,18,26 2111:14, 23 2117:4,23 2118:17	
		<b>background</b> 2048:2	
		<b>bad</b> 2064:21 2065:4 2087:7 2098:4 2111:5	

<p><b>bicker</b> 2072:16 <b>bickering</b> 2071:4 <b>big</b> 2066:3 2071:9 2078:26 2086:23 2098:23,24 2111:1 <b>bigger</b> 2112:4 <b>bilateral</b> 2051:7 <b>bile</b> 2060:5,6,8,9,11,14, 15 2089:2 <b>billionaire</b> 2085:22 <b>Bind</b> 2084:28 <b>bio</b> 2096:15 <b>birdshot</b> 2111:2 <b>birthday</b> 2069:3 <b>bit</b> 2048:2 2049:8 2062:18 2064:1 2066:9, 10 2067:9,20,26 2068:10 2070:22 2072:3,6,23 2073:26 2074:22 2090:2 <b>black</b> 2087:15,17,18 2110:14 <b>blast</b> 2088:22 <b>bleed</b> 2052:8 <b>bleeding</b> 2051:14 2052:18 2053:1,3,10 2054:14,23,24 2055:6, 8,9,18,21,22,23 <b>blind</b> 2083:11 2085:9 2111:20 <b>blindfolded</b> 2085:20 <b>blood</b> 2051:3,13,15 2052:1,27,28 2056:7, 20,21,25,28 2057:4,8, 21 2089:4,5,8 2090:26 2091:4,5 <b>bloodstream</b> 2064:20 2100:9 <b>blown</b> 2111:3 <b>blue</b> 2069:5 <b>board</b> 2048:7,18,19,25, 26,28 2049:4,5,6,22 2074:3</p>	<p><b>body</b> 2053:17 2058:8, 14,17,24 2059:26 2062:28 2064:3,6 2065:23 2088:22 2089:7 <b>book</b> 2083:5 <b>bore</b> 2077:2 <b>bottom</b> 2097:2,3 2111:5 <b>bovine</b> 2092:13 2098:14 2099:5 <b>Bowe</b> 2046:17 2050:12, 14,16,22,24 2051:8,18 2053:1 2054:8,27 2056:6,10,12,25 2057:4,13,23 2058:23 2059:6,15,28 2060:18, 21 2061:3,6,17 2062:9, 14,22 2063:10 2064:22 2066:26 2069:15 2070:18 2073:4 2074:20 2075:8,14 2079:25 2086:16 2087:8,14,19,27 2088:7 2089:6,13,21,23 2090:15 2093:11 2094:18 2095:18,25 2096:13 2097:5 2099:21 2102:5,7,9,18, 26,28 2103:4,5,8,11,17, 22,25,28 2104:6,14 2105:8,26 2106:5,9,14, 18,21,26,27 2107:12, 13,14,25,28 2108:5,7, 11,12,13,16,25 2109:9, 20 2110:24,28 2111:4 2112:3 2113:5,7,14,19, 27 2114:4,8,28 2115:27 <b>Bowe's</b> 2051:4,18,27 2052:11 2053:3,7,12,23 2054:3 2055:27 2056:28 2057:8,28 2058:7,17 2059:7 2060:6 2061:12 2088:22 2095:7 2108:18 <b>bowel</b> 2089:1 2091:2 <b>bowling</b> 2068:25,26 2069:3 <b>box</b> 2046:22 2081:18 2101:27</p>	<p><b>boy</b> 2089:19 2111:2 <b>break</b> 2063:23 2069:12 2072:14 2077:21,22 <b>breaking</b> 2091:2 <b>breaks</b> 2086:11 2117:19,21 <b>breast</b> 2097:10 <b>breath</b> 2099:4 <b>breathe</b> 2071:6 <b>breathing</b> 2053:21 2056:12 2092:9,10 <b>bring</b> 2081:15 2098:21 2101:5 <b>bringing</b> 2070:1 <b>broke</b> 2090:20 <b>brought</b> 2050:16,22 2051:15 2057:13 2071:10 2086:25 2097:27 2101:3,11 <b>Brown</b> 2113:4,10 2114:11 <b>bruising</b> 2052:16 <b>Bryan</b> 2073:15,19,22 2093:1 2099:12 2113:4, 11 2114:12 <b>bucket</b> 2085:25 <b>buckshot</b> 2111:2 <b>buddy</b> 2075:5 <b>built</b> 2071:5 <b>bullets</b> 2058:14 <b>bunch</b> 2076:28 2082:28 <b>burden</b> 2084:17 2112:19 <b>buried</b> 2091:26 2098:27 <b>business</b> 2117:20 2119:5 <b>busy</b> 2070:5 <b>butt</b> 2074:14 2086:21</p>	<hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>CA</b> 2046:1 2081:1 <b>calculated</b> 2107:27 <b>calculation</b> 2107:18 2114:17 <b>call</b> 2046:24 2050:16 2066:3 2076:15 2086:4 2089:8 2093:15 2095:5 2118:8 <b>called</b> 2047:23 2054:7, 13 2084:11 2113:8 <b>calling</b> 2080:11 <b>calls</b> 2058:20 2085:12 <b>campus</b> 2071:14 <b>car</b> 2068:16 2087:16 <b>care</b> 2048:16,27 2050:5 2055:27 2056:4 2058:27 2079:1 <b>career</b> 2050:10 <b>carefully</b> 2103:3 <b>Carta</b> 2082:27 <b>case</b> 2051:3 2052:26 2054:12 2080:18 2083:27 2084:24,26 2087:25 2097:14 2098:2 2101:21 2102:7 2103:2 2104:22 2105:6, 13 2106:25 2107:10,11, 12,17,25 2109:17,21,23 2110:20 2112:12 2114:16 2115:17,19 2116:7,18,24,27 2117:7,10,21 2118:5,11 <b>cash</b> 2114:7 <b>caused</b> 2051:2 2061:18 2072:15 2110:14 2113:5,10 <b>causing</b> 2091:2 <b>cavity</b> 2053:20 2054:15,16 2058:2 2088:28 <b>Cedars-sinai</b> 2064:23, 26 2065:2,15,17,25,28 2092:3 2104:28 2105:1</p>
--	---	---	--

2108:22 <b>Center</b> 2049:10 2050:8, 14,24 <b>certainty</b> 2061:18 <b>certification</b> 2048:19 <b>certified</b> 2048:7,18,25, 26,28 2049:4,5,6,22 <b>challenging</b> 2074:13 <b>chance</b> 2116:4 2117:14 <b>change</b> 2102:18,19 2116:9 <b>changed</b> 2091:5 <b>Chapter</b> 2083:6,12 <b>charge</b> 2117:25 <b>chart</b> 2096:20 <b>Chen</b> 2093:13 <b>chest</b> 2051:12,13 2053:6,7,8,10,20 2054:2 2058:4 2060:6, 15 2061:19 2063:1 2064:13 2088:25,27 2089:4,8 2090:13,25,26 2097:22 2098:27 2099:4 <b>Chicago</b> 2050:10 <b>chief</b> 2050:1 <b>choice</b> 2088:2,3,4 2098:5,11 <b>choose</b> 2116:1 <b>chronic</b> 2097:21,22,27, 28 <b>civil</b> 2082:20,22 <b>claimed</b> 2086:16 2113:19 <b>classes</b> 2071:19 <b>classroom</b> 2071:14,27 <b>clean</b> 2067:14,17,22 <b>clear</b> 2093:11 2102:25 <b>clerk</b> 2047:5,6 2080:5 2118:15 <b>Cleveland</b> 2046:6,17 2050:13,14 2062:3,9	2081:6 2086:16 2087:8, 14 2089:15 2096:14 2102:5,7,18,27,28 2103:4,6,11,17,23,25 2104:6 2105:3,26 2106:6,9,10,14 2107:25 2113:5,7,14,19,27 2114:4,8,28 2115:27 <b>Cleveland's</b> 2097:6 2103:8 <b>click</b> 2100:5 <b>clinic</b> 2060:19,22 2061:2,11 <b>close</b> 2047:13 2054:15 2059:9 2087:22 <b>closed</b> 2059:7,9,10 <b>closer</b> 2079:2 <b>closing</b> 2101:28 2112:10 <b>clot</b> 2055:23 <b>clotting</b> 2055:23 <b>coin</b> 2117:15 <b>Cole</b> 2075:17 <b>collect</b> 2060:12 <b>collection</b> 2061:15 <b>college</b> 2048:11 2071:12 2114:26 <b>colorized</b> 2090:5 <b>coma</b> 2092:28 <b>comfort</b> 2108:7 <b>comfortable</b> 2079:20 <b>common</b> 2087:2 2106:4 2113:24 2116:19 <b>communication</b> 2118:10 <b>community</b> 2083:21, 25 2091:12 2111:12,27 <b>company</b> 2077:8 <b>Compare</b> 2103:23 <b>compensate</b> 2102:5 2103:11 2107:25 2109:9 2113:7 2114:4	2115:27 <b>compensated</b> 2102:10,11,14 <b>compensation</b> 2082:21,24 2083:21 2109:16 2113:8,16 <b>competency</b> 2048:23 <b>complaints</b> 2114:20, 23 <b>complete</b> 2071:24 <b>completed</b> 2048:21 <b>compose</b> 2069:13 <b>compression</b> 2062:18, 26,27 2063:3,11,19 2091:7 <b>computer</b> 2072:2 <b>concept</b> 2082:24 <b>concern</b> 2064:19 <b>concerned</b> 2055:5 2100:7,8 <b>conclusive</b> 2115:8 <b>concrete</b> 2077:21 <b>condition</b> 2051:4 2056:23 <b>conditions</b> 2114:20,23 <b>conduct</b> 2112:20 2113:12 2118:10 <b>conduit</b> 2077:2 <b>confirming</b> 2080:5 <b>connection</b> 2070:26 <b>consideration</b> 2095:1 <b>considered</b> 2104:3 2116:8 <b>consistent</b> 2109:28 <b>construction</b> 2074:11 2076:8 2107:1 <b>contact</b> 2057:3 <b>contained</b> 2054:25 <b>context</b> 2087:5 2095:1 <b>continue</b> 2054:23 2079:13 2083:12,17	2100:17 2115:1 2118:9 <b>continued</b> 2061:3 <b>continues</b> 2112:11 <b>contractures</b> 2098:15 <b>contradictive</b> 2097:25 <b>control</b> 2053:3 2054:13,14 2055:8,18, 20 2089:11 2098:25 <b>controversy</b> 2118:21 <b>convene</b> 2119:4 <b>convinced</b> 2116:10 <b>cope</b> 2070:8 <b>copies</b> 2112:21 <b>coping</b> 2094:27 2111:6 <b>copy</b> 2110:10,11,17,18 2112:15 2118:16,17,18, 19 <b>correct</b> 2095:3 2108:4 2110:19 <b>corrected</b> 2081:12 <b>corrective</b> 2065:5 <b>costs</b> 2107:22 2114:17, 20,26,27 <b>cough</b> 2064:8 <b>counsel</b> 2046:7 2047:20 2081:16 2112:8 2118:24 2119:6 <b>counseling</b> 2069:17, 19,21,25 2070:8,11 2106:12 2108:2,13,26 <b>counselor</b> 2075:17 2094:15 <b>count</b> 2090:16 <b>counted</b> 2067:17 <b>couple</b> 2066:27 2068:12 2070:23 2078:13 2095:19 2101:15 2102:16 2103:14 <b>courses</b> 2071:13 <b>court</b> 2046:5,13,19,21, 28 2047:8,11,17,19 2058:21 2061:26,27
---	---	--	--

2062:2,5 2063:6 2075:10 2080:1,10,14 2081:5,15 2090:11 2101:13,17,23,26 2109:2,5 2110:3 2112:8 2117:12 2118:1,14,15 2119:1,3 <b>Court's</b> 2046:26 2117:20 <b>courtroom</b> 2046:22 2081:17 2101:19,27 2102:27 <b>cover</b> 2066:15 2108:25 <b>covering</b> 2050:19 <b>crafted</b> 2103:3 <b>crater</b> 2066:3 2098:19 <b>creates</b> 2079:15 <b>creator</b> 2082:16 <b>critical</b> 2048:15,27 <b>CROSS- EXAMINATION</b> 2075:12 <b>crunching</b> 2088:28 <b>cry</b> 2093:21 2094:9,10 <b>crying</b> 2099:27 2107:1 <b>Cuesta</b> 2071:12 <b>cumulative</b> 2063:5 <b>curled</b> 2069:10 <b>current</b> 2054:18 2081:12 2114:3 2118:23 <b>cut</b> 2065:22 2066:2,24 2091:24 2098:21 <b>cyst</b> 2060:22,28	<b>damaged</b> 2053:23 <b>damages</b> 2082:21,24 2083:22 2084:9 2086:6, 14,16 2087:1,10 2088:12 2090:19 2093:7 2095:28 2096:14 2097:19 2102:4 2104:5 2105:17, 23 2107:6,9,16,18 2109:1,2,3,7,8 2110:13 2112:11,24 2113:8,15, 17,19,23 2114:6,9,13, 16,17 2115:1,12,23,25, 26 2117:15 <b>damned</b> 2098:7 <b>dark</b> 2087:16 <b>Darvocet</b> 2089:26 <b>date</b> 2075:20 2084:9,10 2088:13,14,18 2091:18 2092:20 2096:3,9 2098:28 2107:28 2108:27 2109:10 <b>DAVID</b> 2046:3 2081:3 <b>day</b> 2050:16,20 2054:26 2065:1 2067:17,18,23 2070:1 2071:2 2076:12 2082:6 2085:22,24 2095:1,5,13 2097:5 2100:14,21 <b>days</b> 2066:27 2071:28 2074:7 2093:15 2094:8, 11,18,20,25 2108:17 2110:21 <b>dead</b> 2055:9 2058:28 2088:8 <b>deal</b> 2055:20 2067:19 2070:2 2074:11 2098:24 <b>death</b> 2056:24 2083:14, 16 <b>debilitated</b> 2059:16 <b>debris</b> 2054:23 <b>decent</b> 2075:4 2112:6 <b>decide</b> 2084:26 2085:4, 11,19 2087:1 2093:23 2096:13 2102:4 2105:11 2109:15,27 2113:6,23 2114:28	2115:19,22 2116:7 2117:15 <b>decided</b> 2065:14 2113:2 <b>deciding</b> 2086:28 2113:22 2115:8 2116:19 <b>decision</b> 2117:9,14 <b>Declaration</b> 2083:1 <b>decline</b> 2056:21 <b>deep</b> 2058:12 2090:8 <b>Defendant</b> 2085:21 <b>defendants</b> 2114:9,14 2115:24 <b>Defense</b> 2046:18 2080:11 2089:17 2094:19 2101:9,20 2110:7,15 <b>degree</b> 2061:17 <b>deliberate</b> 2110:19 2112:16 <b>deliberations</b> 2116:15, 21 2117:25 2119:5 <b>demanded</b> 2083:18 <b>department</b> 2046:3 2050:2 2081:3 <b>depends</b> 2066:28 2067:23 <b>deposition</b> 2095:24 <b>depressing</b> 2094:3 <b>depression</b> 2084:8 2086:18 2093:19 2094:3 2099:25 2113:21,26 2114:2,5 <b>describe</b> 2052:4,13 2057:17 2059:16,23 2063:13 2077:17 <b>destructive</b> 2052:7 2053:9 2055:17 <b>detail</b> 2086:19 2090:2 <b>determine</b> 2051:13 2054:24 2102:21 2114:2 2115:2	<b>determined</b> 2050:25 <b>Dev</b> 2092:13 2097:9,24 2098:1,21 2099:20 2103:18 2104:7,13,26 2105:5 2106:16,23 2108:19,23 <b>Dev's</b> 2103:26 2106:17 <b>developed</b> 2065:7 <b>device</b> 2059:19 2077:24 <b>devitalized</b> 2055:9 <b>diaphragm</b> 2053:17, 18,19,23,27,28 2054:4 2060:13,14 2089:3,9 <b>Diarrhea</b> 2099:7 <b>dictate</b> 2098:26 <b>die</b> 2092:26,27 2115:6 <b>differently</b> 2116:12 <b>difficult</b> 2068:4 <b>dig</b> 2076:26 2077:1,11 <b>digestion</b> 2060:10 <b>DIRECT</b> 2047:25 2062:12 <b>director</b> 2050:4 <b>disagree</b> 2112:26 2117:1 <b>discharged</b> 2059:6,15, 23,28 2060:18 2118:8 <b>disciples</b> 2083:24 <b>discover</b> 2051:24 <b>discuss</b> 2080:18 2101:20 2117:21 <b>discussed</b> 2055:26 <b>discussion</b> 2046:10 2081:14 2116:16 <b>discussions</b> 2058:23 2116:3 <b>disfigurement</b> 2084:7 2086:17 2091:23,28 2092:5 2098:19 2113:20,26 2114:1,5 <b>disorder</b> 2093:12,14, 16 2094:7,17
<hr/> <b>D</b> <hr/>			
<b>dad</b> 2060:27 2071:8,15 2074:4 2092:18 2093:2 2099:13 <b>daily</b> 2095:11 2098:3 <b>damage</b> 2052:11,16 2053:6,26 2054:13 2056:7 2089:11			

<b>disorders</b> 2084:8 2086:18 2094:6 2100:13 2113:21,27 2114:2,6	<b>duration</b> 2100:26	<b>England</b> 2082:27	<b>Exodus</b> 2083:6
<b>displaced</b> 2091:26	<b>duty</b> 2112:11 2116:5	<b>English</b> 2082:26	<b>expectancy</b> 2115:5,9
<b>dispute</b> 2097:25 2102:8	<b>dying</b> 2087:22 2092:23	<b>enhances</b> 2055:23	<b>expected</b> 2049:3 2096:16 2115:4
<b>distinct</b> 2109:22	<hr/> <b>E</b> <hr/>	<b>enjoyment</b> 2107:3	<b>expenses</b> 2107:13,14, 19,20 2114:18,21
<b>District</b> 2046:7 2081:7 2114:10,11	<b>earlier</b> 2067:12 2072:10 2076:22 2112:21	<b>environment</b> 2079:5	<b>experience</b> 2049:8 2061:4 2105:9 2116:19, 26
<b>ditches</b> 2076:27 2077:1,11	<b>early</b> 2069:2,23 2075:21	<b>esteem</b> 2093:27	<b>experiences</b> 2116:23
<b>dive</b> 2084:13	<b>earn</b> 2107:21 2114:26	<b>estimated</b> 2057:4,6	<b>explain</b> 2048:18 2054:10 2056:18 2105:5
<b>divided</b> 2088:15	<b>earnings</b> 2097:14 2107:20 2114:24,25	<b>evaluation</b> 2117:10	<b>explained</b> 2068:19 2098:1
<b>doctor</b> 2047:27 2057:12 2058:23 2060:18 2061:16,21,24 2071:2 2088:26 2095:17 2097:26 2098:20 2099:19 2104:23	<b>easier</b> 2067:5 2090:5	<b>evidence</b> 2080:15 2084:26 2085:11,14 2086:26 2087:2 2088:21 2096:11,17 2097:17,23 2102:13,14, 15,20,21,24,26 2103:13 2104:2,17 2105:6,7,10, 13,16 2106:5 2109:27 2112:10,19 2113:24 2115:7,12,14,19 2116:8,26 2117:2,5,10	<b>explanation</b> 2117:6
<b>doctors</b> 2049:16,25 2064:9,16 2065:18 2095:20,21 2096:19 2097:24 2100:27 2104:24 2105:1,2 2106:14	<b>easily</b> 2058:15 2067:4 2074:14 2116:18	<b>eventually</b> 2087:12	<b>express</b> 2080:18 2101:21 2118:11
<b>dollars</b> 2085:3,22,23 2091:14 2114:3	<b>easy</b> 2093:21 2107:12	<b>evoked</b> 2104:18	<b>extensive</b> 2056:20
<b>door</b> 2072:2	<b>eat</b> 2099:8	<b>evolved</b> 2055:20	<b>extent</b> 2103:1 2108:22
<b>dosage</b> 2090:1	<b>Eating</b> 2099:9	<b>exact</b> 2075:20 2110:11 2113:15	<b>extrude</b> 2059:1,3
<b>dosages</b> 2095:7	<b>economic</b> 2107:16 2108:7 2109:1 2114:13, 15	<b>EXAMINATION</b> 2047:25 2062:12	<b>eye</b> 2083:7,8,9,10,11
<b>dose</b> 2094:27 2095:16	<b>education</b> 2048:10 2114:26	<b>examined</b> 2103:18	<b>eyes</b> 2084:28 2089:22
<b>downplay</b> 2104:15	<b>efforts</b> 2057:12,15,18	<b>examples</b> 2103:14	<hr/> <b>F</b> <hr/>
<b>downs</b> 2081:24	<b>element</b> 2105:18	<b>exams</b> 2048:22	<b>face</b> 2082:7
<b>drain</b> 2060:3	<b>elicit</b> 2103:3	<b>excavators</b> 2077:1	<b>fact</b> 2104:7
<b>drains</b> 2059:28 2060:2, 12	<b>elicits</b> 2104:4	<b>exceeded</b> 2057:22	<b>factors</b> 2105:25 2115:10
<b>drop</b> 2085:24	<b>ELMO</b> 2110:9	<b>excuse</b> 2104:11 2108:11 2114:10	<b>facts</b> 2085:5,13,27
<b>DSM</b> 2095:26	<b>embarrassed</b> 2109:21	<b>excused</b> 2061:26	<b>fad</b> 2097:2
<b>ducts</b> 2060:11	<b>embarrassing</b> 2086:24	<b>exhibit</b> 2088:24 2090:4 2103:21 2104:12	<b>fair</b> 2076:4 2078:3 2079:4 2085:5 2087:26 2088:4,7,10 2091:15 2116:4
<b>due</b> 2051:3	<b>emotional</b> 2093:21 2100:1 2104:4,18 2114:20,23	<b>exists</b> 2086:28 2113:22	<b>fairly</b> 2115:27
<b>duly</b> 2047:23 2062:10	<b>end</b> 2054:6 2082:9 2093:25	<b>exit</b> 2101:19	<b>faith</b> 2086:9
	<b>ended</b> 2108:19		<b>fall</b> 2049:18 2099:7
	<b>ends</b> 2082:10		<b>falling</b> 2067:7
	<b>endure</b> 2089:13		<b>familiar</b> 2083:7

<p><b>family</b> 2068:1 2071:4 2072:12 2086:9 2103:8 2111:16,25</p> <p><b>fancy</b> 2082:21 2107:26</p> <p><b>Farr</b> 2090:5,9</p> <p><b>father</b> 2105:4</p> <p><b>fear</b> 2084:7 2086:17 2092:22,23 2093:3,5,6, 8 2099:10,11,12,14,16, 17,18,24 2100:5,6 2113:21,26 2114:1,5</p> <p><b>fedora</b> 2087:18</p> <p><b>feel</b> 2066:11 2068:2 2073:16,17,18 2074:25 2075:5 2085:25 2098:6 2116:9</p> <p><b>feeling</b> 2070:13 2075:23 2094:24</p> <p><b>feels</b> 2074:15 2092:16 2093:24 2098:13 2099:4 2100:2</p> <p><b>fees</b> 2107:22 2114:27</p> <p><b>fellow</b> 2116:17</p> <p><b>fellowship</b> 2048:15</p> <p><b>felt</b> 2063:14,17 2090:25 2093:20</p> <p><b>Fernandez</b> 2094:21 2101:1 2110:23</p> <p><b>fever</b> 2065:10,12</p> <p><b>Fields</b> 2103:9 2113:4, 11 2114:12</p> <p><b>figure</b> 2097:1 2103:10 2107:24</p> <p><b>finally</b> 2071:6 2104:12</p> <p><b>find</b> 2082:3 2097:26</p> <p><b>finds</b> 2099:27</p> <p><b>finish</b> 2073:28 2081:27 2093:1 2099:13</p> <p><b>five-and-a-half</b> 2088:17 2091:18 2092:7,20 2093:9 2094:5 2096:2</p> <p><b>fix</b> 2077:2,3 2097:10</p>	<p><b>fixed</b> 2086:27 2113:22</p> <p><b>flag</b> 2082:7</p> <p><b>flesh</b> 2098:13 2099:5</p> <p><b>flip</b> 2117:15</p> <p><b>floor</b> 2092:25</p> <p><b>fluid</b> 2061:15</p> <p><b>focus</b> 2071:28</p> <p><b>fold</b> 2084:28</p> <p><b>folds</b> 2111:20</p> <p><b>folks</b> 2085:16 2086:9 2096:24 2100:4</p> <p><b>follow</b> 2083:3 2105:15 2111:15,19,21,22 2112:13,24,25,28 2118:9</p> <p><b>Food</b> 2099:7</p> <p><b>Ford</b> 2096:26</p> <p><b>foreperson</b> 2096:8</p> <p><b>forget</b> 2088:1</p> <p><b>forgotten</b> 2073:17</p> <p><b>form</b> 2080:18 2082:13, 19,20 2096:6 2101:21 2118:11,19</p> <p><b>forward</b> 2047:12 2084:11</p> <p><b>found</b> 2061:12 2101:4</p> <p><b>Fractured</b> 2089:8</p> <p><b>fractures</b> 2053:13,14</p> <p><b>free</b> 2061:28 2080:2,3 2085:9 2086:2 2116:9 2118:7</p> <p><b>frequent</b> 2078:11</p> <p><b>friend</b> 2078:18 2092:26 2111:11,16,24</p> <p><b>front</b> 2047:1 2072:1 2075:4 2090:13</p> <p><b>froze</b> 2069:7</p> <p><b>full</b> 2071:22 2087:25</p> <p><b>fully</b> 2102:5 2107:25</p> <p><b>fun</b> 2074:13</p>	<p><b>function</b> 2053:18</p> <p><b>funny</b> 2099:26</p> <p><b>future</b> 2064:17 2066:10,11 2084:9,12 2087:8 2088:12,18,20 2090:24 2096:9 2097:14,21 2098:19 2099:2,3,10,25 2100:13,26 2106:19 2107:19 2109:7 2113:20,25,28 2114:21</p> <hr/> <p style="text-align: center;"><b>G</b></p> <hr/> <p><b>gate</b> 2047:1</p> <p><b>gates</b> 2075:4</p> <p><b>gathered</b> 2082:26,28</p> <p><b>gauze</b> 2055:14 2091:3, 5</p> <p><b>gave</b> 2072:28 2112:14, 17,18 2118:22</p> <p><b>gears</b> 2067:24</p> <p><b>GED</b> 2071:13,19</p> <p><b>geez</b> 2076:3</p> <p><b>general</b> 2048:8,13,26 2052:16 2112:18</p> <p><b>generally</b> 2052:25 2053:17</p> <p><b>gentlemen</b> 2080:14 2101:18 2102:2 2105:6 2109:18,22</p> <p><b>get along</b> 2079:17</p> <p><b>GI</b> 2097:1</p> <p><b>girlfriends</b> 2077:27</p> <p><b>give</b> 2047:7,12 2078:12 2079:22 2084:15 2085:9 2086:1 2095:7 2096:13 2101:17 2103:14 2107:15 2108:5,7,10 2112:25 2116:11 2117:7,24 2118:6</p> <p><b>glass</b> 2087:16</p> <p><b>glue</b> 2112:1</p> <p><b>gluteal</b> 2060:23</p>	<p><b>God</b> 2047:9 2090:27 2111:2</p> <p><b>good</b> 2047:27,28 2062:14,15 2066:12 2073:17,18 2074:15 2075:4,14,15 2076:18 2079:22 2081:21 2084:2 2086:10 2087:7, 20 2088:5,10 2091:16 2094:18,20,25 2095:5 2097:16 2098:5,15 2099:23 2106:28 2107:1 2110:6 2111:27</p> <p><b>goes</b> 2083:14</p> <p><b>grade</b> 2082:5,6</p> <p><b>graduation</b> 2100:3</p> <p><b>grand</b> 2109:12</p> <p><b>Great</b> 2079:24</p> <p><b>greater</b> 2050:9 2057:21</p> <p><b>grew</b> 2092:14,15</p> <p><b>group</b> 2068:8 2082:25 2104:12</p> <p><b>growing</b> 2070:27</p> <p><b>guess</b> 2068:10,16 2094:2 2107:9 2113:1, 17</p> <p><b>gunshot</b> 2051:11 2057:25 2064:2 2068:17</p> <p><b>guy</b> 2085:25</p> <p><b>guys</b> 2068:12</p> <hr/> <p style="text-align: center;"><b>H</b></p> <hr/> <p><b>habits</b> 2115:10</p> <p><b>half</b> 2070:24 2090:7</p> <p><b>Halloween</b> 2065:1 2092:3</p> <p><b>hand</b> 2077:1 2082:7 2085:7,28 2096:28</p> <p><b>handing</b> 2118:15</p> <p><b>handle</b> 2071:28</p> <p><b>hands</b> 2067:10,11,16, 18,21,22 2094:15,16</p>
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2100:21	<b>hemorrhagic</b> 2056:18, 19	<b>humiliation</b> 2086:21	<b>Independence</b> 2083:2
<b>handwriting</b> 2108:9	<b>hernia</b> 2059:11 2089:1 2106:24	<b>hundred</b> 2085:3,22,23 2095:14	<b>infected</b> 2061:15 2067:13
<b>hanging</b> 2091:25	<b>herniate</b> 2054:1	<b>hundreds</b> 2091:14	<b>infection</b> 2057:9 2058:18 2060:3 2065:4, 20,22 2066:2,24 2067:13,15 2092:3 2093:5 2099:17 2108:20
<b>happen</b> 2064:10 2073:9 2082:17	<b>Herr</b> 2058:19 2061:24 2063:4 2075:10,11,13 2080:10,12 2081:11 2101:14,15,28 2102:1 2109:3,6 2110:3 2119:1,2,8	<b>hurt</b> 2111:8	<b>infections</b> 2093:6
<b>happened</b> 2068:11 2069:5 2070:1,25 2071:10 2073:7 2074:21 2082:17	<b>hesitated</b> 2101:5	<b>hyper</b> 2074:28 2100:19	<b>inflicted</b> 2093:10
<b>happy</b> 2079:4,5	<b>high</b> 2046:6 2056:23 2081:6 2114:9,11	<b>hypochondriac</b> 2095:25	<b>information</b> 2085:2 2089:14 2096:17 2115:7 2116:22 2118:6
<b>hard</b> 2072:4 2091:11 2099:28	<b>hired</b> 2095:24	<hr/> <b>I</b> <hr/>	<b>informed</b> 2072:13
<b>harm</b> 2086:15 2087:8,9, 11,13 2088:19 2090:20, 22 2091:20 2092:23 2093:7 2096:1 2097:20 2099:24 2101:7,8 2106:7 2110:14 2113:5, 7,9,13,16,28	<b>historical</b> 2083:3,5	<b>ibuprofen</b> 2066:28 2074:18 2098:2,3,11,12	<b>initiated</b> 2051:16
<b>he'll</b> 2098:22	<b>hit</b> 2096:27 2111:5	<b>ICU</b> 2056:5,7	<b>injured</b> 2052:8
<b>health</b> 2086:10 2087:21,28 2088:6,11 2091:16 2097:16 2098:16 2099:23 2110:7 2111:27 2115:10	<b>hold</b> 2096:28 2111:28	<b>idea</b> 2078:13 2082:23 2083:4	<b>injuries</b> 2052:12,13 2055:20 2056:15 2061:16
<b>hear</b> 2080:15 2090:2 2096:11 2097:8,17 2104:27 2105:2 2109:21	<b>hole</b> 2051:27 2065:7 2066:3 2088:25	<b>ideas</b> 2116:18	<b>injury</b> 2051:11 2052:7 2053:8,15 2055:17 2059:25 2060:11 2102:8 2104:1
<b>heard</b> 2080:15 2088:24, 25 2089:10 2096:25,28 2100:3,6,27 2104:22, 23,24,26 2105:5 2106:15,19,27 2108:22, 23 2112:9 2116:4	<b>home</b> 2058:26 2088:7 2098:6 2111:7	<b>Imagine</b> 2087:14 2111:13	<b>inserted</b> 2092:11
<b>heart</b> 2056:23 2082:7 2088:9	<b>HON</b> 2046:3 2081:3	<b>immediately</b> 2116:15	<b>inside</b> 2051:8 2054:8, 20 2057:28 2058:17,24 2066:6,8 2090:15 2091:26 2098:27
<b>heckling</b> 2068:11	<b>honest</b> 2116:11	<b>impact</b> 2056:14	<b>insides</b> 2091:24
<b>held</b> 2091:7	<b>honor</b> 2046:25 2047:21 2058:19 2062:4,8 2063:4 2079:28 2080:8, 13 2081:10,11,21 2090:10 2102:1 2110:5 2112:3,5 2118:13,27 2119:2,8,9	<b>impaired</b> 2092:10,12, 17 2099:4,6,9	<b>insomnia</b> 2061:4
<b>helicopter</b> 2050:22	<b>hood</b> 2068:15	<b>impairment</b> 2084:7 2086:17 2092:8,9,19 2099:2,5 2113:21,26 2114:1,5	<b>instruct</b> 2112:12
<b>hell</b> 2087:23	<b>horrible</b> 2102:8 2104:1, 14 2105:9 2107:4	<b>important</b> 2053:21 2102:10 2104:21 2106:8 2107:8	<b>instructed</b> 2058:27 2117:8
<b>helped</b> 2070:17 2073:1, 3	<b>hospital</b> 2049:16,26,27 2056:2 2059:6 2062:21 2092:1,27 2093:1	<b>include</b> 2086:14,24 2087:10,13 2090:19 2093:7 2096:1 2097:13, 19 2110:13 2113:9 2115:23	<b>instruction</b> 2081:13 2085:15 2086:13 2096:12 2105:19,20 2106:3 2107:6,7 2110:8,9,16,18
<b>hemodynamically</b> 2050:25,28	<b>hour</b> 2102:23	<b>included</b> 2086:25 2094:2	<b>instructions</b> 2046:11 2084:14,21 2090:18 2105:21 2112:13,15,17, 18,20,22 2118:9,16,22, 23
	<b>hours</b> 2055:5 2057:22 2061:8 2076:21	<b>includes</b> 2107:19	<b>insurance</b> 2084:23,24, 25 2085:2,8,12
	<b>huge</b> 2104:5	<b>including</b> 2084:6 2114:18,21 2117:22	
	<b>human</b> 2097:15	<b>income</b> 2107:20,21 2114:23,25	
	<b>humiliating</b> 2086:22	<b>indecisive</b> 2093:22	



2115:17,18 <b>intense</b> 2088:16,17 2089:25 2091:10 2092:19 2096:2 2098:18 2100:25 <b>intensity</b> 2098:17 <b>intensive</b> 2050:5 2056:4 <b>interfere</b> 2116:16 <b>interpretation</b> 2110:1 <b>interrupt</b> 2063:4 <b>intestine</b> 2060:10 <b>Intestines</b> 2089:1 <b>intra-abdominal</b> 2054:7,11 <b>intubated</b> 2051:5 <b>involve</b> 2074:9 <b>involved</b> 2116:24 <b>involvement</b> 2055:26 2056:1 <b>irrelevant</b> 2084:25 2086:3 2115:18 <b>issue</b> 2112:11,24 <b>issues</b> 2057:9 2079:16 2085:19 2115:22 <b>item</b> 2086:14 2087:10, 13 2090:20 2091:20 2092:8,22 2093:7 2096:1 2097:20 2099:23 2105:24 2110:13,16 2113:9 <b>items</b> 2086:12,15 2088:11,19 2090:22 2092:23 2107:18 2113:18 2114:17	2088:13 2095:10 2106:10,11,13 2110:23 <b>job</b> 2074:7,9 2076:7,10, 20,23,27 2077:6 2079:5,7,8,20 2082:2, 11 2099:13 2106:28 <b>jobs</b> 2093:27 <b>Joe</b> 2097:1 <b>journey</b> 2081:22,24 <b>Jr</b> 2097:3 <b>Judge</b> 2046:3 2081:3 2084:15 2096:12 2107:15 2109:4,6,28 <b>judgment</b> 2087:1 2113:23 2114:3 2115:13 <b>juice</b> 2093:22 <b>July</b> 2046:1 2081:1 2084:11 2088:14 2096:9 <b>junior</b> 2094:1 <b>jurisdiction</b> 2061:27 <b>juror</b> 2104:20 2116:2 2117:17 2118:5,6 <b>jurors</b> 2083:23 2111:22 2116:6,17,22 2117:1 2118:1 <b>jury</b> 2046:9,11,19,21,22 2076:26 2081:9,15,17, 18 2082:22 2084:14,21 2085:15 2096:7,8,12 2101:17,25,26,27 2103:22 2105:19,20 2109:25 2110:7,9,11, 16,18 2112:9,16 2115:28 2116:5,9 2117:23 2118:2,17,18 2119:4 <b>justice</b> 2082:10,12,13, 14,15,19,20,22,23,25 2083:22 2084:28 2085:9,12,20 2111:20	<b>Kennedy</b> 2096:26 <b>Kern</b> 2049:10,13,26 2050:2,5,7,14,24 <b>kicks</b> 2074:14 <b>kid</b> 2068:6 <b>kids</b> 2082:4 <b>killed</b> 2083:16 <b>Kim</b> 2103:9 2113:4,10 2114:12 <b>kind</b> 2048:10 2052:16 2055:10,13 2059:19,26 2066:3 2069:6,9 2070:15,28 2071:5 2083:4 2086:19 2111:10 <b>King</b> 2097:3 <b>Klonopin</b> 2095:15 <b>knew</b> 2068:4 <b>knot</b> 2063:22 <b>knots</b> 2063:21	22,23 2112:12,23,25,27 2115:19 <b>laws</b> 2117:6 <b>lawyer</b> 2094:19 2101:9 2110:15 <b>lawyers</b> 2047:3 2082:28 <b>lay</b> 2077:2,4 <b>lead</b> 2056:24 2057:9 2064:19 2100:7 <b>leading</b> 2105:3 <b>leak</b> 2089:2 <b>learn</b> 2105:15 <b>learned</b> 2102:16 2116:25 <b>leave</b> 2060:12 2065:28 2068:3 2111:13 <b>leaves</b> 2091:25 <b>left</b> 2047:2 2054:14 2059:13 2060:1,2 2062:16,21 2065:28 2066:2 2084:27 2090:8 2095:9,21 <b>level-headed</b> 2104:20 <b>lies</b> 2082:9 <b>life</b> 2077:26 2086:8,9 2087:24 2097:6 2098:25 2101:1 2115:1, 5,9 <b>lifestyle</b> 2115:11 <b>lifetime</b> 2066:16 <b>lift</b> 2077:6 <b>limitations</b> 2077:5 <b>limited</b> 2099:8 2114:18, 21 <b>Limits</b> 2092:15 <b>listen</b> 2106:28 <b>listening</b> 2101:12 <b>liter</b> 2089:6 <b>liters</b> 2056:28 2057:2,4, 6 2089:5,7 <b>litigation</b> 2107:22
<hr/> <b>J</b> <hr/> <b>jackhammer</b> 2077:15, 17 2098:8 <b>Jacob</b> 2092:25 <b>January</b> 2050:1,13,17 2054:26 2075:19 2076:13 2084:10	<hr/> <b>K</b> <hr/> <b>keeping</b> 2074:28	<hr/> <b>L</b> <hr/> <b>laceration</b> 2051:25 2053:28 <b>lacerations</b> 2052:15 <b>ladies</b> 2080:14 2101:18 2102:2 2105:5 2109:18, 22 <b>lady</b> 2084:27 2085:9, 12,20 2111:20 <b>Lampe</b> 2046:3 2081:3 2084:15 2096:13 2107:15 2109:28 <b>large</b> 2051:24,27 2052:6,7 2053:8,19,28 2098:22 <b>lasted</b> 2061:8 <b>late</b> 2069:22 2072:27 <b>laughing</b> 2068:18 <b>law</b> 2084:15,26 2085:1, 4,11 2086:2,11,12 2090:18 2107:15 2109:28 2111:14,15,20,	

2114:27 <b>live</b> 2068:4 2075:25 2079:7 2091:11 2096:16 2099:11 2115:2,4,5,8 <b>liver</b> 2051:25,27 2052:2,7 2054:1,3 2055:8,17,20 2057:28 2058:2 2060:9,11,12,13 2064:14 2089:3,10 2098:4,5,13,27 <b>lives</b> 2099:11 <b>living</b> 2048:6 2075:28 2076:4 2079:5 <b>lobe</b> 2052:25,27 <b>lobes</b> 2052:21,23,24 2053:1 <b>local</b> 2058:27 2071:12 <b>long</b> 2049:5 2056:3 2057:9 2064:5 2065:15 2075:28 2079:21,23 2084:3 2087:15 2091:10 2096:21,24 2097:4 2109:23 2115:2, 7 <b>longer</b> 2098:18 2106:10 2108:1 2115:6 <b>looked</b> 2073:9 2093:2 <b>loose</b> 2091:25 <b>Lopez</b> 2092:25 <b>Los</b> 2050:9 2064:26 <b>loss</b> 2051:3 2056:7,20, 25 2057:8 2089:4,8 2107:21 2114:24,25 2115:27 <b>losses</b> 2084:6 2097:15 <b>lost</b> 2057:5 2069:11 2097:14 2107:12,20,21 2108:5 2114:23 <b>lot</b> 2052:9 2064:13 2065:13 2067:11,12,13 2070:27 2073:1,24 2074:27 2101:7,8 2107:2 <b>lots</b> 2081:25	<b>loud</b> 2107:2 <b>love</b> 2079:7 <b>low</b> 2056:22,23 2093:26 <b>lucky</b> 2076:23 <b>Luis</b> 2079:3 <b>lump</b> 2087:11 <b>lung</b> 2052:11,12,14,17, 18,20,23,27 2053:4 2064:13 2088:27 2097:22 2098:27 <b>Luther</b> 2097:3 <hr/> <b>M</b> <hr/> <b>machine</b> 2092:10 <b>made</b> 2073:2,17 2085:22 <b>Magna</b> 2082:27 <b>main</b> 2064:19 <b>major</b> 2055:20 2089:20 <b>make</b> 2055:19 2068:16 2073:16,18 2082:16 2085:24 2086:5 2089:12 2093:17 2097:17 2115:24 2116:21 2117:17 2118:16 <b>makes</b> 2067:4 2074:14 <b>making</b> 2047:14 <b>male</b> 2096:16 2115:4 <b>malnourished</b> 2059:24,25 <b>man</b> 2083:13 2086:21 2087:17 2088:1 <b>managed</b> 2056:2,24 <b>Marilyn</b> 2113:3,10 2114:11 <b>Mark</b> 2103:9 2113:3,4, 10,11 2114:11 <b>marked</b> 2081:13 <b>Martin</b> 2097:3 <b>Mary</b> 2075:17	<b>massive</b> 2056:25 2057:20 2089:4,8 <b>Massively</b> 2074:23 <b>material</b> 2055:14 <b>matter</b> 2047:7 2097:9, 18 <b>matters</b> 2116:24 <b>Maxed</b> 2095:16 <b>maximum</b> 2090:1 2095:16 <b>maxing</b> 2110:24 <b>meaning</b> 2059:16 <b>meaningful</b> 2073:2 <b>means</b> 2048:19,20 2049:20 2051:1 2057:19 2087:6 2093:12,14 2097:22 2112:27 <b>meant</b> 2071:13 <b>media</b> 2094:12 2100:17 2111:17,26 <b>medical</b> 2048:12 2049:10,13,20,26,27 2050:2,5,7,14,24 2061:18 2097:15 2107:13,14,19 2114:18, 21 <b>medication</b> 2094:27 <b>medications</b> 2089:23, 25,28 2095:16 2110:24 <b>medicine</b> 2048:23 <b>medicines</b> 2108:15 <b>meds</b> 2106:11 2108:1, 13,26 <b>member</b> 2111:11,16,25 <b>members</b> 2112:9 2116:8 <b>memorable</b> 2070:12 <b>men</b> 2082:26 <b>mental</b> 2084:8 2086:18 2094:6,17 2100:13 2113:21,27 2114:2,6, 19,22	<b>mentally</b> 2070:14 <b>mention</b> 2088:2 <b>mentioned</b> 2048:17 2081:22 2116:13 <b>merits</b> 2085:6,10 2086:5 <b>mesh</b> 2065:6,22 2066:7 2092:13,15 2098:14 2099:5 <b>mess</b> 2098:12 <b>messed</b> 2098:12 <b>method</b> 2055:19 <b>microphone</b> 2047:12 <b>middle</b> 2098:20 <b>midst</b> 2083:23 <b>mightily</b> 2107:23 <b>migrate</b> 2058:18 <b>migrated</b> 2090:28 <b>migrating</b> 2064:19 <b>milligram</b> 2098:2 <b>milligrams</b> 2066:28 2095:12,14 2111:9 <b>million</b> 2085:3,22,23 2091:15,17 2092:6,19 2093:8 2094:4 2096:2 2100:24 2103:5 2105:28 2106:3 2109:19 <b>millions</b> 2091:14 <b>mind</b> 2063:7 2105:14 2109:24 2116:9,17 <b>minor</b> 2089:21,22 <b>minute</b> 2071:6 <b>minutes</b> 2069:14 2101:16,19 2102:23 <b>missed</b> 2100:2 <b>mist</b> 2090:25 <b>mistake</b> 2103:28 <b>model</b> 2096:27 <b>moderately</b> 2087:6 <b>mom</b> 2065:11 2072:3,5,
--	---	--	--

8,18,25 2092:17 2093:22		<b>nowadays</b> 2066:26 2067:1	2087:25 2091:23 2116:16,17 2117:12
<b>moment</b> 2049:15	<hr/> <b>N</b> <hr/>	<b>number</b> 2048:20 2051:2 2088:24 2095:28 2096:27 2100:18 2103:12 2106:2,20 2107:24 2108:3,4,6,24 2109:12	<b>opening</b> 2095:18
<b>moments</b> 2101:14	<b>named</b> 2050:14	<b>numbers</b> 2108:8	<b>operating</b> 2051:19,21 2054:17,27 2055:2
<b>money</b> 2082:22,23,25 2083:22 2087:25 2101:7 2102:17,19 2103:6,7,8 2105:18,23 2107:21 2108:5 2109:14 2113:6 2114:26	<b>names</b> 2047:17	<b>Numerous</b> 2090:15	<b>opinions</b> 2080:19 2101:21 2116:14 2118:11
<b>month</b> 2063:16 2078:13,15,17 2081:23 2090:6 2102:3,16	<b>narcotics</b> 2089:25	<b>Nyquil</b> 2067:3 2099:7	<b>opioids</b> 2098:13
<b>months</b> 2066:4 2071:23 2091:24 2092:14	<b>national</b> 2115:3	<hr/> <b>O</b> <hr/>	<b>opportunity</b> 2101:17
<b>morning</b> 2046:2,15 2047:27,28 2062:14,15 2075:14,15 2082:17 2088:26 2102:27	<b>needed</b> 2054:17 2055:4 2060:27 2072:28 2073:1 2108:14,15	<b>oath</b> 2047:5 2062:6 2109:24 2117:24	<b>order</b> 2046:14,23 2048:9 2053:3 2082:2 2083:4 2095:4
<b>mornings</b> 2074:19	<b>neighbor</b> 2083:15,16 2111:11,25	<b>object</b> 2058:19 2063:5	<b>orderly</b> 2116:3
<b>move</b> 2056:17 2057:11 2060:17 2063:26 2064:22 2067:27 2069:8,15	<b>nervous</b> 2094:8 2100:15	<b>objection</b> 2063:7 2118:24	<b>ordinary</b> 2049:1 2117:20 2119:5
<b>moved</b> 2068:1,7,21 2070:22 2072:27	<b>news</b> 2084:2 2096:25	<b>objections</b> 2119:2	<b>organ</b> 2052:8,26
<b>movement</b> 2092:12	<b>nice</b> 2068:3	<b>objective</b> 2105:12 2110:1	<b>organized</b> 2080:18
<b>movements</b> 2091:3 2092:16	<b>nickels</b> 2086:1	<b>objectively</b> 2104:3	<b>organs</b> 2054:21 2056:8 2058:13 2090:3
<b>moves</b> 2047:13 2053:21	<b>night</b> 2046:17 2092:17 2094:10 2095:6	<b>observations</b> 2056:26	<b>outgoing</b> 2099:26
<b>movies</b> 2100:15	<b>nightmares</b> 2061:4 2094:10	<b>obsessed</b> 2067:16	<b>overprotective</b> 2072:12,19
<b>moving</b> 2052:10 2064:19	<b>Nobel</b> 2097:4	<b>occasion</b> 2055:25 2060:21 2068:8,12 2070:16 2071:7 2078:6	<b>overruled</b> 2063:7
<b>multiple</b> 2053:14 2054:18 2088:27	<b>noise</b> 2088:28	<b>occasions</b> 2103:12 2104:17	<b>oversee</b> 2049:24,27
<b>muscle</b> 2053:19 2062:23 2065:5 2091:8 2092:12,14	<b>noises</b> 2047:14 2094:9	<b>occupation</b> 2115:11	<b>overstated</b> 2103:13
<b>muscles</b> 2054:20 2059:9,10,12,17 2091:25 2092:15 2097:28	<b>noneconomic</b> 2084:5, 9 2086:6,16,28 2100:26 2109:2,3,7,8 2113:19 2114:6,9	<b>OCD</b> 2086:19 2093:18 2094:6,13 2100:21	<b>owner</b> 2083:15,18
<b>Mustang</b> 2096:27	<b>nonsurgical</b> 2056:4	<b>offer</b> 2083:2	<b>owns</b> 2083:13
	<b>noon</b> 2080:20	<b>older</b> 2070:28 2072:14	<b>ox</b> 2083:13,14,15,18
	<b>normal</b> 2070:6 2089:5	<b>Oliver</b> 2073:20 2093:1 2099:12 2113:4,5,11 2114:10,12,13	<hr/> <b>P</b> <hr/>
	<b>Northwestern</b> 2050:10	<b>Oliver's</b> 2113:12	<b>P.M.</b> 2076:24
	<b>noted</b> 2101:24	<b>one's</b> 2056:21	<b>pack</b> 2060:28
	<b>notes</b> 2091:22	<b>ongoing</b> 2054:24	<b>packet</b> 2118:15,18
	<b>notice</b> 2108:16	<b>open</b> 2054:15 2058:26 2060:28 2066:1,5	<b>packing</b> 2055:18
	<b>noticed</b> 2073:11,14,15		<b>packs</b> 2055:7,12,21
	<b>notices</b> 2094:16		<b>pages</b> 2084:2
	<b>notion</b> 2082:24 2083:21,25 2105:17		<b>paid</b> 2114:3
	<b>nourishment</b> 2059:22		<b>pain</b> 2061:7 2063:17 2066:26 2074:17

<p>2084:7 2086:17 2089:25 2090:23,27 2091:9,10,15,20 2097:21,28 2098:1,15 2113:20,25 2114:1,4</p> <p><b>painful</b> 2091:2,6 2098:10 2105:9</p> <p><b>pains</b> 2070:28</p> <p><b>paintings</b> 2091:13</p> <p><b>pair</b> 2097:3</p> <p><b>pants</b> 2097:2,3</p> <p><b>paramedic</b> 2088:25,28 2089:6</p> <p><b>parents</b> 2064:18 2070:19,26 2078:18 2086:22</p> <p><b>parole</b> 2074:2,3</p> <p><b>part</b> 2053:16 2074:16 2081:28 2083:7,12,28 2084:18 2097:8,14 2102:10 2115:26 2116:26</p> <p><b>participate</b> 2051:22</p> <p><b>parties</b> 2069:4 2084:24 2086:3 2115:17 2119:6</p> <p><b>parts</b> 2088:15</p> <p><b>party</b> 2080:2 2085:16, 18 2115:21</p> <p><b>party's</b> 2085:18 2115:21</p> <p><b>Paso</b> 2067:27 2068:1,5, 8,21 2070:22 2071:1 2078:20</p> <p><b>pass</b> 2065:13 2085:9 2086:2 2099:21</p> <p><b>passed</b> 2048:21</p> <p><b>passion</b> 2109:25</p> <p><b>past</b> 2076:15 2084:5,11 2088:12,20 2090:21,23, 24 2091:19,23 2092:23 2094:6 2100:16 2107:19 2109:1 2113:19 2114:18</p> <p><b>patience</b> 2118:4</p>	<p><b>patient</b> 2050:13 2051:14 2055:4,18</p> <p><b>patients</b> 2059:24</p> <p><b>pays</b> 2083:18</p> <p><b>Peace</b> 2097:4</p> <p><b>pellets</b> 2057:25,27 2058:7,11,12,13,16,24 2059:1 2064:1,2,17 2089:9 2090:3,9,14,28 2091:26 2098:27 2100:7</p> <p><b>pending</b> 2047:7</p> <p><b>penetrate</b> 2090:9</p> <p><b>people</b> 2068:9 2074:21 2079:14 2083:5,20,25 2091:12 2093:24 2098:26 2104:5 2106:20 2111:27,28 2115:5</p> <p><b>Percocet</b> 2089:26</p> <p><b>perfect</b> 2082:14,15,18</p> <p><b>performed</b> 2104:24</p> <p><b>period</b> 2049:12 2064:5 2076:16 2101:10 2107:27 2108:12,18 2109:9</p> <p><b>permanent</b> 2097:23 2100:28</p> <p><b>permanently</b> 2098:22</p> <p><b>permission</b> 2046:26</p> <p><b>permit</b> 2063:6</p> <p><b>person</b> 2056:22 2059:24 2075:26 2085:28 2093:25 2111:10,17,26 2115:7</p> <p><b>person's</b> 2051:1 2115:8,10</p> <p><b>personal</b> 2116:23 2117:9</p> <p><b>phase</b> 2080:16 2081:19 2084:16 2102:6 2116:28 2117:26 2118:23</p> <p><b>Philadelphia</b> 2083:1</p>	<p><b>photo</b> 2103:19</p> <p><b>photograph</b> 2103:15, 16,22,23,24 2104:8,10</p> <p><b>photographs</b> 2103:20, 25,28 2104:10,13,14</p> <p><b>photos</b> 2103:19</p> <p><b>physical</b> 2077:5 2079:19 2084:7 2086:16,17 2090:23 2091:9,10,15,20 2092:8,18 2097:8 2098:15 2099:2 2113:20,25,26 2114:1, 4,5,19,22</p> <p><b>pick</b> 2070:7 2096:8</p> <p><b>picture</b> 2088:23</p> <p><b>pills</b> 2089:27</p> <p><b>pipe</b> 2077:2</p> <p><b>Pismo</b> 2078:28 2079:1</p> <p><b>place</b> 2051:13 2054:19 2055:10,21 2070:14</p> <p><b>places</b> 2074:27</p> <p><b>plaintiff</b> 2046:24 2047:22 2062:9 2080:6 2103:24 2107:16 2114:8,13,15</p> <p><b>plaintiff's</b> 2103:1,7 2104:11 2106:2,15</p> <p><b>plan</b> 2054:16 2116:15</p> <p><b>planned</b> 2055:3</p> <p><b>plans</b> 2074:3</p> <p><b>plate</b> 2097:11</p> <p><b>play</b> 2074:19</p> <p><b>pled</b> 2109:21</p> <p><b>Pledge</b> 2082:8,9</p> <p><b>PM</b> 2099:7</p> <p><b>podiums</b> 2047:2,3</p> <p><b>point</b> 2056:10 2060:7 2081:28 2102:3,12,25 2104:16,21</p> <p><b>Points</b> 2109:26</p> <p><b>polished</b> 2103:3</p>	<p><b>pop</b> 2064:8</p> <p><b>popped</b> 2068:27 2069:6</p> <p><b>popping</b> 2047:14</p> <p><b>portion</b> 2052:26 2066:25</p> <p><b>pose</b> 2058:25</p> <p><b>posed</b> 2058:25</p> <p><b>position</b> 2116:10</p> <p><b>positive</b> 2076:5</p> <p><b>possessions</b> 2086:8, 11 2091:13</p> <p><b>possibly</b> 2073:26 2111:26</p> <p><b>pounds</b> 2077:7</p> <p><b>poverty</b> 2085:17,18 2115:21</p> <p><b>power</b> 2082:16 2102:12 2109:26</p> <p><b>practicing</b> 2049:3</p> <p><b>prejudice</b> 2063:7 2109:25</p> <p><b>prepare</b> 2101:20</p> <p><b>prescribe</b> 2095:8</p> <p><b>prescribing</b> 2094:28</p> <p><b>prescriptive</b> 2106:11</p> <p><b>presence</b> 2084:24 2115:17 2119:6</p> <p><b>present</b> 2046:7 2074:6 2081:16,17 2105:16 2114:7</p> <p><b>presentation</b> 2102:13 2103:3 2109:27</p> <p><b>presentations</b> 2102:12</p> <p><b>presented</b> 2095:21 2097:23 2103:16,17,24 2104:18 2105:10,27 2117:10</p> <p><b>presenting</b> 2103:1</p> <p><b>President</b> 2096:26</p> <p><b>presiding</b> 2116:2</p>
--	--	---	--

<b>pressure</b> 2056:22	<b>proud</b> 2111:11,19	9 2089:18,20 2094:19 2096:5 2102:9 2105:3 2106:23 2117:12 2118:18	<b>rebuttal</b> 2110:4
<b>pretty</b> 2063:2 2067:16 2069:2 2070:14 2074:14,27 2079:22	<b>prove</b> 2087:8 2106:6 2113:14,27	<b>questionnaire</b> 2084:1	<b>recall</b> 2062:2 2103:27 2104:7
<b>prevent</b> 2060:3	<b>provide</b> 2113:15 2116:21	<b>questions</b> 2048:1 2061:22,24 2075:7,16, 22 2079:24,27 2084:3 2088:20 2093:18 2106:20 2117:1,7	<b>received</b> 2108:17 2116:26
<b>previous</b> 2112:17	<b>provided</b> 2056:4	<b>quickly</b> 2056:24	<b>recent</b> 2103:18 2118:16,22
<b>previously</b> 2062:10 2101:24 2112:14,18 2117:8 2118:14	<b>psychiatrist</b> 2094:17 2095:8 2101:2	<b>quitter</b> 2111:4,10	<b>recently</b> 2076:7
<b>priced</b> 2087:6	<b>psychological</b> 2093:10	<hr/>	<b>recess</b> 2080:17,20 2101:22 2119:7
<b>prior</b> 2107:13	<b>psychologist</b> 2095:24 2101:2	<b>R</b>	<b>recite</b> 2082:8
<b>prison</b> 2073:25 2099:12	<b>PTSD</b> 2086:19 2093:15, 17,18 2094:6,17 2095:18,22 2100:27 2106:22	<b>R-U-B-Y</b> 2047:18	<b>recognize</b> 2068:13
<b>privilege</b> 2109:22	<b>public</b> 2074:24	<b>Racehorses</b> 2091:14	<b>recognized</b> 2068:9,14
<b>Prize</b> 2097:4	<b>published</b> 2096:17 2115:6	<b>ranking</b> 2049:19	<b>reconvene</b> 2119:4
<b>prized</b> 2086:7 2091:12	<b>pull</b> 2063:21	<b>ranks</b> 2049:16	<b>record</b> 2046:6 2081:6, 14 2101:24 2118:25
<b>probationary</b> 2076:16	<b>pulled</b> 2063:23	<b>rate</b> 2056:23 2105:17	<b>recover</b> 2087:8 2113:25
<b>problem</b> 2067:6	<b>pulls</b> 2087:15,16	<b>rational</b> 2104:19	<b>red</b> 2090:24
<b>problems</b> 2064:17 2072:15	<b>punctures</b> 2088:27	<b>raw</b> 2094:16	<b>redemption</b> 2083:19
<b>procedure</b> 2104:28	<b>punish</b> 2103:9 2115:23	<b>reach</b> 2112:24	<b>reduced</b> 2114:7
<b>procedures</b> 2089:13 2105:4 2114:19,22	<b>punitive</b> 2115:25	<b>reaching</b> 2085:16 2112:28 2115:20	<b>reference</b> 2118:18
<b>proceed</b> 2081:8	<b>purpose</b> 2051:10 2055:16	<b>read</b> 2095:23 2117:4	<b>reflects</b> 2109:1
<b>proceedings</b> 2080:2,5	<b>purposes</b> 2105:11	<b>reading</b> 2083:12,17	<b>refuse</b> 2118:23
<b>process</b> 2063:13 2102:3,11	<b>pus</b> 2058:28 2061:15	<b>ready</b> 2069:6 2081:8,18 2101:14	<b>regard</b> 2086:13 2097:17 2106:5
<b>processes</b> 2067:15	<b>push</b> 2072:15	<b>real</b> 2093:3 2099:28	<b>regular</b> 2071:4
<b>produced</b> 2060:9 2089:2	<b>pushed</b> 2073:17	<b>realistic</b> 2099:18	<b>reinspect</b> 2055:6
<b>product</b> 2077:4	<b>put</b> 2062:23 2065:5,21 2082:7 2083:16 2088:3, 23 2092:9,10 2094:22 2097:24 2099:10 2100:1,11 2103:2 2109:26 2110:9,26	<b>reason</b> 2055:1 2056:6 2058:10 2069:24 2079:11 2099:28 2106:8 2110:28 2111:4	<b>rejecting</b> 2065:24
<b>products</b> 2057:21	<b>putting</b> 2046:18	<b>reasonable</b> 2061:17 2072:20,21 2087:2,4,5, 6 2102:10,21 2103:10 2105:12 2106:4 2109:16,19 2110:1 2113:15,24	<b>related</b> 2116:24
<b>proof</b> 2084:17 2086:25 2095:7 2110:22 2112:19	<hr/>	<b>reasoned</b> 2115:13	<b>relationship</b> 2070:19, 26 2072:25 2073:1 2100:1
<b>properly</b> 2046:22 2081:17 2101:27	<b>Q</b>	<b>reasons</b> 2087:7	<b>released</b> 2061:27 2091:28 2096:27 2097:1 2118:7
<b>proposition</b> 2087:19, 20	<hr/>		<b>relevant</b> 2085:19 2115:22
<b>protective</b> 2072:24	<b>question</b> 2058:20 2061:16 2063:8 2082:3, 2089:1		<b>remain</b> 2058:16 2062:6 2090:3,15
<b>protruding</b> 2054:3,21 2089:1			<b>remaining</b> 2058:24

<b>remember</b> 2068:12 2071:11 2082:4,10 2084:17 2090:9 2091:8 2092:22,24 2093:13 2096:23,25 2099:19 2100:14 2106:17	<b>responsible</b> 2111:28	2103:22 2109:25 2110:11 2112:16 2116:1,5 2117:23 2118:2	2071:22 2073:7 2081:6 2094:12 2100:18 2114:10,11
<b>remind</b> 2107:10 2116:28 2117:11	<b>rest</b> 2080:12 2087:24 2091:1,17 2097:5 2100:28 2115:1	<b>roommate</b> 2075:27 2076:2	<b>schooling</b> 2048:10
<b>remote</b> 2094:14	<b>restaurants</b> 2078:6,10, 17	<b>root</b> 2072:9	<b>scientist</b> 2097:7
<b>removal</b> 2057:24 2091:6	<b>rests</b> 2080:7	<b>rough</b> 2063:18	<b>screen</b> 2072:2
<b>remove</b> 2051:13 2054:23 2055:9 2057:27 2058:6,11 2069:9	<b>result</b> 2108:20	<b>rub</b> 2086:1	<b>seated</b> 2046:22 2047:3, 11 2081:17 2101:27
<b>removed</b> 2055:7 2058:7 2063:11,15 2098:23	<b>RESUMED</b> 2062:12	<b>Ruby</b> 2046:26 2047:16, 22 2104:25	<b>seconds</b> 2069:11
<b>repack</b> 2055:10	<b>resuscitation</b> 2057:12, 14,18,20	<b>rule</b> 2085:15	<b>secrete</b> 2060:11
<b>repacking</b> 2055:12	<b>retake</b> 2062:5	<b>rules</b> 2084:14,16,20 2111:21	<b>security</b> 2075:4
<b>repair</b> 2077:3	<b>return</b> 2054:16 2055:11	<b>running</b> 2082:27	<b>seeking</b> 2107:16 2114:8,13,15
<b>repaired</b> 2106:25	<b>review</b> 2088:21 2105:12	<b>runs</b> 2098:19	<b>seldom</b> 2078:8,12
<b>repeat</b> 2112:16	<b>Reyna</b> 2118:3,13	<hr/> <b>S</b> <hr/>	<b>sell</b> 2091:13
<b>replace</b> 2077:2	<b>ribs</b> 2053:12 2089:8	<b>S-K-I-N-N-E-R</b> 2047:18	<b>send</b> 2118:16
<b>report</b> 2060:22 2095:2	<b>Richardson</b> 2113:4,11	<b>sadly</b> 2108:21	<b>sending</b> 2117:4
<b>reported</b> 2061:3,6 2094:21	<b>riddled</b> 2089:9	<b>safe</b> 2075:5	<b>sense</b> 2086:5 2087:3 2097:17 2106:4 2113:25 2116:19
<b>reports</b> 2094:12 2100:17 2115:3	<b>ripped</b> 2098:14	<b>salary</b> 2107:20 2114:24,25	<b>separates</b> 2053:19
<b>represent</b> 2103:26	<b>risk</b> 2058:17,25	<b>sale</b> 2091:13	<b>September</b> 2092:13
<b>request</b> 2118:19	<b>road</b> 2064:20	<b>salt</b> 2060:9 2094:1	<b>serve</b> 2055:22 2118:5
<b>require</b> 2059:19	<b>roads</b> 2077:3	<b>San</b> 2079:3	<b>session</b> 2046:2,5,21 2081:2,5,16 2101:23,26
<b>required</b> 2056:11 2117:13	<b>Rob</b> 2089:15 2105:3	<b>satisfaction</b> 2107:3	<b>set</b> 2103:25 2104:9
<b>requirements</b> 2057:22	<b>Robles</b> 2067:27 2068:1,5,8,21 2071:1 2078:20	<b>save</b> 2065:22	<b>settle</b> 2071:1 2072:11
<b>research</b> 2048:14	<b>rock</b> 2111:5	<b>scab</b> 2063:23	<b>settled</b> 2070:22
<b>residents</b> 2049:27	<b>rocket</b> 2097:7	<b>scabbed</b> 2063:22	<b>sew</b> 2062:21,25
<b>respect</b> 2080:4 2081:18 2112:5 2118:22	<b>Rodriguez</b> 2046:10,16 2080:8 2081:10,20,21 2090:12 2101:13 2110:4,5 2118:26,27 2119:10	<b>scale</b> 2061:7	<b>sewn</b> 2059:12
<b>respiration</b> 2053:22	<b>role</b> 2082:1,11	<b>scar</b> 2086:23 2098:14, 19,22	<b>share</b> 2069:27 2070:25 2116:18
<b>response</b> 2104:4,19 2105:3	<b>roll</b> 2046:21 2101:26	<b>scare</b> 2094:9	<b>She'll</b> 2118:16
	<b>Ron</b> 2075:5,6	<b>scared</b> 2066:18 2092:27	<b>Sheryl</b> 2113:4,11 2114:10,12
	<b>Rona</b> 2103:9 2113:3,10 2114:11	<b>scenario</b> 2051:12	<b>shirt</b> 2086:23
	<b>room</b> 2051:19,21 2054:17,27 2055:2 2069:12 2096:7	<b>Schedule</b> 2046:14	<b>shock</b> 2051:3 2056:18, 19
		<b>school</b> 2046:6 2048:12	<b>Shoffner</b> 2103:10 2113:3,10 2114:12

<p><b>shoot</b> 2087:21 2099:15 2100:16</p> <p><b>shooting</b> 2067:6,10 2068:7 2070:2,18 2072:18,22 2073:7 2084:10 2088:13 2093:23,25 2095:11 2099:25 2107:28 2108:17 2109:10</p> <p><b>shootings</b> 2094:12 2100:18</p> <p><b>short</b> 2079:9 2101:10</p> <p><b>shortly</b> 2103:20</p> <p><b>Shortness</b> 2099:3</p> <p><b>shot</b> 2063:16 2068:6 2079:23 2092:24 2093:26 2094:8</p> <p><b>shotgun</b> 2053:23 2061:18 2087:22 2088:22 2089:9 2090:3, 8,14 2091:25 2098:27</p> <p><b>shovel</b> 2077:12</p> <p><b>show</b> 2103:15 2110:22, 27</p> <p><b>showed</b> 2110:8,21,23, 25 2111:22,26 2112:5</p> <p><b>shown</b> 2070:15</p> <p><b>shredded</b> 2089:9</p> <p><b>sick</b> 2065:11</p> <p><b>side</b> 2052:24 2053:12 2060:25 2090:8 2091:27 2095:21,23,24 2098:1</p> <p><b>sidebars</b> 2081:25</p> <p><b>sign</b> 2071:13,19 2103:27</p> <p><b>signature</b> 2103:26</p> <p><b>significant</b> 2059:8 2104:9</p> <p><b>signing</b> 2082:27 2083:1</p> <p><b>signs</b> 2051:1 2056:21</p> <p><b>similar</b> 2083:28</p> <p><b>simple</b> 2070:14</p>	<p><b>simply</b> 2110:20 2117:16</p> <p><b>single</b> 2089:17,20</p> <p><b>Sir</b> 2062:5</p> <p><b>sister</b> 2068:19 2075:25 2076:2 2078:18</p> <p><b>sit</b> 2047:11</p> <p><b>sitting</b> 2090:25</p> <p><b>situation</b> 2069:9</p> <p><b>situations</b> 2108:21</p> <p><b>six-and-a-half</b> 2088:14 2098:17 2100:24</p> <p><b>size</b> 2057:1 2088:25</p> <p><b>skin</b> 2059:10,12 2060:3 2062:23,25 2090:28 2091:7 2092:1</p> <p><b>Skinner</b> 2046:16,26 2047:16,22 2088:26 2089:2,4,10 2104:25 2108:23</p> <p><b>Skinny</b> 2104:25</p> <p><b>slammed</b> 2068:15</p> <p><b>sleep</b> 2067:1,4 2092:16,17 2094:11 2095:2 2099:6</p> <p><b>sleeping</b> 2089:27 2095:3</p> <p><b>slickest</b> 2102:13 2109:27</p> <p><b>slide</b> 2100:11 2107:26</p> <p><b>slides</b> 2091:21 2102:22</p> <p><b>snipped</b> 2063:24</p> <p><b>soaked</b> 2091:4,5</p> <p><b>social</b> 2077:26</p> <p><b>society</b> 2083:20 2091:12 2112:1</p> <p><b>softball</b> 2088:25</p> <p><b>solemnly</b> 2047:6</p> <p><b>solid</b> 2086:25</p> <p><b>sooner</b> 2055:5 2099:20 2115:6</p>	<p><b>sore</b> 2074:15</p> <p><b>soreness</b> 2097:28</p> <p><b>sort</b> 2060:5 2076:15 2078:7,25 2079:8 2102:12</p> <p><b>sound</b> 2068:16 2111:9</p> <p><b>sounds</b> 2070:14 2107:1</p> <p><b>source</b> 2058:18 2089:14</p> <p><b>space</b> 2072:28</p> <p><b>speaking</b> 2052:25 2053:18</p> <p><b>special</b> 2081:12 2116:22 2118:19</p> <p><b>specialization</b> 2048:23</p> <p><b>specific</b> 2086:12,15 2088:11,19 2113:18</p> <p><b>specifically</b> 2050:19 2056:3 2083:27</p> <p><b>speculate</b> 2107:9 2113:17</p> <p><b>Spell</b> 2047:17</p> <p><b>spend</b> 2072:1 2073:28</p> <p><b>spent</b> 2056:3,6</p> <p><b>spine</b> 2090:13</p> <p><b>split</b> 2091:23</p> <p><b>squirting</b> 2090:26</p> <p><b>staff</b> 2049:20</p> <p><b>stage</b> 2080:4 2100:3</p> <p><b>stand</b> 2047:4 2062:3,6 2082:6</p> <p><b>standard</b> 2086:27 2113:22</p> <p><b>Staples</b> 2062:26</p> <p><b>start</b> 2047:14 2048:2 2055:23 2065:10,24 2068:21 2072:10 2082:5 2110:6</p> <p><b>started</b> 2050:7,10 2059:17 2065:13 2068:17 2069:7</p>	<p>2072:11 2074:1 2076:11 2081:23 2102:6</p> <p><b>startled</b> 2068:17</p> <p><b>state</b> 2047:15 2116:13 2118:25</p> <p><b>statement</b> 2095:18</p> <p><b>statements</b> 2116:21</p> <p><b>States</b> 2096:15</p> <p><b>statistics</b> 2096:15 2115:3</p> <p><b>stay</b> 2056:2 2064:14 2065:15 2069:12 2080:3 2098:6 2111:7</p> <p><b>stayed</b> 2092:4 2094:11</p> <p><b>step</b> 2046:28 2061:28 2074:5 2080:1</p> <p><b>sticking</b> 2092:11</p> <p><b>stipulation</b> 2119:3</p> <p><b>stitch</b> 2063:19</p> <p><b>stitched</b> 2092:1</p> <p><b>stitches</b> 2062:18,26,27 2063:3,11,25 2091:7</p> <p><b>stomach</b> 2063:1 2065:4,8 2066:4,25 2091:25 2097:28</p> <p><b>stop</b> 2055:22</p> <p><b>stopped</b> 2069:24 2075:20,21 2106:11 2108:25,26</p> <p><b>stops</b> 2081:24 2087:17</p> <p><b>strained</b> 2070:20</p> <p><b>strategies</b> 2105:15</p> <p><b>street</b> 2087:15</p> <p><b>stress</b> 2093:12,14,15 2094:7</p> <p><b>stressed</b> 2070:13</p> <p><b>strike</b> 2085:13 2086:4</p> <p><b>strongly</b> 2116:14</p> <p><b>struggled</b> 2066:19 2072:6 2107:23</p>
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<p><b>students</b> 2049:28</p> <p><b>stuff</b> 2069:4 2076:28</p> <p><b>stuffed</b> 2091:3</p> <p><b>stuffing</b> 2055:13</p> <p><b>submit</b> 2109:18</p> <p><b>suction</b> 2054:22</p> <p><b>suffer</b> 2087:9 2105:26 2106:7 2113:28</p> <p><b>suffered</b> 2095:22 2096:14 2102:7 2104:1 2114:28</p> <p><b>suffering</b> 2102:28</p> <p><b>suffers</b> 2095:18</p> <p><b>suggest</b> 2111:18</p> <p><b>suit</b> 2087:18</p> <p><b>sum</b> 2087:12</p> <p><b>summer</b> 2073:8</p> <p><b>sunglasses</b> 2087:18</p> <p><b>supply</b> 2052:27,28 2057:8</p> <p><b>supposed</b> 2085:10 2105:22</p> <p><b>surface</b> 2090:28 2091:1</p> <p><b>surgeon</b> 2048:7,8,9 2049:2 2050:8</p> <p><b>surgeons</b> 2049:3 2104:23</p> <p><b>surgeries</b> 2065:25 2066:10,11 2067:13 2071:2 2098:23 2104:22,23,26,27 2105:2,4,7</p> <p><b>surgery</b> 2048:13,26 2050:2,20 2051:22 2054:6,12,13 2055:3 2057:7 2065:5 2089:22 2093:4,19 2099:16,17, 19,20 2104:24 2105:5 2106:19,26,27 2114:19, 22</p> <p><b>surgical</b> 2048:15,27 2050:4 2054:14 2056:3 2089:12 2104:28</p>	<p><b>Surgically</b> 2091:24</p> <p><b>surroundings</b> 2074:26,28 2100:20</p> <p><b>survived</b> 2110:28 2111:1</p> <p><b>surviving</b> 2093:4 2099:16,19</p> <p><b>Sustained</b> 2058:21</p> <p><b>sutures</b> 2053:4</p> <p><b>swayed</b> 2109:25</p> <p><b>swear</b> 2047:6</p> <p><b>swearing</b> 2117:27</p> <p><b>swelling</b> 2059:8</p> <p><b>switch</b> 2053:16 2062:17 2067:24 2073:4</p> <p><b>Switching</b> 2049:8 2050:12</p> <p><b>sworn</b> 2047:23 2062:10</p> <p><b>sympathy</b> 2103:4</p> <p><b>symptoms</b> 2093:14,16</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tablets</b> 2095:1,4,11,13</p> <p><b>Taft</b> 2046:6 2068:3 2081:6 2114:9,10</p> <p><b>takes</b> 2059:26</p> <p><b>taking</b> 2086:23 2091:6 2095:11,12,13,15 2098:11 2106:10 2108:1,26</p> <p><b>talk</b> 2062:18 2064:1,16 2066:9 2067:9 2069:28 2072:3 2074:6,20 2087:4 2093:28 2096:9 2100:6 2116:5</p> <p><b>talked</b> 2074:5 2094:7</p> <p><b>talking</b> 2070:2 2099:3 2111:24,25</p> <p><b>talks</b> 2083:12 2084:5 2101:9 2105:21</p> <p><b>tamp</b> 2055:22</p>	<p><b>taped</b> 2091:3</p> <p><b>tattoo</b> 2104:8,11</p> <p><b>taught</b> 2070:11</p> <p><b>teaching</b> 2049:26,27</p> <p><b>tears</b> 2093:3</p> <p><b>teddy</b> 2112:4</p> <p><b>telling</b> 2105:27</p> <p><b>ten</b> 2049:14 2057:21 2061:7 2067:23 2077:7 2100:21 2109:10</p> <p><b>term</b> 2055:12 2057:9 2079:9</p> <p><b>terms</b> 2052:1 2059:22 2077:26 2079:8,14,19</p> <p><b>test</b> 2051:7</p> <p><b>testified</b> 2047:24 2062:11 2093:13 2095:8 2100:28</p> <p><b>testify</b> 2101:6</p> <p><b>testimony</b> 2047:7,12 2106:17 2115:14 2116:20 2117:3,4</p> <p><b>tests</b> 2048:22</p> <p><b>therapist</b> 2095:17</p> <p><b>therapists</b> 2095:22</p> <p><b>therapy</b> 2108:16</p> <p><b>thick</b> 2063:25</p> <p><b>thing</b> 2065:20 2072:15 2073:11,13,14,15 2077:20 2078:7,25 2082:14 2086:9,20 2089:21 2093:11 2096:6 2098:28 2100:11 2112:7 2116:1</p> <p><b>things</b> 2051:2,14 2070:7,8 2072:7 2073:11 2077:2 2089:26 2097:7 2100:6, 16,19 2101:11 2102:17 2105:26 2106:22</p> <p><b>thinking</b> 2069:7 2092:28</p> <p><b>thinks</b> 2100:15 2117:17</p>	<p><b>thought</b> 2068:20 2071:11 2091:10,11 2093:27 2104:8 2106:22 2108:6 2109:8, 9</p> <p><b>thousand</b> 2066:27</p> <p><b>tie</b> 2087:18</p> <p><b>tight</b> 2055:21</p> <p><b>tightness</b> 2092:16 2099:4</p> <p><b>time</b> 2049:9,12 2051:24 2056:3,6,10 2057:23 2059:15,26 2060:1 2061:2,6,11 2063:10 2064:2,5,15,25 2066:8 2067:10 2068:18,27 2069:5,10,21,22 2071:3 2072:1,4 2073:28 2079:6,22 2080:9,12 2081:28 2083:23 2084:4 2092:24 2094:11,14,15 2095:3 2098:8,9 2102:24 2106:14,17 2108:12,18 2109:10 2111:23 2114:3</p> <p><b>timeline</b> 2084:9</p> <p><b>times</b> 2060:18 2067:17, 23 2070:16,18 2072:4 2074:24 2078:13,15,17 2091:6 2095:12,19 2098:13 2099:9 2100:21 2111:5</p> <p><b>tinted</b> 2087:16</p> <p><b>tired</b> 2074:13</p> <p><b>tissue</b> 2055:10 2057:8 2058:28 2092:12,14</p> <p><b>today</b> 2089:10 2097:5 2103:17,28</p> <p><b>today's</b> 2084:10 2088:13,18 2091:18 2092:20 2096:3,9 2098:28 2108:27</p> <p><b>told</b> 2058:28 2065:20 2083:5 2095:19,23 2100:8 2102:7 2107:28 2110:7,21 2112:13 2115:28 2116:4</p>
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<b>tools</b> 2070:10	<b>trial</b> 2080:16 2081:19 2082:1,20 2094:22 2103:20 2104:16 2109:23 2115:15 2117:26	<b>underneath</b> 2059:13 2060:3 2091:8	2095:26
<b>tooth</b> 2083:8,9	<b>trick</b> 2065:3	<b>understand</b> 2060:4 2068:18 2080:10	<b>versus</b> 2046:6 2081:6
<b>topic</b> 2050:12 2056:17 2057:11 2060:17 2063:27 2064:22 2066:10 2069:15 2073:4	<b>trip</b> 2051:21 2078:26	<b>understood</b> 2071:17, 18	<b>victim</b> 2083:19 2111:1
<b>topics</b> 2049:8 2062:17	<b>truck</b> 2071:10 2090:25	<b>unfair</b> 2085:6,26 2086:3	<b>video</b> 2093:13
<b>torn</b> 2089:9 2099:5	<b>true</b> 2084:18 2095:27 2116:20	<b>Union</b> 2046:6 2081:6 2114:9,10	<b>views</b> 2116:6
<b>torso</b> 2111:3	<b>Trujillo</b> 2046:25 2047:21,26 2058:22 2062:4,7,8,13 2063:9 2079:27 2119:9	<b>unique</b> 2052:27,28 2116:23	<b>vigilant</b> 2074:28 2100:20
<b>total</b> 2096:4 2100:22 2101:6 2109:13	<b>truth</b> 2047:8,9	<b>unit</b> 2050:5 2056:4	<b>Virginia</b> 2094:23
<b>totally</b> 2084:25 2085:6, 26 2115:18	<b>tube</b> 2092:11	<b>United</b> 2096:15	<b>visit</b> 2060:22 2061:11 2095:9
<b>touch</b> 2094:14	<b>tubes</b> 2051:7,13 2092:11	<b>units</b> 2057:21	<b>visits</b> 2060:19 2061:2 2095:28
<b>tracheal</b> 2092:11	<b>TUESDAY</b> 2046:1 2081:1	<b>University</b> 2050:11	<b>vital</b> 2051:1 2056:21 2115:3
<b>track</b> 2074:28	<b>turn</b> 2083:11	<b>unstable</b> 2050:25,28 2051:2,12	<b>vote</b> 2116:16
<b>tracks</b> 2069:7	<b>turned</b> 2085:21	<b>ups</b> 2081:24	<b>voted</b> 2117:12
<b>trade</b> 2088:10	<b>TV</b> 2094:14 2099:6	<b>upset</b> 2071:7,15	<hr/> <b>W</b> <hr/>
<b>trainees</b> 2049:28	<b>Tylenol</b> 2066:28 2099:6	<b>usual</b> 2067:4	<b>wages</b> 2107:13,20 2114:24,25
<b>training</b> 2048:13,15,21 2049:21 2076:11 2116:23,25	<b>Tyler</b> 2113:5,12 2114:13	<b>utilities</b> 2074:12	<b>waistline</b> 2063:1
<b>tranquilizers</b> 2089:27	<b>type</b> 2055:3 2059:25	<hr/> <b>V</b> <hr/>	<b>wait</b> 2046:11
<b>transcript</b> 2094:23	<b>types</b> 2106:19,22	<b>vac</b> 2054:7,11,19 2055:10 2066:5 2092:11	<b>waited</b> 2068:14
<b>transcription</b> 2094:23	<b>typically</b> 2049:21 2057:19 2058:13	<b>vacation</b> 2078:23	<b>wake</b> 2066:18 2093:4
<b>transfusions</b> 2051:16	<hr/> <b>U</b> <hr/>	<b>vacuum</b> 2054:19	<b>walk</b> 2047:1,2 2086:6 2090:10 2100:3
<b>trapped</b> 2088:27	<b>Uh-huh</b> 2071:22	<b>valuable</b> 2086:8,10	<b>walker</b> 2059:21
<b>trauma</b> 2048:7,9,15 2049:1 2050:2,8,19 2057:19 2093:10	<b>ulcers</b> 2091:2	<b>vascular</b> 2052:8	<b>walking</b> 2059:20 2087:15
<b>travel</b> 2060:14 2100:19	<b>unattached</b> 2059:13	<b>vehicle</b> 2068:15,19	<b>walks</b> 2087:18
<b>Trazadone</b> 2095:13	<b>uncomfortable</b> 2074:22	<b>ventilator</b> 2056:11	<b>wall</b> 2053:6,7,9,10
<b>treat</b> 2065:3	<b>undergo</b> 2048:10	<b>ventral</b> 2097:10	<b>wanted</b> 2070:6 2093:17,22 2110:19,22
<b>treated</b> 2061:17	<b>underground</b> 2074:11 2076:8	<b>verdict</b> 2085:17,24 2096:6 2111:14,16,17, 19,22,26 2112:24,28 2113:1 2115:20,26 2117:18 2118:20	<b>wanting</b> 2072:13 2073:28 2094:10
<b>treating</b> 2108:12,25		<b>Veronica</b> 2118:7	<b>wash</b> 2067:21 2094:15
<b>treatment</b> 2057:13,23 2060:6 2106:12,13 2108:15,16,18 2114:19, 22		<b>version</b> 2081:12	<b>washed</b> 2067:11,18
<b>tremendously</b> 2105:9			<b>washes</b> 2100:20
			<b>washing</b> 2067:10,16

<p><b>water</b> 2093:23</p> <p><b>ways</b> 2054:18 2070:27</p> <p><b>wealth</b> 2085:16,17,18 2086:3 2115:20,21</p> <p><b>wearing</b> 2087:17</p> <p><b>wears</b> 2079:22</p> <p><b>week</b> 2091:9</p> <p><b>weeks</b> 2065:16 2092:4 2094:26</p> <p><b>whiner</b> 2111:9</p> <p><b>white</b> 2110:14</p> <p><b>wind</b> 2093:26</p> <p><b>wins</b> 2097:4</p> <p><b>wiped</b> 2086:22</p> <p><b>wire</b> 2063:24</p> <p><b>witnesses</b> 2046:18 2080:11 2112:6,19 2115:14 2117:2</p> <p><b>wooden</b> 2047:1</p> <p><b>word</b> 2082:21 2087:4</p> <p><b>words</b> 2077:6</p> <p><b>work</b> 2046:13 2050:7,8 2064:15 2074:17 2078:25 2079:14,18 2094:25 2098:8,9,10 2108:19,20 2109:23 2111:8</p> <p><b>worked</b> 2049:9,12 2068:26 2077:3</p> <p><b>working</b> 2049:16 2068:22 2069:2 2089:6</p> <p><b>world</b> 2091:11</p> <p><b>worried</b> 2100:10</p> <p><b>worries</b> 2074:1 2093:24</p> <p><b>worry</b> 2075:3 2100:9</p> <p><b>worst</b> 2063:17</p> <p><b>worthless</b> 2093:21</p> <p><b>wound</b> 2051:11 2053:24 2054:7,11,19 2055:10 2058:27 2060:15 2061:19</p>	<p>2066:1,5 2092:11 2094:1</p> <p><b>wounds</b> 2058:26 2059:2,3 2091:3</p> <p><b>Write</b> 2117:7</p> <p><b>writing</b> 2110:12</p> <p><b>written</b> 2112:22</p> <p><b>wrong</b> 2095:26</p> <p><b>wrongful</b> 2113:12</p> <hr/> <p style="text-align: center;"><b>X</b></p> <hr/> <p><b>X-RAY</b> 2090:6</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> 2070:24 2071:23 2073:7 2076:3,11,12 2088:16 2089:13,23,24 2090:21 2091:1,17,19 2092:5,19,21 2093:8 2094:2,4 2095:10,17 2096:2,3 2098:16 2099:23 2100:11,12 2103:19 2106:16 2108:10,28 2109:12 2110:23</p> <p><b>yearbook</b> 2073:6,12 2094:1,2</p> <p><b>years</b> 2048:11,12,13,14 2049:7,14 2064:7 2070:23,24 2076:1 2082:26 2088:14,17,18 2090:21 2091:18 2092:7,20 2094:5,8 2096:3,10,17,21,22,24 2098:17 2100:22,24 2108:11,28 2109:10 2115:4</p> <p><b>Yesterday</b> 2062:16</p> <p><b>young</b> 2086:21</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>Zoloft</b> 2095:11</p>
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