

**ORIGINAL**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

THE STATE OF NEVADA,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR  
THE COUNTY OF CLARK, and THE  
HONORABLE MARK E. GIBBONS,  
District Judge,

Respondents,

and

ALFRED P. CENTOFANTI, III,

Real Party in Interest.

No. 38987

District Court No. C172534

**FILED**

JAN 09 2002

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
CHIEF DEPUTY CLERK

**SUPPLEMENTAL POINT & AUTHORITIES IN SUPPORT OF  
PETITION FOR WRIT OF MANDAMUS**

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**RECEIVED**

JAN 02 2002

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Counsel for Petitioner

Real Party in Interest

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4  
5 THE STATE OF NEVADA,  
6 Petitioner,

7 vs.

8 THE EIGHTH JUDICIAL DISTRICT COURT  
9 OF THE STATE OF NEVADA, IN AND FOR  
10 THE COUNTY OF CLARK, and THE  
HONORABLE MARK E. GIBBONS,  
District Judge,

11 Respondents,

12 and

13 ALFRED P. CENTOFANTI,

14 Real Party in Interest.

No. 38987

District Court No. C172534

15 **SUPPLEMENAL POINTS & AUTHORITIES**

16  
17 **Brief Statement of the Case**

18 The defendant has been charged with open murder for the December 20, 2000 killing  
19 of his ex-wife. On December 27, 2001, the district court denied the State's motion to compel  
20 the defendant to undergo an independent psychiatric examination and request for the notes  
21 and test results from the defendant's experts that he had indicated he intends to call at trial.  
22 Exhibit 3 (Transcript of Proceeding on December 27, 2001 pages 124-133). See State's  
23 Exhibits 1,2 (filed with initial Petition).

24 **Points & Authorities**

25 There is utility to reciprocal discovery in criminal cases. The United States Supreme  
26 Court has concluded that the privilege against self-incrimination is not violated when a  
27 defendant is required to "accelerate the timing of his disclosure" of information traditionally  
28 protected by the Fifth Amendment. Williams v. Florida, 399 U.S. 78, 85, 90 S. Ct. 1893,

1 1898 (1970), quoted in, Binegar v. Eighth Judicial Court, 112 Nev. 544, 550-51, 915 P.2d  
2 889, 894 (1996). In the Williams case the issue was whether a Florida statute that required  
3 the defendant to give notice of an alibi defense, including information detailing where the  
4 defendant is claiming he was and the names and addresses of those who could substantiate  
5 that claim. The prosecution had a reciprocal obligation to disclose any witnesses that the  
6 State intended to call as rebuttal witnesses to the alibi.

7  
8 The United States Supreme Court concluded that the privilege against  
9 self-incrimination was not violated by the notice-of-alibi statute. The Court  
10 stated that the defendant would have been forced to reveal the identity of the  
11 alibi witness at trial, and that

12 “[a]t most, the rule only compelled the petitioner to accelerate  
13 the timing of his disclosure, forcing him to divulge at an  
14 earlier date information that the petitioner from the beginning  
15 planned to divulge at trial. Nothing in the Fifth Amendment  
16 privilege entitles a defendant as a matter of constitutional right  
17 to await the end of the State's case before announcing the  
18 nature of his defense, any more than it entitles him to await the  
19 jury's verdict on the State's case-in-chief before deciding  
20 whether or not to take the stand himself.”

21 Binegar v. Eighth Judicial Court, 112 Nev. 544, 550-51, 915 P.2d 889, 894 (1996) (citing  
22 Williams v. Florida, 399 U.S. 78, 85, 90 S. Ct. 1893, 1898 (1970)). After all “[t]he adversary  
23 system of trial is hardly an end in itself; it is not yet a poker game in which player enjoy an  
24 absolute right always to conceal their cards until played.” Williams v. Florida, 399 U.S. 78,  
25 82, 90 S. Ct. 1893, 1896 (1970).

26 The defendant in a criminal trial is frequently forced to testify himself  
27 and to call other witnesses in an effort to reduce the risk of conviction. When  
28 he presents his witnesses, he must reveal their identity and submit them to  
cross-examination which in itself may prove incriminating or which may  
furnish the State with leads to incriminating rebuttal evidence. That the  
defendant faces such a dilemma demanding a choice between complete silence  
and presenting a defense has never been thought an invasion of the privilege  
against compelled self-incrimination. The pressures generated by the State's  
evidence may be severe but they do not vitiate the defendant's choice to  
present an alibi defense and witnesses to prove it, even though the attempted  
defense ends in catastrophe for the defendant. However 'testimonial' or  
'incriminating' the alibi defense proves to be, it cannot be considered  
'compelled' within the meaning of the Fifth and Fourteenth Amendments.

Williams v. Florida, 399 U.S. 78, 83-4, 90 S. Ct. 1893, 1897 (1970).

1 Clearly, a statute such as NRS 174.245 does not violate the defendant's Fifth  
2 Amendment rights when it requires the defendant, at the request of the prosecuting attorney  
3 to "inspect and to copy or photograph"

4 (b) Results or reports of physical or mental examination, scientific tests  
5 or scientific experiments that the defendant intends to introduce in evidence  
6 during the case in chief of the defendant, or copies thereof, within the  
7 possession, custody or control of the defendant, the existence of which is  
8 know, or by the exercise of reasonable diligence may become known, to the  
9 defendant.

10 NRS. 174.245(1)(b). "At most, this rule only compelled [defendant] to accelerate the timing  
11 of his disclosure." Williams v. Florida, 399 U.S. 78, 85, 90 S. Ct. 1893, 1898 (1970).

12 "Nothing in the Fifth Amendment privilege entitles a defendant as a matter of constitutional  
13 right to await the end of the State's case before announcing the nature of his defense." Id.

14 As such, the district court's denial of the State's motion for "notes, and test results"  
15 was an abuse of discretion. It places the State in the unfavorable position of not being  
16 prepared to cross examine the defense expert and is inconsistent with NRS 174.245 and the  
17 intent of the legislature.

18 With regard to whether it is proper to compel a defendant to undergo an independent  
19 examination the following analysis is offered. As far as the Fifth Amendment is concerned,  
20 the defendant waives his Fifth Amendment privilege by raising a mental status defense.  
21 Buchanan v. Kentucky, 483 U.S. 402, 421-24, 107 S.Ct. 2906, 2916-18 (1987).

22 In Smith we observed that "[w]hen a defendant asserts the insanity defense and  
23 introduces supporting psychiatric testimony, his silence may deprive the State  
24 of the only effective means it has of controverting his proof on an issue that he  
25 has interjected into the case." 451 U.S., at 465, 101 S.Ct., at 1874. And in  
26 Buchanan the Court held that if a defendant requests a psychiatric examination  
27 in order to prove a mental-status defense, he waives the right to raise a Fifth  
28 Amendment challenge to the prosecution's use of evidence obtained through  
that examination to rebut the defense. 483 U.S., at 422-423, 107 S.Ct., at  
2917- 2918.

30 Powell v. Texas, 492 U.S. 680, 684, 109 S.Ct. 3146, 3149 (1989). Because of this potential  
31 unfairness may court require the defendant to submit to psychiatric testing where he intends  
32 to use psychiatric testimony.

1  
2 When a defendant asserts the insanity defense and introduces  
3 supporting psychiatric testimony, his silence may deprive the State of the only  
4 effective means it has of controverting his proof on an issue that he interjected  
5 into the case. Accordingly, several Courts of Appeals have held that, under  
6 such circumstances, a defendant can be required to submit to a sanity  
7 examination conducted by the prosecution's psychiatrist. See, e. g., United  
8 States v. Cohen, 530 F.2d 43, 47-48 (CA5), cert. denied, 429 U.S. 855, 97  
9 S.Ct. 149, 50 L.Ed.2d 130 (1976); Karstetter v. Cardwell, 526 F.2d 1144,  
10 1145 (CA9 1975); United States v. Bohle, 445 F.2d 54, 66-67 (CA7 1971);  
11 United States v. Weiser, 428 F.2d 932, 936 (CA2 1969), cert. denied, 402 U.S.  
12 949, 91 S.Ct. 1606, 29 L.Ed.2d 119 (1971); United States v. Albright, 388  
13 F.2d 719, 724-725 (CA4 1968); Pope v. United States, 372 F.2d 710, 720-721  
14 (CA8 1967) (en banc), vacated and remanded on other grounds, 392 U.S. 651,  
15 88 S.Ct. 2145, 20 L.Ed.2d 1317 (1968). [FN10]

16 [FN10]On the same theory, the Court of Appeals here carefully  
17 left open "the possibility that a defendant who wishes to use  
18 psychiatric evidence in his own behalf [on the issue of future  
19 dangerousness] can be precluded from using it unless he is  
20 [also] willing to be examined by a psychiatrist nominated by the  
21 state." 602 F.2d, at 705.

22 Estelle v. Smith, 451 U.S. 454, 465-66, 101 S.Ct. 1866, 1874 (1981).

23 However, where a defendant does not intend to introduce psychiatric testimony he can  
24 not be compelled to undergo a psychiatric exam if his statements might be used against him  
25 at trial. "A criminal defendant, who neither initiates a psychiatric evaluation nor attempts  
26 to introduce any psychiatric evidence, may not be compelled to respond to a psychiatrist if  
27 his statements can be used against him at a capital sentencing proceeding."

28 Estelle v. Smith, 451 U.S. 454, 468, 101 S.Ct. 1866, 1876 (1981).

Where defendant intends to use psychiatric or psychological testimony at trial, and  
where that defendant has designated psychiatric or psychological experts in his expert  
witness notification, the State is clearly within its right to request an independent  
examination. Such a request does not run afoul of the Fifth Amendment for the reasons  
stated in Estelle v. Smith, Buchanan v. Kentucky, Powell v. Texas, and Williams v. Florida.  
Additionally the High Court has stated:

While it may be unfair to the state to permit a defendant to use  
psychiatric testimony without allowing the state a means to rebut that  
testimony, it certainly is not unfair to require the state to provide counsel with  
notice before examining the defendant concerning future dangerousness.

1 Thus, if a defendant were to surprise the prosecution on the eve of trial by  
2 raising an insanity defense to be supported by psychiatric testimony, the court  
3 might be justified in ordering a continuance and directing that the defendant  
4 submit to examination by a state-appointed psychiatrist. There would be no  
justification, however, for also directing that defense counsel receive no notice  
of this examination.

5 Powell v. Texas, 492 U.S. 680, 685, 109 S.Ct. 3146, 3150 (1989). The Sixth Amendment  
6 requires that "defendants formally charged with capital crimes have a Sixth Amendment right  
7 to consult with counsel before submitting to psychiatric examinations . . ." Satterwhite v.  
8 Texas, 486 U.S. 249, 251, 108 S.Ct. 1792, 1795 (1988).

9 The defendant has indicated that he intends to use psychiatric testimony in his case-in-  
10 chief. See Exhibits 1,2. As such, there is no violation of the defendant's right in ordering  
11 him seen by a prosecution psychiatrist. See e.g. Williams v. Florida, 399 U.S. 78, 85, 90 S.  
12 Ct. 1893, 1898 (1970) and Buchanan v. Kentucky, 483 U.S. 402, 421-24, 107 S.Ct. 2906,  
13 2916-18 (1987). "[I]ntroduction by the defense of psychiatric testimony constitute[s] a  
14 waiver of the defendant's fifth amendment privilege in the same manner as would the  
15 defendant's election to testify at trial." Battie v. Estelle, 655 F.2d 692, 701-02 (5th Cir.  
16 1981). The Fifth Circuit went on to say:

17 Cohen, like virtually every other federal and state court addressing this issue,  
18 concluded that any burden imposed on the defense by this result is justified by  
19 the State's overwhelming difficulty in responding to the defense psychiatric  
20 testimony without its own psychiatric examination of the accused and by the  
need to prevent fraudulent mental defenses.

21 Battie v. Estelle, 655 F.2d 692, 702 (5th Cir. 1981), quoted in, Powell v. Texas, 492 U.S.  
22 680, 684, 109 S.Ct. 3146, 3149 (1989).

### 23 Conclusion

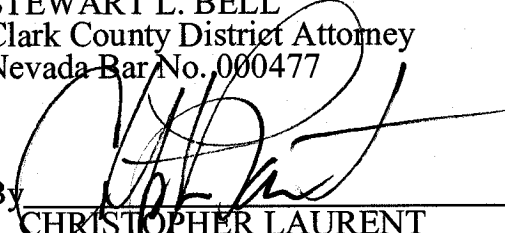
24  
25 "The adversary system of trial is hardly an end in itself; it is not yet a poker game in  
26 which player enjoy an absolute right always to conceal their cards until played." Williams  
27 v. Florida, 399 U.S. 78, 82, 90 S. Ct. 1893, 1896 (1970). "Apropos to the point is the  
28 statement by the venerable Justice Cardozo in Snyder v. Massachusetts, 291 U.S. 97, 122 [54

1 S.Ct. 330, 338, 78 L.Ed. 674] (1934), that 'justice, though due to the accused is due to the  
2 accuser also. The concept of fairness must not be strained till it is narrowed to a filament.  
3 We are to keep the balance true.'" Atkins v. State, 112 Nev 1122, 923 P.2d 1119 (1996)  
4 (quoting Snyder v. Massachusetts, 291 U.S. 97, 137, 54 S.Ct. 330, 338, 78 L.Ed. 674] (1934).  
5 To permit the defendant to present psychiatric testimony without providing the State with  
6 discovery under NRS 174.245 and without allowing the State an opportunity to adequately  
7 rebut that testimony is inconsistent with the concepts of justice and fairness and contrary to  
8 prevailing case law. As such the State requests that a writ issue ordering the district court  
9 to order the defendant to comply with NRS 174.245 and to make himself available for  
10 examination by a prosecution psychiatrist or psychologist.

11 A resolution that has work well in the past, and which provides the defendant with  
12 extra protection that what is required, is to allow the State to hire an expert and have the  
13 expert conduct the evaluation but preclude that expert from discussing the case with the  
14 prosecution until such time as the defendant testifies or actually offers psychiatric testimony.  
15 It is the State's position that this approach is overly cautious, but that it is certainly more fair  
16 that the one proposed by the district court.

17 Dated December 31, 2001.

18  
19 STEWART L. BELL  
Clark County District Attorney  
Nevada Bar No. 000477

20  
21 By   
22 CHRISTOPHER LAURENT  
23 Chief Deputy  
Nevada Bar No. 005043  
24  
25  
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Chief Judge Mark E. Gibbons  
District Court Department VII  
200 South Third Street  
Las Vegas, NV 89155

*[Signature]*  
Employee, Clark County  
District Attorney's Office

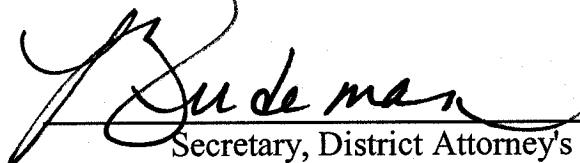


1                                    CERTIFICATE OF FACSIMILE TRANSMISSION

2                    I hereby certify that service of Supplemental Points & Authorities in Support of  
3                    Petition for Writ of Mandamus, was made this 31st day of December, 2001, by facsimile  
4                    transmission to:

5  
6                                    Gloria Navaro  
7                                    Special Deputy Public Defender  
8                                    FAX # 455-6273

9                                    Chief Judge Mark E. Gibbons  
10                                  District Court Department VII  
11                                  FAX # 455-2430

12                                    
13                                  Secretary, District Attorney's Office

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DEC 28 1 29 PM '01

*Shirley E. Pringle*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, )

Plaintiff, )

vs. )

ALFRED P. CENTOFANTI, III, )

Defendant. )

Case No. C172534

Dept. No. VII

Docket No. P

CONDENSED TRANSCRIPT  
CONCORDANCE

Before the Honorable Mark Gibbons

Thursday, December 27, 2001, 9:00 a.m.

Reporter's Transcript of Proceedings

MOTIONS HEARING

APPEARANCES:

For the State:

CHRISTOPHER LAURENT, ESQ.

BECKY GOETTSCH, ESQ.

Deputies District Attorney

For the Defendant:

GLORIA NAVARRO, ESQ.

Deputy Special Public Defender

ALAN BLOOM, ESQ.

Attorney at Law

REPORTED BY: Renee Silvaggio, C.C.R. No. 122

**EXHIBIT** 3

# I N D E X

| WITNESS ON BEHALF OF THE STATE:           | PAGE |
|-------------------------------------------|------|
| <u>MacGREGOR, Craig</u>                   |      |
| Direct Examination by Ms. Goettsch        | 13   |
| Cross-Examination by Mr. Bloom            | 24   |
| Redirect Examination by Ms. Goettsch      | 25   |
| Recross-Examination by Mr. Bloom          | 45   |
| WITNESS ON BEHALF OF THE DEFENDANT:       |      |
| <u>WINSLOW, David</u>                     |      |
| Direct Examination by Mr. Bloom           | 49   |
| Cross-Examination by Ms. Goettsch         | 62   |
| Redirect Examination by Mr. Bloom         | 65   |
| Recross-Examination by Ms. Goettsch       | 67   |
| Further Redirect Examination by Mr. Bloom | 71   |

-oOo-

ACCUSCRIPTS (702) 391-0379

1 Also, for Mr. and Mrs. Centofanti, Mr.  
2 Centofanti's parents, the State has requested to interview  
3 you on a -- before your testimony in pretrial.  
4 I advise you you don't have to speak to  
5 them; as we advise all witnesses, you are not required to  
6 speak to either of the attorneys.  
7 However, they are free to -- all witnesses  
8 to a case are free to speak to the attorneys, but it's not  
9 required that they do so.  
10 So, again, I'll ask Mr. Laurent to make his  
11 request through Mr. Bloom and then you can determine what  
12 you wish to do.  
13 Okay. Why don't we do this: We've also --  
14 off the record, we've had discussion about if there is a  
15 penalty phase in this case, that the parties would have to  
16 stipulate in writing to waive the jury conducting the  
17 penalty phase and sentencing.  
18 I've advised Mr. Bloom of that and the State  
19 as well, so I'm going to ask the parties to consider that.  
20 And then, on Thursday, before we commence  
21 jury selection, to let me know at that time if the parties  
22 are willing to stipulate to waive the penalty phase.  
23 MR. LAURENT: That will be Wednesday, right,  
24 Judge?

ACCUSCRIPTS (702) 391-0379

3

1 Las Vegas, Nevada, Thursday, December 27, 2001, 9:00 a.m.  
2  
3 \* \* \* \* \*  
4  
5 THE COURT: This is Case Number C172534, the  
6 State of Nevada versus Alfred Centofanti, III.  
7 Let the record reflect the presence of Mr.  
8 Centofanti; together with his attorneys Allen Bloom and  
9 Gloria Navarro; the State of Nevada represented by deputy  
10 District Attorneys Christopher Laurent and Becky Goettsch.  
11 The first issue that came up, the State had  
12 advised me that they had served Mr. Centofanti's parents  
13 with subpoenas to appear for the trial.  
14 Mr. Bloom, it's my understanding, from our  
15 conference at the bench, that we will not have the State  
16 contact Mr. Centofanti's parents regarding their testimony.  
17 However, when they are -- it is necessary  
18 for them to testify, that he would notify you and then you  
19 would make the arrangements to have Mr. Centofanti's parents  
20 here in court so they can testify.  
21 Is that correct?  
22 MR. BLOOM: Yes.  
23 THE COURT: Okay. So we'll handle it that  
24 way.

ACCUSCRIPTS (702) 391-0379

5

1 I think you said Thursday.  
2 THE COURT: Wednesday. I'm sorry.  
3 And then if the answer is yes, then I'll ask  
4 the State to do a stipulation and have it signed by Mr.  
5 Centofanti, together with Mr. Bloom and Miss Navarro, plus  
6 the deputy District Attorneys.  
7 Again, I'm not going to require an answer on  
8 that today. You can wait and think about that, how you want  
9 to handle that.  
10 Okay. Why don't we go through what we --  
11 the list and I'll start with: Mr. Bloom can give me a list  
12 of things that he feels that need to be done on a pretrial  
13 basis today, and if there is any new matters; then we'll  
14 talk about scheduling, how much time we need to allocate to  
15 these various items then.  
16 MR. BLOOM: The list that I have, Your  
17 Honor, is 17 items long.  
18 One has to deal with the TPO, the admission  
19 of that.  
20 Then the -- we have the continuation of our  
21 bad acts motion with some testimony today.  
22 Pending is the search warrant issue, which  
23 is still pending, has been filed, and having to do with the  
24 signature on the return to the search warrant, et cetera.

ACCUSCRIPTS (702) 391-0379

1 Then there is the defense motion with  
2 regards to destruction of evidence, which the People have  
3 today filed an opposition;

4 Then there is the defense motion regarding  
5 preserving the objection for federalizing objections and  
6 other important proceedings, which has been filed and has --  
7 we haven't the terms yet.

8 THE COURT: Is that beyond -- is that the  
9 jury instruction you are talking about?

10 MR. BLOOM: No, that's a motion that the  
11 defense filed that --

12 THE COURT: I read all your motions. I just  
13 want to make sure I have the right one.

14 Go ahead.

15 Which one is this?

16 MR. BLOOM: It's -- it's a defense motion  
17 to, in effect, federalize our objections, so that -- to  
18 streamline the process --

19 THE COURT: Oh, okay, that one. I remember  
20 that one.

21 MR. BLOOM: Then there is the District  
22 Attorneys' -- what I'll call its reverse Petrocelli motion,  
23 regarding the -- what -- what they have listed as the  
24 character evidence of Virginia Centofanti.

ACCUSCRIPTS (702) 391-0379

1 which I didn't have to, but I did file, and served on the  
2 prosecution here because they're not a party to it either.

3 THE COURT: Okay.

4 MR. BLOOM: And that balancing is that the  
5 materials could -- could lead to admissible evidence in this  
6 case slash or, therefore, are discoverable; and a finding of  
7 the Court to that effect here, I think, will have an impact  
8 as to the balancing that the court will have to do in San  
9 Diego on that issue.

10 THE COURT: Okay.

11 MR. BLOOM: Next has to do with the -- the  
12 People raised the issue regarding the -- the expert  
13 witnesses and the delivery of the designation of the  
14 experts' slash statements of their -- of their testimony and  
15 their offered testimony.

16 THE COURT: Okay.

17 MR. BLOOM: The -- the other matters include  
18 the District Attorneys' oral motion to canvass the  
19 defendant.

20 The District Attorneys' next matter is the  
21 District Attorneys' oral motion to have the defendant be  
22 available for a -- a prosecution selected psychiatrist, if  
23 the defense presents psychiatric testimony.

24 A jury -- the next item is a jury

ACCUSCRIPTS (702) 391-0379

1 There are two additional matters that I'm  
2 going to raise today that I want the Court to address today:

3 That is, for the defense to receive an order  
4 for the release of the weapon in this case to my  
5 investigator Jim Thomas for a test firing;

6 And, second, for a -- for an order from this  
7 Court that the juvenile records that we are attempting to  
8 obtain in San Diego regarding Virginia Centofanti are  
9 discoverable; not necessarily admissible, but are  
10 discoverable; and --

11 THE COURT: Can I -- would I have  
12 jurisdiction to do that?

13 MR. BLOOM: This Court would only be  
14 making -- you do not have jurisdiction in this.

15 This is a process which we started in  
16 California in the juvenile court. However, that court makes  
17 its decision based upon a balancing of the minor's right for  
18 privacy -- and, in this case, the minor being now an adult,  
19 now being deceased, so their interests are less -- but,  
20 nonetheless, having -- the process of having a minor's  
21 records maintained as unavailable, balancing that versus the  
22 need for them in a particular case.

23 And I've outlined in my papers that I have  
24 filed with the -- with the court, juvenile court copies of

ACCUSCRIPTS (702) 391-0379

1 questionnaire.

2 And then, a memorandum of law, which we are  
3 going to present to the Court, regarding the admissibility  
4 of -- of hearsay statements.

5 We have hearsay statements of Virginia  
6 Centofanti, which is at issue; we have the hearsay  
7 statements of my client, which are at issue, which the  
8 defense will want to present.

9 We have the question -- I have -- next is  
10 going to be a motion with regards to which -- regarding the  
11 exhibits in the case; more specifically, my concern with --  
12 regarding the autopsy photos and the inflammatory nature of  
13 them.

14 Actually, I misnumbered. My last item has  
15 to do with the question of the jury instructions.

16 THE COURT: Okay.

17 MR. BLOOM: That's my list.

18 THE COURT: Is that -- is that where you  
19 want to go, the beyond a reasonable doubt instruction? Do  
20 you want to talk about that?

21 MR. BLOOM: Yes. And there is some other  
22 instructions that I think are important --

23 THE COURT: Okay.

24 MR. BLOOM: -- to discuss.

ACCUSCRIPTS (702) 391-0379

1 THE COURT: Mr. Laurent, does the State have  
2 anything else it wants to talk about pretrial?

3 MR. LAURENT: Court's indulgence.  
4 (Whereupon, a sotto voce at this time.)

5 MR. LAURENT: We think that covers  
6 everything, Judge.

7 THE COURT: Yes. I appreciate, Mr. Bloom --  
8 I thank you for doing this list.

9 I think I had most of these points, but I  
10 think this summarizes it pretty well.

11 Let me ask, Mr. Laurent: Do you have that  
12 police officer here to testify on that?

13 MR. LAURENT: Yes.

14 THE COURT: Why don't we get him done, if  
15 he's here, just so he doesn't have to wait around; and then  
16 we'll deal -- a lot of these things are probably fairly  
17 straightforward we can deal with, and then we'll go into  
18 the -- some other matters.

19 MS. GOETTSCH: And I can deal with the TPO  
20 issue right now.

21 Just for the record, whenever the TPO came  
22 to me, it had these two documents stapled to it, with the  
23 gun registration registered to Virginia Centofanti.

24 If that's not what was filed, it's not what

ACCUSCRIPTS (702) 391-0379

1 up with this exhibit to make sure it's -- we have everything  
2 here.

3 I will -- that's why the file is here, to  
4 give each party an opportunity to do that and I will make it  
5 available to -- we'll leave it here today so we can get that  
6 done.

7 Miss Goettsch, anything else on that?

8 MS. GOETTSCH: No, that's all on the TPO  
9 issue.

10 THE COURT: Okay.

11 MS. GOETTSCH: And then our first witness on  
12 the second issue, on the continued Petrocelli, would be  
13 Officer MacGregor.

14 THE COURT: Okay. Why don't we get the  
15 officer here; let's get this done, get his testimony; and  
16 then we'll start dealing with these other issues.

17 Officer MacGregor.

18 MR. LAURENT: We invoke the exclusionary  
19 rule, Your Honor.

20 THE COURT: Okay. Ladies and gentlemen, if  
21 anybody here expects to be called as a witness to testify at  
22 the trial, I ask you to remain outside, please.

23 Officer, if you would come on up here,  
24 please, and step on over to your right; and if you could

ACCUSCRIPTS (702) 391-0379

1 was filed. We won't pursue that -- and that's not a big  
2 deal, so we will not pursue that at this point.

3 If we find out down the road that that  
4 wasn't the case somehow or somehow the defendant was the one  
5 who put these registration records on the TPO, we would  
6 renew our motion.

7 THE COURT: Well --

8 MS. GOETTSCH: But, at that point, we've  
9 already heard the evidence on it.

10 THE COURT: Well, it's not in the Court  
11 file, so it's impossible --

12 MS. GOETTSCH: Right. I don't know how that  
13 would happen, but if there would be something that would  
14 come up, we would just renew it at that time.

15 THE COURT: Well, let ask you: Without me  
16 ruling on the TPO, whether it's admissible or not -- I'm  
17 just talking about the form of the document here -- what I  
18 am going to order the court clerk to do is on the exhibit  
19 that was admitted last week on the TPO, to redact, take off,  
20 the last two -- I believe it's the last two pages that had  
21 that -- yeah, if you would remove those because those are  
22 not part of the -- of the file.

23 Now, if either side -- since we have the  
24 file -- why don't you go through it page by page to match it

ACCUSCRIPTS (702) 391-0379

1 face me and raise your right hand, please.

2  
3 Whereupon,

4 CRAIG MacGREGOR

5 having been called as a witness by the State and  
6 having been first duly sworn to tell the truth, the  
7 whole truth and nothing but the truth, was examined  
8 and testified as follows:

9 THE CLERK: Thank you. You may be seated.

10 THE WITNESS: Thank you.

11 THE COURT: Sir, would you state your name  
12 and spell your first and last for the court reporter,  
13 please.

14 THE WITNESS: Yes. It's Craig Scott  
15 MacGregor. Last name is M-a-c-G-r-e-g-o-r.

16 THE COURT: Okay. And Craig is C-r-a-i-g?

17 THE WITNESS: Correct. C-r-a-i-g.

18 THE COURT: Thank you very much.

19 Miss Goettsch.

20  
21 DIRECT EXAMINATION

22 BY MS. GOETTSCH:

23 Q Officer MacGregor, you are an officer with  
24 the Las Vegas Metropolitan Police Department; is that

ACCUSCRIPTS (702) 391-0379

1 correct?

2 A Yes.

3 Q Were you, -- how long have you been in that  
4 position?

5 A Approximately three years.

6 Q Were you on duty in that position on  
7 December 5th of the year 2000 in the -- during the day?

8 A Yes.

9 Q Did you have an occasion to come into  
10 contact with individuals identified to you as Alfred  
11 Centofanti, III and Virginia Centofanti?

12 A Yes, I did.

13 Q What was nature of your contact with those  
14 individuals on that day?

15 A It was a 911 call that had come in. The  
16 details of the call were that it was a husband and wife and  
17 the husband had the gun to the wife's -- had put the gun to  
18 the wife's head.

19 Q As a result of -- go ahead.

20 A Okay. That was pretty much the nature of  
21 the call.

22 Q As a result of information given to you by  
23 dispatch about the gun to the wife's head, what action did  
24 you take?

ACCUSCRIPTS (702) 391-0379

1 made contact with Chip and he was advised to step out of the  
2 house.

3 Q Do you see Chip present in the courtroom  
4 today?

5 A Yes.

6 Q Could you point to him and describe  
7 something that he's wearing.

8 A Yes. He's sitting over there in a dark  
9 brown suit, with a goatee.

10 THE COURT: Okay. The record will reflect  
11 identification of the defendant.

12 MS. GOETTSCH: Thank you.

13 BY MS. GOETTSCH:

14 Q What happened upon your contact with Mr.  
15 Centofanti?

16 A Well, we took him down at gunpoint; we  
17 handcuffed him. He had -- he had a cell phone or a cordless  
18 phone in his hand.

19 He came out the front door and we took him  
20 into custody, still not knowing what was going on inside the  
21 house.

22 We then attempted to clear the house, to  
23 make sure there was nobody else in there, no guns, no other  
24 people, and for our safety.

ACCUSCRIPTS (702) 391-0379

15

1 A Upon -- the call came out as a hot call,  
2 meaning a priority call, that it was occurring right then  
3 and there.

4 So I responded Code 3, with my lights and  
5 siren on, to the residence. And I was looking at the  
6 details of the call as I was driving, and I looked at -- the  
7 person reporting was not either of the two involved. It  
8 was -- it was somebody else and that kind of -- I didn't  
9 understand why that was.

10 And that was basically all I had, you know,  
11 other than the details that I told you about the gun being  
12 put to her head.

13 Q And you were -- you responded to their home  
14 at 8720 Wintry Garden Avenue?

15 A Wintry Garden, correct.

16 Q What did you find upon your arrival?

17 A Upon arrival, I waited for a backup unit to  
18 arrive because there was a gun involved, and I didn't know  
19 if it was out at that time. I didn't know what was going on  
20 in the house.

21 My backup unit arrived and we had dispatch  
22 call inside the house to try to make contact with somebody  
23 in there.

24 They made contact with Alfred or Chip. They

ACCUSCRIPTS (702) 391-0379

17

1 Q Did you make contact with a person  
2 identified to you as Gina or Virginia Centofanti?

3 A Yes, I did.

4 Q Okay. And how long after your arrival did  
5 you make contact with her?

6 A Just maybe one minute.

7 Q When you made contact with her, what was her  
8 demeanor?

9 A She appeared as if she had been crying. She  
10 looked like she was upset. She had the baby in her arms and  
11 she was walking around in the -- in the front room there.

12 Q Was she crying at this point?

13 A No, I don't believe so.

14 Q Was she shaky?

15 A I don't recall.

16 Q Did she appear to be nervous or upset to  
17 you?

18 A Yes, she did.

19 Q At that point, did you ask her what had  
20 happened?

21 A Yes, I did.

22 Q And what did she tell you?

23 A She stated that she had been out with her  
24 co-workers all night and that Chip was upset about that.

ACCUSCRIPTS (702) 391-0379

1 He tried to use her phone to call her boss  
2 or something with the phone -- I don't remember exactly.

3 I remember that there was a struggle over  
4 the phone and that she hit him over the head with a picture  
5 frame.

6 Q She admitted to you that she hit him in the  
7 head with a picture frame?

8 A Yes.

9 Q What else did she say about what had  
10 happened?

11 A She said that, after that, he grabbed a -- a  
12 gun and pointed it at her, pulled the trigger; it did not  
13 fire; and that there was a struggle at that time over the  
14 gun.

15 He put it to her head and threatened to kill  
16 her, himself and the kids; and then, at one point, he also  
17 put it to his head, I believe she stated to me.

18 Q Was she injured at all?

19 A Yes.

20 Q And what were her injuries?

21 A She had a little bit of a swollen lip and  
22 she said that that occurred during the struggle over the  
23 gun.

24 Q Was the defendant, Mr. Centofanti, injured

ACCUSCRIPTS (702) 391-0379

1 Q What did you do with the gun after that?

2 A I know that gun, we ran -- standard  
3 procedure, we run it for wants and registered owner. It  
4 came back registered to him. We impounded it for  
5 safekeeping, as well as the other two guns.

6 Q When you say that gun, what gun are you  
7 referring to?

8 A That one was a semi-automatic and I don't --  
9 I don't remember the caliber or the make, but I know it was  
10 a semi-auto; it had a clip, a magazine in it.

11 Q And why was that gun more significant to you  
12 in your investigation than the other guns?

13 A That was the gun that the -- that was the  
14 one that Gina said was used to point at her.

15 Q And did you put those guns in to safekeeping  
16 after that?

17 A Yes.

18 Q Did you eventually make an arrest as a  
19 result of this incident.

20 A Yes, I did.

21 Q And who did you arrest?

22 A We arrested Gina Centofanti.

23 Q And what went into your decision -- what  
24 issues or factors went into your decision to arrest Gina

ACCUSCRIPTS (702) 391-0379

1 at all, that you could see?

2 A Yes.

3 Q And how was he injured?

4 A He had a mark on the back of his head and  
5 neck area from the picture frame. It was visible; it was  
6 fresh.

7 He also had like a carpet burn, rug burn, on  
8 one of his knees; and I think some scratches on his hands,  
9 some marks on his hands.

10 Q Were you able to find a gun that day?

11 A Yes.

12 Q And where did you find the gun or how did  
13 you get the gun?

14 A Well, that was our primary concern,  
15 initially, was to get the guns into custody.

16 I asked Gina -- because I was talking to  
17 Gina initially; other officers were talking to Chip -- and  
18 Gina didn't know where the gun was. She only knew it was in  
19 the kitchen. I think she said it was in the kitchen  
20 somewhere. She didn't know exactly where it was.

21 So I walked out to Chip. I asked him where  
22 the gun was that we were talking about; and he stated that  
23 it was in the kitchen cabinet above the range and that's  
24 where it was located.

ACCUSCRIPTS (702) 391-0379

1 Centofanti?

2 A Primarily -- first of all, it was a  
3 battery/domestic violence incident.

4 Number two was that she admitted to hitting  
5 Chip over the head with the picture frame.

6 Number three was the mark on his head and  
7 neck area.

8 And that was primarily it, her admittal to  
9 the -- the battery.

10 Q Was there any consideration at that time by  
11 you of arresting Mr. Centofanti?

12 A Yes, there was.

13 Q And what factors did you consider?

14 A Well, she had the fat lip. That was  
15 evident; it was fresh; it appeared fresh to all of the  
16 officers there; but Chip denied intentionally hitting her or  
17 causing that injury.

18 Also, the fact that they had an infant there  
19 that was on a respirator or -- there was something wrong  
20 with the infant that required somebody to be with the infant  
21 all the time.

22 That was another reason why we didn't take  
23 him. And also the fact that Gina stated it occurred during  
24 the struggle and that it was not necessarily intentional.

ACCUSCRIPTS (702) 391-0379

1 Gina also stated that.

2 Q You talked about the semi-automatic with the  
3 magazine that you found in the kitchen; is that correct?

4 A Right.

5 Q Okay. Where did you find -- you also  
6 referred to other guns.

7 What other guns are we talking about?

8 A Well, we asked them if they had any other  
9 guns, because it was our idea --

10 MR. BLOOM: Objection, Your Honor.

11 It's non-responsive as to when -- what the  
12 witness answered -- vague when the witness answered 'they  
13 answered' --

14 THE COURT: Overruled.

15 MR. BLOOM: -- we asked 'them and they  
16 answered', that response -- non-responsive or vague.

17 THE COURT: Okay. Sir, would you clarify  
18 who said what to whom?

19 THE WITNESS: Okay. Okay.

20 We wanted to get all of the guns out of the  
21 house for safekeeping, because of the statements that Gina  
22 and Chip had made regarding the battery/domestic violence,  
23 as a matter of safekeeping.

24 So we impound all the guns in the house that

ACCUSCRIPTS (702) 391-0379

CROSS-EXAMINATION

1 BY MR. BLOOM:

2 Q How long have you been a police officer?

3 A Approximately three years.

4 Q And as of that time, how long had you been a  
5 police officer?

6 A About two years.

7 Q And how many DV cases had you responded to?

8 A I couldn't tell you offhand; a lot though.

9 Q It happens?

10 A Oh, yeah.

11 Q That's part of your duties in a great  
12 amount?

13 A Right. That's probably -- on a day shift  
14 patrol beat, that's probably half of your calls are domestic  
15 violence calls.

16 Q Do you remember the exact call that went out  
17 on the 911 call, the exact words?

18 A The exact words?

19 I don't remember the -- it comes out on a  
20 computer that we -- a computer screen that we have in the  
21 car, kind of like a laptop --

22 Q Uh-huh.

23 A -- and you can read the details off of that.

ACCUSCRIPTS (702) 391-0379

1 we can find in order to prevent them being used by either  
2 party because they're emotional and angry at that time.

3 BY MS. GOETTSCH:

4 Q So after you found the semi-automatic with  
5 the magazine --

6 A Uh-huh.

7 Q -- did you ask either Mr. Centofanti or Gina  
8 Centofanti if there were any other guns in the house?

9 A Yes.

10 Q Which one did you ask?

11 A I talked to Gina. She said that she had a  
12 revolver in her car. I believe she had a BMW that was  
13 parked outside. We got that; impounded that.

14 And other officers, I guess, talked to Chip  
15 and located a shotgun and I believe it was in a master  
16 closet and they retrieved that gun. I did not.

17 (Whereupon, a sotto voce at this time.)

18 MS. GOETTSCH: I'll pass the witness.

19 Thank you.

20 THE COURT: Mr. Bloom.

21 MR. BLOOM: Thank you, Your Honor.

22 MR. BLOOM: Good morning, Officer.

23 THE WITNESS: Hi.

ACCUSCRIPTS (702) 391-0379

1 It came out as a hot call, as I remember,  
2 meaning that it was a priority call; and that the male half  
3 of the parties had the gun to the wife's head at that time.

4 Q Okay. You went out there, and because of  
5 having that call, not knowing whether it was right or wrong,  
6 you have to be cautious when you go there and you were  
7 cautious as you went to the -- to the door?

8 A Yes.

9 Q And it was Mr. Centofanti who answered the  
10 door?

11 A Yes.

12 Q And he had a cell phone in his hand?

13 A Cordless phone.

14 Q Cordless phone.

15 A Yeah.

16 Q And you asked him to step outside and -- for  
17 your safety and to calm down the incident, you asked him to  
18 come outside and he did?

19 A Right. Yeah, we had dispatch actually call  
20 inside the house and we wait outside for them to come out to  
21 us.

22 Q So when he had his phone in the -- in his  
23 hand, it could very well have been that he was talking to  
24 dispatch that you had requested?

ACCUSCRIPTS (702) 391-0379



1 A Yes, he was.  
 2 Q He was --  
 3 A I believe he was. I'm not positive.  
 4 Q All right. You made the call; he comes out  
 5 with the phone --  
 6 A Right.  
 7 Q -- in response to what you asked for on the  
 8 phone?  
 9 A Exactly.  
 10 Q So his demeanor at that time was,  
 11 apparently -- I guess I'll call it -- responsive to your --  
 12 A He was.  
 13 Q -- to your efforts?  
 14 A Uh-huh.  
 15 Q What was his demeanor?  
 16 A He was calm, cool and collected.  
 17 He seemed a little surprised by the officers  
 18 standing out front with guns drawn on him, but he was  
 19 compliant and calm.  
 20 Q And would that be his demeanor throughout --  
 21 would you characterize that as his demeanor throughout the  
 22 entire time that he was there?  
 23 A Yes.  
 24 Q And you asked him to come out; and put

ACCUSCRIPTS (702) 391-0379

1 him -- and put him into handcuffs over to the side of the  
 2 car -- or over --  
 3 A Right.  
 4 Q -- somewhere to the side of one of the  
 5 vehicles, correct?  
 6 A Correct.  
 7 Q And you did that, again, out of -- a  
 8 cautionary thing; you didn't know what was going to happen;  
 9 you didn't want anything to escalate?  
 10 A Correct.  
 11 Q You say you saw some marks on him --  
 12 A Yes.  
 13 Q -- at some point.  
 14 Did you see the bruises on him right away?  
 15 A I don't know if I saw bruises.  
 16 Q Or whatever marks --  
 17 A But, later on in the investigation, I did  
 18 see the rug burn on his knee and the mark on the back of his  
 19 head, scratches or marks on his hand.  
 20 I don't remember what they were.  
 21 Q And -- and did you -- I think you saw some  
 22 other -- you said you saw some marks on his neck also?  
 23 A It was the back of his head or his neck. I  
 24 don't recall exactly.

ACCUSCRIPTS (702) 391-0379

1 Q Did you say his shirt was ripped?  
 2 A Yes, it was ripped off of him.  
 3 Q Now, when you say you walked out there in a  
 4 compliant fashion, was he -- you could tell that he was --  
 5 he wasn't bubbling over or he wasn't at that excited range  
 6 or something?  
 7 A No.  
 8 Q He was more at that subdued range.  
 9 Is that a fair statement?  
 10 A Yes.  
 11 Q You had never met him before; is that  
 12 correct?  
 13 A That's correct.  
 14 Q Was he talkative or was he rather subdued  
 15 during the time that you saw him?  
 16 A He was fairly subdued; he wasn't talkative.  
 17 He answered our questions and didn't add much more.  
 18 Q I don't know if you could tell, but could  
 19 you tell if he was -- his being subdued was a function of  
 20 him because of the after effects of the incident?  
 21 MS. GOETTSCH: I'm going to object as  
 22 speculation.  
 23 MR. BLOOM: I'm asking if he could tell.  
 24 THE COURT: Overruled.

ACCUSCRIPTS (702) 391-0379

1 You can answer that if you know.  
 2 THE WITNESS: I couldn't tell.  
 3 BY MR. BLOOM:  
 4 Q Now, with regards to the issue as to why you  
 5 arrested -- ultimately, made your arrest of Virginia  
 6 Centofanti, you gave us those reasons.  
 7 You also indicated that you decided not to  
 8 arrest Mr. Centofanti, correct?  
 9 A Correct.  
 10 Q And you testified about his exact manner at  
 11 the Grand Jury hearing, didn't you?  
 12 A Yes, I believe I did.  
 13 Q The question was put to you here today, as  
 14 it was at the Grand Jury: Were there any other children  
 15 there?  
 16 A Yes.  
 17 Q Were there any kids there?  
 18 A There were.  
 19 Q And there were also -- there was a nine year  
 20 old and there was a -- an infant?  
 21 A An infant, correct.  
 22 Q And did the presence of the infant have any  
 23 bearing on your decision to arrest, which is what you were  
 24 asked today and what you were asked at the Grand Jury; is

ACCUSCRIPTS (702) 391-0379

1 that correct?

2 A Yes, it did.

3 Q You answered at the Grand Jury: Slightly --

4 A Yes.

5 Q -- did you not?

6 A It did.

7 Q Well, even if the child was not present, did  
8 you have probable cause to arrest Mr. Centofanti?

9 A I would say no. Other officers might say  
10 yes. I would say no.

11 Q And that's exactly how you testified at the  
12 Grand Jury, didn't you?

13 A Yes.

14 Q So whether or not the child was there -- the  
15 infant was there, the nine year old was there or not there,  
16 you did not believe --

17 A In my opinion, I would not have arrested  
18 him.

19 Q And that was because the physical injury to  
20 Miss -- to Virginia had to do with this -- this slightly  
21 puffed lip; that was the only physical injury?

22 A Yes.

23 Q And she herself said that that could have --  
24 she could have received that in --

ACCUSCRIPTS (702) 391-0379

1 2000, you were asked that question about this incident,  
2 correct?

3 A I believe so.

4 MR. BLOOM: And I'll refer to -- may I  
5 approach, Your Honor?

6 THE COURT: Yes.

7 MR. BLOOM: I'm referring to page five of  
8 his statement.

9 BY MR. BLOOM:

10 Q I'll show you a cover sheet just so you know  
11 that we're dealing with the same interview. (Indicating)

12 A Okay.

13 Q I'll refer you to page five.

14 A Yes.

15 Q In fact, when you test- -- not testified.  
16 When you gave your statement to Officer --  
17 or Detective LaRochelle --

18 A Uh-huh.

19 Q -- on December 27th of 2000 --

20 A Right.

21 Q -- you, in fact, were asked -- or questions  
22 were put to you about her demeanor and you say --

23 A Yes, she was fairly calm.

24 Q All right. Thank you.

ACCUSCRIPTS (702) 391-0379

1 A The struggle over the gun was what she said.

2 Q Now, by the time you saw her, you believe  
3 you saw a person who you believed had some indications or  
4 had been upset before and had been crying before?

5 A Yes.

6 Q But at the time you saw her, she was fairly  
7 calm, correct?

8 A She was.

9 MS. GOETTSCH: Objection; that  
10 mischaracterizes his testimony.

11 MR. BLOOM: I'm not mischaracterizing. I'm  
12 asking if, in fact, she was fairly calm.

13 THE COURT: Overruled.

14 It's cross-examination.

15 BY MR. BLOOM:

16 Q Let me ask you again to make sure that I'm  
17 clear on that.

18 A Okay.

19 Q Was she fairly calm at the time you saw her?

20 A Yes, she was.

21 Q And, in fact, when you gave your statement  
22 with regard to this incident to the -- to, I believe, an  
23 Officer LaRochelle, a detective in the -- for Metro, in the  
24 statement that, I believe, was given on December 27th of

ACCUSCRIPTS (702) 391-0379

1 A Yes, she was.

2 Q Now, when you showed up at the door, you  
3 were in uniform, correct?

4 A Yes, I was.

5 Q And you were not alone; other officers were  
6 there, correct?

7 A Other officers were there.

8 Q By the time this incident was over, how many  
9 officers were there?

10 A Maybe five, six officers.

11 Q And we know that Lourenco was another  
12 officer?

13 A Yes, he was.

14 Q Who were the other officers who were  
15 present?

16 A There was Officer Mark Lourenco, Officer  
17 Gordon McGee; Sergeant Winslow. There was another officer.  
18 I'm trying to remember his name.

19 Q Udiak?

20 A Pardon me?

21 Q Udiak?

22 A Usiak --

23 Q Usiak.

24 A -- was a cadet and his capacity there was

ACCUSCRIPTS (702) 391-0379

1 just to help with paperwork.

2 Q He was there, but --

3 A He was there.

4 Q Okay.

5 A He's not an officer though.

6 Q Okay. And so there was even another one,  
7 but you can't recall right now.

8 A Yes; only briefly.

9 Q When -- when -- who was the person -- who  
10 were the officers or officer that stayed with Mr. Centofanti  
11 when he was brought outside?

12 A I believe that was Officers Lourenco and  
13 McGee.

14 Q And all the officers were in uniform?

15 A Yes.

16 Q So -- and when you were speaking to Miss  
17 Virg- -- to Miss Virginia Centofanti, it was clear you were  
18 questioning her regarding what had happened.

19 You were investigating this matter; is that  
20 correct?

21 A Yes, I was.

22 Q And was another officer with you at the time  
23 you were speaking to her?

24 A There were other officers present, but not

ACCUSCRIPTS (702) 391-0379

1 A That's correct.

2 Q And in response -- and it was during the  
3 time that she told you about what happened, that all this  
4 investigation was going on; meaning there was -- all this  
5 investigation was going on around her --

6 A Uh-huh.

7 Q -- your presence there at the time she was  
8 answering the questions to you?

9 A Yes.

(Whereupon, a sotto voce at this time.)

11 BY MR. BLOOM:

12 Q You mention that there was a child there, an  
13 infant and a young -- a young boy, nine or ten --

14 A Nine years old.

15 Q Nine years old.

16 I'm going to call that boy Quito, that nine  
17 year old, just so we can talk about it.

18 A That was -- okay.

19 Q Did you speak to Quito?

20 A Yes, I did.

21 Q And the time period, was it before or after,  
22 if you remember, when you spoke to Virginia Centofanti?

23 A It was after.

24 Q And where had the children been taken during

ACCUSCRIPTS (702) 391-0379

1 during the entire time. They were back and forth. They  
2 were also investigating.

3 So they were listening to what her and I  
4 were talking about and going back and forth between myself  
5 and -- and Chip Centofanti.

6 Q And this was done in her presence, meaning  
7 she -- in her presence, she would observe officers coming in  
8 and out --

9 A Yes.

10 Q -- of the house?

11 A Yes.

12 Q She would observe you talking to her?

13 A Yes.

14 Q She would observe that her husband had been  
15 taken out in custody?

16 A Yes.

17 Q That her husband was in custody, or at least  
18 in handcuffs and temporary status custody --

19 A Yes.

20 Q -- outside?

21 A Yes.

22 Q She was quite aware that this was not a  
23 social gathering on the part of the police at the Centofanti  
24 home; this was an investigation into a crime?

ACCUSCRIPTS (702) 391-0379

1 the conversation with Mrs. Centofanti? Were they still in  
2 the house?

3 A The infant was inside the house. Quito was  
4 outside on his bike, riding his bike.

5 And, initially, I didn't even realize that  
6 he belonged in that house. I remember him riding his bike  
7 down the street and just telling him to get out of the area  
8 because of the situation.

9 Q So he had been out of the house by the  
10 time --

11 A By the time --

12 Q He was already gone?

13 A By the time we arrived, he was out of the  
14 house.

15 Q And he was riding, as you saw him, on his  
16 bicycle?

17 A He was on his bicycle.

18 Q But at some point, you realized that he was  
19 part of this family, may have some information, and so you  
20 spoke to him?

21 A Yes.

22 Q And what did he tell you?

23 A He said that he wasn't present during the  
24 picture frame incident where Gina hit Chip with the picture

ACCUSCRIPTS (702) 391-0379

1 frame, only that he heard the glass break.

2 He heard them arguing; that he was afraid.

3 He appeared upset.

4 And other than that, I just told him, you  
5 know: Everything is going to be okay, you know; your dad is  
6 going to be here.

7 And just basically to calm him down and let  
8 him know that it's all right; his mom is going to jail;  
9 she's not going to stay in there forever; she's going to be  
10 back tomorrow after a 12 hour period.

11 I was just trying to help him understand  
12 what was going on.

13 Q Did he, in any way, express any fear to you  
14 of being left alone with his dad -- or with -- you called  
15 him his dad, but Mr. Centofanti?

16 A No, he did not.

17 Q And when you asked him what he did hear or  
18 see, did you -- did you ask him what he saw?

19 A I asked him what he saw and what he heard,  
20 yes.

21 Q And what did he say he saw?

22 A I don't believe he saw any -- I don't  
23 remember him saying that he saw anything; just that he heard  
24 the picture -- the glass break from the picture frame.

ACCUSCRIPTS (702) 391-0379

1 Q In fact, he told you he didn't see anything?

2 A He didn't see anything. He told me that he  
3 did not see anything.

4 Q And with regards to what he heard, he told  
5 you that he did hear the arguing.

6 A Arguing.

7 Q Did you ask him: What words and can you  
8 remember more?

9 A No. I -- I briefly talked to him.

10 Other officers conducted a more thorough  
11 interview with him and I talked to other officers about  
12 that. I don't recall what he said to them.

13 Q With regards to finding of the weapons, or  
14 the guns, have you asked -- first, you were concerned with  
15 the actual gun that had been used itself.

16 A Correct.

17 Q And in that regard, a question was put to  
18 Virginia Centofanti as to where the weapon was?

19 A Yes.

20 Q She didn't know.

21 A She didn't know.

22 Q You asked the -- the question of where --  
23 did you ask Mr. Centofanti where the weapon was?

24 A Yes.

ACCUSCRIPTS (702) 391-0379

1 Q You had asked him, Mr. Centofanti, what had  
2 happened, correct?

3 A Yes, I did.

4 Q And he had given you a statement about what  
5 had happened, right?

6 A He did.

7 Q And what did he tell you had happened?

8 A He said that --

9 MS. GOETTSCH: Objection; hearsay.

10 THE COURT: Overruled.

11 Go ahead.

12 THE WITNESS: He said that Gina had pulled  
13 the gun on him and that he wrestled her to the ground in an  
14 attempt to get the gun away from her.

15 BY MR. BLOOM:

16 Q And did he say he was successful and was  
17 able to get the gun away from her?

18 A Yes. He said he took the gun away from her.

19 Q And then did he say he hid the gun or put  
20 the gun some place where she wouldn't find it?

21 A Yes. He said he put it in the cabinet above  
22 the range.

23 Q And, in fact, did you go to that cabinet  
24 above the range?

ACCUSCRIPTS (702) 391-0379

1 A Yes.

2 Q And what was there?

3 A The gun was there.

4 Q And then you asked him, at some later point,  
5 were there any other guns in the house?

6 A Yes, I did.

7 Q And he answered that and told you.

8 A He stated that there were other guns.

9 And I don't recall -- because there were  
10 other officers also investigating, I remember asking him  
11 about other guns and other officers retrieved those guns. I  
12 did not.

13 Q So somebody --

14 A I don't remember where he said anything else  
15 about other guns.

16 I remember asking him if there were other  
17 guns, but my primary goal was to get the gun that was used  
18 in this altercation.

19 Q And as it relates to -- then you asked  
20 Mr. -- Miss Centofanti, Virginia, to where -- if there were  
21 other guns in the area?

22 A Yes.

23 Q And she told you yes?

24 A She said: Yes, there was her revolver

ACCUSCRIPTS (702) 391-0379

1 inside her car, her BMW.

2 Q Did either Mr. Centofanti or Virginia  
3 Centofanti tell you where the gun had been that was the gun  
4 that was struggled over?

5 A No, no.

6 Q When you went to Mrs. Centofanti's BMW, did  
7 you find a gun?

8 A Yes, I did.

9 Q Where was it?

10 A I'm not sure. I think it was in the glove  
11 box, but I'm not sure.

12 Q Inside the passenger area?

13 A It was inside the passenger area of the car  
14 though.

15 MR. BLOOM: Thanks.

16 Nothing further.

17 THE COURT: Miss Goettsch.

18 REDIRECT EXAMINATION

19 BY MS. GOETTSCH:

20 Q Mr. Bloom asked you if you recall the exact  
21 words that came over the 911 dispatch, for your response to  
22 the call; is that right?

23 A Yes.

24 ACCUSCRIPTS (702) 391-0379

1 A Just what's stated here: That the PR  
2 received a call from Gina Centofanti stating her husband has  
3 a gun pointed at her; male pulled trigger, but gun did not  
4 fire.

5 No further description.

6 Second-hand to person reporting; additional  
7 given; did not verify.

8 Q Did you have any information, based on your  
9 911 dispatch, as to Miss Centofanti's state of mind at that  
10 time or her demeanor at that time?

11 A Through dispatch was that she was crying.  
12 The dispatcher will read exactly what pops up on her screen.

13 Q Okay. Thank you.

14 And one further point of clarification: You  
15 indicated or there was some discussion about Mr.  
16 Centofanti's shirt being ripped versus ripped off?

17 A Yes.

18 Q Was his shirt still on his back?

19 A When he came out of the house, I remember  
20 him not having a shirt on.

21 Q Okay. How did you find out that his shirt  
22 was ripped?

23 A Both Gina and Alfred stated that the shirt  
24 was ripped during the struggle.

ACCUSCRIPTS (702) 391-0379

1 Q And you said you didn't quite remember what  
2 the exact words were?

3 A I don't remember the words because the  
4 majority of the information that we get is over what we call  
5 our MCT. It's like a laptop computer.

6 And I don't even remember if I was  
7 dispatched to it or I took the call because I was in the  
8 area, but the words that came out was that it was a 413, I  
9 believe --

10 Q Would looking at a 911 dispatch transcript  
11 refresh your recollection as to what the nature of that call  
12 was?

13 A Yes, it would.

14 MS. GOETTSCH: May I approach?

15 THE COURT: Yes.

16 BY MS. GOETTSCH:

17 Q If you could take a look at this and let me  
18 know if that refreshes your recollection.

19 A Okay.

20 (Complies.)

21 Yes, it does.

22 Q Okay. And what were the exact words that  
23 were said to -- that came over the 911 dispatch that you  
24 responded to?

ACCUSCRIPTS (702) 391-0379

1 Q Did you actually see the shirt he was  
2 alleged to have been wearing?

3 A Yes, I did. We impounded it.

4 Q And it was ripped completely through?

5 A It had a rip, I believe, that was about a  
6 foot long, about 12 inches long.

7 Q And where was that, in the front or back  
8 or --

9 A I don't remember.

10 (Whereupon, a sotto voce at this time.)

11 MS. GOETTSCH: I have nothing further.

12 THE COURT: All right. Mr. Bloom.

13 RECROSS-EXAMINATION

14 BY MR. BLOOM:

15 Q You don't know yourself, of course, as to  
16 who made the call to dispatch, do you?

17 A I do.

18 Q What is your --

19 A It was a social worker was what -- Gina said  
20 that after the incident took place, that Alfred wanted her  
21 to speak to a social worker friend of his in order to kind  
22 of clear things up.

23 She said that she was afraid to call the  
24

ACCUSCRIPTS (702) 391-0379

1 police at that time.

2 She said that he talked to the social worker  
3 friend of his, I believe, first; and then he let her talk on  
4 the phone to him in order to smooth things over.

5 This is coming from Gina.

6 Q Him being the social worker?

7 A The social worker.

8 So she got on the phone with the social  
9 worker and, at one point, got away from Alfred in order to  
10 tell the social worker what had happened.

11 And she stated to the social worker that he  
12 pointed the gun at her and that she was afraid to call the  
13 police because he was still there; she was afraid what he  
14 might do to her; she was very fearful.

15 And the social worker actually called our  
16 dispatch to report what had happened.

17 Q And you don't know whether that fear of  
18 calling the police is because she was afraid what he would  
19 do to her or --

20 MS. GOETTSCH: Objection; that's testifying.

21 MR. BLOOM: I'm asking the question.

22 THE COURT: Overruled.

23 Go ahead and ask the question.

24 MR. BLOOM: Thank you.

ACCUSCRIPTS (702) 391-0379

1 MR. BLOOM: The officer is still under --  
2 for the record, the officer should -- is under subpoena and  
3 will be available for the trial, correct, Your Honor?

4 Or he should be ordered at this time, since  
5 he's here, to make himself available --

6 THE COURT: Well, I think Miss Goettsch has  
7 to sign his subpoena for his --

8 MS. GOETTSCH: Just for his appearance  
9 today.

10 THE COURT: And then the officer -- I assume  
11 he's under subpoena for the trial?

12 MS. GOETTSCH: Absolutely.

13 THE COURT: Okay.

14 THE WITNESS: Yeah.

15 MR. BLOOM: Thank you.

16 THE COURT: Okay. Does the State have any  
17 additional witnesses on the Petrocelli issue?

18 MS. GOETTSCH: No, Your Honor.

19 THE COURT: Okay. Mr. Bloom, does the  
20 defense have any witnesses on the Petrocelli issue?

21 MR. BLOOM: We're supposed to. I'm not sure  
22 they're here.

23 THE COURT: You can go check and see.

24 THE COURT: Okay, Officer, if you would come

ACCUSCRIPTS (702) 391-0379

1 BY MR. BLOOM:

2 Q You don't know if her statement about her  
3 being afraid of what Mr. Centofanti would do is the basis of  
4 her fear or if she was -- didn't want to call the police  
5 because she feared she may get in trouble from what  
6 happened?

7 A No. She said she was fearful of him, of him  
8 hurting her.

9 Q I know what she said.  
10 But I'm saying you don't know know -- that's  
11 what she told you?

12 A Right.

13 Q You weren't there during that phone  
14 conversation; this is her relating it to you at this time?

15 A Correct.

16 MR. BLOOM: Okay. Thank you very much.  
17 Nothing further.

18 MS. GOETTSCH: I have nothing further.

19 THE COURT: Thank you, Officer, very much  
20 for coming to court and testifying.

21 You are excused.

22 THE WITNESS: Thank you.

23 (Whereupon, the witness  
24 was excused.)

ACCUSCRIPTS (702) 391-0379

1 on up and step around to your right, please; and if you  
2 could face me and raise your right hand.

3  
4 Whereupon,

5 DAVID WINSLOW

6 having been called as a witness by the defense and  
7 having been first duly sworn to tell the truth, the  
8 whole truth and nothing but the truth, was examined  
9 and testified as follows:

10 THE CLERK: Thank you. You may be seated.

11 THE COURT: Officer, could you state your  
12 name and spell your first and last name for the court  
13 reporter, please.

14 THE WITNESS: Okay. David Winslow;  
15 D-a-v-i-d, W-i-n-s-l-o-w.

16 THE COURT: Thank you very much.

17 Mr. Bloom, you may proceed.

18  
19 DIRECT EXAMINATION

20 BY MR. BLOOM:

21 Q Would you state your occupation, please.

22 A Police officer with Las Vegas Metropolitan  
23 Police Department.

24 Q And how long have you been so employed?

ACCUSCRIPTS (702) 391-0379

1 A Approximately 20 years.  
 2 Q And what is your rank?  
 3 A I'm a sergeant.  
 4 Q And in your capacity as a police officer  
 5 with Metro, did you respond to an address on Wintry Garden  
 6 on December 5th involving a domestic violence incident?  
 7 A Yes, I did.  
 8 Q And how is it you got there?  
 9 A Pardon me?  
 10 Q How is it you got there?  
 11 A As a sergeant, I try to monitor the calls;  
 12 and I noticed that a couple of my officers were responding  
 13 to that address on a domestic violence; and I started  
 14 heading that way to see if they needed any assistance.  
 15 Q When you got there, were you -- were other  
 16 officers already there?  
 17 A Yes, they were.  
 18 Q You just saw Officer Lourenco(sic) here.  
 19 Was he one of the officers that was there?  
 20 A Yes, he was.  
 21 Q Any other officers?  
 22 A I'd have to look at the records, but I'm  
 23 sure there were several officers there at the time.  
 24 Q How about Officer -- I'm sorry that was --

ACCUSCRIPTS (702) 391-0379

1 know which party was where. Officers were interviewing both  
 2 parties at that time.  
 3 Q Do you remember where those interviews were  
 4 taking place?  
 5 A I can't recall.  
 6 Q Do you remember if they were inside or  
 7 outside the house?  
 8 A I would have to assume that --  
 9 Q I want to stop you. Just from what you --  
 10 just from what you actually remember?  
 11 A I don't recall where either party was at the  
 12 time originally.  
 13 Q Do you -- did you yourself participate or  
 14 witness the interview of either of the parties?  
 15 A I went between both interviews, trying to  
 16 figure out what was going on myself, so that if questions  
 17 arose, I would know what was going on. So I listened to  
 18 bits and pieces of both parties, yes.  
 19 Q But you don't remember where they were when  
 20 you were listening to them?  
 21 A I don't recall, no.  
 22 Q Do you remember anything about the bits and  
 23 pieces that you listened to of the female?  
 24 A She seemed to be scared to death. She was

ACCUSCRIPTS (702) 391-0379

1 THE COURT: MacGregor.  
 2 THE WITNESS: MacGregor.  
 3 MR. BLOOM: MacGregor.  
 4 BY MR. BLOOM:  
 5 Q Was Officer Lourenco also there that day?  
 6 A Yes, he was.  
 7 Q And was a -- an Officer McGee there?  
 8 A Yes, he was.  
 9 Q And was a -- a cadet, I think, Udiak or  
 10 Usiak?  
 11 A Usiak, yes, sir.  
 12 Q What was your role there?  
 13 A It's my feeling as a sergeant that I let my  
 14 officers perform their duties. If and when there is a  
 15 question as to what should be the next step or logical step,  
 16 then I offer suggestions at that time.  
 17 Q How long did you stay there?  
 18 A Without checking the records, I was probably  
 19 there up until the female was taken off to jail.  
 20 Q I want to ask what you saw when you got  
 21 there.  
 22 What was -- what was the situation when you  
 23 got there?  
 24 A Both parties had been separated. I don't

ACCUSCRIPTS (702) 391-0379

1 trembling. She was terrified at the time when I saw her.  
 2 Q Did you spend a lot of -- more time with her  
 3 or less time with her than -- than MacGregor?  
 4 A He spent the most time with her.  
 5 Q If I were to tell you that, in his opinion,  
 6 she appeared fairly calm, would that refresh your  
 7 recollection as to her demeanor?  
 8 A That's his opinion. I couldn't say one way  
 9 or the other. I --  
 10 Q How long did you spend with her?  
 11 A I don't recall exactly the amount of time.  
 12 Q Well, give us an approximate amount of time.  
 13 A I -- I would have to look at the records to  
 14 find out how long we were there approximately. Like I said,  
 15 I spent time with both parties.  
 16 Q I'm just asking you how long -- of the time  
 17 that you were there, how long you spent with Mrs.  
 18 Centofanti?  
 19 A I couldn't give you a specific time. I  
 20 don't know.  
 21 Q I'm not asking for a specific.  
 22 The amount of the amount you were there, how  
 23 much was the approximate time you spent with Mrs.  
 24 Centofanti?

ACCUSCRIPTS (702) 391-0379

1 MS. GOETTSCH: Objection; asked and  
2 answered.  
3 MR. BLOOM: It has been asked. It hasn't  
4 been answered.  
5 THE COURT: Sustained.  
6 BY MR. BLOOM:  
7 Q Are we talking about under a minute?  
8 A No. It was longer than a minute.  
9 Q I'm just talking about with her.  
10 That is just my question, just with her.  
11 A I was never alone just with her. I was  
12 never alone with either one. Officers were there.  
13 Q I'm not -- I didn't ask anything about being  
14 alone.  
15 A Okay.  
16 Q Just the time you were with her, just with  
17 her, was it under a minute of your time?  
18 A No, it was not. It was over a minute.  
19 Q And how about with Mr. Centofanti?  
20 A It was over a minute.  
21 Q And who was interviewing Mr. Centofanti?  
22 A I don't recall.  
23 Q And what was his demeanor?  
24 A He seemed pretty shaken up about the whole

ACCUSCRIPTS (702) 391-0379

1 Have you seen people after they have  
2 experienced traumatic events?  
3 A In over 26 years as a police officer, yes, I  
4 have.  
5 Q And did the reaction of both of these people  
6 fit the category that, in your mind, appeared to be that  
7 they both had experienced traumatic events?  
8 A Yes.  
9 Q Very traumatic events?  
10 A Yes.  
11 Q What else did you do besides -- do you  
12 remember any words that she used?  
13 I know you weren't there the whole time of  
14 her conversation, but did you witness or can you recall any  
15 questions or answers that were actually put to her?  
16 A Only that she admitted to striking the  
17 gentleman in the head with a picture frame defending  
18 herself.  
19 Q She said those words, defending herself?  
20 A Yes.  
21 Q And defending herself from what, if -- if  
22 you know?  
23 A I would assume from --  
24 Q I'm not asking you to assume.

ACCUSCRIPTS (702) 391-0379

1 situation also; both parties did.  
2 Q Were either party crying?  
3 A I don't recall.  
4 Q You say shaken up.  
5 You felt both of them were afraid?  
6 A No. They were visibly shaken that something  
7 traumatic had happened to both of them, by the time I had  
8 got there, and that they were both pretty shaken up about  
9 what had happened.  
10 Q Would you characterize her as being -- I  
11 think your words a few moments ago was deathly afraid.  
12 A No, I think I said terrified.  
13 Q Oh. I thought you said afraid to death.  
14 Okay. Terrified.  
15 Did he appear to have the same demeanor?  
16 A No. He appeared to be visibly shaken from  
17 what had transpired, but he didn't seem to be terrified, no.  
18 Q What was it that terrifying -- about her  
19 demeanor that caused you to believe that she was terrified?  
20 A She was trembling.  
21 Q Was he trembling?  
22 A No.  
23 Q Have you seen people who have been involved  
24 in circumstances -- I'm sorry. Let me start that over.

ACCUSCRIPTS (702) 391-0379

1 A -- the male.  
2 Q Just what you heard; not asking --  
3 A She is defending herself, and since there  
4 were only two people in the house, I would have to assume  
5 that it was against the male.  
6 Q Did you -- did you -- did she say anything  
7 else or more specific, more particularly; did you hear her  
8 say anything else?  
9 A That day?  
10 No, not that I recall.  
11 Q You say that day.  
12 Have you ever spoken to her any other day?  
13 A Yes, sir.  
14 Q When was that?  
15 A The next day, she requested police presence  
16 when she went to pick up some clothing, so that she could  
17 change from what she had been arrested in.  
18 Q And going -- before we get to the next day  
19 with the police presence, had you ever spoken to her on any  
20 other day besides those two days?  
21 A No, sir.  
22 Q Do you remember her saying anything else on  
23 December 5th, the day of the incident, than what you've told  
24 us?

ACCUSCRIPTS (702) 391-0379



1 A Not as a direct quote, no, sir.  
 2 Q Or an indirect quote?  
 3 A Well, just what my officers said she said.  
 4 Q No, I'm not talking about what other  
 5 officers told you. I'm just talking about what you listened  
 6 to her --  
 7 A No.  
 8 Q -- a direct quote?  
 9 A Nothing I can recall at this time, no, sir.  
 10 Q Did you hear anything Mr. Centofanti said on  
 11 that day of the incident?  
 12 A I believe I talked to him and he told me  
 13 that he was defending himself against his wife.  
 14 Q What else did he say?  
 15 MS. GOETTSCH: I'm going to object to this  
 16 again, as the defendant cannot bring in his own statements  
 17 for his own purposes.  
 18 THE COURT: I'm going to overrule it under  
 19 N.R.S. 51.075.  
 20 MS. GOETTSCH: 50 point what?  
 21 THE COURT: 51.075.  
 22 BY MR. BLOOM:  
 23 Q What else did he say, if you can recall?  
 24 A Basically, that's all I talked to him, I

ACCUSCRIPTS (702) 391-0379

1 believe, a few minutes that day.  
 2 Q But did you speak to him on any other day?  
 3 A The following day when I brought his wife  
 4 back to the house.  
 5 Q And the next day, what conversation --  
 6 what -- what happened the next day?  
 7 A The next day, I met his wife at a parking  
 8 lot, because all the other officers were tied up on reported  
 9 calls.  
 10 I escorted her to the house. I told her  
 11 that any time she wanted to go to the house that she should  
 12 call the police and have the police escort her to the house,  
 13 so that nothing the day before that happened would ever  
 14 happen again.  
 15 And I even gave her my business card with my  
 16 cell phone; told her the days that I was working, the hours  
 17 that I was working, that she could call if other officers  
 18 were tied up; that if I wasn't tied up, I would be more than  
 19 happy to escort her there with other officers.  
 20 When we got there, her husband met us in the  
 21 street. Every -- everything seemed very calm and congenial.  
 22 He even helped load some of the stuff into  
 23 the car. He let her go into the house. He and I stayed  
 24 outside. And I explained to him that as long as he

ACCUSCRIPTS (702) 391-0379

1 cooperated with us, there should be no problems.  
 2 But I also suggested to him that if he had  
 3 any contact with her, that he call the police and let the  
 4 police be there, so that nothing like the day before  
 5 happened would ever happen again.  
 6 Q Any other conversation with her?  
 7 A Not to the best of my recollection, no.  
 8 Q You got no more information -- it wasn't  
 9 your purpose to do so, you weren't investigating it, but  
 10 there was no more information about the day before when you  
 11 were speaking to her?  
 12 A No. The only other suggestion I made to her  
 13 was that if it didn't work out, that she, you know, take  
 14 care of it legally.  
 15 And she said there was no way that she could  
 16 ever leave him. He wouldn't allow that.  
 17 Q And any other conversation with him?  
 18 A No.  
 19 Q Did you give those same words to him about  
 20 take care of it legally, something --  
 21 A I don't believe that conversation ever came  
 22 up. He was very -- seemed to put the day before behind and  
 23 wanted to go on.  
 24 And conversation with him was minimal. Like

ACCUSCRIPTS (702) 391-0379

1 I said, he was quite cooperative at the time.  
 2 Q Did you -- did you become aware of the fact  
 3 that, ultimately, he filed for a divorce and such a divorce  
 4 was granted?  
 5 A I have no knowledge of that until you just  
 6 told me right now.  
 7 (Whereupon, a sotto voce at this time.)  
 8 BY MR. BLOOM:  
 9 Q Did you speak to Quito, the child -- on  
 10 December 5th, did you speak to any of the -- the --  
 11 A No.  
 12 Q You couldn't have spoken to the infant.  
 13 Did you speak to Quito, the nine year old?  
 14 A No, I did not.  
 15 Q Did you witness him being spoken to?  
 16 A No, I did not.  
 17 Q At any time, did you witness anything he  
 18 said?  
 19 A No, I did not.  
 20 MR. BLOOM: Thank you very much.  
 21 THE COURT: Miss Goettsch.  
 22  
 23  
 24

ACCUSCRIPTS (702) 391-0379

CROSS-EXAMINATION

BY MS. GOETTSCH:

Q Did you find that his behavior -- Mr. Centofanti's behavior unusual at all on the day that you escorted Gina back to her house?

MR. BLOOM: I'm sorry. I couldn't hear the question. I couldn't hear if you said Mrs. Centofanti or mister.

BY MS. GOETTSCH:

Q Did you find Mr. Centofanti's behavior unusual at all on the day that you -- when you took Mrs. Centofanti back to the house?

A Considering what had happened the day before, yes.

Q Explain what you mean by that.

A He seemed very relaxed and easy going and very, very cooperative, to the point where -- I guess it's being a police officer for 26 years -- it just made me apprehensive.

Q And as a result of your apprehension, did you say anything to Mrs. Centofanti?

A I told her that I thought it was quite unusual. And that's when I told her that the police work 24/7 and that we were available at any time and that she

ACCUSCRIPTS (702) 391-0379

THE WITNESS: Yes, this helps.

THE COURT: Okay.

BY MS. GOETTSCH:

Q Did you take a written statement from her?

A Yes, I did.

Q And if you would take a few minutes to look at that -- to read that document, please.

A (Complies.)

Q Does that refresh your recollection as to what Mrs. Centofanti may have told you about what happened that day?

A I'm -- I believe in the heat of what was going on there, she probably told me and the other officer that was here those exact words; and that's when I instructed them to make sure that she had -- put it down in writing and I signed it as being a witness as she wrote it.

Q And what did she put down in writing?

A That she had woke up; she was late for a meeting; she needed to call to say she was being late at work for the meeting.

And her husband grabbed the phone; there was a struggle for the phone; she then hit him over the head.

Then a gun was placed to her head, where he threatened to kill her and himself.

ACCUSCRIPTS (702) 391-0379

should use our services any time she has contact with him.

Q Did you also take a written statement from Virginia Centofanti the day of the domestic violence on December 5th?

A I don't think I did personally. I would have to look at it, but I'm sure somebody did.

Q Would it refresh your recollection to take a look at that document?

A Sure.

BY MS. GOETTSCH:

Q Now, I could be mistaken, but if you could take a look at this and tell me if that is your signature at the bottom or not.

A Yes, that's mine. Yes, it is.

Q Does that refresh your recollection as to whether you took a written statement from her?

A That's correct.

Q Okay. And if you could --

MR. BLOOM: Wait. Wait.

That's not responsive. The question was: Does it refresh your recollection?

THE COURT: Does it refresh your recollection, sir, if you took a written statement from her, without telling us whether you did or you didn't?

ACCUSCRIPTS (702) 391-0379

MS. GOETTSCH: I have nothing further.

THE COURT: Mr. Bloom.

REDIRECT EXAMINATION

BY MR. BLOOM:

Q Where was she when she wrote that?

A I don't recall. Somewhere in the house; either downstairs or upstairs.

Q Did you remain with her while she wrote it?

A While she was writing it, yes.

Q The whole time?

A It only took a matter of minutes to write it, yes.

Q So she wrote this because you told her to?

A No. I asked her to write her statement as to what took place, in her words what had taken place --

Q And she --

A -- prior to us getting there.

Q And she complied?

A Yes, as did her husband, when he was asked to give his statement.

Q Were you in uniform at this time?

A Was I in uniform?

Yes, sir.

ACCUSCRIPTS (702) 391-0379

1 Q Were all the officers in uniform?  
 2 A Yes, sir.  
 3 Q Did you tell her you were going to witness  
 4 this and that you would sign off on it?  
 5 A I was standing there while she wrote it.  
 6 Q And did you give her the form?  
 7 A Yes. I believe one of the cadets gave her  
 8 the form. It's a standard form that we give to victims and  
 9 suspects.  
 10 Q Now, looking at that writing, does it  
 11 indicate to you in any way that this was a hand that was  
 12 trembling as she was writing it?  
 13 A I believe you asked me what she looked like  
 14 when I first got there.  
 15 I believe if you look into the matter, we  
 16 were probably at their residence for, I would imagine,  
 17 almost an hour.  
 18 Without looking at the direct -- when people  
 19 responded and left the place, I'm sure we were there a good  
 20 hour, if not longer.  
 21 Q So when you say you saw her trembling, that  
 22 was at the beginning when you first got there?  
 23 A That's exactly -- you asked me what she  
 24 looked like and I told you how she looked.

ACCUSCRIPTS (702) 391-0379

1 infant child than anything else at that time.  
 2 Q She was no longer trembling?  
 3 A Now?  
 4 Q At the time -- at the time that she was --  
 5 made the statement to you -- made the statement, not just  
 6 wrote it, but at the time she made it, she wasn't trembling?  
 7 A She wasn't as trembling as when I first met  
 8 her, no, that's correct.  
 9 Q So, at that point, would you say that she  
 10 was relatively calm?  
 11 A Relatively. Considering what had  
 12 transpired, they both were, yes.  
 13 Q Well, you said that you believed the symptom  
 14 that you saw that caused you to conclude that she had -- was  
 15 afraid was that she had been trembling. That's what you  
 16 told us.  
 17 At the time that she made the statement,  
 18 were there any symptoms that you observed of her at that  
 19 time?  
 20 A No. That she was -- had gone through a  
 21 traumatic experience, but, like I said, her main concern at  
 22 that time was for the infant child.  
 23 Q Any symptoms that you saw?  
 24 A Not that I can recall.

ACCUSCRIPTS (702) 391-0379

1 Q Later on, she calmed down?  
 2 A Yes, sir.  
 3 Q And by the time she made the statement to  
 4 you about what happened, at that point, she was calm?  
 5 A She was calmer, yes.  
 6 Q And in writing this report, she didn't  
 7 appear to be trembling when she's writing this report?  
 8 A No.  
 9 Q At that point, when she's writing this --  
 10 this -- this statement that you just read, how was her  
 11 demeanor?  
 12 A She was calm.  
 13 Q And --  
 14 A Of course, there were six to eight police  
 15 officers in the house also.  
 16 Q So she was aware that this was a police  
 17 investigation that was going -- anyone there would have seen  
 18 six to eight police officers there, all in uniform, and they  
 19 would have been aware that this was not a social gathering,  
 20 but a police investigation?  
 21 A Yes.  
 22 Q When she made the statement to you,  
 23 reflected in those words, how was her demeanor?  
 24 A Calmer. She was more worried about the

ACCUSCRIPTS (702) 391-0379

1 MR. BLOOM: Thanks.  
 2 Nothing further.  
 3 THE COURT: Miss Goettsch.  
 4  
 5 RE-CROSS-EXAMINATION  
 6 BY MS. GOETTSCH:  
 7 Q You indicated that she appeared calmer as  
 8 the investigation proceeded; is that correct?  
 9 A That's correct.  
 10 Q Did she -- when you say calmer, did she  
 11 still appear or seem upset?  
 12 A They both were upset during the whole  
 13 ordeal.  
 14 Q Did she appear to continue to be under the  
 15 stress of what had just happened to her?  
 16 MR. BLOOM: Objection, Your Honor; that --  
 17 that's not looking for an objective observation. That's  
 18 asking for an opinion.  
 19 THE COURT: Well, he can give an opinion.  
 20 MR. BLOOM: And vague also.  
 21 THE COURT: He can give opinions under  
 22 N.R.S. 50.265.  
 23 So overruled on that objection.  
 24 You can answer it.

ACCUSCRIPTS (702) 391-0379

1 BY MS. GOETTSCH:

2 Q Do you understand -- remember my question?

3 A No. Could you repeat it, please?

4 Q Did she continue to appear as if she was  
5 under -- still under the stress of what had just happened to  
6 her?

7 A During the whole time, even once she was  
8 placed in handcuffs and placed in the back of the car, she  
9 was still distressed.

10 Q And you said she was showing concern for the  
11 infant child.

12 What was she doing, what was she saying,  
13 that conveyed that to you?

14 A Every few seconds, she would look toward it  
15 to make sure that it was fine, and she was worried what  
16 would happen to the child while we were there.

17 And I expressed sympathy with her and I  
18 stated that the child -- the children were our main concern,  
19 and they always are in these types of deals. Whatever the  
20 parents end up doing, my main concern is for the children.  
21 And I said the children's safety is paramount and that  
22 seemed to calm her a bit.

23 (Whereupon, a sotto voce at this time.)

24 MS. GOETTSCH: I have nothing further.

ACCUSCRIPTS (702) 391-0379

1 MR. BLOOM: I'm asking --

2 MS. GOETTSCH: -- and assumes facts not in  
3 evidence.

4 MR. BLOOM: Well, actually --

5 THE COURT: Well, I'm going to overrule it.  
6 If he knows one way or the other.

7 BY MR. BLOOM:

8 Q Did she tell you that?

9 A No.

10 Q Did she tell that you it was Mr. Centofanti  
11 that had been with the child at the hospital the night  
12 before.

13 MS. GOETTSCH: Objection; relevance.

14 THE COURT: Overruled.

15 THE WITNESS: I never heard that. I -- that  
16 wasn't my concern at the time.

17 MR. BLOOM: Nothing further.

18 Thank you very much.

19 Thank you, Officer.

20 THE COURT: Miss Goettsch, anything else?

21 MS. GOETTSCH: No.

22 THE COURT: Thank you very much, Sergeant,  
23 for coming in.

24 THE WITNESS: Sure.

ACCUSCRIPTS (702) 391-0379

1 THE COURT: Mr. Bloom.

2  
3 FURTHER REDIRECT EXAMINATION

4 BY MR. BLOOM:

5 Q In terms of this -- your presence -- in  
6 terms of the sympathy or the -- that you say you observed of  
7 Virginia towards her infant child, this was done in your  
8 presence that she kept looking over towards the infant?

9 A Yes. When I was first there, she was  
10 upstairs still, and the child was upstairs, I believe, in  
11 their bed; and that's when we found out it needed special  
12 medication for a certain condition that was going on at the  
13 time.

14 Q Did you get a sense that she was attempting  
15 to manipulate you through the emphasis of sympathy?

16 A No.

17 Q Well, did she tell you that the night before  
18 the infant had been at the hospital?

19 A I never knew that, no.

20 Q Did she tell you that the night before  
21 this -- that she was out drinking with a friend, having sex  
22 with a co-worker --

23 MS. GOETTSCH: Objection; argumentative  
24 and --

ACCUSCRIPTS (702) 391-0379

1 (Whereupon, the witness  
2 was excused.)

3 THE COURT: Does the defense have any  
4 additional witnesses for the Petrocelli hearing?

5 MR. BLOOM: Thank you for coming, Officer.  
6 Excuse me, Your Honor.

7 No, no other officers.

8 We did have one other officer, but I guess  
9 the officer didn't appear, and I'll -- if I think it's  
10 critical, I'll address it to the Court.

11 I'm not going to -- I don't have anything  
12 further right now, Your Honor.

13 THE COURT: Okay.

14 MR. BLOOM: And I'm not going to ask you at  
15 this time for a warrant for the officer because he wasn't  
16 here. The service was quick and so I'll --

17 THE COURT: Okay. I appreciate that.

18 Okay. So you have no further witnesses at  
19 this time?

20 MR. BLOOM: That's correct.

21 THE COURT: Okay. Just brief argument. I  
22 think we went through it the other day.

23 But anything else the State wants to add?

24 MS. GOETTSCH: No, Your Honor.

ACCUSCRIPTS (702) 391-0379

1 I think the whole point that we want to get  
2 in is the whole situation regarding this December 5th  
3 incident.

4 I think it's relevant as to Mr. Centofanti's  
5 state of mind and intent when he shot her. He's basically  
6 threatening her at that time, and I feel 'I'm going to kill  
7 you, the kids, Quito', this is excited utterance.

8 I have, clearly, case law on that, that  
9 shows that she was operating under the stress of this event;  
10 she was upset; she made this declaration to the officers.  
11 So we ask that this be admitted.

12 THE COURT: Okay. Mr. Bloom.

13 MR. BLOOM: Well, I believe the incident has  
14 relevance, and now we're getting into the question of  
15 admissibility of Miss Centofanti's statement.

16 It is absolutely not an excited utterance.  
17 This is a situation -- for a moment there, I thought the  
18 trembling part was going to have an impact on this case; it  
19 was going to be in contradiction to what the other officer  
20 said.

21 But at the time she's making the statement,  
22 she is completely reflective. She's aware that there is a  
23 police investigation going on. She has to have been aware  
24 of that with all the police there.

ACCUSCRIPTS (702) 391-0379

1 you.

2 When hearsay is coming in, you don't have  
3 that opportunity; you don't have that opportunity to  
4 cross-examine.

5 It would be different if Mr. Centofanti  
6 testifies; they can cross-examine him about other  
7 statements. So we don't have the -- the jury is going to  
8 hear just that version.

9 The question is: Does she have a reason; is  
10 there an exception to that hearsay to provide enough  
11 foundation?

12 And you only get it because the law says  
13 that if you have these spontaneous types of things, we're  
14 going to assume that there is truth to it.

15 She's not spontaneous at this point. She  
16 knows she's protecting -- she has every reason to protect  
17 what's going to happen to her.

18 She's trying to make sure she doesn't get in  
19 trouble and get arrested. She knows the police are there,  
20 ready to arrest somebody. They've already put him in  
21 handcuffs.

22 She has every interest to be worried about  
23 what's going to happen to her; and that is both at the time  
24 she does the writing and at the time that she does the --

ACCUSCRIPTS (702) 391-0379

1 She knows that her husband -- a person has  
2 been taken out of custody -- taken out in custody. She's  
3 completely aware of the fact that she's at risk.

4 She's further aware of the fact that she  
5 could get in trouble if she doesn't blame him more than he  
6 blames her.

7 THE COURT: Wasn't there a difference  
8 between the time period when she wrote her written statement  
9 versus when she gave a verbal statement?

10 MR. BLOOM: Of course, there is a difference  
11 in time period, but not a difference in demeanor.

12 The statement that she made, that we heard  
13 from this officer, and the statement that came from Officer  
14 MacGregor is that at the time she made the oral statement,  
15 she was not -- she was not in that spontaneous declaration  
16 type of mode that, oh, my gosh, there is a fire or he's  
17 jumping type of circumstances that the code involves in  
18 terms of showing that this is a reliable statement.

19 The question is -- this has to do with  
20 reliability, right? That's what we're talking about.

21 Here is a statement -- because the defense  
22 does not have a right to confront her, and the U.S.  
23 Constitution, the confrontation clause says you have a right  
24 to confront the people that are going to testify against

ACCUSCRIPTS (702) 391-0379

1 makes the statement.

2 Now, that's different than what she says on  
3 the phone, and I totally agree that, at that point, we're  
4 close in time, and depending on what would come out through  
5 the social worker, that that statement could be an excited  
6 utterance, because it's very fresh and he -- if he says she  
7 was crying at the time, if he says that there is this an  
8 emotional component to it, okay. That's -- that's a  
9 different set of facts.

10 But here, by the time the police officers  
11 arrive and the time she makes her statement, she is  
12 relatively calm and that means that we're in a situation  
13 where we don't have a chance to cross-examine her, that it  
14 would be very unfair to allow her testimony to come in and  
15 she's -- without that umbrella of credibility, because she's  
16 trying to protect herself from avoiding any prosecution.

17 It's a big thing to say: Who shot the gun  
18 first?

19 You don't have to be Sherlock Holmes to  
20 figure out that who shot the gun first or who held the gun  
21 to your head is a court issue in this matter; and she  
22 certainly has every reason to be trying to figure out a way  
23 to protect herself.

24 And that's what the situation is: Is she

ACCUSCRIPTS (702) 391-0379

1 spontaneously saying this out of emotions at the time or is  
2 she at a time when reflection has come into this situation.  
3 THE COURT: Miss Goettsch, anything else?  
4 MS. GOETTSCH: Yes. I want to address -- I  
5 think Mr. Bloom is referring to a present sense impression,  
6 which is different than an excited utterance.  
7 A present sense impression is: Oh, my gosh.  
8 The guy is jumping from building.  
9 Right now, they're seeing it, and, of  
10 course, there is not time to fabricate.  
11 But the excited utterance is a little bit  
12 different than that because it's any statement relating to a  
13 startling event or condition made while the declarant was  
14 still under the stress of excitement caused by that. So it  
15 doesn't have to be spontaneous.  
16 In fact, there are several cases here --  
17 Deering versus State, 100 Nevada 590, one and a half hours  
18 had passed since the victim was assaulted, and that was  
19 sufficient because she still operating under this traumatic  
20 event.  
21 So the standard is different and the case  
22 law clearly says that.  
23 Furthermore, on whether we want to talk  
24 about general reliability -- and I think some statements

ACCUSCRIPTS (702) 391-0379

1 there was testimony she was trembling, and I think the other  
2 officer -- that's Officer Winslow.  
3 The other officer, MacGregor, said that she  
4 was calm, but she was nervous and all like that.  
5 So I think there is sufficient circumstances  
6 there and the closeness in time between the police's arrival  
7 to when the call was made to dispatch, that it would qualify  
8 as an excited utterance as well.  
9 It might also qualify as a present  
10 impression under 51.085, and the statement regarding  
11 existing mental state under 51.105, but I'll admit it under  
12 51.075 and 51.095.  
13 I might add too that I am going to allow Mr.  
14 Centofanti's statement to be admissible under 51.075 as  
15 well, because I think, under the circumstances, it applies  
16 to him as well as to Mrs. Centofanti, what was said to the  
17 officers that evening during that immediate time period  
18 after the officers arrived.  
19 As far as the next day, that's a different  
20 story. So I don't know if -- either side is not arguing  
21 about getting the statements in from the next with day, I  
22 would assume.  
23 Miss Goettsch, are you going to try --  
24 MS. GOETTSCH: Well, my problem with that is

ACCUSCRIPTS (702) 391-0379

1 came in under 51.075, general reliability here -- it's very  
2 interesting to note that Mrs. Centofanti was very honest  
3 with the officers, saying: Yeah, I hit him over the head  
4 with a picture frame; yeah, I did that.  
5 And the fat lip, she could have easily said:  
6 He just clocked me one in the lip. She didn't say that.  
7 She said: Well, I think this happened in  
8 the struggle for the gun.  
9 That whole indicia of reliability here also  
10 goes to admitting that. And, certainly, if the defendant's  
11 statements are coming in under that, then her statement  
12 should come in as well.  
13 THE COURT: Okay. Thank you.  
14 Okay. My ruling is this: I do agree with  
15 the State on this, specifically for that reason Miss  
16 Goettsch just stated: That when Mrs. Centofanti was  
17 interviewed, she said things that are bad for her; and that  
18 is, hitting Mr. Centofanti with the picture frame. It's  
19 certainly bad for her and caused her to be arrested.  
20 So I believe the conversation with Mrs.  
21 Centofanti, with the officers, is admissible under N.R.S.  
22 51.075.  
23 Also, I believe it may -- it's also  
24 admissible under the excited utterance, 51.095, because

ACCUSCRIPTS (702) 391-0379

1 that the thing that makes Miss Centofanti's -- Virginia's  
2 statements an overall reliability here is she was also  
3 saying things that were bad for her.  
4 We don't have that with him. He is much,  
5 much calmer here. People have always said he was cool, calm  
6 and collected during this situation, and the fact he never  
7 said anything.  
8 THE COURT: Well, I understand that, but  
9 it's not -- Mr. Centofanti's statements are allowed under  
10 51.075, not all these excited utterances.  
11 MR. BLOOM: The Court did talk about the  
12 next day --  
13 THE COURT: Yeah, I don't know if either  
14 side is even offering the next day's incidents, because that  
15 appears to me to be hearsay all the way across the board  
16 from everybody.  
17 I didn't hear you argue that, but I will  
18 listen to you on that.  
19 MS. GOETTSCH: Well, I think the officer can  
20 testify that he was contacted by her and went to their house  
21 at that point.  
22 Whether her statements come in or not, that  
23 would be subject --  
24 THE COURT: He can testify about the

ACCUSCRIPTS (702) 391-0379

1 incident: That he went there; Mr. Centofanti was  
2 cooperative; what he observed. He can do that.

3 As far as the statements and his  
4 conclusions, I'm very concerned about his conclusions that  
5 Mr. Centofanti had something devious planned and all because  
6 that -- I'm not going to admit that.

7 But as far as what he observed on the --  
8 going back the next day is admissible.

9 MR. LAURENT: And the statements that he  
10 makes to them, of course, he's subject to cross-examination.

11 MS. GOETTSCH: A defense statement --

12 THE COURT: Well, if it's an admission of a  
13 party, yes, it would be admissible.

14 MR. LAURENT: No. I'm sorry, Judge.

15 What I'm saying is any advice that he tells  
16 them, based on what he sees, anything he tells them, that's  
17 a statement --

18 THE COURT: Well, what he says is --

19 MR. LAURENT: -- is not hearsay because he's  
20 testifying.

21 THE COURT: Right.

22 Well, he's -- he's subject to  
23 cross-examination.

24 MR. LAURENT: Correct.

ACCUSCRIPTS (702) 391-0379

1 is --

2 THE COURT: I'm going to allow him to  
3 testify, Mr. Bloom, but -- because the evidence is clear  
4 there was a gun involved. It's just a question of who  
5 initiated the gun -- who -- who drew the gun.

6 And Mr. Centofanti's statement is going to  
7 come in, in the State's case in chief, that he didn't draw  
8 the gun; it was Mrs. Centofanti.

9 So I think that whatever the boy testifies  
10 to, it's ambivalent as far as his testimony. It's  
11 admissible and he can be cross-examined by the defense and  
12 you can bring out any prior inconsistencies in the  
13 cross-examination.

14 MR. BLOOM: Very well.

15 THE COURT: Okay. Now, let's -- let's deal  
16 with these other issues here.

17 Let's talk about what we call the reverse  
18 Petrocelli hearing on that one.

19 Mr. Bloom, what is it that you want to get  
20 in as to Mrs. Centofanti?

21 You're going to get in this picture frame  
22 incident.

23 So what else do you have that you want to  
24 offer as to her?

ACCUSCRIPTS (702) 391-0379

1 THE COURT: So I would allow what he said to  
2 in under 51.075, because he can be cross-examined by either  
3 side on what he said.

4 Okay. Anything else on -- do either -- so  
5 as far as the -- on the motion itself, the State's motion to  
6 admit other acts as far as this incident of 12/5, the  
7 parties agree it's relevant and I'm going to allow the whole  
8 context to come in; that is, the picture frame incident and  
9 everything else that happened. I think it is relevant.

10 And the statements of Mrs. Centofanti and  
11 Mr. Centofanti that evening are admissible.

12 MR. BLOOM: And to make it clear, Your  
13 Honor, with regard to Officer Winslow's impressions about  
14 Mr. Centofanti being up to no good, that was formed the next  
15 day, they're not going to present --

16 THE COURT: They're not admissible.

17 MR. BLOOM: Thank you.

18 THE COURT: Even if they were, they would be  
19 more prejudicial than probative, so I wouldn't allow them  
20 under 48.035.

21 MR. BLOOM: And with regards to that  
22 incident, Your Honor, we still have the tangential or  
23 collateral issue really as relates to -- to Quito.

24 Because -- his observations on the 5th, that

ACCUSCRIPTS (702) 391-0379

1 MR. BLOOM: Judge, I don't think -- I'm --  
2 hold on a second.

3 (Whereupon, a sotto voce at this time.)

4 THE COURT: Mr. Bloom, what do you want to  
5 offer on --

6 MR. BLOOM: I think we filed a motion with  
7 regard to the general aspect of it, Your Honor.

8 I don't --

9 THE COURT: What acts do you want to offer  
10 as to --

11 MR. BLOOM: I don't think we have to offer  
12 any of those -- that information. I think the law is clear  
13 that they can't request that information of the defense.

14 THE COURT: Well, I know you said that, but  
15 there is a case -- and let me --

16 MR. LAURENT: Are you referring to the  
17 Coleman case?

18 THE COURT: Coleman, yeah, 116 Nevada  
19 Advanced Opinion 82.

20 I thought it is under that case, Mr. Bloom,  
21 so I --

22 MR. BLOOM: It's been my research on this,  
23 Your Honor, that they have no right whatsoever to reduce  
24 the -- or the burden of the prosecution for them to require

ACCUSCRIPTS (702) 391-0379

1 the presentation of information of the defense in this area.

2 And I -- I'm not familiar with --

3 THE COURT: Well, did you read Coleman?

4 MR. BLOOM: I did not.

5 THE COURT: Well, that's a --

6 MR. BLOOM: See, the People don't file --  
7 the People -- I don't want to say in general --

8 THE COURT: Why don't you say the State?

9 MR. BLOOM: The State. All right.

10 THE COURT: But that was in their motion;  
11 that case was cited --

12 MR. BLOOM: I didn't read it, Your Honor. I  
13 have to say that.

14 THE COURT: Why don't you -- the way I read  
15 it, Mr. Bloom, is that you do have to do that.

16 But I think we may be splitting hairs on  
17 this one. I mean, that -- I assume the main evidence you  
18 are offering is this picture frame incident. That's coming  
19 in.

20 So what else do you have?

21 And then we can sort it out right here.

22 I'm just trying to determine if we need an  
23 evidentiary hearing on it or not, so we can -- to address  
24 the issues you brought up the first thing today.

ACCUSCRIPTS (702) 391-0379

1 I'll get -- let Miss Navarro take a look at that case, and  
2 Mr. Centofanti can help you out and look at it as well; see  
3 if you can think of anything else you want to bring up as  
4 far as other specific acts of Mrs. Centofanti.

5 MR. BLOOM: And this would be specific acts  
6 that would come from some other source than the defendant,  
7 of course, because you would never ask him --

8 THE COURT: Well, if there is another act  
9 that she's committed or you are alleging that she --  
10 qualifies under N.R.S. 48.054, some sort of common scheme  
11 or -- the same way the State has to do it, to show motive  
12 or -- the different issues the State has raised.

13 I mean, if you want to argue them, you can  
14 do that, but -- and you can offer that, but we have to go  
15 through the same procedure we did on this last one.

16 So I don't know -- I don't know if there is  
17 any --

18 MR. BLOOM: Well --

19 THE COURT: -- other than the karate, you  
20 don't have to on that, because that's just whether or not  
21 she's trained in karate.

22 If there is going to be evidence that Mr.  
23 Centofanti feared for his life because she's a brown belt in  
24 karate, I mean, I think that's probably relevant, but --

ACCUSCRIPTS (702) 391-0379

87

1 MR. BLOOM: Well, I'm just --

2 THE COURT: I mean, I know there was  
3 something about karate, that she knows karate. You can  
4 offer that evidence. That's not character evidence.

5 So what else do you have? Are there  
6 other --

7 MR. BLOOM: I'm not prepared to respond,  
8 Judge -- I'm not trying to be coy -- because I haven't  
9 formed the full response to this at this time and I  
10 haven't -- I haven't gone through it in my mind yet.

11 Do you want to give us a few minutes?

12 I might be able to form something this  
13 morning.

14 THE COURT: I'll -- I'll pass addressing  
15 this one here, but I believe, under Coleman -- maybe Miss  
16 Navarro can take a look at Coleman while we're going ahead  
17 and see if she has any other input for that.

18 Miss Navarro, do you need a copy of that  
19 case pulled for you?

20 MS. NAVARRO: Is that the one that was  
21 attached to the motion?

22 MR. BLOOM: Yes.

23 THE COURT: Well, let's do this: I'm going  
24 to -- I'll rule on that motion in a little bit here, but

ACCUSCRIPTS (702) 391-0379

89

1 MR. BLOOM: See the --

2 THE COURT: -- I don't know.

3 MR. BLOOM: See, that's -- that's offered  
4 for a different purpose; not offered for motive.

5 That offer is as it relates to his state of  
6 mind and what he knew, and that relates to his testimony.

7 And I'm certain that there is nothing  
8 that -- under the Coleman case that says that the  
9 prosecution has a right to have the defense expose  
10 information that comes as a state of mind of the defendant.

11 He has a Fifth Amendment right to remain  
12 silent or testify, so I'm sure we're not talking about.

13 THE COURT: We're talking about acts,  
14 conduct, arrests -- I mean, anything. I don't -- I don't  
15 know -- is there anything else out there that you --

16 MR. BLOOM: I will --

17 MR. LAURENT: Judge, I think that the  
18 language that we should look at there is it says:

19 Evidence of other crimes, wrongs or acts is  
20 not admissible to prove the character of the person in order  
21 to show that he -- in this case she -- acted in conformity  
22 therewith.

23 THE COURT: Uh-huh.

24 MR. LAURENT: I mean, that's subsection (2)

ACCUSCRIPTS (702) 391-0379



1 of 48.045.

2 THE COURT: Right.

3 MR. BLOOM: Exactly. That's my point: That  
4 if they're offered not for the purpose of showing the --  
5 that this was an acting in furtherance of that, but offered  
6 as it relates to the state of mind of my client, this  
7 section doesn't apply; there is no requirement for a  
8 hearing.

9 MR. LAURENT: It does apply.

10 MR. BLOOM: They have no right to get that.  
11 It's only if we're offering for the purpose stated there.

12 THE COURT: Well, you can't offer it for  
13 character. That's what the statute says.

14 You can offer it to show motive. There is a  
15 whole list of --

16 MR. LAURENT: Opportunity, intent,  
17 preparation, plan, knowledge, identity --

18 THE COURT: Right.

19 MR. LAURENT: -- or absence of mistake or  
20 accident.

21 And it's not meant to be a laundry list that  
22 is totally inclusive, but the Coleman case specifically  
23 refers to this statute and says: If not offered for one of  
24 those admissible purposes, you have to have the Petrocelli

ACCUSCRIPTS (702) 391-0379

1 this going to be an issue or not; and if it is, I will have  
2 to schedule a hearing, and we will have to do it next  
3 Wednesday like you suggested.

4 I want to go through your list, but this is  
5 the next item that we need to do.

6 MR. BLOOM: Then we're going to have to  
7 retire or recess and caucus for a few minutes, Your Honor.  
8 I can't do it in whispers.

9 Ten minutes?

10 THE COURT: Okay.

11 MR. LAURENT: While they are doing that,  
12 Judge, if I could show you a duplicate original of the  
13 search warrant.

14 Maybe it will give you a chance to look at  
15 that while they do that.

16 THE COURT: We'll take five minutes then  
17 like that.

18 (Recess in proceedings.)

19  
20  
21 THE COURT: This is the continuation of Case  
22 Number C172534, the State of Nevada versus Alfred  
23 Centofanti, III.

24 Let the record reflect the presence of Mr.

ACCUSCRIPTS (702) 391-0379

1 hearing and give the Court the opportunity to weigh it.

2 THE COURT: Mr. Bloom, do you want to take a  
3 minute and talk --

4 MR. BLOOM: Let me take a few minutes and  
5 we'll --

6 THE COURT: I don't want to spend a lot of  
7 time on something that may be a non-issue here, so why don't  
8 you talk to Mr. Centofanti and Miss Navarro and see if there  
9 is something here that might fall within this that we need  
10 to talk about now.

11 MR. BLOOM: Okay. Well, I think the key  
12 issue here is going to focus on the question of whether it  
13 comes from the defendant or not. That's what I'm saying.

14 This case talks about a witness, not talking  
15 about a -- the defendant making a statement.

16 But may I have a few moments?

17 We'll go through that.

18 Do you want us to return to something else  
19 before we have that break?

20 THE COURT: No. Let's get this done. This  
21 is an important issue.

22 Because I need to know --

23 MR. BLOOM: Okay.

24 THE COURT: -- because I need to know if

ACCUSCRIPTS (702) 391-0379

1 Centofanti; together with his attorneys Mr. Bloom and Miss  
2 Navarro; Mr. Laurent and Miss Goettsch representing the  
3 State.

4 Okay. Mr. Bloom, did you get a chance to  
5 talk about that issue?

6 MR. BLOOM: Yes, Your Honor.

7 Here is the defense position: First of all,  
8 it should be very clear, I object to -- I object to any  
9 moving or requirement that the defense reveal information  
10 regarding the defense, under this section, under our  
11 circumstances.

12 I don't believe that the section was meant  
13 to be used as a tool for discovery by the prosecution, and,  
14 therefore, they have a second bite at the apple.

15 The Coleman case, in my mind, is different  
16 than what we have here.

17 There is a whole body of cases in Nevada --  
18 in fact, a very recent case in Nevada, that says that the  
19 failure of the Court to allow the defense to present  
20 evidence of specific acts of -- that are the foundation to  
21 self defense by the specific acts of the victim, which are  
22 foundation to the --

23 THE COURT: What are you talking about,  
24 Petty or Shoels or which case?

ACCUSCRIPTS (702) 391-0379

1 MR. BLOOM: If you want to know, Judge, I  
2 prepared this memo; it's one of the things that I was going  
3 to do at the next thing. I didn't think we were going to  
4 have to have it today, but there is a whole line of cases  
5 and a very recent one -- I don't know the name of it.

6 (Whereupon, a sotto voce at this time.)

7 MR. BLOOM: Miss Navarro says that case is  
8 Petty. That was a situation where the Nevada trial court  
9 didn't allow the defendant to present evidence of bad acts  
10 of the victim without him testifying -- without him  
11 testifying, and -- and saying that there had -- that, yes,  
12 they are admissible, but only if he testifies.

13 That case was reversed. The conviction was  
14 reversed when the Nevada Supreme Court ruled that, in  
15 fact -- that this evidence can be presented by the defense  
16 even when the defendant doesn't testify, even when that  
17 doesn't happen.

18 And, of course, when the defendant --

19 THE COURT: I don't think there is an  
20 argument on what can be done --

21 MR. BLOOM: And there is no requirement that  
22 there be a Petrocelli hearing with regards to those matters.

23 THE COURT: And I did the retrial on Petty  
24 and I did Shoels, so I did both of them, both retrials, not

ACCUSCRIPTS (702) 391-0379

1 as to the state of mind of the defendant, and whether or not  
2 it's true or not -- whether or not it really happened or  
3 not, it matters only if the defendant believed it was true.

4 You could have somebody who presents  
5 themselves as a Hell's Angel, real powerful, marked up with  
6 all sorts of gang tattoos and all sorts of things like that,  
7 yet, in real life, might have been the most -- meekest  
8 little person in the world and that still can come in.

9 THE COURT: Mr. Bloom, we're going to debate  
10 this thing all day.

11 The law is -- and you can look -- the way I  
12 understand it -- Petty and Shoels speak for themselves. You  
13 can read it, what they permit and what they don't permit.

14 If you've got a problem with N.R.S. 50.085,  
15 subsection (3), read it. You know, that's going to be the  
16 issue here on this point, and it tells you when you can go  
17 into specific acts and when you can't go into it.

18 MR. BLOOM: But --

19 THE COURT: So -- so you need to -- to -- to  
20 deal with that.

21 But, right now, I don't know if you are  
22 going to offer any of this evidence, so if we're -- I don't  
23 want to sit here and chew up valuable court time on an  
24 intellectual debate on something that may not even be coming

ACCUSCRIPTS (702) 391-0379

1 the first trials.

2 But my recollection is you can have -- offer  
3 opinion evidence by parties if somebody is violent and all  
4 of that; that -- I believe it's in the Petty trial -- the  
5 first trial court didn't allow that.

6 It was reversed by the Supreme Court, and  
7 the second trial court -- of course, we did do that and  
8 allowed opinion evidence to be solicited from third parties  
9 regarding the opinions if the victim was violent and -- that  
10 was permitted.

11 MR. BLOOM: The Nevada Supreme Court never  
12 made the ruling that it was -- or a limitation that it was  
13 only going to deal with opinion evidence, Your Honor.

14 Actually, opinion evidence is -- was -- was  
15 found to be the general -- the general statement of that  
16 case and the Long case law has to do with that evidence  
17 relating to it, whether it's -- it comes in the form of  
18 somebody's opinion or it comes in the form of acts which  
19 support the element of self defense.

20 All of that is allowed, must be admitted,  
21 even if the defendant didn't testify, let alone if the  
22 defendant does testify, because then it comes in under a  
23 different reason if the defendant does testify.

24 If the defendant does testify, it comes in

ACCUSCRIPTS (702) 391-0379

1 in because we have too many other things to do.

2 MR. BLOOM: Well, I do know certain evidence  
3 will come in. I don't think we have to reveal this.

4 If the Court is directing me to, over my  
5 objection, I will reveal certain things that I know of right  
6 now that are going to come in, if the Court is telling me to  
7 do that --

8 THE COURT: Well, I'm telling you if you  
9 have -- if you have specific acts of Mrs. Centofanti that  
10 you want to get in for -- for -- that are relevant under --  
11 and you believe are relevant under N.R.S. 48.054, then you  
12 need to tell me what -- what they are, so we can make a  
13 determination if it's something that -- that requires a  
14 hearing under Coleman or doesn't.

15 I've already told you the karate doesn't.  
16 Okay? The fact she -- because that's not -- that's just  
17 something that she -- she's trained in karate and that may  
18 have had some impact on Mr. Centofanti's state of mind in  
19 this incident.

20 You don't have to do any more than that,  
21 other than offer evidence of her karate training.

22 But if there is something else, some other  
23 acts that she's done, we need to know about it.

24 MR. BLOOM: Well, I know the Court wants to

ACCUSCRIPTS (702) 391-0379

1 cut to the chase and get to the end portion of it, but there  
2 is one other step before this, Your Honor, and that has to  
3 do with the application of Coleman.

4 It's my understanding that Coleman was a  
5 situation where this type of foundation had to have been  
6 laid where the defendant was claiming that a third party was  
7 responsible for the murder.

8 That's -- that's -- and that third party was  
9 somebody else who -- I believe it was a wife who was  
10 responsible for it, and they were trying to establish the  
11 character of this third party as it relates to establishing  
12 that this person had the character and would have committed  
13 this violent act.

14 We are not claiming any third party  
15 culpability here.

16 Coleman doesn't apply.

17 We're claiming self defense. It has to do  
18 with the state of mind of my client. It would have to do  
19 with what he knew happened.

20 It does have to do with the aggressiveness  
21 of the -- of the decedent Virginia, but we're not claiming  
22 that a third party did this act.

23 We're claiming that she had conduct which  
24 justified -- that he knew about that justified her -- her --

ACCUSCRIPTS (702) 391-0379

1 But what if the foundation comes from the --  
2 from my client; in other words, it is my client's belief and  
3 his testimony as to what happened, what he saw?

4 I'm certain that the Court is not making  
5 some pretrial ruling that he has to, either in the presence  
6 of the People or, frankly, out of the presence of the  
7 People, make any statement pretrial as to what his testimony  
8 is going to be.

9 I mean, the United States Constitution  
10 certainly wouldn't allow such a circumstance.

11 THE COURT: Well, Mr. Bloom, a defendant can  
12 testify in, like, a motion to suppress and other pretrial  
13 hearings without waiving the right to invoke the Fifth  
14 Amendment and not testify at the trial to offer evidence of  
15 pretrial.

16 So I -- I don't know what you are talking  
17 about.

18 MR. BLOOM: I'm talking about that the Court  
19 has said that if there are things about Mrs. Centofanti,  
20 Virginia Centofanti, that we are going to attempt to  
21 present, which relate to her violence, that we have to tell  
22 them -- list them to this Court, so the Court could  
23 determine if a Petrocelli hearing should be held to  
24 determine if there is a foundation for it.

ACCUSCRIPTS (702) 391-0379

1 his conduct.

2 That's why I think we're claiming that she  
3 had conduct which justified -- that he knew about that  
4 justified her -- her -- his conduct.

5 That's why I think Coleman is apples and  
6 oranges.

7 THE COURT: Okay. The State's motion in  
8 limine to prohibit introduction of character evidence absent  
9 a Petrocelli hearing by the defense is granted.

10 MR. BLOOM: All right.

11 THE COURT: Okay. Now that I've done that,  
12 we'll cross that bridge if you have anything.

13 MR. BLOOM: Okay. All right.

14 In that regard, Your Honor --

15 MR. NELSON: Judge, could I just have a  
16 second?

17 (Whereupon, a sotto voce at this time.)

18 MR. BLOOM: Well, here's two other concerns  
19 that we have, Your Honor, with regards to this -- and I'm  
20 trying to -- just sort through it, and I'm -- it's kind of  
21 blended together.

22 The Court made its ruling that there has to  
23 be a presentation of evidence to this Court based on  
24 foundational evidence.

ACCUSCRIPTS (702) 391-0379

1 That's what I understand the Court has just  
2 ruled.

3 THE COURT: Right.

4 MR. BLOOM: If we -- but my position is: If  
5 there are such matters and they come from the mind of my  
6 client, they come from his observations --

7 THE COURT: Okay.

8 MR. BLOOM: -- if -- under that category,  
9 I'm -- I don't believe there is any requirement that Nevada  
10 could ever create in a Petrocelli or any other law, that  
11 could say that if the source of this information is my  
12 client, that my client has to go through a Petrocelli  
13 hearing.

14 THE COURT: Well, if the State can't use  
15 what he says in the case in chief, I mean, what -- what's  
16 the problem here?

17 I mean, that's how do you a motion to  
18 suppress: A defendant gets up here and says: The police  
19 didn't read me my rights or something before they did a  
20 search; and the police said: Yes, we did.

21 The only way the defense can put that at  
22 issue is to get up and testify; the defendant has to testify  
23 because he was there.

24 It doesn't mean he has to -- he has to

ACCUSCRIPTS (702) 391-0379

1 testify at the trial, nor does --

2 MR. BLOOM: Well, that's --

3 THE COURT: -- nor is -- that testimony  
4 cannot be used against him at the trial.

5 MR. BLOOM: That's because the defense  
6 raises the search issue, Your Honor; the defense, by raising  
7 the search issue, claims that there is some violation of  
8 police conduct.

9 THE COURT: Well, I've ruled that if you are  
10 going to raise other bad acts of Mrs. Centofanti, that it's  
11 your motion to do that, this is what you have to do.

12 MR. BLOOM: No, it's not my motion to do it.

13 It's their motion to suppress. I'm going to  
14 present evidence. I'm not moving to --

15 MR. LAURENT: Judge, if I could briefly  
16 interpose, I might be able to solve defendant's problem.

17 THE COURT: Okay.

18 MR. LAURENT: I can see Mr. Bloom's point.

19 I think that evidence -- if the defendant  
20 were to take the stand, he could say that she was a purple  
21 eyed monster and we have to let it in because that's his  
22 subjective, potentially, state of mind.

23 I think we have to let that in because --  
24 and then the jury would say: Well, he's crazy for thinking

ACCUSCRIPTS (702) 391-0379

1 If you are talking about what Mr. Laurent  
2 said -- see, I'm in the dark, Mr. Bloom. I don't know what  
3 you have in mind.

4 I'm trying to --

5 MR. BLOOM: Yeah, let's -- let's just talk  
6 on one subject.

7 I have exposed in this case that Mr. -- Mrs.  
8 Centofanti had gang tattoos --

9 THE COURT: Okay.

10 MR. BLOOM: -- photographs of them; my  
11 client knew about them.

12 I've explained that that was part of the  
13 concern that Mr. Centofanti had, because he knew of this --  
14 these tattoos and had conversations and whatever, had this  
15 history about her.

16 Now, people want to -- people claim that  
17 he's under some campaign to paint her in some bad way.

18 These tattoos exist --

19 MR. LAURENT: Existed.

20 THE COURT: Okay. So you are saying that --  
21 that she got the tattoos being in a gang; and, therefore,  
22 are we crossing the threshold here about whether she was in  
23 a gang, if it becomes a Petrocelli issue? Is that it?

24 MR. BLOOM: Yeah.

ACCUSCRIPTS (702) 391-0379

1 that.

2 THE COURT: Right.

3 MR. LAURENT: But I think statements that  
4 are coming from the defendant, this is what she told me,  
5 things like that, I think what he believes has got -- has  
6 got to come in. Okay?

7 What I'm concerned about is proving it  
8 through other people, bringing other people in to establish  
9 those acts.

10 Petty, just like you said, talks about  
11 opinion testimony. And -- and if they're going to prove it,  
12 to bring acts in, Judge, we want to have the opportunity to  
13 have a Petrocelli hearing, not from what the defendant is  
14 saying, but from what other witnesses may testify to.

15 I think that will clear it up and it will be  
16 one of those safe harbor areas, Judge.

17 Did that make sense on that?

18 THE COURT: Okay. It does.

19 Well, I mean, I -- I --

20 (Whereupon, a sotto voce at this time.)

21 THE COURT: Mr. Laurent, I don't disagree  
22 with what you said nor what Mr. Bloom said.

23 As far as his perceptions, he can testify to  
24 his perceptions without a Petrocelli hearing.

ACCUSCRIPTS (702) 391-0379

1 THE COURT: Okay. Well, that's -- that's  
2 the issues we need to flesh out.

3 MR. BLOOM: But that comes from him.

4 THE COURT: Okay.

5 MR. BLOOM: The photos that are presented  
6 are photos he knows about.

7 THE COURT: Let me hear what Mr. Laurent  
8 thinks about that issue --

9 MR. BLOOM: Let me --

10 THE COURT: -- see if that requires a  
11 Petrocelli hearing.

12 MR. BLOOM: Let me just say this: I don't  
13 think I had to even say that. But why? Because that  
14 presents potential testimony from my client, we don't have  
15 to reveal that. They can't use that for this purpose.

16 THE COURT: Well, as I recall, that's  
17 already been brought up.

18 MR. BLOOM: I know, Judge.

19 I mean, I'm not -- I'm just saying, though,  
20 there are other areas like that.

21 THE COURT: Okay.

22 MR. BLOOM: They don't have the right to  
23 gain that information.

24 THE COURT: Mr. Laurent, what is your

ACCUSCRIPTS (702) 391-0379

1 position on that?

2 MR. LAURENT: First off, Judge, if they were  
3 intending to show photos, we should have received those in a  
4 reciprocal discovery motion, which we have not.

5 MR. BLOOM: They have.

6 MR. LAURENT: Photos of gang tattoos?

7 MR. BLOOM: Yes.

8 THE COURT: Are they in the autopsy  
9 pictures?

10 MR. LAURENT: Judge, I believe they were  
11 removed through lasers, any type of tattoos she had.

12 Next, Judge, if they were going to prove  
13 that, other than by Mr. Centofanti, they're going to bring  
14 somebody else in to say she was in a gang, then we need to  
15 have a Petrocelli hearing.

16 If they're going to say: She told me she  
17 was in a gang, I believe she was in a gang, then I don't  
18 think we need to have a Petrocelli hearing.

19 However, if they're going to bring some  
20 other witness, a third witness, to come in and say she was  
21 in a gang or she told me she was in a gang, and it's not Mr.  
22 Centofanti testifying, then we need to have a Petrocelli  
23 hearing, I believe.

24 THE COURT: Okay. Mr. Bloom.

ACCUSCRIPTS (702) 391-0379

1 talking about, there is merit to what the Court now says;  
2 and the People's second case that they cite here is a civil  
3 case.

4 When you are talking about a defendant's  
5 right to remain silent, the constitutional right of not --  
6 of the People having the burden, the defense not being  
7 required to lessen that burden by presenting this evidence  
8 to them and so forth, it's a -- it's -- the -- the concerns  
9 are very different.

10 And that's why I think when these were --  
11 when -- when the reciprocal discovery of Petrocelli was  
12 established, why it should be limited in its use -- and  
13 that's why I think this Coleman case talks about a concern  
14 as it relates to third parties and so forth.

15 So that's why I think there is a very  
16 different set of -- we're in a different ballpark when we're  
17 talking about a --

18 THE COURT: Well, Mr. -- I understand what  
19 you are saying and I appreciate the difference between civil  
20 and criminal.

21 The ruling is this, so we can move on: That  
22 I won't allow third parties to come in and present evidence  
23 such as this without the Petrocelli hearing.

24 I will allow Mr. Centofanti -- if he elects

ACCUSCRIPTS (702) 391-0379

1 MR. BLOOM: And that's what I'm saying:  
2 Since that's the source and that relates to the self defense  
3 issue, not third party culpability, not blaming something  
4 else, then I believe the case law is absolutely manifest  
5 that there is no requirement of the defense to have this  
6 beforehand.

7 THE COURT: Well, that -- that will be the  
8 ruling.

9 I'm not going to require a Petrocelli  
10 hearing if it's testimony of Mr. Centofanti or something  
11 that he's observed or what he's been told or something like  
12 that. I won't require it.

13 If it's going to be evidence from third  
14 parties -- and then I have to determine: Is it more  
15 probative than prejudicial, this gang issue?

16 The same way if the State tried to say Mr.  
17 Centofanti was in a gang or something, I mean, you have to  
18 go look at that whole balancing test at that stage.

19 MR. BLOOM: There is a difference though,  
20 Judge.

21 And I know this Court has extensive  
22 background in criminal law and extensive -- perhaps more  
23 extensive background in the civil arena.

24 If it's in the civil arena that you are

ACCUSCRIPTS (702) 391-0379

1 to voluntarily testify, which is his right to testify or not  
2 testify, he can testify about this issue, as it pertains to  
3 his fear or the circumstances where this incident took  
4 place.

5 MR. BLOOM: All right. Now, one other thing  
6 then, Your Honor: The People -- Petrocelli dealt with the  
7 circumstance of: There is the proponent of the evidence  
8 offering it to establish -- on its own, offering to  
9 establish the care, motive or something like that, and the  
10 list of items that Mr. Laurent just gave.

11 The People are raising and have raised -- I  
12 don't know how they're going to present it when we get to  
13 trial.

14 There have been different presentations  
15 throughout the previous hearings in this case as to the  
16 theories that the People have with regard to this.

17 But one of the theories has been, and it's a  
18 recent one, that Mr. Centofanti has engaged in a campaign to  
19 paint Mrs. Centofanti in a bad way; that he is engaged in  
20 this -- some sort of campaign to set this up.

21 I'm not sure how they could get that in or  
22 something. They can argue something. It's different. They  
23 can argue it, extrapolations from it.

24 However, one of the things could be that

ACCUSCRIPTS (702) 391-0379

1 they're trying to say something was set up. For example,  
2 trying to say she had a -- a gang history.

3 Let's just talk about the --

4 THE COURT: Well, wouldn't this -- it -- I  
5 can't see this in the State's case in chief, so wouldn't  
6 this be some issue on cross-examination of Mr. Centofanti,  
7 if he did testify?

8 It may go to bias or -- I don't know. I  
9 mean, it's tough for me as a judge to sit here and try and  
10 look in a crystal ball what the evidence is going to be and  
11 what the questions are going to be and -- I can make rulings  
12 once it happens.

13 MR. BLOOM: All right. I understand.

14 THE COURT: But, right now, I don't know  
15 what it's going to be and I hate to make rulings and  
16 prejudice either side from presenting their case.

17 MR. BLOOM: All right. Let me put this then  
18 in the category of what it would be if it was in a written  
19 form, a memorandum of law.

20 A memorandum of statement is what I'm going  
21 to give the Court here, as opposed to a -- then I think if  
22 they make that claim they set this up, this whole thing  
23 about gangs and just, sir, it never happened or anything  
24 like that that's presented, then I think -- then that's --

ACCUSCRIPTS (702) 391-0379

1 Look, we're not going to solve it today.  
2 I've made the rulings. Let's move forward. We have many,  
3 many other issues to deal with. And that's the way it is.  
4 Let's see how the trial develops and we'll  
5 just go from there.

6 MR. BLOOM: And I guess all I can do, Your  
7 Honor, is any time that I see something that comes up that I  
8 believe is coming from an independent source -- not from my  
9 client, but an independent source, that I will present it to  
10 the Court before it gets presented to the --

11 THE COURT: I guess that's all you can do.  
12 I understand.

13 MR. BLOOM: All right.

14 THE COURT: And we'll deal with it, if and  
15 when it ever comes up.

16 MR. BLOOM: Thank you, Your Honor.

17 THE COURT: Okay. Let's go through these  
18 other issues, because a lot of them are pretty simple and  
19 straightforward, and we need some answers on them before  
20 next week.

21 The jury questionnaire: Mr. Bloom, here is  
22 my policy on that: I just ordered the jury during the  
23 break, so we'll have -- I've ordered 50 people on the jury  
24 venire; and I've ordered them to come in early on next

ACCUSCRIPTS (702) 391-0379

1 now, that's not being offered in some sort of affirmative  
2 way by the defense, but rather being offered in a responsive  
3 way to an issue that the prosecution has raised.

4 And, at that point, then I don't think that  
5 there will be any requirement and Petrocelli certainly  
6 doesn't say it, Coleman never says it, that -- that says the  
7 defense has to make some sort of Petrocelli showing with  
8 regards to the evidence.

9 Then Coleman talked about where the defense  
10 was affirmatively trying to establish, through its own  
11 evidence of the vampires indices and all these weird things  
12 regarding this third party; and, of course, the People in  
13 that case never said that that witness was not guilty. They  
14 never said anything about that.

15 It was the impetus that started -- that the  
16 source came from -- from the defense.

17 If the -- if the generation of it -- the  
18 genesis of it, in our case, comes from the prosecution's  
19 claim in some fashion, then Petrocelli, I think, applies in  
20 any respect.

21 THE COURT: Okay.

22 MR. BLOOM: That was my --

23 THE COURT: Well, I appreciate it, Mr.

24 Bloom.

ACCUSCRIPTS (702) 391-0379

1 Wednesday, so they can fill out the questionnaires.

2 What you need to do is I -- I have no  
3 problem with the jury questionnaires, but the State and the  
4 defense have to agree on the questionnaire format.

5 I've never had a problem, I think, in any  
6 trial where it hasn't been agreed to, but we need to get  
7 them copied and get them down to the Jury Commissioner, so  
8 they have them to hand out early Wednesday morning when  
9 these people come in, so we can get them filled out, copied  
10 and back to the attorneys, so they can be of some assistance  
11 to each side.

12 So I'll allow them just -- you and the State  
13 just need to agree. If you can't agree to them, then we  
14 won't do them.

15 MR. BLOOM: Well, I think what probably will  
16 happen is that we will -- hold on a second.

17 (Whereupon, a sotto voce at this time.)

18 MS. NAVARRO: Judge, I have a questionnaire  
19 that I put together, but there still may be some changes to  
20 be made to it.

21 THE COURT: What I'm going to suggest is  
22 when we get done with the hearing today that the defense and  
23 the State sit down, go through this.

24 I can't imagine there is a whole lot of

ACCUSCRIPTS (702) 391-0379

1 arguments on it, but just the questions should be very  
2 general and just to help get background information on the  
3 jurors.

4 And then, if you agree to it, just let's get  
5 it photocopied and get it to my office, and we'll have it  
6 delivered to the Jury Commissioner, so they have them first  
7 thing Wednesday morning.

8 MR. BLOOM: Well, it's not -- it's -- this  
9 is not just asking for names and numbers though. I think  
10 there is a couple of areas, like domestic violence, contact  
11 with lawyers, these are areas which I think can better be  
12 explored -- they're clearly relevant on voir dire and I  
13 think they can be better explored with the privacy of a  
14 questionnaire that somebody would feel a little more  
15 comfortable presenting it --

16 THE COURT: Mr. Bloom, I'll allow it.

17 I'm just saying you have to get with the  
18 State and agree.

19 Now, we do these things all the time on  
20 death penalty cases.

21 MR. BLOOM: Sure.

22 THE COURT: I don't recall there being big  
23 arguments on them. I know Miss Navarro's office has  
24 probably done them multiple times.

ACCUSCRIPTS (702) 391-0379

1 Wednesday. Wednesday, we're supposed to be picking the  
2 jury. There's not going to be a lot of time for a  
3 questionnaire.

4 THE COURT: Well, Mr. Laurent, they're going  
5 to do it Wednesday morning. We're not going to get the jury  
6 picked Wednesday afternoon.

7 I mean, we're going to have -- and I'm going  
8 to talk to you in a minute about --

9 MR. LAURENT: Oh. I'm sorry, Judge.

10 THE COURT: -- the jury selection process,  
11 but -- but -- so you are going to have, basically, Wednesday  
12 night to digest them.

13 I mean, we're going to be doing general voir  
14 dire; maybe we'll get to a couple people on that.

15 MR. LAURENT: Okay. Judge, I apologize.

16 THE COURT: And you can pull those  
17 questionnaires out and read them just for the couple people  
18 we get to.

19 What -- let me just mention one thing -- so  
20 that will be the procedure.

21 If either one of you want it back on  
22 calendar on Monday morning for me to look at, just notify my  
23 office, we'll place it on calendar for Monday morning at  
24 nine o'clock and deal with it.

ACCUSCRIPTS (702) 391-0379

1 So I'm suggesting get with the State, get  
2 them agreed to, and then get them copied, and that's fine  
3 and we'll get it done.

4 MR. BLOOM: Okay.

5 THE COURT: If we can't agree on it, then we  
6 won't do them.

7 MR. BLOOM: Well, it's on that last point  
8 that I want to talk about, Judge.

9 I think if we can't agree, that doesn't mean  
10 we can't do them. If we can't agree on certain portions of  
11 the questionnaire, then I would ask to submit it to the  
12 Court and see if it's appropriate.

13 THE COURT: Then on Monday morning -- if you  
14 need me to look at them on Monday morning, I will do it.

15 MR. BLOOM: Okay.

16 THE COURT: And then -- you don't have to  
17 come, Mr. Bloom. Miss Navarro can cover the appearance.

18 MR. BLOOM: Very well.

19 THE COURT: But I would urge the parties  
20 to --

21 MR. LAURENT: Judge, we generally don't have  
22 a -- the only problem I see with this one and this  
23 circumstance is the time we have.

24 We're going to bring these jurors in on

ACCUSCRIPTS (702) 391-0379

1 On the jury -- again, Mr. Bloom, I will tell  
2 you -- this isn't on your list, but I will just talk about  
3 it briefly.

4 On the peremptory challenges, each side has  
5 eight peremptory challenges to this case.

6 I figure we'll have two alternate jurors, so  
7 you have one peremptory challenge on the alternates.

8 You have a right by law to have the  
9 alternates selected or identified to the parties before the  
10 trial commences.

11 There is two ways to do that.

12 If you want to know who the alternates are,  
13 I will seat the alternates in chairs 13 and 14, which will  
14 be the front row, the last two seats on your left.

15 The other way I do it, if the parties  
16 stipulate to it, is I don't identify alternates until the  
17 end of the case, where we randomly pull two numbers out of a  
18 hat.

19 We have 14 numbers in a cup. The court  
20 clerk pulls two numbers out and they're the alternates.  
21 That way, you get an extra peremptory challenge per side.  
22 You get nine peremptory challenges on the whole panel.

23 So if the parties need to discuss it --  
24 either one is fine with me. If the parties stipulate to do

ACCUSCRIPTS (702) 391-0379

1 method two -- and I tell the jury then -- at the beginning,  
2 I'll tell them that there are 12 regular jurors and there  
3 will be two alternates and we don't know who the alternates  
4 are until the end of the case. And I will tell them up  
5 front.

6 If we do know who the alternates are, at the  
7 end of the case -- I won't tell them that until the end of  
8 the case. Then I will tell them they've been identified as  
9 alternates.

10 So it's your choice. We can go either way  
11 on the selection process.

12 MR. LAURENT: So do you pass a certain  
13 number for cause and then start exercising your peremptory  
14 challenges? Is that how you do it?

15 THE COURT: Well, we don't -- we put 14  
16 people in the box --

17 MR. LAURENT: Okay.

18 THE COURT: -- and then we -- we pass  
19 everybody for cause.

20 And if they're removed for cause, they're  
21 removed, when we go through the initial selection process.

22 Then we start the peremptory challenges and  
23 we go back and forth, whether it's eight times or nine  
24 times, until every challenge has been either exercised or

ACCUSCRIPTS (702) 391-0379

119

1 waived. That will be our method.

2 Okay. So you can -- you don't have to  
3 answer that today. You can think about that one, on which  
4 way you want to go.

5 Some of these other issues: Autopsy photos,  
6 here is my policy on that, how I do it in all trials:

7 I don't allow cumulative autopsy photos. I  
8 have the State -- for identity purposes, those that are  
9 relevant, I allow the State to pick out four or six or how  
10 many, not dozens of them, and to offer them into evidence.

11 I know they're all graphic; every autopsy  
12 photo is. But I will sustain a cumulative objection. I  
13 will allow some of them.

14 So I would ask the State to be selective in  
15 what they -- what they need with the coroner and all to --  
16 for identity purposes.

17 And if you think they're too much, you make  
18 an objection they're cumulative; and if I agree, I will  
19 sustain it.

20 MR. BLOOM: May -- would the Court direct  
21 the prosecution to advise the defense of which photos they  
22 intend to introduce?

23 THE COURT: Yes, I will ask the State to --  
24 before Wednesday morning to pick out the autopsy photos that

ACCUSCRIPTS (702) 391-0379

1 you wish to use.

2 Usually, the range is four to six,  
3 somewhere --

4 MR. LAURENT: It depends on how many wounds,  
5 Judge.

6 THE COURT: What?

7 MR. LAURENT: We usually want to show each  
8 wound, entrance and exit type of things.

9 THE COURT: Okay.

10 MR. LAURENT: We're not going to show  
11 multiples of each one.

12 THE COURT: Just to give you some  
13 parameters, that's what I approve; and, again, the defense  
14 certainly has a right to argue it's cumulative, and we'll  
15 take a look at it at that time.

16 And -- And if you have a continuing  
17 objection as to using autopsy photos, Mr. Bloom, you want to  
18 make that objection now, for the record, I will let you do  
19 that, but that's -- that's how I -- I handle them.

20 MR. BLOOM: Well, in general, I'm concerned  
21 about the prejudicial effect, particularly in this case,  
22 Your Honor.

23 For whatever reason, there were not a lot of  
24 photographs taken during the autopsy where the decedent was

ACCUSCRIPTS (702) 391-0379

121

1 cleaned for the purposes of evaluation.

2 So many of the pictures that I have  
3 received, in the large stack, are where she still has -- has  
4 still blood and it's dripping and things like that, which  
5 it's always been my experience are to be forbidden from  
6 presentation.

7 THE COURT: Okay. Well, let's let the State  
8 pick out the ones they want to use, and I will allow you to  
9 make that objection, if you feel that they're being done  
10 just for graphic purposes then.

11 MS. GOETTSCH: And also, Judge, just a note  
12 on that: That we would not be able to make a decision as to  
13 which photos we're going to use until we speak to Dr. Sims.

14 I was thinking Dr. Sims told me he's out of  
15 town until like January 2nd.

16 THE COURT: Okay.

17 MS. GOETTSCH: So I'm not sure if we can get  
18 it by Wednesday, but as soon as we talk to him --

19 THE COURT: Then I don't want you showing  
20 them to the jury and all like that in opening statement  
21 until we've had that issue --

22 MS. GOETTSCH: Sure.

23 THE COURT: -- presented to the defense and  
24 they -- they know which ones you are going to use and they

ACCUSCRIPTS (702) 391-0379



1 have a right to make their objection then.

2 MR. BLOOM: Well, Your Honor, with regards  
3 to that, the defense wants to present them in opening  
4 statement.

5 If they're going to come in, we should have  
6 a right to have that before the opening statements.

7 So I would request that we have that  
8 information; this matter be litigated prior to --

9 THE COURT: We probably won't get to opening  
10 statements until Friday, so we'll have a little bit of time  
11 to talk to the coroner before that.

12 MR. BLOOM: Thank you.

13 THE COURT: And I'm going to -- backwards on  
14 your list, Mr. Bloom, because some of the easier issues here  
15 are down further.

16 You have the -- the hearsay issue on the  
17 statements of Mr. and Mrs. Centofanti, I have ruled on the  
18 ones on the December 5th incident.

19 If there is other statements from either of  
20 them, each side can make their objections and I'll rule on  
21 it, probably on the same standard I did on December 5th.

22 If I'm going to allow -- my policy though  
23 is: If I allow Mrs. Centofanti's in, I will probably allow  
24 Mr. Centofanti's in the same set of circumstances, under

ACCUSCRIPTS (702) 391-0379

1 I'm using. And I ruled that way on the December 5th.

2 I know both sides may disagree with it, but  
3 that's -- that's the ruling and that's the way it will be.

4 MR. BLOOM: And with -- understand, Your  
5 Honor, I'm going to want to -- tactically, I want to think  
6 about something in this case that relates directly to this  
7 issue, and I'd like to put this on our list to -- to return  
8 to it prior to -- it doesn't have to be prior to our  
9 selection of the jury.

10 It does have to be prior to opening  
11 statements and so forth. So we're going to -- if that's not  
12 going to be until Friday or whenever that is, I'd like to  
13 carve out some time to deal with it.

14 THE COURT: Well, you can do that, but at  
15 the trial, each side can object it's hearsay on the  
16 statements and we'll deal with them as they come along.  
17 Everybody reserves their objections on that.

18 I'm just giving you some general idea how I  
19 look at it and interpret them.

20 Okay. We have an issue of whether or not  
21 the defendant has to be -- submit to a psychological  
22 evaluation by the State.

23 Mr. Laurent, do you have some authority on  
24 that one?

ACCUSCRIPTS (702) 391-0379

1 51.075.

2 I don't know what they are, but I want to  
3 present a balanced picture to the jury on -- on these  
4 statements.

5 So, generally, that's -- that's my -- how I  
6 will look at them and review them.

7 MR. BLOOM: Well, the -- situation that we  
8 have with regard to Mr. Centofanti, of course, is he is  
9 available -- should he testify, he is available for  
10 cross-examination and that makes a huge -- or a world of  
11 difference in terms of --

12 THE COURT: Well, when the State puts on  
13 their case in chief, they don't know if he's going to  
14 testify or not.

15 MR. BLOOM: No, I was talking about  
16 presenting -- on the defense side, of presenting --

17 THE COURT: I understand that.

18 But, as of right now, both Mrs. Centofanti  
19 and Mr. Centofanti are unavailable at this stage of the  
20 case.

21 Mrs. Centofanti is deceased. Mr. Centofanti  
22 doesn't have to testify unless he voluntarily elects to do  
23 it.

24 So, with that in mind, that's the standard

ACCUSCRIPTS (702) 391-0379

1 MR. LAURENT: Yes, I do, Judge.

2 I got the defense response last -- this  
3 morning when I got in and they cite a federal Pacific court.

4 What I would like to address, Your Honor:  
5 Over the years, the courts have specifically held that  
6 compulsory psychiatric examinations do not violate the Fifth  
7 Amendment of the United States Constitution.

8 Our Nevada Supreme Court has not had the  
9 occasion to pass upon the issue of whether an individual who  
10 claims an insanity defense or other psychological defense  
11 may be compelled to attend a psychiatric examination by a  
12 State's expert.

13 However, there is a great wealth of federal  
14 cases that provide it does not violate the accused's Fifth  
15 or Sixth Amendment rights; again, United States versus  
16 Byers, which is a DC Circuit 1984. It's 740 F2nd 1104.

17 You have United States versus Cohen, 530 Fed  
18 2nd 43. That's a Fifth Circuit, 1976;

19 You have United States versus Bohle,  
20 B-o-h-l-e, 445 F2nd 54. That's a Seventh Circuit, 1971;

21 United States versus Albright, which is  
22 3885-- excuse me -- 388 F2nd 79, Fourth Circuit, 1964;

23 And Pope versus United States, 73 -- 372 --

24 MR. BLOOM: Your Honor, I object to this.

ACCUSCRIPTS (702) 391-0379

1 The -- this is -- this is response by  
2 ambush.

3 The -- we asked for this information. I  
4 think it's improper to be presenting these things now  
5 without --

6 THE COURT: Well, I think he just got your  
7 response today.

8 MR. BLOOM: No. He got my response today.  
9 He had our -- this is an oral motion raised by the  
10 prosecution, instead of being in writing and --

11 THE COURT: Let me cut it short.

12 Mr. Laurent, is there any authority,  
13 statutory or case law, of the State of Nevada, the Nevada  
14 Supreme Court, that requires a defendant to submit to a  
15 psychological evaluation before the trial?

16 MR. LAURENT: Judge, under the statute,  
17 which is the reciprocal discovery -- let me get to their  
18 case.

19 First of all, our motion asked for a couple  
20 of things and the defense has denied all of them.

21 The first thing that we wanted were the  
22 notes and the testing that was done on the defendant. They  
23 said we weren't entitled to that.

24 However, it says, in N.R.S. 174.245:

ACCUSCRIPTS (702) 391-0379

1 Judge, I am -- I mean, what -- what -- what  
2 it is is the defendant is a piece of physical evidence at  
3 this point. He becomes a piece of physical evidence and  
4 he's being tested, he's being examined and looked at.

5 And we're entitled to that information.

6 THE COURT: Well, hasn't he just pled not  
7 guilty and the State has the burden to prove his guilty  
8 beyond a reasonable doubt?

9 MR. LAURENT: That is absolutely correct,  
10 Judge.

11 However, where the defense has put in --  
12 here is a Hanes case, which is Nevada case law, 103 Nevada  
13 309. It says:

14 Jurisdictions are split as to whether the  
15 attorney/client privilege is violated when a  
16 defense retained psychiatrist, who is not called as  
17 a defense witness, is called as a rebuttal witness  
18 to give an opinion on the legal sanity of the  
19 defendant.

20 Most jurisdictions hold that attorney/client  
21 privilege is violated in those circumstances.

22 However, it goes on: Likewise, most courts  
23 hold that the attorney/client privilege is waived  
24 only if the defendant calls a psychiatrist as a

ACCUSCRIPTS (702) 391-0379

1 Results of reports or physical or mental  
2 examinations, scientific tests or scientific  
3 experiments, that the defendant intends to  
4 introduce in evidence during the case in chief of  
5 the defendant or copies thereof.

6 So all of that information, we're entitled  
7 to, the results of the tests, the -- the -- I mean, it's  
8 supposed to be a standardized testing tool.

9 Additionally, Judge, there is no state case  
10 that says that, but the Ninth Circuit has held that if a  
11 defendant -- that the Court does have the inherent power to  
12 compel a criminal defendant to submit to psychiatric  
13 examination by State's expert when the defendant claims an  
14 insanity type defense, which is the state of mind defense.

15 And that's United States v. Wade, 48 --  
16 excuse me -- 489 F2d 258, Ninth Circuit, 1973.

17 And the Court held - and Handy, which is  
18 another Ninth Circuit, '72, said:

19 That if a defendant does not comply with  
20 this order, he shall be precluded at trial from  
21 presenting testimony upon the issue of alleged  
22 mental capacity by any expert by whom he has been  
23 interviewed.

24 We are entitled to have that information.

ACCUSCRIPTS (702) 391-0379

1 defense witness or places the psychiatrist's name  
2 on a witness list.

3 So as soon as that happens, we don't have  
4 that attorney/client privilege anymore. He becomes that  
5 piece of evidence.

6 They've proffered that they're going to  
7 present that, and under those circumstances, Judge, we're  
8 entitled to examine him as well and to have him -- because  
9 he's a piece of evidence at this point.

10 THE COURT: Okay. Mr. Laurent, on this one,  
11 I'm going to go with the defense on it in this regard: Is  
12 that I -- I think, under the Constitution here, that without  
13 specific statutory case authority, that you can't be  
14 compelled to give an examination prior to trial.

15 However, what I'm going to do is this: I'm  
16 going to allow, if a psychological witness testifies, I'm  
17 going to allow you to have an expert in the courtroom  
18 listening to the psychological expert, so you can use that  
19 person as a rebuttal witness for the State.

20 I also will allow you, if Mr. Centofanti is  
21 going to give testimony himself of a psychological nature  
22 corresponding to that, to have the psychological expert sit  
23 in and listen to his testimony, so that person can hear, on  
24 the stand, what he says and you can present that evidence in

ACCUSCRIPTS (702) 391-0379

1 rebuttal.

2 MR. LAURENT: And in that regard, Judge,  
3 since there is no case law on this -- and if I let this pass  
4 at this time, I will never be able to address this again --  
5 I respectfully move for a stay at this point, so I can take  
6 this issue up to the Supreme Court, because I will never get  
7 a chance to do this again.

8 This is so important to the State's case,  
9 that the defense is going to be allowed to present this  
10 evidence, that I need a stay to take this up in an  
11 interlocutory appeal.

12 THE COURT: Well, can't you file -- you can  
13 file a writ on it right now, couldn't you?

14 MR. LAURENT: I know, but I have to request  
15 a stay, Judge.

16 THE COURT: Okay. The motion for stay is  
17 denied.

18 However, the -- the State can file a writ on  
19 that, as well as the defense, on any issue I'm addressing  
20 pretrial.

21 MR. LAURENT: Thank you, Your Honor.

22 With regard to that as well, in that State's  
23 oral motion, the State also requested the notes, everything  
24 that the defense is relying on to form that opinion. We're

ACCUSCRIPTS (702) 391-0379

131

1 entitled to that pursuant to the discovery order.

2 THE COURT: I -- I don't think you are, Mr.  
3 Laurent, unless he testifies. Then if he does, then I think  
4 you may be entitled to it.

5 MR. LAURENT: That's under the expert  
6 witness act.

7 He's supposed to provide us with the results  
8 of the test, Judge. That's an independent test.

9 I mean, it's supposed to be like a  
10 scientific test. It's like if we were to take a firearm and  
11 take it in and have it examined -- I mean, these are  
12 standardized -- they're supposed to be scientific tests,  
13 that anyone should be able to look at objectively and  
14 determine.

15 That's what I'm asking for in advance, so I  
16 can look at it.

17 THE COURT: I understand.

18 I think, though, in looking at this issue, I  
19 do agree with the defense on that.

20 If he testifies or the psychologist  
21 testifies, then it's at issue; then you get to see it and  
22 then you get to show it to your expert.

23 MR. LAURENT: And what --

24 THE COURT: If they don't testify though --

ACCUSCRIPTS (702) 391-0379

1 MR. LAURENT: And I understand that.

2 Why I'm saying that, Judge, is that they've  
3 declared an expert.

4 THE COURT: I understand.

5 MR. LAURENT: And now the --

6 THE COURT: It doesn't mean they have to  
7 call him.

8 MR. LAURENT: I understand that, Judge.

9 But in declaring an expert, it's -- we're  
10 talking trial by ambush at this point.

11 I mean, I can't -- I can't adequately  
12 prepare for that. I can't adequately prepare for the --

13 THE COURT: Well --

14 MR. LAURENT: Judge, can I make my record,  
15 please?

16 I'm sorry.

17 THE COURT: Go ahead.

18 MR. LAURENT: I can't adequately prepare my  
19 cross-examination because I don't know what he relied upon.  
20 I don't know what testing he did -- and I'm entitled to  
21 that.

22 And the course and practice in this state  
23 has been for us to receive that information.

24 We do it in sexual assault cases all the

ACCUSCRIPTS (702) 391-0379

133

1 time; we do it in all these cases.

2 And, again, I'm going to re- -- if that's  
3 the Court's ruling, I need to request a stay, so I can  
4 adequately address these things before the Supreme Court.

5 THE COURT: The stay is denied.

6 What I will do, for the record, though, is  
7 if -- if a person testifies, I will give the State a break  
8 before the cross-examination to get the data that that  
9 expert relied upon, so that the State will have some time  
10 period -- and I don't know how much -- but to review that  
11 information with your expert to assist you in preparing  
12 cross-examination and all to question that witness.

13 But I -- I don't think we can do it unless  
14 the -- the defense elects to put these people on the stand.

15 As it pertains to -- if it was some third  
16 party or something else, Mr. Laurent, I would agree with  
17 you; but I think as the defendant, I think Mr. Bloom is  
18 right. Under the Constitution, there is just -- the Court  
19 is restricted on what it can do.

20 MR. LAURENT: Judge, additionally, I need to  
21 request a transcript of this so I can make a record.

22 THE COURT: The Court will order a  
23 transcript prepared today by the court reporter and  
24 furnished to the State and the defense.

ACCUSCRIPTS (702) 391-0379

1 Okay. Let's deal with the issue of  
2 canvassing of the defendant.

3 MR. BLOOM: -- or, Mr. Laurent, you raised  
4 that.

5 MR. LAURENT: That was --

6 THE COURT: Is there any authority --

7 MR. LAURENT: That's the Beets decision,  
8 Judge, and it's not so much authority. I never said that  
9 the Court was required to do it.

10 What I was saying is that it's advisable in  
11 circumstances where the defendant or his -- or the  
12 defendant's counsel is going to get up and make certain  
13 admissions as to what the defendant did, so that we don't  
14 get this on post-conviction.

15 And the Beets case, B-e-e-t-s, I provided  
16 that through e-mail to Mr. -- I responded to Mr. Bloom's  
17 e-mail this morning when I got in.

18 And I don't have the cite here. I just  
19 downloaded it and sent it away. I apologize, Judge.

20 But what happened in that case, in front of  
21 Judge Thompson, the public defender argued that: What we've  
22 got here is second degree murder. And that's what he  
23 argued.

24 Well, the defendant, on post-conviction,

ACCUSCRIPTS (702) 391-0379

1 Bloom or something like that to deal with it?

2 I mean, kind of after the fact?

3 MR. LAURENT: You could, Judge, but what  
4 will happen at that point is jeopardy has attached. Okay?

5 And once jeopardy attaches, we have to have  
6 manifest necessity to retry him.

7 At that point, Mr. Centofanti could say:  
8 You know, I really don't think Mr. Bloom did all that good a  
9 job; you know, he wasn't authorized to argue that.

10 So if you do it up front, if they make a  
11 statement where they're going to say they're going to argue  
12 something that might seem counter to it, 'yeah, he actually  
13 shot her,' then it's been my practice -- and I'm just  
14 throwing it out to the Court.

15 THE COURT: I appreciate it, but wouldn't  
16 this come up in almost every trial?

17 MR. LAURENT: And you know what?

18 If you don't want to retry cases, which I  
19 know the Court doesn't, you take as many steps to be as  
20 cautious as you can, and that's one of the steps that I've  
21 tried to do.

22 I will leave it with the Court's discretion.

23 THE COURT: What I'm going to do is deny it  
24 without prejudice. I will see how things develop from here.

ACCUSCRIPTS (702) 391-0379

1 said: I never authorized him to argue that.

2 And so the case got reversed.

3 And so what I'm saying, Judge, is where --  
4 it's just a cautionary instruction; it's just a cautionary  
5 measure to clean the re- -- make sure the record is clean.

6 I don't need to be present. Let's take care  
7 of the post-conviction conflict issues ahead of time.

8 If -- if there is a conflict, he's not  
9 authorized to argue that, let's know now, so that we don't  
10 have to come back and waste other state resources. That's  
11 the only thing.

12 That's -- and it doesn't -- the Beets  
13 decision doesn't talk about being able to do that. I've  
14 done it in the past in other courtrooms. It's just a  
15 cau- -- it's just a suggestion.

16 I leave it in the Court's hands. I'm just  
17 trying to make the record sound.

18 THE COURT: Well, I understand the dilemma  
19 the State faces.

20 MR. LAURENT: It's not really a dilemma for  
21 the State. I mean, I don't care one way or the other --

22 THE COURT: Well, couldn't I do something  
23 with -- when the defense finishes its closing argument, ask  
24 Mr. Centofanti if he concurs with the argument made by Mr.

ACCUSCRIPTS (702) 391-0379

1 But I've never heard of that in a trial  
2 before and I think you could apply it to almost any trial  
3 that exists.

4 Okay. Let's go next to -- I'm jumping  
5 around a little bit. I'm trying to get some simple things  
6 here since we have to break in a few minutes.

7 The -- Mr. Laurent, do you have an objection  
8 to releasing the weapon to the defense's expert to take --  
9 to do a firing examination?

10 MR. LAURENT: Here are my objections, Judge:  
11 Late date, I need to have their information  
12 on their scientific examinations before we do our opening,  
13 so that we don't step on ourselves. We want to make sure  
14 that we have all of that information.

15 We haven't received anything -- if that can  
16 be done prior to that, we have no objection.

17 THE COURT: Okay. What I will do, I will  
18 enter an order to release the weapon to the defense -- who  
19 is your expert, Mr. Bloom, on that?

20 MR. BLOOM: On this issue, it's only going  
21 to be the -- the trigger pull or rapidity of shooting, like  
22 that.

23 Remember, I told the Court about the audio  
24 tape which is taken with a similar weapon?

ACCUSCRIPTS (702) 391-0379

1 THE COURT: All right.  
 2 MR. BLOOM: It's going to be repeated.  
 3 Jim Thomas is the investigator that is going  
 4 to do that.  
 5 THE COURT: What I will do is I will order  
 6 the release --  
 7 MR. LAURENT: Okay. That being the object  
 8 of it, Judge, I do object, because, first of all, Mr. Thomas  
 9 is not the one that fired the gun on December 30th -- 20th.  
 10 Mr. Thomas has had extensive training in  
 11 firearms, and since that's the case, I would imagine he  
 12 could fire it a little more quickly than the defense.  
 13 I don't think that it is an accurate  
 14 demonstration and should not be brought before the Court.  
 15 THE COURT: Okay. Well, Mr. Laurent, what  
 16 I'm going to do is I'm going to allow them to do it. I'm  
 17 not saying it's admissible.  
 18 MR. LAURENT: Okay.  
 19 THE COURT: But I'm going to allow them to  
 20 conduct this test with the proviso that the results must be  
 21 given to you prior to the commencement of the trial.  
 22 So we need to do it immediately, to get that  
 23 gun done, so you are prepared on whatever he's going to say.  
 24 Then you can argue what you just argued --

ACCUSCRIPTS (702) 391-0379

1 notify -- the procedure in California is to notify each of  
 2 the prosecuting agencies five days ahead of this, which  
 3 we've done, and then -- and then file it with the Court; and  
 4 then the Court takes it under submission.  
 5 The Court, by statute, looks at the records,  
 6 determines if it should have a hearing for the release of  
 7 them; determines, if it does release it, for what limited  
 8 purpose, and it goes through that balancing.  
 9 All I'm asking of the Court here is not to  
 10 say that -- that you are making a finding with regard to the  
 11 contents of the records -- you can't possibly, because you  
 12 don't know what they are -- but that they're -- that they --  
 13 the issue -- with the self defense issue in here makes them  
 14 potentially discoverable and that's what I'm asking for.  
 15 MR. LAURENT: Judge, I see that as  
 16 bootstrapping. I think that they should either follow or  
 17 rely on what the law -- where the site is where they're  
 18 located and I think that we should stay out of it.  
 19 THE COURT: Okay. Well, I'll enter an order  
 20 I have no objection to the Superior Court judge doing an in  
 21 camera inspection of the juvenile records in accordance with  
 22 California law and that's all.  
 23 Then the judge in California can do whatever  
 24 he or she feels is appropriate.

ACCUSCRIPTS (702) 391-0379

1 MR. LAURENT: Thank you, Judge.  
 2 THE COURT: -- whether it's admissible or  
 3 not.  
 4 Okay. Let's go next to the juvenile  
 5 records.  
 6 Knowing I don't have jurisdiction to order  
 7 them released, does the State have any problem if I enter an  
 8 order that I have no objection to the San Diego County  
 9 Superior Court releasing the juvenile records?  
 10 MR. LAURENT: Sure.  
 11 Judge, I don't think they should be  
 12 released. Juvenile records are sacrosanct. They protect  
 13 them all the time.  
 14 If they were here, would you release them --  
 15 would you release those records?  
 16 THE COURT: Well, I would look at them in  
 17 camera here. That's what we do usually.  
 18 MR. LAURENT: But that's not what's  
 19 happening here. The judge can look at them in camera there.  
 20 MR. BLOOM: That is what is happening.  
 21 MR. LAURENT: Okay. Well, then --  
 22 THE COURT: So it's in camera?  
 23 MR. BLOOM: The motion -- the motion that we  
 24 file in San Diego is to have them released, and we have to

ACCUSCRIPTS (702) 391-0379

1 MR. LAURENT: Judge, before that order goes  
 2 out -- I know the defense is going to prepare it -- we'd  
 3 like to see that before it goes out.  
 4 THE COURT: Well, I'm not going to sign it  
 5 until Monday because I won't be here, but as far as the  
 6 minute order, the court clerk can put that in the minutes,  
 7 and I'll make a minute order available to both sides as soon  
 8 as the court clerk prepares it.  
 9 MR. LAURENT: Thank you.  
 10 MR. BLOOM: And I would ask the Court's --  
 11 the Court said there was no -- what was the wording, Judge?  
 12 What I was hoping to get from this Court was  
 13 a -- a -- that sort of finding isn't -- I don't think fits  
 14 into the balancing very much.  
 15 What I was hoping to get is the -- a  
 16 response to the issue where the California court says:  
 17 Well, why -- what's the important --  
 18 MR. LAURENT: Judge, I invoked the  
 19 exclusionary rule --  
 20 THE COURT: This is not evidence, so it's  
 21 okay for them to be here.  
 22 MR. BLOOM: But the California court could  
 23 say: I don't know why these matters could be relevant in  
 24 balancing that to make a determination.

ACCUSCRIPTS (702) 391-0379

1 In this case, what I was asking this Court  
2 to say is that we have raised the issue of self defense in  
3 our case here; therefore, records there could be relevant.

4 THE COURT: Okay. Well, that would be  
5 the -- the order would be that there would be an in camera  
6 inspection done by a Superior Court judge to determine if  
7 there is any relevant information as to your claim for self  
8 defense.

9 And the judge can look at it and see if  
10 there is or there isn't.

11 MR. BLOOM: So, basically, all I want to  
12 know is if this Court is confirming the fact that we have  
13 raised self defense in this issue.

14 I think that that's all -- the only  
15 balancing that we have.

16 THE COURT: You've done that and I will  
17 allow it for the Court to look at it and see if there is  
18 anything in there that could possibly relate to self  
19 defense.

20 MR. BLOOM: All right. Thank you, Your  
21 Honor.

22 MR. LAURENT: Judge, we could handle that  
23 search warrant issue right now.

24 THE COURT: Okay, the search warrant, that's

ACCUSCRIPTS (702) 391-0379

1 The judge has a duty as a judge to verify  
2 and sign that everything is accurate and what the judge  
3 approved.

4 So when the judge did the -- signed the  
5 written search warrant, the judge did that verification, so  
6 that's sufficient authentication, in the mind of the Court,  
7 to comply with the law.

8 So, Mr. Laurent, did you want this back or  
9 did you --

10 MR. LAURENT: Please, Judge, if I could --  
11 thank you.

12 I will put it back in my document.

13 (Whereupon, a sotto voce at this time.)

14 MS. NAVARRO: Judge, is that now going to be  
15 filed with the correct number so that we can get a copy of  
16 it?

17 Because I never did receive a copy of it.  
18 We looked for it too.

19 THE COURT: Yeah.

20 MR. LAURENT: The only thing that's missing  
21 is the signature, Judge. We'll make a copy.

22 THE COURT: We'll make a copy and get the  
23 signature page for the defense then like that.

24 Let's do this: The TPO issue, Mr. Bloom, I

ACCUSCRIPTS (702) 391-0379

1 next.

2 MR. LAURENT: I've already shown this to  
3 counsel. Here is a certified copy of the original. It is  
4 signed by Judge Smith.

5 I think it was filed under a different  
6 District Court case number.

7 THE COURT: Okay. Anything else on the  
8 search warrant, Mr. Bloom?

9 MR. BLOOM: The -- we'll submit the matter  
10 to the Court, but on the basis also that it was my  
11 understanding of Nevada law -- and our motion specifically  
12 says that the tape recording itself must be available to the  
13 defense -- must be available to the Court.

14 That has not been produced.

15 And this is a certified copy of a document  
16 with a signature. I'm sure there is an original of that  
17 somewhere.

18 But even with that original, it doesn't  
19 satisfy the requirement of the tape recording itself.

20 THE COURT: Okay. The defense objection is  
21 overruled in that -- for this reason: The courts -- when  
22 the tape recordings are done, the tape recording is -- the  
23 search warrant is an exact transcription of what is done on  
24 the tape recording.

ACCUSCRIPTS (702) 391-0379

1 assume you -- what is your position on the TPO in general  
2 coming into evidence then?

3 MR. BLOOM: I don't see --

4 MR. LAURENT: Judge, I don't think we're  
5 offering the TPO at this time.

6 MS. GOETTSCH: Yeah, I mean, we're --  
7 it's --

8 THE COURT: What is the TPO issue?

9 MR. LAURENT: It was resolved with the --

10 THE COURT: With the ruling on the  
11 September --

12 MR. LAURENT: Correct.

13 MR. BLOOM: I actually think there are  
14 certain portions of the TPO which are going to come into  
15 evidence on the defense side.

16 THE COURT: Okay. Then what -- if either  
17 side wants to offer it with redactions or without  
18 redactions, we'll cross that bridge when we come to it; and  
19 then each side can look at it and see if the redactions are  
20 appropriate, and then we'll deal with it.

21 MR. BLOOM: Well, we're going to --

22 THE COURT: Right now, until one side or the  
23 other offers it, there is nothing we can --

24 MR. BLOOM: Well, we are going to offer it

ACCUSCRIPTS (702) 391-0379

1 Your Honor, but, of course, the first six pages or so of  
2 that were created by the court; that things that we're going  
3 to offer is the fact that the TPO was sought and was  
4 obtained.

5 THE COURT: Why don't do you this, Mr.

6 Bloom: Prepare a redacted version of what you want to  
7 offer; show it to the State; see if the State has any  
8 objection to it or the State wants to add anything else.

9 If you can't agree, then I will rule on it.

10 MR. BLOOM: Very well.

11 THE COURT: We will do that, but we won't do  
12 that today.

13 Okay. Let's deal with the -- I'll call it  
14 the streamline objection, Mr. Bloom, what you wanted to do,  
15 and I will get back to the court clerk in a minute, because  
16 we have a bunch of motions here, to tell her which is which.

17 But on that one, my understanding it's the  
18 law for either side; either side has a right to raise  
19 matters pretrial; the Court rules on them; either side  
20 reserves their objections to it for appellate purposes.

21 So as far as your objections at trial, I  
22 mean, you could say: Objection, irrelevant; objection  
23 immaterial, whatever it is. You can do it in two words and  
24 then go from there.

ACCUSCRIPTS (702) 391-0379

1 Well, that doesn't give the Court the  
2 opportunity to hear that particular issue.

3 Now, 20 years down the road, what they're  
4 looking at is they will have someone look at it and say:  
5 Well, you know, we had this federalized motion here. We  
6 said: Under all federal grounds.

7 Hmm. Let's look at that.

8 And now they start trying to piece it  
9 together, second guessing everyone.

10 You need to make contemporaneous objections;  
11 that's what the law requires; state your reasons so the  
12 Court can hear it.

13 That's why we have a judge here. If not, we  
14 could submit this all on pleadings and walk away.

15 MR. BLOOM: Maybe Mr. Laurent misunderstands  
16 what we're doing.

17 I'm not saying that this document creates  
18 objections.

19 I'm saying when I make the objection during  
20 the trial, I don't have to go through a litany of saying  
21 that this is under this federal authority, this federal  
22 authority, this federal authority, this federal authority;  
23 that this -- that by filing this document and by getting  
24 leave of the Court, I can say my objection is made under

ACCUSCRIPTS (702) 391-0379

1 So I'm not sure what else you want me to do.

2 MR. BLOOM: Well, what I wanted to do is  
3 avoid having to make a record of each objection, that we're  
4 doing it under federal authority, and that's what this does.

5 This preserves the federalization of our  
6 objections as we're going along.

7 THE COURT: Well --

8 MR. BLOOM: Otherwise, I have to go through  
9 and state on the record every objection, and the Court has  
10 to allow me to state on the record under which precise  
11 federal grounds that I'm doing it and that seems to be a  
12 very cumbersome and long thing.

13 MR. LAURENT: Let me tell you why we have to  
14 do it that way, Judge: Because throughout the trial -- we  
15 never have perfect trials.

16 From start to finish, we never have perfect  
17 trials. If we allow someone to point to a document and say  
18 yeah, I said it in the document, then we can't fix it in the  
19 process.

20 But this is an attempt to do -- this is for  
21 post-conviction. And this is something that comes down from  
22 Michael Pachetta, and doing it that way, what they want to  
23 do is be able to say: Well, I filed a motion ahead of  
24 time.

ACCUSCRIPTS (702) 391-0379

1 both state and federal ground, without having to list the  
2 federal grounds.

3 That's all I'm saying. I'm not trying to  
4 say this Court -- that I've now objected to everything that  
5 comes out.

6 I'm saying that by granting leave of the  
7 Court allowing us to do it this way, when I make the  
8 objection, I can just say, irrelevance or I can just say  
9 hearsay, or whatever the objection is, and to the extent  
10 that there is federal authority that supports that, that's  
11 incorporated within it. It's very simple.

12 MR. LAURENT: Judge --

13 MR. BLOOM: That's not doing any of the  
14 things that the prosecutor brought up.

15 THE COURT: Mr. Laurent.

16 MR. LAURENT: I need to have the opportunity  
17 to respond to the specific objection --

18 MR. BLOOM: That's what he --

19 MR. LAURENT: Can I finish, please?

20 THE COURT: Go ahead.

21 MR. LAURENT: I need to have the opportunity  
22 to respond to the specific objection. I cannot be relying  
23 on: Well, that's federal; that's federal; that's federal.

24 I need to have the opportunity -- because

ACCUSCRIPTS (702) 391-0379

1 there are exceptions to all these little federal rules and I  
2 need that opportunity.

3 THE COURT: Okay. The defense's motion is  
4 denied on that.

5 You can get -- Mr. Bloom, I understand.

6 I kind of thought it was a good idea when I  
7 read it, but if they're objecting to it, we'll just have to  
8 state the grounds for it and just do this as succinctly as  
9 possible to preserve the record.

10 MR. BLOOM: Well, there isn't -- I guess  
11 there is another way to do it, Your Honor.

12 We could talk about whether or not we say  
13 due process. We could talk about -- I could announce the  
14 amendment, the Fifth, Sixth Amendment or something like  
15 that.

16 But the -- I -- the reason why I think we  
17 have to do this -- the Court, obviously, can do it the other  
18 way -- is that it takes about 15 seconds, 30 seconds, to  
19 recite this and put it on the record.

20 There was, in -- as I have outlined in this  
21 motion, there was a circumstance where it was clear that  
22 there was an error all the way through the proceedings,  
23 but --

24 THE COURT: Well, I -- I understand what you

ACCUSCRIPTS (702) 391-0379

1 voir dire or a juror gets removed, the Court just said: No,  
2 you have to say if it's a Sixth Amendment right to impartial  
3 jury or Sixth Amendment right to --

4 THE COURT: Mr. Bloom, what I will do to  
5 speed this along is when we take breaks, I will allow you to  
6 supplement the record during the breaks and deem it  
7 contemporaneous objections to what you are making; and the  
8 same is with the State as well.

9 That way, we'll put it in almost immediately  
10 afterwards and I will rule, as a matter of law, it's  
11 contemporaneous.

12 MR. BLOOM: Thank you, Your Honor.

13 THE COURT: Okay. The other -- the final  
14 two issues I have here are the destruction of evidence  
15 motion.

16 I think maybe what we can do is set that one  
17 over to -- I did read the State's opposition, to come into  
18 that this morning, but why don't I set that over to  
19 Wednesday morning on that one -- and, Mr. Bloom, because I  
20 want to give you a chance to respond to what the State says  
21 and I don't know if you've even had a chance to read it yet.

22 MR. BLOOM: No, I haven't.

23 THE COURT: Okay. Well, you need to read  
24 it, so you can respond to it, so I will set that over to

ACCUSCRIPTS (702) 391-0379

1 are saying.

2 I appreciate your offer to streamline it  
3 here, but I think the parties have a right to have  
4 objections stated.

5 So we'll just have to do it that way: Just  
6 make the objections accordingly at the trial.

7 MR. BLOOM: All right.

8 THE COURT: All right.

9 MR. BLOOM: All right. Thank you.

10 THE COURT: Thank you.

11 MR. BLOOM: One other alternative could be,  
12 Your Honor, instead of saying the whole thing, we can refer  
13 to them is a short way, saying Sixth Amendment.

14 THE COURT: That's fine.

15 Just something so you feel, for appellate  
16 purposes, it's covered. If you say objection under the  
17 Sixth Amendment, I assume that covers all Sixth Amendment  
18 issues.

19 MR. BLOOM: Well, it's interesting: The  
20 courts have said you have a right to six -- let's just deal  
21 with one thing on a federal case, which dealt with this  
22 Sixth Amendment right to jury.

23 You would think that that's covered by the  
24 Sixth Amendment right to jury. If something is improper on

ACCUSCRIPTS (702) 391-0379

1 Wednesday morning at -- let me just look real quick at what  
2 I have, because we'll be back Wednesday morning for some --  
3 we'll make it at ten a.m. on Wednesday morning.

4 MR. LAURENT: Thank you, Judge.

5 THE COURT: Ten a.m. Wednesday morning; ten  
6 a.m.

7 MR. BLOOM: Thank you, Your Honor.

8 THE COURT: Okay. The only other matter,  
9 Mr. Bloom, I have on your list is the issue regarding expert  
10 witnesses and statements.

11 Again, what was that?

12 Just to refresh my recollection.

13 MR. BLOOM: There was a requirement of the  
14 Court or -- to characterize it or something -- that the  
15 People complained regarding the type of characterization  
16 that the defense gave of their experts; specifically, they  
17 complained about Lieutenant Steve Franks.

18 And we were required to give to the  
19 prosecution, by four p.m. yesterday, a designation of our  
20 experts with the statement of what they --

21 THE COURT: Right.

22 MR. BLOOM: -- were --

23 THE COURT: Is that done?

24 MR. BLOOM: Yes.

ACCUSCRIPTS (702) 391-0379



THE COURT: Okay. Miss Goettsch.

MS. GOETTSCH: Here's my issue with it though: It's the same -- what I received at four o'clock yesterday is the same information that I have received from them since the designation on the 15th or what have you.

It says things like: Richard Fox, a criminalist; blood spatters, ballistics; and crime scene analyst. He will give opinions related thereto.

I need to know what those opinions are.

It's absolutely impossible for me to go hire a rebuttal expert that would look at the same evidence and say: Well, I don't come up to this same agreement or this same opinion regarding blood splatter as the defense expert, because I don't know what Richard Fox specifically is going to say.

So, once again, I get a six page designation that tells me who the experts are going to be: Dr. John Eisel, a pathologist, medical doctor, with extensive experience in conducting autopsies. He's going to testify about autopsy findings, nature of the wounds, cause of death, incapacitating nature of wounds.

But that's it. It's very general.

I don't know -- what about the incapacitating nature of the wound?

ACCUSCRIPTS (702) 391-0379

155

I can't go to my own coroner and say: How do you feel about this opinion to form a rebuttal opinion without knowing what Dr. John Eisel is going to say specifically.

That's -- that's what the statute requires. We have to be able to give a rebuttal, hire a rebuttal expert, and we can't do that with this kind of fluffy designation.

And that -- that is my problem.

THE COURT: Okay.

MS. GOETTSCH: And we still don't have reports.

THE COURT: Mr. Bloom.

MR. BLOOM: And I invite the Court to read this document. I filed one with the Court.

THE COURT: Okay.

MR. BLOOM: I invite the Court to compare it -- I didn't file this report.

THE COURT: Mr. Bloom --

MS. GOETTSCH: And I know what he's going to say. He's going to say we did the same thing.

But here's -- here's the --

MR. BLOOM: Excuse me. Don't I get a chance, Your Honor?

ACCUSCRIPTS (702) 391-0379

THE COURT: Go ahead. Your turn.

MR. BLOOM: Thank you.

I invite the Court to read the two page one that we got.

I invite the Court to look at the statute of what is required in here.

I have complied with the statute beyond the requirements of the statute.

THE COURT: What I will do, Miss Goettsch, I will look at each side's response. I will deal with it at ten a.m. Wednesday morning.

MS. GOETTSCH: And can I say one thing though?

Here is the issue: Certainly, our designation is just like this, you know: Dr. Larry Sims will testify regarding autopsy findings.

But the difference is I have given a report with very specific findings: She had seven entry wounds and X number of exit wounds.

That second part is what I'm missing from his.

THE COURT: I will look at it and look at the statute and I will deal with it Wednesday morning.

MS. GOETTSCH: Okay.

ACCUSCRIPTS (702) 391-0379

157

MR. BLOOM: All right.

THE COURT: Okay. Thank you.

MR. BLOOM: Well, there is one -- all right.

I know we're late, Judge, but I want to say it's unfair on that characterization.

I got a report from Dr. Sims, who did the -- the coroner who did the autopsy.

There is nothing once in those things that talks about angle of shots or --

THE COURT: Mr. Bloom, I will allow you to address it Wednesday morning.

MR. BLOOM: Thank you.

THE COURT: I'm going to allow each side -- once I read it, then I will have some questions and all and I will allow each side to comment on it.

MR. BLOOM: Okay. Thank you, Judge.

THE COURT: Okay. I think there is some other motions here, but I'm just going to go through this with the court clerk.

Okay. The motion -- I'll deal with the court clerk separately.

I think we've covered everything.

As far as the terminology, like Mrs. Centofanti and victim and all like that, I would ask you to

ACCUSCRIPTS (702) 391-0379

1 refer to her as Mrs. Centofanti or Miss Eisenman -- I  
2 think -- was her name changed in the divorce? I don't  
3 recall.

4 MR. BLOOM: I don't -- I don't believe so.

5 THE COURT: -- or the decedent.

6 You can use those -- that terminology.

7 The victim -- even though, for the purposes  
8 of our things in court, we use the defendant and victim,  
9 common terminology, I think, in this case here, probably  
10 decedent would be a better term or her actual name.

11 So I agree with the defense on that motion  
12 to deal with that on the name.

13 Let's see what else.

14 MR. BLOOM: There was a motion we filed,  
15 Your Honor, that has to do with attorney status of my client  
16 and -- and I didn't add it to my list. I'm sorry.

17 MS. GOETTSCH: I haven't seen that one.

18 THE COURT: I haven't seen it either.

19 So you can look for that.

20 MR. BLOOM: Okay.

21 THE COURT: Okay. The prosecution can tell  
22 the -- the jury it represents the State of Nevada. It's  
23 duly elected -- the District Attorney is duly elected by the  
24 citizens of Clark County to represent the State in any state

ACCUSCRIPTS (702) 391-0379

1 statutes that are violated and that's who they represent  
2 and all like that.

3 The same way the U.S. attorney can tell the  
4 jury in a federal case they represent the United States and  
5 give that designation.

6 The reasonable doubt instruction that you  
7 want, Mr. Bloom, that's denied.

8 I mean, there is a statutory definition of  
9 reasonable doubt in Nevada and that's the one we'll give in  
10 this case.

11 Okay. I think that's it. I think that's  
12 everything, other than the matters that we continued.

13 (Whereupon, a sotto voce at this time.)

14 THE COURT: Okay. Thank you very much.

15 We'll see you on -- you will have the  
16 transcript probably tomorrow morning, if you want to file  
17 that.

18 MR. LAURENT: Thank you. I appreciate it.

19 ATTEST: Full, true and accurate transcript of proceedings.

20  
21 ~~RENEE SILVAGGIO, C.C.R. NO. 122~~  
22 OFFICIAL COURT REPORTER  
23  
24

ACCUSCRIPTS (702) 391-0379

1 CONCORDANCE  
2 State v. Centofanti  
3 December 27, 2001  
4 --A--  
5 above 19-23, 30-21, 40-24  
6 absence 30-19  
7 absent 30-8  
8 absolutely 28-12, 74-16, 107-4, 128-9, 154-10  
9 accident 90-20  
10 accordance 140-21  
11 accordingly 151-6  
12 accurate 138-13, 144-2, 159-19  
13 accused's 125-14  
14 across 81-15  
15 act 88-8, 98-13, 98-22, 131-6  
16 acted 88-21  
17 acting 90-5  
18 action 14-23  
19 acts 5-21, 83-6, 85-9, 88-4, 88-5, 89-13, 89-19, 93-20, 93-21, 94-9, 95-18, 96-17, 97-9, 97-25, 102-10, 103-9, 103-12, 39-15, 158-10  
20 actual 9-14, 25-19, 45-1, 46-15, 52-10, 56-15, 72-2, 95-12, 136-12, 142-13  
21 actually 28-17, 73-23, 80-19, 146-8, 158-16  
22 add 7-1, 44-6, 73-17, 73-4  
23 additional 127-9, 133-20  
24 additionally 125-4, 50-5, 50-13, 73-10, 78-4, 86-23, 87-14, 130-4, 133-4, 157-11  
address 87-14, 130-4  
addressing 87-14, 130-4  
adequately 92-11, 132-12, 132-18, 133-4  
admissibility 7-9, 85-15  
admissible 82-8, 83-11, 11-16, 79-21, 79-24, 80-14, 80-34, 84-12, 85-11, 85-16, 87-11, 89-20, 5-18, 82-12  
admission 5-18, 82-12  
admissions 5-18, 82-12  
admit 80-13, 82-6, 83-6  
admittal 80-13, 82-6, 83-6  
admitted 79-19, 13-6, 21-4, 56-16, 74-11, 95-20  
admitting 79-10  
adult 7-18  
advance 131-15  
Advanced 85-19  
advice 82-15

ACCUSCRIPTS (702) 391-0379

1 alternative 151-11  
2 always 70-19, 81-5, 121-5  
3 ambivalent 84-10  
4 ambush 126-7, 132-10  
5 amendment 89-11, 100-12, 125-7, 125-15, 150-14, 151-13, 151-17, 151-22, 151-24, 152-2, 152-3  
6 amount 24-13, 53-11, 53-12, 53-22  
7 analyst 152-3  
8 Angel 96-5  
9 angle 157-9  
10 angry 23-2  
11 announce 150-13  
12 answer 5-3, 5-7, 29-1, 69-24, 119-3  
13 answered 22-12, 25-9, 28-17, 30-3, 41-7, 54-2, 54-4  
14 answered' 22-13, 22-16  
15 answering 36-8  
16 answers 56-15, 112-19  
17 anybody 12-21  
18 anymore 12-4  
19 anyone 67-17, 131-13  
20 anything 10-2, 12-7, 27-9, 38-23, 39-1, 39-2, 39-3, 41-14, 52-22, 54-13, 57-6, 57-8, 57-22, 58-10, 61-17, 62-21, 68-1, 72-20, 73-11, 73-23, 78-3, 81-7, 82-16, 83-4, 88-3, 89-14, 89-15, 89-12, 110-23, 111-14, 134-19, 142-18, 143-7, 146-8  
21 apologize 116-5, 134-19  
22 apparently 28-11  
23 appeal 130-11  
24 appear 3-18, 55-15, 67-7, 69-11, 69-14, 70-4, 70-8, 115-17  
appearance 48-8, 115-17  
appeared 19-7, 21-15, 38-3, 53-6, 55-16, 56-6, 81-15  
appears 81-15  
appellate 94-6, 20, 151-15  
apple 94-14  
apples 94-2  
application 94-2  
applies 80-15, 111-19  
apply 90-7, 90-9, 98-16, 137-2  
appear 17-16  
appreciate 10-7, 73-17, 108-19, 111-23, 136-15, 151-2, 159-18  
apprehension 62-20

ACCUSCRIPTS (702) 391-0379

1 advisable 134-10  
2 advise 4-4, 4-5, 119-21  
3 advised 3-12, 4-18, 16-1  
4 affirmative 111-1  
5 affirmatively 111-10  
6 afraid 38-2, 45-24, 46-12, 46-13, 46-18, 47-3, 55-5, 55-11, 55-13, 68-13  
7 afternoon 16-6  
8 afterwards 52-10  
9 again 4-10, 5-7, 27-7, 31-16, 58-16, 59-14, 60-5, 117-1, 120-13, 125-15, 130-4, 130-7, 133-2, 153-11, 154-16  
10 against 57-5, 58-13, 75-24, 102-4  
11 agencies 140-2  
12 aggressiveness 98-20  
13 ago 62-21  
14 agree 7-3, 79-14, 83-7, 113-4, 113-13, 114-4, 14-18, 133-16, 146-9, 158-11  
15 agreed 13-18, 133-16, 146-9, 158-11  
16 agreement 13-18, 133-16, 146-9, 158-11  
17 ahead 52-6, 14-19, 40-11, 46-23, 87-16, 12-17, 135-7, 140-2, 147-23, 149-20, 28-21  
18 Albright 28-21  
19 Alfred 3-2, 14-10, 15-24, 44-23, 45-21, 46-9, 75-22  
20 alleged 88-6, 127-21  
21 alleging 88-6  
22 Allen 3-9  
23 allocate 3-9  
24 allow 80-16, 77-14, 80-13, 83-1, 83-7, 83-12, 84-24, 93-19, 94-9, 95-5, 100-10, 108-22, 108-24, 113-12, 114-16, 119-7, 119-9, 119-13, 121-8, 122-22, 122-25, 129-18, 129-19, 132-20, 138-16, 138-19, 142-17, 147-10, 147-17, 152-5, 157-10, 157-13, 57-15  
25 allowed 81-9, 95-8, 95-20, 130-9  
26 allowing 149-7  
27 almost 69-17, 136-16, 137-2, 152-9  
28 alone 33-5, 38-14, 54-11, 54-12, 54-14, 95-21  
29 along 124-16, 147-6, 152-5  
30 altercation 47-18  
31 alternate 117-6  
32 alternates 117-7, 117-9, 117-12, 117-13, 117-16, 117-20, 118-3, 118-6, 118-9

ACCUSCRIPTS (702) 391-0379

1 apprehensive 62-19  
2 approach 32-5, 43-14  
3 appropriate 115-12, 140-24, 145-20  
4 approve 120-13  
5 approved 122-3  
6 approximate 53-12, 53-23  
7 approximately 12-5, 24-4, 50-1, 53-14, 9-5, 21-7, 37-7, 41-21, 42-12, 42-13, 43-8, 86-1  
8 areas 103-16, 105-20, 114-10, 114-11  
9 arena 107-23, 107-24  
10 argue 81-17, 88-13, 109-22, 109-23, 120-14, 135-21, 135-9, 136-9, 136-11, 138-24, 134-21, 134-23, 138-24  
11 argued 38-2, 39-5, 39-6, 80-20  
12 arguing 73-21, 94-20, 135-23, 135-24  
13 argument 73-21, 94-20, 135-23, 135-24  
14 argumentative 73-21, 94-20, 135-23, 135-24  
15 arguments 114-23  
16 ants 17-10  
17 arose 52-17  
18 around 10-15, 17-11, 36-5, 49-1, 137-5  
19 arrangements 3-19  
20 arrest 20-18, 20-21, 20-24, 29-5, 29-8, 29-23, 20-8, 76-20  
21 arrested 20-22, 29-5, 30-17, 57-17, 76-19, 79-19  
22 arresting 80-17  
23 arrests 80-17  
24 arrival 15-18, 15-17, 17-4, 80-6  
arrive 15-20, 37-13, 80-18  
arrived 15-20, 37-13, 80-18  
ask 17-10, 42-9, 53-10, 11-15, 12-22, 29-24, 29-25, 51-20, 31-16, 38-18, 39-7, 39-11, 88-23, 15-11, 119-14, 119-23, 135-23, 141-10, 157-21  
asked 135-23, 141-10, 22-8, 23-15, 25-16, 25-17, 29-16, 29-21, 29-22, 32-1, 32-21, 38-17, 38-19, 26-21, 29-22, 50-1, 51-1, 51-19, 52-19, 82-14, 82-15, 85-15, 65-20, 66-13, 68-21, 126-3, 126-10, 126-11, 126-12, 126-13, 126-14, 126-15, 126-16, 126-17, 126-18, 126-19, 126-20, 126-21, 126-22, 126-23, 126-24, 126-25, 126-26, 126-27, 126-28, 126-29, 126-30, 126-31, 126-32, 126-33, 126-34, 126-35, 126-36, 126-37, 126-38, 126-39, 126-40, 126-41, 126-42, 126-43, 126-44, 126-45, 126-46, 126-47, 126-48, 126-49, 126-50, 126-51, 126-52, 126-53, 126-54, 126-55, 126-56, 126-57, 126-58, 126-59, 126-60, 126-61, 126-62, 126-63, 126-64, 126-65, 126-66, 126-67, 126-68, 126-69, 126-70, 126-71, 126-72, 126-73, 126-74, 126-75, 126-76, 126-77, 126-78, 126-79, 126-80, 126-81, 126-82, 126-83, 126-84, 126-85, 126-86, 126-87, 126-88, 126-89, 126-90, 126-91, 126-92, 126-93, 126-94, 126-95, 126-96, 126-97, 126-98, 126-99, 126-100, 126-101, 126-102, 126-103, 126-104, 126-105, 126-106, 126-107, 126-108, 126-109, 126-110, 126-111, 126-112, 126-113, 126-114, 126-115, 126-116, 126-117, 126-118, 126-119, 126-120, 126-121, 126-122, 126-123, 126-124, 126-125, 126-126, 126-127, 126-128, 126-129, 126-130, 126-131, 126-132, 126-133, 126-134, 126-135, 126-136, 126-137, 126-138, 126-139, 126-140, 126-141, 126-142, 126-143, 126-144, 126-145, 126-146, 126-147, 126-148, 126-149, 126-150, 126-151, 126-152, 126-153, 126-154, 126-155, 126-156, 126-157, 126-158, 126-159, 126-160, 126-161, 126-162, 126-163, 126-164, 126-165, 126-166, 126-167, 126-168, 126-169, 126-170, 126-171, 126-172, 126-173, 126-174, 126-175, 126-176, 126-177, 126-178, 126-179, 126-180, 126-181, 126-182, 126-183, 126-184, 126-185, 126-186, 126-187, 126-188, 126-189, 126-190, 126-191, 126-192, 126-193, 126-194, 126-195, 126-196, 126-197, 126-198, 126-199, 126-200, 126-201, 126-202, 126-203, 126-204, 126-205, 126-206, 126-207, 126-208, 126-209, 126-210, 126-211, 126-212, 126-213, 126-214, 126-215, 126-216, 126-217, 126-218, 126-219, 126-220, 126-221, 126-222, 126-223, 126-224, 126-225, 126-226, 126-227, 126-228, 126-229, 126-230, 126-231, 126-232, 126-233, 126-234, 126-235, 126-236, 126-237, 126-238, 126-239, 126-240, 126-241, 126-242, 126-243, 126-244, 126-245, 126-246, 126-247, 126-248, 126-249, 126-250, 126-251, 126-252, 126-253, 126-254, 126-255, 126-256, 126-257, 126-258, 126-259, 126-260, 126-261, 126-262, 126-263, 126-264, 126-265, 126-266, 126-267, 126-268, 126-269, 126-270, 126-271, 126-272, 126-273, 126-274, 126-275, 126-276, 126-277, 126-278, 126-279, 126-280, 126-281, 126-282, 126-283, 126-284, 126-285, 126-286, 126-287, 126-288, 126-289, 126-290, 126-291, 126-292, 126-293, 126-294, 126-295, 126-296, 126-297, 126-298, 126-299, 126-300, 126-301, 126-302, 126-303, 126-304, 126-305, 126-306, 126-307, 126-308, 126-309, 126-310, 126-311, 126-312, 126-313, 126-314, 126-315, 126-316, 126-317, 126-318, 126-319, 126-320, 126-321, 126-322, 126-323, 126-324, 126-325, 126-326, 126-327, 126-328, 126-329, 126-330, 126-331, 126-332, 126-333, 126-334, 126-335, 126-336, 126-337, 126-338, 126-339, 126-340, 126-341, 126-342, 126-343, 126-344, 126-345, 126-346, 126-347, 126-348, 126-349, 126-350, 126-351, 126-352, 126-353, 126-354, 126-355, 126-356, 126-357, 126-358, 126-359, 126-360, 126-361, 126-362, 126-363, 126-364, 126-365, 126-366, 126-367, 126-368, 126-369, 126-370, 126-371, 126-372, 126-373, 126-374, 126-375, 126-376, 126-377, 126-378, 126-379, 126-380, 126-381, 126-382, 126-383, 126-384, 126-385, 126-386, 126-387, 126-388, 126-389, 126-390, 126-391, 126-392, 126-393, 126-394, 126-395, 126-396, 126-397, 126-398, 126-399, 126-400, 126-401, 126-402, 126-403, 126-404, 126-405, 126-406, 126-407, 126-408, 126-409, 126-410, 126-411, 126-412, 126-413, 126-414, 126-415, 126-416, 126-417, 126-418, 126-419, 126-420, 126-421, 126-422, 126-423, 126-424, 126-425, 126-426, 126-427, 126-428, 126-429, 126-430, 126-431, 126-432, 126-433, 126-434, 126-435, 126-436, 126-437, 126-438, 126-439, 126-440, 126-441, 126-442, 126-443, 126-444, 126-445, 126-446, 126-447, 126-448, 126-449, 126-450, 126-451, 126-452, 126-453, 126-454, 126-455, 126-456, 126-457, 126-458, 126-459, 126-460, 126-461, 126-462, 126-463, 126-464, 126-465, 126-466, 126-467, 126-468, 126-469, 126-470, 126-471, 126-472, 126-473, 126-474, 126-475, 126-476, 126-477, 126-478, 126-479, 126-480, 126-481, 126-482, 126-483, 126-484, 126-485, 126-486, 126-487, 126-488, 126-489, 126-490, 126-491, 126-492, 126-493, 126-494, 126-495, 126-496, 126-497, 126-498, 126-499, 126-500, 126-501, 126-502, 126-503, 126-504, 126-505, 126-506, 126-507, 126-508, 126-509, 126-510, 126-511, 126-512, 126-513, 126-514, 126-515, 126-516, 126-517, 126-518, 126-519, 126-520, 126-521, 126-522, 126-523, 126-524, 126-525, 126-526, 126-527, 126-528, 126-529, 126-530, 126-531, 126-532, 126-533, 126-534, 126-535, 126-536, 126-537, 126-538, 126-539, 126-540, 126-541, 126-542, 126-543, 126-544, 126-545, 126-546, 126-547, 126-548, 126-549, 126-550, 126-551, 126-552, 126-553, 126-554, 126-555, 126-556, 126-557, 126-558, 126-559, 126-560, 126-561, 126-562, 126-563, 126-564, 126-565, 126-566, 126-567, 126-568, 126-569, 126-570, 126-571, 126-572, 126-573, 126-574, 126-575, 126-576, 126-577, 126-578, 126-579, 126-580, 126-581, 126-582, 126-583, 126-584, 126-585, 126-586, 126-587, 126-588, 126-589, 126-590, 126-591, 126-592, 126-593, 126-594, 126-595, 126-596, 126-597, 126-598, 126-599, 126-600, 126-601, 126-602, 126-603, 126-604, 126-605, 126-606, 126-607, 126-608, 126-609, 126-610, 126-611, 126-612, 126-613, 126-614, 126-615, 126-616, 126-617, 126-618, 126-619, 126-620, 126-621, 126-622, 126-623, 126-624, 126-625, 126-626, 126-627, 126-628, 126-629, 126-630, 126-631, 126-632, 126-633, 126-634, 126-635, 126-636, 126-637, 126-638, 126-639, 126-640, 126-641, 126-642, 126-643, 126-644, 126-645, 126-646, 126-647, 126-648, 126-649, 126-650, 126-651, 126-652, 126-653, 126-654, 126-655, 126-656, 126-657, 126-658, 126-659, 126-660, 126-661, 126-662, 126-663, 126-664, 126-665, 126-666, 126-667, 126-668, 126-669, 126-670, 126-671, 126-672, 126-673, 126-674, 126-675, 126-676, 126-677, 126-678, 126-679, 126-680, 126-681, 126-682, 126-683, 126-684, 126-685, 126-686, 126-687, 126-688, 126-689, 126-690, 126-691, 126-692, 126-693, 126-694, 126-695, 126-696, 126-697, 126-698, 126-699, 126-700, 126-701, 126-702, 126-703, 126-704, 126-705, 126-706, 126-707, 126-708, 126-709, 126-710, 126-711, 126-712, 126-713, 126-714, 126-715, 126-716, 126-717, 126-718, 126-719, 126-720, 126-721, 126-722, 126-723, 126-724, 126-725, 126-726, 126-727, 126-728, 126-729, 126-730, 126-731, 126-732, 126-733, 126-734, 126-735, 126-736, 126-737, 126-738, 126-739, 126-740, 126-741, 126-742, 126-743, 126-744, 126-745, 126-746, 126-747, 126-748, 126-749, 126-750, 126-751, 126-752, 126-753, 126-754, 126-755, 126-756, 126-757, 126-758, 126-759, 126-760, 126-761, 126-762, 126-763, 126-764, 126-765, 126-766, 126-767, 126-768, 126-769, 126-770, 126-771, 126-772, 126-773, 126-774, 126-775, 126-776, 126-777, 126-778, 126-779, 126-780, 126-781, 126-782, 126-783, 126-784, 126-785, 126-786, 126-787, 126-788, 126-789, 126-790, 126-791, 126-792, 126-793, 126-794, 126-795, 126-796, 126-797, 126-798, 126-799, 126-800, 126-801, 126-802, 126-803, 126-804, 126-805, 126-806, 126-807, 126-808, 126-809, 126-810, 126-811, 126-812, 126-813, 126-814, 126-815, 126-816, 126-817, 126-818, 126-819, 126-820, 126-821, 126-822, 126-823, 126-824, 126-825, 126-826, 126-827, 126-828, 126-829, 126-830, 126-831, 126-832, 126-833, 126-834, 126-835, 126-836, 126-837, 126-838, 126-839, 126-840, 126-841, 126-842, 126-843, 126-844, 126-845, 126-846, 126-847, 126-848, 126-849, 126-850, 126-851, 126-852, 126-853, 126-854, 126-855, 126-856, 126-857, 126-858, 126-859, 126-860, 126-861, 126-862, 126-863, 126-864, 126-865, 126-866, 126-867, 126-868, 126-869, 126-870, 126-871, 126-872, 126-873, 126-874, 126-875, 126-876, 126-877, 126-878, 126-879, 126-880, 126-881, 126-882, 126-883, 126-884, 126-885, 126-886, 126-887, 126-888, 126-889, 126-890, 126-891, 126-892, 126-893, 126-894, 126-895, 126-896, 126-897, 126-898,

1 assistance 50-14, 113-10  
 2 assume 48-10, 52-8, 56-23, 56-24, 57-4, 76-14,  
 80-22, 86-17, 145-1, 151-17  
 3 assumes 72-2  
 4 attached 87-21, 136-4  
 5 attaches 136-5  
 6 attempt 40-12, 100-20, 147-20  
 7 attempted 16-23  
 8 attempting 7-7, 71-14  
 9 attend 125-11  
 10 Attest 158-19  
 11 attorney 128-15, 128-20, 128-23, 129-4, 158-15,  
 158-23, 159-5  
 12 attorneys 3-8, 3-10, 4-6, 4-8, 5-6, 93-1, 113-10  
 13 Attorneys' 6-2, 8-18, 8-20, 8-21  
 14 audio 17-23  
 15 authentication 17-23  
 16 authority 17-23  
 17 authorized 126-12, 129-13, 134-6, 134-8,  
 135-9, 136-9  
 18 autopsies 135-9, 136-9  
 19 autopsy 9-12, 106-8, 119-5, 119-7, 119-11,  
 112-24, 120-17, 120-24, 154-20, 156-16,  
 157-7  
 20 available 8-22, 12-5, 48-3, 48-5, 62-24, 123-9,  
 141-7, 143-12, 143-13  
 21 Avenue 19-14  
 22 avoid 127-3  
 23 avoiding 77-18  
 24 aware 35-22, 61-2, 67-16, 67-19, 74-22, 74-23,  
 75-3, 75-4

--B--  
 18 B-e-e-t-s 134-15  
 19 B-o-n-l-e 125-20  
 20 baby 17-10  
 21 back 19-4, 20-4, 27-18, 27-23, 35-1, 35-4,  
 38-10, 44-18, 45-7, 59-4, 62-5, 62-12,  
 70-8, 82-8, 113-10, 116-21, 118-23,  
 135-10, 144-8, 144-12, 146-15, 153-2  
 22 background 107-22, 107-23, 114-2  
 23 backup 15-17, 15-21  
 24 backwards 122-13  
 bad 5-21, 79-17, 79-19, 81-3, 94-9, 102-10,  
 104-17, 109-19  
 balanced 123-3  
 balancing 7-17, 7-21, 8-4, 8-8, 107-18, 140-8,

ACCUSCRIPTS (702) 391-0379

1 blames 75-6  
 2 blaming 107-3  
 3 blended 99-21  
 4 blood 121-4  
 5 Bloom 3-8, 3-14, 3-22, 4-11, 4-18, 5-5, 5-11,  
 5-16, 6-10, 6-15, 6-21, 7-13, 8-4, 8-11,  
 8-19, 8-20, 8-21, 8-22, 10-13, 10-22, 10-23,  
 12-15, 23-20, 23-21, 23-22, 24-2, 28-23,  
 29-3, 31-11, 31-15, 32-2, 32-5, 32-9,  
 36-1, 40-15, 42-15, 42-21, 42-25, 42-29,  
 48-15, 48-19, 48-21, 49-17, 49-19, 48-13,  
 51-13, 54-3, 54-6, 58-22, 61-8, 61-20, 61-3,  
 63-19, 65-2, 65-22, 65-23, 65-24, 65-25,  
 66-20, 67-1, 67-2, 67-3, 67-4, 67-5, 67-6,  
 67-7, 67-8, 67-9, 67-10, 67-11, 67-12, 67-13,  
 67-14, 67-15, 67-16, 67-17, 67-18, 67-19,  
 67-20, 67-21, 67-22, 67-23, 67-24, 67-25,  
 67-26, 67-27, 67-28, 67-29, 67-30, 67-31,  
 67-32, 67-33, 67-34, 67-35, 67-36, 67-37,  
 67-38, 67-39, 67-40, 67-41, 67-42, 67-43,  
 67-44, 67-45, 67-46, 67-47, 67-48, 67-49,  
 67-50, 67-51, 67-52, 67-53, 67-54, 67-55,  
 67-56, 67-57, 67-58, 67-59, 67-60, 67-61,  
 67-62, 67-63, 67-64, 67-65, 67-66, 67-67,  
 67-68, 67-69, 67-70, 67-71, 67-72, 67-73,  
 67-74, 67-75, 67-76, 67-77, 67-78, 67-79,  
 67-80, 67-81, 67-82, 67-83, 67-84, 67-85,  
 67-86, 67-87, 67-88, 67-89, 67-90, 67-91,  
 67-92, 67-93, 67-94, 67-95, 67-96, 67-97,  
 67-98, 67-99, 67-100, 67-101, 67-102, 67-103,  
 67-104, 67-105, 67-106, 67-107, 67-108,  
 67-109, 67-110, 67-111, 67-112, 67-113,  
 67-114, 67-115, 67-116, 67-117, 67-118,  
 67-119, 67-120, 67-121, 67-122, 67-123,  
 67-124, 67-125, 67-126, 67-127, 67-128,  
 67-129, 67-130, 67-131, 67-132, 67-133,  
 67-134, 67-135, 67-136, 67-137, 67-138,  
 67-139, 67-140, 67-141, 67-142, 67-143,  
 67-144, 67-145, 67-146, 67-147, 67-148,  
 67-149, 67-150, 67-151, 67-152, 67-153,  
 67-154, 67-155, 67-156, 67-157, 67-158,  
 67-159, 67-160, 67-161, 67-162, 67-163,  
 67-164, 67-165, 67-166, 67-167, 67-168,  
 67-169, 67-170, 67-171, 67-172, 67-173,  
 67-174, 67-175, 67-176, 67-177, 67-178,  
 67-179, 67-180, 67-181, 67-182, 67-183,  
 67-184, 67-185, 67-186, 67-187, 67-188,  
 67-189, 67-190, 67-191, 67-192, 67-193,  
 67-194, 67-195, 67-196, 67-197, 67-198,  
 67-199, 67-200, 67-201, 67-202, 67-203,  
 67-204, 67-205, 67-206, 67-207, 67-208,  
 67-209, 67-210, 67-211, 67-212, 67-213,  
 67-214, 67-215, 67-216, 67-217, 67-218,  
 67-219, 67-220, 67-221, 67-222, 67-223,  
 67-224, 67-225, 67-226, 67-227, 67-228,  
 67-229, 67-230, 67-231, 67-232, 67-233,  
 67-234, 67-235, 67-236, 67-237, 67-238,  
 67-239, 67-240, 67-241, 67-242, 67-243,  
 67-244, 67-245, 67-246, 67-247, 67-248,  
 67-249, 67-250, 67-251, 67-252, 67-253,  
 67-254, 67-255, 67-256, 67-257, 67-258,  
 67-259, 67-260, 67-261, 67-262, 67-263,  
 67-264, 67-265, 67-266, 67-267, 67-268,  
 67-269, 67-270, 67-271, 67-272, 67-273,  
 67-274, 67-275, 67-276, 67-277, 67-278,  
 67-279, 67-280, 67-281, 67-282, 67-283,  
 67-284, 67-285, 67-286, 67-287, 67-288,  
 67-289, 67-290, 67-291, 67-292, 67-293,  
 67-294, 67-295, 67-296, 67-297, 67-298,  
 67-299, 67-300, 67-301, 67-302, 67-303,  
 67-304, 67-305, 67-306, 67-307, 67-308,  
 67-309, 67-310, 67-311, 67-312, 67-313,  
 67-314, 67-315, 67-316, 67-317, 67-318,  
 67-319, 67-320, 67-321, 67-322, 67-323,  
 67-324, 67-325, 67-326, 67-327, 67-328,  
 67-329, 67-330, 67-331, 67-332, 67-333,  
 67-334, 67-335, 67-336, 67-337, 67-338,  
 67-339, 67-340, 67-341, 67-342, 67-343,  
 67-344, 67-345, 67-346, 67-347, 67-348,  
 67-349, 67-350, 67-351, 67-352, 67-353,  
 67-354, 67-355, 67-356, 67-357, 67-358,  
 67-359, 67-360, 67-361, 67-362, 67-363,  
 67-364, 67-365, 67-366, 67-367, 67-368,  
 67-369, 67-370, 67-371, 67-372, 67-373,  
 67-374, 67-375, 67-376, 67-377, 67-378,  
 67-379, 67-380, 67-381, 67-382, 67-383,  
 67-384, 67-385, 67-386, 67-387, 67-388,  
 67-389, 67-390, 67-391, 67-392, 67-393,  
 67-394, 67-395, 67-396, 67-397, 67-398,  
 67-399, 67-400, 67-401, 67-402, 67-403,  
 67-404, 67-405, 67-406, 67-407, 67-408,  
 67-409, 67-410, 67-411, 67-412, 67-413,  
 67-414, 67-415, 67-416, 67-417, 67-418,  
 67-419, 67-420, 67-421, 67-422, 67-423,  
 67-424, 67-425, 67-426, 67-427, 67-428,  
 67-429, 67-430, 67-431, 67-432, 67-433,  
 67-434, 67-435, 67-436, 67-437, 67-438,  
 67-439, 67-440, 67-441, 67-442, 67-443,  
 67-444, 67-445, 67-446, 67-447, 67-448,  
 67-449, 67-450, 67-451, 67-452, 67-453,  
 67-454, 67-455, 67-456, 67-457, 67-458,  
 67-459, 67-460, 67-461, 67-462, 67-463,  
 67-464, 67-465, 67-466, 67-467, 67-468,  
 67-469, 67-470, 67-471, 67-472, 67-473,  
 67-474, 67-475, 67-476, 67-477, 67-478,  
 67-479, 67-480, 67-481, 67-482, 67-483,  
 67-484, 67-485, 67-486, 67-487, 67-488,  
 67-489, 67-490, 67-491, 67-492, 67-493,  
 67-494, 67-495, 67-496, 67-497, 67-498,  
 67-499, 67-500, 67-501, 67-502, 67-503,  
 67-504, 67-505, 67-506, 67-507, 67-508,  
 67-509, 67-510, 67-511, 67-512, 67-513,  
 67-514, 67-515, 67-516, 67-517, 67-518,  
 67-519, 67-520, 67-521, 67-522, 67-523,  
 67-524, 67-525, 67-526, 67-527, 67-528,  
 67-529, 67-530, 67-531, 67-532, 67-533,  
 67-534, 67-535, 67-536, 67-537, 67-538,  
 67-539, 67-540, 67-541, 67-542, 67-543,  
 67-544, 67-545, 67-546, 67-547, 67-548,  
 67-549, 67-550, 67-551, 67-552, 67-553,  
 67-554, 67-555, 67-556, 67-557, 67-558,  
 67-559, 67-560, 67-561, 67-562, 67-563,  
 67-564, 67-565, 67-566, 67-567, 67-568,  
 67-569, 67-570, 67-571, 67-572, 67-573,  
 67-574, 67-575, 67-576, 67-577, 67-578,  
 67-579, 67-580, 67-581, 67-582, 67-583,  
 67-584, 67-585, 67-586, 67-587, 67-588,  
 67-589, 67-590, 67-591, 67-592, 67-593,  
 67-594, 67-595, 67-596, 67-597, 67-598,  
 67-599, 67-600, 67-601, 67-602, 67-603,  
 67-604, 67-605, 67-606, 67-607, 67-608,  
 67-609, 67-610, 67-611, 67-612, 67-613,  
 67-614, 67-615, 67-616, 67-617, 67-618,  
 67-619, 67-620, 67-621, 67-622, 67-623,  
 67-624, 67-625, 67-626, 67-627, 67-628,  
 67-629, 67-630, 67-631, 67-632, 67-633,  
 67-634, 67-635, 67-636, 67-637, 67-638,  
 67-639, 67-640, 67-641, 67-642, 67-643,  
 67-644, 67-645, 67-646, 67-647, 67-648,  
 67-649, 67-650, 67-651, 67-652, 67-653,  
 67-654, 67-655, 67-656, 67-657, 67-658,  
 67-659, 67-660, 67-661, 67-662, 67-663,  
 67-664, 67-665, 67-666, 67-667, 67-668,  
 67-669, 67-670, 67-671, 67-672, 67-673,  
 67-674, 67-675, 67-676, 67-677, 67-678,  
 67-679, 67-680, 67-681, 67-682, 67-683,  
 67-684, 67-685, 67-686, 67-687, 67-688,  
 67-689, 67-690, 67-691, 67-692, 67-693,  
 67-694, 67-695, 67-696, 67-697, 67-698,  
 67-699, 67-700, 67-701, 67-702, 67-703,  
 67-704, 67-705, 67-706, 67-707, 67-708,  
 67-709, 67-710, 67-711, 67-712, 67-713,  
 67-714, 67-715, 67-716, 67-717, 67-718,  
 67-719, 67-720, 67-721, 67-722, 67-723,  
 67-724, 67-725, 67-726, 67-727, 67-728,  
 67-729, 67-730, 67-731, 67-732, 67-733,  
 67-734, 67-735, 67-736, 67-737, 67-738,  
 67-739, 67-740, 67-741, 67-742, 67-743,  
 67-744, 67-745, 67-746, 67-747, 67-748,  
 67-749, 67-750, 67-751, 67-752, 67-753,  
 67-754, 67-755, 67-756, 67-757, 67-758,  
 67-759, 67-760, 67-761, 67-762, 67-763,  
 67-764, 67-765, 67-766, 67-767, 67-768,  
 67-769, 67-770, 67-771, 67-772, 67-773,  
 67-774, 67-775, 67-776, 67-777, 67-778,  
 67-779, 67-780, 67-781, 67-782, 67-783,  
 67-784, 67-785, 67-786, 67-787, 67-788,  
 67-789, 67-790, 67-791, 67-792, 67-793,  
 67-794, 67-795, 67-796, 67-797, 67-798,  
 67-799, 67-800, 67-801, 67-802, 67-803,  
 67-804, 67-805, 67-806, 67-807, 67-808,  
 67-809, 67-810, 67-811, 67-812, 67-813,  
 67-814, 67-815, 67-816, 67-817, 67-818,  
 67-819, 67-820, 67-821, 67-822, 67-823,  
 67-824, 67-825, 67-826, 67-827, 67-828,  
 67-829, 67-830, 67-831, 67-832, 67-833,  
 67-834, 67-835, 67-836, 67-837, 67-838,  
 67-839, 67-840, 67-841, 67-842, 67-843,  
 67-844, 67-845, 67-846, 67-847, 67-848,  
 67-849, 67-850, 67-851, 67-852, 67-853,  
 67-854, 67-855, 67-856, 67-857, 67-858,  
 67-859, 67-860, 67-861, 67-862, 67-863,  
 67-864, 67-865, 67-866, 67-867, 67-868,  
 67-869, 67-870, 67-871, 67-872, 67-873,  
 67-874, 67-875, 67-876, 67-877, 67-878,  
 67-879, 67-880, 67-881, 67-882, 67-883,  
 67-884, 67-885, 67-886, 67-887, 67-888,  
 67-889, 67-890, 67-891, 67-892, 67-893,  
 67-894, 67-895, 67-896, 67-897, 67-898,  
 67-899, 67-900, 67-901, 67-902, 67-903,  
 67-904, 67-905, 67-906, 67-907, 67-908,  
 67-909, 67-910, 67-911, 67-912, 67-913,  
 67-914, 67-915, 67-916, 67-917, 67-918,  
 67-919, 67-920, 67-921, 67-922, 67-923,  
 67-924, 67-925, 67-926, 67-927, 67-928,  
 67-929, 67-930, 67-931, 67-932, 67-933,  
 67-934, 67-935, 67-936, 67-937, 67-938,  
 67-939, 67-940, 67-941, 67-942, 67-943,  
 67-944, 67-945, 67-946, 67-947, 67-948,  
 67-949, 67-950, 67-951, 67-952, 67-953,  
 67-954, 67-955, 67-956, 67-957, 67-958,  
 67-959, 67-960, 67-961, 67-962, 67-963,  
 67-964, 67-965, 67-966, 67-967, 67-968,  
 67-969, 67-970, 67-971, 67-972, 67-973,  
 67-974, 67-975, 67-976, 67-977, 67-978,  
 67-979, 67-980, 67-981, 67-982, 67-983,  
 67-984, 67-985, 67-986, 67-987, 67-988,  
 67-989, 67-990, 67-991, 67-992, 67-993,  
 67-994, 67-995, 67-996, 67-997, 67-998,  
 67-999, 67-1000, 67-1001, 67-1002, 67-1003,  
 67-1004, 67-1005, 67-1006, 67-1007, 67-1008,  
 67-1009, 67-1010, 67-1011, 67-1012, 67-1013,  
 67-1014, 67-1015, 67-1016, 67-1017, 67-1018,  
 67-1019, 67-1020, 67-1021, 67-1022, 67-1023,  
 67-1024, 67-1025, 67-1026, 67-1027, 67-1028,  
 67-1029, 67-1030, 67-1031, 67-1032, 67-1033,  
 67-1034, 67-1035, 67-1036, 67-1037, 67-1038,  
 67-1039, 67-1040, 67-1041, 67-1042, 67-1043,  
 67-1044, 67-1045, 67-1046, 67-1047, 67-1048,  
 67-1049, 67-1050, 67-1051, 67-1052, 67-1053,  
 67-1054, 67-1055, 67-1056, 67-1057, 67-1058,  
 67-1059, 67-1060, 67-1061, 67-1062, 67-1063,  
 67-1064, 67-1065, 67-1066, 67-1067, 67-1068,  
 67-1069, 67-1070, 67-1071, 67-1072, 67-1073,  
 67-1074, 67-1075, 67-1076, 67-1077, 67-1078,  
 67-1079, 67-1080, 67-1081, 67-1082, 67-1083,  
 67-1084, 67-1085, 67-1086, 67-1087, 67-1088,  
 67-1089, 67-1090, 67-1091, 67-1092, 67-1093,  
 67-1094, 67-1095, 67-1096, 67-1097, 67-1098,  
 67-1099, 67-1100, 67-1101, 67-1102, 67-1103,  
 67-1104, 67-1105, 67-1106, 67-1107, 67-1108,  
 67-1109, 67-1110, 67-1111, 67-1112, 67-1113,  
 67-1114, 67-1115, 67-1116, 67-1117, 67-1118,  
 67-1119, 67-1120, 67-1121, 67-1122, 67-1123,  
 67-1124, 67-1125, 67-1126, 67-1127, 67-1128,  
 67-1129, 67-1130, 67-1131, 67-1132, 67-1133,  
 67-1134, 67-1135, 67-1136, 67-1137, 67-1138,  
 67-1139, 67-1140, 67-1141, 67-1142, 67-1143,  
 67-1144, 67-1145, 67-1146, 67-1147, 67-1148,  
 67-1149, 67-1150, 67-1151, 67-1152, 67-1153,  
 67-1154, 67-1155, 67-1156, 67-1157, 67-1158,  
 67-1159, 67-1160, 67-1161, 67-1162, 67-1163,  
 67-1164, 67-1165, 67-1166, 67-1167, 67-1168,  
 67-1169, 67-1170, 67-1171, 67-1172, 67-1173,  
 67-1174, 67-1175, 67-1176, 67-1177, 67-1178,  
 67-1179, 67-1180, 67-1181, 67-1182, 67-1183,  
 67-1184, 67-1185, 67-1186, 67-1187, 67-1188,  
 67-1189, 67-1190, 67-1191, 67-1192,

42-23, 43-4, 43-7, 43-11, 44-2, 45-17,  
 52-19, 58-12, 57-4, 59-12, 59-17, 60-3,  
 62-19, 80-6, 84-17, 132-5, 146-13,  
 158-21, 13-5, 38-14, 48-15, 49-6, 128-16,  
 128-18,  
 22-18, 24-19, 50-19, 59-9, 128-24,  
 33-25, 48-16, 53-19, 59-21, 62-11, 67-31-19,  
 68-10, 70-22, 77-12, 80-4, 81-5  
 97-5, 67-24, 62-7, 62-18, 81-5  
 72-12, 72-8, 43-23, 44-19, 60-21, 75-13,  
 78-22, 111-9,  
 132-17, 132-18, 139-22, 140-21, 142-5  
 142-7, 52-5, 85-13, 90-11, 92-8, 96-17,  
 01-14, 110-15, 113-10-5, 113-13, 113-24,  
 13-5, 112-9, 115-10, 129-13, 130-12,  
 14-18, 145-12, 152-18, 140-11, 146-9,  
 58-16, 102-4, 149-22  
 87-18,  
 34-22, 50-4, 127-22  
 33-12, 24-22, 27-2, 42-1, 42-13, 59-23,  
 70-8,  
 59-15  
 60-14, 60-20, 109-9, 135-6, 135-21  
 9-7,  
 125-13  
 2-4, 4-8, 4-15, 7-4, 7-18, 7-22, 8-6,  
 8-11, 11-4, 17-4, 74-8, 78-21, 84-7,  
 85-15, 85-17, 85-20, 86-11, 87-19, 88-1,  
 89-8, 89-21, 90-22, 91-14, 92-21, 93-15,  
 93-8, 93-24, 94-7, 94-13, 95-16,  
 01-15, 102-7, 107-4, 108-2, 108-3,  
 08-18, 109-15, 110-5, 110-16, 111-13,  
 11-18, 117-5, 117-13, 118-4, 118-7,  
 18-6, 120-21, 123-12, 123-20, 124-6,  
 26-13, 126-18, 127-4, 128-1, 128-10,  
 28-13, 130-3, 130-8, 134-15, 134-20,  
 35-2, 138-11, 142-4, 142-3, 143-6,  
 51-21, 158-9, 159-4, 159-10  
 25-14, 78-18, 93-17, 94-4, 114-20,  
 125-14, 132-24, 133-1, 136-18

ACCUSCRIPTS (702) 391-0379

|    |               |                                                                                                      |
|----|---------------|------------------------------------------------------------------------------------------------------|
| 1  | chase         | 98-1                                                                                                 |
| 2  | check         | 50-23                                                                                                |
| 3  | checking      | 51-18                                                                                                |
| 4  | chev          | 96-23                                                                                                |
| 5  | chief         | 84-23                                                                                                |
| 6  | child         | 101-15, 110-5, 123-13, 127-4                                                                         |
| 7  | children      | 30-14, 36-12, 61-9, 68-1, 68-22                                                                      |
| 8  | children's    | 70-11, 70-16, 70-18, 71-7, 71-10, 72-11                                                              |
| 9  | chip          | 29-14, 36-24, 70-18, 70-20                                                                           |
| 10 | choice        | 15-24, 16-1, 16-3, 17-24, 19-17, 19-21                                                               |
| 11 | christopher   | 21-5, 21-16, 22-22, 23-14, 35-5, 37-24                                                               |
| 12 | circuit       | 18-10                                                                                                |
| 13 | circumstance  | 3-10                                                                                                 |
| 14 | circumstances | 23-16, 125-18, 125-20, 125-22, 127-10, 127-18, 127-18                                                |
| 15 | cite          | 100-0, 109-7, 115-23, 150-21                                                                         |
| 16 | cited         | 53-23, 75-17, 80-3, 80-13, 93-11, 109-3, 109-24, 128-21, 129-7, 134-11                               |
| 17 | citizens      | 128-3, 125-3, 134-18                                                                                 |
| 18 | civil         | 86-11                                                                                                |
| 19 | claim         | 58-24                                                                                                |
| 20 | claiming      | 107-23, 107-24, 108-2, 108-12                                                                        |
| 21 | claims        | 104-18, 110-23, 111-19, 142-7                                                                        |
| 22 | clarification | 98-6, 98-14, 98-17, 98-21, 98-23, 99-2                                                               |
| 23 | clarify       | 102-7, 125-10, 127-13                                                                                |
| 24 | Clark         | 44-14                                                                                                |
| 25 | clause        | 22-17                                                                                                |
| 26 | clean         | 158-24                                                                                               |
| 27 | cleaned       | 75-23                                                                                                |
| 28 | clear         | 135-5                                                                                                |
| 29 | clearly       | 121-1                                                                                                |
| 30 | clerk         | 16-22, 31-17, 34-17, 45-23, 83-12, 84-3, 85-12, 93-9, 103-15, 150-21                                 |
| 31 | client        | 72-8, 78-22, 114-12                                                                                  |
| 32 | client's      | 11-18, 13-9, 49-10, 117-20, 141-6, 141-8, 146-15, 157-19, 157-21                                     |
| 33 | clip          | 9-7, 90-6, 98-18, 100-2, 101-6, 101-12, 104-11, 105-14, 112-9, 128-15, 128-20, 128-23, 129-4, 158-15 |
| 34 | clocked       | 100-2                                                                                                |
| 35 | close         | 20-10                                                                                                |
| 36 | closeness     | 79-6                                                                                                 |
| 37 | closet        | 77-4                                                                                                 |
| 38 | closing       | 80-6                                                                                                 |
| 39 | clothing      | 23-16, 135-23                                                                                        |
| 40 |               | 57-16                                                                                                |

ACCUSCRIPTS (702) 391-0379

76-6, 101-8, 110-18  
 132-14  
 30-8, 118-13, 118-19, 118-20, 154-20  
 55-12, 68-14, 78-14, 79-19  
 57-8, 135-4  
 25-9, 136-20  
 16-17, 25-12, 59-16  
 106-22  
 3-6, 3-8, 4-1, 5-5, 6-24, 7-8, 9-6, 20-22,  
 10-23, 14-11, 16-15, 17-2, 18-24, 20-22,  
 21-1, 21-11, 23-7, 23-8, 25-9, 29-6  
 29-8, 30-8, 32-10, 34-17, 35-5, 35-23  
 36-22, 37-1, 38-15, 39-18, 47-3, 40-1,  
 41-20, 42-3, 44-23, 47-3, 53-18  
 53-24, 52-19, 54-21, 58-10, 62-7, 62-12,  
 63-21, 63-3, 64-10, 72-10, 76-5, 79-5  
 79-16, 79-19, 79-21, 80-16, 82-1, 82-5,  
 83-10, 83-13, 83-14, 84-8, 84-20, 88-2,  
 88-7, 88-23, 91-8, 92-23, 93-1, 97-9  
 100-19, 100-20, 102-10, 104-8, 104-13  
 106-13, 107-10, 107-17, 108-24, 109-18,  
 109-19, 109-21, 122-17, 123-8, 123-18  
 124-19, 124-21, 129-20, 135-24, 136-7,  
 157-24  
 3-12, 3-16, 3-19, 4-2, 42-6, 44-9  
 47-16, 62-4, 62-10, 74-4, 74-19, 80-14,  
 81-16, 81-9, 84-6, 97-18, 122-23, 122-24  
 71-12, 89-7, 97-2, 97-5, 100-4, 115-10,  
 118-12, 134-12, 145-14  
 77-22, 79-10, 79-19, 100-10, 111-5,  
 120-14, 156-14  
 143-3, 143-15  
 5-24  
 117-13  
 117-7, 117-21, 118-24  
 77-13, 117-7, 117-22, 118-14, 118-22  
 152-21, 155-24  
 157-17  
 118-2  
 113-19  
 89-28, 87-4, 89-20, 90-13, 98-11, 98-12,  
 92-8  
 153-15, 157-5  
 26-21, 55-10, 153-14

ACCUSCRIPTS (702) 391-0379

|    |              |                                                                                                                                                                                                                                                                                 |
|----|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | co-worker    | 41-22                                                                                                                                                                                                                                                                           |
| 2  | co-workers   | 17-24                                                                                                                                                                                                                                                                           |
| 3  | code         | 75-17                                                                                                                                                                                                                                                                           |
| 4  | Cohen        | 85-17                                                                                                                                                                                                                                                                           |
| 5  | Coleman      | 85-17, 85-18, 86-3, 87-15, 87-16, 89-8,<br>90-22, 93-13, 97-12, 98-5, 98-7, 98-18,                                                                                                                                                                                              |
| 6  | collateral   | 85-17                                                                                                                                                                                                                                                                           |
| 7  | collected    | 85-23                                                                                                                                                                                                                                                                           |
| 8  | come         | 26-16, 81-6,<br>11-14, 12-22, 14-9, 14-15, 25-18, 25-20,<br>26-24, 83-27, 77-4, 77-12, 78-2, 79-12,<br>81-22, 83-8, 84-7, 88-6, 96-8, 97-3,<br>97-6, 101-2, 101-6, 103-6, 106-20,<br>108-22, 112-24, 113-9, 115-17, 122-5,<br>125-19, 125-10, 136-16, 145-14, 145-18,<br>152-12 |
| 9  | comes        | 65-20, 28-3, 89-10, 91-13, 95-17, 95-18,<br>95-24, 100-1, 105-5, 111-18,<br>112-7, 112-15, 147-21, 149-5                                                                                                                                                                        |
| 10 | comfortable  | 15-15                                                                                                                                                                                                                                                                           |
| 11 | coming       | 35-7, 46-5, 47-20, 72-23, 73-5, 76-2,<br>79-11, 86-18, 96-24, 103-4, 112-8, 145-2                                                                                                                                                                                               |
| 12 | commence     | 4-20                                                                                                                                                                                                                                                                            |
| 13 | commencement | 38-21                                                                                                                                                                                                                                                                           |
| 14 | commences    | 17-10                                                                                                                                                                                                                                                                           |
| 15 | comment      | 57-15                                                                                                                                                                                                                                                                           |
| 16 | Commissioner | 13-7, 114-6                                                                                                                                                                                                                                                                     |
| 17 | committed    | 88-9, 98-12                                                                                                                                                                                                                                                                     |
| 18 | common       | 88-10, 158-9                                                                                                                                                                                                                                                                    |
| 19 | compare      | 22-1                                                                                                                                                                                                                                                                            |
| 20 | compel       | 22-1                                                                                                                                                                                                                                                                            |
| 21 | compelled    | 22-1, 129-14                                                                                                                                                                                                                                                                    |
| 22 | complained   | 23-15, 123-17                                                                                                                                                                                                                                                                   |
| 23 | completely   | 23-4, 74-22, 75-3                                                                                                                                                                                                                                                               |
| 24 | complaint    | 26-18, 28-4                                                                                                                                                                                                                                                                     |
| 25 | complied     | 62-19, 156-7                                                                                                                                                                                                                                                                    |
| 26 | complies     | 43-20, 64-8                                                                                                                                                                                                                                                                     |
| 27 | comply       | 77-19, 144-7                                                                                                                                                                                                                                                                    |
| 28 | component    | 77-8                                                                                                                                                                                                                                                                            |
| 29 | compulsory   | 125-6                                                                                                                                                                                                                                                                           |
| 30 | computer     | 6-11, 43-5                                                                                                                                                                                                                                                                      |
| 31 | concern      | 13-21, 19-14, 68-21, 70-10, 70-18, 70-20,<br>75-6, 82-4, 108-13, 108-13,<br>96-18, 103-7, 120-20                                                                                                                                                                                |
| 32 | concerned    | 82-4, 108-8                                                                                                                                                                                                                                                                     |
| 33 | concerns     | 82-4, 108-8                                                                                                                                                                                                                                                                     |
| 34 | conclude     | 82-4                                                                                                                                                                                                                                                                            |
| 35 | conclusions  | 82-4                                                                                                                                                                                                                                                                            |

ACCUSCRIPTS (702) 391-0379



1 decided 29-7  
2 decision 7-17, 20-23, 20-24, 29-23, 121-12,  
134-7, 135-13  
3 declarant 78-13  
4 declaration 72-10, 75-15  
5 declaring 132-3  
6 deem 132-9  
7 deering 152-6  
8 defendant 78-17  
8-19, 8-21, 11-4, 16-11, 18-24, 58-16,  
88-6, 89-10, 91-13, 91-15, 92-9, 94-16,  
92-18, 95-21, 95-22, 95-23, 95-24, 96-1,  
96-3, 98-6, 100-11, 101-18, 101-22, 96-1,  
102-19, 103-4, 103-13, 124-21, 125-14,  
126-23, 127-3, 127-5, 127-11, 127-12,  
127-13, 127-19, 128-2, 128-19, 128-24,  
128-27, 134-2, 134-11, 134-13, 134-24,  
138-8  
10 defendant's 79-10, 102-16, 108-4, 134-12  
11 defender 134-21  
12 defending 56-17, 56-19, 56-21, 57-3, 58-13  
13 defense 68-20, 69-6, 69-11, 69-16, 69-23, 9-8,  
82-10, 82-9, 88-3, 93-21, 95-9, 93-11,  
93-18, 99-21, 94-15, 95-19, 98-17, 99-9,  
101-21, 102-5, 102-6, 107-2, 107-5,  
108-9, 112-2, 111-7, 111-9, 111-16,  
113-3, 113-22, 119-21, 120-13, 121-23,  
122-3, 123-16, 123-22, 125-10, 126-20,  
126-24, 128-11, 128-16, 128-17, 129-1,  
129-11, 130-9, 130-19, 130-24, 131-19,  
132-3, 132-24, 135-23, 137-18, 138-12,  
140-9, 141-2, 142-23, 142-8, 142-13,  
142-19, 143-3, 143-20, 144-23, 145-15,  
145-16, 150-3  
18 defense's 137-8  
19 definition 159-8  
20 degree 134-22  
21 delivered 14-6  
22 delivery 8-13  
23 demeanor 7-8, 26-10, 26-15, 26-20, 26-21, 32-22,  
44-10, 53-7, 54-23, 55-15, 55-19, 67-11,  
67-23, 75-11  
24 demonstration 138-14  
denied 21-16, 126-20, 130-17, 133-5, 150-4,  
159-7  
deny 136-23

ACCUSCRIPTS (702) 391-0379

1 documents 147-17, 147-18, 148-17, 148-23, 155-15  
2 domestic 10-22  
21-3, 22-22, 24-15, 50-6, 50-13, 63-3,  
14-10  
3 door 16-19, 25-7, 25-10, 33-2  
4 doubt 9-19, 128-8, 159-6, 159-9  
5 down 11-3, 16-16, 25-17, 37-7, 38-7, 64-15,  
64-17, 67-7, 113-7, 113-23, 122-15,  
127-21, 148-3  
6 downloaded 134-19  
7 downstairs 34-8  
8 dozens 65-8  
9 or 19-10  
21-13, 121-14, 154-17, 155-3, 156-15,  
157-6  
8 draw 82-7  
9 drawn 82-18  
10 drew 82-5  
11 drinking 71-21  
12 dripping 121-4  
13 driving 15-6  
14 due 50-13  
15 duty 49-7, 158-23  
16 duplicate 93-6  
17 during 17-2, 18-22, 21-23, 28-15, 35-1, 36-2,  
37-2, 37-23, 47-13, 69-12, 70-7,  
80-19, 81-9, 112-22, 120-24, 127-4,  
148-19, 152-6  
14 duties 24-12, 51-14  
15 duty 24-8, 144-1  
16 Dv 24-8  
17 e-mail --E-- 134-16, 134-17  
18 early 112-24, 113-8  
19 easier 122-14  
20 easily 79-5  
21 easy 62-16  
22 effect 9-17, 8-7, 120-21  
23 effects 28-20  
24 efforts 28-12  
21 eight 67-12, 67-18, 117-5, 118-23  
22 misal 154-8, 155-3  
23 misman 158-1  
24 either 4-6, 8-2, 11-23, 15-7, 23-1, 23-7, 42-2,  
52-11, 52-14, 54-12, 55-2, 65-8, 80-20,  
81-13, 83-2, 83-4, 100-5, 110-16,  
116-21, 117-24, 118-10, 118-24, 122-19,

ACCUSCRIPTS (702) 391-0379

1 Department 13-24, 49-23  
2 depending 77-4  
3 depends 120-4  
4 deputy 3-9, 5-6  
5 describe 16-6  
6 description 8-13, 153-19, 154-5, 154-16, 155-8,  
156-15  
7 designation 56-15, 152-14  
8 destruction 6-21, 15-11, 24-24  
9 details 12-16, 13-9  
10 detective 97-13, 121-24  
11 determination 41-11, 86-23, 100-23, 100-24, 107-14,  
121-14, 122-6  
12 determine 140-6, 140-7  
13 develops 138-24  
14 develops 12-4  
15 devious 82-5  
16 Diego 7-8, 8-2, 139-8, 139-24  
17 difference 75-7, 75-10, 75-11, 107-19, 108-19,  
123-11, 126-17  
18 different 76-5, 77-2, 77-9, 78-6, 78-12, 78-21,  
80-19, 88-12, 89-4, 93-15, 95-23, 108-9,  
109-18, 109-14, 109-22, 143-5  
13 digest 116-16  
14 dilemma 139-18, 135-20  
15 dire 14-12, 116-14, 152-1  
16 direct 3-21, 49-19, 58-1, 58-8, 66-18, 119-20  
17 directing 97-4  
18 directly 124-6  
19 disagree 103-21, 124-2  
20 discoverable 7-9, 7-10, 8-6, 140-14  
21 discovery 93-13, 106-4, 108-11, 126-17, 131-1  
22 discretion 136-22  
23 discuss 9-24, 117-23  
24 discussion 4-14, 44-15  
dispatch 14-23, 15-21, 25-19, 25-24, 42-22,  
43-10, 43-23, 44-9, 44-11, 45-17, 46-16,  
80-7  
21 dispatched 43-7  
22 dispatcher 42-12  
23 distressed 70-9  
24 district 3-10, 5-6, 6-21, 8-18, 8-20, 8-21,  
143-6, 158-23  
divorce 61-3, 158-2  
doctor 54-18  
document 11-17, 63-8, 64-7, 143-15, 144-12,

ACCUSCRIPTS (702) 391-0379

1 elected 140-16, 145-16, 146-18, 146-19, 158-18  
2 elects 128-23  
3 element 108-52, 123-22, 133-14  
4 emotional 90-6  
5 emotions 23-2, 77-8  
6 emphasis 28-2  
7 employed 79-15  
8 end 79-22  
9 engaged 47-20, 98-1, 117-17, 118-4, 118-7  
10 enough 109-18, 109-19  
11 enter 76-10  
12 entire 137-18, 139-7, 140-19  
13 entitled 28-23, 35-7  
14 entrance 126-23, 127-6, 127-24, 128-5, 129-8,  
131-8, 131-4, 132-20  
15 entry 160-8  
16 error 28-18  
17 escalate 150-22  
18 escort 59-12, 59-19  
19 escorted 59-10, 62-5  
20 establish 98-10, 103-8, 109-8, 109-9, 111-10  
21 established 108-12  
22 establishing 28-11  
23 et 5-24  
24 evaluation 121-1, 124-22, 126-15  
even 30-7, 34-6, 37-5, 43-6, 59-15, 59-22,  
70-7, 81-14, 83-18, 94-16, 95-21, 96-24,  
105-13, 143-18, 152-21, 158-7  
15 evening 80-17, 83-11  
16 event 74-9, 78-13, 78-20  
17 events 56-2, 56-7, 56-9  
18 eventually 20-18  
19 everybody 81-16, 118-19, 124-17  
20 everyone 148-9  
21 everything 10-6, 12-1, 38-5, 59-21, 83-9, 130-23,  
144-2, 149-4, 157-22, 159-12  
22 evidence 6-2, 6-24, 8-5, 11-9, 72-3, 84-3, 86-17,  
87-4, 88-22, 89-19, 93-20, 94-9, 94-15,  
95-3, 95-8, 95-13, 95-16, 95-16, 96-22,  
97-2, 97-21, 99-8, 99-23, 99-24, 100-14,  
102-14, 102-19, 107-13, 108-7, 108-22,  
109-7, 110-10, 111-8, 111-11, 119-10,  
127-4, 128-2, 128-3, 129-5, 129-9,  
129-24, 130-10, 141-20, 145-2, 145-15,  
152-12, 154-11  
24 evident 21-15

ACCUSCRIPTS (702) 391-0379

1 evidentiary 86-23  
 2 exact 22-17, 24-18, 24-19, 29-10, 42-21, 43-2,  
 3 exactly 18-2, 19-20, 26-9, 27-24, 30-11, 44-12,  
 4 examination 51-11, 66-13, 80-3  
 5 examinations 27-13, 129-14, 137-9  
 6 examine 25-9, 127-2, 137-12  
 7 examined 10-1, 49-8, 128-4, 131-11  
 8 example 76-10  
 9 exception 76-10  
 10 exceptions 28-5, 74-7, 74-16, 77-5, 78-6, 78-11,  
 11 excited 78-24, 80-8, 81-10  
 12 excitement 78-13, 141-19  
 13 exclusionary 73-9, 122-22, 127-16, 155-23  
 14 excuse 47-2, 47-23, 73-1  
 15 excused 118-24  
 16 exercised 118-13  
 17 exercising 11-18, 12-1  
 18 exhibit 9-11  
 19 exhibits 104-18  
 20 exist 104-9  
 21 existed 80-11  
 22 existing 37-3  
 23 exists 120-8, 156-19  
 24 exit 12-21, 121-5, 154-19  
 expects 56-2, 56-7  
 experience 8-12, 125-12, 127-13, 127-22, 129-17,  
 experienced 129-18, 129-22, 131-5, 131-22, 132-3,  
 experiments 132-9, 133-9, 133-11, 137-8, 137-19,  
 expert 133-6, 152-11, 154-13, 155-7  
 experts 53-16, 153-20, 154-17  
 experts' 8-14  
 explain 62-15  
 explained 59-24, 104-12  
 explored 114-12, 114-13  
 expose 89-9  
 exposed 104-7  
 express 38-13  
 expressed 70-17  
 extensive 107-21, 107-22, 107-23, 138-10, 154-18  
 extent 149-9

ACCUSCRIPTS (702) 391-0379

1 file 8-1, 11-11, 11-22, 11-24, 12-3, 86-6,  
 2 30-12, 30-13, 130-18, 139-24, 140-3,  
 3 filed 155-18, 159-16  
 4 5-23, 6-3, 6-6, 6-11, 7-24, 10-24, 11-1,  
 5 61-3, 85-6, 123-5, 144-15, 147-23,  
 6 55-15, 158-14  
 7 filling 128-23  
 8 filled 113-9  
 9 final 52-13  
 10 find 11-3, 15-16, 19-10, 19-12, 22-5, 23-10  
 11 40-20, 42-7, 44-21, 53-12, 62-3, 62-10  
 12 finding 8-6, 39-13, 140-10, 141-13  
 13 findings 52-20, 156-16, 156-18  
 14 fine 70-15, 115-2, 117-24, 151-14  
 15 finish 147-16, 149-19  
 16 finishes 145-28  
 17 fire 18-13, 44-4, 75-16, 138-12  
 18 firearm 121-10  
 19 firearms 138-9  
 20 fired 138-9  
 21 firing 7-7, 137-9  
 22 first 7-11, 12-11, 13-6, 13-12, 21-2, 39-14,  
 13 46-3, 47-7, 49-10, 68-14, 68-24, 68-7,  
 14 71-2, 77-18, 77-20, 86-24, 93-24, 95-1,  
 15 95-2, 106-2, 114-6, 126-19, 126-21,  
 16 138-8, 146-1  
 17 fit 56-6  
 18 fits 141-13  
 19 five 32-7, 32-13, 33-10, 92-16, 140-2  
 20 fix 147-18  
 21 flesh 105-2  
 22 fluff 155-7  
 23 focus 91-12  
 24 follow 140-16  
 following 59-3  
 follows 13-8, 49-9  
 foot 45-6  
 forbidden 121-5  
 forever 38-9  
 form 11-17, 66-6, 66-8, 87-12, 95-17, 95-18,  
 10-19, 130-24, 155-2  
 format 113-4  
 formed 83-14, 87-9  
 forth 35-1, 35-4, 108-8, 108-14, 118-23,  
 124-11  
 forward 112-2

ACCUSCRIPTS (702) 391-0379

1 extra 117-21  
 2 extrapolations 109-23  
 3 eyed 102-21  
 4 --F--  
 5 F2nd 125-16, 125-20, 125-22, 127-16  
 6 fabricate 78-10  
 7 face 13-1, 49-2  
 8 faces 135-19  
 9 fact 21-18, 21-23, 31-12, 31-21, 32-15,  
 10 32-18, 39-1, 40-23, 81-2, 75-3, 75-4,  
 11 78-16, 81-6, 93-18, 94-15, 97-16, 136-2,  
 12 142-12, 146-3  
 13 factors 20-24, 21-13  
 14 facts 72-2, 77-9  
 15 failure 93-19  
 16 fair 28-9  
 17 fairly 10-16, 28-16, 31-6, 31-12, 31-19, 32-23,  
 18 52-8  
 19 fall 51-8  
 20 familiar 89-2  
 21 family 37-19  
 22 far 80-19, 82-3, 82-7, 83-5, 83-6, 84-10,  
 13 88-2, 103-23, 141-5, 146-21, 157-23  
 14 fashion 28-2, 111-19  
 15 fat 28-14, 79-5  
 16 fear 38-13, 46-17, 47-4, 109-3  
 17 feared 47-5, 88-23  
 18 fearful 46-14, 47-7  
 19 fed 25-17  
 20 federal 25-3, 125-13, 147-4, 147-11, 148-6,  
 17 28-21, 148-22, 149-1, 149-2, 149-10,  
 18 49-23, 150-1, 151-21, 159-4  
 19 federalization 27-5  
 20 federalize 6-17  
 21 federalized 149-5  
 22 federalizing 6-5  
 23 feel 4-6, 114-14, 121-9, 151-15, 155-2  
 24 feeling 51-13  
 feels 5-12, 140-24  
 felt 55-5  
 female 51-19, 52-23  
 few 55-1, 59-1, 64-6, 70-14, 87-11, 91-4,  
 23 81-16, 82-7, 137-6  
 Fifth 89-16, 100-13, 125-6, 125-14, 125-18,  
 150-14  
 figure 52-16, 77-20, 77-22, 117-6

ACCUSCRIPTS (702) 391-0379

1 found 22-3, 23-4, 71-11, 95-15  
 2 foundation 75-11, 93-20, 93-22, 98-5, 100-1, 100-24  
 3 foundational 68-21  
 4 four 119-5, 120-2, 153-19, 154-3  
 5 fourth 125-22  
 6 fox 154-14  
 7 frame 18-5, 18-7, 19-5, 21-5, 37-24, 38-1,  
 8 82-18, 86-17, 79-4, 79-18, 83-8, 84-21,  
 9 88-18  
 10 frankly 100-9  
 11 franks 73-17  
 12 free 19-6, 4-8  
 13 fresh 19-6, 21-15, 77-6  
 14 Friday 22-22, 124-12  
 15 friend 42-19, 49-11, 71-21  
 16 front 19-5, 174-20, 26-18, 45-7, 117-14,  
 17 18-9, 174-20, 136-10  
 18 full 87-9, 159-19  
 19 function 133-19  
 20 furnished 133-24  
 21 further 45-16, 44-5, 44-14, 45-11, 47-17, 47-18,  
 12 92-1, 69-2, 70-24, 71-3, 72-17, 73-12,  
 13 73-18, 75-4, 122-15  
 14 furtherance 20-3  
 15 Furthermore 78-23  
 16 --G--  
 17 gain 105-23  
 18 gang 96-6, 104-8, 104-21, 104-23, 106-6,  
 19 106-14, 108-17, 106-21, 107-15, 107-17,  
 20 10-2  
 21 gangs 10-23  
 22 garden 15-14, 15-15, 50-5  
 23 gathering 35-23, 67-19, 50-5  
 24 gave 29-6, 31-21, 32-16, 59-15, 66-7, 75-9,  
 109-10, 153-18  
 general 78-24, 79-1, 85-7, 86-7, 95-15, 114-2,  
 116-13, 120-20, 124-18, 145-1, 154-22,  
 115-21, 123-5  
 generally 111-14  
 generation 11-17  
 genesis 59-17  
 gentleman 12-20  
 gentlemen 17-2, 19-16, 19-17, 19-18, 20-14, 20-22,  
 23 20-24, 21-23, 22-1, 22-21, 23-4, 23-11,  
 37-24, 40-12, 44-2, 44-23, 45-20, 46-5,  
 62-5

ACCUSCRIPTS (702) 391-0379



1 give 5-11, 12-4, 53-12, 53-19, 60-19, 65-21,  
66-9, 66-8, 69-19, 69-21, 87-11, 91-1,  
92-14, 110-21, 120-12, 128-18, 129-14,  
129-21, 133-7, 138-1, 152-20, 153-18,  
154-3, 155-6, 159-5, 159-9  
2 given 14-23, 31-24, 40-4, 44-7, 138-21, 156-17  
3 giving 12-18  
4 glass 38-1, 38-24  
5 Gloria 3-9  
6 glove 42-10  
7 goal 41-17  
8 goatee 16-9  
9 goes 79-10, 128-22, 140-8, 141-1, 141-3  
10 Goettsch 3-10, 10-19, 11-8, 11-12, 12-7, 12-8,  
12-11, 13-19, 13-22, 16-12, 16-13, 23-3,  
23-18, 28-21, 31-9, 40-9, 42-17, 42-20,  
43-12, 43-16, 45-11, 46-20, 47-18, 48-6,  
48-8, 48-12, 48-18, 54-1, 58-15, 58-20,  
59-21, 62-2, 62-9, 63-10, 67-3, 65-1,  
69-3, 69-6, 70-1, 70-24, 71-23, 72-3,  
72-13, 72-20, 72-21, 73-24, 78-4,  
79-12, 80-23, 80-24, 81-19, 82-1, 83-2,  
121-11, 121-17, 121-23, 125-6, 154-1,  
157-2, 155-11, 155-20, 156-9, 156-12,  
157-24, 158-17  
11 going 4-9, 5-7, 7-2, 9-3, 9-10, 11-18, 15-19,  
16-20, 16-21, 28-21, 35-4, 36-4, 36-12,  
36-19, 37-8, 38-21, 38-8, 38-9, 38-12,  
39-19, 42-17, 47-18, 48-15, 58-18, 62-2,  
65-19, 67-12, 67-16, 67-18, 67-19, 72-5,  
73-2, 73-12, 74-19, 74-18, 74-23, 80-13,  
80-23, 82-3, 83-8, 83-12, 83-22, 84-13,  
85-6, 85-23, 87-8, 87-23, 88-5, 88-9, 88-12,  
92-15, 92-21, 92-26, 94-5, 94-20, 96-9,  
96-15, 96-22, 97-6, 100-8, 100-20, 106-13,  
102-10, 102-13, 103-9, 106-12, 106-13,  
108-18, 108-19, 107-9, 107-13, 109-12,  
110-10, 110-11, 110-15, 110-20, 112-1,  
113-21, 115-24, 116-2, 116-4, 116-5,  
117-1, 118-11, 118-13, 120-10, 121-13,  
121-24, 122-5, 122-13, 122-22, 123-13,  
124-15, 124-16, 125-17, 129-21, 130-9,  
133-5, 134-12, 136-11, 136-23, 137-20,  
138-8, 138-13, 138-19, 138-23, 145-21,  
141-2, 141-4, 144-12, 145-14, 145-21,

ACCUSCRIPTS (702) 391-0379

1 happened 16-14, 17-20, 18-10, 34-18, 36-3, 40-2,  
40-5, 40-7, 46-10, 46-16, 47-8, 55-7,  
55-9, 59-6, 59-13, 60-5, 62-13, 64-10,  
67-4, 69-15, 70-5, 79-7, 83-9, 96-2,  
98-19, 100-3, 110-23, 134-20  
2 happens 139-19, 139-20  
3 happy 24-10, 110-12, 129-3  
4 harbor 69-19  
5 hat 103-16  
6 hate 117-18  
7 having 110-15  
8 head 5-23, 7-20, 13-5, 13-6, 25-5, 44-20,  
29-6, 49-7, 71-21, 108-6, 127-3, 129-1,  
14-18, 14-23, 15-12, 18-4, 18-7, 18-15,  
19-4, 19-5, 21-5, 21-6, 25-3, 27-19,  
27-23, 56-17, 64-22, 64-23, 77-21, 79-3  
9 heading 50-12  
10 hear 38-17  
11 heard 39-5, 57-7, 58-10, 62-6, 62-7,  
76-8, 81-17, 105-7, 129-23, 148-2,  
148-12  
12 hearing 11-9, 38-1, 38-2, 38-19, 38-23, 39-4,  
57-2, 58-15, 75-12, 137-1  
13 29-11, 73-4, 87-18, 88-23, 90-8, 91-1,  
92-2, 94-23, 97-12, 98-9, 100-23  
14 hearings 101-13, 103-13, 103-26, 105-11, 106-15,  
106-18, 108-23, 107-10, 108-23, 113-22,  
118-9  
15 hearsay 100-9, 109-15  
16 heat 92-9, 92-9, 40-9, 76-2, 76-10, 81-15,  
82-19, 122-18, 124-15, 149-9  
17 held 97-20, 100-23, 125-5, 127-10, 127-17  
18 hell's 96-5  
19 help 38-11, 88-2, 114-2  
20 helped 29-22  
21 helps 20-23, 56-18, 56-19, 56-21, 57-3, 77-16,  
78-23  
22 herself 20-19  
23 Hi 20-19  
24 hid 20-19  
21 himself 13-16, 48-5, 58-13, 64-24, 129-21  
22 hire 12-10, 123-9  
23 history 104-15, 110-6  
24 hit 18-4, 18-6, 37-24, 64-22, 79-3  
21 hitting 21-4, 21-16, 79-18  
22 him 148-7  
23 hold 85-2, 113-16, 128-20, 128-23

ACCUSCRIPTS (702) 391-0379

1 145-24, 146-2, 147-6, 154-14, 154-17,  
157-13, 155-3, 155-20, 155-21, 157-13,  
157-18  
2 gone 37-12, 68-20, 87-10  
3 good 23-22, 66-19, 83-14, 136-8, 150-6  
4 Gordon 23-19, 129-21  
5 gosh 75-16, 78-7  
6 grabbed 18-1, 64-21  
7 Grand 29-11, 29-14, 29-24, 30-3, 30-12  
8 granted 61-4, 99-9  
9 granting 19-6  
10 graphic 19-11, 121-10  
11 great 24-12, 125-13  
12 ground 20-13, 129-13  
13 grounds 127-11, 148-6, 149-2, 150-8  
14 guess 23-11, 26-11, 62-17, 73-8, 112-6,  
118-9, 150-10  
15 guessing 11-13, 128-7  
16 guilty 0-23, 14-17, 16-23, 15-11, 15-18,  
15-19, 18-18, 18-23, 20-1, 20-2, 20-6,  
20-13, 20-17, 23-19, 23-18, 31-1, 39-15,  
40-20, 41-12, 40-19, 40-18, 40-19,  
40-20, 41-17, 42-3, 42-7, 44-3,  
46-12, 48-23, 77-17, 77-20, 79-8, 82-4,  
84-8, 84-8, 138-9, 138-23  
17 gunpoint 9-16  
18 guns 16-23, 19-15, 20-5, 20-12, 20-15, 22-6,  
22-9, 22-20, 22-24, 23-8, 26-18,  
39-14, 41-5, 41-8, 41-11, 41-15, 41-17,  
78-8  
19 guy 78-8  
20 --H-- 86-16  
21 hairs 24-5, 25-2, 78-17  
22 half 13-15, 16-18, 25-12, 25-23, 27-19, 49-2,  
66-1, 113-8  
23 hand 19-17  
24 handcuffed 27-1, 35-18, 70-8, 76-21  
handcuffs 3-23, 5-9, 120-19, 142-22  
handle 19-8, 59-9, 135-16  
hands 127-17  
Handy 28-12  
Hanes 11-13, 27-8, 59-14, 60-5, 70-16, 76-17,  
76-23, 94-17, 113-16, 136-4

ACCUSCRIPTS (702) 391-0379

1 Holmes 77-19  
2 home 15-13, 35-24  
3 honest 79-2  
4 Honor 5-17, 12-19, 22-10, 23-21, 32-5, 48-3,  
48-18, 69-16, 73-9, 73-12, 73-24, 83-13,  
83-23, 85-7, 85-23, 88-15, 92-7, 93-6,  
95-13, 98-2, 99-17, 99-8, 102-6, 109-6,  
112-3, 112-16, 120-22, 122-2, 124-5,  
126-6, 126-24, 130-21, 132-21, 146-1,  
150-11, 151-12, 152-12, 153-7, 155-24,  
158-15  
5 hoping 121-12, 141-15  
6 hospital 71-18, 72-11  
7 hot 15-1, 25-1  
8 hour 38-10, 58-17, 66-20  
9 hours 58-10, 58-17, 66-20  
10 house 15-20, 15-22, 16-2, 16-21, 16-22, 22-21,  
22-20, 23-8, 25-20, 35-10, 37-5, 37-23,  
37-6, 37-9, 37-10, 41-5, 44-19, 53-7,  
57-6, 59-2, 59-18, 59-19, 59-23,  
62-3, 62-12, 59-10, 59-15, 81-20, 59-23,  
62-3, 62-12, 65-7, 106-19, 109-30, 125-13,  
128-2, 128-11, 128-22, 129-15, 130-18,  
148-10  
11 However 128-10  
12 huge 128-10  
13 hurting 47-8  
14 husband 14-16, 14-17, 35-14, 35-17, 44-2, 59-20,  
64-21, 65-20, 75-1  
15 I'd --I-- 50-22, 124-7, 124-12  
16 I'll 3-10, 5-3, 31-19, 22, 23-18, 26-11,  
36-4, 38-10, 37-14, 38-1, 38-1, 38-1,  
80-11, 87-2, 87-13, 88-1, 113-12,  
114-18, 118-2, 122-20, 140-19, 141-7,  
146-13, 157-20  
17 idea 22-9, 124-18, 150-6  
18 identification 16-11  
19 identified 12-10, 17-2, 117-9, 118-8  
20 identify 17-16  
21 identity 20-17, 119-8, 119-16  
22 imagine 3-6, 14-11, 92-23  
immaterial 66-16, 113-24, 138-11  
23 immediate 126-23  
immediately 80-17  
impact 138-22, 152-9  
impartial 8-2, 74-18, 97-18  
152-2

ACCUSCRIPTS (702) 391-0379

1 impetus 111-15  
 2 important 9-22, 91-21, 130-8, 141-17  
 3 impossible 22-21, 154-10  
 4 impound 20-24, 23-13, 45-3  
 5 impression 28-9, 78-7, 80-10  
 6 impressions 63-13  
 7 improper 151-24  
 8 incapacitating 154-21, 154-24  
 9 inches 20-9, 21-3, 25-17, 28-20, 31-22, 32-1;  
 10 incident 22-9, 37-23, 40-6, 57-23, 58-11;  
 11 64-22, 86-18, 97-19, 109-3, 122-18  
 12 incidents 81-14  
 13 include 80-17  
 14 inclusive 80-22  
 15 inconsistencies 82-12  
 16 incorporated 129-11  
 17 independent 112-8, 112-9, 131-8  
 18 indicate 68-11  
 19 indicated 29-7, 44-15, 69-7  
 20 indicating 32-11  
 21 indications 31-3  
 22 indices 111-11  
 23 indicia 79-9  
 24 indirect 58-2  
 individual 125-9  
 individuals 14-10, 14-14  
 indulgence 10-3  
 infant 21-18, 21-20, 29-20, 29-21, 29-22,  
 30-15, 36-13, 57-3, 61-12, 68-1, 68-22,  
 70-17, 71-7, 71-8, 71-18  
 9-12  
 inflammatory 14-22, 37-19, 63-4, 44-8, 60-8, 60-10,  
 information 85-15, 85-13, 88-1, 89-10, 93-9, 101-11,  
 105-23, 112-2, 122-8, 126-1, 127-6,  
 127-12, 128-5, 132-23, 133-11, 137-11,  
 137-17, 142-7, 152-4  
 inherent 17-18  
 initial 18-21  
 initially 9-15, 19-17, 37-5  
 initiated 8-5  
 injured 18-18, 18-24, 19-3  
 injuries 21-20  
 injury 30-19, 30-21  
 input 87-17

ACCUSCRIPTS (702) 391-0379

1 142-13, 142-23, 144-24, 145-8, 148-2,  
 2 issues 155-9, 156-2, 156-14, 86-24, 88-12,  
 106-16, 107-23, 112-16, 119-5, 122-14,  
 132-7, 151-18, 152-14  
 3 item 8-24, 2-5, 92-5  
 4 items 9-13, 7-17, 109-10  
 5 its 6-22, 7-17, 22-22, 108-12, 109-8,  
 111-10, 155-23  
 6 itself 39-15, 83-5, 143-12, 143-19  
 7 --J--  
 8 jail 38-8, 51-19  
 9 January 121-15  
 10 jeopardy 136-4, 136-5  
 11 Jim 7-27, 138-3  
 12 job 136-9  
 13 John 124-17, 155-3  
 14 judge 4-24, 10-6, 82-14, 85-1, 87-8, 89-17,  
 92-12, 94-1, 99-15, 102-15, 103-12,  
 103-16, 105-18, 106-2, 106-10, 106-12,  
 107-20, 110-9, 113-18, 115-8, 115-21,  
 116-9, 116-15, 120-5, 121-11, 125-1,  
 126-16, 127-8, 128-1, 128-10, 129-7,  
 130-2, 130-15, 131-8, 132-2, 132-8,  
 132-14, 133-20, 134-8, 134-19, 134-21,  
 135-3, 136-3, 137-10, 138-8, 139-1,  
 139-11, 139-19, 140-15, 140-20, 140-23,  
 141-1, 141-11, 141-18, 142-6, 142-9,  
 142-22, 143-4, 144-1, 144-2, 144-4,  
 144-5, 144-10, 144-14, 144-21, 145-4,  
 147-14, 148-13, 149-12, 153-4, 157-4,  
 157-16  
 17 jumping 75-17, 78-8, 137-4  
 18 jurisdiction 7-12, 7-14, 139-6  
 19 jurisdictions 128-14, 128-20  
 20 juror 12-3, 115-24, 117-6, 118-2  
 21 jurors 4-16, 4-21, 6-9, 8-24, 9-15, 29-11,  
 29-14, 29-24, 30-3, 30-12, 76-7, 102-24,  
 112-31, 112-22, 112-23, 113-3, 113-7,  
 118-9, 121-20, 123-3, 124-8, 127-1,  
 151-24, 152-3, 158-22, 159-4  
 22 just 6-12, 10-15, 10-21, 11-14, 11-17, 17-6,  
 32-10, 34-1, 38-17, 37-14, 38-4, 38-7,  
 38-11, 38-23, 44-1, 48-8, 50-18, 52-9,

ACCUSCRIPTS (702) 391-0379

1 insanity 125-10, 127-14  
 2 inside 13-25, 16-20, 25-20, 37-3, 42-1, 42-12,  
 42-13, 52-8  
 3 inspection 140-21, 142-6  
 4 instead 126-10, 151-12  
 5 instructed 64-15  
 6 instructions 6-9, 9-19, 135-4, 159-6  
 7 intellectual 9-15, 9-22  
 8 intend 96-24  
 9 intending 119-22  
 10 intends 106-3  
 11 intent 127-3  
 12 intentional 74-5, 90-16  
 13 intentionally 21-24  
 14 interest 21-16  
 15 interesting 26-22  
 16 interests 29-2, 151-19  
 17 interlocutory 7-19  
 18 interpose 130-11  
 19 interpret 102-16  
 20 interview 124-18  
 21 interviewed 4-3, 32-11, 39-11, 52-14  
 22 interviewing 79-17, 127-23  
 23 interviews 52-1, 54-21  
 24 introduce 52-3, 52-15  
 19-22, 127-4  
 introduction 99-8  
 investigating 34-19, 35-2, 41-10, 60-9  
 investigation 20-15, 37-17, 35-24, 36-4, 36-5, 67-17,  
 67-20, 69-8, 74-23  
 investigator 67-5, 138-3  
 invite 155-14, 155-17, 156-3, 156-5  
 17 invoke 122-18, 100-13  
 18 invoked 21-18  
 19 involved 13-7, 15-18, 55-23, 84-4  
 20 involves 75-17  
 21 involving 50-6  
 22 irrelevance 149-8  
 23 irrelevant 124-22  
 24 issue 32-1, 5-22, 8-9, 8-12, 9-6, 9-7, 10-20,  
 32-9, 5-12, 26-4, 18-17, 48-20, 77-21,  
 83-23, 91-12, 91-21, 92-1, 93-20, 94-16,  
 101-22, 102-18, 102-7, 104-23, 105-8,  
 107-3, 107-16, 108-2, 110-6, 111-22, 111-29,  
 111-31, 122-16, 124-7, 124-20, 127-9,  
 134-1, 137-20, 140-13, 141-18, 142-2,

ACCUSCRIPTS (702) 391-0379

1 52-10, 53-16, 54-9, 54-10, 54-11, 54-16,  
 54-2, 58-5, 58-5, 61-5, 62-18, 67-10,  
 68-9, 69-15, 70-5, 73-21, 76-8, 79-6,  
 79-16, 84-4, 86-22, 87-1, 88-20, 97-16,  
 99-15, 99-20, 101-1, 103-10, 104-5  
 2 105-12, 105-19, 109-10, 110-3, 110-23,  
 112-5, 112-22, 113-12, 113-13, 114-1,  
 114-2, 114-4, 114-9, 114-17, 116-17,  
 116-19, 116-22, 117-2, 120-12, 121-10,  
 121-11, 124-18, 126-6, 128-6, 133-18,  
 134-8, 134-14, 135-14, 135-15, 135-16,  
 136-13, 138-24, 149-8, 150-7, 150-8,  
 151-5, 151-15, 151-20, 152-1, 153-1,  
 153-12, 156-15, 157-18  
 3 justified 98-24, 99-3, 99-4  
 4 juvenile 7-7, 7-16, 7-24, 139-4, 139-9, 139-12,  
 140-21  
 5 --K--  
 6 karate 87-3, 88-19, 88-21, 88-24, 97-15, 97-17,  
 97-21  
 7 kept 71-8  
 8 key 91-11  
 9 kids 18-16, 29-17, 74-7  
 10 kill 18-15, 64-24, 74-6  
 11 kind 15-8, 24-22, 45-22, 99-20, 136-2, 150-6,  
 155-7  
 12 kitchen 19-19, 19-23, 22-3  
 13 knee 19-8  
 14 knees 19-18, 71-19, 89-6, 98-19, 98-24, 99-3,  
 104-11, 104-13  
 15 knew 16-20, 25-5, 139-6, 155-3  
 16 knowing 16-20, 25-5, 139-6, 155-3  
 17 knowledge 72-8, 75-1, 76-16, 76-19, 87-3, 105-6  
 18 knows 72-8, 75-1, 76-16, 76-19, 87-3, 105-6  
 19 --L--  
 20 ladies 12-20  
 21 laid 88-6  
 22 language 89-18  
 23 laptop 24-22, 43-5  
 24 large 21-25, 32-17  
 Larochelle 31-23, 32-17  
 Larry 35-15  
 las 35-24, 49-22  
 lasers 106-11  
 last 9-14, 11-19, 11-20, 13-12, 13-15, 49-12,

ACCUSCRIPTS (702) 391-0379

ACCUSCRIPTS (702) 391-0379

1 missing 144-20, 156-20  
 2 mistake 90-18  
 3 mistaken 93-11  
 4 mister 82-8  
 5 misunderstands 148-15  
 6 mode 148-16  
 7 mom 148-17  
 8 moment 148-17  
 9 moments 148-17  
 10 Monday 148-17  
 11 monitor 148-17  
 12 monster 148-17  
 13 more 148-17  
 14 morning 148-17  
 15 motion 148-17  
 16 motions 148-17  
 17 motive 148-17  
 18 moving 148-17  
 19 much 148-17  
 20 multiple 148-17  
 21 multiples 148-17  
 22 murder 148-17  
 23 must 148-17  
 24 name --N-- 148-17  
 25 names 148-17  
 26 nature 148-17  
 27 Navarro 148-17

ACCUSCRIPTS (702) 391-0379

1 numbers 114-9, 117-17, 117-19, 117-20  
 2 --0--  
 3 o'clock 116-24, 154-3  
 4 object 28-21, 58-15, 93-8, 124-15, 125-24,  
 5 objected 138-7, 138-8  
 6 objecting 138-7, 138-8  
 7 objection 138-7, 138-8  
 8 objections 138-7, 138-8  
 9 objective 138-7, 138-8  
 10 objectively 138-7, 138-8  
 11 observation 138-7, 138-8  
 12 observations 138-7, 138-8  
 13 observe 138-7, 138-8  
 14 observed 138-7, 138-8  
 15 obtain 138-7, 138-8  
 16 obtained 138-7, 138-8  
 17 obviously 138-7, 138-8  
 18 occasion 138-7, 138-8  
 19 occupation 138-7, 138-8  
 20 occurred 138-7, 138-8  
 21 occurring 138-7, 138-8  
 22 offer 138-7, 138-8  
 23 offered 138-7, 138-8  
 24 offering 138-7, 138-8  
 25 offers 138-7, 138-8  
 26 offhand 138-7, 138-8  
 27 office 138-7, 138-8  
 28 officer 138-7, 138-8

ACCUSCRIPTS (702) 391-0379

1 Navarro's 91-8, 93-2, 94-7, 113-18, 115-17, 144-14  
 2 necessarily 114-23  
 3 necessary 7-9, 21-24  
 4 neck 5-17  
 5 need 136-6  
 6 needed 19-5, 21-7, 27-22, 27-23  
 7 Nelson 5-12, 5-14, 7-25, 86-22, 87-18, 91-9  
 8 nervous 91-22, 91-24, 92-5, 96-19, 97-12, 97-23,  
 9 Nevada 105-3, 106-14, 106-18, 106-22, 112-19,  
 10 never 105-3, 106-14, 106-18, 106-22, 112-19,  
 11 new 105-3, 106-14, 106-18, 106-22, 112-19,  
 12 next 105-3, 106-14, 106-18, 106-22, 112-19,  
 13 night 105-3, 106-14, 106-18, 106-22, 112-19,  
 14 nine 105-3, 106-14, 106-18, 106-22, 112-19,  
 15 Ninth 105-3, 106-14, 106-18, 106-22, 112-19,  
 16 nobody 105-3, 106-14, 106-18, 106-22, 112-19,  
 17 non-issue 105-3, 106-14, 106-18, 106-22, 112-19,  
 18 non-responsive 105-3, 106-14, 106-18, 106-22, 112-19,  
 19 nonetheless 105-3, 106-14, 106-18, 106-22, 112-19,  
 20 note 105-3, 106-14, 106-18, 106-22, 112-19,  
 21 notes 105-3, 106-14, 106-18, 106-22, 112-19,  
 22 nothing 105-3, 106-14, 106-18, 106-22, 112-19,  
 23 noticed 105-3, 106-14, 106-18, 106-22, 112-19,  
 24 notify 105-3, 106-14, 106-18, 106-22, 112-19,  
 25 number 105-3, 106-14, 106-18, 106-22, 112-19,

ACCUSCRIPTS (702) 391-0379

1 officers 49-22, 50-4, 50-18, 50-24, 51-5, 51-7,  
 2 56-3, 62-18, 64-13, 72-12, 73-2, 73-8,  
 3 73-9, 74-15, 74-19, 75-13, 80-2, 80-3,  
 4 81-19, 83-13  
 5 19-17, 21-18, 23-14, 26-17, 30-9, 33-5,  
 6 33-7, 33-9, 33-10, 33-14, 34-10, 34-12,  
 7 34-14, 34-24, 35-7, 39-10, 39-11, 41-10,  
 8 41-11, 50-12, 50-16, 50-19, 50-21, 58-5,  
 9 58-9, 58-17, 59-19, 66-12, 67-15, 67-18,  
 10 67-9, 74-10, 77-10, 79-3, 79-21, 80-17,  
 11 80-18  
 12 official 159-22  
 13 old 28-20, 30-15, 36-14, 36-15, 36-17, 61-13  
 14 once 70-9, 110-12, 136-5, 154-16, 157-8,  
 15 one 157-14  
 16 5-12, 6-13, 6-15, 6-19, 6-20, 11-4,  
 17 17-9, 18-16, 19-8, 20-8, 20-14, 23-10,  
 18 27-9, 32-6, 44-14, 48-8, 50-13, 53-8,  
 19 62-1, 62-7, 72-6, 78-8, 78-17, 79-6,  
 20 82-18, 82-17, 82-15, 82-20, 88-15,  
 21 89-24, 89-2, 92-5, 98-2, 103-16, 104-6,  
 22 109-5, 109-17, 109-18, 109-24, 115-32,  
 23 116-19, 116-21, 117-8, 117-22, 118-3,  
 24 118-11, 124-24, 129-10, 135-21, 136-20,  
 15 138-9, 142-23, 142-17, 151-11, 151-21,  
 16 152-16, 152-17, 155-15, 156-3, 156-12,  
 17 157-16, 157-17, 157-18  
 18 ones 121-30, 159-22, 159-9  
 19 only 121-30, 159-22, 159-9  
 20 opening 121-30, 159-22, 159-9  
 21 operating 121-30, 159-22, 159-9  
 22 opinion 121-30, 159-22, 159-9  
 23 opinions 121-30, 159-22, 159-9  
 24 opportunity 121-30, 159-22, 159-9  
 25 opposed 121-30, 159-22, 159-9  
 26 opposition 121-30, 159-22, 159-9  
 27 oral 121-30, 159-22, 159-9  
 28 oranges 121-30, 159-22, 159-9  
 29 ordeal 121-30, 159-22, 159-9

ACCUSCRIPTS (702) 391-0379

1 order 7-3, 7-6, 11-18, 23-1, 45-22, 46-4,  
2 12-18, 13-5, 13-6, 13-8, 13-11, 13-22,  
3 21-4, 21-11, 21-28, 21-29, 21-30, 21-31,  
4 21-32, 21-33, 21-34, 21-35, 21-36, 21-37,  
5 21-38, 21-39, 21-40, 21-41, 21-42, 21-43,  
6 21-44, 21-45, 21-46, 21-47, 21-48, 21-49,  
7 21-50, 21-51, 21-52, 21-53, 21-54, 21-55,  
8 21-56, 21-57, 21-58, 21-59, 21-60, 21-61,  
9 21-62, 21-63, 21-64, 21-65, 21-66, 21-67,  
10 21-68, 21-69, 21-70, 21-71, 21-72, 21-73,  
11 21-74, 21-75, 21-76, 21-77, 21-78, 21-79,  
12 21-80, 21-81, 21-82, 21-83, 21-84, 21-85,  
13 21-86, 21-87, 21-88, 21-89, 21-90, 21-91,  
14 21-92, 21-93, 21-94, 21-95, 21-96, 21-97,  
15 21-98, 21-99, 21-100, 21-101, 21-102,  
16 21-103, 21-104, 21-105, 21-106, 21-107,  
17 21-108, 21-109, 21-110, 21-111, 21-112,  
18 21-113, 21-114, 21-115, 21-116, 21-117,  
19 21-118, 21-119, 21-120, 21-121, 21-122,  
20 21-123, 21-124, 21-125, 21-126, 21-127,  
21 21-128, 21-129, 21-130, 21-131, 21-132,  
22 21-133, 21-134, 21-135, 21-136, 21-137,  
23 21-138, 21-139, 21-140, 21-141, 21-142,  
24 21-143, 21-144, 21-145, 21-146, 21-147,

ACCUSCRIPTS (702) 391-0379

1 Petty 93-24, 94-8, 94-23, 95-4, 96-12, 103-10  
2 phase 4-15, 4-17, 4-22  
3 phone 16-17, 16-18, 18-1, 18-2, 18-4, 25-12,  
4 25-13, 25-14, 25-22, 26-5, 26-8, 26-4,  
5 26-8, 27-13, 59-16, 64-21, 64-22, 77-3  
6 photo 119-12  
7 photocopied 112-5  
8 photographs 104-10, 120-24  
9 photos 9-12, 105-5, 105-6, 106-3, 106-6, 119-5,  
10 119-7, 119-21, 119-24, 120-17, 121-13,  
11 30-19, 30-21, 127-1, 128-2, 128-3  
12 physical 57-16, 119-9, 119-24, 121-8  
13 pick 116-6  
14 picked 116-1  
15 picking 18-4, 18-7, 19-5, 21-5, 37-24, 38-24,  
16 picture 56-17, 79-4, 79-18, 83-8, 84-21, 86-18,  
17 106-3, 121-2  
18 pictures 128-2, 128-3, 129-5, 129-9, 148-8  
19 piece 52-18, 52-23, 129-5, 129-9, 148-8  
20 pieces 20-20, 45-21, 52-4, 65-16, 66-19, 109-4,  
21 place 116-23  
22 placed 64-23, 70-8  
23 places 129-21  
24 plan 90-17  
pleaded 82-5  
pleading 128-14  
please 128-24  
15 12-24, 13-1, 13-13, 49-1, 49-13,  
16 49-21, 64-7, 70-3, 132-15, 144-10,  
17 128-6  
18 plus 7-5  
19 point 11-8, 16-6, 17-12, 17-19, 18-16,  
20 20-14, 27-13, 37-18, 37-4, 44-14, 46-9,  
21 58-20, 62-17, 67-4, 67-3, 68-9, 74-1,  
22 76-15, 77-3, 81-21, 90-3, 96-16, 102-18,  
23 111-4, 113-7, 128-3, 129-9, 130-5,  
24 132-10, 136-4, 136-7, 147-17  
pointed 18-12, 44-3, 46-12  
points 10-12, 13-24, 24-3, 24-6, 35-23, 46-1,  
21 46-13, 46-18, 47-3, 49-2, 49-23, 50-4,  
22 56-15, 57-15, 57-19, 59-12, 60-3, 60-4,  
23 62-18, 62-23, 67-14, 67-18, 67-18,  
24 67-20, 72-23, 74-24, 76-19, 77-10,  
101-18, 101-20, 102-8  
police's 80-6

ACCUSCRIPTS (702) 391-0379

1 participate 104-12, 156-20  
2 particular 52-13  
3 particularly 7-22, 148-2  
4 parties 57-2, 120-21  
5 4-15, 4-19, 4-21, 25-3, 51-24, 52-2,  
6 52-14, 52-18, 53-15, 55-1, 83-7, 95-3,  
7 95-8, 107-12, 108-14, 108-22, 115-19,  
8 117-9, 117-15, 117-23, 117-24, 151-3,  
9 8-2, 12-4, 23-2, 52-1, 52-11, 55-2,  
10 82-13, 98-6, 98-8, 98-11, 98-14, 98-22,  
11 107-3, 111-12, 133-16  
12 pass 23-18, 87-14, 118-12, 118-18, 125-9,  
13 130-3  
14 passed 78-18  
15 passenger 42-12, 42-13  
16 past 135-14  
17 pathologist 154-8  
18 patrol 24-15  
19 penalty 4-15, 4-17, 4-22, 114-20  
20 pending 5-22, 5-23  
21 people 6-2, 8-12, 16-24, 55-23, 56-1, 56-5,  
22 7-4, 66-18, 75-24, 81-5, 86-6, 86-7,  
23 100-6, 100-7, 103-8, 104-16, 108-8, 23  
24 103-8, 116-14, 116-17, 118-12, 133-12,  
108-2  
People's 108-2  
per 108-2  
perceptions 103-23, 103-24  
peremptory 116-15, 117-5, 117-7, 117-21, 117-22,  
16 119-13, 119-22  
perfect 57-15, 147-16  
perform 107-32  
perhaps 36-21, 38-10, 75-8, 75-11, 80-17, 133-10  
period 68-10  
permitted 12-10  
person 89-20, 17-1, 31-3, 34-2, 44-6, 75-1,  
89-20, 96-8, 98-12, 129-19, 129-23,  
133-7  
personally 109-2, 133-15  
pertains 6-22, 14-12, 48-17, 48-20, 73-4, 84-18,  
22 80-24, 94-22, 99-5, 100-23, 101-10,  
23 101-12, 103-13, 103-24, 104-23, 105-11,  
24 108-12, 108-18, 108-22, 107-9, 108-11,  
108-23, 109-6, 111-5, 111-7, 111-19

ACCUSCRIPTS (702) 391-0379

1 policy 112-22, 119-6, 122-22  
2 Pope 125-23  
3 pops 47-12  
4 portion 98-1  
5 portions 115-10, 145-14  
6 position 14-6, 14-6, 93-7, 101-4, 106-1, 145-1  
7 positive 26-3  
8 possible 120-9  
9 possibly 120-11, 142-18  
10 post-conviction 132-12, 132-24, 135-7, 147-21  
11 potential 105-12  
12 potentially 102-23, 140-14  
13 power 127-11  
14 powerful 92-51  
15 Pr 26-7  
16 practice 132-22, 136-13  
17 precise 137-20  
18 precluded 110-16, 136-24  
19 prejudice 83-19, 107-15, 120-21  
20 prejudicial 83-17  
21 preparation 132-12, 132-18, 141-2, 146-6  
22 prepare 87-1, 94-2, 133-23, 138-23  
23 prepared 141-8  
24 prepares 137-11  
preparing 27-19, 29-22, 35-6, 35-7, 36-7, 57-15,  
14 37-19, 71-5, 71-8, 72-23, 100-23, 100-6  
15 present 9-3, 9-8, 16-3, 30-0, 60-3, 83-15, 93-19,  
16 94-5, 100-21, 102-14, 108-22, 109-12,  
17 112-9, 122-3, 123-3, 129-7, 129-24,  
18 130-9, 135-6  
19 presentation 86-1, 99-23, 121-6  
20 presentations 109-14  
21 presented 94-15, 105-5, 110-24, 112-10, 121-23  
22 presenting 108-7, 110-18, 114-15, 123-18, 126-4,  
23 127-21  
24 presents 8-23, 96-4, 105-14  
preserve 150-2  
preserves 147-5  
preserving 9-3  
pretrial 5-12, 10-2, 100-5, 100-7, 100-12,  
22 100-15, 130-20, 146-12  
pretty 10-10, 14-20, 54-24, 55-8, 112-18  
prevent 23-1  
previous 109-15  
primarily 21-2, 21-8

ACCUSCRIPTS (702) 391-0379

|    |                |                                                                             |
|----|----------------|-----------------------------------------------------------------------------|
| 1  | primary        | 19-16, 41-17                                                                |
| 2  | prior          | 65-18, 81-12, 122-8, 124-8, 124-10, 129-14, 137-16, 138-21                  |
| 3  | priority       | 15-8, 25-2                                                                  |
| 4  | privacy        | 128-15, 128-21, 128-23, 129-4                                               |
| 5  | privilege      | 10-16, 24-14, 24-15, 51-18, 64-13                                           |
| 6  | probably       | 95-19, 88-24, 113-15, 114-24, 122-9, 122-11, 122-23, 158-9, 159-16          |
| 7  | probative      | 83-19, 107-15                                                               |
| 8  | problem        | 80-24, 96-14, 101-16, 102-16, 113-3, 113-5, 115-22, 139-7, 155-9            |
| 9  | problems       | 60-1                                                                        |
| 10 | procedure      | 20-7, 88-15, 116-20, 140-1                                                  |
| 11 | proceed        | 29-17                                                                       |
| 12 | proceeded      | 69-8                                                                        |
| 13 | proceedings    | 6-6, 92-12, 150-22, 159-19                                                  |
| 14 | process        | 6-18, 7-15, 7-20, 116-10, 118-11, 118-21, 147-19, 150-13                    |
| 15 | produced       | 123-14                                                                      |
| 16 | proffered      | 129-6                                                                       |
| 17 | prohibit       | 99-8                                                                        |
| 18 | proponent      | 109-7                                                                       |
| 19 | prosecuting    | 140-2                                                                       |
| 20 | prosecution    | 8-2, 8-22, 77-16, 85-24, 89-9, 93-13, 111-3, 119-21, 126-10, 153-19, 158-21 |
| 21 | prosecution's  | 111-18                                                                      |
| 22 | prosecutor     | 149-14                                                                      |
| 23 | protect        | 76-16, 77-16, 77-23, 139-12                                                 |
| 24 | protecting     | 76-16                                                                       |
| 1  | prove          | 89-20, 103-11, 106-12, 128-7                                                |
| 2  | provide        | 76-10, 125-14, 131-7                                                        |
| 3  | provided       | 103-15                                                                      |
| 4  | proving        | 103-7                                                                       |
| 5  | proviso        | 138-20                                                                      |
| 6  | psychiatric    | 8-23, 125-6, 125-11, 127-12                                                 |
| 7  | psychiatrist   | 8-23, 128-16, 128-24                                                        |
| 8  | psychiatrist's | 129-1                                                                       |
| 9  | psychological  | 129-21, 125-10, 126-15, 129-16, 129-18, 129-22                              |
| 10 | psychologist   | 31-20                                                                       |
| 11 | public         | 31-20                                                                       |
| 12 | puffed         | 30-21                                                                       |
| 13 | pull           | 16-16, 117-17, 137-21                                                       |
| 14 | pulled         | 17-12, 40-12, 44-3, 87-19                                                   |
| 15 | pulls          | 17-20                                                                       |

ACCUSCRIPTS (702) 391-0379

|    |                     |                                                                                                                                               |
|----|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | reaction            | 56-5                                                                                                                                          |
| 2  | read                | 6-12, 24-24, 44-12, 64-7, 67-10, 86-3, 86-12, 86-14, 96-13, 96-13, 101-19, 116-17, 120-7, 123-17, 152-21, 152-23, 155-14, 156-3, 157-14       |
| 3  | ready               | 76-20                                                                                                                                         |
| 4  | real                | 96-2, 96-7, 153-1                                                                                                                             |
| 5  | realize             | 37-18                                                                                                                                         |
| 6  | realized            | 83-23, 96-2, 135-20, 136-8                                                                                                                    |
| 7  | really              | 21-22, 76-9, 76-16, 77-22, 79-15, 95-23, 120-23, 143-21, 150-16                                                                               |
| 8  | reason              | 9-19, 128-8, 159-6, 159-9                                                                                                                     |
| 9  | reasonable          | 29-6, 148-11                                                                                                                                  |
| 10 | reasons             | 128-17, 129-19, 130-1, 154-11, 155-2, 155-8                                                                                                   |
| 11 | rebuttal            | 17-15, 27-24, 34-7, 39-12, 41-9, 42-21, 52-5, 52-11, 52-21, 53-11, 54-22, 55-3, 56-14, 57-10, 58-9, 58-23, 65-7, 68-24, 105-16, 114-22, 158-3 |
| 12 | recall              | 7-3, 132-23, 144-17                                                                                                                           |
| 13 | receive             | 30-24, 44-2, 106-3, 121-3, 137-15, 154-3, 154-4                                                                                               |
| 14 | received            | 93-18, 94-5, 109-18                                                                                                                           |
| 15 | recent              | 92-7, 92-19                                                                                                                                   |
| 16 | recess              | 106-4, 108-11, 126-17                                                                                                                         |
| 17 | reciprocal          | 150-19                                                                                                                                        |
| 18 | recite              | 43-11, 43-18, 53-7, 60-7, 63-7, 63-15, 63-21, 63-23, 64-9, 85-2, 153-12                                                                       |
| 19 | recollection        | 3-7, 4-12, 10-21, 16-10, 48-2, 82-24, 120-18, 132-14, 133-6, 133-21, 135-5, 155-19, 157-3, 147-9, 147-10, 150-9, 155-19, 157-3                |
| 20 | record              | 143-22, 143-19, 143-22, 143-24                                                                                                                |
| 21 | recording           | 143-22                                                                                                                                        |
| 22 | recordings          | 7-7, 7-21, 11-5, 50-22, 51-18, 53-13, 139-5, 139-9, 139-12, 139-15, 140-5, 140-11, 140-21, 142-3                                              |
| 23 | records             | 15-18, 69-5                                                                                                                                   |
| 24 | Recross-examination | 11-18                                                                                                                                         |
| 1  | redact              | 128-9                                                                                                                                         |
| 2  | redacted            | 128-9                                                                                                                                         |
| 3  | redactions          | 145-17, 145-18, 145-19                                                                                                                        |
| 4  | Redirect            | 85-23, 65-4, 71-3                                                                                                                             |
| 5  | reduce              | 32-23, 32-13, 151-12, 158-1                                                                                                                   |
| 6  | refer               | 56-9                                                                                                                                          |
| 7  | referred            | 20-7, 32-7, 78-5, 85-16                                                                                                                       |
| 8  | referring           | 20-7, 32-7, 78-5, 85-16                                                                                                                       |

ACCUSCRIPTS (702) 391-0379

|    |                |                                                                                                                                                                         |
|----|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | purple         | 102-20                                                                                                                                                                  |
| 2  | purpose        | 60-9, 89-4, 90-4, 90-11, 105-15, 140-8                                                                                                                                  |
| 3  | purposes       | 58-17, 90-24, 119-8, 119-18, 121-1, 121-10, 146-20, 151-16, 158-7                                                                                                       |
| 4  | pursuant       | 131-1                                                                                                                                                                   |
| 5  | pursue         | 11-5, 11-2                                                                                                                                                              |
| 6  | put            | 26-24, 27-1, 29-13, 32-22, 39-17, 40-19, 40-21, 56-15, 60-22, 64-15, 64-17, 78-20, 101-21, 110-17, 113-19, 118-15, 124-20, 128-11, 133-14, 141-6, 144-12, 150-19, 152-9 |
| 7  | puts           | 123-12                                                                                                                                                                  |
| 8  | --Q--          |                                                                                                                                                                         |
| 9  | qualifies      | 88-10                                                                                                                                                                   |
| 10 | qualify        | 80-7, 80-9                                                                                                                                                              |
| 11 | question       | 9-9, 9-15, 29-13, 32-1, 39-17, 39-22, 44-21, 46-23, 51-15, 54-10, 62-7, 63-20, 70-2, 74-14, 75-19, 76-9, 84-4, 91-12, 133-12                                            |
| 12 | questioning    | 32-18                                                                                                                                                                   |
| 13 | questionnaire  | 9-1, 112-21, 113-4, 113-18, 114-14, 115-11, 116-3                                                                                                                       |
| 14 | questionnaires | 113-1, 116-3                                                                                                                                                            |
| 15 | questions      | 28-17, 32-21, 34-8, 52-16, 56-15, 110-11, 114-1, 157-14                                                                                                                 |
| 16 | quick          | 71-16, 153-1                                                                                                                                                            |
| 17 | quickly        | 138-12                                                                                                                                                                  |
| 18 | quite          | 32-22, 43-1, 61-1, 62-22                                                                                                                                                |
| 19 | Quit           | 32-16, 36-19, 37-3, 61-9, 61-13, 83-23                                                                                                                                  |
| 20 | Quote          | 58-1, 58-2, 58-8                                                                                                                                                        |
| 21 | quote          |                                                                                                                                                                         |
| 22 | --R--          |                                                                                                                                                                         |
| 23 | raise          | 7-2, 13-1, 49-2, 102-10, 146-18                                                                                                                                         |
| 24 | raised         | 8-12, 88-12, 109-11, 111-3, 126-9, 123-3, 142-2, 142-13                                                                                                                 |
| 1  | raises         | 105-9                                                                                                                                                                   |
| 2  | raising        | 102-6, 109-11                                                                                                                                                           |
| 3  | ran            | 20-7                                                                                                                                                                    |
| 4  | randomly       | 17-17                                                                                                                                                                   |
| 5  | rank           | 19-23, 28-5, 28-8, 40-22, 40-24, 120-2                                                                                                                                  |
| 6  | rapidity       | 50-2                                                                                                                                                                    |
| 7  | rather         | 137-21                                                                                                                                                                  |
| 8  | re-            | 29-14, 111-2                                                                                                                                                            |
| 9  |                | 133-2, 135-5                                                                                                                                                            |

ACCUSCRIPTS (702) 391-0379

|    |              |                                                                                                                                                        |
|----|--------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1  | refers       | 90-23                                                                                                                                                  |
| 2  | reflect      | 3-7, 16-10, 92-24                                                                                                                                      |
| 3  | reflected    | 67-23                                                                                                                                                  |
| 4  | reflection   | 79-2                                                                                                                                                   |
| 5  | reflective   | 74-22                                                                                                                                                  |
| 6  | refresh      | 43-11, 53-6, 63-7, 63-15, 63-21, 63-22, 64-9, 153-12                                                                                                   |
| 7  | refreshes    | 23-18                                                                                                                                                  |
| 8  | regard       | 31-22, 39-17, 83-13, 85-7, 99-14, 109-16, 123-8, 129-11, 130-2, 130-22, 140-10                                                                         |
| 9  | regarding    | 3-16, 6-4, 6-23, 7-8, 8-12, 9-3, 9-10, 8-12, 22-22, 34-18, 74-2, 80-10, 93-10, 95-9, 111-12, 153-9, 153-15, 154-13, 156-16                             |
| 10 | regards      | 6-2, 9-10, 29-4, 39-4, 39-13, 83-21, 84-22, 99-19, 111-8, 122-2                                                                                        |
| 11 | registered   | 10-23, 20-3, 20-4                                                                                                                                      |
| 12 | registration | 10-23, 20-3, 20-4                                                                                                                                      |
| 13 | regular      | 118-1, 11-5                                                                                                                                            |
| 14 | relate       | 100-21, 142-18                                                                                                                                         |
| 15 | related      | 154-8                                                                                                                                                  |
| 16 | relates      | 41-19, 83-23, 89-5, 89-6, 90-6, 98-11, 107-2, 108-14, 124-6                                                                                            |
| 17 | relating     | 27-16, 78-12, 95-17                                                                                                                                    |
| 18 | relatively   | 68-10, 68-11, 77-12                                                                                                                                    |
| 19 | relaxed      | 68-10, 68-11, 77-12                                                                                                                                    |
| 20 | release      | 94-18, 137-18, 138-6, 139-14, 139-15, 140-4, 140-7                                                                                                     |
| 21 | released     | 138-9, 139-12, 139-24                                                                                                                                  |
| 22 | releasing    | 137-8, 139-9                                                                                                                                           |
| 23 | relevance    | 72-1, 72-14                                                                                                                                            |
| 24 | relevant     | 72-1, 83-7, 83-9, 88-24, 97-10, 97-11, 114-12, 119-8, 141-23, 142-3, 142-7, 72-18, 78-24, 79-1, 79-9, 81-2                                             |
| 1  | reliability  | 72-18                                                                                                                                                  |
| 2  | reliable     | 132-19, 133-9                                                                                                                                          |
| 3  | relied       | 126-12                                                                                                                                                 |
| 4  | rely         | 130-24, 149-22                                                                                                                                         |
| 5  | relying      | 126-12, 89-11, 108-5                                                                                                                                   |
| 6  | remain       | 6-16, 18-2, 18-3, 20-9, 24-17, 24-20, 24-20, 24-18, 36-22, 37-6, 38-23, 38-8, 21-10, 25-9, 52-3, 52-9, 52-10, 52-19, 52-22, 56-12, 57-22, 70-2, 137-23 |
| 7  | remove       | 11-21                                                                                                                                                  |
| 8  | removed      | 106-11, 118-20, 118-21, 152-1                                                                                                                          |

ACCUSCRIPTS (702) 391-0379

1 Renee 159-21  
 2 renew 11-9, 11-14  
 3 repeat 70-3  
 4 reported 138-2  
 5 reporter 46-16, 67-6, 67-7, 155-18, 156-17, 157-6  
 6 reporting 13-12, 49-13, 133-23, 159-22  
 7 reports 15-7, 44-6  
 8 represent 127-1, 155-12  
 9 represented 158-24, 159-1, 159-4  
 10 representing 3-9  
 11 request 158-22  
 12 4-11, 85-13, 122-7, 130-14, 133-3,  
 13 133-21  
 14 requested 4-2, 25-24, 57-15, 130-23  
 15 require 5-7, 85-24, 107-9, 107-13  
 16 required 2-5, 4-9, 21-20, 108-7, 134-9, 153-18,  
 17 156-26  
 18 requirement 90-7, 93-9, 94-21, 101-9, 107-5, 111-5,  
 19 143-19, 153-13  
 20 requirements 156-8  
 21 requires 85-13, 105-10, 126-14, 148-11, 155-5  
 22 research 62-17, 146-20  
 23 reserves 15-9, 66-16  
 24 residence 135-10  
 resolved 11-20  
 resources 130-3  
 respect 21-19  
 respectfully 50-5, 87-7, 149-17, 149-22, 152-20,  
 17 122-24  
 18 responded 15-4, 15-13, 24-8, 43-24, 66-19, 134-16  
 19 responding 50-12  
 20 response 22-16, 26-7, 36-2, 42-22, 87-9, 125-2,  
 126-1, 126-7, 126-8, 141-16, 156-10  
 21 responsible 98-7, 98-10  
 22 responsive 26-11, 63-20, 111-2  
 23 restricted 133-19  
 24 result 14-19, 14-22, 20-19, 62-20  
 results 127-1, 127-7, 131-7, 138-20  
 retained 128-16  
 retire 92-7  
 retrial 94-23  
 retrials 94-24  
 retrieved 23-16, 41-11

ACCUSCRIPTS (702) 391-0379

1 said 5-1, 18-11, 18-22, 19-19, 20-14, 22-18,  
 23-11, 27-22, 30-23, 31-1, 37-23, 39-12,  
 2 40-8, 40-12, 40-18, 40-21, 41-12, 41-24,  
 42-9, 43-23, 45-20, 45-24, 46-2, 47-7,  
 3 47-9, 53-12, 55-12, 55-13, 56-19, 58-3,  
 58-10, 60-15, 61-1, 61-18, 62-7, 68-13,  
 4 68-17, 70-10, 70-21, 74-20, 79-5, 79-7,  
 68-17, 80-3, 80-16, 81-5, 81-7, 83-1,  
 5 83-3, 85-12, 100-19, 101-20, 103-10,  
 103-22, 104-2, 111-13, 111-14, 126-23,  
 6 128-6, 132-8, 135-1, 141-11, 147-18,  
 128-16, 151-20, 152-1,  
 7 same 32-16, 55-15, 60-19, 88-11, 88-15,  
 8 107-16, 122-21, 122-24, 152-8, 154-3,  
 122-2, 154-11, 154-12, 154-13, 155-21,  
 9 159-3  
 10 San 7-8, 8-8, 139-8, 139-24  
 11 sanity 128-18  
 12 satisfy 128-18  
 13 saw 27-15, 27-21, 27-22, 28-15, 31-2, 31-3,  
 31-9, 31-18, 37-15, 38-18, 38-19, 38-31,  
 12 38-5, 38-23, 50-18, 51-20, 53-1, 66-21,  
 68-12, 68-23, 100-3  
 13 say 18-4, 20-5, 27-10, 28-1, 28-3, 30-9,  
 14 30-10, 32-22, 37-1, 40-18, 40-19, 53-8,  
 23-1, 57-6, 57-10, 58-12, 58-33,  
 14 62-1, 66-19, 66-21, 68-9, 69-10, 71-6,  
 77-17, 77-8, 86-7, 86-8, 86-13, 101-11,  
 15 102-20, 102-24, 105-12, 105-13, 106-14,  
 106-16, 106-20, 107-16, 110-1, 110-2,  
 16 111-6, 136-2, 136-11, 138-23, 140-10,  
 17 141-23, 142-2, 142-22, 147-17, 147-23,  
 148-4, 148-24, 149-4, 149-8, 150-12,  
 18 151-16, 152-2, 152-12, 154-15, 155-1,  
 155-3, 155-21, 157-4, 157-15,  
 19 saying 38-23, 57-10, 57-22, 70-12, 78-1, 79-3,  
 81-3, 82-15, 91-13, 94-11, 103-14,  
 20 104-20, 105-19, 107-1, 108-19, 114-17,  
 132-5, 134-10, 135-3, 138-17, 148-17,  
 148-19, 148-20, 149-3, 149-6, 151-1,  
 21 151-12, 151-13  
 22 says 75-23, 76-12, 77-2, 77-6, 77-7, 78-22,  
 82-18, 89-8, 89-18, 90-13, 90-23, 93-18,  
 94-7, 101-15, 101-18, 108-1, 111-6,  
 23 126-24, 127-10, 128-13, 129-24, 141-16,  
 143-12, 152-20, 154-6  
 24 scared 52-24

ACCUSCRIPTS (702) 391-0379

1 retry 136-6, 136-18  
 2 return 5-2, 9, 124-7  
 3 reveal 93-9, 97-18, 97-5, 105-15  
 4 reverse 22-22, 84-17  
 5 reversed 94-23, 94-14, 95-6, 135-2  
 6 review 133-13, 133-10  
 7 revolver 143-6, 143-10  
 8 Richard 154-12, 154-24  
 9 riding 174-6, 154-14  
 10 right 37-9, 37-15  
 11 12-23, 6-13, 6-17, 10-20, 11-12, 12-24,  
 12 13-1, 15-2, 22-3, 24-14, 25-19, 25-19,  
 13 26-9, 28-8, 27-3, 27-14, 28-20, 29-24,  
 14 29-1, 29-8, 40-3, 43-12, 43-14, 44-12,  
 15 42-23, 42-9, 61-6, 73-12, 75-20, 75-22,  
 16 82-23, 78-9, 82-21, 85-23, 86-9, 86-21,  
 17 82-2, 82-11, 82-21, 90-10, 90-18, 96-21,  
 18 97-5, 99-10, 99-13, 100-13, 101-3,  
 19 103-2, 105-22, 108-5, 109-1, 109-5,  
 20 110-13, 110-14, 110-17, 112-13, 117-8,  
 21 120-18, 122-1, 122-6, 123-18, 130-13,  
 22 133-18, 138-1, 142-20, 142-23, 145-22,  
 23 149-18, 151-3, 151-7, 151-8, 151-9,  
 24 151-20, 151-22, 151-24, 152-2, 152-3,  
 153-21, 157-3  
 13 rights 101-19, 125-15  
 14 rip 42-5  
 15 ripped 28-1, 28-2, 44-16, 44-22, 44-24, 45-4  
 16 risk 73-3  
 17 road 11-3, 148-3  
 18 role 51-12  
 19 room 17-11  
 20 row 17-14  
 21 rug 9-7, 27-18  
 22 rule 12-19, 87-24, 122-20, 141-19, 146-9,  
 152-10  
 23 ruled 94-14, 101-2, 102-9, 122-17, 124-1  
 24 rules 146-19, 150-1  
 ruling 11-16, 79-14, 95-12, 99-22, 100-5  
 107-8, 108-21, 124-3, 133-3, 145-10  
 110-11, 110-15, 112-2  
 20-3  
 22 --S--  
 23 sacrosanct 139-12  
 24 safe 103-16  
 safekeeping 20-5, 20-15, 22-21, 22-23  
 safety 16-24, 25-17, 70-21

ACCUSCRIPTS (702) 391-0379

1 scene 154-7  
 2 schedule 92-2  
 3 scheduling 5-12  
 4 scheme 88-10  
 5 scientific 127-2, 131-10, 131-12, 137-12  
 6 Scott 147-12  
 7 scratches 19-8, 27-19  
 8 screen 24-9, 5-12  
 9 search 6-23, 5-3, 92-13, 101-20, 102-6, 102-7,  
 145-23, 142-24, 143-8, 143-23, 144-5  
 10 seat 12-23, 142-24, 143-8, 143-23, 144-5  
 11 seated 11-9, 49-10  
 12 seats 17-14  
 13 second 7-8, 12-12, 85-2, 93-14, 95-7, 99-16,  
 108-2, 113-18, 134-22, 148-9, 156-20  
 14 Second-hand 45-6  
 15 seconds 70-4, 150-18  
 16 section 90-2, 93-10, 23-12  
 17 see 18-3, 18-3, 27-14, 27-18, 38-18, 39-1,  
 82-3, 82-3, 48-23, 50-14, 82-9,  
 11 87-17, 88-2, 89-1, 89-3, 91-8, 108-18,  
 104-2, 105-10, 110-5, 112-2, 112-7,  
 12 115-12, 115-22, 142-31, 142-31, 142-15,  
 143-7, 143-7, 143-17, 145-3, 145-19,  
 13 146-7, 158-13, 159-15  
 14 seeing 78-9  
 15 seem 53-17, 69-11, 136-12  
 16 seemed 28-17, 26-25, 54-24, 59-21, 60-22,  
 62-16, 70-22  
 17 seems 127-11  
 18 seen 55-23, 56-1, 67-17, 158-17, 158-18  
 19 sees 82-16  
 20 selected 8-22, 117-9  
 21 selection 2-21, 116-10, 118-11, 118-21, 124-9  
 22 selective 119-14  
 23 self 93-21, 95-12, 98-17, 107-2, 140-13,  
 142-6, 142-7, 142-13, 142-18  
 20 semi-auto 20-10  
 21 semi-automatic 20-8, 22-2, 23-4  
 22 sense 71-14, 78-5, 78-7, 103-17  
 23 sent 134-19  
 24 sentencing 4-17  
 separated 51-24  
 separately 157-21  
 September 145-11  
 sergeant 33-17, 50-3, 50-11, 51-13, 72-22  
 served 3-12, 8-1

ACCUSCRIPTS (702) 391-0379

|    |             |                                         |
|----|-------------|-----------------------------------------|
| 1  | service     | 73-16                                   |
| 2  | services    | 63-1                                    |
| 3  | set         | 77-9, 108-16, 109-20, 110-1, 110-22,    |
| 4  | seven       | 122-24, 152-16, 152-18, 152-24          |
| 5  | several     | 50-23, 78-16                            |
| 6  | sex         | 132-24                                  |
| 7  | sexual      | 52-24, 55-4, 55-6, 55-8, 55-16          |
| 8  | shaken      | 127-20                                  |
| 9  | shaky       | 27-10                                   |
| 10 | shall       | 27-10                                   |
| 11 | sheet       | 27-10                                   |
| 12 | Sherlock    | 27-10                                   |
| 13 | shift       | 27-10                                   |
| 14 | shirt       | 27-10                                   |
| 15 | Shoels      | 27-10                                   |
| 16 | shooting    | 94-24, 96-12                            |
| 17 | short       | 126-11, 151-13                          |
| 18 | shot        | 74-5, 77-17, 77-20, 136-13              |
| 19 | shotgun     | 23-15                                   |
| 20 | shots       | 157-9                                   |
| 21 | show        | 32-10, 88-11, 89-21, 90-14, 92-12,      |
| 22 | showed      | 106-3, 120-7, 120-10, 131-22, 146-7     |
| 23 | showing     | 32-10                                   |
| 24 | shown       | 70-10, 75-18, 90-4, 111-7, 121-19       |
| 15 | shows       | 143-2                                   |
| 16 | sic         | 74-9                                    |
| 17 | side        | 50-18                                   |
| 18 | side's      | 11-23, 27-1, 27-4, 80-20, 81-14, 83-3,  |
| 19 | sides       | 10-10, 11-1, 11-4, 11-7, 11-10, 11-13,  |
| 20 | sign        | 23-16, 12-15, 12-15, 12-15, 12-15,      |
| 21 | signature   | 25-23, 142-18, 142-18, 157-13, 157-15,  |
| 22 | signed      | 152-10                                  |
| 23 | significant | 12-2, 141-7                             |
| 24 | silent      | 48-7, 66-4, 141-4, 144-2                |
| 1  | simba       | 5-24, 83-12, 123-16, 142-21, 144-23     |
| 2  | similar     | 5-24, 64-16, 143-4, 144-4               |
| 3  | simple      | 20-11                                   |
| 4  | sims        | 89-12, 108-5                            |
| 5  | since       | 22-5                                    |
| 6  |             | 11-18                                   |
| 7  |             | 12-13, 137-5, 149-11                    |
| 8  |             | 21-13, 21-14, 156-15, 157-6             |
| 9  |             | 12-13, 48-2, 57-1, 58-18, 107-2, 130-3, |
| 10 |             | 17-8, 138-11, 154-5                     |

ACCUSCRIPTS (702) 391-0379

|    |               |                                          |
|----|---------------|------------------------------------------|
| 1  | speaking      | 34-16, 34-23, 60-11                      |
| 2  | special       | 33-19, 53-21, 57-7, 88-4, 88-5, 93-20,   |
| 3  | specific      | 93-21, 96-17, 97-9, 129-13, 129-17,      |
| 4  | specifically  | 129-22, 156-18                           |
| 5  | speculation   | 9-11, 79-15, 90-22, 125-5, 143-11,       |
| 6  | speed         | 153-16, 154-14, 155-4                    |
| 7  | spell         | 28-22                                    |
| 8  | spend         | 132-2                                    |
| 9  | spent         | 13-12, 49-12                             |
| 10 | splatter      | 23-2, 23-10, 21-6                        |
| 11 | split         | 53-4, 53-15, 53-17, 53-23                |
| 12 | splitting     | 12-13                                    |
| 13 | spoke         | 86-16                                    |
| 14 | spoken        | 28-22, 37-20                             |
| 15 | spontaneous   | 27-12, 57-19                             |
| 16 | spontaneously | 75-15, 76-13, 76-15, 78-15               |
| 17 | stack         | 78-1                                     |
| 18 | stage         | 121-3                                    |
| 19 | stand         | 107-18, 123-19                           |
| 20 | standard      | 102-20, 129-24, 133-14                   |
| 21 | standardized  | 20-2, 66-8, 78-21, 122-21, 123-24        |
| 22 | standing      | 127-8, 131-12                            |
| 23 | stapled       | 26-18, 66-5                              |
| 24 | start         | 10-22                                    |
| 1  | started       | 5-11, 12-16, 55-24, 118-13, 118-22,      |
| 2  | startling     | 147-16, 148-8                            |
| 3  | state         | 7-15, 50-13, 111-15                      |
| 4  |               | 78-13                                    |
| 5  |               | 3-6, 3-9, 3-11, 3-15, 4-2, 4-18, 5-4,    |
| 6  |               | 10-1, 13-5, 13-11, 14-9, 14-16, 14-11,   |
| 7  |               | 19-21, 73-23, 74-5, 78-17, 79-15, 80-11, |
| 8  |               | 86-8, 86-9, 88-11, 88-12, 89-5, 89-10,   |
| 9  |               | 90-2, 92-22, 93-3, 96-1, 97-18, 98-18,   |
| 10 |               | 101-14, 102-22, 107-16, 113-3, 113-12,   |
| 11 |               | 113-13, 113-18, 115-1, 119-8, 119-9,     |
| 12 |               | 119-17, 119-18, 121-7, 123-12, 124-22,   |
| 13 |               | 126-13, 127-9, 127-14, 128-7, 129-19,    |
| 14 |               | 130-18, 130-23, 132-32, 133-7, 133-9,    |
| 15 |               | 134-24, 135-10, 135-19, 135-21, 139-7,   |
| 16 |               | 138-1, 150-8, 152-8, 152-20, 158-22,     |
| 17 |               | 158-24                                   |
| 18 | State's       | 85-8, 84-7, 99-7, 110-5, 125-12, 127-13, |
| 19 | stated        | 130-8, 130-22, 152-17                    |
| 20 |               | 17-23, 18-17, 19-22, 21-23, 22-1, 41-8,  |

ACCUSCRIPTS (702) 391-0379

|    |            |                                          |
|----|------------|------------------------------------------|
| 1  | siren      | 15-5                                     |
| 2  | sit        | 96-23, 110-9, 113-23, 129-22             |
| 3  | sitting    | 120-17                                   |
| 4  | situation  | 16-8                                     |
| 5  | six        | 37-8, 51-22, 55-1, 74-2, 74-17, 77-12,   |
| 6  | Sixth      | 77-23, 78-2, 81-9, 94-8, 98-5, 123-7,    |
| 7  | slash      | 33-10, 67-14, 67-18, 119-9, 120-2,       |
| 8  | slightly   | 46-1, 151-20, 152-16                     |
| 9  | Smith      | 25-15, 150-14, 151-13, 151-17, 151-22,   |
| 10 | smooth     | 51-24, 152-2, 152-3                      |
| 11 | social     | 8-6, 8-14                                |
| 12 | solicited  | 30-3, 30-20                              |
| 13 | solve      | 143-4                                    |
| 14 | somebody   | 46-4                                     |
| 15 | somebody's | 35-23, 45-20, 45-22, 46-2, 46-6, 46-7,   |
| 16 | somehow    | 46-8, 46-10, 46-11, 46-15, 67-19, 77-5   |
| 17 | someone    | 95-8                                     |
| 18 | something  | 102-16, 112-1                            |
| 19 |            | 5-8, 15-22, 21-20, 41-13, 63-6, 76-20,   |
| 20 |            | 92-3, 96-4, 98-9, 106-14, 114-14         |
| 21 |            | 11-24                                    |
| 22 |            | 17-17, 148-4                             |
| 23 |            | 1-13, 16-7, 18-2, 21-19, 28-6, 55-6,     |
| 24 |            | 60-20, 83-5, 87-5, 87-12, 91-9, 91-8,    |
| 1  |            | 91-18, 98-24, 97-13, 97-17, 97-22,       |
| 2  |            | 101-19, 107-3, 107-10, 107-11, 107-17,   |
| 3  |            | 109-9, 109-22, 110-10, 112-7, 124-9,     |
| 4  |            | 134-16, 135-22, 136-1, 136-12, 149-21,   |
| 5  |            | 140-12, 151-15, 151-24, 153-14           |
| 6  | somewhere  | 9-20, 27-4, 35-7, 120-3, 143-17          |
| 7  | soon       | 21-18                                    |
| 8  | sorry      | 5-23, 20-24, 55-24, 62-6, 82-14, 116-9,  |
| 9  | sort       | 132-10, 158-18                           |
| 10 | sorts      | 82-21, 88-10, 99-20, 109-20, 111-1,      |
| 11 | sotto      | 96-1, 141-13                             |
| 12 |            | 10-6                                     |
| 13 |            | 85-3, 92-17, 96-10, 103-20, 113-17,      |
| 14 |            | 122-13, 159-13                           |
| 15 | sought     | 122-13                                   |
| 16 | sound      | 38-37                                    |
| 17 | source     | 88-6, 101-11, 107-2, 111-16, 112-8,      |
| 18 | spatters   | 152-9                                    |
| 19 | speak      | 54-7                                     |
| 20 |            | 4-4, 4-6, 4-8, 36-19, 45-22, 59-2, 61-9, |
| 21 |            | 61-10, 81-13, 96-12, 121-13              |

ACCUSCRIPTS (702) 391-0379

|    |                 |                                          |
|----|-----------------|------------------------------------------|
| 1  | statement       | 44-1, 44-23, 46-11, 70-18, 79-16, 90-11, |
| 2  |                 | 151-4                                    |
| 3  |                 | 28-2, 31-21, 31-24, 32-8, 32-16, 40-4,   |
| 4  |                 | 47-2, 63-2, 63-16, 63-23, 64-4, 65-15,   |
| 5  |                 | 65-21, 67-3, 67-10, 67-22, 68-5, 68-17,  |
| 6  |                 | 74-15, 74-21, 75-8, 75-9, 75-12, 75-13,  |
| 7  |                 | 75-14, 75-18, 75-21, 77-1, 77-5, 77-11,  |
| 8  |                 | 78-12, 79-11, 80-10, 80-14, 82-11,       |
| 9  |                 | 82-17, 84-6, 91-15, 95-15, 100-7,        |
| 10 | statements      | 110-20, 121-20, 122-4, 136-11, 153-20,   |
| 11 |                 | 8-14, 9-4, 9-5, 9-7, 22-21, 58-16, 79-7, |
| 12 |                 | 78-24, 79-11, 80-21, 81-2, 81-9, 81-22,  |
| 13 |                 | 82-3, 82-9, 83-10, 103-3, 122-6, 122-10, |
| 14 |                 | 122-17, 122-19, 123-4, 124-11, 124-16,   |
| 15 |                 | 153-10                                   |
| 16 | States          | 100-9, 125-7, 125-15, 125-17, 125-19,    |
| 17 |                 | 125-21, 125-23, 127-15, 159-4            |
| 18 | stating         | 42-2                                     |
| 19 | status          | 35-18, 158-15                            |
| 20 | statute         | 90-13, 90-23, 126-16, 140-5, 155-5,      |
| 21 |                 | 156-5, 156-7, 156-8, 156-23              |
| 22 | statutes        | 156-7                                    |
| 23 | statutory       | 26-13, 129-13, 159-8                     |
| 24 | stay            | 38-9, 51-17, 130-5, 130-10, 130-15,      |
| 1  |                 | 130-16, 133-3, 133-5, 140-18             |
| 2  | stayed          | 32-10, 59-23                             |
| 3  | step            | 32-24, 16-1, 25-16, 49-1, 51-15, 98-2,   |
| 4  |                 | 127-13                                   |
| 5  | steps           | 36-19, 136-20                            |
| 6  | steve           | 49-17                                    |
| 7  | still           | 5-23, 16-20, 37-1, 44-18, 46-13, 48-19,  |
| 8  |                 | 29-11, 70-9, 71-10, 78-12, 78-19,        |
| 9  |                 | 83-22, 96-8, 113-19, 121-3, 121-4,       |
| 10 |                 | 152-11                                   |
| 11 | stipulate       | 4-16, 4-22, 117-16, 117-24               |
| 12 | stipulation     | 52-9                                     |
| 13 | stop            | 80-20                                    |
| 14 | story           | 10-17, 112-19                            |
| 15 | straightforward | 10-17, 144-14, 151-2                     |
| 16 | streamline      | 67-18, 59-21, 74-9, 78-14                |
| 17 | street          | 27-7, 70-5, 74-9, 78-14                  |
| 18 | stress          | 82-12, 18-13, 18-22, 21-24, 31-1, 44-24, |
| 19 | striking        | 18-3, 79-8                               |
| 20 | struggle        | 63-22                                    |
| 21 | struggled       | 59-22                                    |
| 22 | stuff           | 59-22                                    |

ACCUSCRIPTS (702) 391-0379



1 subdued 28-8, 28-14, 28-16, 28-19  
2 subject 81-23, 82-10, 82-22, 104-6  
3 subjective 102-22  
4 submission 108-14, 124-21, 126-14, 127-12, 143-9,  
5 submit 48-2, 48-7, 48-11  
6 subpoena 88-13  
7 subpoenas 89-24, 96-15  
8 subsection 40-18  
9 successful 40-8  
10 succinctly 40-8  
11 such 61-7, 100-10, 101-5, 108-23  
12 sufficient 78-19, 80-5, 144-6  
13 suggest 113-21  
14 suggested 60-2, 92-3  
15 suggesting 115-1  
16 suggestion 60-12, 135-15  
17 suggestions 51-16  
18 suit 16-9  
19 summarizes 10-10  
20 Superior 139-9, 140-20, 142-6  
21 supplement 152-6  
22 support 95-9  
23 supports 149-10  
24 supposed 48-2, 116-1, 127-8, 131-7, 131-9,  
131-12  
100-12, 101-18, 102-13  
14 suppress 94-14, 95-6, 95-11, 125-8, 126-14,  
15 Supreme 130-6, 133-4  
16 sure 6-13, 12-1, 16-23, 31-16, 42-10, 42-11,  
17 48-21, 50-23, 63-6, 63-8, 64-15, 66-19,  
70-15, 72-24, 76-18, 89-12, 109-21,  
114-21, 121-17, 121-22, 135-5, 137-13,  
139-10, 143-16, 147-1  
18 surprised 26-17  
19 suspects 66-9  
20 sustain 119-12, 119-19  
21 Sustained 18-5  
22 swollen 18-21  
23 sworn 13-2, 49-7  
24 sympathy 70-17, 71-6, 71-15  
25 symptom 68-14  
26 symptoms 68-18, 68-23

1 testifies 76-6, 84-9, 94-12, 129-16, 131-3,  
131-20, 131-21, 133-12, 133-21, 75-24, 81-20,  
2 testify 81-18, 82-20, 89-12, 94-16, 95-21, 95-22,  
95-23, 95-24, 100-12, 100-14, 101-22,  
3 102-1, 103-14, 103-23, 109-1, 109-2,  
110-7, 123-9, 123-14, 123-22, 131-24,  
4 134-19, 136-16  
5 testifying 46-20, 47-20, 82-20, 94-10, 94-11,  
6 testimony 106-22  
7 3-16, 4-3, 5-21, 8-14, 8-15, 8-23,  
12-15, 31-10, 77-14, 80-1, 84-10, 89-6,  
100-3, 100-7, 102-3, 103-11, 105-14,  
7 107-10, 127-21, 129-21, 129-23  
8 testing 126-22, 127-8, 132-20  
9 tests 127-2, 127-7, 131-12  
10 thank 10-8, 13-9, 13-10, 13-18, 16-12, 23-19,  
23-21, 32-24, 44-13, 46-24, 47-16,  
11 47-18, 47-22, 48-15, 49-10, 49-16,  
61-20, 72-18, 72-19, 72-22, 73-5, 79-13,  
83-17, 112-16, 122-12, 130-21, 139-1,  
12 141-9, 142-20, 144-11, 151-9, 151-10,  
152-12, 153-4, 153-7, 156-2, 157-2,  
157-12, 157-16, 159-14, 159-18  
13 Thanks 42-15, 69-1  
14 themselves 96-5, 96-12  
15 theories 109-16, 109-17  
16 there's 16-2  
17 therefore 8-6, 93-14, 104-21, 142-3  
18 thereof 127-5  
19 therewith 89-22  
20 they're 8-2, 23-2, 48-22, 78-9, 83-15, 83-16,  
89-2, 103-11, 106-13, 106-16, 109-18,  
109-19, 110-1, 114-12, 116-4, 119-20,  
18 118-20, 118-11, 119-17, 119-18, 120-9,  
19 123-5, 129-6, 131-12, 136-11, 140-12,  
140-17, 148-3, 150-7, 152-2  
20 they've 72-20, 118-8, 129-5, 132-2  
21 think 19-8, 19-9, 27-21, 42-10, 48-2, 50-9,  
55-8, 55-12, 63-5, 73-9, 73-22, 74-1,  
72-1, 78-5, 78-24, 79-7, 83-1, 80-5,  
80-15, 81-19, 83-9, 84-9, 85-1, 85-2,  
88-1, 88-12, 88-16, 88-3, 88-24, 89-17,  
89-11, 89-12, 94-10, 97-3, 98-2, 99-2,  
22 102-19, 102-23, 103-3, 103-5, 103-15,  
23 103-19, 102-23, 103-3, 103-5, 103-15,  
24 103-19, 102-23, 103-3, 103-5, 103-15,

1 tactically --T--  
2 take 124-5  
3 11-19, 14-24, 21-22, 43-17, 60-13,  
60-20, 63-2, 63-7, 63-12, 64-4, 64-6,  
4 67-18, 88-1, 91-2, 91-4, 92-16, 102-20,  
120-15, 130-5, 130-10, 131-10, 131-11,  
5 135-6, 136-19, 137-8, 152-5  
6 taken 35-15, 36-24, 51-19, 65-16, 75-2,  
7 120-24, 137-24  
8 takes 140-4, 150-18  
9 taking 52-4  
10 talk 5-14, 9-20, 10-2, 36-17, 46-3, 78-23,  
81-11, 84-17, 91-3, 91-8, 91-10, 93-5,  
11 104-5, 110-3, 115-8, 116-8, 117-2,  
121-18, 122-11, 135-13, 150-12, 150-13  
12 talkative 28-14, 28-16  
13 talked 22-2, 23-11, 23-14, 39-9, 39-11, 46-2,  
58-12, 58-24, 111-9  
14 talking 69-9, 11-17, 19-16, 19-17, 19-22, 22-7,  
69-23, 35-4, 35-6, 47-7, 47-9, 58-23,  
11 58-5, 75-20, 89-15, 89-18, 91-14, 93-23,  
100-16, 104-18, 104-19, 108-1, 108-2,  
12 108-19, 124-18, 125-10  
13 talks 91-14, 105-10, 108-13, 157-9  
14 tangential 83-23  
15 tape 137-24, 143-12, 143-19, 143-22, 143-24  
16 tattoos 96-6, 104-8, 104-12, 104-18, 104-21,  
106-6, 108-11  
17 tell 28-3, 17-25, 24-9, 28-4, 28-18, 28-19,  
28-33, 59-25, 63-32, 60-7, 71-7, 99-10,  
18 72-8, 72-10, 97-12, 66-7, 71-17, 71-20,  
118-1, 118-2, 118-7, 118-21, 118-8,  
19 136-7, 136-12, 137-15, 158-21, 159-3  
20 temporary 82-16, 82-18, 96-16, 154-17  
21 term 32-18, 92-9, 153-3, 153-5, 156-11  
22 terminology 129-10  
23 terms 152-21, 158-6, 158-9  
24 terrified 67-1, 71-5, 71-8, 75-18, 123-11  
terrifying 55-12, 55-14, 55-17, 55-19  
test 25-18, 107-18, 131-8, 131-10, 138-20  
test- 75-15  
tested 128-4  
testified 13-8, 29-10, 30-11, 32-15, 49-9

1 105-13, 106-18, 108-10, 108-13, 108-15,  
2 110-21, 110-24, 111-12, 111-19, 113-5,  
3 113-15, 114-9, 114-11, 114-13, 115-9,  
4 119-12, 119-17, 124-5, 126-4, 126-6,  
5 133-12, 131-8, 131-13, 131-18, 133-13,  
133-17, 136-8, 137-2, 138-13, 139-11,  
6 140-16, 140-18, 141-13, 142-14, 143-5,  
145-7, 145-13, 150-16, 151-3, 151-23,  
7 152-16, 157-17, 157-22, 158-2, 158-9,  
159-11  
8 thinking 102-24, 121-14  
9 thinks 105-8  
10 third 95-8, 98-6, 98-8, 98-11, 98-14, 98-22,  
106-20, 107-3, 107-13, 108-14, 108-22,  
11 111-12, 113-15  
12 Thomas 7-5, 138-3, 138-8, 138-10  
13 Thompson 137-21  
14 thorough 39-10  
15 though 24-9, 34-5, 42-14, 105-19, 107-19,  
11 114-9, 122-23, 131-18, 131-24, 133-6,  
134-3, 152-13, 158-7  
12 thought 55-13, 62-22, 74-17, 85-20, 150-6  
13 threatened 18-19, 64-24  
14 threatening 72-8, 21-6, 24-4  
15 three 104-22  
16 threshold 28-22, 26-21, 109-15, 147-14  
17 throughout 136-14  
18 throwing 136-14, 20, 5-1  
19 Thursday 59-8, 59-18  
20 tied 59-8, 59-18  
21 time 72-20, 5-14, 10-4, 11-14, 15-19, 18-13,  
22 21-21, 23-2, 23-17, 24-5, 25-3,  
54-10, 56-22, 28-15, 31-2, 31-6, 31-19,  
32-8, 32-10, 35-1, 36-3, 36-7, 36-10,  
18 37-1, 37-14, 48-4, 50-23, 51-16,  
52-2, 56-12, 53-15, 53-24, 53-3, 53-4,  
53-12, 53-16, 53-17, 53-18, 53-19,  
20 54-21, 57-12, 57-17, 58-16, 58-13, 58-9,  
58-11, 61-7, 61-17, 68-24, 68-31,  
68-32, 68-33, 68-1, 68-2, 68-13,  
21 68-16, 68-18, 68-19, 70-7, 70-23, 72-8,  
74-16, 74-23, 75-9, 77-2, 77-9,  
77-10, 77-11, 78-1, 78-2, 78-10, 80-6,  
80-17, 85-11, 87-9, 91-7, 94-6, 96-19,  
22 99-17, 103-20, 112-7, 113-17, 114-19,  
23 102-19, 102-23, 103-3, 103-5, 103-15,  
24 103-19, 102-23, 103-3, 103-5, 103-15,

1 115-23, 116-2, 120-15, 122-10, 124-13,  
30-4, 133-1, 133-9, 135-7, 139-13,  
2 12-13, 125-5, 127-24, 159-13,  
114-24, 118-23, 118-24  
3 times 5-8, 4-13, 5-21, 6-3, 7-2, 12-5, 16-4,  
today 29-13, 29-24, 48-8, 86-25, 94-7, 112-1,  
4 113-22, 119-3, 126-7, 126-8, 133-23,  
126-12  
5 together 3-8, 5-5, 93-1, 99-21, 113-19, 148-9  
told 15-11, 36-3, 38-4, 39-1, 39-2, 39-4,  
6 21-7, 41-23, 47-11, 57-23, 58-5, 58-12,  
59-10, 59-16, 61-6, 82-23, 82-23, 84-10,  
7 64-13, 65-12, 66-24, 68-16, 67-15, 64-10,  
103-2, 106-16, 106-21, 107-11, 121-14,  
8 12-23  
9 tomorrow 38-10, 159-16  
took 19-16, 16-19  
10 19-16, 16-19, 40-18, 43-7, 45-21, 62-11,  
83-19, 62-8, 65-12, 65-16, 109-3  
11 tool 77-3, 90-22  
totally 10-9  
tough 70-14  
toward 79-7, 71-8  
towards 121-15  
town 12-8, 10-19, 10-21, 11-5, 11-16, 11-19,  
12 12-8, 14-24, 145-1, 145-5, 145-8,  
125-14, 145-3  
13 trained 68-21, 97-17  
training 97-21, 138-10  
transcript 23-10, 133-21, 133-23, 159-16, 159-19  
transcription 123-23  
transpired 25-17, 68-12  
traumatic 23-1, 26-2, 56-7, 56-9, 68-21, 78-19  
trembling 23-1, 23-20, 35-21, 66-12, 66-21, 67-7,  
18 68-16, 68-6, 68-7, 68-15, 74-18, 80-1,  
3-12, 12-22, 28-3, 48-11, 94-8, 95-4,  
19 95-5, 95-7, 100-14, 102-1, 102-4,  
109-13, 112-4, 113-6, 117-10, 124-15,  
20 126-15, 127-20, 129-14, 132-10, 136-16,  
137-1, 137-2, 138-21, 146-21, 147-14,  
21 128-20, 151-6  
trials 95-1, 112-6, 147-15, 147-17  
tried 18-1, 107-16, 136-21  
22 trigger 18-12, 44-3, 137-21  
trouble 47-5, 75-5, 76-19  
true 96-2, 96-3, 159-19  
23 truth 13-6, 13-7, 49-7, 49-8, 76-14

ACCUSCRIPTS (702) 391-0379

1 69-12, 74-10  
2 upstairs 65-8, 71-10  
urge 115-19  
3 use 18-1, 63-1, 101-14, 105-15, 108-12,  
20-1, 121-8, 121-13, 121-24, 129-18,  
4 158-6, 158-8  
used 20-12, 23-1, 39-15, 41-17, 56-12, 93-13,  
102-6  
5 Usiak 33-23, 33-23, 51-10, 51-11  
using 33-23, 33-23, 124-1  
6 usually 120-7, 120-7, 139-17  
utterance 76-7, 74-16, 77-6, 78-6, 78-11, 79-24,  
80-8  
7 utterances 81-10  
8 --V--  
9 vague 22-12, 22-16, 69-20  
valuable 68-23  
10 vampires 11-11  
various 2-15  
11 Vegas 2-15, 13-24, 49-22  
vehicles 27-5  
12 venire 112-24  
verbal 75-9  
13 verification 124-5  
verify 24-7, 144-1  
14 version 76-8, 146-6  
versus 3-6, 7-21, 44-16, 75-9, 78-17, 92-22,  
15 125-15, 125-17, 125-19, 125-21, 125-23,  
13-18, 25-23, 46-14, 47-16, 47-19,  
16 49-18, 49-9, 52-21, 60-22, 61-20, 62-16,  
62-17, 62-18, 72-22, 77-6, 77-12, 79-1,  
17 79-2, 82-8, 84-14, 93-8, 93-18, 94-5,  
108-9, 108-13, 114-1, 115-18, 141-14,  
18 159-10, 147-12, 149-11, 154-22, 156-18,  
19 victim 78-18, 93-21, 94-10, 95-9, 157-24,  
158-7, 158-8  
20 victims 125-6, 125-14  
violate 128-15, 128-21, 159-1  
21 violated 102-7  
violation 21-3, 22-22, 24-16, 50-6, 50-13, 63-3,  
22 violence 100-21, 114-10  
23 violent 95-3, 95-9, 98-13  
Ving 34-17  
24 Virginia 6-24, 7-8, 9-5, 10-23, 14-11, 17-2,

ACCUSCRIPTS (702) 391-0379

1 try 15-22, 50-11, 80-23, 110-9  
2 trying 33-18, 38-11, 52-15, 76-18, 77-16,  
77-22, 86-22, 87-8, 98-10, 99-20, 104-4,  
3 110-2, 110-3, 111-10, 135-17, 137-5,  
118-8, 149-3  
4 turn 152-1  
two 7-1, 10-22, 11-20, 15-7, 20-5, 21-4,  
24-7, 57-2, 57-20, 98-18, 117-6, 117-11,  
5 117-14, 117-17, 117-20, 118-1, 118-3,  
117-14, 152-17, 152-3  
6 type 76-23, 75-17, 98-5, 106-11, 120-8,  
7 72-16, 75-15  
types 70-19, 76-13  
8 --U--  
9 Udiak 33-19, 33-21, 51-9  
Uh-huh 22-8, 24-23, 26-14, 32-18, 36-6, 89-23  
10 ultimately 22-8, 61-3  
umbrella 77-5  
unavailable 7-21, 123-19  
under 48-1, 48-2, 48-11, 54-7, 54-17, 58-18,  
69-14, 69-21, 70-5, 74-9, 78-14, 78-19,  
76-4, 79-11, 79-21, 79-24, 80-10, 80-11,  
12 80-14, 80-15, 81-8, 83-2, 83-20, 85-20,  
87-5, 88-10, 89-8, 93-10, 95-22, 97-10,  
97-11, 97-14, 101-8, 104-17, 122-24,  
14 124-16, 129-7, 129-12, 131-5, 133-18,  
120-21, 143-5, 147-4, 147-10, 148-6,  
15 128-21, 148-24, 151-16  
understand 5-9, 38-11, 70-2, 81-8, 86-12, 101-1,  
16 08-18, 110-13, 112-12, 123-17, 124-4,  
31-17, 132-1, 132-4, 132-8, 135-18,  
17 150-5, 150-24  
understanding 3-14, 98-4, 143-11, 146-17  
unfair 77-14, 157-5  
18 uniform 33-3, 34-14, 65-22, 65-23, 66-1, 67-18  
unit 5-17, 15-21  
19 United 100-9, 125-7, 125-15, 125-17, 125-19,  
20 23-21, 125-23, 127-15, 159-4  
unless 23-22, 31-3, 133-13  
until 51-19, 61-5, 117-16, 118-4, 118-7,  
21 118-24, 121-13, 121-15, 121-21, 122-10,  
22 124-12, 124-5, 125-22  
unusual 62-4, 62-11, 62-23  
upon 17-17, 15-1, 15-16, 15-17, 16-14, 125-9,  
23 127-21, 132-19, 133-9  
upset 17-10, 17-16, 17-24, 31-4, 38-3, 69-11,

ACCUSCRIPTS (702) 391-0379

1 29-5, 30-20, 34-17, 36-22, 39-18, 41-20,  
2 22-2, 63-5, 71-7, 98-21, 100-20  
Virginia's 81-1, 19-5  
3 visible 52-2, 55-16  
visibly 10-7, 23-19, 36-10, 45-10, 61-7, 70-23,  
4 voce 85-3, 92-6, 99-17, 103-20, 113-17,  
122-13, 129-13  
5 voir 12-13, 116-13, 152-1  
voluntarily 109-1, 123-22  
6 --W--  
7 W-i-n-s-l-o-w 49-15  
wade 127-15  
8 wait 5-8, 10-15, 25-20, 63-19  
waited 15-17  
9 waive 4-16, 4-22  
waived 1-19, 128-23  
10 waiving 100-1  
walk 12-13, 129-13  
11 walked 9-21, 28-3  
walking 7-11  
want 5-8, 6-13, 7-2, 9-8, 9-19, 9-20, 27-9,  
12 47-4, 51-20, 52-8, 74-1, 78-7, 78-23,  
84-19, 84-23, 85-4, 85-9, 86-7, 86-11,  
13 88-3, 89-13, 91-2, 91-6, 91-8, 92-4,  
92-1, 96-23, 97-10, 103-18, 104-16,  
14 115-8, 116-21, 117-16, 123-5, 129-7,  
15 20-17, 121-8, 121-19, 123-5, 124-5,  
38-8, 137-13, 132-11, 142-8, 146-6,  
16 147-22, 152-20, 157-4, 159-7,  
159-16  
17 wanted 22-20, 45-21, 59-11, 60-23, 126-21,  
126-14, 147-2  
18 wants 10-2, 20-3, 73-23, 97-24, 122-3, 145-17,  
146-8  
19 warrant 5-22, 5-24, 73-15, 92-13, 142-23,  
142-24, 143-8, 143-23, 144-5  
20 waste 135-10  
way 3-24, 38-13, 50-14, 53-8, 60-15, 66-11,  
21 72-6, 77-22, 81-13, 86-14, 88-11, 96-11,  
101-21, 104-17, 107-16, 109-19, 111-2,  
22 111-2, 112-3, 117-15, 117-21, 118-10,  
119-4, 124-1, 124-3, 135-21, 147-14,  
23 17-22, 149-7, 150-11, 150-18, 150-22,  
151-5, 151-13, 152-9, 159-3  
24 ways 117-11

ACCUSCRIPTS (702) 391-0379

1 we'd 141-2  
 2 we'll 3-23, 5-13, 10-16, 10-17, 12-5, 12-16,  
 3 12-14, 12-23, 14-5, 15-3, 112-4,  
 4 16-8, 17-9, 120-13, 125-10, 125-16,  
 5 130-9, 132-6, 152-9, 153-2, 153-3,  
 6 we're 32-11, 38-21, 74-14, 75-20, 76-13, 77-3,  
 7 77-12, 87-16, 89-12, 89-13, 90-11, 92-6,  
 8 96-12, 98-22, 98-17, 98-23, 99-2,  
 9 108-16, 112-13, 120-10, 116-1, 116-5,  
 10 12-6, 12-7, 129-7, 130-23, 132-3,  
 11 12-7, 12-8, 125-21, 146-2, 147-3,  
 12 12-9, 148-16, 157-4,  
 13 wealth 125-13  
 14 weapon 7-4, 39-18, 39-23, 137-8, 137-18, 137-24  
 15 weapons 39-13  
 16 wearing 16-7, 45-2  
 17 Wednesday 4-23, 5-2, 22-3, 113-1, 113-8, 114-7,  
 18 16-1, 116-5, 116-6, 116-11, 119-24,  
 19 121-18, 152-19, 153-1, 153-2, 153-3,  
 20 153-5, 156-11, 156-23, 157-11  
 21 week 11-19, 112-20  
 22 weigh 91-1  
 23 weird 111-11  
 24 well 4-19, 10-10, 11-7, 11-10, 11-15, 16-16,  
 19-14, 20-5, 21-14, 22-8, 25-23, 30-7,  
 48-9, 53-12, 58-3, 68-13, 69-19, 71-17,  
 78-7, 78-5, 72-13, 79-7, 81-2, 80-8,  
 80-15, 80-16, 80-24, 81-8, 81-19, 82-12,  
 82-18, 82-22, 82-17, 85-14, 85-3, 85-9,  
 87-1, 87-23, 88-2, 88-8, 88-18, 90-2,  
 91-11, 97-3, 97-8, 99-24, 99-18, 100-11,  
 101-4, 102-2, 102-9, 102-22, 103-19,  
 105-1, 103-15, 107-7, 108-18, 108-19,  
 11-23, 113-15, 114-8, 115-8, 118-18,  
 16-7, 18-13, 20-20, 21-7, 22-2,  
 28-8, 30-13, 30-19, 30-9, 32-13,  
 32-3, 35-18, 35-22, 36-15, 39-16,  
 38-51, 40-18, 41-22, 41-12, 42-5,  
 45-51, 45-24, 47-10, 47-12, 47-5,  
 47-23, 48-24, 48-5, 49-22, 50-10,  
 50-22, 51-19, 52-8, 52-23, 54-12,  
 57-3

ACCUSCRIPTS (702) 391-0379

1 wounds 120-4, 154-20, 154-21, 156-18, 156-19  
 2 wrestled 40-13  
 3 write 130-13, 130-18  
 4 writing 65-12, 65-15  
 5 written 4-16, 64-16, 64-17, 65-10, 66-10, 66-12,  
 6 67-8, 67-7, 67-9, 76-24, 126-10  
 7 65-2, 63-16, 63-23, 64-4, 75-8, 110-18,  
 8 124-5  
 9 wrong 21-19, 25-5  
 10 wrongs 89-19  
 11 wrote 64-16, 65-6, 65-9, 65-14, 66-5, 68-6,  
 12 75-8  
 13 --Y--  
 14 year 14-7, 29-19, 30-15, 36-17, 36-13  
 15 years 14-5, 24-4, 24-7, 36-14, 36-15, 50-1,  
 16 56-3, 62-18, 125-5, 148-3  
 17 yesterday 153-19, 154-4  
 18 yet 8-7, 87-10, 96-7, 152-21  
 19 you're 84-21  
 20 young 36-13

ACCUSCRIPTS (702) 391-0379

1 whatever 27-16, 70-19, 84-9, 104-14, 120-23,  
 2 whatsoever 138-23, 140-23, 146-23, 149-9  
 3 whenever 85-23  
 4 whereupon 10-21, 124-12  
 5 whether 10-4, 13-3, 23-17, 36-10, 45-10, 47-23,  
 6 49-4, 61-7, 70-23, 73-1, 85-3, 94-6,  
 7 99-17, 103-20, 113-17, 144-13, 159-13  
 8 11-16, 25-5, 30-12, 46-17, 63-16, 63-24,  
 9 78-23, 81-22, 88-20, 91-12, 95-17, 96-1,  
 10 96-2, 104-22, 118-23, 124-20, 125-9,  
 11 128-14, 139-2, 150-12  
 12 while 65-9, 65-10, 66-5, 70-16, 78-13, 87-16,  
 13 82-11, 92-15  
 14 whispers 92-8  
 15 whole 13-7, 49-8, 54-24, 56-13, 65-11, 69-12,  
 16 70-7, 72-7, 72-5, 79-9, 83-7, 90-15,  
 17 93-17, 94-4, 107-18, 110-22, 113-24,  
 18 117-22, 151-12  
 19 wife 14-16, 58-3, 59-3, 59-7, 98-9  
 20 wife's 14-19, 14-18, 14-23, 25-3  
 21 willing 4-22  
 22 Winslow 33-17, 49-5, 49-14, 80-2  
 23 Winslow's 83-15  
 24 wintry 15-14, 15-15, 50-5  
 1 wish 15-12, 120-1  
 2 within 91-9, 128-1  
 3 witness 12-11, 12-21, 13-5, 13-10, 13-14, 13-17,  
 4 22-13, 22-19, 23-18, 23-23, 23-23, 23-23,  
 5 29-29, 29-23, 28-19, 28-23, 49-12, 51-2,  
 6 52-17, 56-12, 57-15, 57-15, 64-1, 71-16,  
 7 66-3, 72-15, 72-24, 73-1, 91-14, 102-18,  
 8 11-13, 12-17, 12-29, 129-2, 129-18,  
 9 129-18, 131-17, 131-11  
 10 witnesses 25-4, 7-8, 9-3, 28-1, 48-20, 73-4,  
 11 72-18, 103-14, 153-10  
 12 woke 121-11  
 13 wording 24-18, 24-19, 39-7, 42-22, 43-2, 43-3  
 14 words 23-8, 43-22, 55-11, 56-12, 56-19, 60-19,  
 15 64-13, 63-16, 67-23, 100-2, 146-23  
 16 work 60-20, 65-23, 64-20  
 17 worker 72-20, 72-11, 46-6, 46-7, 46-9,  
 18 88-10, 88-11, 46-15, 77-5  
 19 working 82-8, 123-10  
 20 world 62-24, 70-13, 76-22  
 21 worried 120-8, 154-24  
 22 wound

ACCUSCRIPTS (702) 391-0379