

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-5579

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JAN 23 2010

JOHN W. BISSELL
U.S. Magistrate Judge

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

LAURENCE ISOM

-vs-

WILLIAM H. FAUVER, et al,
Defendants.

* * * *

FRIDAY, DECEMBER 11, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above matter taken by Theresa O. Mastroianni, Certified Court Reporter, license number 30X100085700, and Notary Public of the State of New Jersey at the United States District Court House, One Gerry Plaza, Camden, New Jersey, 08102, commencing at 12:25 PM.

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1 JUDGE BISSELL: I am reopening
2 proceedings in the action brought by Laurence Isom,
3 docket number 08-5579.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Isom.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Isom was housed in F Unit at
18 Bayside State Prison on July 30th, 1997. F Unit was
19 the unit to which Officer Baker was assigned. He was
20 stabbed in the interior of F Unit, staggered out the
21 door, fell outside the unit and eventually succumbed
22 to his injuries.

23 Mr. Isom testified that he was
24 assaulted in various particulars on occasions
25 beginning with the extraction of the occupants of F

1 Unit to the gymnasium for the search of F Unit.

2 He described that while sitting in the
3 gym, he switched positions at which point the SOG
4 took him to the back of the gym, to the cage area
5 which, as we have come to learn, houses exercise or
6 weight equipment. And Mr. Isom also testified to
7 that.

8 He then testifies at page 16 of his
9 testimony on November 20th, 2008, to the following
10 beginning at line seven.

11 "Question: Okay. And you said they
12 sicced the dogs on you. Just tell us what happened?
13 What do the dogs do, for example? What happened with
14 you?

15 "Answer: Just snapped at my face and
16 scratched my legs with his paws. They didn't let him
17 get close enough to actually bite me, but close
18 enough that I would move back and then I would get
19 pushed forward every time I tried to get away from
20 the dog. The dog was --

21 "Question: I'm sorry?

22 "Answer: The dog was still coming with
23 his paws, scratching my legs.

24 "Question: But you did not get bitten?

25 "Answer: No, I didn't get bit.

1 He then adds a curious statement
2 gratuitously in his testimony beginning at page 31
3 going from lines 20 to 25.

4 "The witness: If I may, Mr. Loughry,
5 and if I may, Judge Bissell, I've come to understand
6 through the Abu Ghraib incident that when a dog is
7 taken by its handler and forced upon you in any sort
8 of way, under the Geneva Convention, it's considered
9 torture."

10 In the first place, I find that his
11 description of the dog's activities upon him at the
12 back of the gym is, to be charitable, inaccurate.
13 There has been testimony throughout these proceedings
14 by the handlers of these dogs and the manner in which
15 they were handled. They are trained to attack only
16 on command, they are trained in the course of an
17 attack to bite the object of their attack and to
18 latch on and not let go as a means, frankly, of
19 apprehending the person involved or neutralizing him
20 if there is an element of danger posed by that
21 person. Otherwise, they are kept on leash and
22 restrained.

23 I find that under no circumstances did
24 Mr. Isom testify accurately that the dogs were
25 allowed to scratch his legs while at the back of the

1 gym. They may have been there, the dog may have
2 barked close to him as a means, once again, of
3 intimidation and control of this inmate. But there
4 was no physical contact with him.

5 And with that reference to Abu Ghraib,
6 it would appear that Mr. Isom exposed his motive for
7 this testimony. Namely, that with that reminder,
8 this Special Master might conclude that the
9 employment of this dog, whether for intimidation or
10 with the scratching that ensued upon him, was an act
11 of torture and hence the imposition of cruel and
12 unusual punishment which is the gravamen of this
13 case. I find, however, that the testimony is untrue
14 and that conclusion is only enforced by the
15 motivation demonstrated by Mr. Isom's Abu Ghraib
16 comment.

17 He testified to a second allegation of
18 assault after the events of his extraction, march to
19 the gym, stay in the gym and return, during which
20 there were no other allegations of assault in that
21 time frame. The question begins at page 16, line 24
22 as follows:

23 "Question: And now I want to go
24 forward in time another day or two. Did there come a
25 point when some SOG officer or officers came into

1 your cell in F Unit and had some interaction with
2 you?

3 "Answer: That's correct.

4 "Question: What --

5 "Answer: I was shackled to my bunk.

6 "Question: Now, what happened at that
7 time? First of all, how many officers or officer
8 came into your cell? One or two or three, how many?

9 "Answer: Three were outside of the
10 cell. One came in.

11 "Question: And this was -- now, do you
12 know what the special operations group was?

13 "Answer: Yes, I do. That is known as
14 SOG.

15 "Question: Were they dressed in the
16 same or different ways than the regular Bayside
17 Officers?

18 "Answer: They're all dressed
19 differently, they're dressed in black.

20 "Question: Were these SOG officers
21 that came to your cell, were they regular Bayside
22 Officers?

23 "Answer: No, they were not.

24 "Question: Were they SOG officers?

25 "Answer: Yes, they were.

1 "Question: All right. One of them
2 came in and what did he do?

3 "Answer: He told me to sit on my bunk
4 and put shackles on my legs. He said, you didn't
5 comply. I said comply with what? He wouldn't give
6 me an example or tell me what it was. He just said
7 you didn't comply. Sit down and shut up. He put the
8 shackles on.

9 "Question: Had you been given any kind
10 of order or instructions that you think, as you look
11 back, that you did not obey in some fashion? Or do
12 you know what he was talking about?

13 "Answer: Not to my knowledge at all.
14 I don't have any idea to this day what he was talking
15 about.

16 "Question: Did you receive any kind of
17 a disciplinary charge that day from anyone at
18 Bayside?

19 "Answer: None at all.

20 "Question: How long were you shackled
21 to the bed?

22 "Answer: A number of hours.

23 "Question: And did you suffer any kind
24 of injury from that?

25 "Answer: Feet swollen, and they get

1 numb sometimes."

2 That's his testimony on that event.

3 Like the supposed incident of being
4 scratched by the dog in the gym, Mr. Isom's
5 recounting of these events in his cell also has
6 inherent elements of incredibility.

7 First, the SOG units were assigned
8 basically for specific duties during the course of
9 the lockdown. They were involved in the extraction
10 of the inmates en masse from various units in order
11 that those units could be searched. They
12 occasionally assisted with showers and phone calls
13 when called in to do so and when those opportunities
14 resumed after the beginning of the lockdown.

15 They occasionally were called for
16 individual extractions, usually to lockup, although
17 that's a duty that they shared even during the
18 lockdown with the Bayside Response Team. But there
19 is no satisfactory explanation developed here, and
20 the plaintiff does have the burden of proof, as to
21 why a SOG unit would even have been in F Unit at this
22 time and on this occasion, SOGs would have been let
23 into his cell which we know requires a double locking
24 technique, one at the podium and one at the door by a
25 Bayside Officer, and why they would then shackle him

1 to his bunk within the confines of a secure cell.

2 First, I do not find this recounting of
3 the alleged event to have any indicia of credibility
4 or reality at all.

5 Secondly, if indeed the shackles were
6 placed upon his legs and even if they were tight to
7 the extent of leading to impact on his feet, I do not
8 find that this type of event, while bizarre and
9 unexplained, constitutes either cruel or unusual
10 punishment or the use of excessive force. At the
11 most, it's an unnecessary imposition of additional
12 security with a deminimis impact.

13 To summarize this, first, Mr. Isom has
14 not established to the satisfaction of the Special
15 Master that he sustained his burden of proof by a
16 preponderance of the credible evidence that this
17 event occurred at all.

18 But secondly, even if it did as he
19 described it, it would not constitute an imposition
20 of excessive force and/or punishment. Rather it is,
21 at most, the modest enhancing of the restraints
22 already in place upon Mr. Isom as a result of him
23 being incarcerated in the secure cell.

24 Once again, at page 19, line six
25 running through page 20 line 14 Mr. Isom testifies

1 with regard to a random arrival, an intrusion by SOG
2 officers on F Unit targeting in this case him and his
3 bunk mate.

4 Beginning at line six on page 19.

5 "Question: And about how far into the
6 lockdown did that happen, do you know?

7 "Answer: A few days.

8 "Question: And what happened, did some
9 officers come in your cell?

10 "Answer: Yes, they did."

11 And this, by the way, is on a different
12 occasion than the shackling that he had previously
13 described.

14 Back up a little bit.

15 "Question: And what happened? Did
16 some officers come in your cell?

17 "Answer: Yes, they did.

18 "Question: And where were you when
19 they came into your cell?

20 "Answer: Under the bunk, where I was
21 ordered to go.

22 "Question: They ordered you to go
23 under the bed?

24 "Answer: Initially when he came to the
25 door, they said you, on the bottom bunk. Get the

1 fuck up under you. You in the top bunk, get down.
2 Get on your knees, face the window with your hands on
3 your head. After we complied, the door just slid
4 open and they came in, jabbed me under the bunk, said
5 you took too long. Slammed my cellie to the side of
6 the wall. And had me come out, hit me in the head.

7 "Question: Hit you where?

8 "Answer: Right in the back of my head,
9 left side.

10 "Question: What did they hit you with?

11 "Answer: The baton.

12 "Question: Was there bleeding or a cut
13 or anything like that? Did you see any blood?

14 "Answer: No. Thank God, no. Just a
15 lump. Just a lump and some pain.

16 "Question: And at the time that that
17 happened, was there one or more than one guard in
18 your cell?

19 "Answer: More than one.

20 "Question: Now, were these personnel,
21 were they SOG officers or were they regular Bayside
22 Officers?

23 "Answer: SOG officers."

24 Once again, a totally unexplained
25 intrusion of SOG officers into a line of cells on F

1 Unit, completely inconsistent with the duties that
2 SOG was required to perform.

3 Now, I have found in other cases tried
4 before me that there have been occasions when SOGs
5 have come in unannounced essentially for, I believe I
6 may have characterized them from time to time, as
7 recreational assaults on inmates. But this is not
8 one of those incidents. I find that the inherent
9 incredibility of Mr. Isom's testimony with regard to
10 the other alleged incidents, which he mentioned and
11 which I've described above, clouds the credibility of
12 his description of this alleged event in his cell as
13 well.

14 Furthermore, if there was an entry into
15 the cell, some of the description about making him on
16 the lower bunk go under his bunk and being prodded by
17 a stick if the officers were not satisfied that he
18 was far enough under his bunk or had moved promptly,
19 is consistent with that type of conduct involving
20 other inmates on occasions when there was a
21 reasonable explanation for SOG even to be in the
22 cells at all. However, such prodding would not
23 constitute the infliction of excessive force or cruel
24 and unusual punishment as defined in the jury
25 instructions which govern this matter.

1 Maybe mindful of that, Mr. Isom on
2 continuing this part of the story, talks about him
3 being struck in the head, also with a night stick, by
4 the SOG officer upon his exiting from the space
5 underneath his bunk. I find once again this alleged
6 incident is a fabrication.

7 Mr. Isom testifies finally to a fourth
8 incident involving SOG officers relating to the
9 shower and I do find that it is reasonable to
10 conclude that SOG officers would have been brought in
11 to assist in the taking of showers to which inmates
12 during the lockdown were now being escorted, unlike
13 the circumstances when no lockdown was in place.

14 He describes how he was taken down to
15 the shower, and then the testimony picks up at page
16 21, line 18.

17 "Question: All right. So you're
18 dragged down to the shower. Did you get to go into
19 the shower?

20 "Answer: Yes, I did.

21 "Question: And then what happened
22 after that?

23 "Answer: After taking a shower, I came
24 back out the door, I'm waiting to be escorted back,
25 and he said go ahead. But when I looked down the

1 hallway, there is a number of officers down the
2 hallway, so I looked back at him, I figured he's
3 going to walk me down. He said no, no, no. Go
4 ahead. Go ahead.

5 "Question: They walked you to the
6 shower, but you were not escorted back?

7 "Answer: No, I wasn't escorted back.

8 "Question: What happened on the way
9 back?

10 "Answer: On the way back the officers,
11 each and every one of them, took a swing at me. Some
12 caught me, some didn't. Because as they swung at me,
13 I started to run.

14 "Question: What were they swinging at
15 you with, their fists or clubs?

16 "Answer: Batons and feet.

17 "Question: Did anything make an impact
18 on you, did you get struck?

19 "Answer: Head, back, shoulders and
20 legs.

21 "Question: Were you able to maintain
22 your footing and keep going?

23 "Answer: Yes, I was.

24 "Question: Did you check your body
25 later to see whether you had any bruises?

1 "Answer: Yes, I did. Some bruises,
2 some swelling, nothing broken."

3 Once again, I find this recounting of
4 this story not to be credible. Whether or not he was
5 escorted directly back to his cell by a SOG officer
6 after completion of the shower, it is inherently
7 incredible that, for an event such as a shower
8 detail, a gauntlet of SOG officers would be set up
9 along the hallway to inflict this type of punishment
10 on Mr. Isom as he made his way back to his cell.

11 First, this type of conduct would be
12 completely visible by inmates from other cells. I
13 find, frankly, that the SOG units would not run this
14 risk.

15 Secondly, the Bayside housing officers
16 certainly have a stake in the orderly running of the
17 units assigned to them and in minimizing incidents
18 that could prove to be provocative. Bayside Officers
19 had a significant level of control, even though
20 assisted by SOG, with regard to showering.
21 Particularly because it was Bayside Officers who
22 controlled the locking and unlocking of the cells in
23 question.

24 Finally, given what I have already
25 determined to be the fabrication by Mr. Isom of the

1 other incidents that allegedly occurred to him, I
2 find for this additional reason that his testimony
3 about being beaten while running a gauntlet of SOG
4 officers back to his cell after taking a shower has
5 not been supported by a preponderance of the credible
6 evidence.

7 Accordingly, in all respects with
8 regard to the incidents about which he has testified,
9 both individually and collectively, Mr. Isom has not
10 maintained that burden of proof and has thus failed
11 to sustain his claims before me.

12 Finally, although not every item of
13 evidence has been discussed in this opinion/report,
14 all evidence presented to the Special Master was
15 reviewed and considered. For the reasons set forth
16 above, I recommend in this report that the District
17 Court enter an order and judgment of no cause for
18 action with regard to Laurence Isom.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni

Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XIO857
Date: December 15, 2009

A	10:7 17:17	bottom 12:25	circumstances 6:23 15:13	credibility 11:3 14:11
able 16:21	assist 15:11	broken 17:2	Civil 1:2 4:14	credible 11:16 17:4 18:5
Abu 6:6 7:5,15	assisted 10:12 17:20	brought 4:2 15:10	claims 18:11	cruel 7:11 11:9 14:23
accurate 19:6	attack 6:15,17 6:17	bruises 16:25 17:1	close 5:17,17 7:2	curious 6:1
accurately 6:24	attorney 19:10 19:12	bunk 8:5 9:3 11:1 12:3,20	clouds 14:11	cut 13:12
act 7:10	ATTORNEYS 3:8,14	12:25 13:1,4 14:16,16,18	clubs 16:15	C.S.R 19:19
action 1:2 4:2 18:18 19:11,14	Audubon 2:22	15:5	collectively 18:9	D
activities 6:11		burden 10:20 11:15 18:10	come 5:5 6:5 7:24 12:9,16 13:6 14:5	D 3:6
additional 11:11 18:2	B		coming 5:22	danger 6:20
adds 6:1	back 5:4,18 6:12 6:25 9:11 12:14 13:8 15:24,24 16:2 16:6,7,9,10,19 17:5,10 18:4	C	command 6:16	date 19:8,21
Agreement 4:7	Baker 4:19	C 3:2 19:1,1	commencing 2:10	day 7:24 9:14,17
ahead 15:25 16:4,4	barked 7:2	case 5:4	comment 7:16	days 12:7
al 1:9	based 4:9	called 10:13,15	Commission 19:20	December 1:15 19:21
allegation 7:17	basically 10:8	calls 10:12	completely 14:1 17:12	decision 4:8
allegations 4:11 7:20	baton 13:11	Camden 2:10 3:7	completion 17:6	Defendants 1:10 3:14
alleged 11:3 14:10,12 15:5	Batons 16:16	case 7:13 12:2	complied 13:3	defined 14:24
allegedly 18:1	Bayside 1:5 4:18 8:16,21 9:18 10:18,25 13:21 17:15,18,21	cases 14:3	comply 9:5,5,7	deminimis 11:12
allowed 6:25	beaten 18:3	caught 16:12	conclude 7:8 15:10	demonstrated 7:15
and/or 11:20	bed 9:21 12:23	cause 18:17	conclusion 7:14	described 5:2 11:19 12:13 14:11
Answer 5:15,22 5:25 8:3,5,9,13 8:18,23,25 9:3 9:13,19,22,25 12:7,10,17,20 12:24 13:8,11 13:14,19,23 15:20,23 16:7 16:10,16,19,23 17:1	beginning 4:25 5:10 6:2 10:14 12:4	cell 8:1,8,10,21 10:5,23 11:1 11:23 12:9,16 12:19 13:18 14:12,15 17:5 17:10 18:4	conduct 14:19 17:11	describes 15:14
appear 7:6	begins 7:21	cellie 13:5	confines 11:1	description 6:11 14:12,15
applicable 4:11	believe 14:5	cells 13:25 14:22 17:12,22	considered 6:8 18:15	detail 17:8
applied 4:8	Bissell 1:21 4:1 6:5	certainly 17:16	consistent 14:19	determined 17:25
apprehending 6:19	bit 5:25 12:14	Certificate 19:21	constitute 4:14 11:19 14:23	developed 10:19
area 5:4	bite 5:17 6:17	Certified 2:6,20 19:4	contact 7:4	different 8:16 12:11
arrival 12:1	bitten 5:24	certify 19:5,9	continuing 15:2 17:19	differently 8:19
assault 7:18,20	bizarre 11:8	characterized 14:6	control 7:3 17:19	directives 4:5
assaulted 4:24	black 8:19	charge 9:17	controlled 17:22	directly 17:5
assaults 14:7	bleeding 13:12	charges 4:10	Convention 6:8	disciplinary 9:17
assigned 4:19	blood 13:13	charitable 6:12	correct 8:3	discussed 18:13
	body 16:24	check 16:24	counsel 19:10,12	District 1:1,2 2:9 18:16
			course 6:16 10:8	docket 4:3
			Court 1:1 2:7,9 2:20 18:17	

dog 5:20,20,22 6:6 7:1,9 10:4	18:6,13,14	fists 16:15	guard 13:17	incident 6:6 10:3 15:6,8
dogs 5:12,13 6:14,24	example 5:13 9:6	following 5:9	guiding 4:7	incidents 14:8 14:10 17:17 18:1,8
dog's 6:11	excessive 11:10 11:20 14:23	follows 7:22	gym 5:3,4 6:12 7:1,19,19 10:4	inconsistent 14:1
door 4:21 10:24 12:25 13:3 15:24	exercise 5:5	footing 16:22	gymnasium 5:1	incredibility 10:6 14:9
double 10:23	exiting 15:4	force 11:10,20 14:23	H	incredible 17:7
dragged 15:18	Expires 19:20	forced 6:7	H 1:9	indicia 11:3
dressed 8:15,18 8:19	explanation 10:19 14:21	foregoing 19:5	hallway 16:1,2 17:9	individual 10:16
duties 10:8 14:1	exposed 7:6	FORMAROLI 2:19	HAMILTON 3:13	individually 18:9
duty 10:17	extent 4:11 11:7	forth 4:9 18:15 19:8	handled 6:15	inflict 17:9
E	extraction 4:25 7:18 10:9	forward 5:19 7:24	handler 6:7	infliction 14:23
E 3:2,2 19:1,1	extractions 10:16	found 14:3	handlers 6:14	inherent 10:6 14:8
either 11:9	F	fourth 15:7	hands 13:2	inherently 17:6
element 6:20	F 4:17,18,20,25 5:1 8:1 10:21	frame 7:21	happen 12:6	Initially 12:24
elements 10:6	12:2 13:25 19:1	frankly 6:18 17:13	happened 5:12 5:13 8:6 12:8 12:15 13:17 15:21 16:8	injuries 4:22
employee 19:10 19:12	fabrication 15:6 17:25	FRIDAY 1:15	head 13:3,6,8 15:3 16:19	injury 9:24
employment 7:9	face 5:15 13:2	fuck 13:1	head 13:3,6,8 15:3 16:19	inmate 7:3
en 10:10	facts 4:8	FURTHER 19:9	hereinbefore 19:8	inmates 10:10 14:7,20 15:11 17:12
enforced 7:14	failed 18:10	Furthermore 14:14	HIGHWAY 3:12	instructions 4:10 9:10 14:25
enhancing 11:21	far 12:5 14:18	G	HIT 13:6,7,10	interaction 8:1
ensued 7:10	fashion 9:11	gauntlet 17:8 18:3	HONORABLE 1:21	interested 19:13
enter 18:17	FAUVER 1:9	Geneva 6:8	Horse 2:21	interior 4:20
entry 14:14	feet 9:25 11:7 16:16	Gerry 2:9	hours 9:22	intimidation 7:3 7:9
equipment 5:6	fell 4:21	Ghraib 6:6 7:5 7:15	House 2:9	intrusion 12:1 13:25
escorted 15:12 15:24 16:6,7 17:5	figured 16:2	give 9:5	housed 4:17	involved 6:19 10:9
ESQUIRE 3:5 3:11,12	finalized 4:13	given 9:9 17:24	houses 5:5	involving 14:19 15:8
ESQUIRES 3:4	finally 15:7 17:24 18:12	go 6:18 7:23 12:21,22 14:16 15:18,25 16:3 16:4	housing 17:15	Isom 1:7 4:2,12 4:17,23 5:6 6:24 7:6 11:13 11:22,25 15:1 15:7 17:10,25 18:9,18
essentially 14:5	financially 19:13	God 13:14	I	
established 11:14	find 6:10,23 7:13 11:2,8 14:8 15:5,9 17:3,13 18:2	going 6:3 16:3 16:22	idea 9:14	
et 1:9	first 6:10 8:7 10:7 11:2,13 17:11	govern 14:25	impact 11:7,12 16:17	
event 10:2 11:3 11:8,17 14:12 17:7		gratuitously 6:2	imposition 7:11 11:11,19	
events 7:18 10:5		gravamen 7:12	inaccurate 6:12	
eventually 4:21		GRIEGEL 3:10	incarcerated 11:23	
evidence 11:16		group 8:12		

Isom's 7:15 10:4 14:9 issued 4:4 item 18:12	line 5:10 7:21 11:24,25 12:4 13:25 15:16 lines 6:3 Litigation 1:6 little 12:14 Local 4:13 lockdown 10:9 10:14,18 12:6 15:12,13 locking 10:23 17:22 lockup 10:16 long 9:20 13:5 look 9:10 looked 15:25 16:2 Loughry 3:4,5 6:4 lower 14:16 LOZIER 3:10 3:12 lump 13:15,15	mindful 15:1 minimizing 17:17 modest 11:21 motivation 7:15 motive 7:6 move 5:18 moved 14:18	16:1,10 17:8 17:15,18,21 18:4 Okay 5:11 once 7:2 11:24 13:24 15:5 17:3 open 13:4 operations 8:12 opinion/report 1:5 4:4 18:13 opportunities 10:13 order 4:5,16 9:10 10:10 18:17 ordered 12:21 12:22 orderly 17:16 outside 4:21 8:9	PLAINTIFFS 3:8 Plaza 2:9 PM 2:10 podium 10:24 point 5:3 7:25 posed 6:20 positions 5:3 preponderance 11:16 18:5 presented 18:14 previously 12:12 principles 4:7 Prison 1:5 4:18 proceedings 2:5 4:2 6:13 prodded 14:16 prodding 14:22 promptly 14:18 proof 10:20 11:15 18:10 prove 17:18 provocative 17:18 Public 2:8 19:3 19:20 punishment 7:12 11:10,20 14:24 17:9 pursuant 4:5 pushed 5:19 put 9:4,7
J jabbed 13:4 Jersey 1:2 2:8,10 2:22 3:7,13 19:5,20 JOHN 1:21 Judge 4:1 6:5 judgment 18:17 July 4:18 jury 4:9,10 14:24 JUSTIN 3:5	M maintain 16:21 maintained 18:10 making 14:15 manner 6:14 march 7:18 MARK 3:11 MARKET 3:6 masse 10:10 Master 1:6,21 4:6,16 7:8 11:15 18:14 Master's 4:6 Mastroianni 2:6 2:19 19:3,19 mate 12:3 matter 1:4 2:6 14:25 means 6:18 7:2 Mejias 4:10 mentioned 14:10	N N 3:2 neither 19:9,11 neutralizing 6:19 New 1:2 2:8,10 2:22 3:7,13 19:4,20 night 15:3 Notary 2:8 19:3 19:20 November 5:9 numb 10:1 number 2:7 4:3 9:22 16:1	P P 3:2,2 page 5:8 6:2 7:21 11:24,25 12:4 15:15 pain 13:15 paragraph 4:15 part 15:2 Particularly 17:21 particulars 4:24 parties 19:11 paws 5:16,23 PC 3:10 perform 14:2 person 6:19,21 personnel 13:20 phone 10:12 physical 7:4 picks 15:15 Pike 2:21 place 6:10 11:22 15:13 19:8 placed 11:6 plaintiff 10:20	Q question 5:11,21 5:24 7:21,23 8:4,6,11,15,20 8:24 9:1,9,16 9:20,23 12:5,8 12:15,18,22 13:7,10,12,16 13:20 15:17,21 16:5,8,14,17 16:21,24 17:23
K keep 16:22 KENNETH 3:12 kept 6:21 kind 9:9,16,23 knees 13:2 know 8:12 9:12 10:23 12:6 knowledge 9:13 known 8:13	L latch 6:18 Laurence 1:7 4:2 18:18 law 4:7 LAWRENCE 3:6 LAZZARO 3:10 leading 11:7 learn 5:5 leash 6:21 left 13:9 legs 5:16,23 6:25 9:4 11:6 16:20 level 17:19 license 2:7 LINDSAY 3:4,6	O O 2:6 19:3,19 obey 9:11 object 6:17 occasion 10:22 12:12 occasionally 10:12,15 occasions 4:24 14:4,20 occupants 4:25 occurred 11:17 18:1 officer 4:19 7:25 8:7 10:25 15:4 17:5 officers 7:25 8:7 8:17,20,22,24 12:2,9,16 13:21,22,23,25 14:17 15:8,10	R	

R 3:2 19:1 random 12:1 reality 11:4 reason 18:2 reasonable 14:21 15:9 reasons 18:15 receive 9:16 recommend 18:16 recounting 10:5 11:2 17:3 recreational 14:7 reference 4:5,16 7:5 regard 1:4 12:1 14:9 17:20 18:8,18 regular 8:16,21 13:21 relating 15:8 relative 19:10,12 reminder 7:7 reopening 4:1 report 4:15 18:16 Reporter 2:7 19:4 Reporting 2:20 required 4:15 14:2 requires 10:23 respects 18:7 Response 10:18 restrained 6:22 restraints 11:21 result 11:22 resumed 10:14 return 7:19 review 4:13 reviewed 18:15 right 9:1 13:8 15:17 risk 17:14 ROSELLI 3:10	3:11 Rule 4:14 run 16:13 17:13 running 11:25 17:16 18:3 <hr/> S <hr/> S 3:2 satisfaction 11:14 satisfactory 10:19 satisfied 14:17 scratch 6:25 scratched 5:16 10:4 scratching 5:23 7:10 search 5:1 searched 10:11 second 7:17 secondly 11:5,18 17:15 secure 11:1,23 security 11:12 see 13:13 16:25 set 4:9 17:8 18:15 19:8 seven 4:15 5:10 shackle 10:25 shackled 8:5 9:20 shackles 9:4,8 11:5 shackling 12:12 shared 10:17 Shorthand 19:4 shoulders 16:19 shower 15:9,15 15:18,19,23 16:6 17:6,7 18:4 showering 17:20 showers 10:12 15:11 shut 9:7	siced 5:12 side 13:5,9 significant 17:19 sit 9:3,7 sitting 5:2 six 11:24 12:4 Slammed 13:5 slid 13:3 snapped 5:15 SOG 5:3 7:25 8:14,20,24 10:7,21 12:1 13:21,23,25 14:2,21 15:4,8 15:10 17:5,8 17:13,20 18:3 SOGs 10:22 14:4 sorry 5:21 sort 6:7 South 2:21 space 15:4 special 1:6,21 4:6,6,16 7:8 8:12 11:14 18:14 specific 10:8 SQUARE 3:13 stabbed 4:20 staggered 4:20 stake 17:16 started 16:13 State 1:5 2:8 3:12 4:18 19:4 19:20 statement 6:1 States 1:1 2:9 stay 7:19 stenographica... 19:7 stick 14:17 15:3 story 15:2 17:4 STREET 3:6 struck 15:3 16:18 succumbed 4:21	suffer 9:23 summarize 11:13 supported 18:5 supposed 10:3 sustain 18:11 sustained 11:15 swelling 17:2 swing 16:11 swinging 16:14 switched 5:3 swollen 9:25 swung 16:12 <hr/> T <hr/> T 3:5 19:1,1 taken 2:6 6:7 15:14 19:7 talking 9:12,14 talks 15:2 targeting 12:2 Team 10:18 technique 10:24 tell 5:12 9:6 testified 4:23 5:6 7:17 18:8 testifies 5:8 11:25 15:7 testify 6:24 testimony 5:9 6:2,13 7:7,13 10:2 14:9 15:15 18:2 19:6 Thank 13:14 Theresa 2:6 19:3 19:19 think 9:10 three 8:8,9 tight 11:6 time 5:19 7:21 7:24 8:7 10:22 13:16 14:6,6 19:7 told 9:3 top 13:1	torture 6:9 7:11 totally 13:24 trained 6:15,16 transcript 2:5 4:14 19:6 tried 5:19 14:3 true 19:6 two 7:24 8:8 type 11:8 14:19 17:9,11 <hr/> U <hr/> unannounced 14:5 underlie 4:8 underneath 15:5 understand 6:5 unexplained 11:9 13:24 unit 4:17,18,19 4:20,21 5:1,1 8:1 10:21,21 12:2 14:1 United 1:1 2:9 units 10:7,10,11 17:13,17 unlocking 17:22 unnecessary 11:11 untrue 7:13 unusual 7:12 11:9 14:24 use 11:10 usually 10:16 <hr/> V <hr/> various 4:24 10:10 Videoconfere... 2:20 visible 17:12 vs 1:8 <hr/> W <hr/> W 1:21 3:12 waiting 15:24
--	---	---	--	---

walk 16:3	251 2:21			
walked 16:5				
Walker 4:10	3			
wall 13:6	30th 4:18			
want 7:23	30X100085700			
wasn't 16:7	2:7			
way 6:8 12:11	31 6:2			
16:8,10 17:10	33 3:12			
ways 8:16	330 3:6			
weight 5:6	5			
White 2:21	5 19:20			
WILLIAM 1:9	52.1 4:14			
window 13:2	6			
witness 6:4	609-586-2257			
wouldn't 9:5	3:13			
written 4:15	8			
X	856-546-1100			
XIO857 19:21	2:23			
0	856-968-9201			
08-5579 1:2 4:3	3:7			
08102 2:10 3:7				
08106 2:22				
08690 3:13				
1				
11 1:15				
12:25 2:10				
1337 3:12				
14 11:25				
15 19:21				
16 5:8 7:21				
18 15:16				
19 11:24 12:4				
1997 4:18				
2				
20 6:3 11:25				
20th 5:9				
2008 5:9				
2009 1:15 19:21				
2010 19:20				
21 15:16				
24 7:21				
25 6:3				