

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
Civil Action No. 09-953

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JOEL SCHNEIDER  
U.S. Magistrate Judge

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In Regard to the Matter of:

Bayside State Prison  
Litigation

OPINION/REPORT  
OF THE  
SPECIAL MASTER

HENRY MITCHELL

-vs-

WILLIAM H. FAUVER, et al,  
Defendants.

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\* \* \* \*

THURSDAY, NOVEMBER 12, 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 1:27 PM.

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A P P E A R A N C E S :

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1 JUDGE BISSELL: I am reopening  
2 proceedings in the case of Henry Mitchell, docket  
3 number 09-953.

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 Mitchell.

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 Henry Mitchell was assigned to Trailer  
18 Number One upon his arrival at Bayside State Prison  
19 from Saint Francis Hospital on or about the 14th of  
20 July, 1997. At the time of the lockdown on  
21 July 30th, he was still awaiting classification in  
22 Trailer Number One. At a later point he went to  
23 Trailer Number Five.

24 Mr. Mitchell brought a cane with him  
25 from Saint Francis based upon the medical condition

1 which may have been diagnosed as a stroke, but in any  
2 case left him disabled on one side and required the  
3 assistance of a cane for walking.

4 I find, as he testified, that upon his  
5 exit from Trailer Number One to the gym, when Trailer  
6 Number One was searched, which I'll explore more  
7 fully in a few minutes, his cane was confiscated.  
8 Under the circumstances of the lockdown, the cane  
9 could have been considered a weapon at that point.  
10 He was not permitted to use it on his way to and from  
11 the gym.

12 I have considered the testimony of  
13 Officer Beck which I find quite credible in other  
14 respects, but Officer Beck testified that under no  
15 circumstances would Mr. Mitchell have had a cane in  
16 Trailer Number One.

17 I find that we had here a situation  
18 which was an exception to the general rule because he  
19 had only just arrived at BSP, had needed a cane  
20 because of diagnoses and treatment at Saint Francis  
21 and that in addition, he was awaiting classification  
22 to another one of the trailers or units. Presumably  
23 the question of his cane would have been dealt with  
24 at that time. So I do find that in this case Mr.  
25 Mitchell did have a cane when he arrived and the cane

1 was confiscated at the time that the unit was  
2 evacuated for search.

3 Mr. Mitchell alleges that on the date  
4 when Trailer Number One was searched, he was  
5 assaulted in two ways and in two fashions by SOG  
6 officers. He alleges that he received blows to the  
7 head while lying on his bed as ordered in his  
8 residential area before being strip searched and  
9 removed for transport to the gym. I find, however,  
10 that those allegations are unproven and they are  
11 adequately contradicted by the testimony of Officer  
12 Beck.

13 Officer Beck was the housing officer on  
14 the unit on the occasion of Mr. Mitchell's extraction  
15 for the purpose of the unit search. And I'm going to  
16 quote from some of her testimony, because I think  
17 it's telling here with regard to the question of  
18 whether Mr. Mitchell was struck by SOG officers at  
19 that extraction or not.

20 Begin at page 82, line 13 of the  
21 transcript of March 9th, 2009. I note  
22 parenthetically that this removal and search of the  
23 trailer occurred on the 12th of August, 1997.

24 Now, undertaking that quotation.

25 "Question: Okay. And when the inmates

1 were taken out of the trailer -- well, let me ask  
2 you, how are the inmates taken out of the trailer, do  
3 you remember?

4 "Answer: They were told by myself one  
5 wing at a time to get up and go outside.

6 "Question: Now, where were the SOG  
7 officers at that time?

8 "Answer: They were on the wings. And  
9 there was like one in the dayroom and then maybe ten  
10 foot later there was another one in the dayroom out  
11 to the door and down the walkway.

12 "Question: Now, when SOG was in the  
13 Trailer One and they were taking the inmates out of  
14 the wings, were you able to see down the wings?

15 "Answer: Yes.

16 "Question: How come?

17 "Answer: Because I went down the wings  
18 to clear them.

19 "Question: And on that particular day  
20 do you have any recollection of seeing -- let me step  
21 back. I'm sorry.

22 Were you able to see the inmates as  
23 they were made to get off their bunks?

24 "Answer: Yes.

25 "Question: And do you remember SOG

1 striking any inmate with their batons?

2 "Answer: No.

3 "Question: Did you ever see any SOG  
4 hit any inmate on that day in the head?

5 "Answer: No.

6 "Question: Do you have any  
7 recollection of the SOG hitting Mr. Mitchell in the  
8 head with their batons on that day?

9 "Answer: No."

10 Then in response to a question from me  
11 when I asked what clearing the wing meant, he said it  
12 didn't mean unlocking any doors because there weren't  
13 locks there. She said, so I would just go down and  
14 tell them to get off their beds and let's go. So I  
15 find the testimony of Officer Beck credible that she  
16 was actually in the wings assisting with instructions  
17 for the inmates to clear their beds for purposes of  
18 extraction and witnessed no such beating as the  
19 plaintiff testifies. And I find the testimony of  
20 Ms. Beck credible in that respect.

21 Mr. Mitchell also testified about being  
22 hit and struck by sticks repeatedly while on his way  
23 to and from the gym by SOG officers. However, his  
24 testimony both before the court and otherwise  
25 reflects significant discrepancies regarding the



1 amount and the nature of the hits by SOG in coming  
2 and going from the gym. I find that at the most he  
3 has established, and this is evident from a film clip  
4 which was viewed, he did walk with a slight limp.  
5 And I find it would be credible that he would be  
6 prodded by the SOG from time to time to keep up the  
7 pace remembering that he had to walk without his  
8 cane. However, under the circumstances, I would not  
9 find such prodding or directives to keep up with the  
10 pace of other inmates as amounting to excessive  
11 force. In fact, it was minimal force and also not  
12 any punishment.

13 I note further that the credibility of  
14 Mr. Mitchell is also impacted here by his rather  
15 categorical statements from time to time that during  
16 the lockdown the residents of Trailer Number One  
17 where he was had had a complete absence of showers,  
18 access to phones or mail. However, a review of the  
19 log book reveals that these programs were in place on  
20 or before August 5, 1997 when Officer Beck returned  
21 to duty. And furthermore, reviewing the log  
22 indicates that some of them began as early as  
23 August 1st. So that Mr. Mitchell's credibility or at  
24 least the accuracy of his recollection of events in  
25 my view is significantly impacted by his testimony

1 regarding the unavailability of showers, phone  
2 contact and mail in the trailer.

3 He also alleges that once reassigned to  
4 Trailer Number Five, he made himself a homemade head  
5 rag out of a sweat shirt, (I believe using the sleeve  
6 if I recall correctly), and that one of the  
7 corrections officers came in, snatched that head rag  
8 from his head and pushed him back onto his bunk. He  
9 claims that in falling back on to his bunk, he was  
10 injured because he ran into a corner or a hard part  
11 of the bunk structure. I find that at the very most  
12 that injury, about being pushed back onto the bunk,  
13 was a result of the officer's negligence. It does  
14 not indicate that there was any intentional or  
15 excessive use of force, any effort to punish or  
16 anything beyond what might be necessary merely to  
17 prod the plaintiff, Mr. Mitchell, back onto his bed.  
18 The question of whether or not the head rag could  
19 properly be seized is not an issue that is within the  
20 confines of the assignment of this matter to me as a  
21 Special Master.

22 Accordingly, I find that Mr. Mitchell  
23 has failed in his burden of proof to sustain his  
24 allegations of any of the assaults and/or uses of  
25 excessive force against him concerning which he

1 testified here.

2                   Finally, although not every item of  
3 evidence has been discussed in this opinion/report,  
4 all evidence presented to the Special Master was  
5 reviewed and considered.

6                   For the reasons set forth above, I  
7 recommend in this report that the district court  
8 enter an order and judgment of no cause for action  
9 with regard to Henry Mitchell.

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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. XI0857  
Date: November 20, 2009

<b>A</b>	10:12,17 <b>based</b> 4:9,25 <b>batons</b> 8:1,8 <b>Bayside</b> 1:5 4:18 <b>beating</b> 8:18 <b>Beck</b> 5:13,14 6:12,13 8:15 8:20 9:20 <b>bed</b> 6:7 10:17 <b>beds</b> 8:14,17 <b>began</b> 9:22 <b>believe</b> 10:5 <b>beyond</b> 10:16 <b>BISSELL</b> 1:21 4:1 <b>blows</b> 6:6 <b>book</b> 9:19 <b>brought</b> 4:24 <b>BSP</b> 5:19 <b>bunk</b> 10:8,9,11 10:12 <b>bunks</b> 7:23 <b>burden</b> 10:23	<b>clear</b> 7:18 8:17 <b>clearing</b> 8:11 <b>clip</b> 9:3 <b>come</b> 7:16 <b>coming</b> 9:1 <b>commencing</b> 2:10 <b>Commission</b> 12:20 <b>complete</b> 9:17 <b>concerning</b> 10:25 <b>condition</b> 4:25 <b>confines</b> 10:20 <b>confiscated</b> 5:7 6:1 <b>considered</b> 5:9 5:12 11:5 <b>constitute</b> 4:14 <b>contact</b> 10:2 <b>contradicted</b> 6:11 <b>corner</b> 10:10 <b>corrections</b> 10:7 <b>correctly</b> 10:6 <b>counsel</b> 12:10,12 <b>court</b> 1:1 2:7,9 2:20 8:24 11:7 <b>credibility</b> 9:13 9:23 <b>credible</b> 5:13 8:15,20 9:5 <b>C.S.R</b> 12:19	<b>disabled</b> 5:2 <b>discrepancies</b> 8:25 <b>discussed</b> 11:3 <b>district</b> 1:1,2 2:9 11:7 <b>docket</b> 4:2 <b>door</b> 7:11 <b>doors</b> 8:12 <b>duty</b> 9:21	<b>finalized</b> 4:13 <b>Finally</b> 11:2 <b>financially</b> 12:13 <b>find</b> 5:4,13,17,24 6:9 8:15,19 9:2 9:5,9 10:11,22 <b>Five</b> 4:23 10:4 <b>foot</b> 7:10 <b>force</b> 9:11,11 10:15,25 <b>foregoing</b> 12:5 <b>FORMAROLI</b> 2:19 <b>forth</b> 4:9 11:6 12:8 <b>Francis</b> 4:19,25 5:20 <b>fully</b> 5:7 <b>further</b> 9:13 12:9 <b>furthermore</b> 9:21
<b>B</b>	<b>C</b>	<b>E</b>	<b>G</b>	
<b>able</b> 7:14,22 <b>absence</b> 9:17 <b>access</b> 9:18 <b>accuracy</b> 9:24 <b>accurate</b> 12:6 <b>action</b> 1:2 11:8 12:11,14 <b>addition</b> 5:21 <b>adequately</b> 6:11 <b>Agreement</b> 4:7 <b>al</b> 1:9 <b>allegations</b> 4:11 6:10 10:24 <b>alleges</b> 6:3,6 10:3 <b>amount</b> 9:1 <b>amounting</b> 9:10 <b>and/or</b> 10:24 <b>Answer</b> 7:4,8,15 7:17,24 8:2,5,9 <b>applicable</b> 4:11 <b>applied</b> 4:8 <b>area</b> 6:8 <b>arrival</b> 4:18 <b>arrived</b> 5:19,25 <b>asked</b> 8:11 <b>assaulted</b> 6:5 <b>assaults</b> 10:24 <b>assigned</b> 4:17 <b>assignment</b> 10:20 <b>assistance</b> 5:3 <b>assisting</b> 8:16 <b>attorney</b> 12:10 12:12 <b>ATTORNEYS</b> 3:7,14 <b>Audubon</b> 2:22 <b>August</b> 6:23 9:20,23 <b>awaiting</b> 4:21 5:21	<b>C</b> 3:2 12:1,1 <b>Camden</b> 2:10 3:6 <b>cane</b> 4:24 5:3,7,8 5:15,19,23,25 5:25 9:8 <b>case</b> 4:2 5:2,24 <b>categorical</b> 9:15 <b>cause</b> 11:8 <b>Certificate</b> 12:21 <b>Certified</b> 2:6,20 12:4 <b>certify</b> 12:5,9 <b>charges</b> 4:10 <b>circumstances</b> 5:8,15 9:8 <b>Civil</b> 1:2 4:14 <b>claims</b> 10:9 <b>classification</b> 4:21 5:21	<b>E</b> 3:2,2 12:1,1 <b>early</b> 9:22 <b>effort</b> 10:15 <b>employee</b> 12:10 12:12 <b>enter</b> 11:8 <b>ESQUIRE</b> 3:5 3:10,11,12 <b>ESQUIRES</b> 3:4 <b>established</b> 9:3 <b>et</b> 1:9 <b>evacuated</b> 6:2 <b>events</b> 9:24 <b>evidence</b> 11:3,4 <b>evident</b> 9:3 <b>exception</b> 5:18 <b>excessive</b> 9:10 10:15,25 <b>exit</b> 5:5 <b>Expires</b> 12:20 <b>explore</b> 5:6 <b>extent</b> 4:11 <b>extraction</b> 6:14 6:19 8:18	<b>general</b> 5:18 <b>Gerry</b> 2:9 <b>go</b> 7:5 8:13,14 <b>going</b> 6:15 9:2 <b>GRIEGEL</b> 3:9 3:12 <b>guiding</b> 4:7 <b>gym</b> 5:5,11 6:9 8:23 9:2	
<b>D</b>	<b>F</b>	<b>H</b>		
<b>back</b> 7:21 10:8,9	<b>date</b> 6:3 12:8,21 <b>day</b> 7:19 8:4,8 <b>dayroom</b> 7:9,10 <b>dealt</b> 5:23 <b>decision</b> 4:8 <b>Defendants</b> 1:10 3:14 <b>diagnosed</b> 5:1 <b>diagnoses</b> 5:20 <b>directives</b> 4:5 9:9	<b>F</b> 12:1 <b>fact</b> 9:11 <b>facts</b> 4:8 <b>failed</b> 10:23 <b>falling</b> 10:9 <b>fashions</b> 6:5 <b>FAUVER</b> 1:9 <b>film</b> 9:3	<b>H</b> 1:9 <b>HAMILTON</b> 3:13 <b>hard</b> 10:10 <b>head</b> 6:7 8:4,8 10:4,7,8,18 <b>Henry</b> 1:7 4:2,17 11:9 <b>hereinbefore</b> 12:8	

<b>HIGHWAY</b> 3:12 <b>hit</b> 8:4,22 <b>hits</b> 9:1 <b>hitting</b> 8:7 <b>homemade</b> 10:4 <b>HONORABLE</b> 1:21 <b>Horse</b> 2:21 <b>Hospital</b> 4:19 <b>House</b> 2:9 <b>housing</b> 6:13	<b>keep</b> 9:6,9 <hr/> <b>L</b> <b>law</b> 4:7 <b>LAZZARO</b> 3:9 3:11 <b>left</b> 5:2 <b>let's</b> 8:14 <b>license</b> 2:7 <b>limp</b> 9:4 <b>LINDSAY</b> 3:4 <b>line</b> 6:20 <b>Litigation</b> 1:6 <b>Local</b> 4:13 <b>lockdown</b> 4:20 5:8 9:16 <b>locks</b> 8:13 <b>log</b> 9:19,21 <b>LOUGHRY</b> 3:4 3:5 <b>LOZIER</b> 3:9 <b>lying</b> 6:7	8:7,21 9:14 10:17,22 11:9 <b>Mitchell's</b> 6:14 9:23 <hr/> <b>N</b> <b>N</b> 3:2 <b>nature</b> 9:1 <b>necessary</b> 10:16 <b>needed</b> 5:19 <b>negligence</b> 10:13 <b>neither</b> 12:9,11 <b>New</b> 1:2 2:8,10 2:22 3:6,13 12:4,20 <b>Notary</b> 2:8 12:3 12:20 <b>note</b> 6:21 9:13 <b>November</b> 1:15 12:21 <b>number</b> 2:7 4:3 4:18,22,23 5:5 5:6,16 6:4 9:16 10:4	<b>pace</b> 9:7,10 <b>page</b> 6:20 <b>paragraph</b> 4:15 <b>parenthetically</b> 6:22 <b>part</b> 10:10 <b>particular</b> 7:19 <b>parties</b> 12:11 <b>PC</b> 3:9 <b>permitted</b> 5:10 <b>phone</b> 10:1 <b>phones</b> 9:18 <b>Pike</b> 2:21 <b>place</b> 9:19 12:8 <b>plaintiff</b> 8:19 10:17 <b>PLAINTIFFS</b> 3:7 <b>Plaza</b> 2:9 <b>PM</b> 2:10 <b>point</b> 4:22 5:9 <b>presented</b> 11:4 <b>Presumably</b> 5:22 <b>principles</b> 4:7 <b>Prison</b> 1:5 4:18 <b>proceedings</b> 2:5 4:2 <b>prod</b> 10:17 <b>prodded</b> 9:6 <b>prodding</b> 9:9 <b>programs</b> 9:19 <b>proof</b> 10:23 <b>properly</b> 10:19 <b>Public</b> 2:8 12:3 12:20 <b>punish</b> 10:15 <b>punishment</b> 9:12 <b>purpose</b> 6:15 <b>purposes</b> 8:17 <b>pursuant</b> 4:5 <b>pushed</b> 10:8,12	6:17,25 7:6,12 7:16,19,25 8:3 8:6,10 10:18 <b>quite</b> 5:13 <b>quotation</b> 6:24 <b>quote</b> 6:16 <hr/> <b>R</b> <b>R</b> 3:2 12:1 <b>rag</b> 10:5,7,18 <b>ran</b> 10:10 <b>reasons</b> 11:6 <b>reassigned</b> 10:3 <b>recall</b> 10:6 <b>received</b> 6:6 <b>recollection</b> 7:20 8:7 9:24 <b>recommend</b> 11:7 <b>Reference</b> 4:5 4:16 <b>reflects</b> 8:25 <b>regard</b> 1:4 6:17 11:9 <b>regarding</b> 8:25 10:1 <b>relative</b> 12:10,12 <b>remember</b> 7:3 7:25 <b>remembering</b> 9:7 <b>removal</b> 6:22 <b>removed</b> 6:9 <b>reopening</b> 4:1 <b>repeatedly</b> 8:22 <b>report</b> 4:15 11:7 <b>Reporter</b> 2:7 12:4 <b>Reporting</b> 2:20 <b>required</b> 4:15 5:2 <b>residential</b> 6:8 <b>residents</b> 9:16 <b>respect</b> 8:20 <b>respects</b> 5:14 <b>response</b> 8:10	
<hr/> <b>I</b> <b>impacted</b> 9:14 9:25 <b>indicate</b> 10:14 <b>indicates</b> 9:22 <b>injured</b> 10:10 <b>injury</b> 10:12 <b>inmate</b> 8:1,4 <b>inmates</b> 6:25 7:2 7:13,22 8:17 9:10 <b>instructions</b> 4:10 8:16 <b>intentional</b> 10:14 <b>interested</b> 12:13 <b>issue</b> 10:19 <b>issued</b> 4:4 <b>item</b> 11:2	<hr/> <b>M</b> <b>mail</b> 9:18 10:2 <b>March</b> 6:21 <b>MARK</b> 3:10 <b>MARKET</b> 3:5 <b>Master</b> 1:6,21 4:6,16 10:21 11:4 <b>Master's</b> 4:6 <b>Mastroianni</b> 2:6 2:19 12:3,19 <b>matter</b> 1:4 2:6 10:20 <b>mean</b> 8:12 <b>meant</b> 8:11 <b>medical</b> 4:25 <b>Mejias</b> 4:10 <b>merely</b> 10:16 <b>minimal</b> 9:11 <b>minutes</b> 5:7 <b>Mitchell</b> 1:7 4:2 4:12,17,24 5:15,25 6:3,18	<hr/> <b>O</b> <b>O</b> 2:6 12:3,19 <b>occasion</b> 6:14 <b>occurred</b> 6:23 <b>officer</b> 5:13,14 6:11,13,13 8:15 9:20 <b>officers</b> 6:6,18 7:7 8:23 10:7 <b>officer's</b> 10:13 <b>Okay</b> 6:25 <b>once</b> 10:3 <b>opinion/report</b> 1:5 4:4 11:3 <b>order</b> 4:5,16 11:8 <b>ordered</b> 6:7 <b>outside</b> 7:5	<b>Plaza</b> 2:9 <b>PM</b> 2:10 <b>point</b> 4:22 5:9 <b>presented</b> 11:4 <b>Presumably</b> 5:22 <b>principles</b> 4:7 <b>Prison</b> 1:5 4:18 <b>proceedings</b> 2:5 4:2 <b>prod</b> 10:17 <b>prodded</b> 9:6 <b>prodding</b> 9:9 <b>programs</b> 9:19 <b>proof</b> 10:23 <b>properly</b> 10:19 <b>Public</b> 2:8 12:3 12:20 <b>punish</b> 10:15 <b>punishment</b> 9:12 <b>purpose</b> 6:15 <b>purposes</b> 8:17 <b>pursuant</b> 4:5 <b>pushed</b> 10:8,12	<hr/> <b>P</b> <b>P</b> 3:2,2	<hr/> <b>Q</b> <b>question</b> 5:23
<hr/> <b>J</b> <b>JAMES</b> 3:11 <b>Jersey</b> 1:2 2:8,10 2:22 3:6,13 12:5,20 <b>JOHN</b> 1:21 <b>JUDGE</b> 4:1 <b>judgment</b> 11:8 <b>July</b> 4:20,21 <b>jury</b> 4:9,10 <b>JUSTIN</b> 3:5	<hr/> <b>K</b>	<hr/> <b>P</b> <b>P</b> 3:2,2	<hr/> <b>Q</b> <b>question</b> 5:23		

<p><b>result</b> 10:13  <b>returned</b> 9:20  <b>reveals</b> 9:19  <b>review</b> 4:13 9:18  <b>reviewed</b> 11:5  <b>reviewing</b> 9:21  <b>ROSELLI</b> 3:9              3:10  <b>rule</b> 4:14 5:18</p> <hr/> <p style="text-align: center;"><b>S</b></p> <p><b>S</b> 3:2  <b>Saint</b> 4:19,25              5:20  <b>search</b> 6:2,15,22  <b>searched</b> 5:6 6:4              6:8  <b>see</b> 7:14,22 8:3  <b>seeing</b> 7:20  <b>seized</b> 10:19  <b>set</b> 4:9 11:6 12:8  <b>seven</b> 4:15  <b>shirt</b> 10:5  <b>Shorthand</b> 12:4  <b>showers</b> 9:17              10:1  <b>side</b> 5:2  <b>significant</b> 8:25  <b>significantly</b>              9:25  <b>situation</b> 5:17  <b>sleeve</b> 10:5  <b>slight</b> 9:4  <b>snatched</b> 10:7  <b>SOG</b> 6:5,18 7:6              7:12,25 8:3,7              8:23 9:1,6  <b>sorry</b> 7:21  <b>South</b> 2:21  <b>Special</b> 1:6,21              4:6,6,16 10:21              11:4  <b>SQUARE</b> 3:13  <b>State</b> 1:5 2:8              3:12 4:18 12:4              12:20</p>	<p><b>statements</b> 9:15  <b>States</b> 1:1 2:9  <b>stenographica...</b>              12:7  <b>step</b> 7:20  <b>STEVEN</b> 3:12  <b>sticks</b> 8:22  <b>STREET</b> 3:5  <b>striking</b> 8:1  <b>strip</b> 6:8  <b>stroke</b> 5:1  <b>struck</b> 6:18 8:22  <b>structure</b> 10:11  <b>sustain</b> 10:23  <b>sweat</b> 10:5</p> <hr/> <p style="text-align: center;"><b>T</b></p> <p><b>T</b> 3:5 12:1,1  <b>taken</b> 2:6 7:1,2              12:7  <b>tell</b> 8:14  <b>telling</b> 6:17  <b>ten</b> 7:9  <b>testified</b> 5:4,14              8:21 11:1  <b>testifies</b> 8:19  <b>testimony</b> 5:12              6:11,16 8:15              8:19,24 9:25              12:6  <b>Theresa</b> 2:6 12:3              12:19  <b>think</b> 6:16  <b>THURSDAY</b>              1:15  <b>time</b> 4:20 5:24              6:1 7:5,7 9:6,6              9:15,15 12:7  <b>told</b> 7:4  <b>trailer</b> 4:17,22              4:23 5:5,5,16              6:4,23 7:1,2,13              9:16 10:2,4  <b>trailers</b> 5:22  <b>transcript</b> 2:5              4:14 6:21 12:6</p>	<p><b>transport</b> 6:9  <b>treatment</b> 5:20  <b>true</b> 12:6  <b>two</b> 6:5,5</p> <hr/> <p style="text-align: center;"><b>U</b></p> <p><b>unavailability</b>              10:1  <b>underlie</b> 4:8  <b>undertaking</b>              6:24  <b>unit</b> 6:1,14,15  <b>United</b> 1:1 2:9  <b>units</b> 5:22  <b>unlocking</b> 8:12  <b>unproven</b> 6:10  <b>use</b> 5:10 10:15  <b>uses</b> 10:24</p> <hr/> <p style="text-align: center;"><b>V</b></p> <p><b>Videoconfere...</b>              2:20  <b>view</b> 9:25  <b>viewed</b> 9:4  <b>vs</b> 1:8</p> <hr/> <p style="text-align: center;"><b>W</b></p> <p><b>W</b> 1:21  <b>walk</b> 9:4,7  <b>Walker</b> 4:10  <b>walking</b> 5:3  <b>walkway</b> 7:11  <b>way</b> 5:10 8:22  <b>ways</b> 6:5  <b>weapon</b> 5:9  <b>went</b> 4:22 7:17  <b>weren't</b> 8:12  <b>White</b> 2:21  <b>WILLIAM</b> 1:9  <b>wing</b> 7:5 8:11  <b>wings</b> 7:8,14,14              7:17 8:16  <b>witnessed</b> 8:18  <b>written</b> 4:15</p> <hr/> <p style="text-align: center;"><b>X</b></p>	<p><b>XIO857</b> 12:21</p> <hr/> <p style="text-align: center;"><b>0</b></p> <p><b>08102</b> 2:10 3:6  <b>08106</b> 2:22  <b>08690</b> 3:13  <b>09-953</b> 1:2 4:3</p> <hr/> <p style="text-align: center;"><b>1</b></p> <p><b>1st</b> 9:23  <b>1:27</b> 2:10  <b>12</b> 1:15  <b>12th</b> 6:23  <b>13</b> 6:20  <b>1337</b> 3:12  <b>14th</b> 4:19  <b>1997</b> 4:20 6:23              9:20</p> <hr/> <p style="text-align: center;"><b>2</b></p> <p><b>20</b> 12:21  <b>2009</b> 1:15 6:21              12:21  <b>2010</b> 12:20  <b>251</b> 2:21</p> <hr/> <p style="text-align: center;"><b>3</b></p> <p><b>30th</b> 4:21  <b>30X100085700</b>              2:7  <b>33</b> 3:12  <b>330</b> 3:5</p> <hr/> <p style="text-align: center;"><b>5</b></p> <p><b>5</b> 9:20 12:20  <b>52.1</b> 4:14</p> <hr/> <p style="text-align: center;"><b>6</b></p> <p><b>609-586-2257</b>              3:13</p> <hr/> <p style="text-align: center;"><b>8</b></p> <p><b>82</b> 6:20  <b>856-546-1100</b>              2:23  <b>856-968-9201</b>              3:6</p>	<p style="text-align: center;"><b>9</b></p> <hr/> <p><b>9th</b> 6:21</p>
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