

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 24-cr-80103-AMC-1

UNITED STATES OF AMERICA, Fort Pierce, Florida

Plaintiff, August 6, 2025

vs. 1:41 p.m. - 2:59 p.m.

DUSTIN SEAN MCCABE,

Defendant. Pages 1 to 68

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE AILEEN M. CANNON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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STENOGRAPHICALLY REPORTED BY:

LAURA E. MELTON, RMR, CRR, FPR
Official Court Reporter to the
Honorable Aileen M. Cannon
United States District Court
Fort Pierce, Florida

1 (Call to the order of the Court.)

2 THE COURT: Good afternoon. Please be seated unless
3 you are addressing the Court. Let's call the case.

4 COURTROOM DEPUTY: Calling case United States of
5 America v. Dustin Sean McCabe, Case Number 24-cr-80103-Cannon.

6 Counsel, please state your appearances for the record,
7 starting with the United States.

8 MR. KELLER: Good afternoon, Your Honor.
9 Zachary Keller and Tanner Stiehl on behalf of the
10 United States.

11 THE COURT: Good afternoon to both of you.

12 MS. FRANCIS: Good afternoon, Your Honor.
13 Calisha Francis and Mr. Terrence O'Sullivan on behalf of
14 Mr. Dustin Sean McCabe.

15 THE COURT: Okay. Good afternoon, Ms. Francis and
16 Mr. O'Sullivan. And good afternoon to you, Mr. McCabe.
17 who is here for probation?

18 THE PROBATION OFFICER: Frances Weisberg on behalf of
19 U.S. Probation. Good afternoon, Your Honor.

20 THE COURT: Good afternoon, Officer.

21 Okay. Mr. McCabe, this is your sentencing hearing, as
22 you know. The purpose of today's proceeding is to determine a
23 sentence that is reasonable, but not more than what is
24 necessary to serve the statutory purposes that are outlined in
25 Title 18, United States Code, Section 3553(a).

1 As you are also aware, you were adjudicated guilty of
2 all counts in the indictment following a jury trial and jury
3 verdict. There were a total of six counts -- excuse me, five
4 counts in the indictment, the first of which is seaman's
5 manslaughter in Count 1. The second offense was making a false
6 statement within the jurisdiction of an agency of the
7 United States, in violation of Title 18, United States Code,
8 Section 1001(a)(2). And then there were three counts of wire
9 fraud, 3, 4, 5, in violation of Title 18, United States Code,
10 Section 1343.

11 I obviously presided over the trial, so I'm fully
12 familiar with the facts. I have also reviewed all of the
13 filings pertinent to today's hearing, including the Presentence
14 Investigation Report, the objections to that report that were
15 filed by your attorney, the addendum, along with a sentencing
16 memorandum filed by your counsel with some untimely additional
17 objections. The government also has responded to the those PSI
18 objections. And I think that covers the factual picture.

19 Ms. Francis, are there any other items I overlooked for
20 today's hearing?

21 MS. FRANCIS: No, Your Honor. You have covered it all.

22 THE COURT: Okay. Any from the United States?

23 MR. KELLER: Nothing, Your Honor.

24 THE COURT: Okay then. Before we begin, let me ask
25 whether any family members of the victim are present today and

1 wish to be heard.

2 MR. KELLER: Yes, Your Honor. So first I will note the
3 family members of the victim that are here. There is Tiffany
4 Ghiz, Jack Ghiz, Josh Ghiz, Nick Ghiz, and also, Your Honor,
5 Sean Flynn, Mollie's husband is here as well.

6 As far as who will be speaking, Tiffany Ghiz and Sean
7 Flynn will be speaking.

8 THE COURT: Okay. And do you wish to have those
9 statements following the resolution of the PSI objections?

10 MR. KELLER: Yes, Your Honor, at your -- at your
11 discretion, however you prefer to have it.

12 THE COURT: Okay. Then we will give anybody who wishes
13 to speak an opportunity to do so, and that also applies, of
14 course, to any defense witnesses or character references.

15 So, with that, let me ask Ms. Francis, have you had a
16 full opportunity to review the PSI with Mr. McCabe?

17 MS. FRANCIS: Yes, Your Honor. It was reviewed with
18 Mr. McCabe with Mr. Terrence O'Sullivan.

19 THE COURT: Okay. Stay standing, please. I have a few
20 more questions.

21 Briefly walk me through the process that you went
22 through to review the PSI with Mr. McCabe.

23 MS. FRANCIS: Okay. Your Honor, if I may have
24 Mr. O'Sullivan --

25 THE COURT: Okay. Mr. O'Sullivan, the question is:

1 Please walk us through briefly the process that you went
2 through to review the PSI with Mr. McCabe and answer any
3 sentencing-related questions.

4 MR. O'SULLIVAN: Judge, as the Court knows Mr. McCabe
5 is at the St. Lucie County Jail, so I visited Mr. McCabe there
6 several times, and we went over the PSI. And we have also
7 spoken on the phone. And me and Ms. Francis have discussed it
8 between ourselves, the objections and the contents of the PSI.

9 THE COURT: okay.

10 MR. O'SULLIVAN: As well as --

11 THE COURT: Please continue.

12 MR. O'SULLIVAN: As well as speaking to his family
13 members who are here. They were very involved in the posttrial
14 motions and discussions.

15 THE COURT: okay. All right. Then let me ask you
16 another question, Mr. O'Sullivan. Do you believe you have
17 answered Mr. McCabe's questions to his satisfaction?

18 MR. O'SULLIVAN: I believe I have, Your Honor.

19 THE COURT: okay then.

20 All right. Let's swear Mr. McCabe in, please.

21 COURTROOM DEPUTY: Please stand and raise your right
22 hand.

23 Do you solemnly swear or affirm that the testimony you
24 are about to give in this cause shall be the truth, the whole
25 truth, and nothing but the truth, so help you God?

1 THE DEFENDANT: Yes, ma'am.

2 COURTROOM DEPUTY: Thank you.

3 THE COURT: Okay. You may take a seat, sir.

4 Please provide the microphone to Mr. McCabe.

5 Okay. Mr. McCabe, did you hear my exchange with your
6 attorneys regarding your preparation for today?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you agree with everything they have
9 said?

10 THE DEFENDANT: Yes.

11 THE COURT: Are you fully prepared to proceed today
12 with sentencing?

13 THE DEFENDANT: Yes.

14 THE COURT: And have they answered all of your
15 questions to your satisfaction?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay then. All right. I do want to make a
18 note that there was an outstanding motion for judgment of
19 acquittal which was resolved by written order today. So I
20 trust the parties are aware of the Court's ruling on that
21 motion.

22 Okay. Let's begin now to address any unresolved
23 factual objections to the PSI. There were a number of items.
24 And so my question, Ms. Francis -- and I'm not sure who is
25 handling today's hearing in bulk. Is that going to be you or

1 Mr. O'Sullivan?

2 MS. FRANCIS: Yes, Your Honor. I will be addressing
3 the objections.

4 THE COURT: Okay. So the way we are going to do this
5 is, we are going to start with the factual objections, anything
6 that you think is factually inaccurate in the PSI, and then
7 we're going to move into any legal objections, in other words,
8 any specific offense characteristics that you do not think
9 should be applied as far as calculating the advisory guideline
10 range.

11 Do you follow the structure?

12 MS. FRANCIS: Yes, Judge.

13 THE COURT: Okay then. All right. So first alert me
14 to the first unresolved factual objection to the PSI, and
15 please be specific as far as which paragraph you think contains
16 inaccurate information.

17 MS. FRANCIS: Yes, Your Honor.

18 Your Honor, if I can begin with the defendant objecting
19 to the phrase of "scheme to defraud" and "used to enrich
20 himself." And that was contained in the PSR, and it was
21 contained in numerous places.

22 Judge, may I address from the podium?

23 THE COURT: It's -- it's preferable that you stay where
24 you are, actually, because I'm going to be going back and forth
25 between you and government counsel. So just stay where you

1 are, please. And if you need another microphone, then you can
2 switch spots.

3 MS. FRANCIS: Understood. Is it okay if I hold my
4 laptop, Your Honor?

5 THE COURT: That's fine.

6 MS. FRANCIS: Okay. Thank you, Judge.

7 THE COURT: okay. All right. So with respect to this
8 first objection, I see it here, you take issue with the phrase
9 "scheme to defraud" and "used to enrich himself" and "in
10 furtherance of the scheme."

11 what is the basis of your objection, ma'am?

12 MS. FRANCIS: well, Your Honor, what we are asserting
13 is that these terms mirror the government's charging language,
14 and it does go beyond the jury's verdict. We do request that
15 the language -- or we did request that the language be replaced
16 to reflect that the defendant was convicted of submitting
17 materially inaccurate PPP loan applications, which is what the
18 jury determined, and that is what meets the elements of
19 18 U.S.C. 1343.

20 THE COURT: okay. But you would agree that the "scheme
21 to defraud" language comes directly from Counts 3, 4, and 5,
22 and, of course, the jury convicted him on those three counts;
23 correct?

24 MS. FRANCIS: I agree with you, Your Honor. We do
25 agree with that, that it does mirror the charging language.

1 However, we assert that it goes beyond the jury's verdict.

2 There was --

3 THE COURT: But for what reason? This is what -- I'm
4 failing to see any daylight between the charging document and
5 the convictions reached by the jury on these three wire fraud
6 counts.

7 MS. FRANCIS: Judge, what we believe is that this is
8 prejudicial to the defendant.

9 THE COURT: okay.

10 okay. well, Mr. Keller?

11 MR. KELLER: So, Your Honor, the government responded
12 to this objection, I just want to note for the record. And I
13 know you know, but in docket entry 117, on page 5, at the top,
14 this is objection 2, the two responses we have -- and because
15 on the one hand there is the scheme issue and then there is the
16 unjustly enriched issue -- is that as far as the scheme, you're
17 correct in pointing to the charging language, but it even is in
18 the elements of the offense.

19 So not only is it listed in the indictment that the
20 defendant engaged in a scheme, but also the jury needed to
21 necessarily find that by finding that the -- all four elements
22 were proven.

23 THE COURT: And that information and that language was
24 in the jury instructions; correct?

25 MR. KELLER: Yes, as to the scheme issue.

1 And then as to the unjustly enriched issue, the
2 government's position is that we provided ample evidence of
3 that during the trial. The defendant got the money that he
4 applied for, for these PPP loans. He spent it on things like a
5 golf club membership that, under any reasonable definition of
6 unjust enrichment, that is exactly what happened here. So our
7 position is that both of those aspects of the PSI language are
8 appropriate.

9 THE COURT: Okay. This factual objection will be
10 overruled. I think for all of the reasons stated by the
11 United States, I see no basis to deviate from the jury's
12 finding of fraud on those counts, nor do I agree that use of
13 that language in the PSI somehow goes beyond the jury's
14 verdict. And I think there was ample evidence to show the
15 fraud, including, of course, the golf membership, which was
16 obtained using funds to which the defendant wasn't entitled
17 through the false statements that he made to the -- to banks at
18 issue.

19 So next factual objection.

20 MS. FRANCIS: Yes, Your Honor.

21 We are objecting to paragraph 98 of the PSR. 98
22 references employment complaints from a former employee. It
23 includes reprimands and altercations that are unrelated to the
24 instant offense. What we are asserting are that these
25 incidents were never adjudicated. They did not result in any

1 kind of discipline that's related to this case. They have no
2 probative value regarding any character or criminal history.
3 what we're arguing is that the inclusion of this information is
4 unfairly prejudicial. And it invites the Court to rely on
5 unverified hearsay to assess his conduct.

6 So, Judge, it is -- what we're saying is that we submit
7 that this information should be stricken from the PSR since the
8 allegations are not linked to any type of criminal conviction
9 or formal misconduct. It serves no legitimate purpose.

10 THE COURT: Okay. And so looking at -- paragraph 98, I
11 think you said?

12 MS. FRANCIS: Yes, Judge.

13 THE COURT: Is that the only place you see this
14 information?

15 MS. FRANCIS: Yes, Your Honor.

16 THE COURT: Do you disagree that his employee file
17 included these items? I know you may take issue with the
18 ultimate reliability of the complaints, but is it inaccurate to
19 say that his employee file actually had those items in it?

20 MS. FRANCIS: No, Judge, that is accurate. The
21 employee file did contain these reprimands and altercations.
22 Our argument is that these incidents were never adjudicated and
23 it didn't result in any kind of discipline.

24 THE COURT: Okay.

25 MS. FRANCIS: And that should not be --

1 THE COURT: Okay. So if there were to be an addition
2 to paragraph 98 to, I guess, emphasize your point that none of
3 these employee complaints resulted in formal discipline, would
4 that cure your objection?

5 MS. FRANCIS: That would, Your Honor. In addition to
6 that, what we are asking for is it to be stricken completely
7 from the PSR since the allegations are not linked to these
8 criminal charges or any kind of formal misconduct. What we're
9 saying is that it serves no legitimate purpose. It should be
10 stricken. But, yes, Your Honor, if something was added, that
11 would accomplish the same result.

12 THE COURT: Okay. Mr. Keller, anything on this issue?

13 MR. KELLER: Just briefly, Your Honor.

14 And this is objection 6 that the government responded
15 to on page 7 of docket entry 117. And our position here is
16 essentially that, because they do not contest the facts -- the
17 PSI is for all types of different evidence of the defendant's
18 history, his characteristics. His employment history is
19 included in that. We don't think it's unduly prejudicial to
20 have it in there because the PSI is supposed to have that type
21 of stuff in there, just in the same way that it has information
22 relating to family history.

23 So because the defense doesn't object to the
24 truthfulness of the actual conduct or the -- or the facts in
25 there, our position is that, to Your Honor's suggestion, that

1 what is appropriate is that those facts remain in the PSI, but
2 that there be an addendum that includes the defendant's,
3 you know, characterization, his description of them because we
4 don't contest what he is saying. We are not going to bring a
5 witness here to testify about whether those are just reprimands
6 or whatnot. So we don't object to the inclusion of the
7 additional language the defense proposes.

8 THE COURT: Okay. With respect to the requests made by
9 the defendant to strike paragraph 98 in its entirety, that
10 request will be denied. I think this information is accurate
11 as written. I also think it's proper -- properly included in
12 the PSI. I see no legal basis to remove it.

13 That said, for completeness, I will direct probation to
14 add the following language to paragraph 98: None of these
15 items in the defendant's employee file resulted in formal
16 discipline, and the defendant objects to the characterization
17 of his employment history.

18 Okay. Anything further on that subject?

19 MS. FRANCIS: No, Judge.

20 THE COURT: Okay. Next factual objection.

21 MS. FRANCIS: Judge, we are objecting to paragraphs 5,
22 18, 22, and 24 of the PSR. Again, that was 5, 18, 22, and 24.
23 There, Judge, the PSR repeatedly implies that Mr. McCabe
24 engaged in intentional wrongdoing or deception by operating his
25 vessel as a recreational vessel. What we are asserting is that

1 his vessel was lawfully classified as a recreational vessel
2 under the UPVA. We maintain that the law explicitly permits
3 the operation of vessels carrying six or fewer passengers for
4 hire without formal Coast Guard inspection or certification as
5 a commercial passenger vessel. What we're arguing is that this
6 classification was legally appropriate and consistent with
7 federal marine time [sic] regulations, and that suggesting that
8 he acted with criminal intent simply for using a lawful and
9 recognized vessel classification distorts the facts and
10 improperly colors the narrative of both the manslaughter and
11 the fraud charges.

12 So, Judge, what we are requesting is that all
13 references to the vessel classification as misleading,
14 deceptive, improper be removed or revised from the PSR report.

15 THE COURT: Okay. Mr. Keller.

16 MR. KELLER: And, Judge, I believe that this is
17 objection 7, which the government responds to at
18 docket entry 117 on page 7. And our response here is that the
19 defendant, Mr. McCabe, was convicted of lying intentionally
20 about the purpose of this vessel to the Coast Guard. That when
21 we say he was intentionally lying, that was part of what the
22 jury was finding in convicting him. This was a specific intent
23 crime in that sense.

24 THE COURT: Are you referring to Count 2?

25 MR. KELLER: Yes, Your Honor.

1 THE COURT: Okay. Please continue.

2 MR. KELLER: And so when the PSI is describing the
3 defendant as intentionally lying about the purpose of his
4 vessel, that is exactly what was proven at trial, that is
5 exactly what the jury convicted him of, and it is, therefore,
6 appropriate.

7 THE COURT: Okay. For the reasons stated by the
8 government, both orally and in writing, I am going to overrule
9 this objection. I understand you might take issue with the
10 jury's finding, but I think there is no basis to disturb that
11 finding, and it's clear to the Court that the defendant's
12 material lies on the Coast Guard forms with respect to the
13 purported recreational nature of the vessel were proven and
14 that nothing in the PSI is inconsistent with the trial evidence
15 as received and ultimately found by the jury.

16 So next factual objection.

17 MS. FRANCIS: Yes, Judge. Thank you.

18 Judge, I would like to address the two-level
19 enhancement under USSG 3B1.

20 THE COURT: Okay. So before we get there, I just want
21 to make sure, do you have any other factual challenge to the
22 PSI? In other words, any language that you think is incorrect?

23 MS. FRANCIS: No, Your Honor. We have put forth all of
24 our objections in the memorandum, and that would be it for
25 us -- for our oral arguments on the PSR objections for today.

1 THE COURT: Okay. I just want to make sure that you
2 raise right now any additional factual objections that you
3 previously raised that we may not have addressed today.

4 Are there any other factual objections that we haven't
5 talked about that need to be resolved right now?

6 MS. FRANCIS: No, Your Honor, no additional factual
7 objections.

8 THE COURT: Okay. All right. So now we're going to
9 shift and talk about any enhancements that you think are not
10 applicable. So you can return to that argument, please.

11 MS. FRANCIS: Thank you, Judge.

12 Judge, what we would like to address is that two-level
13 enhancement under Statute 3BI -- I'm sorry -- 1.3 for alleged
14 use of a special skill in the commission of the offense.

15 The Presentence Investigation Report applies this
16 enhancement based on Mr. McCabe's status as a licensed boat
17 captain. However, the law is clear, particularly under the
18 Eleventh Circuit's guidance in United States v. Ward. Again,
19 that was United States v. Ward. That the government must show
20 not only that the defendant possessed a special skill, but that
21 he used that skill in a manner that was -- significantly
22 facilitated the commission or concealment of the offense.

23 Judge, in this case that standard is not met. The
24 offense of conviction, seaman's manslaughter, applies only to
25 certain maritime professionals, including captains.

1 Mr. McCabe's role as a vessel captain is not merely incidental.
2 It is an element of the offense. That skill is already
3 incorporated into the base offense level. The enhancement,
4 therefore, constitutes impermissible double counting.
5 Moreover, Judge, there is no evidence that Mr. McCabe used
6 specialized knowledge or training, such as advanced navigation
7 or seamanship or evasive tactics to further or conceal the
8 offense. The conduct at issue was tragic, but it was not
9 executed through any misuse of any special skill. Accordingly,
10 Judge, the enhancement should not apply. And without it, the
11 total offense level would be 24, and the applicable guideline
12 range would be reduced to 51 to 63 months.

13 THE COURT: Okay. Let me ask you something. Did you
14 make these arguments in a timely objection to the PSI?

15 MS. FRANCIS: No, Your Honor. These were provided
16 yesterday in the memorandum.

17 THE COURT: Okay. You understand, correct, that there
18 is a time period for the filing of objections to the PSI, and
19 that's all by design so that the government has a chance to
20 respond and then probation can respond like it did in the
21 initial addendum that was filed in early June?

22 MS. FRANCIS: Yes, Your Honor. We understand and we
23 know that we did not abide by the time constraints. But based
24 on the severity of the sentence that he is facing, we wanted to
25 bring it to the Court's attention.

1 In addition to that, Mr. McCabe has also sought outside
2 counsel. And it was after meeting with that counsel that these
3 issues were raised. So we apologize for the untimeliness. But
4 we feel that it's important that the Court addresses it due to
5 the fact that he is facing prison time.

6 THE COURT: Okay. All right. Well, I'm pretty sure
7 that the prospect of an incarceration was self-evident at the
8 moment of remand.

9 But, in any case, Mr. Keller, why don't you address the
10 merits of this untimely objection.

11 MR. KELLER: Yes, Your Honor.

12 So just to begin with where the defense talks about
13 it's baked into the guidelines of the base offense level
14 because of the fact that there was a commercial vessel
15 involved, the government respectfully disagrees with that.
16 That's -- that -- what we look at for these -- for these cases
17 is the nature of the facts that happened here. And here what
18 you have is a defendant who was someone who was in a position
19 of trust, someone who was believed by every person who
20 testified who was on that boat, that they were looking to him
21 to keep them safe. And, in fact, that that is his specific
22 role, is to keep them safe and to have the boat in working
23 order, to have the propellers in working order and not present
24 a danger to his passengers.

25 And the reason I say that that matters is because it's

1 different than, for example, in the Fifth Circuit case O'Keefe
2 you had a tugboat captain who crashed into someone else. And
3 there it's a very different fact pattern because the victim
4 didn't have this relationship with the person who perpetrated
5 the crime.

6 Here the relationship between Dustin McCabe,
7 Mr. McCabe, the defendant, and Mollie Ghiz-Flynn, the victim,
8 was one where Ms. Ghiz-Flynn put trust in him, just like
9 Sean Flynn did, and we heard him testify about it. And one in
10 which they relied on him to use his specialized knowledge, his
11 scuba knowledge as a scuba charter captain, which he had been
12 doing for many years, in order to put themselves -- and them
13 being these passengers -- in the position to be in his care in
14 the first place.

15 So our position is that, given the context here, given
16 that Mr. McCabe was a scuba charter captain, given the fact
17 that he was a merchant, a licensed merchant mariner, given the
18 fact that these passengers repeatedly testified that they were
19 putting their trust in him based upon his knowledge, based upon
20 his role as their captain, that that is enough, and sufficient
21 for this Court to apply the 3B1.3 enhancement for the use of a
22 special skill in the commission of the offense, which was his
23 bringing these people on this boat when he knew there was a
24 problem and not warning them for it.

25 THE COURT: Okay. And what do you say with respect to

1 the claim of double counting based on the terms of 2A1.4 which
2 sets the base offense level of 22 if the offense involved the
3 reckless operation of a means of transportation?

4 MR. KELLER: And this is what I was meaning to get at
5 about the tugboat captain who maybe was using drugs, for
6 example, which is the O'Keefe fact pattern. That what you have
7 there is someone who is recklessly operating a means of
8 transportation, but there is no obvious skill, there is no
9 obvious relationship of trust between that defendant and the
10 person who was the victim. That in that situation it's much
11 more arguable as to whether this additional enhancement should
12 apply.

13 So that's just to say that, just because someone is
14 involved in the reckless operation of a means of transportation
15 doesn't mean that they're necessarily employing a specialized
16 skill. They could be recklessly just at the helm and they're
17 doing whatever they're doing, whether they're on drugs,
18 whether -- whatever the reason is. There, there might be other
19 enhancements that might apply. There might be an upward
20 variance, given the egregious nature of what they did, but you
21 wouldn't have this specific enhancement apply because they're
22 not employing a specialized skill; they're, instead, just
23 acting in a grossly reckless way.

24 THE COURT: Okay. And so the specialized skill here, I
25 think you have described it as -- as being the licensed captain

1 operating a vessel which is marketed as a -- as a paid-for-hire
2 service, which then necessarily involves a level of trust to
3 the paying customers, and then -- I'm just trying to fully
4 articulate the basis for this enhancement beyond just the
5 reckless operation of the transportation.

6 MR. KELLER: Well, and we would -- the government would
7 add to that the nature of scuba, that he was a scuba charter
8 captain specifically. And one of the things that we really
9 tried to emphasize to the jury during trial is that when we are
10 talking scuba, we are talking about the danger of the
11 propellers in a different kind of way than we are, for example,
12 with a fishing charter.

13 So when we have someone like Mr. McCabe, who is an
14 expert or who has been working in the scuba charter area
15 specifically, he is someone who they're relying on to keep it
16 safe, specific -- specifically as it relates to those
17 propellers. So that is something that makes his knowledge even
18 more specialized and even more important, given the danger that
19 those propellers present.

20 THE COURT: Okay. All right. Final argument,
21 Ms. Francis.

22 MS. FRANCIS: Thank you, Judge.

23 I just want to point out that the guideline expressedly
24 prohibits application where the special skill is already
25 incorporated into the base level -- the base offense level.

1 The adjustment may not be employed if an abuse of trust or
2 skill is included in the base level or specific offense
3 characteristics. That goes to the statute.

4 Judge, the Eleventh Circuit has clarified that the
5 government has to establish both that the defendant possessed a
6 special skill and that the defendant used that skill in a
7 manner that significantly facilitated the commission or
8 concealment of the offense. Here, the offense of conviction,
9 seaman's manslaughter, it inherently applies only to persons in
10 maritime positions such as captains. So Mr. McCabe's role as a
11 vessel captain is an element of the offense. They were
12 required to prove that at trial. And the use of that status is
13 already contemplated in the base level offense.

14 So if we apply that enhancement, it is double counting.
15 Further, Your Honor, the PSI fails to establish that Mr. McCabe
16 used his maritime training or captain's license to facilitate
17 or conceal the offense in a manner beyond the
18 required -- that's required for the offense itself.

19 There is no allegation or evidence that specialized
20 navigational knowledge or any other type of special skill was
21 misused in any way that significantly contributed to the
22 commission or concealment of the offense. Therefore, legally
23 and factually it is inapplicable and it must be removed.
24 Removal of this two-level enhancement would reduce Mr. McCabe's
25 total offense level to 24.

1 And that is our argument, Judge.

2 THE COURT: All right. Thank you.

3 with respect to the challenge here, the two-level
4 application of the special skill enhancement -- and this is
5 reflected in paragraph -- one moment -- 45 of the PSI -- the
6 objection is overruled for the reasons stated by the
7 government.

8 The base offense level of 22 applies for offenses
9 involving the reckless operation of a means of transportation.
10 It does not, by that language, necessitate the use of a special
11 skill, as was employed here to facilitate the offense. As we
12 know from the trial evidence, Mr. McCabe is a licensed scuba
13 charter captain that used that status and that licensure and
14 his reputation as such to convince folks to come on his boat
15 for payment. Those individuals trusted his expertise and yet
16 he obviously failed remarkably in his expectations and
17 ultimately resulted in the death of the victim in this case.

18 So I think the use of the special skill enhancement is
19 warranted, and I don't see a special counting, a special --
20 excuse me, a double counting issue, looking at the language of
21 2A1.4(a)(2)(B). For the reasons stated by Mr. Keller, that
22 guideline provision doesn't necessarily mandate the use of a
23 special skill, which is why this enhancement exists. And I
24 think it does properly apply here based on the Court's review
25 of all of the facts and circumstances.

1 Okay. So that objection will be overruled.

2 Let me return for a moment -- Ms. Francis, you had
3 raised, I think, some additional factual challenges to the PSI,
4 and I just want to make sure that the record is complete.

5 Looking at your docket entry, 115, Counsel, can you
6 just ensure that there is no additional factual challenge that
7 you've raised that wasn't discussed today?

8 MS. FRANCIS: Yes, Your Honor. We have found in
9 paragraphs 46 and 52 --

10 THE COURT: Again, we're just sticking with what you
11 have actually objected to in the papers.

12 MS. FRANCIS: Yes, Judge.

13 THE COURT: So this wouldn't be the time for brand-new
14 items that you have just conjured up. I'm looking at what did
15 you actually file, and I just want to make sure that we're
16 covering what it is that you flagged in the written objections.

17 MS. FRANCIS: Yes, Judge, this was in the written
18 objections.

19 THE COURT: Okay. So where are we? We have talked
20 about language implying direct causation of death.

21 MS. FRANCIS: Yes, Judge.

22 THE COURT: We've addressed that; correct?

23 MS. FRANCIS: Yes, Your Honor.

24 THE COURT: Okay. And that was overruled.

25 we talked about prosecutorial language and fraud

1 descriptions. That also was addressed and overruled; correct?

2 MS. FRANCIS: Yes, Judge.

3 THE COURT: Okay. So then anything more on objection
4 number 3, as you've described it, "language suggesting intent
5 beyond the verdict"?

6 MS. FRANCIS: No, Your Honor. Just claims of perjury.
7 That was included in the PSR report. That's what we wanted
8 to --

9 THE COURT: That's the extra stuff. Okay. So
10 objection 3 was resolved factually.

11 MS. FRANCIS: Yes, Judge.

12 THE COURT: All those factual objections, the Court
13 finds, are just contrary to the trial evidence and to the
14 jury's verdict.

15 Okay. So we still need to address objection 4, which
16 is the obstruction of justice enhancement.

17 Okay. Are you still maintaining an objection to the
18 inclusion of funeral expenses and emotional losses?

19 MS. FRANCIS: No, Your Honor.

20 THE COURT: So that is being abandoned?

21 MS. FRANCIS: That's correct.

22 THE COURT: Okay. I'm going to note that objection 5
23 to inclusion of funeral expenses and emotional losses.

24 And so am I correct then that there is no longer a
25 challenge to the permissibility of restitution to cover those

1 losses?

2 MS. FRANCIS: Judge, may I have a minute with my --

3 THE COURT: Yes, you may. Let's turn the white noise
4 on, please.

5 (Discussion between counsel and defendant.)

6 MS. FRANCIS: Thank you, Your Honor. We are ready to
7 proceed.

8 THE COURT: okay.

9 MS. FRANCIS: And Mr. Sullivan will address the Court,
10 Judge.

11 THE COURT: okay. Mr. Sullivan.

12 MR. O'SULLIVAN: Thank you, Your Honor.

13 As far as restitution goes, the victim's family has
14 submitted a letter requesting restitution, however, the crime
15 for which Mr. McCabe was convicted under the seaman's
16 manslaughter is not covered by the Mandatory Victim Restitution
17 Act.

18 THE COURT: okay. I think everybody agrees it wouldn't
19 be mandatory, but the question is, it is permissible under
20 Title 18, United States Code, Section 3663.

21 MR. O'SULLIVAN: It's permissible, but not mandatory.

22 THE COURT: okay. And so I think we're all in
23 agreement that it's not mandatory, it's permissive only. So
24 are you still maintaining an objection to the imposition of
25 permissive restitution under the facts and circumstances of

1 this case?

2 MR. O'SULLIVAN: I think that would, of course, be up
3 to the Court. We would ask that restitution not be part of
4 this case, as there was a separate civil settlement that should
5 have covered that, but, of course, it's up to the Court.

6 THE COURT: Well, this is where I want to explore the
7 argument.

8 Okay. So do you understand that it would be the
9 defendant's burden to prove that an offset is warranted to the
10 restitution order?

11 MR. O'SULLIVAN: Yes, Judge, I understand that.

12 THE COURT: Okay. So what evidence can you prove or
13 present to me to show that an offset is warranted perhaps
14 because the money received by the beneficiary of a policy was
15 intended to compensate for the funeral expenses that are now
16 being sought?

17 MR. O'SULLIVAN: I mean, the only thing that we can
18 proffer to the Court is that there was a separate civil suit in
19 the amount of \$300,000 that was paid out already. And that
20 covers -- we believe that covers what any potential restitution
21 in this case would cover for funeral expenses.

22 THE COURT: Okay. Do you know who the beneficiary of
23 that policy was?

24 MR. O'SULLIVAN: I do not.

25 THE COURT: Do you know if the payout was intended to

1 compensate for funeral expenses?

2 MR. O'SULLIVAN: I don't have that judgment and
3 sentence in the civil action, Your Honor.

4 THE COURT: Okay. All right. Let me hear from the
5 government on this restitution issue specifically.

6 MR. KELLER: Judge, the government responded to this
7 issue on page 6 of docket entry 117. And, in essence, it's
8 exactly what you said, which is that the defense was citing to
9 the Mandatory Restitution Act, when this is not mandatory.
10 We're not contesting that. But there is restitution that can
11 be levied.

12 And here Ms. Tiffany Ghiz has provided an estimate of
13 her restitution. And, you know, at the end of this hearing we
14 will be asking for the hearing to be set for 90 days out, and
15 we expect that we will reach a stipulation with the defense
16 once we show them documentation relating to that.

17 But our position here today is that, and as the law is
18 clear, that funeral expenses are absolutely covered by the
19 restitution laws, and that they actually specifically say that
20 it pays, quote, "an amount equal to the costs of necessary
21 funeral and related services." So our position is that all of
22 that is covered and will be appropriate restitution here.

23 THE COURT: Okay. All right. The objection, as
24 briefed in docket entry 115, was a request to remove from the
25 PSI any references to funeral expenses, emotional distress, and

1 victim impact letters relating to Count 1. This was all under
2 the mistaken impression that restitution in this case fell
3 within the mandatory restitution provision in 3663(A). That's
4 not the case.

5 Restitution is legally permissible under 3663, although
6 a restitution hearing will be set for a future date, not to
7 exceed 90 days from today, at which time the parties can
8 present any additional evidence they wish with respect to the
9 quantity of restitution.

10 And, Mr. McCabe, if there is any evidence your side
11 wishes to bring to bear in support of an offset to that amount,
12 please note it would be the defense burden to prove that
13 necessity for an offset.

14 Any further discussion to be had on objection number 5,
15 Mr. O'Sullivan?

16 MR. O'SULLIVAN: No, Your Honor.

17 THE COURT: Okay. So that objection has been resolved.

18 we've also resolved objection number 6, which is the
19 non-adjudicated employment complaints; that was done earlier
20 today.

21 Okay. Ms. Francis, anything left on docket entry 115
22 to address today? I know we still need to do the obstruction.

23 MS. FRANCIS: No, Your Honor. We have covered
24 objections 6, 7, and 8, 5, 4, 2, and 3.

25 Yes, Your Honor, we have covered all of the objections.

1 THE COURT: And then 9 and 10 as well?

2 MS. FRANCIS: Yes, Your Honor. We did cover that as
3 well, objection 9 and 10.

4 THE COURT: Okay. Those factual objections were
5 overruled, again, based on the trial evidence.

6 I would say the majority of these factual challenges
7 just take issue with the trial evidence, present a different
8 view of the facts. The jury clearly rejected that theory.

9 So, all right, that leaves one remaining legal
10 objection to the PSI, and that concerns the obstruction
11 enhancement applied in paragraph 46.

12 Let me start here with Mr. Keller.

13 MR. KELLER: Judge, Mr. McCabe testified for just about
14 an entire trial day. He testified from about 11:00 in the
15 morning until about 4:45 in the afternoon. And he lied about
16 basically every aspect of this case. I have -- I have crossed
17 four defendants before. I have seen probably a half dozen
18 others. I have never seen a defendant lie about every single
19 aspect of a case. Usually they just lie about a couple things,
20 or try to, you know, twist the facts at the very end.

21 Mr. McCabe lied about the -- what caused the death of
22 Ms. Ghiz-Flynn, claiming it was the waves that sucked her
23 under. He lied about the fact that he submitted the PPP loan
24 applications, saying that maybe the bank was just lying about
25 that. He lied about whether he ran the vessel aground the day

1 before. We had five witnesses come and testify about the
2 vessel running aground. Mr. McCabe insisted that he dropped
3 anchor, even though all of those people were experienced in
4 being on boats, some of them were people who worked at the
5 dock, and yet Mr. McCabe just relentlessly lied about thing
6 after thing during this testimony.

7 So our position is that Your Honor was here as he did
8 that for an entire day, and that it was self-evident during
9 that, that he was lying, and it was self-evident that he was
10 lying with the jury convicting him. Because if they had bought
11 anything he had been selling, then they wouldn't have convicted
12 him on every single count.

13 In fact, for the government, you know, a feature of our
14 rebuttal was the fact that the defendant had just spent an
15 entire day lying to the jury about everything about this case.

16 So our position -- and we're going to make this
17 argument as we talk about an appropriate sentence -- is that
18 this obstruction enhancement is absolutely appropriate and
19 that, really, it doesn't even do justice to what this defendant
20 did as he took the stand during this trial.

21 THE COURT: Okay. So the specific intentional lies you
22 are relying on, are those the ones itemized in paragraph 36,
23 subsection A through H?

24 MR. KELLER: Let me just -- yes, Your Honor,
25 those -- any one of those would be a sufficient basis, but we

1 would submit that all of those were lies that he told us, he
2 testified.

3 THE COURT: Okay. Ms. Francis or Mr. O'Sullivan.

4 MS. FRANCIS: Yes. Thank you, Judge.

5 Paragraph 36 improperly applies the two-level
6 enhancement. This is based on the alleged perjury without
7 specific judicial finding that Mr. McCabe gave false testimony.

8 THE COURT: well, that's what we're doing here now. We
9 are going to decide whether what he said obstructed justice by
10 providing material, false information in connection with this
11 criminal proceeding.

12 And so what I need to hear from you now is why isn't
13 the record quite clear that Mr. McCabe lied on all of those
14 subjects as itemized in paragraph 36?

15 MS. FRANCIS: well, Judge, what we would proffer is
16 that we believe that Mr. McCabe did not lie. His conduct
17 throughout the proceedings, it reflects a meaningful degree of
18 personal accountability that the Court may consider.

19 Prior to the trial, Mr. McCabe even stipulated that he
20 would not pursue a defense strategy of blaming or shifting
21 blame to any government witnesses or even the victim. So he
22 did not seek to minimize the seriousness of the offense; he
23 told his story. He understands the level and degree of
24 seriousness of the offense and that a life was lost. His
25 conduct during the trial was respectful, restrained. It was

1 devoid of any tactics that was intended to inflame or prolong
2 the proceedings.

3 So while asserting his legal defenses, Mr. McCabe
4 consistently demonstrated more responsibility for the incident.
5 So we believe that he was able to exercise his legal right of
6 proceeding to trial and that he told his story.

7 THE COURT: Okay. But the question is, was the story a
8 lie? And it's hard to see how it wasn't, with respect. You
9 have a boat captain who is literally advancing a theory that a
10 woman died because she was naturally, through the organic
11 movement of the waves, thrust into a propeller. Yet the
12 evidence was overwhelming that there was a malfunction on the
13 boat and that she, in fact, was wound up in this engaged
14 propeller; and, of course, all of this coming after the notice
15 issues the day before. It's very hard to see how this ocean
16 current theory was anywhere in the realm of reality.

17 MS. FRANCIS: No, Judge, we do not proffer that
18 Mr. McCabe lied. Based on the testimony of the medical
19 examiner himself, he prescribed that the propeller could not
20 have been engaged, and that the wounds, although they looked
21 bad, were superficial, and that her life would have been saved.

22 So, Judge, we do not pro offer [sic] that he lied. We
23 do not believe the propeller was engaged. The testimony of the
24 medical examiner also, you know, revealed that if it was
25 engaged, the wounds would have been more detrimental and that

1 her life would have been saved. So there was plenty testimony
2 on the opposite side, but there was testimony that did go with
3 what Mr. McCabe said while he was being cross-examined.

4 So, Judge, we would not say that he lied. We presented
5 testimony that his mechanic came on board, that he tried to
6 rectify the issues. In no way, shape or form is he trying to
7 shift the blame to anyone. What he did, Judge, was tell his
8 story. He believes in his story, and that was corroborated by
9 the medical examiner.

10 So, Judge, at this time we would say that --

11 THE COURT: Okay.

12 MS. FRANCIS: -- his defenses at trial were warranted,
13 and it was his right to present those defenses.

14 THE COURT: Well, he certainly has a right to present a
15 defense. What he doesn't have a right to do is tell
16 intentional lies.

17 Let me hear from Mr. Keller.

18 MR. KELLER: Judge, this defendant during this trial --
19 and we just have talked about this, so I don't know how much
20 more I can even say about it -- that when the jury rejected
21 everything he told them, that was them finding the facts here,
22 that was them finding that he lied to them about everything
23 having to do with this case; about the PPP loans, where he said
24 that I didn't know that I was submitting an application; where
25 he said I didn't think that Jennifer Hester told me about this

1 problem with the propellers the day before. Every bit of it is
2 stuff that the jury rejected and said that wasn't true. For
3 them to have accepted any of it, they wouldn't have been able
4 to convict him on all of these crimes.

5 So our position is really that simple. That this
6 defendant got up in front of a jury, pulled out an easel and
7 drew waves on a piece of paper and was trying to convince them
8 that that's what killed Ms. Ghiz-Flynn, like it was a joke,
9 talking like he was going out to lunch with his buddies. Our
10 position is --

11 THE COURT: what do you say with respect to the ME's
12 testimony? From what I recall, the cause of death was drowning
13 exacerbated by the chop wounds; if she had not been wound up in
14 the engaged propeller, then perhaps she could have survived if
15 given air, but ultimately she was unable to be unhinged from
16 the propeller because it had engaged and then wrapped into her
17 suit.

18 MR. KELLER: That is still saying that the engine --
19 that the propeller had engaged, which is not what Mr. McCabe
20 was trying to convince this jury. He was trying to convince
21 them that it was all windmilling, that this was just a matter
22 of the waves going up and down, which was a ridiculous theory
23 and one that he, frankly -- and knew better than to try to
24 pitch to them. But he, being a sea captain, thinking he would
25 be able to convince them, went for it. And our position is

1 that that was a brazen lie, just like everything else he
2 testified to, so that the enhancement should apply.

3 THE COURT: Okay. Having sat through the trial, I am
4 going to overrule this objection, find that the PSI accurately
5 applies the adjustment for obstruction of justice under 3C1.1.
6 The various categories of lies are itemized in the PSI, and I
7 think all of those are well taken and supported by the trial
8 record.

9 I think the claim that Mr. McCabe didn't minimize the
10 seriousness of the offense is belied by the record, to say the
11 least. I don't believe there has been any meaningful degree of
12 personal responsibility, as claimed by counsel today. And I
13 think although the defendant did tell a story, it was an
14 intentionally false story running through various categories,
15 not least of which included falsely disclaiming the grounding
16 the day before, claiming that the victim died due to
17 windmilling, which was flatly false, testifying that his
18 business was operational when it clearly was not.

19 And so for all those reasons and based on the false
20 testimony itemized in the PSI, I will be applying the
21 adjustment for obstruction of justice.

22 Does that cover all of the objections to the PSI,
23 Ms. Francis?

24 MS. FRANCIS: Yes, Your Honor.

25 THE COURT: Okay. Any objections to raise from the

1 United States?

2 MR. KELLER: No, Your Honor.

3 THE COURT: Okay. All right. Then having resolved and
4 denied or otherwise handled all of the PSI objections, factual
5 and legal, let me go ahead and adopt the PSI in full, with the
6 slight clarification I made earlier, and state for the record,
7 the applicable calculations which are as follows: Total
8 offense Level of 26, Criminal History Category Of I. This
9 produces an advisory guideline range of 63 to 78 months'
10 imprisonment, a supervised release range of one to three years,
11 a fine range of \$25,000 to \$250,000, although no fine is
12 recommended, and a mandatory special assessment of \$100 -- \$100
13 per count, for a total of \$500.

14 Is all of that correct, Ms. Francis, based on the
15 Court's rulings?

16 MS. FRANCIS: Yes, Your Honor.

17 THE COURT: Okay. Mr. Keller?

18 MR. KELLER: Yes, Your Honor.

19 THE COURT: Okay. Then having calculated the
20 applicable advisory guideline range, let me hear first from the
21 United States. And if you wish to present any family member
22 testimony, you may do so now.

23 MR. KELLER: Yes, Your Honor. So the first person who
24 will speak will be Ms. Tiffany Ghiz.

25 THE COURT: Good afternoon, ma'am. If you could please

1 walk up to the lectern, and tell me your name and then make
2 your statement, please.

3 MS. GHIZ: Hi. My name is Tiffany Ghiz.

4 THE COURT: You can go ahead, ma'am.

5 MS. GHIZ: The only thing I just want to say is that
6 there was a lot of choices that were made with this incident,
7 and he decided to choose a few fares over the life of my
8 sister. She wasn't just a sister to me. She was an aunt to
9 many; we have five brothers. He took away a wife, a daughter,
10 an aunt, you know? It wasn't just a -- a charter fare. She
11 was a person and she meant something.

12 You could have just had the boat checked, like you said
13 you were going to do, but you didn't. You chose a couple
14 hundred dollars over my sister's life. And that's why it hurts
15 so bad, because you were warned: Hey, check out your boat,
16 dude. Something is wrong. But you didn't. You chose the
17 fare, a couple hundred bucks. And now you got this -- all of
18 us hurt. And it's going to go on for generations that it's
19 going to hurt because she's got nieces and nephews she never
20 got to meet.

21 It's been a horrible situation that you put our family
22 through, and Sean. And I just wish to God you would have
23 thought about somebody besides yourself.

24 I'm going to end it with that. Thank you.

25 THE COURT: Thank you. Just one question.

1 You were Ms. Flynn's sister?

2 MS. GHIZ: Uh-huh.

3 THE COURT: That's correct?

4 MS. GHIZ: Uh-huh. She was my only sister. She was my
5 gift from God. I was so happy when she was born.

6 THE COURT: Thank you, ma'am. You may take a seat.

7 Any other statements?

8 MR. KELLER: So, Your Honor, Mr. Flynn is going to
9 speak.

10 THE COURT: Okay.

11 MR. FLYNN: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. FLYNN: This will be fairly brief, even though I
14 have had years to think about this. The only thing that I
15 would like the Court to consider is, throughout your life you
16 have friends, you have best friends. I will never have a best
17 friend like her. She was my best friend. She was everything
18 to me. I have never met anybody like her, and I probably will
19 never meet anybody like her again. She was a one-of-a-kind
20 person.

21 So -- and for that, like I said, that's a burden that I
22 have to live with, the family has to live with. I understand
23 that people make choices, and obviously those choices have led
24 to bad decisions. For me, like I said, that's an emotional
25 toll that I will carry for the rest of my life. Thank you.

1 THE COURT: Thank you, sir.

2 Any other statements, Mr. Keller?

3 MR. KELLER: No, Your Honor.

4 THE COURT: Okay then. Please present your argument
5 for sentencing.

6 MR. KELLER: Yes, Your Honor.

7 And just to begin with what the government's
8 recommendation is, and we said this in our sentencing
9 memorandum, that we're recommending a top of the guideline
10 sentence, so 78 months. Although I will, frankly, say that in
11 preparing for this sentencing, as I have thought more and more
12 about it, I absolutely think that above -- a sentence above
13 that would absolutely be within this Court's discretion and
14 appropriate.

15 In explaining why a top of the guidelines, at a
16 minimum, sentence is appropriate, the government wants to
17 highlight three aspects of this case. The first is the
18 extremely reckless nature of the defendant's conduct and the
19 horrific consequences that it had. This wasn't just a matter
20 of someone drowning. This was a matter of someone getting
21 brutally chopped up in front of their spouse.

22 This defendant is someone who knew the dangers of this
23 particular type of activity that he had been engaging in for
24 years. He had a propeller that was turning on and that had
25 almost killed someone just the day before. He knew about it.

1 He was told about it and he did nothing. And because of that,
2 Ms. Ghiz-Flynn is dead.

3 And one of the things that is a hallmark of the conduct
4 in this trial that we heard time and again from witness after
5 witness about Mr. McCabe is that this conduct is very much in
6 keeping with the way that he treats everybody. That he bought
7 that boat with someone else's credit; that person ended up
8 being on the hook for it. That he cuts corners. That he wants
9 to do what he wants to do. He had a vision of what this
10 business would be, and he wasn't going to let something like
11 someone's safety stop him.

12 And when we look at the consequences, at the carnage
13 that resulted, Judge -- and we saw Ms. Ghiz-Flynn's body. And
14 the defense talks about, Oh, those wounds weren't fatal. But
15 they were horrific. They were life altering for everyone who
16 saw them, even for the people at this trial who saw them, the
17 jurors who had to see them.

18 And the other aspect of the horror of this case that I
19 want to highlight, Judge, is Mr. Flynn's testimony. And being
20 in this courtroom today, which this is my first time to be in
21 the courtroom -- this courtroom since that trial, I can relive
22 it myself. I can picture myself at that table right there, and
23 Mr. Flynn sitting there and you being there, and the jury being
24 there, and the silence as Mr. Flynn talked about what happened,
25 as he talked about those crucial horrific moments that we all

1 sat there in silence.

2 And honestly, Judge, as the prosecutor I had to think
3 about where to even go from there because the nature of this
4 crime and the nature of the consequences were so lasting, were
5 so profound. And just as Mr. Flynn now talks about, and he
6 talked about at trial, that he is a different person now.

7 So the first factor that we believe the Court should
8 consider in fashioning this sentence is the nature of the
9 crime, the nature of the destruction that was wrought, the
10 ruining of these lives, and the destruction of Mollie's life.

11 The second aspect of this case and aspect of this trial
12 that we believe weighs in favor of having a, at minimum, top of
13 the guideline sentence is the extent of Mr. McCabe's lies, and
14 not just his lies, but his demeanor during the whole trial.
15 Mr. McCabe was sitting there at trial as Mr. Flynn is
16 testifying about the horrific death of his wife on this
17 defendant's boat, and Mr. McCabe is sitting there on his phone.
18 He is sitting there just sitting back.

19 And then when he is testifying, he gets up again with
20 his easel, drawing waves on a piece of paper, talking about the
21 horrific butchering of this person like it's the most normal
22 thing, like it's a random Tuesday.

23 So our position is not just the fact that he lied about
24 every aspect of this case, which I won't belabor because we
25 have already talked about it, but also the way that he did it.

1 The way that he carried himself throughout this entire trial
2 showed an extreme lack of remorse, showed not just an extreme
3 lack of remorse, but a misapprehension and an inability to
4 understand the gravity of what happened here, the gravity of
5 what was going on during that trial. That this is someone
6 whose life was destroyed and whose family was destroyed.

7 And Mr. McCabe during that trial, by lying the way he
8 did, by conducting himself the way he did, showed that he had
9 no respect for the law, no respect for these proceedings, and
10 no respect for this horrific thing that happened.

11 So that's the second reason that we submit that a, at
12 minimum, top of the guideline sentence is appropriate.

13 And then the third factor, which is the least important
14 of these three, is the fact that on top of this horrific crime
15 that you just heard victims speak about, that we spent the vast
16 majority of the trial about, Mr. McCabe committed other crimes
17 that aren't even factored into the guidelines here because they
18 didn't score in a way, you know, under this labyrinthian system
19 we have, to increase his range, his guidelines range. And that
20 is all the fraud and all the lies that he perpetrated outside
21 of this courtroom. That he is someone who lied about the
22 purpose of this boat because, again, he wanted to do what he
23 wanted to do, which is what led to this dangerous situation in
24 the first place.

25 And then on top of that, that after he killed Mollie,

1 he kept himself afloat by lying in order to secure COVID-era
2 pandemic loans that are not a part of the guidelines
3 calculation but that are absolutely just more crimes, more lies
4 from this defendant who couldn't be bothered with what society
5 needed during this pandemic, much less with what the people he
6 was entrusted into their care needed as he conducted this scuba
7 charter.

8 So our position -- and, Judge, you sat here through
9 this seven-day trial. You saw the trauma. You saw the
10 horrors. And you saw the lies. And our position is that those
11 factors, under the 3553(a) -- under 18 U.S.C. 3553(a) the
12 nature of the circumstances of the offense, the need to promote
13 respect for the law, the need to have a just sentence, the need
14 to deter future criminal conduct, all of these things weigh in
15 favor of a stiff sentence, one that is at least at the top of
16 his advisory guidelines. And so that is what we submit to the
17 Court as what is appropriate here.

18 THE COURT: Okay. Thank you.

19 Ms. Francis.

20 MS. FRANCIS: Thank you, Your Honor.

21 THE COURT: If you wish to come to the lectern, you may
22 do so, or whatever you are more comfortable with.

23 MS. FRANCIS: Yes, Judge. I can see better there.
24 Thank you.

25 Thank you, Your Honor.

1 Several key considerations do support a sentence below
2 the advisory guideline range or at least at the low end of a
3 corrected range.

4 This case at its core involves a tragic accident.
5 There is no evidence of malice, intent, or willful disregard
6 for human life. Mr. McCabe was engaged in a lawful activity
7 that ended in an unforeseen and devastating consequence. His
8 conduct does not reflect the type of calculated or predatory
9 behavior that typically justifies a more severe custodial
10 sentence. Mr. McCabe is a first-time offender. He will be 50
11 this year. No prior criminal history. He has spent his life
12 as a hard working, law-abiding citizen.

13 His career as a licensed boat captain required not just
14 technical skill, but public trust and responsibility. This was
15 his first incident. He has strong family and community ties.
16 He has expressed sincere remorse for the loss of life that
17 occurred.

18 Judge, there is nothing in his background that suggests
19 that he presents himself as a danger to the public or a risk of
20 re-offending.

21 Mr. McCabe did exercise his constitutional rights at
22 trial, but, Judge, he did so respectfully and while -- without
23 attempting to shift blame to the victim or to anyone else that
24 was involved.

25 THE COURT: I don't think that's correct. He may have

1 done so respectfully, but he lied repeatedly on the stand and
2 he minimized his criminal conduct, and I think that's
3 self-evident in the trial record, but please continue.

4 MS. FRANCIS: Thank you, Judge.

5 we did stipulate before trial that he would not pursue
6 a defense that blamed the witnesses or the victim. He
7 refrained from any type of inflammatory tactics and he
8 demonstrated a consistent recognition of the tragedy involved,
9 time after time again. He displayed that he understood the
10 severity of the crime. His posture throughout has reflected
11 moral accountability. And, Judge, that deserves weight.

12 A guideline sentence that includes all the enhancements
13 and everything, that wouldn't just [sic] result in a punishment
14 greater than what is necessary to meet the purpose of
15 sentencing.

16 Mr. McCabe has already suffered significant
17 professional and reputational consequences. A sentence at the
18 low end of the range or even below will still adequately
19 promote respect for the law. And --

20 THE COURT: And so the low end -- just remind me. You
21 view the low end of the corrected range that you would have
22 hoped for to be what?

23 MS. FRANCIS: Yes, Judge. And I believe that was a
24 range -- and I will get back to the Court with that -- of 51 to
25 63.

1 THE COURT: Okay. Please continue.

2 MS. FRANCIS: Thank you, Judge.

3 And, Judge, as I was saying, a sentence at the low
4 range, that would still adequately promote respect and justice
5 of the law. It would afford just punishment and it would serve
6 as a sufficient deterrence without inflicting unnecessary
7 severity.

8 Judge, Mr. McCabe is not in need of correctional
9 treatment and nothing suggests that a prolonged term of
10 imprisonment is necessary to protect the public. A shorter
11 custodial sentence would facilitate his reintegration into
12 society and allow him to resume his role as a constructive and
13 contributing member of this community.

14 So, Judge, for all those reasons, what we are asking
15 the Court to do today is impose a sentence at the low end of
16 the range and consider a downward variance, and that's just
17 based on the mitigating factors presented.

18 Thank you, Your Honor.

19 THE COURT: Okay. Thank you.

20 Mr. McCabe, you have a right to address the Court if
21 you wish before I make a decision on sentencing. This is
22 called allocution. You do not have to say anything, sir, but I
23 do want to make sure you have the right to do so if you wish.

24 MR. O'SULLIVAN: Judge, may we have one moment?

25 THE COURT: Yes, you may.

1 (Discussion between counsel and defendant.)

2 THE COURT: Mr. O'Sullivan.

3 MR. O'SULLIVAN: Thank you. Mr. McCabe is not going to
4 make any statements at this time.

5 THE COURT: Okay. Thank you. All right.

6 Anything further from the United States?

7 MR. KELLER: No, Your Honor.

8 THE COURT: Okay. Anything further from Ms. Francis or
9 Mr. O'Sullivan?

10 MS. FRANCIS: No, Your Honor.

11 THE COURT: Okay. The Court has considered the
12 statements of all parties, the presentence report which
13 contains the advisory guidelines and the statutory factors set
14 forth in Title 18, United States Code, Section 3553(a).

15 I'm first going to find, Mr. McCabe, that you are not
16 able to pay a fine on top of restitution, so no fine will be
17 ordered, but I will be setting a restitution hearing to take
18 place.

19 Ms. Moran, can you identify a date for that hearing,
20 please.

21 COURTROOM DEPUTY: Yes, Judge. October 30th at
22 9:30 a.m.

23 THE COURT: Okay. And so I will be setting a date for
24 the determination of the victims' losses. That hearing is
25 hereby set for October 30th at 9:30 a.m. And so no fine will

1 be ordered.

2 Mr. McCabe, having considered all of these arguments,
3 the full trial evidence -- of course, I oversaw the trial
4 evidence and I'm fully familiar with it -- along with all of
5 the arguments raised today, it is the judgment of the Court
6 that an upward variance under my discretion is reasonable and
7 warranted in this case based on the extreme severity of the
8 offense conduct, which involved a very clear and willful
9 disregard for human life, contrary to the suggestions of
10 counsel.

11 You were warned of issues on this vessel, and yet, for
12 reasons that we will never know, decided to proceed forward and
13 continue with your for-profit business the very next day,
14 subjecting these crew members and also, of course, the
15 passengers to extreme risk. They trusted you. You violated
16 their trust. And Ms. Flynn lost her life as a result of your
17 criminal negligence.

18 I disagree that you have exhibited any lack of remorse;
19 in fact, I think it's quite opposite. And all of this, of
20 course, doesn't even address the underlying deception that is
21 displayed in Counts 2, 3, 4, and 5. It seems that you have
22 operated through this train of deception, even before taking
23 those passengers out that day. Had you done things properly
24 and designated your vessel appropriately under the rules, and
25 then alerted the Coast Guard to the issues on the day before

1 the victim died, these horrific events very likely could have
2 been avoided. But, again, you persisted with the lies and the
3 deception, and here we are with the unfathomable loss of an
4 innocent woman whose family is now dealing with the wreckage of
5 her death. And so I think the seriousness of the offense in
6 this case is extreme and warrants a very significant sentence.

7 In addition to that, the obstructive conduct that you
8 exhibited during your trial testimony is, I think, a further
9 indication of your lack of remorse and your willingness to
10 disregard human life by parroting a ridiculous story of
11 windmilling that had no basis in fact.

12 And so for all of those reasons, including the need to
13 serve the important purpose of general deterrence for anybody
14 else who may wish to lie on the navigable waters and subject
15 people to extreme risk, it is the judgment of the Court that
16 the defendant, Dustin Sean McCabe, is committed to the Bureau
17 of Prisons to be imprisoned for 100 months.

18 The term consists of 100 months as to each of Counts 1,
19 3, 4, and 5, and 60 months as to Count 2, all to be served
20 concurrently. I find this sentence to be reasonable and not
21 more than what is necessary to serve the statutory purposes.
22 And I want to make clear that I would impose the same sentence
23 of 100 months regardless of any issues with the calculation of
24 the advisory guideline range. Again, that's applying the
25 3553(a) factors, based on the facts and circumstances of this

1 case.

2 As noted, restitution will be ordered pursuant to
3 Title 18, United States Code, Section 3663, although the amount
4 of such restitution remains to be seen and determined. Once
5 restitution is ordered, during the period of incarceration
6 payments shall be made as follows:

7 1, if the defendant earns wages in a Federal Prison
8 Industries job, then he must pay 50 percent of wages earned
9 toward the financial obligations imposed by this judgment.

10 2, if the defendant does not work in a UNICOR job, then
11 he must pay a minimum of \$25 per quarter toward the financial
12 obligations imposed in this order.

13 Upon release from incarceration, the defendant shall
14 pay restitution at the rate of 10 percent of monthly gross
15 earnings until such time as the Court may alter that payment
16 schedule in the interests of justice.

17 The U.S. Bureau of Prisons, U.S. Probation Office, and
18 U.S. Attorney's Office shall monitor the payment of restitution
19 and report to the Court any material change in the defendant's
20 ability to pay.

21 These payments do not preclude the government from
22 using any other anticipated or unexpected financial gains,
23 assets or income of the defendant to satisfy the restitution
24 obligations.

25 Finally, restitution shall be made payable, once

1 determined, to the clerk and forwarded to the 400 North Miami
2 Avenue address, ultimately then forwarded to the victim and her
3 family.

4 Upon release from imprisonment, the defendant shall be
5 placed on supervised release for a term of three years. This
6 term consists of three years as to each of Counts 1 through 5,
7 all such terms to run concurrently.

8 within 72 hours of release from the custody of the
9 Bureau of Prisons, the defendant shall report in person to the
10 probation office in the district to which the defendant is
11 released.

12 while on supervision, the defendant shall comply with
13 the mandatory and standard conditions of supervision, as
14 referenced in Part F of the presentence report. And the
15 defendant shall also comply with the following special
16 conditions: Mental health treatment, financial disclosure
17 requirement, no new debt restriction, permissible search, and
18 unpaid restitution, fines or special assessments, as noted in
19 Part F of the presentence report.

20 It is further ordered that the defendant shall pay
21 immediately to the United States a special assessment of \$100
22 as to each of Counts 1 through 5, for a total of \$500.

23 The total sentence, therefore, is 100 months'
24 imprisonment, restitution to be determined at a future hearing,
25 three years of supervised release, and a \$500 special

1 assessment.

2 Now that sentence has been imposed, does the defendant
3 or his counsel object to the Court's finding of fact or to the
4 manner in which sentence was pronounced?

5 MR. O'SULLIVAN: We have no objection, Your Honor.

6 THE COURT: Okay. Sir, you have the right to appeal
7 the conviction and sentence imposed, but any notice of appeal
8 must be filed within 14 days after entry of the judgment. If
9 you are unable to pay the costs of an appeal, you may apply for
10 leave to appeal in forma pauperis.

11 Anything further from probation?

12 THE PROBATION OFFICER: No, Your Honor. Thank you.

13 THE COURT: Anything further from the United States?

14 MR. KELLER: Nothing, Your Honor. Thank you.

15 THE COURT: Anything further from the defense?

16 MS. FRANCIS: No, Your Honor.

17 THE COURT: All right. That concludes our hearing.

18 To the victim's family, I know your beloved relative
19 will never come back, but I hope this proceeding provides at
20 least some closure to you and your family.

21 Thank you. We are in recess.

22 (These proceedings concluded at 2:59 p.m.)
23
24
25

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

DATE: 08-13-2025

/s/Laura Melton
LAURA E. MELTON, RMR, CRR, FPR
Official Court Reporter
United States District Court
Southern District of Florida
Fort Pierce, Florida

§	25:10_, 29:24_, 49:21_, 50:19	8	_, 24:3_, 24:6_, 29:8
\$100 [3]_ - 37:12_, 52:21	30th [2]_ - 48:21_, 48:25	8 [1]_ - 29:24	address [11]_ - 6:22_, 7:22_, 15:18_, 16:12_, 18:9_, 25:15_, 26:9_, 29:22_, 47:20_, 49:20_, 52:2
\$25 [1]_ - 51:11	3553(a) [3]_ - 44:11_, 50:25	9	addressed [3]_ - 16:3_, 24:22_, 25:1
\$25,000 [1]_ - 37:11	3553(a) [2]_ - 2:25_, 48:14	9 [2]_ - 30:1_, 30:3	addresses [1]_ - 18:4
\$250,000 [1]_ - 37:11	36 [3]_ - 31:22_, 32:5_, 32:14	90 [2]_ - 28:14_, 29:7	addressing [2]_ - 2:3_, 7:2
\$300,000 [1]_ - 27:19	3663 [3]_ - 26:20_, 29:5_, 51:3	98 [6]_ - 10:21_, 11:10_, 12:2_, 13:9_, 13:14	adequately [2]_ - 46:18_, 47:4
\$500 [3]_ - 37:13_, 52:22_, 52:25	3663(A) [1]_ - 29:3	9:30 [2]_ - 48:22_, 48:25	adjudicated [4]_ - 3:1_, 10:25_, 11:22_, 29:19
1	3B1 [1]_ - 15:19	A	adjustment [3]_ - 22:1_, 36:5_, 36:21
1 [6]_ - 3:5_, 29:1_, 50:18_, 51:7_, 52:6_, 52:22	3B1.3 [1]_ - 19:21	a.m [2]_ - 48:22_, 48:25	adopt [1]_ - 37:5
1.3 [1]_ - 16:13	3BI [1]_ - 16:13	abandoned [1]_ - 25:20	advanced [1]_ - 17:6
10 [3]_ - 30:1_, 30:3_, 51:14	3C1.1 [1]_ - 36:5	abide [1]_ - 17:23	advancing [1]_ - 33:9
100 [4]_ - 50:17_, 50:18_, 50:23_, 52:23	4	abiding [1]_ - 45:12	advisory [7]_ - 7:9_, 37:9
1001(a)(2) [1]_ - 3:8	4 [6]_ - 3:9_, 8:21_, 25:15_, 29:24_, 49:21_, 50:19	ability [1]_ - 51:20	_, 37:20_, 44:16_, 45:2_, 48:13_, 50:24
115 [3]_ - 24:5_, 28:24_, 29:21	400 [1]_ - 52:1	able [4]_ - 33:5_, 35:3_, 35:25_, 48:16	affirm [1]_ - 5:23
117 [4]_ - 9:13_, 12:15_, 14:18_, 28:7	45 [1]_ - 23:5	absolutely [5]_ - 28:18_, 31:18_, 40:12_, 40:13_, 44:3	afford [1]_ - 47:5
11:00 [1]_ - 30:14	46 [2]_ - 24:9_, 30:11	abuse [1]_ - 22:1	afloat [1]_ - 44:1
1343 [2]_ - 3:10_, 8:19	4:45 [1]_ - 30:15	accepted [1]_ - 35:3	afternoon [10]_ - 2:2_, 2:8_, 2:11_, 2:12_, 2:15_, 2:16_, 2:19_, 2:20_, 30:15
14 [1]_ - 53:8	5	accident [1]_ - 45:4	_, 37:25
18 [10]_ - 2:25_, 3:7_, 3:9_, 8:19_, 13:22_, 26:20_, 44:11_, 48:14_, 51:3	5 [12]_ - 3:9_, 8:21_, 9:13_, 13:21_, 13:22_, 25:22_, 29:14_, 29:24_, 49:21_, 50:19_, 52:6_, 52:22	accomplish [1]_ - 12:11	agency [1]_ - 3:6
2	50 [2]_ - 45:10_, 51:8	accordingly [1]_ - 17:9	agree [5]_ - 6:8_, 8:20_, 8:24_, 8:25_, 10:12
2 [6]_ - 9:14_, 14:24_, 29:24_, 49:21_, 50:19_, 51:10	51 [2]_ - 17:12_, 46:24	accountability [2]_ - 32:18_, 46:11	agreement [1]_ - 26:23
22 [4]_ - 13:22_, 20:2_, 23:8	52 [1]_ - 24:9	accurate [2]_ - 11:20_, 13:10	agrees [1]_ - 26:18
24 [4]_ - 13:22_, 17:11_, 22:25	6	accurately [1]_ - 36:4	aground [2]_ - 30:25_, 31:2
24-cr-80103-Cannon [1]_ - 2:5	6 [4]_ - 12:14_, 28:7_, 29:18_, 29:24	acquittal [1]_ - 6:19	ahead [2]_ - 37:5_, 38:4
26 [1]_ - 37:8	60 [1]_ - 50:19	Act [2]_ - 26:17_, 28:9	air [1]_ - 35:15
2:59 [1]_ - 53:22	63 [3]_ - 17:12_, 37:9_, 46:25	acted [1]_ - 14:8	alert [1]_ - 7:13
2A1.4 [1]_ - 20:1	7	acting [1]_ - 20:23	alerted [1]_ - 49:25
2A1.4(a)(2)(B) [1]_ - 23:21	7 [4]_ - 12:15_, 14:17_, 14:18_, 29:24	action [1]_ - 28:3	allegation [1]_ - 22:19
3	72 [1]_ - 52:8	activity [2]_ - 40:23_, 45:6	allegations [2]_ - 11:8_, 12:7
3 [7]_ - 3:9_, 8:21_, 25:4_,	78 [2]_ - 37:9_, 40:10	actual [1]_ - 12:24	alleged [2]_ - 16:13_, 32:6
		add [2]_ - 13:14_, 21:7	allocution [1]_ - 47:22
		added [1]_ - 12:10	allow [1]_ - 47:12
		addendum [3]_ - 3:15_, 13:2_, 17:21	almost [1]_ - 40:25
		addition [4]_ - 12:1_, 12:5_, 18:1_, 50:7	alter [1]_ - 51:15
		additional [8]_ - 3:16_, 13:7_, 16:2_, 16:6_, 20:11	altercations [2]_ - 10:23

altering ^[1] - 41:15 America ^[1] - 2:5 amount ^[4] - 27:19_, 28:20_, 29:11_, 51:3 ample ^[2] - 10:2_, 10:14 anchor ^[1] - 31:3 answer ^[1] - 5:2 answered ^[2] - 5:17_, 6:14 anticipated ^[1] - 51:22 apologize ^[1] - 18:3 appeal ^[4] - 53:6_, 53:7_, 53:9_, 53:10 appearances ^[1] - 2:6 applicable ^[4] - 16:10_, 17:11_, 37:7_, 37:20 application ^[3] - 21:24_, 23:4_, 34:24 applications ^[2] - 8:17_, 30:24 applied ^[3] - 7:9_, 10:4_, 30:11 applies ^[7] - 4:13_, 16:15_, 16:24_, 22:9_, 23:8_, 32:5_, 36:5 apply ^[9] - 17:10_, 19:21_, 20:12_, 20:19_, 20:21_, 22:14_, 23:24_, 36:2_, 53:9 applying ^[2] - 36:20_, 50:24 appropriate ^[11] - 10:8_, 13:1_, 14:6_, 15:6_, 28:22_, 31:17_, 31:18_, 40:14_, 40:16_, 43:12_, 44:17 appropriately ^[1] - 49:24 area ^[1] - 21:14 arguable ^[1] - 20:11 arguing ^[2] - 11:3_, 14:5 argument ^[7] - 11:22_, 16:10_, 21:20_, 23:1_, 27:7_, 31:17_, 40:4 arguments ^[4] - 15:25_, 17:14_, 49:2_, 49:5 articulate ^[1] - 21:4 aspect ^[6] - 30:16_, 30:19_, 41:18_, 42:11_, 42:24 aspects ^[2] - 10:7_, 40:17	assert ^[1] - 9:1 asserting ^[4] - 8:12_, 10:24_, 13:25_, 33:3 assess ^[1] - 11:5 assessment ^[3] - 37:12_, 52:21_, 53:1 assessments ^[1] - 52:18 assets ^[1] - 51:23 attempting ^[1] - 45:23 attention ^[1] - 17:25 attorney ^[1] - 3:15 Attorney's ^[1] - 51:18 attorneys ^[1] - 6:6 aunt ^[2] - 38:8_, 38:10 Avenue ^[1] - 52:2 avoided ^[1] - 50:2 aware ^[2] - 3:1_, 6:20	best ^[3] - 39:16_, 39:17 better ^[2] - 35:23_, 44:23 between ^[7] - 5:8_, 7:25_, 9:4_, 19:6_, 20:9_, 26:5_, 48:1 beyond ^[6] - 8:14_, 9:1_, 10:13_, 21:4_, 22:17_, 25:5 bit ^[1] - 35:1 blame ^[3] - 32:21_, 34:7_, 45:23 blamed ^[1] - 46:6 blaming ^[1] - 32:20 board ^[1] - 34:5 boat ^[13] - 16:16_, 18:20_, 18:22_, 19:23_, 23:14_, 33:9_, 33:13_, 38:12_, 38:15_, 41:7_, 42:17_, 43:22_, 45:13 boats ^[1] - 31:4 body ^[1] - 41:13 born ^[1] - 39:5 bothered ^[1] - 44:4 bought ^[2] - 31:10_, 41:6 brand ^[1] - 24:13 brand-new ^[1] - 24:13 brazen ^[1] - 36:1 brief ^[1] - 39:13 briefed ^[1] - 28:24 briefly ^[3] - 4:21_, 5:1_, 12:13 bring ^[3] - 13:4_, 17:25_, 29:11 bringing ^[1] - 19:23 brothers ^[1] - 38:9 brutally ^[1] - 40:21 bucks ^[1] - 38:17 buddies ^[1] - 35:9 bulk ^[1] - 6:25 burden ^[3] - 27:9_, 29:12_, 39:21 Bureau ^[3] - 50:16_, 51:17_, 52:9 business ^[3] - 36:18_, 41:10_, 49:13 butchering ^[1] - 42:21	calculating ^[1] - 7:9 calculation ^[2] - 44:3_, 50:23 calculations ^[1] - 37:7 Calisha ^[1] - 2:13 captain ^[14] - 16:17_, 17:1_, 19:2_, 19:11_, 19:16_, 19:20_, 20:5_, 20:25_, 21:8_, 22:11_, 23:13_, 33:9_, 35:24_, 45:13 captain's ^[1] - 22:16 captains ^[2] - 16:25_, 22:10 care ^[2] - 19:13_, 44:6 career ^[1] - 45:13 carnage ^[1] - 41:12 carried ^[1] - 43:1 carry ^[1] - 39:25 carrying ^[1] - 14:3 case ^[24] - 2:3_, 2:4_, 11:1_, 16:23_, 18:9_, 19:1_, 23:17_, 27:1_, 27:4_, 27:21_, 29:2_, 29:4_, 30:16_, 30:19_, 31:15_, 34:23_, 40:17_, 41:18_, 42:11_, 42:24_, 45:4_, 49:7_, 50:6_, 51:1 Case ^[1] - 2:5 cases ^[1] - 18:16 categories ^[2] - 36:6_, 36:14 Category ^[1] - 37:8 causation ^[1] - 24:20 caused ^[1] - 30:21 certain ^[1] - 16:25 certainly ^[1] - 34:14 certification ^[1] - 14:4 challenge ^[4] - 15:21_, 23:3_, 24:6_, 25:25 challenges ^[2] - 24:3_, 30:6 chance ^[1] - 17:19 change ^[1] - 51:19 character ^[2] - 4:14_, 11:2 characteristics ^[3] - 7:8_, 12:18_, 22:3 characterization ^[2] - 13:3_, 13:16 charges ^[2] - 12:8_, 14:11
	B		
	background ^[1] - 45:18 bad ^[3] - 33:21_, 38:15_, 39:24 baked ^[1] - 18:13 bank ^[1] - 30:24 banks ^[1] - 10:17 base ^[8] - 17:3_, 18:13_, 20:2_, 21:25_, 22:2_, 22:13_, 23:8 based ^[14] - 16:16_, 17:23_, 19:19_, 20:1_, 23:24_, 30:5_, 32:6_, 33:18_, 36:19_, 37:14_, 47:17_, 49:7_, 50:25 basis ^[7] - 8:11_, 10:11_, 13:12_, 15:10_, 21:4_, 31:25_, 50:11 bear ^[1] - 29:11 begin ^[5] - 3:24_, 6:22_, 7:18_, 18:12_, 40:7 behalf ^[3] - 2:9_, 2:13_, 2:18 behavior ^[1] - 45:9 belabor ^[1] - 42:24 belied ^[1] - 36:10 believes ^[1] - 34:8 beloved ^[1] - 53:18 below ^[2] - 45:1_, 46:18 beneficiary ^[2] - 27:14_, 27:22	C	
		calculated ^[2] - 37:19_, 45:8	

charging [4] - 8:13_, 8:25_, 9:4_, 9:17 charter [8] - 19:11_, 19:16_, 21:7_, 21:12_, 21:14_, 23:13_, 38:10_, 44:7 check [1] - 38:15 checked [1] - 38:12 choices [3] - 38:6_, 39:23 choose [1] - 38:7 chop [1] - 35:13 chopped [1] - 40:21 chose [2] - 38:13_, 38:16 Circuit [2] - 19:1_, 22:4 Circuit's [1] - 16:18 circumstances [4] - 23:25_, 26:25_, 44:12_, 50:25 citing [1] - 28:8 citizen [1] - 45:12 civil [3] - 27:4_, 27:18_, 28:3 claim [2] - 20:1_, 36:9 claimed [1] - 36:12 claiming [2] - 30:22_, 36:16 claims [1] - 25:6 clarification [1] - 37:6 clarified [1] - 22:4 classification [3] - 14:6_, 14:9_, 14:13 classified [1] - 14:1 clear [6] - 15:11_, 16:17_, 28:18_, 32:13_, 49:8_, 50:22 clearly [2] - 30:8_, 36:18 clerk [1] - 52:1 closure [1] - 53:20 club [1] - 10:5 Coast [4] - 14:4_, 14:20_, 15:12_, 49:25 Code [6] - 2:25_, 3:7_, 3:9_, 26:20_, 48:14_, 51:3 colors [1] - 14:10 comfortable [1] - 44:22 coming [1] - 33:14 commercial [2] - 14:5_, 18:14 commission [5] - 16:14_, 16:22_, 19:22_, 22:7_,	22:22 committed [2] - 43:16_, 50:16 community [2] - 45:15_, 47:13 compensate [2] - 27:15_, 28:1 complaints [4] - 10:22_, 11:18_, 12:3_, 29:19 complete [1] - 24:4 completely [1] - 12:6 completeness [1] - 13:13 comply [2] - 52:12_, 52:15 conceal [2] - 17:7_, 22:17 concealment [3] - 16:22_, 22:8_, 22:22 concerns [1] - 30:10 concluded [1] - 53:22 concludes [1] - 53:17 concurrently [2] - 50:20_, 52:7 conditions [2] - 52:13_, 52:16 conduct [13] - 11:5_, 12:24_, 17:8_, 32:16_, 32:25_, 40:18_, 41:3_, 41:5_, 44:14_, 45:8_, 46:2_, 49:8_, 50:7 conducted [1] - 44:6 conducting [1] - 43:8 conjured [1] - 24:14 connection [1] - 32:10 consequence [1] - 45:7 consequences [4] - 40:19_, 41:12_, 42:4_, 46:17 consider [4] - 32:18_, 39:15_, 42:8_, 47:16 considerations [1] - 45:1 considered [2] - 48:11_, 49:2 consistent [2] - 14:6_, 46:8 consistently [1] - 33:4 consists [2] - 50:18_, 52:6 constitutes [1] - 17:4	constitutional [1] - 45:21 constraints [1] - 17:23 constructive [1] - 47:12 contain [1] - 11:21 contained [2] - 7:20_, 7:21 contains [2] - 7:15_, 48:13 contemplated [1] - 22:13 contents [1] - 5:8 contest [2] - 12:16_, 13:4 contesting [1] - 28:10 context [1] - 19:15 continue [5] - 5:11_, 15:1_, 46:3_, 47:1_, 49:13 contrary [2] - 25:13_, 49:9 contributed [1] - 22:21 contributing [1] - 47:13 convict [1] - 35:4 convicted [6] - 8:16_, 8:22_, 14:19_, 15:5_, 26:15_, 31:11 convicting [2] - 14:22_, 31:10 conviction [4] - 11:8_, 16:24_, 22:8_, 53:7 convictions [1] - 9:5 convince [5] - 23:14_, 35:7_, 35:20_, 35:25 core [1] - 45:4 corners [1] - 41:8 correct [11] - 8:23_, 9:17_, 9:24_, 17:17_, 24:22_, 25:1_, 25:21_, 25:24_, 37:14_, 39:3_, 45:25 corrected [2] - 45:3_, 46:21 correctional [1] - 47:8 corroborated [1] - 34:8 costs [2] - 28:20_, 53:9 Counsel [2] - 2:6_, 24:5 counsel [9] - 3:16_, 7:25_, 18:2_, 26:5_, 36:12_, 48:1_, 49:10_, 53:3 count [2] - 31:12_, 37:13 Count [4] - 3:5_, 14:24_, 29:1_, 50:19	counting [5] - 17:4_, 20:1_, 22:14_, 23:19_, 23:20 Counts [5] - 8:21_, 49:21_, 50:18_, 52:6_, 52:22 counts [7] - 3:2_, 3:3_, 3:4_, 3:8_, 8:22_, 9:6_, 10:12 County [1] - 5:5 couple [3] - 30:19_, 38:13_, 38:17 course [9] - 4:14_, 8:22_, 10:15_, 27:2_, 27:5_, 33:14_, 49:3_, 49:14_, 49:20 Court [24] - 2:1_, 2:3_, 5:4_, 11:4_, 15:11_, 18:4_, 19:21_, 25:12_, 26:9_, 27:3_, 27:5_, 27:18_, 32:18_, 39:15_, 42:7_, 44:17_, 46:24_, 47:15_, 47:20_, 48:11_, 49:5_, 50:15_, 51:15_, 51:19 COURT [112] - 2:2_, 2:11_, 2:15_, 2:20_, 3:22_, 3:24_, 4:8_, 4:12_, 4:19_, 4:25_, 5:9_, 5:11_, 5:15_, 5:19_, 6:3_, 6:8_, 6:11_, 6:14_, 6:17_, 7:4_, 7:13_, 7:23_, 8:5_, 8:7_, 8:20_, 9:3_, 9:9_, 9:23_, 10:9_, 11:10_, 11:13_, 11:16_, 11:24_, 12:1_, 12:12_, 13:8_, 13:20_, 14:15_, 14:24_, 15:1_, 15:7_, 15:20_, 16:1_, 16:8_, 17:13_, 17:17_, 18:6_, 19:25_, 20:24_, 21:20_, 23:2_, 24:10_, 24:13_, 24:19_, 24:22_, 24:24_, 25:3_, 25:9_, 25:12_, 25:20_, 25:22_, 26:3_, 26:8_, 26:11_, 26:18_, 26:22_, 27:6_, 27:12_, 27:22_, 27:25_, 28:4_, 28:23_, 29:17_, 30:1_, 30:4_, 31:21_, 32:3_, 32:8_, 33:7_, 34:11_, 34:14_, 35:11_, 36:3_, 36:25_, 37:3_, 37:17_, 37:19_, 37:25_, 38:4_, 38:25_, 39:3_, 39:6_, 39:10_, 39:12_, 40:1_, 40:4_, 44:18_, 44:21_, 45:25_, 46:20_, 47:1_, 47:19_, 47:25_, 48:2_, 48:5_, 48:8_, 48:11_, 48:23_, 53:6_, 53:13_, 53:15_, 53:17
--	---	---	---

Court's [6] - 6:20, 17:25 _, 23:24, 37:15, 40:13, 53:3 COURTROOM [4] - 2:4 _, 5:21, 6:2, 48:21 courtroom [4] - 41:20, 41:21, 43:21 cover [4] - 25:25, 27:21 _, 30:2, 36:22 covered [7] - 3:21, 26:16, 27:5, 28:18, 28:22, 29:23, 29:25 covering [1] - 24:16 covers [3] - 3:18, 27:20 COVID [1] - 44:1 COVID-era [1] - 44:1 crashed [1] - 19:2 credit [1] - 41:7 crew [1] - 49:14 crime [7] - 14:23, 19:5, 26:14, 42:4, 42:9, 43:14, 46:10 crimes [3] - 35:4, 43:16 _, 44:3 criminal [9] - 11:2, 11:8 _, 12:8, 14:8, 32:11, 44:14, 45:11, 46:2, 49:17 Criminal [1] - 37:8 cross [1] - 34:3 cross-examined [1] - 34:3 crossed [1] - 30:16 crucial [1] - 41:25 cure [1] - 12:4 current [1] - 33:16 custodial [2] - 45:9, 47:11 custody [1] - 52:8 customers [1] - 21:3 cuts [1] - 41:8	daylight [1] - 9:4 days [3] - 28:14, 29:7, 53:8 dead [1] - 41:2 dealing [1] - 50:4 death [6] - 23:17, 24:20 _, 30:21, 35:12, 42:16, 50:5 debt [1] - 52:17 deception [4] - 13:24, 49:20, 49:22, 50:3 deceptive [1] - 14:14 decide [1] - 32:9 decided [2] - 38:7, 49:12 decision [1] - 47:21 decisions [1] - 39:24 DEFENDANT [5] - 6:1, 6:7, 6:10, 6:13, 6:16 defendant [38] - 7:18, 8:16, 9:8, 9:20, 10:3, 10:16, 13:9, 13:16, 14:19, 15:3, 16:20, 18:18, 19:7, 20:9, 22:5, 22:6, 26:5, 30:18, 31:14, 31:19, 34:18, 35:6, 36:13, 40:22, 44:4, 48:1, 50:16, 51:7, 51:10, 51:13, 51:23, 52:4, 52:9, 52:10, 52:12, 52:15, 52:20, 53:2 defendant's [8] - 12:17, 13:2, 13:15, 15:11, 27:9, 40:18, 42:17, 51:19 defendants [1] - 30:17 defense [12] - 4:14, 12:23, 13:7, 18:12, 28:8, 28:15, 29:12, 32:20, 34:15, 41:14, 46:6, 53:15 defenses [3] - 33:3, 34:12, 34:13 definition [1] - 10:5 defraud [3] - 7:19, 8:9, 8:21 degree [3] - 32:17, 32:23, 36:11 demeanor [1] - 42:14 demonstrated [2] - 33:4, 46:8 denied [2] - 13:10, 37:4 DEPUTY [4] - 2:4, 5:21	_, 6:2, 48:21 described [2] - 20:25, 25:4 describing [1] - 15:2 description [1] - 13:3 descriptions [1] - 25:1 deserves [1] - 46:11 design [1] - 17:19 designated [1] - 49:24 destroyed [2] - 43:6 destruction [2] - 42:9, 42:10 deter [1] - 44:14 determination [1] - 48:24 determine [1] - 2:22 determined [4] - 8:18, 51:4, 52:1, 52:24 deterrence [2] - 47:6, 50:13 detrimental [1] - 33:25 devastating [1] - 45:7 deviate [1] - 10:11 devoid [1] - 33:1 died [3] - 33:10, 36:16, 50:1 different [6] - 12:17, 19:1, 19:3, 21:11, 30:7, 42:6 direct [2] - 13:13, 24:20 directly [1] - 8:21 disagree [2] - 11:16, 49:18 disagrees [1] - 18:15 discipline [4] - 11:1, 11:23, 12:3, 13:16 disclaiming [1] - 36:15 disclosure [1] - 52:16 discretion [3] - 4:11, 40:13, 49:6 discussed [2] - 5:7, 24:7 Discussion [2] - 26:5, 48:1 discussion [1] - 29:14 discussions [1] - 5:14 displayed [2] - 46:9, 49:21 disregard [3] - 45:5, 49:9, 50:10 distorts [1] - 14:9	distress [1] - 28:25 district [1] - 52:10 disturb [1] - 15:10 dock [1] - 31:5 docket [7] - 9:13, 12:15 _, 14:18, 24:5, 28:7, 28:24, 29:21 document [1] - 9:4 documentation [1] - 28:16 dollars [1] - 38:14 done [3] - 29:19, 46:1, 49:23 double [4] - 17:4, 20:1, 22:14, 23:20 down [1] - 35:22 downward [1] - 47:16 dozen [1] - 30:17 drawing [1] - 42:20 drew [1] - 35:7 dropped [1] - 31:2 drowning [2] - 35:12, 40:20 drugs [2] - 20:5, 20:17 dude [1] - 38:16 due [2] - 18:4, 36:16 during [13] - 10:3, 21:9, 31:6, 31:8, 31:20, 32:25, 34:18, 42:14, 43:5, 43:7, 44:5, 50:8, 51:5 Dustin [4] - 2:5, 2:14, 19:6, 50:16
E			
danger [4] - 18:24, 21:10, 21:18, 45:19 dangerous [1] - 43:23 dangers [1] - 40:22 date [3] - 29:6, 48:19, 48:23 daughter [1] - 38:9			
early [1] - 17:21 earned [1] - 51:8 earnings [1] - 51:15 earns [1] - 51:7 easel [2] - 35:6, 42:20 egregious [1] - 20:20 element [2] - 17:2, 22:11 elements [3] - 8:18, 9:18, 9:21 Eleventh [2] - 16:18, 22:4 emotional [4] - 25:18, 25:23, 28:25, 39:24 emphasize [2] - 12:2,			

21:9 employed [2] - 22:1_, 23:11 employee [6] - 10:22_, 11:16_, 11:19_, 11:21_, 12:3_, 13:15 employing [2] - 20:15_, 20:22 employment [4] - 10:22_, 12:18_, 13:17_, 29:19 end [8] - 28:13_, 30:20_, 38:24_, 45:2_, 46:18_, 46:20_, 46:21_, 47:15 ended [2] - 41:7_, 45:7 engaged [10] - 9:20_, 13:24_, 33:13_, 33:20_, 33:23_, 33:25_, 35:14_, 35:16_, 35:19_, 45:6 engaging [1] - 40:23 engine [1] - 35:18 enhancement [19] - 15:19_, 16:13_, 16:16_, 17:3_, 17:10_, 19:21_, 20:11_, 20:21_, 21:4_, 22:14_, 22:24_, 23:4_, 23:18_, 23:23_, 25:16_, 30:11_, 31:18_, 32:6_, 36:2 enhancements [3] - 16:9_, 20:19_, 46:12 enrich [2] - 7:19_, 8:9 enriched [2] - 9:16_, 10:1 enrichment [1] - 10:6 ensure [1] - 24:6 entire [4] - 30:14_, 31:8_, 31:15_, 43:1 entirety [1] - 13:9 entitled [1] - 10:16 entrusted [1] - 44:6 entry [8] - 9:13_, 12:15_, 14:18_, 24:5_, 28:7_, 28:24_, 29:21_, 53:8 equal [1] - 28:20 era [1] - 44:1 essence [1] - 28:7 essentially [1] - 12:16 establish [2] - 22:5_, 22:15 estimate [1] - 28:12 evasive [1] - 17:7 events [1] - 50:1	evidence [17] - 10:2_, 10:14_, 12:17_, 15:14_, 17:5_, 22:19_, 23:12_, 25:13_, 27:12_, 29:8_, 29:10_, 30:5_, 30:7_, 33:12_, 45:5_, 49:3_, 49:4 evident [4] - 18:7_, 31:8_, 31:9_, 46:3 exacerbated [1] - 35:13 exactly [4] - 10:6_, 15:4_, 15:5_, 28:8 examined [1] - 34:3 examiner [3] - 33:19_, 33:24_, 34:9 example [3] - 19:1_, 20:6_, 21:11 exceed [1] - 29:7 exchange [1] - 6:5 excuse [2] - 3:3_, 23:20 executed [1] - 17:9 exercise [2] - 33:5_, 45:21 exhibited [2] - 49:18_, 50:8 exists [1] - 23:23 expect [1] - 28:15 expectations [1] - 23:16 expenses [7] - 25:18_, 25:23_, 27:15_, 27:21_, 28:1_, 28:18_, 28:25 experienced [1] - 31:3 expert [1] - 21:14 expertise [1] - 23:15 explaining [1] - 40:15 explicitly [1] - 14:2 explore [1] - 27:6 expressed [1] - 45:16 expressedly [1] - 21:23 extent [1] - 42:13 extra [1] - 25:9 extreme [6] - 43:2_, 49:7_, 49:15_, 50:6_, 50:15 extremely [1] - 40:18	facing [2] - 17:24_, 18:5 fact [16] - 18:5_, 18:14_, 18:21_, 19:3_, 19:16_, 19:18_, 20:6_, 30:23_, 31:13_, 31:14_, 33:13_, 42:23_, 43:14_, 49:19_, 50:11_, 53:3 factor [2] - 42:7_, 43:13 factored [1] - 43:17 factors [4] - 44:11_, 47:17_, 48:13_, 50:25 facts [12] - 3:12_, 12:16_, 12:24_, 13:1_, 14:9_, 18:17_, 23:25_, 26:25_, 30:8_, 30:20_, 34:21_, 50:25 factual [18] - 3:18_, 6:23_, 7:5_, 7:14_, 10:9_, 10:19_, 13:20_, 15:16_, 15:21_, 16:2_, 16:4_, 16:6_, 24:3_, 24:6_, 25:12_, 30:4_, 30:6_, 37:4 factually [3] - 7:6_, 22:23_, 25:10 failed [1] - 23:16 failing [1] - 9:4 fails [1] - 22:15 fairly [1] - 39:13 false [7] - 3:5_, 10:17_, 32:7_, 32:10_, 36:14_, 36:17_, 36:19 falsely [1] - 36:15 familiar [2] - 3:12_, 49:4 family [14] - 3:25_, 4:3_, 5:12_, 12:22_, 26:13_, 37:21_, 38:21_, 39:22_, 43:6_, 45:15_, 50:4_, 52:3_, 53:18_, 53:20 far [5] - 4:6_, 7:9_, 7:15_, 9:16_, 26:13 fare [2] - 38:10_, 38:17 fares [1] - 38:7 fashioning [1] - 42:8 fatal [1] - 41:14 favor [2] - 42:12_, 44:15 feature [1] - 31:13 federal [1] - 14:7 Federal [1] - 51:7 fell [1] - 29:2 few [2] - 4:19_, 38:7 fewer [1] - 14:3 Fifth [1] - 19:1	file [5] - 11:16_, 11:19_, 11:21_, 13:15_, 24:15 filed [4] - 3:15_, 3:16_, 17:21_, 53:8 filing [1] - 17:18 filings [1] - 3:13 final [1] - 21:20 finally [1] - 51:25 financial [4] - 51:9_, 51:11_, 51:22_, 52:16 fine [6] - 8:5_, 37:11_, 48:16_, 48:25 finest [1] - 52:18 first [15] - 3:4_, 4:2_, 7:13_, 7:14_, 8:8_, 19:14_, 37:20_, 37:23_, 40:17_, 41:20_, 42:7_, 43:24_, 45:10_, 45:15_, 48:15 first-time [1] - 45:10 fishing [1] - 21:12 five [3] - 3:3_, 31:1_, 38:9 flagged [1] - 24:16 flatly [1] - 36:17 FLYNN [2] - 39:11_, 39:13 Flynn [14] - 4:5_, 4:7_, 19:7_, 19:8_, 19:9_, 30:22_, 35:8_, 39:8_, 41:2_, 41:23_, 41:24_, 42:5_, 42:15_, 49:16 Flynn's [3] - 39:1_, 41:13_, 41:19 folks [1] - 23:14 follow [1] - 7:11 following [4] - 3:2_, 4:9_, 13:14_, 52:15 follows [2] - 37:7_, 51:6 for-profit [1] - 49:13 form [1] - 34:6 forma [1] - 53:10 formal [5] - 11:9_, 12:3_, 12:8_, 13:15_, 14:4 former [1] - 10:22 forms [1] - 15:12 forth [3] - 7:24_, 15:23_, 48:14 forward [1] - 49:12 forwarded [2] - 52:1_, 52:2 four [2] - 9:21_, 30:17 Frances [1] - 2:18
	F		
	facilitate [3] - 22:16_, 23:11_, 47:11 facilitated [2] - 16:22_, 22:7		

FRANCIS ^[55] - 2:12_, 3:21_, 4:17_, 4:23_, 7:2_, 7:12_, 7:17_, 8:3_, 8:6_, 8:12_, 8:24_, 9:7_, 10:20_, 11:12_, 11:15_, 11:20_, 11:25_, 12:5_, 13:19_, 13:21_, 15:17_, 15:23_, 16:6_, 16:11_, 17:15_, 17:22_, 21:22_, 24:8_, 24:12_, 24:17_, 24:21_, 24:23_, 25:2_, 25:6_, 25:11_, 25:19_, 25:21_, 26:2_, 26:6_, 26:9_, 29:23_, 30:2_, 32:4_, 32:15_, 33:17_, 34:12_, 36:24_, 37:16_, 44:20_, 44:23_, 46:4_, 46:23_, 47:2_, 48:10_, 53:16 Francis ^[14] - 2:13_, 2:15_, 3:19_, 4:15_, 5:7_, 6:24_, 21:21_, 24:2_, 29:21_, 32:3_, 36:23_, 37:14_, 44:19_, 48:8 frankly ^[2] - 35:23_, 40:10 fraud ^[7] - 3:9_, 9:5_, 10:12_, 10:15_, 14:11_, 24:25_, 43:20 friend ^[2] - 39:17 friends ^[2] - 39:16 front ^[2] - 35:6_, 40:21 full ^[3] - 4:16_, 37:5_, 49:3 fully ^[4] - 3:11_, 6:11_, 21:3_, 49:4 funds ^[1] - 10:16 funeral ^[8] - 25:18_, 25:23_, 27:15_, 27:21_, 28:1_, 28:18_, 28:21_, 28:25 furtherance ^[1] - 8:10 future ^[3] - 29:6_, 44:14_, 52:24	19:8_, 30:22_, 35:8_, 41:2 Ghiz-Flynn's ^[1] - 41:13 gift ^[1] - 39:5 given ^[7] - 19:15_, 19:16_, 19:17_, 20:20_, 21:18_, 35:15 God ^[3] - 5:25_, 38:22_, 39:5 golf ^[2] - 10:5_, 10:15 government ^[18] - 3:17_, 7:25_, 9:11_, 12:14_, 14:17_, 15:8_, 16:19_, 17:19_, 18:15_, 21:6_, 22:5_, 23:7_, 28:5_, 28:6_, 31:13_, 32:21_, 40:16_, 51:21 government's ^[3] - 8:13_, 10:2_, 40:7 gravity ^[2] - 43:4 greater ^[1] - 46:14 gross ^[1] - 51:14 grossly ^[1] - 20:23 grounding ^[1] - 36:15 Guard ^[4] - 14:4_, 14:20_, 15:12_, 49:25 guess ^[1] - 12:2 guidance ^[1] - 16:18 guideline ^[12] - 7:9_, 17:11_, 21:23_, 23:22_, 37:9_, 37:20_, 40:9_, 42:13_, 43:12_, 45:2_, 46:12_, 50:24 guidelines ^[7] - 18:13_, 40:15_, 43:17_, 43:19_, 44:2_, 44:16_, 48:13 guilty ^[1] - 3:1	41:4_, 43:15 hearing ^[12] - 2:21_, 3:13_, 3:20_, 6:25_, 28:13_, 28:14_, 29:6_, 48:17_, 48:19_, 48:24_, 52:24_, 53:17 hearsay ^[1] - 11:5 helm ^[1] - 20:16 help ^[1] - 5:25 hereby ^[1] - 48:25 Hester ^[1] - 34:25 hi ^[1] - 38:3 highlight ^[2] - 40:17_, 41:19 himself ^[7] - 7:20_, 8:9_, 33:19_, 43:1_, 43:8_, 44:1_, 45:19 hire ^[2] - 14:4_, 21:1 history ^[6] - 11:2_, 12:18_, 12:22_, 13:17_, 45:11 History ^[1] - 37:8 hold ^[1] - 8:3 honestly ^[1] - 42:2 Honor ^[61] - 2:8_, 2:12_, 2:19_, 3:21_, 3:23_, 4:2_, 4:4_, 4:10_, 4:17_, 4:23_, 5:18_, 7:2_, 7:17_, 7:18_, 8:4_, 8:12_, 8:24_, 9:11_, 10:20_, 11:15_, 12:5_, 12:10_, 12:13_, 14:25_, 15:23_, 16:6_, 17:15_, 17:22_, 18:11_, 22:15_, 24:8_, 24:23_, 25:6_, 25:19_, 26:6_, 26:12_, 28:3_, 29:16_, 29:23_, 29:25_, 30:2_, 31:7_, 31:24_, 36:24_, 37:2_, 37:16_, 37:18_, 37:23_, 39:8_, 39:11_, 40:3_, 40:6_, 44:20_, 44:25_, 47:18_, 48:7_, 48:10_, 53:5_, 53:12_, 53:14_, 53:16 Honor's ^[1] - 12:25 hook ^[1] - 41:8 hope ^[1] - 53:19 hoped ^[1] - 46:22 horrible ^[1] - 38:21 horrific ^[8] - 40:19_, 41:15_, 41:25_, 42:16_, 42:21_, 43:10_, 43:14_, 50:1 horror ^[1] - 41:18 horrors ^[1] - 44:10 hours ^[1] - 52:8	human ^[3] - 45:6_, 49:9_, 50:10 hundred ^[2] - 38:14_, 38:17 hurt ^[2] - 38:18_, 38:19 hurts ^[1] - 38:14 husband ^[1] - 4:5 I identify ^[1] - 48:19 immediately ^[1] - 52:21 impact ^[1] - 29:1 impermissible ^[1] - 17:4 implies ^[1] - 13:23 implying ^[1] - 24:20 important ^[4] - 18:4_, 21:18_, 43:13_, 50:13 impose ^[2] - 47:15_, 50:22 imposed ^[4] - 51:9_, 51:12_, 53:2_, 53:7 imposition ^[1] - 26:24 impression ^[1] - 29:2 imprisoned ^[1] - 50:17 imprisonment ^[4] - 37:10_, 47:10_, 52:4_, 52:24 improper ^[1] - 14:14 improperly ^[2] - 14:10_, 32:5 inability ^[1] - 43:3 inaccurate ^[4] - 7:6_, 7:16_, 8:17_, 11:18 inapplicable ^[1] - 22:23 incarceration ^[3] - 18:7_, 51:5_, 51:13 incident ^[3] - 33:4_, 38:6_, 45:15 incidental ^[1] - 17:1 incidents ^[2] - 10:25_, 11:22 included ^[6] - 11:17_, 12:19_, 13:11_, 22:2_, 25:7_, 36:15 includes ^[3] - 10:23_, 13:2_, 46:12 including ^[4] - 3:13_, 10:15_, 16:25_, 50:12 inclusion ^[4] - 11:3_,
G gains ^[1] - 51:22 general ^[1] - 50:13 generations ^[1] - 38:18 Ghiz ^[14] - 4:4_, 4:6_, 19:7_, 19:8_, 28:12_, 30:22_, 35:8_, 37:24_, 38:3_, 41:2_, 41:13 GHIZ ^[4] - 38:3_, 38:5_, 39:2_, 39:4 Ghiz-Flynn ^[5] - 19:7_,	H half ^[1] - 30:17 hallmark ^[1] - 41:3 hand ^[2] - 5:22_, 9:15 handled ^[1] - 37:4 handling ^[1] - 6:25 happy ^[1] - 39:5 hard ^[3] - 33:8_, 33:15_, 45:12 health ^[1] - 52:16 hear ^[5] - 6:5_, 28:4_, 32:12_, 34:17_, 37:20 heard ^[4] - 4:1_, 19:9_,		

13:6_, 25:18_, 25:23 income [1]_ - 51:23 inconsistent [1]_ - 15:14 incorporated [2]_ - 17:3_, 21:25 incorrect [1]_ - 15:22 increase [1]_ - 43:19 indication [1]_ - 50:9 indictment [3]_ - 3:2_, 3:4_, 9:19 individuals [1]_ - 23:15 Industries [1]_ - 51:8 inflare [1]_ - 33:1 inflammatory [1]_ - 46:7 inflicting [1]_ - 47:6 information [8]_ - 7:16_, 9:23_, 11:3_, 11:7_, 11:14_, 12:21_, 13:10_, 32:10_ inherently [1]_ - 22:9 initial [1]_ - 17:21 innocent [1]_ - 50:4 insisted [1]_ - 31:2 inspection [1]_ - 14:4 instant [1]_ - 10:24 instead [1]_ - 20:22 instructions [1]_ - 9:24 intended [3]_ - 27:15_, 27:25_, 33:1 intent [4]_ - 14:8_, 14:22_, 25:4_, 45:5 intentional [3]_ - 13:24_, 31:21_, 34:16 intentionally [4]_ - 14:19_, 14:21_, 15:3_, 36:14 interests [1]_ - 51:16 Investigation [2]_ - 3:14_, 16:15 invites [1]_ - 11:4 involved [7]_ - 5:13_, 18:15_, 20:2_, 20:14_, 45:24_, 46:8_, 49:8 involves [2]_ - 21:2_, 45:4 involving [1]_ - 23:9 issue [14]_ - 8:8_, 9:15_, 9:16_, 9:25_, 10:1_, 10:18_, 11:17_, 12:12_, 15:9_, 17:8_, 23:20_, 28:5_, 28:7_, 30:7	issues [6]_ - 18:3_, 33:15_, 34:6_, 49:11_, 49:25_, 50:23 itemized [4]_ - 31:22_, 32:14_, 36:6_, 36:20 items [6]_ - 3:19_, 6:23_, 11:17_, 11:19_, 13:15_, 24:14 itself [1]_ - 22:18 J Jack [1]_ - 4:4 Jail [1]_ - 5:5 Jennifer [1]_ - 34:25 job [2]_ - 51:8_, 51:10 joke [1]_ - 35:8 Josh [1]_ - 4:4 Judge [57]_ - 5:4_, 7:12_, 7:22_, 8:6_, 9:7_, 11:6_, 11:12_, 11:20_, 13:19_, 13:21_, 13:23_, 14:12_, 14:16_, 15:17_, 15:18_, 16:11_, 16:12_, 16:23_, 17:5_, 17:10_, 21:22_, 22:4_, 23:1_, 24:12_, 24:17_, 24:21_, 25:2_, 25:11_, 26:2_, 26:10_, 27:11_, 28:6_, 30:13_, 32:4_, 32:15_, 33:17_, 33:22_, 34:4_, 34:7_, 34:10_, 34:18_, 41:13_, 41:19_, 42:2_, 44:8_, 44:23_, 45:18_, 45:22_, 46:4_, 46:11_, 46:23_, 47:2_, 47:3_, 47:8_, 47:14_, 47:24_, 48:21 judgment [6]_ - 6:18_, 28:2_, 49:5_, 50:15_, 51:9_, 53:8 judicial [1]_ - 32:7 June [1]_ - 17:21 jurisdiction [1]_ - 3:6 jurors [1]_ - 41:17 jury [19]_ - 3:2_, 8:18_, 8:22_, 9:5_, 9:20_, 9:24_, 14:22_, 15:5_, 15:15_, 21:9_, 30:8_, 31:10_, 31:15_, 34:20_, 35:2_, 35:6_, 35:20_, 41:23 jury's [6]_ - 8:14_, 9:1_, 10:11_, 10:13_, 15:10_, 25:14 justice [7]_ - 25:16_, 31:19_, 32:9_, 36:5_,	36:21_, 47:4_, 51:16 justifies [1]_ - 45:9 K keep [3]_ - 18:21_, 18:22_, 21:15 keeping [1]_ - 41:6 KELLER [26]_ - 2:8_, 3:23_, 4:2_, 4:10_, 9:11_, 9:25_, 12:13_, 14:16_, 14:25_, 15:2_, 18:11_, 20:4_, 21:6_, 28:6_, 30:13_, 31:24_, 34:18_, 35:18_, 37:2_, 37:18_, 37:23_, 39:8_, 40:3_, 40:6_, 48:7_, 53:14 Keller [10]_ - 2:9_, 9:10_, 12:12_, 14:15_, 18:9_, 23:21_, 30:12_, 34:17_, 37:17_, 40:2 kept [1]_ - 44:1 key [1]_ - 45:1 killed [3]_ - 35:8_, 40:25_, 43:25 kind [5]_ - 11:1_, 11:23_, 12:8_, 21:11_, 39:19 knowledge [6]_ - 17:6_, 19:10_, 19:11_, 19:19_, 21:17_, 22:20 knows [1]_ - 5:4 L labyrinthian [1]_ - 43:18 lack [4]_ - 43:2_, 43:3_, 49:18_, 50:9 language [17]_ - 8:13_, 8:15_, 8:21_, 8:25_, 9:17_, 9:23_, 10:7_, 10:13_, 13:7_, 13:14_, 15:22_, 23:10_, 23:20_, 24:20_, 24:25_, 25:4 laptop [1]_ - 8:4 lasting [1]_ - 42:4 law [8]_ - 14:2_, 16:17_, 28:17_, 43:9_, 44:13_, 45:12_, 46:19_, 47:5 law-abiding [1]_ - 45:12 lawful [2]_ - 14:8_, 45:6 lawfully [1]_ - 14:1 laws [1]_ - 28:19 least [6]_ - 36:11_, 36:15_, 43:13_, 44:15_, 45:2_,	53:20 leave [1]_ - 53:10 leaves [1]_ - 30:9 lectern [2]_ - 38:1_, 44:21 led [2]_ - 39:23_, 43:23 left [1]_ - 29:21 legal [6]_ - 7:7_, 13:12_, 30:9_, 33:3_, 33:5_, 37:5 legally [3]_ - 14:6_, 22:22_, 29:5 legitimate [2]_ - 11:9_, 12:9 less [1]_ - 44:5 letter [1]_ - 26:14 letters [1]_ - 29:1 level [17]_ - 15:18_, 16:12_, 17:3_, 17:11_, 18:13_, 20:2_, 21:2_, 21:25_, 22:2_, 22:13_, 22:24_, 22:25_, 23:3_, 23:8_, 32:5_, 32:23 Level [1]_ - 37:8 levied [1]_ - 28:11 license [1]_ - 22:16 licensed [5]_ - 16:16_, 19:17_, 20:25_, 23:12_, 45:13 licensure [1]_ - 23:13 lie [6]_ - 30:18_, 30:19_, 32:16_, 33:8_, 36:1_, 50:14 lied [13]_ - 30:15_, 30:21_, 30:23_, 30:25_, 31:5_, 32:13_, 33:18_, 33:22_, 34:4_, 34:22_, 42:23_, 43:21_, 46:1 lies [11]_ - 15:12_, 31:21_, 32:1_, 34:16_, 36:6_, 42:13_, 42:14_, 43:20_, 44:3_, 44:10_, 50:2 life [16]_ - 32:24_, 33:21_, 34:1_, 38:7_, 38:14_, 39:15_, 39:25_, 41:15_, 42:10_, 43:6_, 45:6_, 45:11_, 45:16_, 49:9_, 49:16_, 50:10 likely [1]_ - 50:1 linked [2]_ - 11:8_, 12:7 listed [1]_ - 9:19 literally [1]_ - 33:9 live [2]_ - 39:22 lives [1]_ - 42:10 loan [2]_ - 8:17_, 30:23
---	---	--	--

loans [3] - 10:4, 34:23, 44:2 look [2] - 18:16, 41:12 looked [1] - 33:20 looking [5] - 11:10, 18:20, 23:20, 24:5, 24:14 loss [2] - 45:16, 50:3 losses [4] - 25:18, 25:23, 26:1, 48:24 lost [2] - 32:24, 49:16 low [6] - 45:2, 46:18, 46:20, 46:21, 47:3, 47:15 Lucie [1] - 5:5 lunch [1] - 35:9 lying [9] - 14:19, 14:21, 15:3, 30:24, 31:9, 31:10, 31:15, 43:7, 44:1	40:19, 40:20 matters [1] - 18:25 McCabe [53] - 2:5, 2:14, 2:16, 2:21, 4:16, 4:18, 4:22, 5:2, 5:4, 5:5, 5:20, 6:4, 6:5, 13:23, 14:19, 17:5, 18:1, 19:6, 19:7, 19:16, 21:13, 22:15, 23:12, 26:15, 29:10, 30:13, 30:21, 31:2, 31:5, 32:7, 32:13, 32:16, 32:19, 33:3, 33:18, 34:3, 35:19, 36:9, 41:5, 42:15, 42:17, 43:7, 43:16, 45:6, 45:10, 45:21, 46:16, 47:8, 47:20, 48:3, 48:15, 49:2, 50:16 McCabe's [6] - 5:17, 16:16, 17:1, 22:10, 22:24, 42:13 ME's [1] - 35:11 mean [2] - 20:15, 27:17 meaning [1] - 20:4 meaningful [2] - 32:17, 36:11 means [4] - 20:3, 20:7, 20:14, 23:9 meant [1] - 38:11 mechanic [1] - 34:5 medical [3] - 33:18, 33:24, 34:9 meet [3] - 38:20, 39:19, 46:14 meeting [1] - 18:2 meets [1] - 8:18 member [2] - 37:21, 47:13 members [4] - 3:25, 4:3, 5:13, 49:14 membership [2] - 10:5, 10:15 memorandum [4] - 3:16, 15:24, 17:16, 40:9 mental [1] - 52:16 merchant [2] - 19:17 merely [1] - 17:1 merits [1] - 18:10 met [2] - 16:23, 39:18 Miami [1] - 52:1 microphone [2] - 6:4, 8:1	might [4] - 15:9, 20:18, 20:19 minimize [2] - 32:22, 36:9 minimized [1] - 46:2 minimum [4] - 40:16, 42:12, 43:12, 51:11 minute [1] - 26:2 mirror [2] - 8:13, 8:25 misapprehension [1] - 43:3 misconduct [2] - 11:9, 12:8 misleading [1] - 14:13 mistaken [1] - 29:2 misuse [1] - 17:9 misused [1] - 22:21 mitigating [1] - 47:17 Mollie [2] - 19:7, 43:25 Mollie's [2] - 4:5, 42:10 moment [4] - 18:8, 23:5, 24:2, 47:24 moments [1] - 41:25 money [2] - 10:3, 27:14 monitor [1] - 51:18 monthly [1] - 51:14 months [6] - 17:12, 40:10, 50:17, 50:18, 50:19, 50:23 months' [2] - 37:9, 52:23 moral [1] - 46:11 Moran [1] - 48:19 moreover [1] - 17:5 morning [1] - 30:15 most [1] - 42:21 motion [2] - 6:18, 6:21 motions [1] - 5:14 move [1] - 7:7 movement [1] - 33:11 MR [43] - 2:8, 3:23, 4:2, 4:10, 5:4, 5:10, 5:12, 5:18, 9:11, 9:25, 12:13, 14:16, 14:25, 15:2, 18:11, 20:4, 21:6, 26:12, 26:21, 27:2, 27:11, 27:17, 27:24, 28:2, 28:6, 29:16, 30:13, 31:24, 34:18, 35:18, 37:2, 37:18, 37:23, 39:8, 39:11, 39:13, 40:3, 40:6,	47:24, 48:3, 48:7, 53:5, 53:14 MS [59] - 2:12, 3:21, 4:17, 4:23, 7:2, 7:12, 7:17, 8:3, 8:6, 8:12, 8:24, 9:7, 10:20, 11:12, 11:15, 11:20, 11:25, 12:5, 13:19, 13:21, 15:17, 15:23, 16:6, 16:11, 17:15, 17:22, 21:22, 24:8, 24:12, 24:17, 24:21, 24:23, 25:2, 25:6, 25:11, 25:19, 25:21, 26:2, 26:6, 26:9, 29:23, 30:2, 32:4, 32:15, 33:17, 34:12, 36:24, 37:16, 38:3, 38:5, 39:2, 39:4, 44:20, 44:23, 46:4, 46:23, 47:2, 48:10, 53:16 must [5] - 16:19, 22:23, 51:8, 51:11, 53:8
M			N
ma'am [5] - 6:1, 8:11, 37:25, 38:4, 39:6 maintain [1] - 14:2 maintaining [2] - 25:17, 26:24 majority [2] - 30:6, 43:16 malfunction [1] - 33:12 malice [1] - 45:5 mandate [1] - 23:22 Mandatory [2] - 26:16, 28:9 mandatory [7] - 26:19, 26:21, 26:23, 28:9, 29:3, 37:12, 52:13 manner [4] - 16:21, 22:7, 22:17, 53:4 manslaughter [5] - 3:5, 14:10, 16:24, 22:9, 26:16 marine [1] - 14:7 mariner [1] - 19:17 maritime [3] - 16:25, 22:10, 22:16 marketed [1] - 21:1 material [3] - 15:12, 32:10, 51:19 materially [1] - 8:17 matter [3] - 35:21,			name [2] - 38:1, 38:3 narrative [1] - 14:10 naturally [1] - 33:10 nature [10] - 15:13, 18:17, 20:20, 21:7, 40:18, 42:3, 42:4, 42:8, 42:9, 44:12 navigable [1] - 50:14 navigation [1] - 17:6 navigational [1] - 22:20 necessarily [4] - 9:21, 20:15, 21:2, 23:22 necessary [5] - 2:24, 28:20, 46:14, 47:10, 50:21 necessitate [1] - 23:10 necessity [1] - 29:13 need [10] - 8:1, 16:5, 25:15, 29:22, 32:12, 44:12, 44:13, 47:8, 50:12 needed [3] - 9:20, 44:5, 44:6 negligence [1] - 49:17 nephews [1] - 38:19 never [9] - 10:25, 11:22, 30:18, 38:19, 39:16, 39:18, 39:19, 49:12, 53:19

new [2] - 24:13, 52:17 next [4] - 10:19, 13:20, 15:16, 49:13 Nick [1] - 4:4 nieces [1] - 38:19 noise [1] - 26:3 non [1] - 29:19 non-adjudicated [1] - 29:19 none [2] - 12:2, 13:14 normal [1] - 42:21 North [1] - 52:1 note [5] - 4:2, 6:18, 9:12, 25:22, 29:12 noted [2] - 51:2, 52:18 nothing [7] - 3:23, 5:25, 15:14, 41:1, 45:18, 47:9, 53:14 notice [2] - 33:14, 53:7 number [4] - 6:23, 25:4, 29:14, 29:18 Number [1] - 2:5 numerous [1] - 7:21	3:17, 3:18, 4:9, 5:8, 6:23, 7:3, 7:5, 7:7, 15:24, 15:25, 16:2, 16:4, 16:7, 17:18, 24:16, 24:18, 25:12, 29:24, 29:25, 30:4, 36:22, 36:25, 37:4 objects [1] - 13:16 obligations [3] - 51:9, 51:12, 51:24 obstructed [1] - 32:9 obstruction [6] - 25:16, 29:22, 30:10, 31:18, 36:5, 36:21 obstructive [1] - 50:7 obtained [1] - 10:16 obvious [2] - 20:8, 20:9 obviously [3] - 3:11, 23:16, 39:23 occurred [1] - 45:17 ocean [1] - 33:15 October [2] - 48:21, 48:25 offender [1] - 45:10 offending [1] - 45:20 Offense [1] - 37:8 offense [33] - 3:5, 7:8, 9:18, 10:24, 16:14, 16:22, 16:24, 17:2, 17:3, 17:8, 17:11, 18:13, 19:22, 20:2, 21:25, 22:2, 22:8, 22:11, 22:13, 22:17, 22:18, 22:22, 22:25, 23:8, 23:11, 32:22, 32:24, 36:10, 44:12, 49:8, 50:5 offenses [1] - 23:8 offer [1] - 33:22 Office [2] - 51:17, 51:18 office [1] - 52:10 OFFICER [2] - 2:18, 53:12 Officer [1] - 2:20 offset [4] - 27:9, 27:13, 29:11, 29:13 once [3] - 28:16, 51:4, 51:25 one [14] - 9:15, 19:8, 19:9, 21:8, 23:5, 30:9, 31:25, 35:23, 37:10, 38:25, 39:19, 41:3, 44:15, 47:24 one-of-a-kind [1] -	39:19 ones [1] - 31:22 operated [1] - 49:22 operating [3] - 13:24, 20:7, 21:1 operation [5] - 14:3, 20:3, 20:14, 21:5, 23:9 operational [1] - 36:18 opportunity [2] - 4:13, 4:16 opposite [2] - 34:2, 49:19 oral [1] - 15:25 orally [1] - 15:8 order [8] - 2:1, 6:19, 18:23, 19:12, 27:10, 44:1, 51:12 ordered [5] - 48:17, 49:1, 51:2, 51:5, 52:20 organic [1] - 33:10 otherwise [1] - 37:4 ourselves [1] - 5:8 outlined [1] - 2:24 outside [2] - 18:1, 43:20 outstanding [1] - 6:18 overlooked [1] - 3:19 overrule [2] - 15:8, 36:4 overruled [6] - 10:10, 23:6, 24:1, 24:24, 25:1, 30:5 oversaw [1] - 49:3 overwhelming [1] - 33:12	32:14 paragraphs [2] - 13:21, 24:9 parroting [1] - 50:10 Part [2] - 52:14, 52:19 part [3] - 14:21, 27:3, 44:2 particular [1] - 40:23 particularly [1] - 16:17 parties [3] - 6:20, 29:7, 48:12 passenger [1] - 14:5 passengers [6] - 14:3, 18:24, 19:13, 19:18, 49:15, 49:23 pattern [2] - 19:3, 20:6 pauperis [1] - 53:10 pay [7] - 48:16, 51:8, 51:11, 51:14, 51:20, 52:20, 53:9 payable [1] - 51:25 paying [1] - 21:3 payment [3] - 23:15, 51:15, 51:18 payments [2] - 51:6, 51:21 payout [1] - 27:25 pays [1] - 28:20 people [7] - 19:23, 31:3, 31:4, 39:23, 41:16, 44:5, 50:15 per [2] - 37:13, 51:11 percent [2] - 51:8, 51:14 perhaps [2] - 27:13, 35:14 period [2] - 17:18, 51:5 perjury [2] - 25:6, 32:6 permissibility [1] - 25:25 permissible [4] - 26:19, 26:21, 29:5, 52:17 permissive [2] - 26:23, 26:25 permits [1] - 14:2 perpetrated [2] - 19:4, 43:20 persisted [1] - 50:2 person [10] - 18:19, 19:4, 20:10, 37:23, 38:11, 39:20, 41:7, 42:6, 42:21, 52:9
O	O'Keefe [2] - 19:1, 20:6 O'Sullivan [11] - 2:13, 2:16, 4:18, 4:24, 4:25, 5:16, 7:1, 29:15, 32:3, 48:2, 48:9 O'SULLIVAN [15] - 5:4, 5:10, 5:12, 5:18, 26:12, 26:21, 27:2, 27:11, 27:17, 27:24, 28:2, 29:16, 47:24, 48:3, 53:5 object [3] - 12:23, 13:6, 53:3 objected [1] - 24:11 objecting [3] - 7:18, 10:21, 13:21 objection [31] - 7:14, 8:8, 8:11, 9:12, 9:14, 10:9, 10:19, 12:4, 12:14, 13:20, 14:17, 15:9, 15:16, 17:14, 18:10, 23:6, 24:1, 25:3, 25:10, 25:15, 25:17, 25:22, 26:24, 28:23, 29:14, 29:17, 29:18, 30:3, 30:10, 36:4, 53:5 objections [24] - 3:14,	P	p.m [1] - 53:22 page [4] - 9:13, 12:15, 14:18, 28:7 paid [2] - 21:1, 27:19 paid-for-hire [1] - 21:1 pandemic [2] - 44:2, 44:5 paper [2] - 35:7, 42:20 papers [1] - 24:11 paragraph [11] - 7:15, 10:21, 11:10, 12:2, 13:9, 13:14, 23:5, 30:11, 31:22, 32:5,

personal [2] - 32:18, 36:12 persons [1] - 22:9 pertinent [1] - 3:13 phone [2] - 5:7, 42:17 phrase [2] - 7:19, 8:8 picture [2] - 3:18, 41:22 piece [2] - 35:7, 42:20 pitch [1] - 35:24 place [4] - 11:13, 19:14, 43:24, 48:18 placed [1] - 52:5 places [1] - 7:21 plenty [1] - 34:1 podium [1] - 7:22 point [2] - 12:2, 21:23 pointing [1] - 9:17 policy [2] - 27:14, 27:23 position [17] - 10:2, 10:7, 12:15, 12:25, 18:18, 19:13, 19:15, 28:17, 28:21, 31:7, 31:16, 35:5, 35:10, 35:25, 42:23, 44:8, 44:10 positions [1] - 22:10 possessed [2] - 16:20, 22:5 posttrial [1] - 5:13 posture [1] - 46:10 potential [1] - 27:20 PPP [4] - 8:17, 10:4, 30:23, 34:23 preclude [1] - 51:21 predatory [1] - 45:8 prefer [1] - 4:11 preferable [1] - 7:23 prejudicial [3] - 9:8, 11:4, 12:19 preparation [1] - 6:6 prepared [1] - 6:11 preparing [1] - 40:11 prescribed [1] - 33:19 present [10] - 3:25, 18:23, 21:19, 27:13, 29:8, 30:7, 34:13, 34:14, 37:21, 40:4 presented [2] - 34:4, 47:17 Presentence [2] - 3:13, 16:15	presentence [3] - 48:12, 52:14, 52:19 presents [1] - 45:19 presided [1] - 3:11 pretty [1] - 18:6 previously [1] - 16:3 Prison [1] - 51:7 prison [1] - 18:5 Prisons [3] - 50:17, 51:17, 52:9 pro [1] - 33:22 probation [5] - 2:17, 13:13, 17:20, 52:10, 53:11 PROBATION [2] - 2:18, 53:12 Probation [2] - 2:19, 51:17 probative [1] - 11:2 problem [2] - 19:24, 35:1 proceed [3] - 6:11, 26:7, 49:12 proceeding [4] - 2:22, 32:11, 33:6, 53:19 proceedings [4] - 32:17, 33:2, 43:9, 53:22 process [2] - 4:21, 5:1 produces [1] - 37:9 professional [1] - 46:17 professionals [1] - 16:25 proffer [3] - 27:18, 32:15, 33:17 profit [1] - 49:13 profound [1] - 42:5 prohibits [1] - 21:24 prolong [1] - 33:1 prolonged [1] - 47:9 promote [3] - 44:12, 46:19, 47:4 pronounced [1] - 53:4 propeller [8] - 33:11, 33:14, 33:19, 33:23, 35:14, 35:16, 35:19, 40:24 propellers [5] - 18:23, 21:11, 21:17, 21:19, 35:1 proper [1] - 13:11	properly [3] - 13:11, 23:24, 49:23 proposes [1] - 13:7 prosecutor [1] - 42:2 prosecutorial [1] - 24:25 prospect [1] - 18:7 protect [1] - 47:10 prove [4] - 22:12, 27:9, 27:12, 29:12 proven [3] - 9:22, 15:4, 15:13 provide [1] - 6:4 provided [3] - 10:2, 17:15, 28:12 provides [1] - 53:19 providing [1] - 32:10 provision [2] - 23:22, 29:3 PSI [32] - 3:17, 4:9, 4:16, 4:22, 5:2, 5:6, 5:8, 6:23, 7:6, 7:14, 10:7, 10:13, 12:17, 12:20, 13:1, 13:12, 15:2, 15:14, 15:22, 17:14, 17:18, 22:15, 23:5, 24:3, 28:25, 30:10, 36:4, 36:6, 36:20, 36:22, 37:4, 37:5 PSR [9] - 7:20, 10:21, 11:7, 12:7, 13:22, 13:23, 14:14, 15:25, 25:7 public [3] - 45:14, 45:19, 47:10 pulled [1] - 35:6 punishment [2] - 46:13, 47:5 purported [1] - 15:13 purpose [8] - 2:22, 11:9, 12:9, 14:20, 15:3, 43:22, 46:14, 50:13 purposes [2] - 2:24, 50:21 pursuant [1] - 51:2 pursue [2] - 32:20, 46:5 put [4] - 15:23, 19:8, 19:12, 38:21 putting [1] - 19:19	quarter [1] - 51:11 questions [4] - 4:20, 5:3, 5:17, 6:15 quite [2] - 32:13, 49:19 quote [1] - 28:20
			R
			raise [3] - 5:21, 16:2, 36:25 raised [5] - 16:3, 18:3, 24:3, 24:7, 49:5 ran [1] - 30:25 random [1] - 42:22 range [16] - 7:10, 17:12, 37:9, 37:10, 37:11, 37:20, 43:19, 45:2, 45:3, 46:18, 46:21, 46:24, 47:4, 47:16, 50:24 rate [1] - 51:14 re [1] - 45:20 re-offending [1] - 45:20 reach [1] - 28:15 reached [1] - 9:5 ready [1] - 26:6 reality [1] - 33:16 really [3] - 21:8, 31:19, 35:5 realm [1] - 33:16 reason [4] - 9:3, 18:25, 20:18, 43:11 reasonable [4] - 2:23, 10:5, 49:6, 50:20 reasons [8] - 10:10, 15:7, 23:6, 23:21, 36:19, 47:14, 49:12, 50:12 rebuttal [1] - 31:14 received [2] - 15:15, 27:14 recess [1] - 53:21 reckless [6] - 20:3, 20:14, 20:23, 21:5, 23:9, 40:18 recklessly [2] - 20:7, 20:16 recognition [1] - 46:8 recognized [1] - 14:9 recommendation [1] - 40:8
		Q	
		quantity [1] - 29:9	

recommended ^[1] - 37:12 recommending ^[1] - 40:9 record ^[8] - 2:6_, 9:12_, 24:4_, 32:13_, 36:8_, 36:10_, 37:6_, 46:3 recreational ^[3] - 13:25_, 14:1_, 15:13 rectify ^[1] - 34:6 reduce ^[1] - 22:24 reduced ^[1] - 17:12 referenced ^[1] - 52:14 references ^[4] - 4:14_, 10:22_, 14:13_, 28:25 referring ^[1] - 14:24 reflect ^[2] - 8:16_, 45:8 reflected ^[2] - 23:5_, 46:10 reflects ^[1] - 32:17 refrained ^[1] - 46:7 regarding ^[2] - 6:6_, 11:2 regardless ^[1] - 50:23 regulations ^[1] - 14:7 reintegration ^[1] - 47:11 rejected ^[3] - 30:8_, 34:20_, 35:2 related ^[3] - 5:3_, 11:1_, 28:21 relates ^[1] - 21:16 relating ^[3] - 12:22_, 28:16_, 29:1 relationship ^[3] - 19:4_, 19:6_, 20:9 relative ^[1] - 53:18 release ^[6] - 37:10_, 51:13_, 52:4_, 52:5_, 52:8_, 52:25 released ^[1] - 52:11 relentlessly ^[1] - 31:5 reliability ^[1] - 11:18 relied ^[1] - 19:10 relive ^[1] - 41:21 rely ^[1] - 11:4 relying ^[2] - 21:15_, 31:22 remain ^[1] - 13:1 remaining ^[1] - 30:9 remains ^[1] - 51:4	remand ^[1] - 18:8 remarkably ^[1] - 23:16 remind ^[1] - 46:20 remorse ^[5] - 43:2_, 43:3_, 45:16_, 49:18_, 50:9 removal ^[1] - 22:24 remove ^[2] - 13:12_, 28:24 removed ^[2] - 14:14_, 22:23 repeatedly ^[3] - 13:23_, 19:18_, 46:1 replaced ^[1] - 8:15 Report ^[2] - 3:14_, 16:15 report ^[8] - 3:14_, 14:14_, 25:7_, 48:12_, 51:19_, 52:9_, 52:14_, 52:19 reprimands ^[3] - 10:23_, 11:21_, 13:5 reputation ^[1] - 23:14 reputational ^[1] - 46:17 request ^[4] - 8:14_, 8:15_, 13:10_, 28:24 requesting ^[2] - 14:12_, 26:14 requests ^[1] - 13:8 required ^[4] - 22:12_, 22:18_, 45:13 requirement ^[1] - 52:17 resolution ^[1] - 4:9 resolved ^[6] - 6:19_, 16:5_, 25:10_, 29:17_, 29:18_, 37:3 respect ^[14] - 8:7_, 13:8_, 15:12_, 19:25_, 23:3_, 29:8_, 33:8_, 35:11_, 43:9_, 43:10_, 44:13_, 46:19_, 47:4 respectful ^[1] - 32:25 respectfully ^[3] - 18:15_, 45:22_, 46:1 respond ^[2] - 17:20 responded ^[4] - 3:17_, 9:11_, 12:14_, 28:6 responds ^[1] - 14:17 response ^[1] - 14:18 responses ^[1] - 9:14 responsibility ^[3] - 33:4_, 36:12_, 45:14 rest ^[1] - 39:25 restitution ^[28] - 25:25_,	26:13_, 26:14_, 26:25_, 27:3_, 27:10_, 27:20_, 28:5_, 28:10_, 28:13_, 28:19_, 28:22_, 29:2_, 29:3_, 29:5_, 29:6_, 29:9_, 48:16_, 48:17_, 51:2_, 51:4_, 51:5_, 51:14_, 51:18_, 51:23_, 51:25_, 52:18_, 52:24 Restitution ^[2] - 26:16_, 28:9 restrained ^[1] - 32:25 restriction ^[1] - 52:17 result ^[5] - 10:25_, 11:23_, 12:11_, 46:13_, 49:16 resulted ^[4] - 12:3_, 13:15_, 23:17_, 41:13 resume ^[1] - 47:12 return ^[2] - 16:10_, 24:2 revealed ^[1] - 33:24 review ^[4] - 4:16_, 4:22_, 5:2_, 23:24 reviewed ^[2] - 3:12_, 4:17 revised ^[1] - 14:14 ridiculous ^[2] - 35:22_, 50:10 rights ^[1] - 45:21 risk ^[3] - 45:19_, 49:15_, 50:15 role ^[5] - 17:1_, 18:22_, 19:20_, 22:10_, 47:12 ruining ^[1] - 42:10 rules ^[1] - 49:24 ruling ^[1] - 6:20 rulings ^[1] - 37:15 run ^[1] - 52:7 running ^[2] - 31:2_, 36:14	schedule ^[1] - 51:16 scheme ^[8] - 7:19_, 8:9_, 8:10_, 8:20_, 9:15_, 9:16_, 9:20_, 9:25 score ^[1] - 43:18 scuba ^[9] - 19:11_, 19:16_, 21:7_, 21:10_, 21:14_, 23:12_, 44:6 sea ^[1] - 35:24 seaman's ^[4] - 3:4_, 16:24_, 22:9_, 26:15 seamanship ^[1] - 17:7 Sean ^[7] - 2:5_, 2:14_, 4:5_, 4:6_, 19:9_, 38:22_, 50:16 search ^[1] - 52:17 seat ^[2] - 6:3_, 39:6 seated ^[1] - 2:2 second ^[3] - 3:5_, 42:11_, 43:11 Section ^[6] - 2:25_, 3:8_, 3:10_, 26:20_, 48:14_, 51:3 secure ^[1] - 44:1 see ^[10] - 8:8_, 9:4_, 10:11_, 11:13_, 13:12_, 23:19_, 33:8_, 33:15_, 41:17_, 44:23 seek ^[1] - 32:22 self ^[4] - 18:7_, 31:8_, 31:9_, 46:3 self-evident ^[4] - 18:7_, 31:8_, 31:9_, 46:3 selling ^[1] - 31:11 sense ^[1] - 14:23 sentence ^[26] - 2:23_, 17:24_, 28:3_, 31:17_, 40:10_, 40:12_, 40:16_, 42:8_, 42:13_, 43:12_, 44:13_, 44:15_, 45:1_, 45:10_, 46:12_, 46:17_, 47:3_, 47:11_, 47:15_, 50:6_, 50:20_, 50:22_, 52:23_, 53:2_, 53:4_, 53:7 sentencing ^[9] - 2:21_, 3:15_, 5:3_, 6:12_, 40:5_, 40:8_, 40:11_, 46:15_, 47:21 sentencing-related ^[1] - 5:3 separate ^[2] - 27:4_, 27:18 seriousness ^[4] - 32:22_, 32:24_, 36:10_, 50:5
S			
safe ^[3] - 18:21_, 18:22_, 21:16 safety ^[1] - 41:11 sat ^[3] - 36:3_, 42:1_, 44:8 satisfaction ^[2] - 5:17_, 6:15 satisfy ^[1] - 51:23 saved ^[2] - 33:21_, 34:1 saw ^[6] - 41:13_, 41:16_, 44:9_, 44:10			

serve ^[4] - 2:24, 47:5, 50:13, 50:21 served ^[1] - 50:19 serves ^[2] - 11:9, 12:9 service ^[1] - 21:2 services ^[1] - 28:21 set ^[4] - 28:14, 29:6, 48:13, 48:25 sets ^[1] - 20:2 setting ^[2] - 48:17, 48:23 settlement ^[1] - 27:4 seven ^[1] - 44:9 seven-day ^[1] - 44:9 several ^[2] - 5:6, 45:1 severe ^[1] - 45:9 severity ^[4] - 17:24, 46:10, 47:7, 49:7 shall ^[10] - 5:24, 51:6, 51:13, 51:18, 51:25, 52:4, 52:9, 52:12, 52:15, 52:20 shape ^[1] - 34:6 shift ^[3] - 16:9, 34:7, 45:23 shifting ^[1] - 32:20 shorter ^[1] - 47:10 show ^[4] - 10:14, 16:19, 27:13, 28:16 showed ^[3] - 43:2, 43:8 sic ^[3] - 14:7, 33:22, 46:13 side ^[2] - 29:10, 34:2 significant ^[2] - 46:16, 50:6 significantly ^[3] - 16:21, 22:7, 22:21 silence ^[2] - 41:24, 42:1 simple ^[1] - 35:5 simply ^[1] - 14:8 sincere ^[1] - 45:16 single ^[2] - 30:18, 31:12 sister ^[4] - 38:8, 39:1, 39:4 sister's ^[1] - 38:14 sitting ^[5] - 41:23, 42:15, 42:17, 42:18 situation ^[3] - 20:10, 38:21, 43:23 six ^[2] - 3:3, 14:3	skill ^[20] - 16:14, 16:20, 16:21, 17:2, 17:9, 19:22, 20:8, 20:16, 20:22, 20:24, 21:24, 22:2, 22:6, 22:20, 23:4, 23:11, 23:18, 23:23, 45:14 slight ^[1] - 37:6 society ^[2] - 44:4, 47:12 solemnly ^[1] - 5:23 someone ^[14] - 18:18, 18:19, 19:2, 20:7, 20:13, 21:13, 21:15, 40:20, 40:22, 40:25, 41:7, 43:5, 43:21 sorry ^[1] - 16:13 sought ^[2] - 18:1, 27:16 speaking ^[3] - 4:6, 4:7, 5:12 special ^[18] - 16:14, 16:20, 17:9, 19:22, 21:24, 22:6, 22:20, 23:4, 23:10, 23:18, 23:19, 23:23, 37:12, 52:15, 52:18, 52:21, 52:25 specialized ^[7] - 17:6, 19:10, 20:15, 20:22, 20:24, 21:18, 22:19 specific ^[9] - 7:8, 7:15, 14:22, 18:21, 20:21, 21:16, 22:2, 31:21, 32:7 specifically ^[5] - 21:8, 21:15, 21:16, 28:5, 28:19 spent ^[4] - 10:4, 31:14, 43:15, 45:11 spoken ^[1] - 5:7 spots ^[1] - 8:2 spouse ^[1] - 40:21 St ^[1] - 5:5 stand ^[3] - 5:21, 31:20, 46:1 standard ^[2] - 16:23, 52:13 standing ^[1] - 4:19 start ^[2] - 7:5, 30:12 starting ^[1] - 2:7 state ^[2] - 2:6, 37:6 statement ^[2] - 3:6, 38:2 statements ^[6] - 4:9, 10:17, 39:7, 40:2, 48:4	-, 48:12 States ^[19] - 2:4, 2:7, 2:10, 2:25, 3:7, 3:9, 3:22, 10:11, 16:18, 16:19, 26:20, 37:1, 37:21, 48:6, 48:14, 51:3, 52:21, 53:13 status ^[3] - 16:16, 22:12, 23:13 statute ^[1] - 22:3 Statute ^[1] - 16:13 statutory ^[3] - 2:24, 48:13, 50:21 stay ^[3] - 4:19, 7:23, 7:25 sticking ^[1] - 24:10 Stiehl ^[1] - 2:9 stiff ^[1] - 44:15 still ^[7] - 25:15, 25:17, 26:24, 29:22, 35:18, 46:18, 47:4 stipulate ^[1] - 46:5 stipulated ^[1] - 32:19 stipulation ^[1] - 28:15 stop ^[1] - 41:11 story ^[8] - 32:23, 33:6, 33:7, 34:8, 36:13, 36:14, 50:10 strategy ^[1] - 32:20 stricken ^[3] - 11:7, 12:6, 12:10 strike ^[1] - 13:9 strong ^[1] - 45:15 structure ^[1] - 7:11 stuff ^[3] - 12:21, 25:9, 35:2 subject ^[2] - 13:18, 50:14 subjecting ^[1] - 49:14 subjects ^[1] - 32:14 submit ^[4] - 11:6, 32:1, 43:11, 44:16 submitted ^[2] - 26:14, 30:23 submitting ^[2] - 8:16, 34:24 subsection ^[1] - 31:23 sucked ^[1] - 30:22 suffered ^[1] - 46:16 sufficient ^[3] - 19:20, 31:25, 47:6 suggesting ^[2] - 14:7,	25:4 suggestion ^[1] - 12:25 suggestions ^[1] - 49:9 suggests ^[2] - 45:18, 47:9 suit ^[2] - 27:18, 35:17 Sullivan ^[2] - 26:9, 26:11 superficial ^[1] - 33:21 supervised ^[3] - 37:10, 52:5, 52:25 supervision ^[2] - 52:12, 52:13 support ^[2] - 29:11, 45:1 supported ^[1] - 36:7 supposed ^[1] - 12:20 survived ^[1] - 35:14 swear ^[2] - 5:20, 5:23 switch ^[1] - 8:2 system ^[1] - 43:18
T			
table ^[1] - 41:22 tactics ^[3] - 17:7, 33:1, 46:7 talks ^[3] - 18:12, 41:14, 42:5 Tanner ^[1] - 2:9 technical ^[1] - 45:14 term ^[4] - 47:9, 50:18, 52:5, 52:6 terms ^[3] - 8:13, 20:1, 52:7 Terrence ^[2] - 2:13, 4:18 testified ^[6] - 18:20, 19:18, 30:13, 30:14, 32:2, 36:2 testify ^[3] - 13:5, 19:9, 31:1 testifying ^[3] - 36:17, 42:16, 42:19 testimony ^[13] - 5:23, 31:6, 32:7, 33:18, 33:23, 34:1, 34:2, 34:5, 35:12, 36:20, 37:22, 41:19, 50:8 THE ^[119] - 2:2, 2:11, 2:15, 2:18, 2:20, 3:22, 3:24, 4:8, 4:12, 4:19			

, 4:25, 5:9_, 5:11_, 5:15_ _, 5:19_, 6:1_, 6:3_, 6:7_, 6:8_, 6:10_, 6:11_, 6:13_, 6:14_, 6:16_, 6:17_, 7:4_, 7:13_, 7:23_, 8:5_, 8:7_, 8:20_, 9:3_, 9:9_, 9:23_, 10:9_, 11:10_, 11:13_, 11:16_, 11:24_, 12:1_, 12:12_, 13:8_, 13:20_, 14:15_, 14:24_, 15:1_, 15:7_, 15:20_, 16:1_, 16:8_ _, 17:13_, 17:17_, 18:6_, 19:25_, 20:24_, 21:20_, 23:2_, 24:10_, 24:13_, 24:19_, 24:22_, 24:24_, 25:3_, 25:9_, 25:12_, 25:20_, 25:22_, 26:3_, 26:8_, 26:11_, 26:18_, 26:22_, 27:6_, 27:12_, 27:22_, 27:25_, 28:4_, 28:23_, 29:17_, 30:1_, 30:4_, 31:21_, 32:3_, 32:8_ _, 33:7_, 34:11_, 34:14_, 35:11_, 36:3_, 36:25_, 37:3_, 37:17_, 37:19_, 37:25_, 38:4_, 38:25_, 39:3_, 39:6_, 39:10_, 39:12_, 40:1_, 40:4_, 44:18_, 44:21_, 45:25_, 46:20_, 47:1_, 47:19_, 47:25_, 48:2_, 48:5_, 48:8_ _, 48:11_, 48:23_, 53:6_, 53:12_, 53:13_, 53:15_, 53:17 themselves [1]_ - 19:12 theory [4]_ - 30:8_, 33:9_, 33:16_, 35:22 therefore [4]_ - 15:5_, 17:4_, 22:22_, 52:23 thinking [1]_ - 35:24 third [1]_ - 43:13 three [9]_ - 3:8_, 8:22_, 9:5_, 37:10_, 40:17_, 43:14_, 52:5_, 52:6_, 52:25 throughout [4]_ - 32:17_ _, 39:15_, 43:1_, 46:10 thrust [1]_ - 33:11 ties [1]_ - 45:15 Tiffany [5]_ - 4:3_, 4:6_, 28:12_, 37:24_, 38:3 timely [1]_ - 17:14 Title [6]_ - 2:25_, 3:7_, 3:9_ _, 26:20_, 48:14_, 51:3 today [15]_ - 3:25_, 6:6_, 6:11_, 6:19_, 15:25_, 16:3_ _, 24:7_, 28:17_, 29:7_,	29:20_, 29:22_, 36:12_, 41:20_, 47:15_, 49:5 today's [4]_ - 2:22_, 3:13_ _, 3:20_, 6:25 toll [1]_ - 39:25 took [2]_ - 31:20_, 38:9 top [9]_ - 9:13_, 40:9_, 40:15_, 42:12_, 43:12_, 43:14_, 43:25_, 44:15_, 48:16 total [7]_ - 3:3_, 17:11_, 22:25_, 37:7_, 37:13_, 52:22_, 52:23 toward [2]_ - 51:9_, 51:11 tragedy [1]_ - 46:8 tragic [2]_ - 17:8_, 45:4 train [1]_ - 49:22 training [2]_ - 17:6_, 22:16 transportation [5]_ - 20:3_, 20:8_, 20:14_, 21:5_ _, 23:9 trauma [1]_ - 44:9 treatment [2]_ - 47:9_, 52:16 treats [1]_ - 41:6 trial [38]_ - 3:2_, 3:11_, 10:3_, 15:4_, 15:14_, 21:9_ _, 22:12_, 23:12_, 25:13_, 30:5_, 30:7_, 30:14_, 31:20_, 32:19_, 32:25_, 33:6_, 34:12_, 34:18_, 36:3_, 36:7_, 41:4_, 41:16_ _, 41:21_, 42:6_, 42:11_, 42:14_, 42:15_, 43:1_, 43:5_, 43:7_, 43:16_, 44:9_ _, 45:22_, 46:3_, 46:5_, 49:3_, 50:8 tried [2]_ - 21:9_, 34:5 true [1]_ - 35:2 trust [9]_ - 6:20_, 18:19_, 19:8_, 19:19_, 20:9_, 21:2_ _, 22:1_, 45:14_, 49:16 trusted [2]_ - 23:15_, 49:15 truth [3]_ - 5:24_, 5:25 truthfulness [1]_ - 12:24 try [2]_ - 30:20_, 35:23 trying [5]_ - 21:3_, 34:6_, 35:7_, 35:20 Tuesday [1]_ - 42:22 tugboat [2]_ - 19:2_, 20:5 turn [1]_ - 26:3	turning [1]_ - 40:24 twist [1]_ - 30:20 two [6]_ - 9:14_, 15:18_, 16:12_, 22:24_, 23:3_, 32:5 two-level [5]_ - 15:18_, 16:12_, 22:24_, 23:3_, 32:5 type [6]_ - 11:8_, 12:20_, 22:20_, 40:23_, 45:8_, 46:7 types [1]_ - 12:17 typically [1]_ - 45:9	unresolved [2]_ - 6:22_, 7:14 untimeliness [1]_ - 18:3 untimely [2]_ - 3:16_, 18:10 unverified [1]_ - 11:5 up [11]_ - 24:14_, 27:2_, 27:5_, 33:13_, 35:6_, 35:13_, 35:22_, 38:1_, 40:21_, 41:7_, 42:19 UPVA [1]_ - 14:2 upward [2]_ - 20:19_, 49:6 USSG [1]_ - 15:19
		U	V
		U.S [4]_ - 2:19_, 51:17_, 51:18 U.S.C [2]_ - 8:19_, 44:11 ultimate [1]_ - 11:18 ultimately [4]_ - 15:15_, 23:17_, 35:15_, 52:2 unable [2]_ - 35:15_, 53:9 under [17]_ - 10:5_, 14:2_, 15:19_, 16:13_, 16:17_, 26:15_, 26:19_, 26:25_, 29:1_, 29:5_, 30:23_, 36:5_ _, 43:18_, 44:11_, 49:6_, 49:24 underlying [1]_ - 49:20 understood [2]_ - 8:3_, 46:9 unduly [1]_ - 12:19 unexpected [1]_ - 51:22 unfairly [1]_ - 11:4 unfathomable [1]_ - 50:3 unforeseen [1]_ - 45:7 unhinged [1]_ - 35:15 UNICOR [1]_ - 51:10 United [19]_ - 2:4_, 2:7_, 2:10_, 2:25_, 3:7_, 3:9_, 3:22_, 10:11_, 16:18_, 16:19_, 26:20_, 37:1_, 37:21_, 48:6_, 48:14_, 51:3_, 52:21_, 53:13 unjust [1]_ - 10:6 unjustly [2]_ - 9:16_, 10:1 unless [1]_ - 2:2 unnecessary [1]_ - 47:6 unpaid [1]_ - 52:18 unrelated [1]_ - 10:23	value [1]_ - 11:2 variance [3]_ - 20:20_, 47:16_, 49:6 various [2]_ - 36:6_, 36:14 vast [1]_ - 43:15 verdict [6]_ - 3:3_, 8:14_, 9:1_, 10:14_, 25:5_, 25:14 vessel [18]_ - 13:25_, 14:1_ _, 14:5_, 14:9_, 14:13_, 14:20_, 15:4_, 15:13_, 17:1_, 18:14_, 21:1_, 22:11_, 30:25_, 31:2_, 49:11_, 49:24 vessels [1]_ - 14:3 victim [13]_ - 3:25_, 4:3_, 19:3_, 19:7_, 20:10_, 23:17_, 29:1_, 32:21_, 36:16_, 45:23_, 46:6_, 50:1_, 52:2 Victim [1]_ - 26:16 victim's [2]_ - 26:13_, 53:18 victims [1]_ - 43:15 victims' [1]_ - 48:24 view [2]_ - 30:8_, 46:21 violated [1]_ - 49:15 violation [2]_ - 3:7_, 3:9 vision [1]_ - 41:9 visited [1]_ - 5:5
			W
			wages [2]_ - 51:7_, 51:8 walk [3]_ - 4:21_, 5:1_,

38:1 wants [3] - 40:16-, 41:8-, 41:9 ward [2] - 16:18-, 16:19 warned [2] - 38:15-, 49:11 warning [1] - 19:24 warranted [5] - 23:19-, 27:9-, 27:13-, 34:12-, 49:7 warrants [1] - 50:6 waters [1] - 50:14 waves [5] - 30:22-, 33:11-, 35:7-, 35:22-, 42:20 weigh [1] - 44:14 weighs [1] - 42:12 weight [1] - 46:11 Weisberg [1] - 2:18 whatnot [1] - 13:6 white [1] - 26:3 whole [2] - 5:24-, 42:14 wife [2] - 38:9-, 42:16 willful [2] - 45:5-, 49:8 willingness [1] - 50:9 windmilling [3] - 35:21-, 36:17-, 50:11 wire [2] - 3:8-, 9:5 wish [9] - 4:1-, 4:8-, 29:8-, 37:21-, 38:22-, 44:21-, 47:21-, 47:23-, 50:14 wishes [2] - 4:12-, 29:11 witness [3] - 13:5-, 41:4-, 41:5 witnesses [4] - 4:14-, 31:1-, 32:21-, 46:6 woman [2] - 33:10-, 50:4 words [2] - 7:7-, 15:22 wound [2] - 33:13-, 35:13 wounds [4] - 33:20-, 33:25-, 35:13-, 41:14 wrapped [1] - 35:16 wreckage [1] - 50:4 writing [1] - 15:8 written [4] - 6:19-, 13:11-, 24:16-, 24:17 wrongdoing [1] - 13:24 wrought [1] - 42:9	Y year [1] - 45:11 years [7] - 19:12-, 37:10-, 39:14-, 40:24-, 52:5-, 52:6-, 52:25 yesterday [1] - 17:16 yourself [1] - 38:23 Z Zachary [1] - 2:9
--	---