

1  
2 ASSOCIATION OF THE FEDERAL BAR

3  
4 OF NEW JERSEY

5  
6 THIRTY-THIRD

7  
8 ANNUAL

9  
10 UNITED STATES DISTRICT COURT

11  
12 CONFERENCE

13  
14 MAYFAIR FARMS

15  
16 WEST ORANGE, NEW JERSEY

17  
18 MARCH 26, 2009

19  
20  
21 TRANSCRIPT OF PROCEEDINGS

22  
23  
24  
25 Reported By: Stanley B. Rizman, C.C.R.,

<p>1 MR. DRASCO: My name is Dennis Drasco  2 I am the President of the Association of the Federal  3 Bar. This is our 33rd Annual Judicial Conference.  4 Once again, we have close to a record  5 crowd. I really appreciate everyone being here. It  6 has been a very good year for our association.  7 You'll hear from Chief Judge Brown  8 probably between the programs to give us a bit of a  9 state of our district. He did that recently at our  10 Board of Trustees meeting. I know that he's going  11 to report that our district is in fine shape.  12 We have two programs for you this  13 morning and they are both a direct outgrowth of the  14 work that we've been doing on the Board of this  15 association.  16 We've been working hard this year on  17 such important topics to the bench and the Bar as  18 MCLE, attorney-client privilege, the amendment to  19 the Third Circuit rules, our new local patent rules,  20 and I think, perhaps, our Association has been most  21 vocal on the two topics that we're going to discuss  22 today. One is jury issues, which is our first  23 program. You see the panelists assembled here to my  24 left and right.  25 And then the second program on the</p>	<p>2 my heart.  3 Over the last two years I have been  4 Chair of the ABA Commission on the American Jury and  5 we have been working hard to try and implement the  6 ABA Principles on juries and jury trials which was  7 adopted by the ABA in 2005 after a year and a half  8 study group called the "American Jury Project"  9 worked to draft the Principles. They were vetted  10 not only with a group of law professors, judges,  11 trial lawyers but also the major constituent groups,  12 including the American College of Trial Lawyers,  13 BODA, the criminal defense bar, lawyers of all walks  14 of life who try cases to try and reach a consensus  15 on best practices on how to try cases in state and  16 federal court.  17 You have as a handout a copy of the  18 Principles. It is a little white book. It contains  19 19 Principles that you're going to hear about  20 today -- at least some of them today.  21 You also have a copy of something  22 called the "Seventh Circuit American Jury Project."  23 The Seventh Circuit project was a pilot program,  24 which was a very detailed and energetic effort to  25 determine whether or not, in fact, the Principles  are important, whether they work, whether they are</p>
<p>3 proposed amendments to the Federal Rules and what  4 that means in terms of the way we practice  5 litigation in federal court. Anne Patterson and  6 Peter Pearlman have been working very hard with  7 respect to that issue. I want to thank both Anne  8 and Peter for putting together our response on  9 behalf of the Association to the proposed amendments  10 to Rule 26 and Peter, particularly, who carried my  11 water by going to San Francisco and making a  12 presentation in person to the Advisory Committee on  13 the Federal Rules.  14 Jeff Greenbaum, Immediate Past  15 President, is going to lead the second program  16 dealing with those issues. The goal, I think, of  17 our work on the rules and also our work on jury  18 innovations is to try to reach our aspirational goal  19 of making trials in federal court -- in litigation  20 in federal court fair, prompt and an affordable  21 means of dispute resolution. I know we've been  22 sidetracked to some extent over the recent years. I  23 think the two programs today are going to address  24 those topics.  25 I had the opportunity to speak before  the Board of Judges in December about the jury  topic, which is the topic that is near and dear to</p>	<p>5 something that should be implemented across the  6 country.  7 The ABA Principles really are an  8 outgrowth of a phenomenon that was studied by the  9 ABA the two years preceding the American Jury  10 Project. That was the vanishing trial phenomenon.  11 A lot of people talked about why the number of cases  12 that are being tried in state and federal court were  13 going down. A lot of it had to do with confidence  14 in the jury system, the movement to mediation and  15 arbitration, private judging and away from trials  16 and jury trials.  17 It was a concern. I think, to a large  18 part, it was a perception that the jury system  19 doesn't work. And I think the goal of the American  20 Jury Project and the goal of the Principles, if they  21 are tried and implemented, is to see to it that the  22 goal of jury trial -- that is, the goal of the  23 American jury system to provide a fair and prompt  24 way of resolving disputes is alive and well. And I  25 think that after you hear from our panelists today  and you hear about the Principles, I hope you'll  agree and you'll get inspired to do what you can to  make sure that the American jury system continues.  With us today is a very distinguished</p>

2 (Pages 2 to 5)

<p>1 panel that is very much interested in this topic.  2 We have three District Court judges who are  3 household names to all of you; Judge Hayden, who we  4 all know clerked for Justice Clifford in the New  5 Jersey Supreme Court, was an Assistant U.S.  6 Attorney, was a member of the New Jersey bench from  7 1991 to 1997 and became a United States District  8 Court judge in 1997.  9 In addition, we have Judge Jose  10 Linares, who sits in Newark. Judge Linares was a  11 very accomplished trial lawyer in his own right  12 before going on the bench. He was on the Superior  13 Court in New Jersey in Essex County starting in 2000  14 and he presided over the medical malpractice docket  15 in Essex County before becoming a United States  16 District Court Judge in 2002.  17 To Judge Linares' right is Judge Anne  18 Thompson. Judge Thompson was an attorney in the  19 United States Department of Labor, Deputy Public  20 Defender in New Jersey, went on the District Court  21 in 1979 and, as most of you know, became our Chief  22 Judge in 1994. She served before becoming a senior  23 judge in 2001.  24 To my left we have two very  25 distinguished trial lawyers. We have Jerry</p>	<p>6  1 on this panel is that the Steve Landsman, who is a  2 good friend of mine from the ABA. If I read his  3 entire C.V., we would not have any time for the  4 program today. It is that extensive.  5 Steve is a Phi Beta Kappa graduate of  6 Kenyon. Then went to Harvard Law School. He is the  7 Robert A. Clifford Professor of Tort Law and Social  8 Policy at the DePaul University College of Law in  9 Chicago. His books, his monographs, his articles  10 and symposium pieces on jury issues are legion. He  11 has written numerous articles on the vanishing trial  12 phenomenon and on jury issues.  13 He was the Reporter for the American  14 Jury Project, which means he wrote the Principles.  15 So we're going to get it from the horse's mouth  16 today. He has served on a number of symposia  17 dealing with this issue.  18 When we started out talking about the  19 vanishing trial back in 2003, Steve put together not  20 only a national symposium, but also put together an  21 entire journal dealing with the subject in the  22 Journal of Empirical Legal Studies, which had a  23 number of articles, including one that was very  24 well-written by Steve on the topic.  25 In addition, he was one of the members</p>
<p>7  1 Krovatin, current partner at Krovatin &amp; Klingeman.  2 He started out his career at Lowenstein Sandler,  3 where he was a partner before going on out on his  4 own. He's a Fellow of the American College of Trial  5 Lawyers and the International Academy of Trial  6 Lawyers.  7 He has tried civil and criminal cases  8 in New Jersey state courts, federal court, other  9 districts. He's a very accomplished trial lawyer  10 and just yesterday he opened before Judge Cavanaugh  11 in a federal corruption trial involving former State  12 Senator Joseph Caniglio. Maybe you'll tell us a  13 little bit about jury selection before Judge  14 Cavanaugh today.  15 To Jerry's left is Kevin Marino, a  16 partner in Marino &amp; Tortorella. He is a complex  17 commercial litigator and criminal trial lawyer.  18 He's Editor-in-Chief of the Law Review at Seton  19 Hall. Clerk for United States District Judge  20 Maryanne Trump Barry when she was in the district  21 court and he continues to be a Director of our  22 Historical Society for the United States District  23 Court and was a member of the Lawyers' Advisory  24 Committee of the United States District Court.  25 The face that you don't find familiar</p>	<p>9  1 of the Executive Committee of the Seventh Circuit  2 Jury Project which put together the report to  3 implement at least several of the Principles that  4 you have before you. I'm really pleased that we  5 have not only our judges and trial lawyers, but also  6 Steve Landsman with us today.  7 Thank you for being with us.  8 I'm going to start out the program by  9 showing you a short satirical video which is  10 entitled "Order in the Classroom." Many of you have  11 probably seen this. It has been around for a few  12 years. But I think it really sets the table for the  13 topic on how we used to try cases and why -- not  14 necessarily in New Jersey, but why in some places we  15 are deeply in need of reform.  16 Can you cue up the video? We already  17 had technical problems.  18 (The following is a transcription of a  19 video recording entitled "National Jury Trial  20 Innovations.")  21 THE MODERATOR: And you haven't even  22 been told what this class is about.  23 Nevertheless, let me tell you what the  24 rules and procedures are. This course could take a  25 few days or a few weeks. I'm not sure. This course</p>

3 (Pages 6 to 9)

<p>10</p> <p>1 could be taught by 10 or 20 different teachers and 2 will involve a subject you know nothing about. In 3 fact, if you knew something about the subject to be 4 taught, you couldn't take the class.</p> <p>5 Each teacher will give you relevant 6 information about the subject. Information you'll 7 need for the final exam. However, I will not tell 8 you what is important and what isn't.</p> <p>9 Not only must you determine what is 10 consequential or not, you must also figure out which 11 teachers have told you the truth. And you can't 12 take notes to remind yourself of what you've heard 13 or what you thought was important.</p> <p>14 Also, you may not ask your teachers any 15 questions no matter how confusing the lectures are. 16 Nor are you allowed to talk to your fellow students 17 about anything the teachers have said even though 18 this is normally how you go through a college course 19 or life, for that matter. And while it might be 20 helpful to have a notebook for notes, course 21 materials or even an idea of what the final exam 22 might be about, it ain't going to happen. However, 23 we will let you look at some of the materials while 24 one of the teachers is lecturing on other important 25 aspects of the course.</p>	<p>12</p> <p>1 hear why the American Jury Project got started, what 2 the purpose or the Principles are and I think the 3 best person to do that would be Steve.</p> <p>4 Steve, could you give us a little 5 background and overview in a nutshell? Explain to 6 us why you think it is important that we consider 7 jury innovations even in a jurisdiction like New 8 Jersey, in the District Court of New Jersey, why we 9 are certainly light years ahead of some places in 10 the country.</p> <p>11 PROFESSOR LANDSMAN: Thank you, Dennis.</p> <p>12 As we come to the end of March and the 13 beginning of baseball season, my thoughts often turn 14 to my roots and the New York Yankees and to Yogi 15 Berra, one of the great analysts of just about 16 everything under the sun.</p> <p>17 Yogi did have some weaknesses in his 18 resume. Mostly, it had to do with academics. When 19 he was in high school, he was not known as a real 20 scholar. There was a moment when a teacher was 21 returning English essays and she paused in front of 22 Yogi's desk. She handed him a paper which had a big 23 red F on it.</p> <p>24 She said to Yogi, "Mr. Berra, don't you 25 know anything?" And Yogi said, as only Yogi could,</p>
<p>11</p> <p>1 Now, I won't be telling you what is 2 important in this course or what the rules are for 3 the final exam until all the teachers have given 4 their lectures. When I do explain the final exam, I 5 will spend only 15 or 20 minutes on it and I will 6 probably use unfamiliar or technical terms that I 7 will not explain. The final will involve only one 8 or two questions and you will have one sheet of 9 paper to write the answer on. You can then discuss 10 the course with each other. But bear in mind you 11 will all have to agree on the same answer to receive 12 credit for the course. You will also be locked in 13 this room until you reach agreement.</p> <p>14 Oh, and one more thing. Depending on 15 your answer, someone you don't even know will either 16 win or lose.</p> <p>17 Any questions? 18 (No response.) 19 Good. Let's begin. This will be a 20 rewarding experience for all of us. 21 (End of video.) 22 MR. DRASCO: Sound familiar? 23 MR. DRASCO: Okay. Sorry about that. 24 I don't think we do things quite that way anymore. 25 I think it would be nice for us just to</p>	<p>13</p> <p>1 "Teacher, I don't even suspect anything." 2 (Laughter.) 3 PROFESSOR LANDSMAN: We have gotten 4 beyond that stage with respect to juries. We know a 5 lot about jury behavior. We know a lot about how to 6 make the jury experience better, how to make the 7 jury more reliable, how to make the process more 8 efficient.</p> <p>9 And in 2004 Robert Gray, then Chair -- 10 then the President of the American Bar Association 11 put together a group and said, "Let's take a look at 12 our jury rules. Let's put what we know into new 13 principles." And that was our charge.</p> <p>14 The ABA had old principles. It had 15 three sets. They were not entirely consistent. 16 They hadn't been updated in a long time. At least 17 some of them. And they were not based on what we 18 knew. They were not based on empirical data.</p> <p>19 So President Gray created what was 20 called the "American Jury Project" and it was 21 chaired by Patricia Refo, a lawyer from Arizona. It 22 was co-chaired by Dennis Drasco, who really has been 23 laboring long and hard and nobly in the field.</p> <p>24 The overarching group of which this was 25 a part was chaired, at least as a honorary member,</p>

4 (Pages 10 to 13)

<p>14</p> <p>1 by Sandra Day O'Connor. So, it was a fairly blue 2 ribbon group. There were six judges, federal and 3 state, academics, court officials and lawyers as 4 well.</p> <p>5 Amongst the academics was perhaps the 6 leading expert and social science expert with 7 respect to the jury. Professor Shari Diamond. Also 8 included was Tom Munsterman from the National Center 9 of State Courts. Tom probably knows more about the 10 American jury than anybody else under the sun. I 11 was the Reporter, as Dennis said. So, if it doesn't 12 sound so good, you know exactly who to blame.</p> <p>13 We met regularly for more than a year. 14 We fashioned 19 Principles. We used the old A.B.A. 15 Principles where and when we could. When they had 16 been demonstrated to be effective and where there 17 were data to say that they really did work, we paid 18 close attention to some of the very best information 19 out there from the National Center for State Courts, 20 from the Manual for Complex Litigation, now in its 21 Third Edition, and from the work of a group out in 22 Arizona that we fashioned Arizona's rules into the 23 most cutting-edge in the nation.</p> <p>24 We reviewed hundreds of Law Review 25 articles and I have to plead guilty to having</p>	<p>16</p> <p>1 Association here, to the improvement of practice, to 2 raising the level, to making the system work.</p> <p>3 That was certainly true in Illinois 4 with the Seventh Circuit project. That project 5 could not have worked, however, without the tireless 6 direction of the Chief Judge of the Northern 7 District, Judge James Holderman. They brought in a 8 number of academics just to make things look good.</p> <p>9 What we did in the Seventh Circuit was 10 we selected seven Principles to try on an 11 experimental basis. Those included allowing jurors 12 to submit written questions, lawyers to present mini 13 statements during the course of the trial, jury 14 instructions being provided before summation and at 15 various other points in the trial, jury 16 questionnaires for screening in voir dire, a return 17 to the use of the 12-person jury and several others.</p> <p>18 The Seventh Circuit Jury Project Group 19 prepared materials explaining the Principles, citing 20 the case law that supported them and then the 21 district judges agreed to try them out on an 22 experimental basis.</p> <p>23 After each judge's trial, the judges, 24 lawyers and jurors were all given questionnaires. 25 How did they feel about the innovations. How did</p>
<p>15</p> <p>1 written a few of them. Social science materials as 2 well. No Principle in these 19 that you now got a 3 copy of was adopted without having a track record in 4 practice and empirical support as well.</p> <p>5 We were out to find the most effective, 6 beneficial approaches that had been used out there 7 in the United States for efficient, reliable, 8 satisfying trials.</p> <p>9 Our work product was reviewed by a host 10 of groups. There was a national conference to 11 review it. And in February of 2005 the American Bar 12 Association adopted the Principles. Since then, in 13 other words, in the last four years, they have been 14 cited dozens of times by federal and state courts 15 usually affirmatively, I'm delighted to say, and 16 have started to affect the way we conduct jury 17 trials.</p> <p>18 Perhaps the most significant effort to 19 advance the cause of the rules was undertaken, as 20 Dennis said, in the Seventh Circuit with the 21 so-called "Seventh Circuit Jury Project." That 22 project was organized by the President of the 23 Federal Bar Association in Illinois and I've got to 24 say how important Bar Associations are. How 25 important ones like this one, the Federal Bar</p>	<p>17</p> <p>1 they work. How might they be improved.</p> <p>2 Those were all collected, collated and 3 you got the product of that research before you 4 today. It is interesting. Many of the judges 5 decided to continue using the innovations after the 6 experiment was done. They thought they were worth 7 the doing.</p> <p>8 Judge Holderman has joined the American 9 Bar Association effort to spread the Principles. 10 Worked with Dennis and I and the American Jury 11 Project as it attempts to spread this gospel around 12 the country.</p> <p>13 Perhaps more important than anything 14 else about these Principles and about the Seventh 15 Circuit's work has been that if it sparked renewed 16 interest in the improvement of the jury trial and in 17 the holding of jury trials and begins, at least, the 18 first baby step towards addressing the problem of 19 the vanishing trial.</p> <p>20 To return to the place where we try 21 cases, we try them efficiently. We try them quickly 22 and we try them well.</p> <p>23 So that's what you got before you. A 24 product of that effort and we hope it is of some 25 interest and perhaps of some use.</p>

5 (Pages 14 to 17)

<p>1 Thank you. 2 (Applause.) 3 MR. DRASCO: Thank you, Steve. 4 One thing we know about our District 5 Court is that we have something called "chambers 6 rules" and we know that among our 25 District Court 7 judges there are lots of different ways of picking 8 juries and trying cases. 9 What I'd like to do is to go through 10 some of the Principles that are in the book and to 11 ask our panelists and to start with the judges to 12 see whether or not some of these things are standard 13 fare in our District Court or are they still novel. 14 Judge Hayden, let's talk about note 15 taking. Principle 13 suggests the jury should be 16 allowed to take notes during trial. Is that 17 something that you do in jury trials? 18 JUDGE HAYDEN: Yes. And I have the 19 benefit of some -- 20 JUDGE DEBEVOISE: We can't hear. 21 JUDGE HAYDEN: I do. I know Judge 22 Thompson is going to talk about that as well. I 23 also have the benefit of some responses -- 24 JUDGE DEBEVOISE: We still can't hear 25 very well.</p>	<p>18 1 to take notes. 2 The notes are not taken back to the 3 jury room until deliberations start. They are left 4 in the courtroom and the jurors are reassured that 5 they are destroyed after the trial and we're very 6 boy scout/girl scout about that. 7 We don't read the juror's notes. 8 Therein lies disaster. Because once we start 9 cheating, all of this starts disappearing. So we 10 just rip them up and throw them away. 11 Thank you. 12 MR. DRASCO: Judge Linares, do you 13 allow jurors to take notes? 14 JUDGE LINARES: I do. I've done it 15 both ways. I've allowed jurors to take notes mostly 16 in the more complex, lengthier cases. In the 17 shorter cases I leave it up to the lawyers whether 18 they have a serious desire that the jurors take 19 notes. I think there is a value to enhancing their 20 attention during the course of the trial than taking 21 notes. 22 In more complicated and lengthier cases 23 I think it also has the added value, you know, of 24 being better able to recollect things better, et 25 cetera.</p>
<p>19 1 JUDGE HAYDEN: That's a rare thing. 2 I'm always too loud. 3 Judge Thompson, Judge Cooper, Judge 4 Simandle, Judge Wigenton, Judge Kugler and Judge 5 Debevoise all supplied answers to me regarding these 6 innovations and it is wonderful to learn from your 7 colleagues and it is wonderful to learn how open a 8 lot of us are to these innovations. 9 Judge Simandle made he very good point 10 that judges who are resistant to anything that we're 11 talking about today should really try them before 12 they cross them out. Because, just as we heard, 13 judges who experiment tend to keep a lot of this. 14 And I certainly have had the experience the more my 15 jury knows -- and that has been a 180-degree turn 16 for me -- the better the experience for them, the 17 better the experience for me. And when I began it 18 was very much along the lines of if they don't know 19 anything, then nothing bad will happen, which, of 20 course, is insane. But it somehow is reassuring 21 even your beginning. 22 But all of my respondents and myself 23 say yes, we do permit the taking of notes with an 24 instruction that the note taker is no better, no 25 worse than anybody else and there is no compulsion</p>	<p>20 1 I do allow it with the caveat that 2 Katherine spoke about with regard to collecting the 3 notes at the end of the day. Not reading them. 4 Making sure they get destroyed at the end and 5 showing the jurors that no one is going to read them 6 and that they are going to be destroyed, et cetera. 7 I think there is a value to it. I've done it both 8 ways now for a long time. I think it is very 9 useful. 10 MR. DRASCO: Judge Thompson. 11 JUDGE THOMPSON: Gentlemen, I do permit 12 jurors to take notes. In fact, I just assumed that 13 is the way we do it, so I just hand out the note 14 pads to jurors in every case -- note pads and pens. 15 And just as the other judges have indicated, I tell 16 them that it is certainly not required and that 17 there is no special status for the note taker. 18 On the other hand, I can't say that 19 I've been as careful about making sure they leave 20 their note pads in the courtroom during the trial. 21 I tell them, "Don't take them home at night." 22 I have my courtroom deputy lock up the 23 note pads and put them back on the chairs the next 24 morning, advising the jurors to "put your name and 25 your number on the first page" and that's it.</p>

6 (Pages 18 to 21)

<p>22</p> <p>1 MR. DRASCO: Judge Hayden, do you have</p> <p>2 a comment?</p> <p>3 JUDGE HAYDEN: Just one other thing.</p> <p>4 Can you hear me now?</p> <p>5 One other thing. We just had a jury</p> <p>6 last week and there was some readback and the jurors</p> <p>7 said, "Can we bring our note pad down and take notes</p> <p>8 during the readbacks?"</p> <p>9 Just watching those jurors and the</p> <p>10 gratefulness with which they were able to take the</p> <p>11 notes made me see all over again how critical that</p> <p>12 is when you got a ten-point experience like that.</p> <p>13 But I never thought of doing that. You learn every</p> <p>14 time.</p> <p>15 JUDGE LINARES: From the practical</p> <p>16 standpoint, too, I look at the lawyers, what they're</p> <p>17 doing during the course of the trial. And I do</p> <p>18 think it does give them some insight as to what some</p> <p>19 jurors may think is important about a particular</p> <p>20 witness' testimony, or whatever, when they start</p> <p>21 writing furiously when the expert makes particular</p> <p>22 statements. So I think for the trial Bar it has a</p> <p>23 practical, tactical use there.</p> <p>24 Of course, there is always the danger</p> <p>25 that a juror is going to deem something more</p>	<p>24</p> <p>1 Two, my preliminary instructions.</p> <p>2 Three, on occasion selected exhibits</p> <p>3 and/or stipulations.</p> <p>4 Four, my final instructions and,</p> <p>5 Five the jurors' notes.</p> <p>6 And whether that all goes in all at</p> <p>7 once or is added to in the course of the trial could</p> <p>8 obviously be a judge's point of view. But it seems</p> <p>9 to me that shows the same kind of respect for the</p> <p>10 rigors what we're asking our jurors to do as</p> <p>11 permitting them to take notes.</p> <p>12 In terms of the respondents, Judge</p> <p>13 Cooper does it if people agree. Judge Simandle and</p> <p>14 Judge Debevoise do it as matter of choice. Judge</p> <p>15 Thompson will speak for herself and Judge Kugler</p> <p>16 said yes, but he also points out, particularly where</p> <p>17 the U.S. Attorney's office is concerned, in a large</p> <p>18 criminal case there is a lot of technological</p> <p>19 publishing of exhibits on the monitors. This could</p> <p>20 kind of be the same experience for the jurors.</p> <p>21 MR. DRASCO: Judge Linares.</p> <p>22 JUDGE LINARES: I have used them. I</p> <p>23 saw a couple of U.S. Attorneys that have practiced</p> <p>24 in front of me on lengthy tax fraud cases, et</p> <p>25 cetera, have used them in my court and it has been</p>
<p>23</p> <p>1 important just because they wrote it down and you</p> <p>2 have to give them that instruction that you have to</p> <p>3 be able to consult with all the fellow jurors. Just</p> <p>4 because you didn't write it down and someone else</p> <p>5 wrote it down -- that doesn't make it that more</p> <p>6 important and all that.</p> <p>7 I think it is a good and valuable</p> <p>8 thing. Principle 13 B. states "Jurors should, in</p> <p>9 appropriate cases, be supplied with identical trial</p> <p>10 notebooks which may include such items as the</p> <p>11 court's preliminary instructions, selected exhibits</p> <p>12 which have been ruled admissible" and stipulations</p> <p>13 of the parties.</p> <p>14 Judge Hayden.</p> <p>15 JUDGE HAYDEN: I never did it before.</p> <p>16 I'm going to start doing it now because Judge</p> <p>17 Debevoise gave a wonderful answer.</p> <p>18 In civil and criminal cases -- this is</p> <p>19 Judge Debevoise's practice and mine now -- I give</p> <p>20 jurors three-ring notebooks which are designed to</p> <p>21 contain, one, a sheet that sets forth the names of</p> <p>22 all the participants in the trial including the</p> <p>23 parties, the attorneys, the deputy clerk, the court</p> <p>24 reporter, my law clerks and my administrative</p> <p>25 assistant.</p>	<p>25</p> <p>1 very helpful, I thought, in streamlining the</p> <p>2 presentation. It also kind of prompts the Court and</p> <p>3 the lawyers to deal with a lot of issues up front.</p> <p>4 Admissibility of exhibits.</p> <p>5 Stipulations. Those things that are going to go</p> <p>6 into the notebooks. It kind of forces everybody to</p> <p>7 prepare and to do some preparation before the trial</p> <p>8 actually begins and it has been very helpful in</p> <p>9 streamlining lengthy, complicated cases.</p> <p>10 And when we do have them -- one thing I</p> <p>11 wasn't doing it the way Judge Debevoise is doing</p> <p>12 them but I think that it is certainly a good idea,</p> <p>13 something that I'd be willing, putting in my</p> <p>14 original instructions in there and the information</p> <p>15 regarding the court personnel, and so forth. I</p> <p>16 think that would be helpful. And when we have used</p> <p>17 them, we've updated it throughout the course of the</p> <p>18 trial. Once some evidence -- some exhibits become</p> <p>19 admitted into evidence, we add them in so they can</p> <p>20 refer back and forth. When they call a witness they</p> <p>21 can go back to an exhibit and the jury has it in</p> <p>22 front of them. We don't have people fumbling trying</p> <p>23 to find an exhibit and bring it back. All that. So</p> <p>24 I think it is very helpful.</p> <p>25 MR. DRASCO: Judge Thompson.</p>

7 (Pages 22 to 25)

<p>1 JUDGE THOMPSON: I agree with all of 2 what has been said. I just can't say that I've done 3 it all the time mainly because we're rushing and not 4 prepared to do all of that. But I think it is all 5 positive and I agree with all of it. 6 MR. DRASCO: Let me turn to the trial 7 lawyers. 8 Using notebooks, having jurors take 9 notes, does that change the way you present your 10 case, the way you present a witness? 11 Jerry. 12 MR. KROVATIN: I don't -- it hasn't 13 been my experience that it has changed the way that 14 I've presented anything. I do -- I picked up on a 15 comment that Judge Linares just made that I do tend 16 to notice when jurors start writing when I say 17 something. But I usually have a negative reaction 18 to that -- 19 (Laughter.) 20 MR. KROVATIN: -- like, "Oh, no. What 21 did I do now?" 22 But I think we've sort of passed the 23 corner on this issue. It has been my experience 24 that most judges now do permit jurors to take notes. 25 Call me old-fashioned. I don't like the practice,</p>	<p>26 1 note-taking process because I think Jerry is exactly 2 right. In my experience, there is usually one note 3 taker. I haven't seen more than one note taker, but 4 one note taker who is very persistent about it. 5 I also think that the note taking wanes 6 over time. I think it is a new broom sweeping clean 7 at the beginning of the trial and you see a lot of 8 things being written down. Particularly, we had a 9 trial that lasted about four months and I can tell 10 you that the notebook went by the boards after the 11 first couple of weeks. That was a criminal case. 12 Of course, we didn't get our opportunity to present 13 our case until well into the trial. So they got a 14 lot of the government's greatest hits up front in 15 that notebook. 16 And we also did find, because it was 17 quite an unusual circumstance, the jury was out for 18 19 days and a juror was actually removed for bias 19 against the government. And in that trial that 20 juror was -- she took some notes at the beginning. 21 There was a lot of dispute over the extent to which 22 she was relying on her notes. This was actually one 23 of the animating Principles there. This juror was 24 treating her notes as evidence. 25 So I like -- I like the idea of</p>
<p>27 1 myself. I do feel that from the perspective of a 2 trial lawyer that you always -- you tend to have one 3 or two jurors that are really the note takers on the 4 panel. The rest tend to do it, in my experience, 5 for a few days and then the novelty wears off. But 6 you always have one or two that seem to be taking 7 notes constantly. I always worry about the 8 distraction of that, number one, but I also do worry 9 about that notion that I think it was Judge Hayden 10 referred to, the special status that the rest of the 11 panel members would give to that juror during 12 deliberations. I'd be curious, Professor, if there 13 had been any studies about that. Whether 14 empirically that is a problem. But from my 15 perspective as a trial lawyer, I would just rather 16 they not take notes and rely on their collective 17 recollection during deliberations. 18 MR. DRASCO: Jerry, how did you get on 19 this panel? 20 Before we turn to the Professor to tell 21 us, as I know he has an answer for that. 22 Kevin, does it change your presentation 23 when jurors take notes or they have the exhibits in 24 a binder. 25 MR. MARINO: I am also uneasy about the</p>	<p>29 1 focusing them on paying attention to what is 2 happening as it goes along, but I have a certain 3 distrust of the note taking as well. 4 MR. DRASCO: The overriding theme of 5 the Principles is juror understanding. 6 Steve, can you tell us whether there 7 have been any studies and what the results are with 8 respect to juror comprehension based upon the 9 ability to take notes and to have a notebook with 10 the exhibits and preliminary instructions in it? 11 PROFESSOR LANDSMAN: The evidence is 12 pretty clear -- again, we've emphasized the longer 13 trial, the more complex trial -- that this is a 14 valuable tool mastery. If you really need to 15 know -- is it page 95 of this book, the study from 16 Mike Dann, a judge from Arizona, and Valerie Hans 17 from Cornell. Recent evaluative research on jury 18 trial innovations found that this is an effective 19 tool for learning and comprehension. 20 I would emphasize something different, 21 though, and that is really, this is a way for 22 lawyers to be advocates. This is a way to get 23 inside the jurors' heads and to influence them. 24 When you understand that it is part of 25 the reality of how jurors are going to decide and</p>

8 (Pages 26 to 29)



<p>30</p> <p>1 you start to work towards using the notes, then 2 they're effective for you.</p> <p>3 These guys are wonderful lawyers. If 4 they spend about two and a half minutes thinking 5 about how they can use these notebooks to their 6 advantage, you're going to see them turn it to their 7 advantage. It is a challenge for advocacy. It is 8 not an impediment.</p> <p>9 I think it is important to understand, 10 if we're going to have comprehension, we're going to 11 try complex cases, then there is a role for advocacy 12 in using these tools which help comprehension. Also 13 help persuade. That is the challenge to you guys.</p> <p>14 MR. DRASCO: Kevin.</p> <p>15 MR. MARINO: I think, to the extent 16 you're referring to the jury having a notebook that 17 has, as Judge Debevoise does -- has some of the 18 highlights of case, some key exhibits, and so forth, 19 I completely agree with that. I think that's 20 tremendously helpful and I think it injects an 21 opportunity for the lawyers to get their theories 22 before the jury very early in the process, which can 23 be difficult to do. That is distinct from the 24 jurors taking notes, themselves, which is, I think, 25 however -- is very problematic and actually, I</p>	<p>32</p> <p>1 for advocacy.</p> <p>2 MR. DRASCO: Let me stop there because 3 you used the words "guessing game." Let's go to the 4 next innovation, which I think is a little more 5 controversial. I didn't think the first two were 6 really that controversial. I guess I was wrong.</p> <p>7 (Laughter.)</p> <p>8 MR. DRASCO: This is a little more 9 controversial. I think it takes the guessing game 10 out of it. That is, allowing jurors to ask 11 questions. 13 C. of the Principles says that "In 12 civil cases, juries should ordinarily, be permitted 13 to submit written questions for witnesses. In 14 deciding whether to permit jurors to submit written 15 questions in criminal cases, the court should take 16 into consideration the historic reasons why courts 17 in a number of jurisdictions have discouraged juror 18 questions and the experience in those jurisdictions 19 that have allowed it."</p> <p>20 You're probably wondering why the 21 distinction. It was a very political issue and the 22 Criminal Justice section of the ABA, particularly 23 the defense Bar, was opposed initially to allowing 24 jurors to ask questions. This was the compromise to 25 get it here. But in New Jersey, through the</p>
<p>31</p> <p>1 think, undercuts what you're trying to do as an 2 advocate.</p> <p>3 MR. KROVATIN: I would beg to differ 4 respectfully. I just don't -- given how the 5 procedure is set up for note taking and the 6 confidentiality of the notes, I'm not sure how I 7 would use it to improve advocacy.</p> <p>8 PROFESSOR LANDSMAN: Well, I think you 9 said it. I think about what you said. When 10 somebody starts to write, a bell goes off in my 11 head. Now I'm going to go back to that moment at 12 the end of the day and I'm going to say: What was 13 going on there?</p> <p>14 I get that signal, so, really, now I've 15 got a picture into what the jurors are thinking 16 about. Hey, doesn't the lawyer want that?</p> <p>17 MR. KROVATIN: I think it is a guessing 18 game. I think -- as I said in the beginning, I tend 19 to think it is probably a negative thing when they 20 start writing when I say something. And I've got 48 21 other things to worry about when I'm trying a case 22 at the end of the day than to go back to the second 23 witness of the day and remember which juror was 24 taking notes about what. I'm not sure how, as a 25 practical matter, it becomes, as you said, a tool</p>	<p>33</p> <p>1 leadership of Judge Thompson, there are -- we do 2 allow criminal cases -- juror questions in criminal 3 cases. I think it is, Judge, U.S. versus Hernandez 4 that --</p> <p>5 JUDGE THOMPSON: Is that what you call 6 leadership? Getting appealed to the Third Circuit 7 Court of Appeals?</p> <p>8 (Laughter.)</p> <p>9 MR. DRASCO: But you were affirmed on 10 that, issue were you not.</p> <p>11 JUDGE THOMPSON: I was.</p> <p>12 MR. DRASCO: Tell us about it.</p> <p>13 JUDGE THOMPSON: Well, let's see. May 14 17th, 1999 the Third Circuit opinion says that 15 "Juror questioning of witnesses during the course of 16 a criminal trial is approved so long as it is done 17 in a manner that ensures the fairness of the 18 proceedings, the primacy of the Court's stewardship 19 and the rights of the accused."</p> <p>20 I've been doing it for a long time.</p> <p>21 MR. DRASCO: You've been doing it ever 22 since.</p> <p>23 JUDGE THOMPSON: No, I had been doing 24 it for a long time before. But that's 1999. I 25 certainly have been doing it ever since.</p>

9 (Pages 30 to 33)

<p>1 MR. DRASCO: That's ten years ago.</p> <p>2 Steve, what are the pros and cons? Why</p> <p>3 should we allow jurors to ask questions and what</p> <p>4 should we be afraid of?</p> <p>5 PROFESSOR LANDSMAN: The theme of all</p> <p>6 of these sections -- Principle 13 -- the idea is to</p> <p>7 enhance juror comprehension.</p> <p>8 You know, if you have a problem, if</p> <p>9 there is something you don't understand or if there</p> <p>10 is something that doesn't seem to have been provided</p> <p>11 that you want during the -- getting a chance to ask</p> <p>12 a question obviously is the way it's going to clear</p> <p>13 it up.</p> <p>14 The arguments go far further than that,</p> <p>15 though. This really is a greater picture of what is</p> <p>16 going on in at least one or several of the jurors'</p> <p>17 minds. It invites consideration of what the jury is</p> <p>18 actually thinking about. I don't think for the</p> <p>19 trial lawyer there can be a much more valuable</p> <p>20 picture.</p> <p>21 Of course, for the judge this is a</p> <p>22 powerful way to keep the jury focused on the issues</p> <p>23 that are important to emphasize when things are</p> <p>24 irrelevant and the data are very clear that when a</p> <p>25 question is asked and the jurors are told: It is</p>	<p>34</p> <p>1 I've picked out some examples from the</p> <p>2 Court files because after a juror asks a question,</p> <p>3 the question is put in the Court file. But on the</p> <p>4 screen from a bank robbery case we have the first</p> <p>5 question: "Did he ask for bottom drawer money?"</p> <p>6 So that is a fact question which a</p> <p>7 juror asked and the next -- I'll read all the</p> <p>8 questions from that one juror. Then I'll talk about</p> <p>9 how they were handled.</p> <p>10 "If yes, did he seem to know about the</p> <p>11 teller booths?"</p> <p>12 Then it reads, "If he seemed</p> <p>13 knowledgeable, wouldn't he have asked about the bait</p> <p>14 money?"</p> <p>15 Now, this question written during a</p> <p>16 bank robbery trial by a juror. That is the</p> <p>17 handwriting. The juror held up the piece of paper.</p> <p>18 My courtroom deputy went over and retrieved it. I</p> <p>19 looked at it to see whether it was a real question</p> <p>20 or whether it was just I didn't hear what that</p> <p>21 witness said. Seeing that it was a real question, I</p> <p>22 asked counsel to come to sidebar. At sidebar I</p> <p>23 showed the question to the lawyers. I said, "Do you</p> <p>24 have any objection to this?" Or maybe, "You don't</p> <p>25 have any objection to this, do you?"</p>
<p>35</p> <p>1 not relevant, you shouldn't be going down this road,</p> <p>2 they follow that instruction. They actually do. So</p> <p>3 that we can correct things before they get too far</p> <p>4 off track. We can help comprehension. It is a</p> <p>5 powerful, useful tool in an otherwise difficult</p> <p>6 area.</p> <p>7 MR. DRASCO: Judge Hayden, did you poll</p> <p>8 the judges on this one?</p> <p>9 JUDGE HAYDEN: Yes, my poll is nuts.</p> <p>10 Judge Cooper, no. Judge Debevoise sometimes,</p> <p>11 depending upon the type of case. Judge Thompson you</p> <p>12 know, yes, and Judge Kugler and Judge Simandle yes,</p> <p>13 limited to civil cases and my practice is similar</p> <p>14 limited to civil cases.</p> <p>15 MR. DRASCO: By rating the chambers</p> <p>16 rules I know that Judge Greenaway, Judge Walls,</p> <p>17 Judge Irenas -- and did you mention Judge Kugler?</p> <p>18 JUDGE HAYDEN: Yes.</p> <p>19 MR. DRASCO: -- all do it in civil</p> <p>20 cases.</p> <p>21 Judge Thompson, you have given us some</p> <p>22 examples of questions that jurors have asked in</p> <p>23 actual cases. I don't know if everyone can see it.</p> <p>24 JUDGE THOMPSON: It is little difficult</p> <p>25 to see. We've got them up on the screen.</p>	<p>37</p> <p>1 (Laughter.)</p> <p>2 JUDGE THOMPSON: And then probably the</p> <p>3 last question, which is argumentative, "If he seemed</p> <p>4 knowledgeable, wouldn't he have asked about the bait</p> <p>5 money?"</p> <p>6 That is clearly an argumentative</p> <p>7 question. I would either restate it or simply not</p> <p>8 ask that question and the lawyers would tell me</p> <p>9 whether they had any objection to the question. I</p> <p>10 would ask the question of the witness.</p> <p>11 Judge McKee in the Hernandez case that</p> <p>12 I told you about said that the judge should ask the</p> <p>13 question rather than having the lawyers ask the</p> <p>14 question. So after sidebar I asked the question.</p> <p>15 Usually I have to rephrase it because the question</p> <p>16 is asked in a less artful way. I'll restate it.</p> <p>17 Make it more of a factual question. I'll ask the</p> <p>18 witness and then I'll say, "Counsel, do you have any</p> <p>19 follow-up?"</p> <p>20 Frequently, one or both sides may wish</p> <p>21 to follow up on that question which was just</p> <p>22 answered by the witness pursuant to a juror's</p> <p>23 question. That is just how we do it. I do it in</p> <p>24 all criminal cases as well as civil.</p> <p>25 MR. DRASCO: Judge, we have some other</p>

10 (Pages 34 to 37)

<p>1 examples. Let me flip to the next one, if I can.  2 JUDGE THOMPSON: Let's see if I have  3 the same one.  4 MR. DRASCO: Here we are. That is the  5 one you have, I think.  6 JUDGE THOMPSON: Is this it?  7 MR. DRASCO: The second one.  8 JUDGE THOMPSON: Okay. The first  9 question up at the top.  10 "Why didn't any" -- bank robbery again.  11 "Why didn't any of the tellers push the alarm  12 button?"  13 See, they're right there with the case.  14 They're right into the case. That is the thing I  15 think that is most valuable about jurors' questions,  16 is the engagement. Not that the questions are so  17 great. Not that they're so relevant. It is the  18 engagement.  19 The next question, "Is this a bank  20 procedure, not to stop a robbery?"  21 (Laughter.)  22 JUDGE THOMPSON: Next question. "Did  23 she discuss the man and the description with Dana  24 before the police arrived?" In other words, any  25 contamination by talking before the police arrived.</p>	<p>38  1 ask questions that I may not ask all the questions  2 that they submit, "but don't worry about that. It's  3 helpful to us to know if there is any confusion. If  4 we don't ask your question, don't worry about that  5 because you see all these books of evidence up here?  6 There are so many rules with regard to evidence,  7 besides that witness may not know the answer, the  8 lawyers know better, which witnesses would know the  9 answer to certain kinds of questions. Don't worry  10 about whether or not your question gets asked. I'm  11 certainly not going to explain questions that don't  12 get asked. But you're helping us if you let us know  13 where there is any confusion."  14 MR. DRASCO: Judge, do you allow  15 lawyers to ask follow-up questions if you actually  16 read one of the jurors' questions in that form or a  17 rephrased form?  18 JUDGE THOMPSON: I always give the  19 lawyers an opportunity to do follow-up. Both sides.  20 MR. DRASCO: One of the criticisms of  21 allowing jurors to ask questions is that it  22 lengthens the trial. Do you find that allowing the  23 jurors to ask questions lengthens the trial  24 unnecessarily?  25 JUDGE THOMPSON: No. My trials are not</p>
<p>39  1 The last question. "Could the  2 government still give a lesser sentence?"  3 Now, you might not want them speaking  4 this kind of thing. But this is what they're  5 thinking and it's not a bad idea to know that. And  6 so --  7 MR. DRASCO: Judge, before we go on  8 to --  9 JUDGE LINARES: She didn't tell them  10 about the last question. "He's guilty as hell. Why  11 can't we not go home?"  12 (Laughter.)  13 MR. DRASCO: Judge, this is --  14 JUDGE THOMPSON: This is what -- this  15 is what gives Jerry Krovatin hypertension.  16 MR. DRASCO: Let's go to jury and  17 Kevin.  18 (Laughter.)  19 MR. DRASCO: Wouldn't you want to know  20 that the jury is thinking about these kinds of  21 things?  22 MR. KROVATIN: No.  23 (Laughter.)  24 JUDGE THOMPSON: I tell the jury at the  25 very beginning when I explain their opportunity to</p>	<p>40  1 long. It doesn't lengthen the trial. I'm sure  2 somewhat. Of course, it adds a little bit. But it  3 adds in comprehensibility. It adds in justice. It  4 adds in all the values that would seem to me truth  5 seeking, Mr. Krovatin.  6 (Laughter.)  7 MR. KROVATIN: Yes, your Honor.  8 JUDGE THOMPSON: And so yes, a little  9 bit.  10 Now, the state court system I think the  11 judges excuse the jury while the question is being  12 reviewed with the lawyers. Well, if you do it that  13 way, yes, I'm sure it does take longer. And maybe  14 that is the premium way of doing it, but I don't do  15 it that way. I do it at sidebar.  16 MR. DRASCO: Judge Linares sat in  17 Superior Court in Essex County. I don't know  18 whether the pilot program in the state court had  19 been in effect at this point.  20 JUDGE LINARES: Yes, it had started.  21 It used them in civil cases in the state court. I  22 didn't think -- I was surprised by how many -- how  23 few questions were asked. I expected that was going  24 to open the flood gates and it was going to be a  25 bunch of questions from the jurors.</p>

11 (Pages 38 to 41)

<p>1 That wasn't the case. I didn't find it 2 was lengthening the trial. 3 Concern about doing them in criminal 4 cases? You get a question about the sentencing in 5 the middle of the trial you haven't even gotten to 6 the defense case yet and they're talking about what 7 kind of sentence is this guy going to get. 8 (Laughter.) 9 JUDGE LINARES: I think that is 10 problematic. I'm sure it is problematic to Jerry, 11 but he has that problem all the time. 12 (Laughter.) 13 JUDGE LINARES: I have never done it in 14 a criminal case. I'm not afraid to do them. I 15 would put it to the lawyers, too. I would want 16 their input as to whether or not they thought it was 17 a good idea, as I do with jurors' note taking; not 18 to go back to that. 19 You'll be surprised to hear -- maybe 20 not -- most lawyers, when I ask them: You know, I'm 21 thinking about letting the jurors take notes. What 22 do you think? 23 By and large, they fall in the same 24 camp as the two lawyers that we have here. "Judge, 25 we'd rather not. We'd rather they just pay</p>	<p>42 1 This is a way for the judge to invite 2 the jury to be active and thoughtful but not to be 3 interventionists. 4 Of course, if you get in the middle of 5 a case, these questions about sentencing, that is 6 something that you do want to talk about, about the 7 presumption of innocence, about the need to keep an 8 open mind. That signal is a valuable one because 9 not addressing that is worse, I think, than at least 10 facing it and moving on with an emphasis on 11 irrelevant fairness. 12 MR. DRASCO: Kevin, you haven't weighed 13 in on this one yet. 14 MR. MARINO: Obviously, these rules of 15 engagement are of one cloth. Once you start having 16 the jurors ask questions, now the jurors are 17 communicating with one another during the course of 18 the trial. There isn't any doubt about that. 19 Right. Because we know that the juror's question is 20 coming in, that the rest of the jury knows, under 21 the procedure that Judge Thompson described -- the 22 other jurors know that the question has been put by 23 a juror. 24 So, I guess, the question is really not 25 so much one of is this something that is going to</p>
<p>43 1 attention." 2 Sometimes I let them take notes, 3 anyway. Sometimes I don't. 4 MR. DRASCO: Steve, in the Seventh 5 Circuit report the consensus was overwhelmingly in 6 favor of allowing jurors to ask questions. Were the 7 judges and the lawyers that participated, did they 8 start out that way? How did it unfold? 9 PROFESSOR LANDSMAN: It was very 10 interesting. As the question suggests, there was 11 initial hesitancy about this. It was something new 12 for a number of people. There was a sense of: Can 13 we make this work? 14 At the end there was a high level of 15 satisfaction and almost everybody who tried it 16 bought into it as something they would do in the 17 future. So that it wasn't just for the experiment 18 but, rather, it was ongoing. 19 There are interesting things that you 20 learn in practice, though, about this. How you 21 invite the jurors to ask questions, how often you 22 remind them they can ask questions. All of this 23 sort of sets a kind of tone in the case. Are they 24 participants or are they sort of marginalized or 25 sidelined.</p>	<p>44 1 aid the process in the abstract, but trying to focus 2 on what it does to the whole process. It changes 3 the process in a rather dramatic way. 4 Now you've got the jurors weighing in. 5 And believe me, they are thinking about sentencing 6 early in the case, for example, so I guess there is 7 a question in my mind is how does this all play out 8 in terms of what it is we're trying to instruct the 9 jury on? Is it a case of allowing them to ask 10 questions throughout, ruling on their questions with 11 objections, and so forth, determining they are 12 irrelevant, telling them they're irrelevant? It 13 dramatically alters the process. I don't know that 14 is necessarily a bad thing, but I can imagine a lot 15 of circumstances in which it would be a bad thing. 16 MR. DRASCO: Jerry, you're shaking your 17 head you're in agreement. 18 MR. KROVATIN: I don't feel that I have 19 enough experience with it to really have a firm 20 opinion about it. I've had one experience that was 21 in a criminal trial with Judge Greenaway. It was an 22 extended trial and he permitted the jurors to ask 23 questions. He would go to sidebar and review the 24 question with the attorneys. He would -- if it was 25 an improper question, such as sentencing, he would</p>

12 (Pages 42 to 45)

46

1 cut it off at that point.

2 Most of the time he would reshape the

3 question as was suggested and then permit the

4 attorneys to handle the question in further follow-

5 up. That seemed to be a nice way to do it. I

6 didn't have a problem with it in that trial.

7 I'm agnostic about the practice,

8 generally. But I do think there is a value to

9 greater participation in a sense that they have a

10 greater role to play. I do think that is a positive

11 value.

12 MR. DRASCO: Not being a criminal

13 lawyer, I can understand the concerns in the

14 criminal context. I have in the state court been

15 involved in most of my trials recently have allowed

16 it. I think it is a very useful tool. I think it

17 is not one that causes a great delay or burden on

18 the lawyers or the judge.

19 JUDGE THOMPSON: Can I say something?

20 MR. DRASCO: Yes.

21 JUDGE THOMPSON: After the trials I

22 always invite my jurors into my chambers to give

23 them a certificate of appreciation which our

24 automation people have so beautifully designed and a

25 letter of appreciation.

47

1 They look at my son's football pictures

2 and then I say is there anything we could do to

3 improve the process? I do not delve into their

4 deliberations. But inevitably, they just -- there

5 is an outpouring of things that they want to say and

6 I listen.

7 My law clerks who are here today come

8 into that little session and they think it is the

9 most valuable part of their clerkship. Jurors

10 inevitably say when I ask them: "Well, how did you

11 feel about taking notes? How did you feel about

12 asking questions? They are so appreciative of the

13 fact. We don't see how we could have done it

14 without taking notes? We so much appreciate being

15 able to ask questions."

16 MR. DRASCO: Okay.

17 JUDGE THOMPSON: Especially medical

18 malpractice cases, where they ask a lot.

19 MR. DRASCO: Let's move on to Principle

20 14, which talks about instructions -- jury

21 deliberations and instructions. Principle 14 A.

22 "All instructions to the jury should be in plain and

23 understandable language" and, "B. Jurors should be

24 instructed with respect to the applicable law before

25 or after the parties' final argument."

48

1 Judge Hayden.

2 JUDGE HAYDEN: Interestingly, all of my

3 respondents give their instructions before the

4 closing argument.

5 Interestingly, too, I think Judge

6 Cooper, Judge Debevoise, I'm not sure about Judge

7 Simandle, have the written instructions handed out

8 and the jurors read along with the judge as the

9 judge delivers the instructions.

10 There was another thing about the kind

11 of language that is used. Now that we have pattern

12 instructions, I think all of us are reluctant to

13 stray from the language that has been worked over

14 carefully by the Committee. So that particular

15 Principle sort of was glossed over in terms of our

16 preliminary discussion.

17 MR. DRASCO: Steve, what is the result

18 of the Seventh Circuit project on the instruction

19 issue?

20 PROFESSOR LANDSMAN: There was -- I

21 think the judge has got it just right.

22 There was a general sense that it is

23 really best to provide written instructions to get

24 people to be able to engage them with, to be able to

25 look at them. It is best to give those instructions

49

1 before the closing arguments by the lawyers. These

2 are just things that make sense that sort of frame

3 the intellectual challenge that the jury has got to

4 face.

5 With respect to the redrafting of

6 instructions, which was not something that the

7 Seventh Circuit judges took on, the challenge is

8 really to all of us, to the Bar, that we don't have

9 good instructions now. We don't give the jurors a

10 good sense of what the law is and how to understand

11 it. We've got to do better.

12 I think we're just beginning the

13 conversation about how to make instructions

14 available to people so they can understand them and

15 language that makes sense. Not case law. But

16 language that people use every day. That challenge

17 has not been addressed, though.

18 MR. DRASCO: Jerry and Kevin, do early

19 instructions before you sum up -- does that help you

20 in your presentation and your summation?

21 MR. KROVATIN: Yes, without a doubt. I

22 think it is helpful, too, to jurors, and

23 particularly from a criminal defense perspective.

24 There is such an overwhelming momentum

25 in favor of the government coming into a criminal

13 (Pages 46 to 49)

<div>50</div> <div>1 case with the indictment and just the very facts of</div> <div>2 the trial. I think it is helpful if the jurors are</div> <div>3 instructed as to what the Principles at stake are in</div> <div>4 the case so they have a better framework and a more</div> <div>5 balanced framework of what they're going to be asked</div> <div>6 to decide.</div> <div>7 MR. DRASCO: Kevin.</div> <div>8 MR. MARINO: I completely agree with</div> <div>9 that. I don't know why they were ever given after</div> <div>10 the summations. They help to frame the things that</div> <div>11 you're going to talk about in summation. The things</div> <div>12 that are important to the decision of the case.</div> <div>13 I think having the instructions before</div> <div>14 summations is critical. I agree with Steve. I</div> <div>15 think the instructions are not generally good. I</div> <div>16 think they are given as a matter of course because</div> <div>17 they are the instructions that have been provided.</div> <div>18 The pattern instructions -- they've</div> <div>19 been upheld on appeal. That is a lot of the</div> <div>20 concern. You don't want to have a trial that has</div> <div>21 gone on for weeks or months go down the drain on bad</div> <div>22 instruction. The default position is to go to the</div> <div>23 pattern instruction.</div> <div>24 The problem is that some of the</div> <div>25 critical concepts are not really unpacked and not</div>	<div>52</div> <div>1 suggestion and found it very useful, especially in a</div> <div>2 longer trial, to tell the jurors where a witness</div> <div>3 fits, to explain why an expert is being called and</div> <div>4 what, exactly, is likely to come from that</div> <div>5 information is incredibly valuable. Often it was</div> <div>6 once a week at the beginning of a new week of trial</div> <div>7 where we've been, where we are going. It keeps</div> <div>8 everybody focused on what the lawyers think is the</div> <div>9 theory of their case, the context into which various</div> <div>10 testimony fits.</div> <div>11 It was very enthusiastically embraced,</div> <div>12 but particularly in longer cases.</div> <div>13 MR. DRASCO: Judge Hayden. Do we do</div> <div>14 that at all? Do any of our judges do that, in New</div> <div>15 Jersey?</div> <div>16 JUDGE HAYDEN: I don't think so. I did</div> <div>17 not specifically ask my respondents on that. I</div> <div>18 don't know any anecdotal suggestions that it is</div> <div>19 going on.</div> <div>20 MR. DRASCO: Judge Linares.</div> <div>21 JUDGE LINARES: Never used it. I</div> <div>22 haven't heard of anybody using it. I'm afraid of</div> <div>23 it. I think it will create -- I think that will</div> <div>24 lengthen the trials.</div> <div>25 As you can imagine, there are going to</div>
<div>51</div> <div>1 really expressed in any meaningful way at all by</div> <div>2 those pattern instructions.</div> <div>3 The presumption of guilt in a criminal</div> <div>4 case is overwhelming. It has to be acknowledged</div> <div>5 that there is a presumption of guilt notwithstanding</div> <div>6 what the Constitution says and you have to not have</div> <div>7 that presumption of guilt.</div> <div>8 If you're thinking as a juror, which</div> <div>9 they are, why is this guy on trial if he didn't do</div> <div>10 anything? Did the government just single him out?</div> <div>11 If that's what is in your mind, that is called</div> <div>12 "presuming guilt." That needs to be exploded and we</div> <div>13 are not exploding it, we're enhancing it. That is a</div> <div>14 huge problem.</div> <div>15 MR. DRASCO: I think we, at least, have</div> <div>16 a consensus on this one.</div> <div>17 Let's talk about interim argument of</div> <div>18 counsel.</div> <div>19 Steve, what is the rationale for</div> <div>20 allowing lawyers to argue at intervals in the case,</div> <div>21 at milestones, on issues; expert witnesses, et</div> <div>22 cetera?</div> <div>23 PROFESSOR LANDSMAN: Again, the thing</div> <div>24 to emphasize here is comprehension and context and</div> <div>25 the lawyers in the Seventh Circuit love this</div>	<div>53</div> <div>1 be all kinds of argument about what can and cannot</div> <div>2 be said. All kind of histrionics with the lawyers.</div> <div>3 I haven't used it. I'm not inclined to use it.</div> <div>4 I'll have to think about it a little more. Not</div> <div>5 done.</div> <div>6 MR. DRASCO: Judge Thompson.</div> <div>7 JUDGE THOMPSON: I'll be inclined to</div> <div>8 use it. I don't think I've done it. You know,</div> <div>9 bifurcate cases and have two summations there. I</div> <div>10 don't see any problem. I think it is probably a</div> <div>11 good idea if it's a lengthy trial to kind of</div> <div>12 summarize things as we're going along. I think you</div> <div>13 probably would give each side a limited amount of</div> <div>14 time. Give each side ten minutes. Give each side</div> <div>15 15 minutes. I think it is probably a good idea.</div> <div>16 MR. DRASCO: Let's turn to the trial</div> <div>17 lawyers. What do you think?</div> <div>18 MR. KROVATIN: I've had one experience</div> <div>19 with it. That was in the state court criminal trial</div> <div>20 in front of Judge Ben Cohen, who is here with us</div> <div>21 today when he was sitting Criminal in Essex County</div> <div>22 before he went on to the Chancery bench.</div> <div>23 It was a lengthy criminal trial. There</div> <div>24 were lengthy jury deliberations. I think the jury</div> <div>25 was out close to a month and there was some delay in</div>

14 (Pages 50 to 53)

<p>54</p> <p>1 their deliberations because of the Jewish holidays.</p> <p>2 There was a break.</p> <p>3 We also had an indication that they had</p> <p>4 reached a partial verdict which he did not take,</p> <p>5 thank God. And they were close to deadlock on the</p> <p>6 remaining counts.</p> <p>7 Judge Cohen then permitted, with the</p> <p>8 consent of both sides, he gave us each ten minutes</p> <p>9 to redo our summations. We did that. I thought it</p> <p>10 was very -- I was always eager to advocate,</p> <p>11 Professor. And I don't know. I don't know</p> <p>12 anecdotally whether it had an impact. But it seemed</p> <p>13 like the right thing to do. Judge Cohen researched</p> <p>14 it. He might have some insight into the law on this</p> <p>15 issue.</p> <p>16 MR. DRASCO: He's shaking his head.</p> <p>17 No.</p> <p>18 (Laughter.)</p> <p>19 MR. KROVATIN: The question I would</p> <p>20 have is where are the milestones? In other words,</p> <p>21 what point, especially in a criminal case, where</p> <p>22 would it be appropriate to do that?</p> <p>23 MR. DRASCO: Steve, can you tell us</p> <p>24 from the Seventh Circuit results.</p> <p>25 PROFESSOR LANDSMAN: First, the judge</p>	<p>56</p> <p>1 limit trials and some judges in the District</p> <p>2 experimenting with the chess clock.</p> <p>3 Are you aware of that?</p> <p>4 JUDGE HAYDEN: I think that Judge</p> <p>5 Hochberg done that and expresses a lot of</p> <p>6 satisfaction with it. In patent cases lawyers</p> <p>7 sometimes suggest it. It's found its use.</p> <p>8 MR. DRASCO: Judge Linares.</p> <p>9 JUDGE LINARES: I haven't used it.</p> <p>10 I felt I could control the trial and</p> <p>11 the timing of the trial without having to use the</p> <p>12 clock. I think it is really sort of honors with the</p> <p>13 lawyers. I haven't used it. I give them general</p> <p>14 time limits. "Counsel, I don't want repetition. I</p> <p>15 don't want to go over the same thing." That kind of</p> <p>16 thing.</p> <p>17 I can stop it rather than just putting</p> <p>18 on a clock. I've certainly done it in bench trials,</p> <p>19 but not in jury trials.</p> <p>20 MR. DRASCO: Do you impose time limits</p> <p>21 on summation, depending on the length of the trial,</p> <p>22 an hour or two hours or three hours?</p> <p>23 JUDGE LINARES: What I do is I ask the</p> <p>24 lawyers how long they will be. If it sounds</p> <p>25 unreasonable, then I cut it. Generally, I don't.</p>
<p>55</p> <p>1 was absolutely right. This is a limited-time thing.</p> <p>2 You're given five minutes or you're given ten</p> <p>3 minutes. Generally, it was in the longer trials and</p> <p>4 it was a once-a-week kind of thing that sort of was</p> <p>5 framing context and was intended to be non-</p> <p>6 argumentative.</p> <p>7 It was in the pattern of opening</p> <p>8 remarks sort of what the evidence will show where</p> <p>9 this fits into the process. It wasn't to be viewed</p> <p>10 as a moment for advocacy, although good lawyers are</p> <p>11 always going to use it both ways. But there was a</p> <p>12 general sense that it made things fit together more</p> <p>13 intelligently.</p> <p>14 MR. DRASCO: Kevin, do you want the</p> <p>15 last word on this one?</p> <p>16 MR. MARINO: I love the idea,</p> <p>17 particularly if it is going to be as non-</p> <p>18 argumentative as openings. That would work okay for</p> <p>19 me.</p> <p>20 (Laughter.)</p> <p>21 PROFESSOR LANDSMAN: How they're</p> <p>22 supposed to be.</p> <p>23 MR. DRASCO: We talked about trial</p> <p>24 length. Let's talk about time limits.</p> <p>25 Judge Hayden, we've heard about time</p>	<p>57</p> <p>1 MR. DRASCO: Judge Thompson.</p> <p>2 JUDGE THOMPSON: I think I follow Judge</p> <p>3 Linares' pattern. I've never actually put a clock</p> <p>4 there and said: You have exactly 15 minutes</p> <p>5 exactly.</p> <p>6 But, on the other hand, I do a lot of</p> <p>7 exhortation and how long are you going to be.</p> <p>8 (Laughter.)</p> <p>9 JUDGE THOMPSON: Certainly, ten minutes</p> <p>10 should be enough for an opening statement. Things</p> <p>11 like that.</p> <p>12 MR. DRASCO: Steve, the Seventh Circuit</p> <p>13 was inconclusive on this one. What was the -- what</p> <p>14 do you get from that?</p> <p>15 PROFESSOR LANDSMAN: I think that the</p> <p>16 thing to emphasize here is if you look at the data,</p> <p>17 the median trial in federal court is still a certain</p> <p>18 fixed number of days. It's two and a half or three</p> <p>19 days when you clump everything together.</p> <p>20 But if you look at the extremes, there</p> <p>21 are a substantial number of cases which are going</p> <p>22 longer. The question is how do you impose</p> <p>23 reasonable discipline in those cases? How do you</p> <p>24 make them work?</p> <p>25 I think that the most dramatic example</p>

15 (Pages 54 to 57)

<p>1 is not drawn from the American judiciary, but the 2 Nuremberg trial of all of the Nazi crimes was 3 concluded in nine months to a general worldwide 4 satisfaction. Slobodan Milosevic was tried for four 5 years inconclusively and died during the trial. 6 If you do not impose discipline on your 7 trials, they're going to go forever. The idea that 8 you could allow a trial to linger is a terrible 9 idea. It affects negatively the jurors. It affects 10 negatively the process of justice. 11 Whatever is going to produce effective 12 focus on the need to remain efficient and to be done 13 with the case in a reasonable amount of time seems 14 important. The judges who do it seem to like it. 15 There are a substantial number who think it is a 16 wacky idea. 17 As Dennis said, it was inconclusive We 18 didn't have enough long trials. There were 35 19 trials in the first phase of the Seventh Circuit 20 experiment. Not enough long ones to really give us 21 an answer. 22 MR. DRASCO: Kevin, you talked about a 23 really long trial. Would time limits have helped in 24 that case? 25 MR. MARINO: I think they would have.</p>	<p>58 1 JUDGE MARTINI: Reasonably. 2 MR. DRASCO: it was two years ago. It 3 was a civil case in front of Judge Martini. It 4 threatened to be a pretty long trial. It settled 5 after two weeks of trial and the judge did impose a 6 chess clock trial sort of framework on us. It 7 scared the death out of me, I have to say. But in 8 practice it worked fine, I thought. 9 Because Judge Martini was flexible 10 about the limits that he put and I think that is 11 probably the key to it. I don't think as a general 12 matter it is great idea. Because I think there are 13 so many variables and changing things that happen in 14 a trial. 15 The trial takes on such a life of its 16 own that it is impossible to say at the outset each 17 side will have 14 days to present their case. 18 So I think the key word here has to be 19 flexibility. I agree totally with Kevin, there is 20 no problem if the judge says how long are you going 21 to be in your summation and sets some reasonable 22 rules that apply to both sides. But I think the 23 theoretic concept of a chess clock trial I think is 24 really unworkable, but in practice it worked fine. 25 MR. DRASCO: Let's talk about something</p>
<p>59 1 One thing that did help in that case 2 that hasn't been discussed specifically today. The 3 judge required the government at the beginning of 4 each week to set forth what its intentions were with 5 respect to that week. The order of witnesses, how 6 long it expected each to go and what the general 7 themes were. 8 It was kind of broken into pneumatic 9 pieces. That worked, I thought, well. 10 In terms of openings and summations -- 11 this was in the Eastern District of Pennsylvania -- 12 the Court did impose some broad limitations on them. 13 They were very reasonable and it was done in 14 consultation with the lawyers. 15 I thought that worked well. You have 16 an hour for opening and I think the closings were an 17 hour and a half or something like that. I thought 18 that worked well. I do think it is important. 19 MR. DRASCO: Jerry, you had a trial 20 last year before Judge Martini where you talked 21 about at least time limits. Did you stick to them? 22 Were you forced to stick to them? 23 MR. KROVATIN: Did we stick to them? 24 MR. DRASCO: Judge Martini is in the 25 first row. Remember that.</p>	<p>61 1 that is really controversial. I think Kevin and 2 Jerry mentioned that allowing jurors to ask 3 questions may invite them to discuss the evidence 4 before deliberations. 5 Principle 13 F. states, "Jurors in 6 civil cases may be instructed that they will be 7 permitted to discuss the evidence among themselves 8 in the jury room during recesses from trial when all 9 are present, as long as they reserve judgment about 10 the outcome of the case until deliberations 11 commence." 12 Steve, is this in place anywhere in the 13 United States at the moment? 14 PROFESSOR LANDSMAN: Well, everything 15 crazy starts in the west. Arizona has been doing it 16 now for several years. Not only did they decide to 17 do it. They decided to observe how it worked and 18 they videotaped a series of 50 cases in which 19 deliberations were held. 20 I had very substantial concerns about 21 the videotaping. What they found was it actually 22 does work. That it produces robust discussion, that 23 jurors don't get locked into a position that they 24 then won't change, but rather, again, helped with 25 comprehension, helped with engagement. Arizona</p>

16 (Pages 58 to 61)



62

1 stuck with it.

2 MR. DRASCO: Let's hear from the

3 judges.

4 Judge Hayden, what do you think of this

5 one?

6 JUDGE HAYDEN: I don't know. That's

7 all I'm going to say.

8 MR. DRASCO: Judge Linares.

9 JUDGE LINARES: I don't know, either.

10 It is such a radical thing. I really have to think

11 about that. My gut tells me I don't think this is a

12 good idea. Especially the way you present the

13 evidence, you know, with one side going first and

14 then the other you begin to discuss it early? I

15 think you're leading to a lot of problems.

16 I'm really not that sure about which

17 way I would go on that. I certainly haven't tried

18 it, nor do I intend to try it in the near future..

19 I'll let Judge Thompson do it first. Then if she

20 doesn't get reversed --

21 MR. DRASCO: Judge Thompson, did you

22 ever think of this one?

23 JUDGE THOMPSON: I thought of it. I

24 knew about the Arizona experiment. I'm not sure. I

25 just have never done it. I'm not totally opposed to

63

1 it. I think it kind of makes sense. It certainly

2 is a lot better than the bugaboo that is facing us,

3 March 23rd, 2009 editorial page when jurors seek

4 evidence on line.

5 Let's face it. Jurors may tweak Face

6 Book, Google, Friend Feed, dig and search while on

7 jury duty. That is the bugaboo.

8 MR. DRASCO: In fact, I was going to

9 ask everyone what they thought about it. That was

10 in the New York Times last week. What do you do

11 with a juror that is doing his own research on the

12 Internet? How do you prevent that?

13 Judge Hayden.

14 JUDGE HAYDEN: Tell them not to. Tell

15 them you know they can. Tell them not to and you

16 remind them not to and you hope.

17 JUDGE LINARES: That's what I do.

18 JUDGE THOMPSON: You certainly tell

19 them beforehand at the very beginning of the case.

20 During your initial jury instructions.

21 But now what do you do when they

22 violate? That is the problem.

23 MR. DRASCO: Any suggestions from the

24 trial lawyers?

25 MR. MARINO: I love the idea of having

64

1 the jurors speak to one another during the course of

2 the trial.

3 Taking that one first, I think the

4 prohibition on juror communications during the

5 course of the trial is about as effective as

6 prohibition was.

7 (Laughter.).

8 MR. MARINO: I think they're doing it.

9 To make -- to keep it as an elicit activity is a

10 mistake. I don't see the harm in it. It is

11 interesting that that's something that those who are

12 very open to note taking, and so forth, are

13 resistant to.

14 I think if you think about it, the

15 jurors are most certainly communicating verbally or

16 non-verbally with one another throughout the course

17 of the trial, particularly a long trial. I don't

18 see the harm in having them speaking to one another

19 during the course of it.

20 MR. DRASCO: As long as there are

21 ground rules?

22 MR. MARINO: As long as there are

23 ground rules. Sure.

24 MR. DRASCO: Jerry.

25 MR. KROVATIN: I agree with Kevin on

65

1 that. I think they do it, anyway. I think the

2 ground rules are important. They have to be

3 instructed that they are not to reach any decisions

4 or conclusions. They have to keep an open mind,

5 certainly.

6 I think the whole issue of BlackBerrys

7 and iPhones and the Internet and juror access to

8 information outside the four corners of the

9 courtroom is a huge problem.

10 I agree with the judges. I don't know

11 how to enforce it and what you do about breaches and

12 violations. But it is a problem. It is going to

13 become a bigger one.

14 MR. DRASCO: We're coming to the end of

15 our time.

16 I want to cover on other topic. Let's

17 go full circle back to the beginning. We opened

18 with and Steve talked about the purpose of the

19 Principles and having its genesis in the vanishing

20 trial and criticism from corporate America that

21 juries aren't capable of dealing with complex

22 issues. Let's go to ADR, take cases away from

23 jurors. The way we try cases in the District Court

24 in New Jersey. Do jurors get it right, should we

25 have confidence in our jury system?

17 (Pages 62 to 65)

<p>1 Judge Hayden. 2 JUDGE HAYDEN: Oh, yeah. It is a very, 3 very stressful time for lawyers and judges. Picking 4 a jury is real pick-and-shovel; dreary work at 5 times. 6 But in the course of the interaction 7 between myself and the jurors, seeing them come, 8 seeing them go, sweating through the deliberation 9 process and just having that feeling of the ship 10 came in. We all grow. I think that there is 11 sometimes negative experiences but it is an 12 intensely human experience. Ninety- 13 five percent of the world's jury trials are tried in 14 the United States because we believe in the system. 15 Every time I have a trial I believe in it more. 16 MR. DRASCO: That is good to hear. 17 Judge Linares. 18 JUDGE LINARES: I agree. I think the 19 jury system is alive and well. I think they get it 20 right 99 percent of the time. 21 You know, there is always that runaway 22 juror -- jury or some jury that doesn't get it 23 right. By and large, I think the system works. I 24 think when it doesn't work, there are ways to fix 25 it. I think it is the best system in the world. If</p>	<p>66 1 to the jury, the jury is perfectly capable of 2 answering and answering well. But I think it is 3 fanciful to think that without appropriate and very 4 thoughtful guidance they'll be able to do their job 5 effectively. 6 MR. DRASCO: Jerry. 7 MR. KROVATIN: My experience is mostly 8 in the criminal area. Obviously, the jury is 9 invaluable there. I just wish they'd get it right 10 more often. 11 (Laughter.) 12 JUDGE LINARES: The clients would. 13 MR. DRASCO: All right. 14 Before I give Steve the last word, let 15 me just state that the goal of programs like this is 16 to educate everyone on what the purpose of the jury 17 system is and what the purpose -- what the goal of 18 the improvements that are suggested by the American 19 Jury Project are. And that is to improve juror 20 understanding of the facts and the laws so they can 21 reach better decisions. If they reach better 22 decisions, it will enhance confidence in the jury 23 system. 24 So with that, Steve, would you like to 25 kind of have the last word and thank the audience</p>
<p>67 1 we can improve to it, we certainly keep it. 2 MR. DRASCO: Judge Thompson. 3 JUDGE THOMPSON: Well, I think it is a 4 work in progress. I think that it is something that 5 we should try to bring our best thoughts and our 6 best ideas in order to make it a comprehensible, 7 reasonable, intelligent process. 8 Sometimes as I watch jury selection and 9 the exercise of peremptory challenges, I am 10 discouraged to see the effort to remove from the 11 jury panel people who are better educated, people 12 who had broader experience. That is a bad thing 13 and I see it at work. 14 So I'm not as sanguine as some others 15 might be, but I think we should work on it. I 16 consider it valuable and something I respect. 17 MR. DRASCO: Kevin. 18 MR. MARINO: I think it works, 19 generally. 20 I think the jurors are as good as what 21 is given them. That is why I think this discussion 22 is a critically important discussion because we're 23 talking about educating jurors. We're talking about 24 rethinking some concepts that really have outlived 25 their usefulness. To me the questions that are put</p>	<p>68 1 for becoming disciples to this cause. 2 PROFESSOR LANDSMAN: Absolutely. I 3 think that Dennis and I viewed it as the Lord's 4 work. 5 When we talk about this and when we 6 hear the judges say all the encouraging things they 7 do. It is an inspiration to return to the system 8 with new energy and renewed hope. We're the 9 stewards of this system. Where it winds up is 10 something we're in charge of. If we misuse voir 11 dire, if we take off people of color, if we take off 12 people who are intelligent, that is our fault. That 13 is our corruption of the system. 14 It is unacceptable. As we've created a 15 broader pool where everybody has to serve, we make 16 that less effective. 17 With respect to democracy. If we 18 believe in it, we've got to live it. That is what 19 the jury is really about. It is interesting because 20 the jurors are our best ambassadors. The data on 21 this are absolutely clear. 22 When jurors leave their experience 23 having adjudicated a case, they are the best 24 ambassadors for the system. Some 80 percent of them 25 say it was an invaluable experience. I would do it</p> <p>69</p>

18 (Pages 66 to 69)

70  
1 again. I felt it was really critical. That speaks  
2 for the value of the system. It is giving them the  
3 opportunity. We stewards have that obligation.  
4 We're, I hope, rolling up our sleeves to make it a  
5 better process in the future.  
6 MR. DRASCO: Okay. Before I thank the  
7 panel, two bits of housekeeping.  
8 Number one, there is CLE credit for  
9 both programs today. Ginny Whipple will have that  
10 information available at the desk at the conclusion  
11 of the second program.  
12 Second bit of housekeeping, please stay  
13 for lunch. Judge Greenaway is going to give an  
14 absolutely tremendous, very short talk that will be  
15 inspiring to us on what we can give back to the  
16 profession. It comes from an article which you now  
17 have in front of you that was -- he wrote and it was  
18 published in Litigation Magazine.  
19 Please stay for lunch and for Judge  
20 Greenaway.  
21 Let me thank our fabulous panel,  
22 Judges.  
23 (Applause.)  
24 MR. DRASCO: And lawyers and Steve.  
25 (Applause.)

71  
1 MR. DRASCO: Hopefully, this is just  
2 the beginning of this discussion in our District.  
3 Obviously, it is ongoing. It is a work in progress,  
4 as Judge Thompson said.  
5 We will take a ten-minute break. Then  
6 I'll turn it over to my good friend Jeff Greenbaum  
7 for our rules program.  
8 MR. GREENBAUM: Good morning, everyone.  
9 My name is Jeff Greenbaum and today we're going to  
10 examine the federal rule making process and rule  
11 changes that are about to occur that will affect  
12 everyone's practice.  
13 First, the rule making process is a  
14 painstaking one that tries to take into account a  
15 wide variety of views. It also seeks improvement to  
16 accomplish the purpose expressed in Rule 1 of the  
17 Federal Rules of Civil Procedure, which is to secure  
18 the just, speedy and inexpensive determination of  
19 every action and proceeding.  
20 But are the rules accomplishing this  
21 purpose? We are not the only ones raising these  
22 questions. In May of 2010 the Advisory Committee on  
23 Civil Rules is convening a conference at Duke Law  
24 School to examine the rising cost of litigation and  
25 the reasons for delay.

72  
1 This conference may very well serve as  
2 incubator for future rule changes. But in the more  
3 immediate future we are going to look today at two  
4 rule changes that are about to occur and will have  
5 an immediate impact.  
6 The first summary judgment. For better  
7 or worse, depending on your point of view, summary  
8 judgment motions are increasingly playing a role in  
9 every case. Wholesale changes are about to take  
10 place to Rule 56 and we will look at those changes  
11 and see whether they will improve our practice.  
12 Second, experts. Experts play a role  
13 in an increasing number of cases and generate a not  
14 insubstantial part of litigation expense. Changes  
15 are about to occur there, too. And to examine these  
16 questions we have put together a wonderful panel of  
17 experts who I will now introduce.  
18 The first, to my right people with whom  
19 you're all familiar. First starting from our south  
20 and traveling north, we have the Honorable Jerome B.  
21 Simandle, United States District Judge from Camden,  
22 a former Magistrate Judge, former Assistant U.S.  
23 Attorney.  
24 Sitting next to him, the Honorable  
25 Freda L. Wolfson, our District Judge in Trenton,

73  
1 also a former U.S. Magistrate Judge, and next to her  
2 the Honorable Michael A. Shipp, a Magistrate Judge  
3 in Newark who was appointed in October 2007. Prior  
4 to that judgeship was in the Attorney General's  
5 office in charge of an 80-person unit in the  
6 Consumer Fraud Group and then was counsel to the  
7 Attorney General. He has other experience starting  
8 with clerking on our Supreme Court in New Jersey.  
9 Then to my left -- I'm not discussing  
10 political leanings -- we have Greg Joseph from the  
11 Greg Joseph law firm from New York. Greg is a  
12 Fellow of the American College of Trial Lawyers and  
13 soon to be President. Also, like our President of  
14 this association, Dennis Drasco, he's a former Chair  
15 of the 70,000 member ABA section of litigation.  
16 Greg is relevant today -- he is a member of the  
17 Advisory Committee on Civil rules appointed by Chief  
18 Justice Rehnquist in 1993 and served in that  
19 capacity for six years. He also was appointed by  
20 our late Chief Judge Edward Becker to Co-Chair the  
21 Third Circuit Task Force on selection of class  
22 counsel.  
23 Greg was listed at least in one  
24 publication as one of ten most highly regarded  
25 commercial litigators in the world. Greg also is a

19 (Pages 70 to 73)

<p>74</p> <p>1 frequent commentator on the Federal Rules and 2 several of his writings are in your materials. 3       Next to Greg is Anne M. Patterson, 4 partner at Riker, Danzig, Scherer, Hyland &amp; 5 Perretti. Anne is also a very well-known -- was 6 listed in Chambers as one of the outstanding 7 commercial litigators, particularly for products 8 liability experience and is regularly counted among 9 the top commercial litigators in New Jersey. And as 10 Dennis mentioned, Anne is one of our two Co-Chairs 11 of our Association's Federal Rules Committee. 12       Then last, but not least, our other 13 co-Chair of our Federal Rules Committee, Peter 14 Pearlman of the firm of Cohn, Lifland, Pearlman, 15 Herrmann &amp; Knopf in Saddle Brook, New Jersey. 16       Peter does plaintiffs' class action 17 work. He also practices in the area of commercial 18 litigation and business transactional work. Peter 19 is a member of our Lawyers Advisory Committee and, 20 as Dennis mentioned, was kind enough to travel to 21 San Francisco to testify and present this 22 Association's views on the recent rule changes to 23 Rule 26 and did a fantastic job in that 24 presentation. He was the final witness and the 25 final thoughts that the committee will have as they</p>	<p>76</p> <p>1 problem and part of the problem is the way we as 2 Americans address problems. 3       Now, let me give you an example from 4 the space program. We had a problem when we were 5 sending men and women into space. That was 6 weightlessness. How could you get a pen to write in 7 space -- because there is no gravity to pull the ink 8 down? So we spent millions of dollars and put teams 9 of engineers together and we came up with the 10 perfect astronaut pen that can write in any 11 direction. 12       The Russians took a different approach. 13 They used a pencil. We have a process in place that 14 comes to a perfect solution, cost aside, for every 15 problem and it creates a very expensive -- 16 absolutely wonderful but very expensive process. 17 And I have a little article that talks about some of 18 these issues in the materials. But we have a 19 process that comes to solutions for individual 20 problems and we don't even foresee some of the ways 21 that together they'll create additional problems. 22       For example, in 1986 the Supreme Court 23 decided the summary judgment trilogy. There is some 24 debate whether the trilogy was a cause or effect of 25 the change or whether it is really managerial</p>
<p>75</p> <p>1 finalize their recommendations next month in the 2 next two or three weeks. 3       Now, with that said, I just want to 4 make a comment about our materials. You have in the 5 materials a bound book, which is really a primer on 6 the rules process. First, it has all of the rule 7 changes that are about to go into effect. It also 8 has submissions by this Association and other 9 comments. It will give you a flavor for some of the 10 hot issues in how this process takes place. With 11 that said we're going to start the process with an 12 overview. 13       We have our Federal Rules process. I'm 14 going to ask Greg Joseph to tell us how has this 15 process gone off track and is it accomplishing its 16 objectives. 17       Greg. 18       MR. JOSEPH: Thanks, Jeff. 19       My comments are going to be a little 20 critical. And as Jeff mentioned, I spent six years 21 on the Rules Committee, the Evidence Committee. I 22 think the world of the people that are doing rules 23 work. These are smart dedicated people. They spend 24 a lot of time analyzing problems to come to a 25 perfect solution for each problem. We have a</p>	<p>77</p> <p>1 judging but that summary judgment wasn't being used 2 sufficiently. 3       In 1993 the Supreme Court had a 4 completely separate line of cases. The Daubert line 5 of cases. The expert-witness line of cases. 6       The question was how do you deal with 7 experts? And they came to the Daubert decision, 8 which at the time, many of us, refreshingly 9 ignorant, thought it was very liberalizing because 10 we weren't bound by crime. Then we come to the 11 expert-witness rules that are put in the civil 12 rules. 13       So we have a system now in place where 14 we have for every expert a report, a deposition, a 15 supplemental report, perhaps a supplemental 16 deposition. We have summary judgment issues. We 17 have Daubert issues. By the time someone gets to 18 trial, we know that is going to be trustworthy 19 testimony. We know it is going to be 20 extraordinarily expensive to get that testimony to 21 trial. We also know because in addition to the 22 expert-witness side, we have the summary judgment 23 side. We'll be talking about amendments to the 24 summary judgment rules which, just as the evidence 25 rules didn't really change Daubert -- they codified</p>

20 (Pages 74 to 77)

<p>78</p> <p>1 it. The summary judgment amendments won't even 2 address the standard.</p> <p>3 We have the conflux of summary judgment 4 together with the Daubert expert-witness rules and 5 we have an overwhelming number of cases now in which 6 summary judgment has become the centerpiece of 7 federal litigation.</p> <p>8 And that means many lawyers, 9 plaintiffs, will flee the federal courts to go into 10 a state court system where summary judgment is less 11 likely whether they consider they have absolutely 12 spectacular experts, they don't want to litigate it 13 for two or three days in a Daubert hearing. And we 14 can see this in many different ways.</p> <p>15 We have a problem with electronic 16 discovery, which is largely -- in fairness to 17 everybody, is a technological problem. But we 18 merged that problem when we address it onto a 19 history of sanctions rules which have been 20 vigorously enforced until at least 1983. And the 21 key in federal court is really not getting 22 electronic discovery. It is finding something that 23 is missing so you can get sanctions and that is 24 another whole area for litigation.</p> <p>25 I love the federal courts. We have to</p>	<p>80</p> <p>1 Secondly, there is a proposed rewriting 2 of the summary judgment standard. 56(a) under the 3 new rule would provide "The Court should grant 4 summary judgment if there is no genuine dispute as 5 to any material fact and a party is entitled to 6 judgment as a matter of law."</p> <p>7 There is a vigorous debate underway -- 8 it won't surprise anyone -- between those who 9 believe the appropriate word is "should" grant 10 summary judgment and those who believe the word 11 "must" should be substituted for "should" and the 12 jury, as it were, is still out on that point.</p> <p>13 Third, there is a procedural change 14 that would not substantially affect our practice 15 here because Local Rule 56.1 in this district 16 provides a very similar process. And that is 17 statements of undisputed fact would be part of the 18 federal rule. The movant would begin the process 19 with the filing of a motion and a statement 20 enumerating only those material facts that cannot 21 genuinely be disputed and would entitle the movant 22 to summary judgment.</p> <p>23 They would file a brief. The opposing 24 party would counter with the response that either 25 accepts or rejects the movant's proposed statement</p>
<p>79</p> <p>1 recognize we're driving a Bentley when we probably 2 need to be in a Prius right now.</p> <p>3 Jeff.</p> <p>4 MR. GREENBAUM: Thank you, Greg.</p> <p>5 Let's examine some of those issues.</p> <p>6 First, to set the stage, we're going to look at the 7 Rule 56 changes and then we'll take them apart and 8 try to examine each one of them.</p> <p>9 Anne Patterson, will you give us a 10 brief overview of what we can expect in this area?</p> <p>11 MS. PATERSON: Sure. We're going to be 12 talking about five major changes that are proposed 13 for Rule 56. The first deals with timing of summary 14 judgment motions. The proposed Rule 56(b) would 15 require parties to file summary judgment motions no 16 later than 30 days after the close of all discovery 17 unless the local rule or the court order provides 18 otherwise. Then the opposing party would have 21 19 days to respond and the movant would have 14 days to 20 reply.</p> <p>21 This rule would tend to shift the 22 summary judgment process earlier in the life of the 23 case than it is in the practice of some districts. 24 But, obviously, leaving room for variations in 25 individual cases.</p>	<p>81</p> <p>1 of material facts and then the opposing party then 2 would add material facts that he or she believes 3 would preclude summary judgment and then the reply 4 would deal with the new material facts. There would 5 be an exchange of material facts that would be 6 grafted into the Federal Rule under this new 7 process.</p> <p>8 And in a related fourth change would be 9 the process by which a fact may be either accepted 10 or disputed either for purposes of the motion only 11 or for purposes of the entire case. In other words, 12 a party responding to a summary judgment motion 13 would have the option to say I am disputing or 14 accepting this fact only for purposes of the motion; 15 not for purposes of the entire case.</p> <p>16 That would be a significant change.</p> <p>17 And, finally, the proposed rule would 18 give District Courts very broad discretion in terms 19 of what to do when a party fails to respond in 20 accordance with the rule to a statement of material 21 facts. The party could be given a second chance to 22 get it right. The Court can consider the fact to be 23 undisputed for purposes of the motion. The Court 24 can grant summary judgment. And then there is a 25 catch-all that the Court can issue any other</p>

21 (Pages 78 to 81)

<p>1 appropriate order. So the discretion, obviously, 2 will be complete with the District Court. 3 So those are the five potential rule 4 changes with respect to Rule 56 that our panel will 5 be discussing today. 6 MR. GREENBAUM: Thank you, Anne. 7 Now, our district has been somewhat 8 ahead of the curve. We've now recently done a 9 change to Rule 56.1 that is really our second 10 version of it in recent time. 11 Judge Simandle, can you tell us about 12 that change and why it was necessary to change the 13 rule? 14 JUDGE SIMANDLE: Well, the rule has a 15 noble pedigree. It was about 17 years ago that this 16 district became probably the first in the country to 17 require a statement of undisputed material facts. 18 We had a very general rule called 12G. It later 19 became 56.1. 20 The rule spoke in generality. It was a 21 little bit difficult to understand exactly what was 22 being required of each party and when and what would 23 be the consequences of not complying with it. 24 So I'd say, with fairly enthusiastic 25 endorsement of the lawyers Advisory Committee, the</p>	<p>82 1 opponent to supplement the statement with their own 2 supplemental statement of facts that are in dispute 3 in order to demonstrate that. 4 I've polled the judges in a very 5 informal survey. I'll make reference to it a couple 6 of times this morning. But on this issue of 56.1, I 7 received 14 responses from district judges. The 8 responses were very interesting. The district 9 judges believe in the supplemental statement or in 10 the statement of material facts not in dispute the 11 process. We do think it is a worthwhile process. 12 But the judges are quite split on the subject of 13 whether counsel generally comply with the Rule 56.1 14 obligations. 15 In other words, are we getting papers 16 that really are narrowed to the material facts and 17 that are helpful in eliminating rather than 18 obfuscating what those facts are or do we still 19 receive statements that impermissibly argue the 20 facts, argue the law, cite the cases and introduce 21 materials that aren't supported somewhere in the 22 record. 23 So the judges were divided on that. 24 Six would agree that counsel both for the movants 25 and for the opponents are complying with their 56.1</p>
<p>83 1 District Court last year unanimously adopted a 2 complete revision of 56.1. It has been in place now 3 for about seven months. We have some preliminary 4 indications that it is working better than the old 5 rule. But, also, that judges still don't feel the 6 attorneys are narrowing their focus, as the rule 7 requires, to the material facts -- the facts that 8 matter, the facts that are going to entitle a party 9 to summary judgment. That is what is supposed to be 10 on the list. 11 So the rule tries to give more clues. 12 Frankly, to make it easier. It is meant not to 13 expand litigation, but to contract it. It is meant 14 to focus it. The movant has the obligation before 15 they even file their motion to figure out can I 16 really say with a straight face that these facts are 17 not disputed and, if so, where can I support that in 18 the record? 19 The local rule, unlike the proposed 20 national rule, does require a citation to the record 21 for the material facts. If the material fact is 22 disputed, the opponent has to cite to the record 23 exactly where the dispute lies. Then also, if the 24 moving papers haven't fully elaborated upon the 25 facts, the local rule gives the opportunity to the</p>	<p>85 1 obligations and six judges who disagree with that 2 proposition and would really call upon counsel to do 3 a better job. 4 But like all rules, this one is under 5 revision. It's very much like the proposed national 6 rule except in the one respect that, here, it has to 7 be documented to the record. We're hopeful that it 8 is going to shorten the time for decision for 9 summary judgment practice. We're hopeful that it 10 will deter the filing of summary judgment motions 11 that can't be sustained because in the preparation 12 of the motion the party themselves will see that this 13 is not a motion worth making. 14 MR. GREENBAUM: Thank you, Judge. 15 Let's cut to the chase now and let's 16 see what the judges think of our motions. 17 Judge Wolfson, are we filing too many 18 summary judgment motions? 19 JUDGE WOLFSON: Probably not a 20 surprising answer from judges. Yes. It appears to 21 be the practice of virtually every case the 22 attorneys think a summary judgment motion needs to 23 be filed before they go to trial. Obviously, the 24 majority of cases are not going to be disposed of by 25 way of summary judgment. So I think that answers</p>

22 (Pages 82 to 85)

<p>1 the question right there.</p> <p>2 I think part of the problem is when we</p> <p>3 talk about the statement of undisputed facts,</p> <p>4 material facts, the first problem is I do not think</p> <p>5 enough lawyers appreciate what is a material fact.</p> <p>6 And so, therefore, too, when you get the opposition</p> <p>7 to what they're disputing, you'll get all kinds of</p> <p>8 disputes about facts that are not really material</p> <p>9 facts and make it more difficult for us and spend</p> <p>10 our time culling through what really are the</p> <p>11 material facts and what are not.</p> <p>12 I think if the attorneys do their job</p> <p>13 of looking at what the rule says and giving us only</p> <p>14 the statement of undisputed material facts, as Judge</p> <p>15 Simandle says, it will tell them at the outset are</p> <p>16 we really talking about a case that has undisputed</p> <p>17 material facts.</p> <p>18 MR. GREENBAUM: Judge Simandle, do you</p> <p>19 have the empirical data? What do your colleagues</p> <p>20 think on that question are we filing too many</p> <p>21 motions?</p> <p>22 JUDGE SIMANDLE: Twelve would agree</p> <p>23 that we are and two would disagree.</p> <p>24 MR. GREENBAUM: Okay. At least we have</p> <p>25 two in there fighting.</p>	<p>86</p> <p>1 conference the last thing you want is me touching</p> <p>2 your stuff.</p> <p>3 For the most part, the lawyers come</p> <p>4 with an idea in mind as to how they want the</p> <p>5 discovery to proceed and the dispositive motions,</p> <p>6 generally, I find are scheduled to take place right</p> <p>7 around that time, anyway. At least in my</p> <p>8 conferences.</p> <p>9 MR. GREENBAUM: This rule is intended,</p> <p>10 of course, to get the motions filed. But what about</p> <p>11 the decision time? Because if the motion is not</p> <p>12 decided and the trial is coming up, you have to</p> <p>13 start preparing for trial.</p> <p>14 Judge Wolfson, will this have an impact</p> <p>15 on getting the motion actually decided?</p> <p>16 JUDGE WOLFSON: Not really because no</p> <p>17 one is going to prepare for trial while you have a</p> <p>18 pending summary judgment motion. I think the</p> <p>19 practice of any judge is going to be they're going</p> <p>20 to decide the motion before they're going to send</p> <p>21 you to trial.</p> <p>22 So in the first instance the Court has</p> <p>23 to decide is it a motion that should be decided</p> <p>24 before trial? Is it a real summary judgment motion?</p> <p>25 And that should take place first. And I think this</p>
<p>87</p> <p>1 All right. Let's look at the rule</p> <p>2 changes, themselves. The first one, as Anne</p> <p>3 mentioned, is the timing. Before there was no limit</p> <p>4 unless you had one imposed by your scheduling order</p> <p>5 on the filing of motions.</p> <p>6 Some people would place the summary</p> <p>7 judgment motions on the eve of trial which created</p> <p>8 havoc. This rule would cut off summary judgment</p> <p>9 motions within 30 days from the close of discovery.</p> <p>10 Judge Shipp, would this result have an</p> <p>11 impact and change the practice in this district?</p> <p>12 JUDGE SHIPP: I don't think it is going</p> <p>13 to have much of an impact in this district. As you</p> <p>14 all know, in this district you have your Rule 16</p> <p>15 conference right up front wherein you pretty much</p> <p>16 chart out and schedule how the litigation is going</p> <p>17 to proceed forward. And usually we talk about</p> <p>18 dispositive motions even at that early stage in the</p> <p>19 game.</p> <p>20 Generally, I always tell lawyers when</p> <p>21 you come to the Rule 16 conference, you ordinarily</p> <p>22 will have submitted a joint discovery plan. This is</p> <p>23 your stuff. I tell you: You know this case --</p> <p>24 you've been living with this case; you know the</p> <p>25 facts a lot better than I do; at this Rule 16</p>	<p>89</p> <p>1 may weave into something else you're going to talk</p> <p>2 about; the notion of the final pretrial order.</p> <p>3 I think many of us have a practice that</p> <p>4 if there is a pending summary judgment motion the</p> <p>5 final pretrial conference does not need to take</p> <p>6 place or the order filed and, therefore, you're not</p> <p>7 ready for trial, in any event. So, but it depends</p> <p>8 on the practice of the judge whether they want the</p> <p>9 pretrial to go forward before trial. But I guess it</p> <p>10 is up to each judge, but I can't imagine a judge who</p> <p>11 says we're going to trial while you have a pending</p> <p>12 motion for summary judgment.</p> <p>13 MR. GREENBAUM: Okay. We're now going</p> <p>14 to look at, I guess, what has been the most</p> <p>15 controversial part -- it may not sound very</p> <p>16 controversial here because we have a long history of</p> <p>17 the statements of material facts. Believe it or</p> <p>18 not, some judges have come out to testify at the</p> <p>19 Rules Committee vociferously, again, of imposing</p> <p>20 this requirement on all judges and all lawyers</p> <p>21 around the country.</p> <p>22 Let me start with just getting a point</p> <p>23 of view and ask Greg Joseph. Do you think these</p> <p>24 statements are necessary and helpful to the</p> <p>25 litigants?</p>

23 (Pages 86 to 89)

<p>1 MR. JOSEPH: I consider them 2 extraordinarily onerous, expensive and useless. 3 MR. GREENBAUM: Why so? 4 MR. JOSEPH: Let's start with the 5 practical proposition. 6 I want to make a motion for summary 7 judgment. In any case of any complexity, because of 8 what Judge Wolfson identified, the statement is 9 going to be enormous because nobody wants to be 10 criticized for not having a material fact in there, 11 right? So it is very long. 12 If I'm responding, I'm responding to 13 something extraordinarily long. Think of a case and 14 just think of a big case. Enron. Think of these 15 things that come in boxes to my office that we deal 16 with. So you've got the expense. 17 I can't -- if I'm making the motion, 18 assume the other side is going to agree. So I have 19 to duplicate everything in an affidavit anyway, 20 right? Because they can disagree with what I've 21 said in that. 22 When you look at them as you receive 23 them you look at every adverb, every adjective, 24 every verb. Even if you basically agree, you tend 25 to rewrite it to make sure there is not something</p>	<p>90 1 they are not all material facts, it is not that 2 useful to us. 3 For us to cull through as well going 4 through and matching up what the adversary is saying 5 as to whether they agree with it and then reply 6 where it goes on the next stage. If you have a 7 small set of really undisputed facts, that could be 8 useful if you can refine it in that way. Frankly, I 9 think if you got pages upon pages of them, it is 10 probably not right for summary judgment, anyway. 11 MR. GREENBAUM: I think the rule 12 drafters were very cognizant of that fact. And the 13 language they used is on the board. But it is 14 basically "only those material facts that cannot be 15 genuinely disputed and entitle the movant to summary 16 judgment." 17 If they can say it -- in other words, 18 they will say: Give me your ten best facts; give me 19 your ten things you really must prove to show you 20 have entitlement to relief. 21 Judge Simandle, is this language clear 22 enough to get that message across? 23 JUDGE SIMANDLE: I think that it is for 24 a lot of cases. I sympathize with Greg Joseph's 25 criticism with the proposal as it might apply to the</p>
<p>91 1 lurking in there that you're not aware of. 2 So I think that there is a lot of 3 problems with this. I wasn't surprised. I saw that 4 the entire federal bench from Seattle and from San 5 Francisco came out against this. I haven't looked 6 at the rule lately. We have it in Manhattan. So 7 I'm used to dealing with this. I'm not happy about 8 with dealing it there, either. 9 I can only say that I thought it would 10 be good to get a letter from practitioners from 11 around the country to get their views and within 48 12 hours I had 77 names on a letter which is one 13 sentence in length saying "it really ought not be 14 mandated; leave it to the discretion of the judge to 15 decide in a particular case. 16 MR. GREENBAUM: Judge Wolfson, for the 17 defense, can these be helpful to the judges if 18 properly used? 19 JUDGE WOLFSON: Well, the last part of 20 your question answers it. "If properly used." 21 And what I said before is that is the 22 problem. 23 When you get a statement of undisputed 24 facts -- material undisputed facts that will go 150 25 or more and take up pages upon pages where clearly</p>	<p>93 1 most complex cases. But when you take a step back 2 from the complex case -- say this Enron case -- you 3 realize pretty quickly it is not an appropriate case 4 where you should be filing for summary judgment, in 5 any event. It has to be broken down into bite-sized 6 pieces. 7 Partial summary judgment, I think, 8 ought to be considered in complex cases. When one 9 is looking at rules or critiquing the rules we ought 10 not judge it from the viewpoint of the outlier case. 11 We ought to look at it are the run-of-the-mill case. 12 The 90 percent of the cases that are neither 13 extremely complex nor extremely trivial. 14 I mean, this is federal court. We deal 15 with complexity. And also to take advantage of the 16 case management that is offered by the Magistrate 17 Judge or even have a pre-motion conference with the 18 district judge if that might ease things a little 19 bit. 20 But I sure don't see why a Rule 56.1 21 statement has to go on for page after page if it is 22 properly framed. 23 MR. GREENBAUM: Let's go back to where 24 we started with Rule 1. Let me ask Anne Patterson. 25 If properly used, isn't summary judgment and the</p>

24 (Pages 90 to 93)



94  
1 whittling down of these issues a useful tool in  
2 providing for an inexpensive disposition of an  
3 action? Should we be faced with trials on cases  
4 that should be weeded out ahead of time?  
5 MS. PATTERSON: I think it is and I  
6 think it certainly can be improved. I do think and  
7 from the point of view of a lawyer practicing in our  
8 district where we've had a process so similar to  
9 what is or would be imposed by this new rule, that  
10 the statements of material fact make the briefing  
11 more focused. More focused on the record.  
12 The lawyer, in order to get that  
13 requirement met, has to focus on exactly what the  
14 factual record shows and that helps make the  
15 briefing better addressed to the case. I think it  
16 has a practical impact on the result.  
17 The judge mentioned partial summary  
18 judgment. I do think that the statements of  
19 material fact have the lawyers focused on what is  
20 really not a dispute in the case and allows the  
21 Court to grant partial summary judgment, if not  
22 summary judgment. So I do think the process, in  
23 general, can contribute to decreasing the expense of  
24 litigation if properly used. I do think this is an  
25 improvement.

95  
1 MR. GREENBAUM: Well, we -- the Federal  
2 Rules have always considered it important to have  
3 national standards. Greg has pointed out that some  
4 judges really don't want this. A number of us  
5 practice in different jurisdictions.  
6 Let me ask Judge Simandle. Do you see  
7 a need for national uniformity in this area?  
8 JUDGE SIMANDLE: No, I don't. I think  
9 that we have progressed well in the past by having a  
10 local opt-in type of an approach to any innovations  
11 in the Federal Rules. We did that in 1993 with  
12 regard to early-disclosure requirements. They were  
13 hotly debated. They were very much opposed in some  
14 districts and some places in the country. It was  
15 done, more or less, on an experimental opt-in basis.  
16 It wasn't long, though, before the utility of it was  
17 seen and it was then adopted on a more national  
18 uniform basis.  
19 I think if there is something like this  
20 and there is a lot of pockets of local opposition  
21 like there was with ADR, to begin with, that the  
22 local culture ought to govern and then maybe a  
23 consensus would be reached in five or ten years down  
24 the road before a national rule was put in.  
25 MR. GREENBAUM: Despite the effort of

96  
1 the Rules Committee to get national uniformity  
2 across the board, I think that is where this rule is  
3 going to end up coming, and we'll know that by  
4 probably the end of this coming month, of April.  
5 Let's go to the standard itself. Greg  
6 had mentioned that the rule changes really don't  
7 effect the standard. And I think that was the  
8 intent. But as some of you may already know right  
9 now, the summary judgment rule has been changed in  
10 the guise of a style revision which went into effect  
11 about a year ago and for some reason the rule  
12 writers decided the word "shall" shall be outlawed.  
13 They found it ambiguous. They didn't know what it  
14 meant.  
15 It always was clear to me. If it said  
16 "shall," you had to do it. But, apparently, some  
17 judges felt that wasn't the case, so they've  
18 abolished the word and the rule has been changed to  
19 the word "should" from "shall."  
20 So the standard, as Anne had mentioned,  
21 was the same in that the Court, whatever adjective  
22 you used, "should grant" or "must grant" or "shall  
23 grant summary judgment if there is no genuine issue  
24 of dispute of any material fact" and the party is  
25 entitled to judgment.

97  
1 Now, if you have proven those things,  
2 shouldn't you get the result? But the rule has  
3 already been changed to "should" and now people have  
4 woken up and said "Wait a minute; you can't do that;  
5 it has to say "must;" otherwise, we'll never get  
6 summary judgment.  
7 On the other hand, judges have said,  
8 Well, there is kind of discretion to deny a  
9 well-pleaded motion.  
10 Let me ask Judge Simandle. Do you  
11 think that district judges do have discretion when  
12 you have proven the no-material-fact; you have  
13 proven your entitlement; you spent the client's  
14 money; you come in with your box of -- maybe you  
15 whittled it down to the ten key facts. Aren't you  
16 entitled to relief at that point?  
17 JUDGE SIMANDLE: You know, I lost sleep  
18 thinking about this issue because I was afraid you  
19 were going to ask me this.  
20 (Laughter.)  
21 JUDGE SIMANDLE: I've been doing this  
22 for quite a long time and I don't remember a time  
23 when I withheld the granting of summary judgment  
24 when the party who moved for it had demonstrated  
25 entitlement.

25 (Pages 94 to 97)

98  
1 So, to me, it is a metaphysical  
2 question about whether a judge, despite it's being  
3 dotted and the t's crossed, should, nonetheless,  
4 withhold the grant of summary judgment. That being  
5 said, I don't understand the differences between  
6 "must, shall" and "should." But I think that a  
7 party who opposes summary judgment on the ground  
8 that it is premature, which I understand is the  
9 actual reason that judges will sometimes withhold  
10 summary judgment even when the entitlement to it has  
11 been shown -- that that is a rationale that ought to  
12 be advanced by the opponents. They ought to file  
13 their 56(f) affidavit and not just say, Judge, it's  
14 too early.

15 MR. GREENBAUM: Well, let me ask Anne  
16 Patterson. If this change is retained as "should,"  
17 do you see judges now saying, Ah, we're going to  
18 probably have to go to trial on one issue; we might  
19 as well do it on everything; I don't think I want to  
20 do it; I want to read all these papers?

21 Are we going to find that summary  
22 judgment becomes disfavored like it really was  
23 before the Trilogy? I can tell a personal  
24 experience that I'm aware of a judge many years ago  
25 having been reversed on his first summary judgment

100  
1 these three things. So, I'm going to accept all  
2 those facts and I'm just going to dispute these  
3 three.

4 Greg, is that a good change?  
5 MR. JOSEPH: Well, it is a good change.  
6 It got a problem the way they're doing it. But it  
7 is definitely a good change. You may be willing as  
8 a legal matter to want to test the proposition that  
9 it really doesn't matter whether or not you concede  
10 their version of the facts. You are still entitled  
11 to win as a matter of law. That doesn't mean if you  
12 are going before a jury because you lose on that  
13 legal matter, you don't want to dispute the facts.  
14 So you ought to be able to do that. The problem is  
15 the rule doesn't say if you don't say whether you  
16 are just doing it for purposes of the motion or  
17 otherwise. There is no default in the rule. And  
18 that is a real problem because my view would be the  
19 default ought to be -- that it ought to be for  
20 purposes of the motion only.

21 And, if, in fact, there is no real  
22 dispute, the judge will make sure you're going to  
23 knowledge it for purposes of trial and not take the  
24 Court's time up. But I think it is a very important  
25 omission from this version of it.

99  
1 motion said "You know what? I'm not doing that  
2 anymore. I'm not helping the parties if the case  
3 gets sent back to me. So, forget these motions.  
4 We'll find fact issues and deny them."

5 Are we going to find that happening  
6 again?

7 MS. PATTERSON: I don't know how the  
8 courts will treat it, but I am sure the trees will  
9 die electronically or otherwise on the issue of  
10 "shall, should" and "must."

11 If the word "must" is rejected, the  
12 commentary for why "must" is rejected, I'm sure will  
13 be the cornerstone of arguments made by lawyers  
14 opposing summary judgment. I'll leave it to people  
15 who are smarter than I am as to whether that is a  
16 good thing. But the argument will be made and  
17 certainly that debate will be at the center of it.

18 MR. GREENBAUM: Thank you, Anne.

19 Okay. Let's look at the next change.  
20 You're now going to be allowed to dispute or accept  
21 the fact for purposes of the motion only. So you're  
22 not going to have to kill trees. You're not going  
23 to be required to quibble and you say, Look, he may  
24 say all these things; I don't really buy all those  
25 things, but for this motion I really only care about

101  
1 MR. GREENBAUM: In other words, you  
2 decide you just going to leave it go for the motion  
3 and then you see it as an admission at trial. Is  
4 that it?

5 MR. JOSEPH: The fear is the way this  
6 rule operates now if you didn't say anything -- if  
7 you just say "admitted" to everything and I'm still  
8 entitled to win and then you go to trial, the rule  
9 doesn't tell me whether or not that is an admission  
10 I made for purposes of the trial. So If I forget to  
11 say it is for purposes of the motion, I could be  
12 stuck with it for trial. We just need a default  
13 built into the rule. If the default is, it is going  
14 to be at trial, then I'll know I have to say it.

15 MR. GREENBAUM: Okay. Let's look at  
16 the next change. Failure to properly respond. As  
17 Anne outlined and as you look on the screen, the  
18 federal rule is -- I would call it a kinder gentler  
19 approach. It gives the trial judge a lot of  
20 discretion to basically say, Well, you really didn't  
21 do it right; go back and do it again.

22 It also gives the judge the discretion  
23 to say, Okay, I'm going to deem that fact as  
24 undisputed and I'm going to grant the motion, but it  
25 says you still have to find the moving party still

26 (Pages 98 to 101)

<p>102</p> <p>1 has an entitlement.</p> <p>2 And then there is a catch-all issue on</p> <p>3 the other proper order. As Judge Simandle said, we</p> <p>4 have a local rule which is much more imposing. It</p> <p>5 says "a motion for summary judgment unaccompanied by</p> <p>6 a statement of material facts shall be dismissed."</p> <p>7 No real discretion.</p> <p>8 And then on the other side any material</p> <p>9 fact not disputed shall be deemed undisputed. That</p> <p>10 is kind of a tough approach.</p> <p>11 Judge Wolfson, what is your view in</p> <p>12 terms of whether this has been necessary to get the</p> <p>13 lawyers to really do what they're supposed to do</p> <p>14 with respect to this?</p> <p>15 JUDGE WOLFSON: I think I want to</p> <p>16 digress for a moment. I think there is one aspect</p> <p>17 of litigation that is not really covered by any of</p> <p>18 these and it becomes a problem for us, as judges,</p> <p>19 which is when we have a pro se party.</p> <p>20 And even though I know everyone here is</p> <p>21 an attorney, some of you, I'm sure, on the other</p> <p>22 side of a pro se plaintiff trying to defend and what</p> <p>23 happens in those motions? I think we all know that</p> <p>24 it is the rare pro se party that will follow these</p> <p>25 rules and deal with them appropriately.</p>	<p>104</p> <p>1 equity needs to be done. And if it hasn't been</p> <p>2 properly put forth but we have concerns about a</p> <p>3 motion, we'll exercise some discretion as I think</p> <p>4 the general federal rule is going to do.</p> <p>5 MR. GREENBAUM: Let me ask Judge</p> <p>6 Simandle. To what extent does our new rule change</p> <p>7 generate satellite litigation where people are</p> <p>8 saying, You know what? He didn't really properly</p> <p>9 respond to my paragraph. I asked him this and he</p> <p>10 now changed the adjectives and didn't really respond</p> <p>11 to it and, therefore, deem that admitted. So you</p> <p>12 get fights over whether it is an admission or not.</p> <p>13 JUDGE SIMANDLE: Happily, that is</p> <p>14 dispute is self-contained within the motion</p> <p>15 practice, itself, because the movant has the</p> <p>16 opportunity to respond in the reply brief and to</p> <p>17 point out what has been admitted or what hasn't been</p> <p>18 admitted.</p> <p>19 But, also, the local rule confines</p> <p>20 those non responses to be deemed as admissions only</p> <p>21 for purposes of the summary judgment motion. It is</p> <p>22 not something that is going to spill over into the</p> <p>23 trial. I think that makes it a little bit easier</p> <p>24 for the parties to not have to go adjective and</p> <p>25 adverb by adjective and adverb in parcing it.</p>
<p>103</p> <p>1 On the other hand, we have very clear</p> <p>2 instructions from the Circuit and we understand that</p> <p>3 we liberally construe pro se pleadings and also when</p> <p>4 we get summary judgment motions with a pro se on one</p> <p>5 side we deal with them a little differently and we</p> <p>6 do go through the record.</p> <p>7 And I know to some extent we may almost</p> <p>8 seem like an advocate because we really are</p> <p>9 reviewing the entire record. They're not following</p> <p>10 these rules, specifically, and I think it is going</p> <p>11 to be a rare judge who is going to say because the</p> <p>12 pro se didn't follow the rule we are going to say we</p> <p>13 deem it all admitted and grant summary judgment</p> <p>14 against them. That is one aspect.</p> <p>15 I don't think our local rule deals with</p> <p>16 by having a very strict rule; whereas this federal</p> <p>17 rule may encompass something like that that gives us</p> <p>18 more discretion. Though I think we're will probably</p> <p>19 all exercising some discretion when pro ses are</p> <p>20 involved, anyway.</p> <p>21 I think all of us will -- or most of</p> <p>22 us -- don't simply look at this notion of submitting</p> <p>23 the statement on undisputed material facts and say</p> <p>24 if it's not done, we're just going to grant it. I</p> <p>25 think we all have a view -- most of us -- that</p>	<p>105</p> <p>1 For 56(e) I don't know if it is</p> <p>2 necessary. But it seems to grant the broadest</p> <p>3 possible discretion to the judge, this proposal, and</p> <p>4 especially I agree with Judge Wolfson that in a pro</p> <p>5 se case you would really want to exhaust some</p> <p>6 alternatives of impressing on the pro se how</p> <p>7 important it is for them to be responsive before you</p> <p>8 would bring the curtain down.</p> <p>9 MR. GREENBAUM: Does page 11 have</p> <p>10 impact on that? If you have 15 pages, do you want</p> <p>11 to be arguing about adjectives?</p> <p>12 MR. SIMANDLE: Right.</p> <p>13 MR. GREENBAUM: Okay. Let's look</p> <p>14 now -- we'll move on from summary judgment. Now you</p> <p>15 have to present your case and you need some experts.</p> <p>16 So we have a proposed change as to experts and this</p> <p>17 was created, in part, by something that the Rules</p> <p>18 Committee did, I think, wittingly or unwittingly in</p> <p>19 1993.</p> <p>20 Let me ask Greg Joseph to tell us what</p> <p>21 is the problem here that this rule is trying to</p> <p>22 address?</p> <p>23 MR. JOSEPH: What happened in 1993?</p> <p>24 There was a very salutary desire to</p> <p>25 have everything set forth in a report on the theory</p>

27 (Pages 102 to 105)

106  
1 that at least in some cases if you have a report you  
2 don't need to take the deposition and you'd know  
3 exactly what the expert is going to say because you  
4 will recall before that -- many of you will  
5 recall -- I see some faces that won't recall --  
6 before that you simply had to state the substance of  
7 what the expert's opinion was going to be.  
8 Basically, those were very unenlightening. You  
9 would have your expert set forth that you were going  
10 to win and that was fine. It was trial by ambush.  
11 Those were the good old days. We don't do that  
12 anymore. But one of the problems was in the  
13 locution that was used in Rule 26(a)(2)(B) -- that  
14 is the report requirement. It said that the report  
15 has to contain all of the, quote, facts or other  
16 information considered by the expert. And the other  
17 information considered by the expert was anything  
18 relating to the case that was said to the expert.  
19 That meant that all communications  
20 between counsel and the expert became fair game for  
21 discovery. All drafts became fair game for  
22 discovery. What we thought had been work product  
23 and in some cases privileged conversations were  
24 gone. It became very difficult to have a  
25 conversation with an expert which would be something

107  
1 like "let's talk about the strengths and weaknesses  
2 of my case because I don't want him then or her then  
3 to be cross-examined at trial about the weaknesses  
4 of the case or what are the strengths and weaknesses  
5 of the opponent's case."  
6 We ended up because all privilege was  
7 gone, everything said to and from an expert -- every  
8 draft would be hammered home at cross-examination no  
9 matter how innocuous the change or the fact the  
10 expert didn't know enough at the time when he or she  
11 started as showing that they were changing their  
12 response in order to curry favor with their  
13 employing lawyer.  
14 We then had to then start employing  
15 separate experts -- a parallel track of experts to  
16 talk to. We can't get drafts of reports. We have  
17 the lawyer bring in his or her laptop. We go over  
18 the report on the laptop because we don't have to  
19 produce drafts. But if we produce drafts-- five  
20 comment on drafts, they're all disclosable. The  
21 expert will have to testify to it.  
22 Of course, if somebody wants to get the  
23 medi data, they can have the medi data. But,  
24 normally, there is mutual assured destruction and at  
25 some point people just back off.

108  
1 That was the problem, that drafts and  
2 communications became completely open with one  
3 exception. Unretained experts. If you had the CFO  
4 of the company who was also a CPA, that person could  
5 come in and give expert testimony without giving any  
6 kind of report and nobody would have any idea. It  
7 was simply a provision in 26(a)(2)(A) that said you'd  
8 have to identify the person but you wouldn't have to  
9 say what he or she was going to say. So those were  
10 the issues the Advisory Committee was looking at.

11 MR. GREENBAUM: As Greg said, the rule  
12 never required you to make drafts, but if you had  
13 them you had to produce them. To make matters  
14 worse, we had one former judge in this district that  
15 the first time you came in to a Rule 16 conference  
16 said "Every draft shall be saved," putting fear in  
17 the hearts of every lawyer who appeared before that  
18 person. New Jersey, we can all be proud, has been  
19 in the forefront of trying to address this issue.

20 Anne Patterson, what did the state  
21 courts do with this problem?

22 MS. PATTERSON: Most people attending  
23 our conference today are aware since 2002 the New  
24 Jersey state courts have been operating in this  
25 regard under Rule 4:10-2(d)(1). The state court

109  
1 rule protects in most cases a draft report shared by  
2 the expert with the attorney.

3 The rule limits discovery of  
4 communications between a lawyer and his or her  
5 expert to, quote, facts and data considered by the  
6 expert in rendering the report. And except for what  
7 is required to be in the expert's report, which,  
8 obviously, continues to be discoverable, the rule  
9 states that all other communications between counsel  
10 and the expert constituting the collaborative  
11 process in preparation of the report including all  
12 preliminary or draft reports produced during this  
13 process shall be deemed trial preparation material  
14 and discoverable only under the work product rule.

15 So for seven years or nearly seven  
16 years New Jersey has operated -- the state courts  
17 have operated with a broad protection for draft  
18 expert reports.

19 MR. GREENBAUM: We had, as  
20 practitioners, the dual experience. If you were in  
21 federal court versus whether you were in state  
22 court.

23 Peter Pearlman, can you give us an  
24 overview and take us quickly through what the  
25 proposed changes are.

28 (Pages 106 to 109)

<p>110</p> <p>1 You should all be aware on page ten in 2 your materials are the actual rule changes. As 3 Peter discusses them, I'm actually going to put the 4 key phrases up on the board.</p> <p>5 Peter.</p> <p>6 MR. PERLMAN: Thank you, Jeffrey.</p> <p>7 If what I'm going to tell you sounds 8 familiar to you, it is because the committee of 9 Rules of Practice and Procedure in proposing these 10 new rules borrowed heavily from and relied heavily 11 upon the New Jersey rules to which Anne just made 12 reference.</p> <p>13 They acknowledge it in their comments 14 and not only do they listen to what we, as an 15 Association, had to say or at least the position 16 taken by the Trustees of this Association in the 17 letter to the Committee, which you'll see at page 89 18 of your materials, but they acknowledge their close 19 reliance on not only what the rule said but the fact 20 that the rule seemed to be working very well in New 21 Jersey. Changes seemed to be working very well in 22 New Jersey.</p> <p>23 There are two principal changes that 24 were made in the 1993 version of the rules. The 25 first deals with Rule 26(a)(2)(C). It essentially</p>	<p>112</p> <p>1 is considered to be someone who is not retained to 2 be -- who was not been retained by the attorney to 3 testify as an expert, such as a treating physician, 4 or someone who was an employee who may testify as an 5 expert but whose job does not require regularly that 6 person testify as an expert.</p> <p>7 The second principal change is in 8 26(b)(4) and 26(a)(2)(B) That deals with experts 9 who are required to provide reports. That is 10 experts who are retained to provide testimony or an 11 employee whose job regularly requires expert 12 testimony as part of his or her job function.</p> <p>13 The change here essentially extends 14 work product protection to all draft reports 15 provided by an expert. And, by the way, to the 16 extent the person who is not required to provide a 17 report does so, that person's draft reports also are 18 protected and to most oral communications between 19 counsel and the expert.</p> <p>20 Now, there are three exceptions. The 21 three exceptions are communications which deal with 22 compensation of the expert, communications which 23 relate facts or data actually considered by the 24 expert in forming the opinions expressed and I 25 emphasize each of those words because not all facts</p>
<p>111</p> <p>1 deals with circumstances in which an expert is not 2 required to provide a report.</p> <p>3 In those circumstances where an expert 4 is not required to provide a report and does not 5 provide a report, the party has to identify or the 6 attorney essentially has to identify the expert and 7 to disclose a summary of the facts and opinions of 8 the expert. That is a summary and not the 9 substance.</p> <p>10 There was some dispute as to whether it 11 was necessary to provide the entire substance of 12 what the expert was going to testify to or simply a 13 summary. The Committee determined the summary was 14 more appropriate because requiring substance was 15 going to essentially lead to, again, collateral 16 litigation over whether there was enough that was 17 provided.</p> <p>18 With this information it was believed 19 and is believed that there will be enough 20 information for the attorney for the opposing party 21 to determine whether he wants to take that person's 22 deposition.</p> <p>23 By the way, for your edification, a 24 person who is not required to provide a report but 25 who is going to be testifying as an expert generally</p>	<p>113</p> <p>1 or data that are communicated to the expert are 2 discoverable. Only to the extent they are 3 considered by the expert in forming the opinions 4 expressed. And, three, assumptions that the 5 attorney provided to the expert upon which the 6 expert relies.</p> <p>7 Those three exceptions, work product 8 applies. As I said, very, very similar to New 9 Jersey's rules and a position has been taken by the 10 Trustees of this Association favoring it.</p> <p>11 MR. GREENBAUM: Thank you, Peter.</p> <p>12 Let's talk about these changes and take 13 them apart. Let me start with Anne Patterson. To 14 what extent have you found that problems with drafts 15 have made its way into depositions of experts?</p> <p>16 MS. PATTERSON: Well, it is an issue at 17 depositions. If under the former state court rule 18 and under the current federal rule if you're taking 19 a deposition of an expert, it is important and 20 really essential to ask about drafts. In most cases 21 an expert will say I don't retain them as a matter 22 of practice.</p> <p>23 A lot of this depends, of course, on 24 the sophistication and level of litigation 25 experience that a given expert has. Rarely you can</p>

29 (Pages 110 to 113)

<p>114</p> <p>1 find something interesting as a deposition taker in 2 going down that road.</p> <p>3 And I think even more rarely do you 4 find something that actually has a material impact 5 on the merits of the expert's testimony. I don't 6 see it as a major issue in terms of causing 7 depositions to go on for days in terms of a 8 complicating factor in making litigation more 9 expensive. But it is an issue that does disappear 10 from the deposition process under the state court 11 rule and under the proposed new rule.</p> <p>12 MR. GREENBAUM: Well, lawyers have 13 experienced these problems, but to what extent? 14 Let me ask Judge Shipp. Have you found 15 these problems really come up in Rule 16 conferences 16 that resulted even with fights by lawyers? "I want 17 them to tell me what he said to the expert and what 18 the lawyer said."</p> <p>19 JUDGE SHIPP: That never happens. 20 Jeff, in reality, I think Anne is right. I think 21 that this clarification will at least eliminate what 22 once was a point of contention.</p> <p>23 We can focus more on the merits and a 24 search for the truth because I think so much time 25 and effort is spent in the search about the drafts</p>	<p>116</p> <p>1 expert when deposed about drafts failed to reveal 2 them and some -- despite the Court's order had 3 failed to turn them over. I had to have a hearing 4 and it resulted in the exclusion of the party's 5 expert.</p> <p>6 It happened to be in a case where 7 expert testimony was probably required for that 8 party to meet its burden. But that was in the 9 context of discovery misconduct. Not in a normal 10 case where everyone is playing by the rules.</p> <p>11 MR. GREENBAUM: Judge Wolfson, do you 12 have experience in this area?</p> <p>13 JUDGE WOLFSON: Yes. Most prominently 14 in the patent field -- intellectual property field. 15 The attorneys oftentimes have their own scientific 16 backgrounds. They're experts in the field and it is 17 quite apparent that the attorneys are very involved 18 in drafting the reports and, indeed, it has come up 19 in my trials in patent cases where they have 20 explored with the expert and, indeed, attacked the 21 expert because oftentimes the expert couldn't 22 explain exactly why something was in the report and 23 it was clear that the attorneys had drafted much of 24 the report and dictated the way in which it would 25 appear. That is a very specialized area.</p>
<p>115</p> <p>1 and things that are now put to rest that it will 2 make it more efficient. I don't think that it has 3 been such a problem and, as Anne indicated, that it 4 creates no real delay and expense. It is something 5 we no longer have to entertain as a point of 6 contention because the clarification really puts it 7 to rest.</p> <p>8 MR. GREENBAUM: Well, let's take it at 9 the next step.</p> <p>10 Judge Simandle, to what extent have you 11 found questions coming up at trial with experts? 12 "Didn't the attorney tell you to say that? Did he 13 prepare your report?" Have you seen that in the 14 trial context?</p> <p>15 JUDGE SIMANDLE: Yes, I have both at 16 trial and also in summary judgments before trial. I 17 don't see it often, though. The most dramatic time 18 that I saw it recently was where there had been some 19 discovery misconduct and as a sanction the 20 Magistrate Judge had entered an Order compelling 21 draft expert reports to be turned over including the 22 communications with counsel and that was an 23 appropriate sanction.</p> <p>24 I don't believe that that part of it 25 was appealed. And then it turned out that the</p>	<p>117</p> <p>1 And that is why I found it not really 2 in other areas of the law.</p> <p>3 MR. GREENBAUM: Well, the rule 4 currently provides and still will provide that the 5 report is a report of the expert. It has to be 6 signed by the expert. I guess one of the things the 7 Advisory Committee was concerned about is -- will 8 the attorney in effect be able to write the report 9 for the expert?</p> <p>10 Greg, do you think under this rule that 11 can happen?</p> <p>12 MR. JOSEPH: Right now the Advisory 13 Committee notes the 1993 rule already acknowledges 14 there is an appropriate role for lawyers because the 15 ultimate issue is that the expert agrees with 16 everything and is competent to testify on it. In 17 fact, I think that is a problem when you hire an 18 expert from, say, a Big 4 accounting firm because 19 somebody far below the expert who has actually done 20 all the work and understands everything and it is 21 another variant of the same problem.</p> <p>22 I actually don't see this as a major 23 issue, Jeff. This is one area -- I do think lawyer 24 drafting is something that will still be the subject 25 of cross-examination. The rule is very clear that</p>

30 (Pages 114 to 117)

118

1 the way the report is put together is something that  
2 the Court will allow to be the subject of testimony.  
3 And if you get to an area where somebody claims work  
4 product, it is hard to believe there wouldn't be  
5 substantial need.  
6 But I really like the rule change  
7 because it really focuses on the substance of the  
8 report and the expert's ability to defend the  
9 positions that are stated in the report and that is  
10 what we ultimately want to get to and that is the  
11 merits of the dispute.  
12 MR. GREENBAUM: Let me ask you this:  
13 Why is it ever relevant?  
14 Our New Jersey rule just makes drafts  
15 not discoverable but the federal rule change didn't  
16 want to give drafts higher protection than other  
17 discussions with counsel and said it would be under  
18 work product and it would be producible for  
19 substantial need or undue hardship.  
20 But I could never understand when it  
21 would ever be a circumstance where you could meet  
22 that standard. Do you envision that?  
23 MR. JOSEPH: First of all, the Advisory  
24 Committee Note that is proposed basically says what  
25 you just said. And that is it that would be very

119

1 hard to satisfy that standard. But, yes, you can  
2 envision situations in which you have experts that  
3 are simply putting their names on documents that  
4 they don't understand and it would be a legitimate  
5 ground of exploration if they can't explain the  
6 position they've articulated; that, in fact, they  
7 didn't write it.  
8 MR. GREENBAUM: Well, we started with a  
9 discussion of Rule 1 and the purpose of Rule 1. I  
10 guess, as our last panel indicated, this is really  
11 all about the search for the truth. If this rule  
12 goes into effect, will this interfere with the  
13 search for the truth?  
14 Anyone?  
15 MR. PEARLMAN: No. I think it will  
16 enhance the search for the truth. What the search  
17 for the truth is all about is the quality of the  
18 opinion, itself.  
19 Is it well founded in science or in  
20 economics or whatever the area of expertise of the  
21 expert is? Is there a sound basis for it? Is the  
22 methodology sound? Is the methodology correct?  
23 Does it hold water generally?  
24 I don't know how you would interfere  
25 with the search for the truth by diverting the focus

120

1 to the opinion, itself. The focus should be on the  
2 opinion. The focus not be -- the focus should not  
3 be on who said what to whom and when. The focus  
4 should be on whether the opinion is a valid opinion,  
5 is a sound opinion and is a correct opinion.  
6 To have satellite litigation over who  
7 said what to whom and to spend time on depositions  
8 over whether one draft deviated from another draft  
9 in saying such-and-such on line 3 or such-and-such  
10 on line 4 really seems to distract from and to  
11 detract from what we're trying to accomplish here.  
12 What we're trying to accomplish here is  
13 to focus on the quality of the opinion.  
14 MR. GREENBAUM: What if the lawyer puts  
15 the words in the expert's mouth and told them what  
16 to say?  
17 MR. PEARLMAN: If the lawyer put the  
18 words in the expert's mouth and told the expert what  
19 to say -- if it's a valid opinion, if it has a valid  
20 scientific basis, then it is something, then --  
21 You're getting to the truth.  
22 If the expert can sustain it -- if the  
23 expert can tell us that it is valid and why it is  
24 valid, whether the idea even came from the lawyer  
25 really isn't the principal issue. The principal

121

1 issue is whether it is a valid opinion -- whether  
2 the opinion is valid, correct and sustainable.  
3 And what we have had and I know Anne  
4 took a position earlier that there really isn't a  
5 lot of collateral time taken up in some of these  
6 side issues -- I don't necessarily agree that that  
7 is true. I find, generally, that the people that  
8 spend a lot of time taking depositions of experts  
9 and deal with these collateral issues, who said what  
10 to whom, what do the experts say, do so because they  
11 really can't do much with the quality of the  
12 opinion, itself.  
13 It is simply a way to try and distract  
14 from the quality of the opinion. And that does not  
15 enhance the search for the truth. What you're  
16 talking about here really is trying to focus on what  
17 is important -- what Rule 702 says is important.  
18 I think Rule 702 talks about -- I can  
19 give you the specific items here -- is the testimony  
20 based on sufficient facts or data? Is it the  
21 product of reliable principles and methods and can  
22 the witness supply the principles and methods  
23 reliably to the facts in the case. That is what the  
24 focus ought to be on. Not whether the lawyer said  
25 something to the witness or the witness said

31 (Pages 118 to 121)

122

1 something to the lawyer or the lawyer even gave that  
2 generally today to the witness or suggested the  
3 witness consider that issue.  
4 MR. GREENBAUM: Thank you, Peter.  
5 Gregg.  
6 MR. JOSEPH: I would just say I agree  
7 it is a commentary on the way we think about things  
8 here. Remember, when this rule was put into effect.  
9 The purpose of the rule was simply to expedite our  
10 learning what the witness would say at trial.  
11 Before we had this rule -- before we  
12 had this disclosure the witness would still be  
13 allowed to say the same thing at trial and we didn't  
14 explore how the witness got to that. The question  
15 was was it right or wrong.  
16 Now we focus on the process by which a  
17 report, which is a disclosure mechanism, is prepared  
18 as a way of precluding the witness from testifying  
19 at trial. The same opinion the witness would have  
20 been allowed to testify to before. But the great  
21 benefit of this rule addresses things that are not  
22 being touched at all.  
23 Right now in our engagement letters we  
24 mandate that the expert must maintain every e-mail  
25 that he or she sends or receives on the case. Must

123

1 maintain every draft they prepared. They are not  
2 allowed to prepare. But if they do, they keep it.  
3 The issue now is can you find e-mails  
4 that are missing between the lawyer and the witness  
5 so you can find spoliation. There are hosts of  
6 ripple effects from these kinds of rules. To the  
7 extent we can recede from some of the requirements,  
8 a good bit of the expense of it recedes with it as  
9 well.  
10 MR. GREENBAUM: With that comment we're  
11 going to turn to our last area and just touch upon  
12 it. Pretrial Orders.  
13 All of you have been through the  
14 process know that the federal pretrial order process  
15 is very onerous. You have to had, in effect,  
16 prepare your whole case for trial paper-wise before  
17 you actually try the case.  
18 The ABA came up with a proposal last  
19 year where it basically said pretrial orders should  
20 not be required to be prepared until two things have  
21 happened. One, summary judgment motions have been  
22 decided and, two, you have an actual trial date  
23 staring you in the face. Whether it is eight weeks  
24 or 12 weeks or four weeks. So you know this is for  
25 real. This is not just an exercise. It is not

124

1 something that is done before settlement. It is  
2 done to help you prepare for trial.  
3 Let me start with Judge Shipp. Let me  
4 ask to what extent does the timing of the summary  
5 judgment motion and whether it has been decided or  
6 not bear on whether you require the parties to go  
7 through this process?  
8 JUDGE SHIPP: This is an area where  
9 different district judges have different practices  
10 in this particular area. I understand the merits  
11 and the value of not going through the effort of  
12 putting together the final pretrial order until the  
13 summary judgment motions have been decided. I think  
14 many of the judges do follow that practice.  
15 To the extent that some don't, there is  
16 some overlap in the preparing of the statements of  
17 material fact with regard to preparing their  
18 contested and uncontested facts. So that to the  
19 extent you are preparing a final pretrial order. It  
20 is not a complete and utter waste of time because  
21 the motion for summary judgment is ultimately  
22 denied. You're that much further along in the  
23 preparation of the final pretrial order. To the  
24 extent that that is the practice that the particular  
25 district judge may follow.

125

1 MR. GREENBAUM: But we're trying to  
2 conserve expense and clients' money. Should we be  
3 doing that until we know if the case is going to go  
4 to trial?  
5 JUDGE SHIPP: I think that is the other  
6 thing -- the better practice is to not have the  
7 lawyer prepare the final pretrial order until that  
8 dispositive motion is ultimately decided.  
9 MR. GREENBAUM: Peter, have you ever  
10 found yourself preparing those orders before the  
11 case -- summary judgment has been resolved?  
12 MR. PEARLMAN: Yes.  
13 MR. GREENBAUM: Let me ask our district  
14 judges to what extent do you find that process  
15 helpful in keying up the case for trial.  
16 Judge Simandle.  
17 JUDGE SIMANDLE: The summary judgment  
18 process?  
19 MR. GREENBAUM: No. The pretrial order  
20 process.  
21 JUDGE SIMANDLE: If there is an  
22 undecided summary judgment motion, I think the  
23 pretrial order process should be deferred. So do  
24 most of the colleagues in my survey. Eleven agreed  
25 that it ought to be deferred as a matter of course

32 (Pages 122 to 125)



<p>126</p> <p>1 and only three disagreed with that. I didn't 2 collect the reasons for their views. But I think 3 all of us are being pressed to do more, to do it 4 better, to do it more cheaply.</p> <p>5 The attorneys receive that pressure 6 from their clients and from this economy. Anything 7 that we can do that would reasonably save 8 unnecessary expense has to be done. So if you find 9 yourself in a case with an undecided summary 10 judgment motion, that may well be dispositive of the 11 case and yet you're confronted with a pretrial 12 deadline that is right around the corner, reach out 13 to one of the judicial officers, either to the 14 Magistrate Judge or to the District Judge and ask 15 for a postponement of the pretrial obligations.</p> <p>16 This also comes as a reminder to the 17 judge who has the motion under reserve. It needs to 18 be decided and not that the judge necessarily needs 19 a reminder. But these are the practicalities. You 20 shouldn't be required to ride two horses at once.</p> <p>21 I would say the same if you have a 22 settlement process which is really about to bear 23 fruit. Let somebody know. You don't have to 24 necessarily divert time from settlement to prepare 25 your pretrial order. A lot of judges are going to</p>	<p>128</p> <p>1 didn't file one during the discovery phase, once 2 they're preparing the final pretrial order and 3 they're getting down to listing what the stipulated 4 facts are and the contested facts, they see they may 5 have a summary judgment motion or partial summary 6 judgment motion in that preparation and then want to 7 file one.</p> <p>8 I think that is where there may be a 9 little bit of a tension of when summary judgment 10 motions are filed. We Even find in the final 11 pretrials, the attorneys there listing that now they 12 want to file a final pretrial. That may be 13 alleviated by the new Federal Rule.</p> <p>14 MR. GREENBAUM: Let me ask Judge Shipp. 15 You've scheduled the pretrial conference and a 16 pretrial order requirement and I write you a letter 17 and say "no, I'm about to file a summary judgment 18 motion." Are you going to put it off?</p> <p>19 JUDGE SHIPP: Now it will depend on the 20 timing of that. We have a new rule that clarifies 21 when that summary judgment motion can be filed. 22 Generally, if there are good reasons to the extent 23 it doesn't conflict with the district judge's 24 practice, sure, for good cause that would be put 25 off.</p>
<p>127</p> <p>1 agree with you that there is good cause to postpone. 2 Don't feel you have to do more than should 3 reasonably be called upon. Some judges won't. I'm 4 not speaking for all of my colleagues and not all of 5 us share the same view.</p> <p>6 MR. GREENBAUM: Judge Wolfson. 7 JUDGE WOLFSON: I agree with everything 8 Judge Simandle said. I think the problem is going 9 to be looking at the new proposed federal rule and 10 the notion of filing summary judgment motions within 11 30 days after the close of discovery. I think that 12 most of the Magistrate Judges are trying to set 13 pretrial within 30 days after the close of 14 discovery.</p> <p>15 The problem in the pending summary 16 judgment motions is that if you haven't filed a 17 summary judgment motion and you're waiting for the 18 close of discovery -- if you're then going to file 19 one when you're also being set for a pretrial or are 20 you going to file it on the 30th day when the 21 pretrial would have been entered.</p> <p>22 The question is during that 30-day 23 period should you be saying I do now know I want to 24 file a summary judgment motion. Let's put off the 25 pretrial. Or sometimes attorneys find while they</p>	<p>129</p> <p>1 MR. GREENBAUM: Okay. I want at this 2 time to remind everyone to join us downstairs for 3 lunch.</p> <p>4 We'll be starting promptly at 12:00. I 5 want to thank you panelists for a wonderful 6 presentation. 7 (Applause.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

33 (Pages 126 to 129)

## 1 CERTIFICATE

2  
3 I CERTIFY that the foregoing is a true  
4 and accurate transcript of the proceedings as  
5 reported stenographically by me at the time, place  
6 and on the date hereinbefore set forth.

7 I DO FURTHER CERTIFY that I am neither  
8 a relative for employee for attorney or counsel of  
9 any of the parties to this action, and that I am  
10 neither a relative for employee of such attorney or  
11 counsel, and that I am not financially interested in  
12 the action.  
13  
14

15 -----  
16 STANLEY B. RIZMAN, C.S.R.  
17 Certificate No. X100304  
18 Notary Public of New Jersey  
19 My Commission expires February 14, 2010  
20  
21  
22  
23  
24  
25

Dated: April 6, 2009

<b>A</b>	<b>Academy</b> 7:5	23:24	<b>agree</b> 5:23 11:11	4:21 5:5,15,19
<b>ABA</b> 4:3,5,6 5:3,5	<b>accept</b> 99:20 100:1	<b>Admissibility</b> 25:4	24:13 26:1,5	5:24 7:4 8:13
8:2 13:14 32:22	<b>accepted</b> 81:9	<b>admissible</b> 23:12	30:19 50:8,14	12:1 13:10,20
73:15 123:18	<b>accepting</b> 81:14	<b>admission</b> 101:3,9	60:19 64:25	14:10 15:11 17:8
<b>ability</b> 29:9 118:8	<b>accepts</b> 80:25	104:12	65:10 66:18	17:10 58:1 68:18
<b>able</b> 20:24 22:10	<b>access</b> 65:7	<b>admissions</b> 104:20	84:24 86:22	73:12
23:3 47:15 48:24	<b>accomplish</b> 71:16	<b>admitted</b> 25:19	90:18,24 92:5	<b>Americans</b> 76:2
48:24 68:4	120:11,12	101:7 103:13	105:4 121:6	<b>among</b> 18:6 61:7
100:14 117:8	<b>accomplished</b> 6:11	104:11,17,18	122:6 127:1,7	74:8
<b>abolished</b> 96:18	7:9	<b>adopted</b> 4:6 15:3	<b>agreed</b> 16:21	<b>Amongst</b> 14:5
<b>about</b> 3:24 4:18	<b>accomplishing</b>	15:12 83:1 95:17	125:24	<b>amount</b> 53:13
5:7,22 7:13 8:18	71:20 75:15	<b>ADR</b> 65:22 95:21	<b>agreement</b> 11:13	58:13
9:22 10:2,3,6,17	<b>accordance</b> 81:20	<b>advance</b> 15:19	45:17	<b>analysts</b> 12:15
10:22 11:23	<b>account</b> 71:14	<b>advanced</b> 98:12	<b>agrees</b> 117:15	<b>analyzing</b> 75:24
12:15 13:5,5	<b>accounting</b> 117:18	<b>advantage</b> 30:6,7	<b>Ah</b> 98:17	<b>and/or</b> 24:3
14:9 16:25 17:14	<b>accurate</b> 130:4	93:15	<b>ahead</b> 12:9 82:8	<b>anecdotal</b> 52:18
17:14 18:4,14,22	<b>accused</b> 33:19	<b>adverb</b> 90:23	94:4	<b>anecdotally</b> 54:12
19:11 20:6 21:2	<b>acknowledge</b>	104:25,25	<b>aid</b> 45:1	<b>animating</b> 28:23
21:19 22:19 27:7	110:13,18	<b>adversary</b> 92:4	<b>ain't</b> 10:22	<b>Anne</b> 3:3,5 6:17
27:9,13,25 28:4	<b>acknowledged</b>	<b>advising</b> 21:24	<b>alarm</b> 38:11	74:3,5,10 79:9
28:9 30:4,5 31:9	51:4	<b>Advisory</b> 3:10	<b>alive</b> 5:20 66:19	82:6 87:2 93:24
31:16,21,24	<b>acknowledges</b>	7:23 71:22 73:17	<b>alleviated</b> 128:13	96:20 98:15
33:12 34:18 36:8	117:13	74:19 82:25	<b>allow</b> 20:13 21:1	99:18 101:17
36:10,13 37:4,12	<b>across</b> 5:1 92:22	108:10 117:7,12	33:2 34:3 40:14	108:20 110:11
38:15 39:10,20	96:2	118:23	58:8 118:2	113:13 114:20
40:2,4,10 42:3,4	<b>action</b> 71:19 74:16	<b>advocacy</b> 30:7,11	<b>allowed</b> 10:16	115:3 121:3
42:6,21 43:11,20	94:3 130:9,12	31:7 32:1 55:10	18:16 20:15	<b>Annual</b> 1:8 2:3
44:5,6,6,7,18	<b>active</b> 44:2	<b>advocate</b> 31:2	32:19 46:15	<b>another</b> 44:17
45:5,20 46:7	<b>activity</b> 64:9	54:10 103:8	99:20 122:13,20	48:10 64:1,16,18
47:11,11,20 48:6	<b>actual</b> 35:23 98:9	<b>advocates</b> 29:22	123:2	78:24 117:21
48:10 49:13	110:2 123:22	<b>affect</b> 15:16 71:11	<b>allowing</b> 16:11	120:8
50:11 51:17 53:1	<b>actually</b> 25:8	80:14	32:10,23 40:21	<b>answer</b> 11:9,11,15
53:4 55:23,24,25	28:18,22 30:25	<b>affects</b> 58:9,9	40:22 43:6 45:9	23:17 27:21 40:7
58:22 59:21	34:18 35:2 40:15	<b>affidavit</b> 90:19	51:20 61:2	40:9 58:21 85:20
60:10,25 61:9,20	57:3 61:21 88:15	98:13	<b>allows</b> 94:20	<b>answered</b> 37:22
62:11,16,24 63:9	110:3 112:23	<b>affirmatively</b>	<b>almost</b> 43:15 103:7	<b>answering</b> 68:2,2
64:5,14 65:11,18	114:4 117:19,22	15:15	<b>along</b> 19:18 29:2	<b>answers</b> 19:5
67:23,23 69:5,19	123:17	<b>affirmed</b> 33:9	48:8 53:12	85:25 91:20
71:11 72:4,9,15	<b>add</b> 25:19 81:2	<b>affordable</b> 3:18	124:22	<b>anybody</b> 14:10
75:4,7 76:17	<b>added</b> 20:23 24:7	<b>afraid</b> 34:4 42:14	<b>already</b> 9:16 96:8	19:25 52:22
77:23 79:12	<b>addition</b> 6:9 8:25	52:22 97:18	97:3 117:13	<b>anymore</b> 11:24
82:11,15 83:3	77:21	<b>after</b> 4:6 5:21	<b>alternatives</b> 105:6	99:2 106:12
86:3,8,16 87:17	<b>additional</b> 76:21	16:23 17:5 20:5	<b>alters</b> 45:13	<b>anyone</b> 80:8
88:10 89:2 91:7	<b>address</b> 3:21 76:2	28:10 36:2 37:14	<b>although</b> 55:10	119:14
96:11 97:18 98:2	78:2,18 105:22	46:21 47:25 50:9	<b>always</b> 19:2 22:24	<b>anything</b> 10:17
99:25 104:2	108:19	60:5 79:16 93:21	27:2,6,7 40:18	12:25 13:1 17:13
105:11 107:1,3	<b>addressed</b> 49:17	127:11,13	46:22 54:10	19:10,19 26:14
113:12,20	94:15	<b>again</b> 2:4 22:11	55:11 66:21	47:2 51:10 101:6
114:25 116:1	<b>addresses</b> 122:21	29:12 38:10	87:20 95:2 96:15	106:17 126:6
117:7 119:11,17	<b>addressing</b> 17:18	51:23 61:24 70:1	<b>ambassadors</b>	<b>anyway</b> 43:3 65:1
121:16,18 122:7	44:9	89:19 99:6	69:20,24	88:7 90:19 92:10
126:22 128:17	<b>adds</b> 41:2,3,3,4	101:21 111:15	<b>ambiguous</b> 96:13	103:20
<b>absolutely</b> 55:1	<b>adjective</b> 90:23	<b>against</b> 28:19 91:5	<b>ambush</b> 106:10	<b>anywhere</b> 61:12
69:2,21 70:14	96:21 104:24,25	103:14	<b>amendment</b> 2:18	<b>apart</b> 79:7 113:13
76:16 78:11	<b>adjectives</b> 104:10	<b>agnostic</b> 46:7	<b>amendments</b> 3:1,7	<b>apparent</b> 116:17
<b>abstract</b> 45:1	105:11	<b>ago</b> 34:1 60:2	77:23 78:1	<b>apparently</b> 96:16
<b>academics</b> 12:18	<b>adjudicated</b> 69:23	82:15 96:11	<b>America</b> 65:20	<b>appeal</b> 50:19
14:3,5 16:8	<b>administrative</b>	98:24	<b>American</b> 4:3,7,11	<b>appealed</b> 33:6

115:25	articles 8:9,11,23	110:1	23:15 25:7 27:20	better 13:6 19:16
Appeals 33:7	14:25	away 5:11 20:10	30:22 33:24 35:3	19:17,24 20:24
appear 116:25	articulated 119:6	65:22	38:24,25 39:7	20:24 40:8 49:11
appeared 108:17	aside 76:14	A.B.A 14:14	47:24 48:3 49:1	50:4 63:2 67:11
appears 85:20	asked 34:25 35:22		49:19 50:13	68:21,21 70:5
Applause 18:2	36:7,13,22 37:4	<b>B</b>	53:22 59:20 61:4	72:6 83:4 85:3
70:23,25 129:7	37:14,16 40:10	B 1:25 23:8 47:23	68:14 70:6 83:14	87:25 94:15
applicable 47:24	40:12 41:23 50:5	72:20 130:15	85:23 87:3 88:20	125:6 126:4
applies 113:8	104:9	baby 17:18	88:24 89:9 91:21	between 2:8 66:7
apply 60:22 92:25	asking 24:10 47:12	back 8:19 20:2	95:16,24 98:23	80:8 98:5 106:20
appointed 73:3,17	asks 36:2	21:23 25:20,21	100:12 105:7	109:4,9 112:18
73:19	aspect 102:16	25:23 31:11,22	106:4,6 108:17	123:4
appreciate 2:5	103:14	42:18 65:17	115:16 122:11	beyond 13:4
47:14 86:5	aspects 10:25	70:15 93:1,23	122:11,20	bias 28:18
appreciation 46:23	aspirational 3:16	99:3 101:21	123:16 124:1	bifurcate 53:9
46:25	assembled 2:23	107:25	125:10	big 12:22 90:14
appreciative 47:12	assistant 6:5 23:25	background 12:5	beforehand 63:19	117:18
approach 76:12	72:22	backgrounds	beg 31:3	bigger 65:13
95:10 101:19	association 1:2 2:2	116:16	began 19:17	binder 27:24
102:10	2:6,15,20 3:7	bad 19:19 39:5	begin 11:19 62:14	bit 2:8 7:13 41:2,9
approaches 15:6	13:10 15:12,23	45:14,15 50:21	80:18 95:21	70:12 82:21
appropriate 23:9	16:1 17:9 73:14	67:12	<del>beginning 12:13</del>	93:19 104:23
54:22 68:3 80:9	75:8 110:15,16	bait 36:13 37:4	19:21 28:7,20	123:8 128:9
82:1 93:3 111:14	113:10	balanced 50:5	31:18 39:25	bite-sized 93:5
115:23 117:14	Associations 15:24	bank 36:4,16	49:12 52:6 59:3	bits 70:7
appropriately	Association's	38:10,19	63:19 65:17 71:2	BlackBerry's 65:6
102:25	74:11,22	bar 1:2 2:3,17 4:12	begins 17:17 25:8	blame 14:12
approved 33:16	assume 90:18	13:10 15:11,23	behalf 3:7	blue 14:1
April 96:4 130:17	assumed 21:12	15:24,25 17:9	behavior 13:5	board 2:10,14 3:24
arbitration 5:11	assumptions 113:4	22:22 32:23 49:8	being 2:5 5:8 9:7	92:13 96:2 110:4
area 35:6 68:8	assured 107:24	Barry 7:20	16:14 20:24 28:8	boards 28:10
74:17 78:24	astronaut 76:10	baseball 12:13	41:11 46:12	BODA 4:12
79:10 95:7	attacked 116:20	based 13:17,18	47:14 52:3 77:1	book 4:17 18:10
116:12,25	attempts 17:11	29:8 121:20	82:22 98:2,4	29:15 63:6 75:5
117:23 118:3	attending 108:22	basically 90:24	122:22 126:3	books 8:9 40:5
119:20 123:11	attention 14:18	92:14 101:20	127:19	booths 36:11
124:8,10	20:20 29:1 43:1	106:8 118:24	believe 45:5 66:14	borrowed 110:10
areas 117:2	attorney 6:6,18	123:19	66:15 69:18 80:9	both 2:13 3:5
argue 51:20 84:19	72:23 73:4,7	basis 16:11,22	80:10 84:9 89:17	20:15 21:7 37:20
84:20	102:21 109:2	95:15,18 119:21	115:24 118:4	40:19 54:8 55:11
arguing 105:11	111:6,20 112:2	120:20	believed 111:18,19	60:22 70:9 84:24
argument 47:25	113:5 115:12	bear 11:10 124:6	believes 81:2	115:15
48:4 51:17 53:1	117:8 130:8,10	126:22	bell 31:10	bottom 36:5
99:16	attorneys 23:23	beautifully 46:24	below 117:19	bought 43:16
argumentative	24:23 45:24 46:4	became 6:7,21	Ben 53:20	bound 75:5 77:10
37:3,6 55:6,18	83:6 85:22 86:12	82:16,19 106:20	bench 2:17 6:6,12	box 97:14
arguments 34:14	116:15,17,23	106:21,24 108:2	53:22 56:18 91:4	boxes 90:15
49:1 99:13	126:5 127:25	Becker 73:20	beneficial 15:6	boy 20:6
Arizona 13:21	128:11	become 25:18	benefit 18:19,23	breaches 65:11
14:22 29:16	Attorney's 24:17	65:13 78:6	122:21	break 54:2 71:5
61:15,25 62:24	attorney-client	becomes 31:25	Bentley 79:1	brief 79:10 80:23
Arizona's 14:22	2:18	98:22 102:18	Berra 12:15,24	104:16
around 9:11 17:11	audience 68:25	becoming 6:15,22	besides 40:7	briefing 94:10,15
88:7 89:21 91:11	automation 46:24	69:1	best 4:14 12:3	bring 22:7 25:23
126:12	available 49:14	before 3:23 6:12	14:18 48:23,25	67:5 105:8
arrived 38:24,25	70:10	6:15,22 7:3,10	66:25 67:5,6	107:17
artful 37:16	aware 56:3 91:1	7:13 9:4 16:14	69:20,23 92:18	broad 59:12 81:18
article 70:16 76:17	98:24 108:23	17:3,23 19:11	Beta 8:5	109:17

<b>broader</b> 67:12 69:15	116:10 121:23 122:25 123:16	<b>chance</b> 34:11 81:21	71:17,23 73:17 77:11	47:7 52:4 66:7 75:24 77:10
<b>broadest</b> 105:2	123:17 125:3,11	<b>Chancery</b> 53:22	<b>claims</b> 118:3	87:21 88:3 89:18
<b>broken</b> 59:8 93:5	125:15 126:9,11	<b>change</b> 26:9 27:22	<b>clarification</b> 114:21 115:6	90:15 97:14 108:5 114:15 116:18
<b>Brook</b> 74:15	<b>cases</b> 4:13,14 5:7	61:24 76:25	<b>clarifies</b> 128:20	<b>comes</b> 70:16 76:14 76:19 126:16
<b>broom</b> 28:6	7:7 9:13 17:21	77:25 80:13 81:8	<b>class</b> 9:22 10:4	<b>coming</b> 44:20 49:25 65:14
<b>brought</b> 16:7	18:8 20:16,17,22	81:16 82:9,12,12	73:21 74:16	88:12 96:3,4 115:11
<b>Brown</b> 2:7	23:9,18 24:24	87:11 98:16	<b>Classroom</b> 9:10	<b>commence</b> 61:11
<b>bugaboo</b> 63:2,7	25:9 30:11 32:12	99:19 100:4,5,7	<b>CLE</b> 70:8	<b>comment</b> 22:2 26:15 75:4 107:20 123:10
<b>built</b> 101:13	32:15 33:2,3	101:16 104:6	<b>clean</b> 28:6	<b>commentary</b> 99:12 122:7
<b>bunch</b> 41:25	35:13,14,20,23	105:16 107:9	<b>clear</b> 29:12 34:12 34:24 69:21	<b>commentator</b> 74:1
<b>burden</b> 46:17 116:8	37:24 41:21 42:4	112:7,13 118:6 118:15	92:21 96:15	<b>comments</b> 75:9,19 110:13
<b>business</b> 74:18	47:18 52:12 53:9	<b>changed</b> 26:13	103:1 116:23	<b>commercial</b> 7:17 73:25 74:7,9,17
<b>button</b> 38:12	56:6 57:21,23	96:9,18 97:3	117:25	<b>Commission</b> 4:3 130:16
<b>buy</b> 99:24	61:6,18 65:22,23	104:10	<b>clearly</b> 37:6 91:25	<b>Committee</b> 73:17 committee 3:10 7:24 9:1 48:14 71:22 74:11,13 74:19,25 75:21 75:21 82:25 89:19 96:1 105:18 108:10 110:8,17 111:13 117:7,13 118:24
	72:13 77:4,5,5	<b>changes</b> 45:2	<b>clerk</b> 23:23	<b>communicated</b> 113:1
	78:5 79:25 84:20	71:11 72:2,4,9	<b>clerked</b> 6:4 7:19	<b>communicating</b> 44:17 64:15
<b>C</b>	85:24 92:24 93:1	72:10,14 74:22	<b>clerking</b> 73:8	<b>communications</b> 64:4 106:19 108:2 109:4,9 112:18,21,22 115:22
<b>C</b> 32:11 130:1,1	93:8,12 94:3	75:7 79:7,12	<b>clerks</b> 23:24 47:7	<b>company</b> 108:4
<b>call</b> 25:20 26:25	106:1,23 109:1	82:4 87:2 96:6	<b>clerkship</b> 47:9	<b>compelling</b> 115:20
33:5 85:2 101:18	113:20 116:19	109:25 110:2,21	<b>clients</b> 68:12 125:2 126:6	<b>compensation</b> 112:22
<b>called</b> 4:7,21 13:20	<b>catch-all</b> 81:25	110:23 113:12	<b>client's</b> 97:13	<b>competent</b> 117:16
18:5 51:11 52:3	102:2	<b>changing</b> 60:13 107:11	<b>Clifford</b> 6:4 8:7	<b>complete</b> 82:2 83:2 124:20
82:18 127:3	<b>cause</b> 15:19 69:1	<b>charge</b> 13:13 69:10 73:5	<b>clock</b> 56:2,12,18 57:3 60:6,23	<b>completely</b> 30:19 50:8 77:4 108:2
<b>Camden</b> 72:21	76:24 127:1	<b>chart</b> 87:16	<b>close</b> 2:4 14:18 53:25 54:5 79:16	<b>complex</b> 7:16 14:20 20:16 29:13 30:11 65:21 93:1,2,8 93:13
<b>came</b> 66:10 76:9	128:24	<b>chase</b> 85:15	87:9 110:18	
77:7 91:5 108:15	<b>causes</b> 46:17	<b>cheaply</b> 126:4	127:11,13,18	
120:24 123:18	<b>causing</b> 114:6	<b>cheating</b> 20:9	<b>closing</b> 48:4 49:1	
<b>camp</b> 42:24	<b>Cavanaugh</b> 7:10 7:14	<b>chess</b> 56:2 60:6,23	<b>closings</b> 59:16	
<b>Caniglio</b> 7:12	<b>caveat</b> 21:1	<b>Chicago</b> 8:9	<b>cloth</b> 44:15	
<b>capable</b> 65:21 68:1	<b>center</b> 14:8,19 99:17	<b>Chief</b> 2:7 6:21 16:6 73:17,20	<b>clues</b> 83:11	
<b>capacity</b> 73:19	<b>centerpiece</b> 78:6	<b>choice</b> 24:14	<b>clump</b> 57:19	
<b>care</b> 99:25	<b>certain</b> 29:2 40:9 57:17	<b>circle</b> 65:17	<b>codified</b> 77:25	
<b>career</b> 7:2	<b>certainly</b> 12:9 16:3 19:14 21:16	<b>Circuit</b> 2:19 4:21 4:22 9:1 15:20	<b>cognizant</b> 92:12	
<b>careful</b> 21:19	25:12 33:25	15:21 16:4,9,18	<b>Cohen</b> 53:20 54:7 54:13	
<b>carefully</b> 48:14	40:11 56:18 57:9	33:6,14 43:5	<b>Cohn</b> 74:14	
<b>carried</b> 3:8	62:17 63:1,18	48:18 49:7 51:25	<b>collaborative</b> 109:10	
<b>case</b> 16:20 21:14	64:15 65:5 67:1	54:24 57:12	<b>collated</b> 17:2	
24:18 26:10	94:6 99:17	58:19 73:21	<b>collateral</b> 111:15 121:5,9	
28:11,13 30:18	<b>certificate</b> 46:23 130:15	103:2	<b>colleagues</b> 19:7 86:19 125:24 127:4	
31:21 35:11 36:4	<b>CERTIFY</b> 130:3,7	<b>Circuit's</b> 17:15	<b>collect</b> 126:2	
37:11 38:13,14	<b>cetera</b> 20:25 21:6	<b>circumstance</b> 28:17 118:21	<b>collected</b> 17:2	
42:1,6,14 43:23	<b>CFO</b> 108:3	<b>circumstances</b> 45:15 111:1,3	<b>collecting</b> 21:2	
44:5 45:6,9	<b>Chair</b> 4:3 13:9 73:14	<b>citation</b> 83:20	<b>collective</b> 27:16	
49:15 50:1,4,12	<b>chaired</b> 13:21,25	<b>cite</b> 83:22 84:20	<b>college</b> 4:11 7:4 8:8 10:18 73:12	
51:4,20 52:9	<b>chairs</b> 21:23	<b>cited</b> 15:14	<b>color</b> 69:11	
54:21 58:13,24	<b>challenge</b> 30:7,13 49:3,7,16	<b>citing</b> 16:19	<b>come</b> 12:12 36:22	
59:1 60:3,17	<b>challenges</b> 67:9	<b>civil</b> 7:7 23:18 32:12 35:13,14 35:19 37:24 41:21 60:3 61:6		
61:10 63:19	<b>chambers</b> 18:5 35:15 46:22 74:6			
69:23 72:9 79:23				
81:11,15 85:21				
86:16 87:23,24				
90:7,13,14 91:15				
93:2,2,3,10,11				
93:16 94:15,20				
96:17 99:2 105:5				
105:15 106:18				
107:2,4,5 116:6				

<b>complexity</b> 90:7 93:15	10:10	121:2	15:14 32:16 78:9	<b>curve</b> 82:8
<b>complicated</b> 20:22 25:9	<b>conserve</b> 125:2	<b>corruption</b> 7:11 69:13	78:25 81:18 99:8	<b>cut</b> 46:1 56:25 85:15 87:8
<b>complicating</b> 114:8	<b>consider</b> 12:6 67:16 78:11 81:22 90:1 122:3	<b>cost</b> 71:24 76:14	108:21,24 109:16	<b>cutting-edge</b> 14:23
<b>comply</b> 84:13	<b>consideration</b> 32:16 34:17	<b>counsel</b> 36:22 37:18 51:18 56:14 73:6,22 84:13,24 85:2 106:20 109:9 112:19 115:22 118:17 130:8,11	<b>court's</b> 23:11 33:18 100:24 116:2	<b>C.C.R</b> 1:25 <b>C.S.R</b> 130:15 <b>C.V</b> 8:3
<b>complying</b> 82:23 84:25	<b>considered</b> 93:8 95:2 106:16,17 109:5 112:1,23 113:3	<b>counted</b> 74:8	<b>cover</b> 65:16	<hr/> <b>D</b> <hr/>
<b>comprehensibility</b> 41:3	<b>consistent</b> 13:15	<b>counter</b> 80:24	<b>covered</b> 102:17	<b>Dana</b> 38:23
<b>comprehensible</b> 67:6	<b>constantly</b> 27:7	<b>country</b> 5:2 12:10 17:12 82:16 89:21 91:11 95:14	<b>Co-Chair</b> 73:20 74:13	<b>danger</b> 22:24
<b>comprehension</b> 29:8,19 30:10,12 34:7 35:4 51:24 61:25	<b>constituent</b> 4:10	<b>counts</b> 54:6	<b>co-chaired</b> 13:22	<b>Dann</b> 29:16
<b>compromise</b> 32:24	<b>constituting</b> 109:10	<b>County</b> 6:13,15 41:17 53:21	<b>Co-Chairs</b> 74:10	<b>Danzig</b> 74:4
<b>compulsion</b> 19:25	<b>Constitution</b> 51:6	<b>couple</b> 24:23 28:11 84:5	<b>CPA</b> 108:4	<b>data</b> 13:18 14:17 34:24 57:16 69:20 86:19 107:23,23 109:5 112:23 113:1 121:20
<b>concede</b> 100:9	<b>construe</b> 103:3	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>create</b> 52:23 76:21 <b>created</b> 13:19 69:14 87:7 105:17	<b>date</b> 123:22 130:6
<b>concept</b> 60:23	<b>consult</b> 23:3	<b>court</b> 1:10 3:3,17 3:18 4:15 5:8 6:2 6:5,8,13,16,20 7:8,21,23,24 12:8 14:3 18:5,6 18:13 23:23 24:25 25:2,15 32:15 33:7 36:2 36:3 41:10,17,18 41:21 46:14 53:19 57:17 59:12 65:23 73:8 76:22 77:3 78:10 78:21 79:17 80:3 81:22,23,25 82:2 83:1 88:22 93:14 94:21 96:21 108:25 109:21 109:22 113:17 114:10 118:2	<b>creates</b> 76:15 115:4	<b>Dated</b> 130:17
<b>concepts</b> 50:25 67:24	<b>consultation</b> 59:14	<b>couple</b> 24:23 28:11 84:5	<b>credit</b> 11:12 70:8	<b>Daubert</b> 77:4,7,17 77:25 78:4,13
<b>concern</b> 5:13 42:3 50:20	<b>Consumer</b> 73:6	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>crime</b> 77:10	<b>day</b> 14:1 21:3 31:12,22,23 49:16 127:20
<b>concerned</b> 24:17 117:7	<b>contain</b> 23:21 106:15	<b>couple</b> 24:23 28:11 84:5	<b>crimes</b> 58:2	<b>days</b> 9:25 27:5 28:18 57:18,19 60:17 78:13 79:16,19,19 87:9 106:11 114:7 127:11,13
<b>concerns</b> 46:13 61:20 104:2	<b>contains</b> 4:17	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>criminal</b> 4:12 7:7 7:17 23:18 24:18 28:11 32:15,22 33:2,2,16 37:24 42:3,14 45:21 46:12,14 49:23 49:25 51:3 53:19 53:21,23 54:21 68:8	<b>dealing</b> 3:14 8:17 8:21 65:21 91:7 91:8
<b>concluded</b> 58:3	<b>contamination</b> 38:25	<b>couple</b> 24:23 28:11 84:5	<b>critical</b> 22:11 50:14,25 70:1 75:20	<b>deals</b> 79:13 103:15 110:25 111:1 112:8
<b>conclusion</b> 70:10	<b>contention</b> 114:22 115:6	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>critically</b> 67:22	<b>death</b> 60:7
<b>conclusions</b> 65:4	<b>contested</b> 124:18 128:4	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>criticism</b> 65:20 92:25	<b>debate</b> 76:24 80:7 99:17
<b>conduct</b> 15:16	<b>context</b> 46:14 51:24 52:9 55:5 115:14 116:9	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>criticisms</b> 40:20	<b>debated</b> 95:13
<b>conference</b> 1:12 2:3 15:10 71:23 72:1 87:15,21 88:1 89:5 93:17 108:15,23 128:15	<b>continue</b> 17:5	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>criticized</b> 90:10	<b>Debevoise</b> 18:20 18:24 19:5 23:17 24:14 25:11 30:17 35:10 48:6
<b>conferences</b> 88:8 114:15	<b>continues</b> 5:24 7:21 109:8	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>critiquing</b> 93:9	<b>Debevoise's</b> 23:19
<b>confidence</b> 5:9 65:25 68:22	<b>convening</b> 71:23	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>cross</b> 19:12	<b>December</b> 3:24
<b>confidentiality</b> 31:6	<b>conversation</b> 49:13 106:25	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>crossed</b> 98:3	<b>decide</b> 29:25 50:6 61:16 88:20,23 91:15 101:2
<b>confines</b> 104:19	<b>conversations</b> 106:23	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>cross-examination</b> 107:8 117:25	
<b>conflict</b> 128:23	<b>Cooper</b> 19:3 24:13 35:10 48:6	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>cross-examined</b> 107:3	
<b>conflux</b> 78:3	<b>copy</b> 4:16,20 15:3	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>crowd</b> 2:5	
<b>confronted</b> 126:11	<b>Cornell</b> 29:17	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>cue</b> 9:16	
<b>confusing</b> 10:15	<b>corner</b> 26:23 126:12	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>cull</b> 92:3	
<b>confusion</b> 40:3,13	<b>corners</b> 65:8	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>culling</b> 86:10	
<b>cons</b> 34:2	<b>cornerstone</b> 99:13	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>culture</b> 95:22	
<b>consensus</b> 4:13 43:5 51:16 95:23	<b>corporate</b> 65:20	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>curious</b> 27:12	
<b>consent</b> 54:8	<b>correct</b> 35:3 119:22 120:5	<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>current</b> 7:1 113:18	
<b>consequences</b> 82:23		<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>currently</b> 117:4	
<b>consequential</b>		<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>curry</b> 107:12	
		<b>course</b> 9:24,25 10:18,20,25 11:2 11:10,12 16:13 19:20 20:20 22:17,24 24:7 25:17 28:12 33:15 34:21 41:2 44:4,17 50:16 64:1,5,16,19 66:6 88:10 107:22 113:23 125:25	<b>curtain</b> 105:8	

<b>decided</b> 17:5 61:17 76:23 88:12,15 88:23 96:12 123:22 124:5,13 125:8 126:18	77:16 106:2 111:22 113:19 114:1,10	<b>discipline</b> 57:23 58:6	121:13	<b>drafted</b> 116:23
<b>deciding</b> 32:14	<b>depositions</b> 113:15 113:17 114:7 120:7 121:8	<b>disclosable</b> 107:20	<b>distraction</b> 27:8	<b>drafters</b> 92:12
<b>decision</b> 50:12 77:7 85:8 88:11	<b>deputy</b> 6:19 21:22 23:23 36:18	<b>disclose</b> 111:7	<b>district</b> 1:10 2:9,11 6:2,7,16,20 7:19 7:20,22,24 12:8 16:7,21 18:4,6 18:13 56:1 59:11 65:23 71:2 72:21 72:25 80:15 81:18 82:2,7,16 83:1 84:7,8 87:11,13,14 93:18 94:8 97:11 108:14 124:9,25 125:13 126:14 128:23	<b>drafting</b> 116:18 117:24
<b>decisions</b> 65:3 68:21,22	<b>described</b> 44:21	<b>disclosure</b> 122:12 122:17	<b>discouraged</b> 32:17 67:10	<b>drafts</b> 106:21 107:16,19,19,20 108:1,12 113:14 113:20 114:25 116:1 118:14,16
<b>decreasing</b> 94:23	<b>description</b> 38:23	<b>discoverable</b> 109:8 109:14 113:2 118:15	<b>discovery</b> 78:16,22 79:16 87:9,22 88:5 106:21,22 109:3 115:19 116:9 127:11,14 127:18 128:1	<b>drain</b> 50:21
<b>dedicated</b> 75:23	<b>designed</b> 23:20 46:24	<b>discussed</b> 81:18 82:1 91:14 97:8 97:11 101:20,22 102:7 103:18,19 104:3 105:3	<b>discuss</b> 2:21 11:9 38:23 61:3,7 62:14	<b>dramatic</b> 45:3 57:25 115:17
<b>deem</b> 22:25 101:23 103:13 104:11	<b>desire</b> 20:18 105:24	<b>discretion</b> 81:18 82:1 91:14 97:8 97:11 101:20,22 102:7 103:18,19 104:3 105:3	<b>discusses</b> 59:2 discusses 110:3 discussing 73:9 82:5	<b>dramatically</b> 45:13
<b>deemed</b> 102:9 104:20 109:13	<b>desk</b> 12:22 70:10	<b>discussion</b> 48:16 61:22 67:21,22 71:2 119:9	<b>discussions</b> 118:17	<b>Drasco</b> 2:1,1 11:22 11:23 13:22 18:3 20:12 21:10 22:1 24:21 25:25 26:6 27:18 29:4 30:14 32:2,8 33:9,12 33:21 34:1 35:7 35:15;19 37:25 38:4,7 39:7,13 39:16,19 40:14 40:20 41:16 43:4 44:12 45:16 46:12,20 47:16 47:19 48:17 49:18 50:7 51:15 52:13,20 53:6,16 54:16,23 55:14 55:23 56:8,20 57:1,12 58:22 59:19,24 60:2,25 62:2,8,21 63:8 63:23 64:20,24 65:14 66:16 67:2 67:17 68:6,13 70:6,24 71:1 73:14
<b>deeply</b> 9:15	<b>despite</b> 95:25 98:2 116:2	<b>disfavored</b> 98:22	<b>disapproved</b> 98:22	<b>drawer</b> 36:5
<b>default</b> 50:22 100:17,19 101:12,13	<b>destroyed</b> 20:5 21:4,6	<b>dismissed</b> 102:6	<b>disapproved</b> 102:6	<b>drawn</b> 58:1
<b>defend</b> 102:22 118:8	<b>destruction</b> 107:24	<b>disposed</b> 85:24	<b>disposition</b> 94:2	<b>dreary</b> 66:4
<b>Defender</b> 6:20	<b>detailed</b> 4:23	<b>dispositive</b> 87:18 88:5 125:8 126:10	<b>dispositive</b> 87:18	<b>driving</b> 79:1
<b>defense</b> 4:12 32:23 42:6 49:23 91:17	<b>deter</b> 85:10	<b>dispute</b> 3:19 28:21 80:4 83:23 84:2 84:10 94:20 96:24 99:20 100:2,13,22 104:14 111:10 118:11	<b>dispute</b> 3:19 28:21 80:4 83:23 84:2 84:10 94:20 96:24 99:20 100:2,13,22 104:14 111:10 118:11	<b>dual</b> 109:20
<b>deferred</b> 125:23 125:25	<b>determination</b> 71:18	<b>disputes</b> 5:20 86:8	<b>disputes</b> 5:20 86:8	<b>Duke</b> 71:23
<b>definitely</b> 100:7	<b>determine</b> 4:24 10:9 111:21	<b>disputing</b> 81:13 86:7	<b>disputing</b> 81:13	<b>duplicate</b> 90:19
<b>delay</b> 46:17 53:25 71:25 115:4	<b>determined</b> 111:13	<b>distinct</b> 30:23	<b>distinct</b> 30:23	<b>during</b> 16:13 18:16 20:20 21:20 22:8,17 27:11,17 33:15 34:11 36:15 44:17 58:5 61:8 63:20 64:1,4,19 109:12 127:22 128:1
<b>deliberation</b> 66:8	<b>determining</b> 45:11	<b>distinction</b> 32:21 6:25	<b>distinction</b> 32:21	<b>duty</b> 63:7
<b>deliberations</b> 20:3 27:12,17 47:4,21 53:24 54:1 61:4 61:10,19	<b>detract</b> 120:11	<b>distract</b> 120:10	<b>distract</b> 120:10	
<b>delighted</b> 15:15	<b>deviated</b> 120:8			
<b>delivers</b> 48:9	<b>Diamond</b> 14:7			
<b>delve</b> 47:3	<b>dictated</b> 116:24			
<b>democracy</b> 69:17	<b>die</b> 99:9			
<b>demonstrate</b> 84:3	<b>died</b> 58:5			
<b>demonstrated</b> 14:16 97:24	<b>differ</b> 31:3			
<b>denied</b> 124:22	<b>differences</b> 98:5			
<b>Dennis</b> 2:1 12:11 13:22 14:11 15:20 17:10 58:17 69:3 73:14 74:10,20	<b>different</b> 10:1 18:7 29:20 76:12 78:14 95:5 124:9 124:9			
<b>deny</b> 97:8 99:4	<b>differently</b> 103:5			
<b>Department</b> 6:19	<b>difficult</b> 30:23 35:5,24 82:21 86:9 106:24			
<b>DePaul</b> 8:8	<b>dig</b> 63:6			
<b>depend</b> 128:19	<b>digress</b> 102:16			
<b>depending</b> 11:14 35:11 56:21 72:7	<b>dire</b> 16:16 69:11			
<b>depends</b> 89:7 113:23	<b>direct</b> 2:13			
<b>deposed</b> 116:1	<b>direction</b> 16:6 76:11			
<b>deposition</b> 77:14	<b>Director</b> 7:21			
	<b>disagree</b> 85:1 86:23 90:20			
	<b>disagreed</b> 126:1			
	<b>disappear</b> 114:9			
	<b>disappearing</b> 20:9			
	<b>disaster</b> 20:8			
	<b>disciples</b> 69:1			

E				
E 130:1,1	eliminating 84:17	entitled 9:10,19	28:24 29:11 40:5	114:13
each 10:5 11:10	embraced 52:11	80:5 96:25 97:16	40:6 55:8 61:3,7	experiences 66:11
16:23 53:13,14	emphasis 44:10	100:10 101:8	62:13 63:4 75:21	experiment 17:6
53:14 54:8 59:4	emphasize 29:20	entitlement 92:20	77:24	19:13 43:17
59:6 60:16 75:25	34:23 51:24	97:13,25 98:10	exactly 14:12 28:1	58:20 62:24
79:8 82:22 89:10	57:16 112:25	102:1	52:4 57:4,5	experimental
112:25	emphasized 29:12	enumerating	82:21 83:23	16:11,22 95:15
eager 54:10	empirical 8:22	80:20	94:13 106:3	experimenting
earlier 79:22 121:4	13:18 15:4 86:19	envision 118:22	116:22	56:2
early 30:22 45:6	empirically 27:14	119:2	exam 10:7,21 11:3	expert 14:6,6
49:18 62:14	employee 112:4,11	equity 104:1	11:4	22:21 51:21 52:3
87:18 98:14	130:8,10	especially 47:17	examine 71:10,24	77:14 106:3,9,16
early-disclosure	employing 107:13	52:1 54:21 62:12	72:15 79:5,8	106:17,18,20,25
95:12	107:14	105:4	example 45:6	107:7,10,21
ease 93:18	encompass 103:17	essays 12:21	57:25 76:3,22	108:5 109:2,5,6
easier 83:12	encouraging 69:6	essential 113:20	examples 35:22	109:10,18 111:1
104:23	end 11:21 12:12	essentially 110:25	36:1 38:1	111:3,6,8,12,25
Eastern 59:11	21:3,4 31:12,22	111:6,15 112:13	except 85:6 109:6	112:3,5,6,11,15
economics 119:20	43:14 65:14 96:3	Essex 6:13,15	exception 108:3	112:19,22,24
economy 126:6	96:4	41:17 53:21	exceptions 112:20	113:1,3,5,6,19
edification 111:23	ended 107:6	et 20:24 21:6 24:24	112:21 113:7	113:21,25
Edition 14:21	endorsement	51:21	exchange 81:5	114:17 115:21
editorial 63:3	82:25	evaluative 29:17	exclusion 116:4	116:1,5,7,20,21
Editor-in-Chief	energetic 4:23	eve 87:7	excuse 41:11	116:21 117:5,6,9
7:18	energy 69:8	even 9:21 10:17,21	Executive 9:1	117:15,18,19
educate 68:16	enforce 65:11	11:15 12:7 13:1	exercise 67:9	119:21 120:18
educated 67:11	enforced 78:20	19:21 42:5 76:20	104:3 123:25	120:22,23
educating 67:23	engage 48:24	78:1 83:15 87:18	exercising 103:19	122:24
Edward 73:20	engagement 38:16	90:24 93:17	exhaust 105:5	expertise 119:20
effect 41:19 75:7	38:18 44:15	98:10 102:20	exhibit 25:21,23	experts 72:12,12
76:24 96:7,10	61:25 122:23	114:3,16 120:24	exhibits 23:11 24:2	72:17 77:7 78:12
117:8 119:12	engineers 76:9	122:1 128:10	24:19 25:4,18	105:15,16
122:8 123:15	English 12:21	event 89:7 93:5	27:23 29:10	107:15,15 108:3
effective 14:16	enhance 34:7	ever 33:21,25 50:9	30:18	112:8,10 113:15
15:5 29:18 30:2	68:22 119:16	62:22 118:13,21	exhortation 57:7	115:11 116:16
58:11 64:5 69:16	121:15	125:9	expand 83:13	119:2 121:8,10
effectively 68:5	enhancing 20:19	every 21:14 22:13	expect 79:10	expert's 106:7
effects 123:6	51:13	49:16 66:15	expected 41:23	109:7 114:5
efficient 13:8 15:7	enormous 90:9	71:19 72:9 76:14	59:6	118:8 120:15,18
58:12 115:2	enough 45:19	77:14 85:21	expedite 122:9	expert-witness
efficiently 17:21	57:10 58:18,20	90:23,23,24	expense 72:14	77:5,11,22 78:4
effort 4:23 15:18	74:20 86:5 92:22	107:7 108:16,17	90:16 94:23	expires 130:16
17:9,24 67:10	107:10 111:16	122:24 123:1	115:4 123:8	explain 11:4,7 12:5
95:25 114:25	111:19	everybody 25:6	125:2 126:8	39:25 40:11 52:3
124:11	Enron 90:14 93:2	43:15 52:8 69:15	expensive 76:15,16	116:22 119:5
eight 123:23	ensures 33:17	78:17	77:20 90:2 114:9	explaining 16:19
either 11:15 37:7	entered 115:20	everyone 2:5 35:23	experience 11:20	exploded 51:12
62:9 80:24 81:9	127:21	63:9 68:16 71:8	13:6 19:14,16,17	exploding 51:13
81:10 91:8	entertain 115:5	102:20 116:10	22:12 24:20	exploration 119:5
126:13	enthusiastic 82:24	129:2	26:13,23 27:4	explore 122:14
elaborated 83:24	enthusiastically	everyone's 71:12	28:2 32:18 45:19	explored 116:20
electronic 78:15	52:11	everything 12:16	45:20 53:18	expressed 51:1
78:22	entire 8:3,21 81:11	57:19 61:14	66:12 67:12 68:7	71:16 112:24
electronically 99:9	81:15 91:4 103:9	90:19 98:19	69:22,25 73:7	113:4
Eleven 125:24	111:11	101:7 105:25	74:8 98:24	expresses 56:5
elicit 64:9	entirely 13:15	107:7 117:16,20	109:20 113:25	extended 45:22
eliminate 114:21	entitle 80:21 83:8	127:7	116:12	extends 112:13
	92:15	evidence 25:18,19	experienced	extensive 8:4



<b>extent</b> 3:20 28:21 30:15 103:7 104:6 112:16 113:2,14 114:13 115:10 123:7 124:4,15,19,24 125:14 128:22	106:20,21 <b>fairly</b> 14:1 82:24 <b>fairness</b> 33:17 44:11 78:16 <b>fall</b> 42:23 <b>familiar</b> 7:25 11:22 72:19 110:8 <b>fanciful</b> 68:3 <b>fantastic</b> 74:23 <b>far</b> 34:14 35:3 117:19 <b>fare</b> 18:13 <b>FARMS</b> 1:14 <b>fashioned</b> 14:14,22 <b>fault</b> 69:12 <b>favor</b> 43:6 49:25 107:12 <b>favoring</b> 113:10 <b>fear</b> 101:5 108:16 <b>February</b> 15:11 130:16 <b>federal</b> 1:2 2:2 3:1 3:3,11,17,18 4:15 5:8 7:8,11 14:2 15:14,23,25 57:17 71:10,17 74:1,11,13 75:13 78:7,9,21,25 80:18 81:6 91:4 93:14 95:1,11 101:18 103:16 104:4 109:21 113:18 118:15 123:14 127:9 128:13 <b>Feed</b> 63:6 <b>feel</b> 16:25 27:1 45:18 47:11,11 83:5 127:2 <b>feeling</b> 66:9 <b>fellow</b> 7:4 10:16 23:3-73:12 <b>felt</b> 56:10 70:1 96:17 <b>few</b> 9:11,25,25 15:1 27:5 41:23 <b>field</b> 13:23 116:14 116:14,16 <b>fighting</b> 86:25 <b>fighths</b> 104:12 114:16 <b>figure</b> 10:10 83:15 <b>file</b> 36:3 79:15 80:23 83:15 127:18,20,24 128:1,7,12,17 <b>filed</b> 85:23 88:10	89:6 127:16 128:10,21 <b>files</b> 36:2 <b>filing</b> 80:19 85:10 85:17 86:20 87:5 93:4 127:10 <b>final</b> 10:7,21 11:3 11:4,7 24:4 47:25 74:24,25 89:2,5 124:12,19 124:23 125:7 128:2,10,12 <b>finalize</b> 75:1 <b>finally</b> 81:17 <b>financially</b> 130:11 <b>find</b> 7:25 15:5 25:23 28:16 40:22 42:1 88:6 98:21 99:4,5 101:25 114:1,4 121:7 123:3,5 125:14-126:8 127:25 128:10 <b>finding</b> 78:22 <b>fine</b> 2:11 60:8,24 106:10 <b>firm</b> 45:19 73:11 74:14 117:18 <b>first</b> 2:22 17:18 21:25 28:11 32:5 36:4 38:8 54:25 58:19 59:25 62:13,19 64:3 71:13 72:6,18,19 75:6 79:6,13 82:16 86:4 87:2 88:22,25 98:25 108:15 110:25 118:23 <b>fit</b> 55:12 <b>fits</b> 52:3,10 55:9 <b>five</b> 24:5 55:2 66:13 79:12 82:3 95:23 107:19 <b>fix</b> 66:24 <b>fixed</b> 57:18 <b>flavor</b> 75:9 <b>flee</b> 78:9 <b>flexibility</b> 60:19 <b>flexible</b> 60:9 <b>flip</b> 38:1 <b>flood</b> 41:24 <b>focus</b> 45:1 58:12 83:6,14 94:13 114:23 119:25 120:1,2,2,3,13 121:16,24 122:16	<b>focused</b> 34:22 52:8 94:11,11,19 <b>focuses</b> 118:7 <b>focusing</b> 29:1 <b>follow</b> 35:2 37:21 46:4 57:2 102:24 103:12 124:14 124:25 <b>following</b> 9:18 103:9 <b>follow-up</b> 37:19 40:15,19 <b>football</b> 47:1 <b>Force</b> 73:21 <b>forced</b> 59:22 <b>forces</b> 25:6 <b>forefront</b> 108:19 <b>foregoing</b> 130:3 <b>foresee</b> 76:20 <b>forever</b> 58:7 <b>forget</b> 99:3 101:10 <b>form</b> 40:16,17 <b>former</b> 7:11 72:22 72:22 73:1,14 108:14 113:17 <b>forming</b> 112:24 113:3 <b>forth</b> 23:21 25:15 25:20 30:18 45:11 59:4 64:12 104:2 105:25 106:9 130:6 <b>forward</b> 87:17 89:9 <b>found</b> 29:18 52:1 56:7 61:21 96:13 113:14 114:14 115:11 117:1 125:10 <b>founded</b> 119:19 <b>four</b> 15:13 24:4 28:9 58:4 65:8 123:24 <b>fourth</b> 81:8 <b>frame</b> 49:2 50:10 <b>framed</b> 93:22 <b>framework</b> 50:4,5 60:6 <b>framing</b> 55:5 <b>Francisco</b> 3:9 74:21 91:5 <b>Frankly</b> 83:12 92:8 <b>fraud</b> 24:24 73:6 <b>Freda</b> 72:25 <b>frequent</b> 74:1 <b>Frequently</b> 37:20 <b>friend</b> 8:2 63:6	71:6 <b>from</b> 2:7 5:11,21 6:6 8:2,15 13:21 14:8,19,20,21 19:6 22:15 27:1 27:14 29:15,16 29:17 30:23 36:1 36:4,8 41:25 48:13 49:23 52:4 54:24 57:14 58:1 61:8 62:2 63:23 65:20,22 67:10 70:16 72:19,21 73:10,11 76:3 84:7 85:20 87:9 91:4,4,10,10 93:2,10 94:7 96:19 100:25 103:2 105:14 107:7 110:10 114:10 117:18 120:8,10,11,24 121:14 122:18 123:6,7 126:6,6 126:24 <b>front</b> 12:21 24:24 25:3,22 28:14 53:20 60:3 70:17 87:15 <b>fruit</b> 126:23 <b>full</b> 65:17 <b>fully</b> 83:24 <b>fumbling</b> 25:22 <b>function</b> 112:12 <b>furiously</b> 22:21 <b>further</b> 34:14 46:4 124:22 130:7 <b>future</b> 43:17 62:18 70:5 72:2,3
<b>extraordinarily</b> 77:20 90:2,13 <b>extremely</b> 93:13 93:13 <b>extremes</b> 57:20 <b>e-mail</b> 122:24 <b>e-mails</b> 123:3	<b>F</b> <b>F</b> 12:23 61:5 130:1 <b>fabulous</b> 70:21 <b>face</b> 7:25 49:4 63:5 63:5 83:16 123:23 <b>faced</b> 94:3 <b>faces</b> 106:5 <b>facing</b> 44:10 63:2 <b>fact</b> 4:24 10:3 21:12 36:6 47:13 63:8 80:5,17 81:9,14,22 83:21 86:5 90:10 92:12 94:10,19 96:24 99:4,21 100:21 101:23 102:9 107:9 110:19 117:17 119:6 124:17 <b>factor</b> 114:8 <b>facts</b> 50:1 68:20 80:20 81:1,2,4,5 81:21 82:17 83:7 83:7,8,16,21,25 84:2,10,16,18,20 86:3,4,8,9,11,14 86:17-87:25 89:17 91:24,24 92:1,7,14,18 97:15 100:2,10 100:13 102:6 103:23 106:15 109:5 111:7 112:23,25 121:20,23 124:18 128:4,4 <b>factual</b> 37:17 94:14 <b>failed</b> 116:1,3 <b>fails</b> 81:19 <b>Failure</b> 101:16 <b>fair</b> 3:18 5:19	<b>final</b> 10:7,21 11:3 11:4,7 24:4 47:25 74:24,25 89:2,5 124:12,19 124:23 125:7 128:2,10,12 <b>finalize</b> 75:1 <b>finally</b> 81:17 <b>financially</b> 130:11 <b>find</b> 7:25 15:5 25:23 28:16 40:22 42:1 88:6 98:21 99:4,5 101:25 114:1,4 121:7 123:3,5 125:14-126:8 127:25 128:10 <b>finding</b> 78:22 <b>fine</b> 2:11 60:8,24 106:10 <b>firm</b> 45:19 73:11 74:14 117:18 <b>first</b> 2:22 17:18 21:25 28:11 32:5 36:4 38:8 54:25 58:19 59:25 62:13,19 64:3 71:13 72:6,18,19 75:6 79:6,13 82:16 86:4 87:2 88:22,25 98:25 108:15 110:25 118:23 <b>fit</b> 55:12 <b>fits</b> 52:3,10 55:9 <b>five</b> 24:5 55:2 66:13 79:12 82:3 95:23 107:19 <b>fix</b> 66:24 <b>fixed</b> 57:18 <b>flavor</b> 75:9 <b>flee</b> 78:9 <b>flexibility</b> 60:19 <b>flexible</b> 60:9 <b>flip</b> 38:1 <b>flood</b> 41:24 <b>focus</b> 45:1 58:12 83:6,14 94:13 114:23 119:25 120:1,2,2,3,13 121:16,24 122:16	<b>focused</b> 34:22 52:8 94:11,11,19 <b>focuses</b> 118:7 <b>focusing</b> 29:1 <b>follow</b> 35:2 37:21 46:4 57:2 102:24 103:12 124:14 124:25 <b>following</b> 9:18 103:9 <b>follow-up</b> 37:19 40:15,19 <b>football</b> 47:1 <b>Force</b> 73:21 <b>forced</b> 59:22 <b>forces</b> 25:6 <b>forefront</b> 108:19 <b>foregoing</b> 130:3 <b>foresee</b> 76:20 <b>forever</b> 58:7 <b>forget</b> 99:3 101:10 <b>form</b> 40:16,17 <b>former</b> 7:11 72:22 72:22 73:1,14 108:14 113:17 <b>forming</b> 112:24 113:3 <b>forth</b> 23:21 25:15 25:20 30:18 45:11 59:4 64:12 104:2 105:25 106:9 130:6 <b>forward</b> 87:17 89:9 <b>found</b> 29:18 52:1 56:7 61:21 96:13 113:14 114:14 115:11 117:1 125:10 <b>founded</b> 119:19 <b>four</b> 15:13 24:4 28:9 58:4 65:8 123:24 <b>fourth</b> 81:8 <b>frame</b> 49:2 50:10 <b>framed</b> 93:22 <b>framework</b> 50:4,5 60:6 <b>framing</b> 55:5 <b>Francisco</b> 3:9 74:21 91:5 <b>Frankly</b> 83:12 92:8 <b>fraud</b> 24:24 73:6 <b>Freda</b> 72:25 <b>frequent</b> 74:1 <b>Frequently</b> 37:20 <b>friend</b> 8:2 63:6	<b>G</b> <b>game</b> 31:18 32:3,9 87:19 106:20,21 <b>gates</b> 41:24 <b>gave</b> 23:17 54:8 122:1 <b>general</b> 48:22 55:12 56:13 58:3 59:6 60:11 73:7 82:18 94:23 104:4 <b>generality</b> 82:20 <b>generally</b> 46:8 50:15 55:3 56:25 67:19 84:13 87:20 88:6 111:25 119:23 121:7 122:2

128:22	goes 24:6 29:2	59:3	32:3,9	hear 2:7 4:18 5:21
<b>General's</b> 73:4	31:10 92:6	government's	guidance 68:4	5:22 12:1 18:20
<b>generate</b> 72:13	119:12	28:14	guilt 51:3,5,7,12	18:24 22:4 36:20
104:7	<b>going</b> 2:10,21 3:9	<b>graduate</b> 8:5	guilty 14:25 39:10	42:19 62:2 66:16
<b>genesis</b> 65:19	3:13,21 4:18 5:9	<b>grafted</b> 81:6	guise 96:10	69:6
<b>Gentlemen</b> 21:11	6:12 7:3 8:15 9:8	<b>grant</b> 80:3,9 81:24	gut 62:11	<b>heard</b> 10:12 19:12
<b>gentler</b> 101:18	10:22 18:22 21:5	94:21 96:22,22	<b>guy</b> 42:7 51:9	52:22 55:25
<b>genuine</b> 80:4 96:23	21:6 22:25 23:16	96:23 98:4	<b>guys</b> 30:3,13	<b>hearing</b> 78:13
<b>genuinely</b> 80:21	25:5 29:25 30:6	101:24 103:13		116:3
92:15	30:10,10 31:11	103:24 105:2	<b>H</b>	<b>heart</b> 4:1
<b>gets</b> 40:10 77:17	31:12,13 34:12	<b>granting</b> 97:23	<b>half</b> 4:6 30:4 57:18	<b>hearts</b> 108:17
99:3	34:16 35:1 40:11	<b>gratefulness</b> 22:10	59:17	<b>heavily</b> 110:10,10
<b>getting</b> 33:6 34:11	41:23,24 42:7	<b>gravity</b> 76:7	<b>Hall</b> 7:19	<b>held</b> 36:17 61:19
78:21 84:15	44:25 50:5,11	<b>Gray</b> 13:9,19	<b>hammered</b> 107:8	<b>hell</b> 39:10
88:15 89:22	52:7,19,25 53:12	<b>great</b> 12:15 38:17	<b>hand</b> 21:13,18	<b>help</b> 30:12,13 35:4
120:21 128:3	55:11,17 57:7,21	46:17 60:12	57:6 97:7 103:1	49:19 50:10 59:1
<b>Ginny</b> 70:9	58:7,11 60:20	122:20	<b>handed</b> 12:22 48:7	124:2
<b>give</b> 2:8 10:5 12:4	62:7,13 63:8	<b>greater</b> 34:15 46:9	<b>handle</b> 46:4	<b>helped</b> 58:23 61:24
22:18 23:2,19	65:12 70:13 71:9	46:10	<b>handled</b> 36:9	61:25
27:11 39:2 40:18	72:3 75:11,14,19	<b>greatest</b> 28:14	<b>handout</b> 4:16	<b>helpful</b> 10:20 25:1
46:22 48:3,25	77:18,19 79:6,11	<b>Greenaway</b> 35:16	<b>handwriting</b> 36:17	25:8,16,24 30:20
49:9 53:13,14,14	83:8 85:8,24	45:21 70:13,20	<b>Hans</b> 29:16	40:3 49:22 50:2
56:13 58:20	87:12,16 88:17	<b>Greenbaum</b> 3:12	<b>happen</b> 10:22	84:17 89:24
68:14 70:13,15	88:19,19,20 89:1	71:6,8,9 79:4	19:19 60:13	91:17 125:15
75:9 76:3 79:9	89:11,13 90:9,18	82:6 85:14 86:18	117:11	<b>helping</b> 40:12 99:2
81:18 83:11	92:3 96:3 97:19	86:24 88:9 89:13	<b>happened</b> 105:23	<b>helps</b> 94:14
92:18,18 108:5	98:17,21 99:5,20	90:3 91:16 92:11	116:6 123:21	<b>her</b> 28:22,24 73:1
109:23 118:16	99:22,22 100:1,2	93:23 95:1,25	<b>happening</b> 29:2	107:2,17 109:4
121:19	100:12,22 101:2	98:15 99:18	99:5	112:12
<b>given</b> 11:3 16:24	101:13,23,24	101:1,15 104:5	<b>happens</b> 102:23	<b>hereinbefore</b>
31:4 35:21 50:9	103:10,11,12,24	105:9,13 108:11	114:19	130:6
50:16 55:2,2	104:4,22 106:3,7	109:19 113:11	<b>Happily</b> 104:13	<b>Hernandez</b> 33:3
67:21 81:21	106:9 108:9	114:12 115:8	<b>happy</b> 91:7	37:11
113:25	110:3,7 111:12	116:11 117:3	<b>hard</b> 2:16 3:4 4:4	<b>Herrmann</b> 74:15
<b>gives</b> 39:15 83:25	111:15,25 114:2	118:12 119:8	13:23 118:4	<b>herself</b> 24:15
101:19,22	123:11 124:11	120:14 122:4	119:1	<b>hesitancy</b> 43:11
103:17	125:3 126:25	123:10 125:1,9	<b>hardship</b> 118:19	<b>Hey</b> 31:16
<b>giving</b> 70:2 86:13	127:8,18,20	125:13,19 127:6	<b>harm</b> 64:10,18	<b>high</b> 12:19 43:14
108:5	128:18	128:14 129:1	<b>Harvard</b> 8:6	<b>higher</b> 118:16
<b>glossed</b> 48:15	<b>gone</b> 50:21 75:15	<b>Greg</b> 73:10,11,11	<b>having</b> 14:25 15:3	<b>highlights</b> 30:18
<b>go</b> 10:18 18:9 25:5	106:24 107:7	73:16,23,25 74:3	26:8 30:16 37:13	<b>highly</b> 73:24
25:21 31:11,22	<b>good</b> 2:6 8:2 11:19	75:14,17 79:4	44:15 50:13	<b>him</b> 12:22 51:10
32:3 34:14 39:7	14:12 16:8 19:9	89:23 92:24 95:3	56:11 63:25	72:24 104:9
39:11,16 42:18	23:7 25:12 42:17	96:5 100:4	64:18 65:19 66:9	107:2
45:23 50:21,22	49:9,10 50:15	105:20 108:11	69:23 90:10 95:9	<b>hire</b> 117:17
56:15 58:7 59:6	53:11,15 55:10	117:10	98:25 103:16	<b>historic</b> 32:16
62:17 65:17,22	62:12 66:16	<b>Gregg</b> 122:5	<b>havoc</b> 87:8	<b>Historical</b> 7:22
66:8 75:7 78:9	67:20 71:6,8	<b>ground</b> 64:21,23	<b>Hayden</b> 6:3 18:14	<b>history</b> 78:19
85:23 89:9 91:24	91:10 99:16	65:2 98:7 119:5	18:18,21 19:1	89:16
93:21,23 96:5	100:4,5,7 106:11	<b>group</b> 4:7,9 13:11	22:1,3 23:14,15	<b>histrionics</b> 53:2
98:18 101:2,8,21	123:8 127:1	13:24 14:2,21	27:9 35:7,9,18	<b>hits</b> 28:14
103:6 104:24	128:22,24	16:18 73:6	48:1,2 52:13,16	<b>Hochberg</b> 56:5
107:17 114:7	<b>Google</b> 63:6	<b>groups</b> 4:10 15:10	55:25 56:4 62:4	<b>hold</b> 119:23
124:6 125:3	<b>gospel</b> 17:11	<b>grow</b> 66:10	62:6 63:13,14	<b>Holderman</b> 16:7
<b>goal</b> 3:14,16 5:15	<b>gotten</b> 13:3 42:5	<b>guess</b> 32:6 44:24	66:1,2	17:8
5:16,18,18 68:15	<b>govern</b> 95:22	45:6 89:9,14	<b>head</b> 31:11 45:17	<b>holding</b> 17:17
68:17	<b>government</b> 28:19	117:6 119:10	54:16	<b>holidays</b> 54:1
<b>God</b> 54:5	39:2 49:25 51:10	<b>guessing</b> 31:17	<b>heads</b> 29:23	<b>home</b> 21:21 39:11

107:8	5:17	information 10:6,6	Interestingly 48:2	64:24 68:6
Honor 41:7	important 2:17	14:18 25:14 52:5	48:5	Jerry's 7:15
Honorable 72:20	4:25 10:8,13,24	65:8 70:10	interfere 119:12	Jersey 1:4,16 6:5,6
72:24 73:2	11:2 12:6 15:24	106:16,17	119:24	6:13,20 7:8 9:14
honorary 13:25	15:25 17:13	111:18,20	interim 51:17	12:8,8 32:25
honors 56:12	22:19 23:1,6	initial 43:11 63:20	International 7:5	52:15 65:24 73:8
hope 5:22 17:24	30:9 34:23 50:12	initially 32:23	Internet 63:12	74:9,15 108:18
63:16 69:8 70:4	58:14 59:18 65:2	injects 30:20	65:7	108:24 109:16
hopeful 85:7,9	67:22 95:2	ink 76:7	intervals 51:20	110:11,21,22
Hopefully 71:1	100:24 105:7	innocence 44:7	interventionists	118:14 130:16
horses 126:20	113:19 121:17	innocuous 107:9	44:3	Jersey's 113:9
horse's 8:15	121:17	innovation 32:4	introduce 72:17	Jewish 54:1
host 15:9	impose 56:20	innovations 3:16	84:20	job 68:4 74:23
hosts 123:5	57:22 58:6 59:12	9:20 12:7 16:25	invaluable 68:9	85:3 86:12 112:5
hot 75:10	60:5	17:5 19:6,8	69:25	112:11,12
hotly 95:13	imposed 87:4 94:9	29:18 95:10	invite 43:21 44:1	join 129:2
hour 56:22 59:16	imposing 89:19	input 42:16	46:22 61:3	joined 17:8
59:17	102:4	insane 19:20	invites 34:17	joint 87:22
hours 56:22,22	impossible 60:16	inside 29:23	involve 10:2 11:7	Jose 6:9
91:12	impressing 105:6	insight 22:18	involved 46:15	Joseph 7:12 73:10
household 6:3	improper 45:25	54:14	103:20 116:17	73:11 75:14,18
housekeeping 70:7	improve 31:7 47:3	inspiration 69:7	involving 7:11	89:23 90:1,4
70:12	67:1 68:19 72:11	inspired 5:23	Iphones 65:7	100:5 101:5
huge 51:14 65:9	improved 17:1	inspiring 70:15	Irenas 35:17	105:20,23
human 66:12	94:6	instance 88:22	irrelevant 34:24	117:12 118:23
hundreds 14:24	improvement 16:1	instruct 45:8	44:11 45:12,12	122:6
Hyland 74:4	17:16 71:15	instructed 47:24	issue 3:5 8:17	Joseph's 92:24
hypertension	94:25	50:3 61:6 65:3	26:23 32:21	journal 8:21,22
39:15	improvements	instruction 19:24	33:10 48:19	judge 2:7 6:3,8,9
	68:18	23:2 35:2 48:18	54:15 65:6 81:25	6:10,16,17,17,18
<b>I</b>	inclined 53:3,7	50:22,23	84:6 96:23 97:18	6:22,23 7:10,13
idea 10:21 25:12	include 23:10	instructions 16:14	98:18 99:9 102:2	7:19 16:6,7 17:8
28:25 34:6 39:5	included 14:8	23:11 24:1,4	108:19 113:16	18:14,18,20,21
42:17 53:11,15	16:11	25:14 29:10	114:6,9 117:15	18:21,24 19:1,3
55:16 58:7,9,16	including 4:11	47:20,21,22 48:3	117:23 120:25	19:3,3,4,4,4,9
60:12 62:12	8:23 23:22	48:7,9,12,23,25	121:1 122:3	20:12,14 21:10
63:25 88:4 108:6	109:11 115:21	49:6,9,13,19	123:3	21:11 22:1,3,15
120:24	inconclusive 57:13	50:13,15,17,18	issues 2:22 3:14	23:14,15,16,19
ideas 67:6	58:17	51:2 63:20 103:2	8:10,12 25:3	24:12,13,14,14
identical 23:9	inconclusively	insubstantial	34:22 51:21	24:15,21,22
identified 90:8	58:5	72:14	65:22 75:10	25:11,25 26:1,15
identify 108:8	increasing 72:13	intellectual 49:3	76:18 77:16,17	27:9 29:16 30:17
111:5,6	increasingly 72:8	116:14	79:5 94:1 99:4	33:1,3,5,11,13
ignorant 77:9	incredibly 52:5	intelligent 67:7	108:10 121:6,9	33:23 34:21 35:7
Illinois 15:23 16:3	incubator 72:2	69:12	items 23:10 121:19	35:9,10,10,11,12
imagine 45:14	indeed 116:18,20	intelligently 55:13	i's 98:2	35:12,16,16,17
52:25 89:10	indicated 21:15	intend 62:18		35:17,18,21,24
immediate 3:12	115:3 119:10	intended 55:5 88:9	<b>J</b>	37:2,11,12,25
72:3,5	indication 54:3	intensely 66:12	James 16:7	38:2,6,8,22 39:7
impact 54:12 72:5	indications 83:4	intent 96:8	Jeff 3:12 71:6,9	39:9,13,14,24
87:11,13 88:14	indictment 50:1	intentions 59:4	75:18,20 79:3	40:14,18,25 41:8
94:16 105:10	individual 76:19	interaction 66:6	114:20 117:23	41:16,20 42:9,13
114:4	79:25	interest 17:16,25	Jeffrey 110:6	42:24 44:1,21
impediment 30:8	inevitably 47:4,10	interested 6:1	Jerome 72:20	45:21 46:18,19
impermissibly	inexpensive 71:18	130:11	Jerry 6:25 26:11	46:21 47:17 48:1
84:19	94:2	interesting 17:4	27:18 28:1 39:15	48:2,5,6,6,8,9,21
implement 4:4 9:3	influence 29:23	43:10,19 64:11	42:10 45:16	52:13,16,20,21
implemented 5:1	informal 84:5	69:19 84:8 114:1	49:18 59:19 61:2	53:6,7,20 54:7

54:13,25 55:25 56:4,4,8,9,23 57:1,2,2,9 59:3 59:20,24 60:1,3 60:5,9,20 62:4,6 62:8,9,19,21,23 63:13,14,17,18 66:1,2,17,18 67:2,3 68:12 70:13,19 71:4 72:21,22,25 73:1 73:2,20 82:11,14 85:14,17,19 86:14,18,22 87:10,12 88:14 88:16,19 89:8,10 89:10 90:8 91:14 91:16,19 92:21 92:23 93:10,17 93:18 94:17 95:6 95:8 97:10,17,21 98:2,13,24 100:22 101:19 101:22 102:3,11 102:15 103:11 104:5,13 105:3,4 108:14 114:14 114:19 115:10 115:15,20 116:11,13 124:3 124:8,25 125:5 125:16,17,21 126:14,14,17,18 127:6,7,8 128:14 128:19 <b>judges</b> 3:24 4:9 6:2 9:5 14:2 16:21 16:23 17:4 18:7 18:11 19:10,13 21:15 26:24 35:8 41:11 43:7 49:7 52:14 56:1 58:14 62:3 65:10 66:3 69:6 70:22 83:5 84:4,7,9,12,23 85:1,16,20 89:18 89:20 91:17 95:4 96:17 97:7,11 98:9,17 102:18 124:9,14 125:14 126:25 127:3,12 <b>judgeship</b> 73:4 <b>judge's</b> 16:23 24:8 128:23 <b>judging</b> 5:11 77:1 <b>judgment</b> 61:9 72:6,8 76:23 77:1,16,22,24	78:1,3,6,10 79:14,15,22 80:2 80:4,6,10,22 81:3,12,24 83:9 85:9,10,18,22,25 87:7,8 88:18,24 89:4,12 90:7 92:10,16 93:4,7 93:25 94:18,21 94:22 96:9,23,25 97:6,23 98:4,7 98:10,22,25 99:14 102:5 103:4,13 104:21 105:14 123:21 124:5,13,21 125:11,17,22 126:10 127:10 127:16,17,24 128:5,6,9,17,21 <b>judgments</b> 115:16 <b>judicial</b> 2:3 126:13 <b>judiciary</b> 58:1 <b>juries</b> 4:5 13:4 18:8 32:12 65:21 <b>jurisdiction</b> 12:7 <b>jurisdictions</b> 32:17 32:18 95:5 <b>juror</b> 22:25 27:11 28:18,20,23 29:5 29:8 31:23 32:17 33:2,15 34:7 36:2,7,8,16,17 44:23 51:8 63:11 64:4 65:7 66:22 68:19 <b>jurors</b> 16:11,24 20:4,13,15,18 21:5,12,14,24 22:6,9,19 23:3,8 23:20 24:5,10,20 26:8,16,24 27:3 27:23 29:23,25 30:24 31:15 32:10,14,24 34:3 34:16,25 35:22 38:15 40:16,21 40:23 41:25 42:17,21 43:6,21 44:16,16,22 45:4 45:22 46:22 47:9 47:23 48:8 49:9 49:22 50:2 52:2 58:9 61:2,5,23 63:3,5 64:1,15 65:23,24 66:7 67:20,23 69:20 69:22	<b>juror's</b> 20:7 37:22 44:19 <b>jury</b> 2:22 3:15,24 4:3,5,7,21 5:5,10 5:12,14,16,18,19 5:24 7:13 8:10 8:12,14 9:2,19 12:1,7 13:5,6,7 13:12,20 14:7,10 15:16,21 16:13 16:15,17,18 17:10,16,17 18:15,17 19:15 20:3 22:5 25:21 28:17 29:17 30:16,22 34:17 34:22 39:16,20 39:24 41:11 44:2 44:20 45:9 47:20 47:22 49:3 53:24 53:24 56:19 61:8 63:7,20 65:25 66:4,13,19,22,22 67:8,11 68:1,1,8 68:16,19,22 69:19 80:12 100:12 <b>just</b> 7:10 11:25 12:15 16:8 19:12 20:10 21:12,13 21:15 22:3,5,9 23:1,3 26:2,15 27:15 31:4 36:20 37:21,23 42:25 43:17 47:4 48:21 49:2,12 50:1 51:10 56:17 62:25 66:9 68:9 68:15 71:1,18 75:3 77:24 89:22 90:14 98:13 100:2,16 101:2,7 101:12 103:24 107:25 110:11 118:14,25 122:6 123:11,25 <b>justice</b> 6:4 32:22 41:3 58:10 73:18	30:14 39:17 44:12 49:18 50:7 55:14 58:22 60:19 61:1 64:25 67:17 <b>key</b> 30:18 60:11,18 78:21 97:15 110:4 <b>keying</b> 125:15 <b>kill</b> 99:22 <b>kind</b> 24:9,20 25:2 25:6 39:4 42:7 43:23 48:10 53:2 53:11 55:4 56:15 59:8 63:1 68:25 74:20 97:8 102:10 108:6 <b>kinder</b> 101:18 <b>kinds</b> 39:20 40:9 53:1 86:7 123:6 <b>Klingeman</b> 7:1 <b>knew</b> 10:3 13:18 62:24 <b>Knopf</b> 74:15 <b>know</b> 2:10 3:19 6:4,21 10:2 11:15 12:25 13:4 13:5,12 14:12 18:4,6,21 19:18 20:23 27:21 29:15 34:8 35:12 35:16,23 36:10 39:5,19 40:3,7,8 40:8,12 41:17 42:20 44:19,22 45:13 50:9 52:18 53:8 54:11,11 62:6,9,13 63:15 65:10 66:21 77:18,19,21 87:14,23,24 96:3 96:8,13 97:17 99:1,7 101:14 102:20,23 103:7 104:8 105:1 106:2 107:10 119:24 121:3 123:14,24 125:3 126:23 127:23 <b>knowledge</b> 100:23 <b>knowledgeable</b> 36:13 37:4 <b>known</b> 12:19 <b>knows</b> 14:9 19:15 44:20 <b>Krovatin</b> 7:1,1 26:12,20 31:3,17 39:15,22 41:5,7	45:18 49:21 53:18 54:19 59:23 64:25 68:7 <b>Kugler</b> 19:4 24:15 35:12,17 <hr/> <b>L</b> <hr/> <b>L</b> 72:25 <b>Labor</b> 6:19 <b>laboring</b> 13:23 <b>Landsman</b> 8:1 9:6 12:11 13:3 29:11 31:8 34:5 43:9 48:20 51:23 54:25 55:21 57:15 61:14 69:2 <b>language</b> 47:23 48:11,13 49:15 49:16 92:13,21 <b>laptop</b> 107:17,18 <b>large</b> 5:13 24:17 42:23 66:23 <b>largely</b> 78:16 <b>last</b> 4:2 15:13 22:6 37:3 39:1,10 55:15 59:20 63:10 68:14,25 74:12 83:1 88:1 91:19 119:10 123:11,18 <b>lasted</b> 28:9 <b>late</b> 73:20 <b>lately</b> 91:6 <b>later</b> 79:16 82:18 <b>Laughter</b> 13:2 26:19 32:7 33:8 37:1 38:21 39:12 39:18,23 41:6 42:8,12 54:18 55:20 57:8 64:7 68:11 97:20 <b>law</b> 4:9 7:18 8:6,7 8:8 14:24 16:20 23:24 47:7,24 49:10,15 54:14 71:23 73:11 80:6 84:20 100:11 117:2 <b>laws</b> 68:20 <b>lawyer</b> 6:11 7:9,17 13:21 27:2,15 31:16 34:19 46:13 94:7,12 107:13,17 108:17 109:4 114:18 117:23 120:14,17,24 121:24 122:1,1
---	--	---	--	---

123:4 125:7	lesser 39:2	Linares 6:10,10,17	look 10:23 13:11	90:6,25 94:10,14
lawyers 4:10,11,12	let 9:23 10:23 26:6	20:12,14 22:15	16:8 22:16 47:1	100:22 108:12
6:25 7:5,6,23 9:5	32:2 38:1 40:12	24:21,22 26:15	48:25 57:16,20	108:13 115:2
14:3 16:12,24	43:2 62:19 68:14	39:9 41:16,20	72:3,10 79:6	makes 22:21 49:15
20:17 22:16 25:3	70:21 76:3 89:22	42:9,13 52:20,21	87:1 89:14 90:22	63:1 104:23
26:7 29:22 30:3	93:24 95:6 97:10	56:8,9,23 57:3	90:23 93:11	118:14
30:21 36:23 37:8	98:15 104:5	62:8,9 63:17	99:19,23 101:15	making 3:9,17
37:13 40:8,15,19	105:20 113:13	66:17,18 68:12	101:17 103:22	16:2 21:4,19
41:12 42:15,20	114:14 118:12	line 63:4 77:4,4,5	105:13	71:10,13 85:13
42:24 43:7 46:18	124:3,3 125:13	120:9,10	looked 36:19 91:5	90:17 114:8
49:1 51:20,25	126:23 128:14	lines 19:18	looking 86:13 93:9	malpractice 6:14
52:8 53:2,17	letter 46:25 91:10	linger 58:8	108:10 127:9	47:18
55:10 56:6,13,24	91:12 110:17	list 83:10	Lord's 69:3	man 38:23
59:14 63:24 66:3	128:16	listed 73:23 74:6	lose 11:16 100:12	management
70:24 73:12	letters 122:23	listen 47:6 110:14	lost 97:17	93:16
74:19 78:8 82:25	letting 42:21	listing 128:3,11	lot 5:7,9 13:5,5	managerial 76:25
86:5 87:20 88:3	let's 11:19 13:11	litigants 89:25	19:8,13 24:18	mandate 122:24
89:20 94:19	13:12 18:14 32:3	litigate 78:12	25:3 28:7,14,21	mandated 91:14
99:13 102:13	33:13 38:2 39:16	litigation 3:3,17	45:14 47:18	Manhattan 91:6
114:12,16	47:19 51:17	14:20 70:18	50:19 56:5 57:6	manner 33:17
117:14	53:16 55:24	71:24 72:14	62:15 63:2 75:24	Manual 14:20
lead 3:13 11:15	60:25 62:2 63:5	73:15 74:18 78:7	87:25 91:2 92:24	many 9:10 17:4
leadership 33:1,6	65:16,22 79:5	78:24 83:13	95:20 101:19	40:6 41:22 60:13
leading 14:6 62:15	85:15,15 87:1	87:16 94:24	113:23 121:5,8	77:8 78:8,14
leanings 73:10	90:4 93:23 96:5	102:17 104:7	126:25	85:17 86:20 89:3
learn 19:6,7 22:13	99:19 101:15	111:16 113:24	lots 18:7	98:24 106:4
43:20	105:13 107:1	114:8 120:6	loud 19:2	124:14
learning 29:19	113:12 115:8	litigator 7:17	love 51:25 55:16	March 1:18 12:12
122:10	127:24	litigators 73:25	63:25 78:25	63:3
least 4:19 9:3	level 16:2 43:14	74:7,9	Lowenstein 7:2	marginalized
13:16,25 17:17	113:24	little 4:17 7:13	lunch 70:13,19	43:24
34:16 44:9 51:15	liability 74:8	12:4 32:4,8	129:3	Marino 7:15,16
59:21 73:23	liberalizing 77:9	35:24 41:2,8	lurking 91:1	27:25 30:15
74:12 78:20	liberally 103:3	47:8 53:4 75:19		44:14 50:8 55:16
86:24 88:7 106:1	lies 20:8 83:23	76:17 82:21	<b>M</b>	58:25 63:25 64:8
110:15 114:21	life 4:13 10:19	93:18 103:5	M 74:3	64:22 67:18
leave 20:17 21:19	60:15 79:22	104:23 128:9	made 19:9 22:11	Martini 59:20,24
69:22 91:14	Lifland 74:14	live 69:18	26:15 55:12	60:1,3,9
99:14 101:2	light 12:9	living 87:24	99:13,16 101:10	Maryanne 7:20
leaving 79:24	like 12:7 15:25	local 2:19 79:17	110:11,24	mastery 29:14
lectures 10:15 11:4	18:9 22:12 26:20	80:15 83:19,25	113:15	matching 92:4
lecturing 10:24	26:25 28:25,25	95:10,20,22	Magazine 70:18	material 80:5,20
left 2:24 6:24 7:15	54:13 57:11	102:4 103:15	Magistrate 72:22	81:1,2,4,5,20
20:3 73:9	58:14 59:17	104:19	73:1,2 93:16	82:17 83:7,21,21
legal 8:22 100:8,13	68:15,24 73:13	lock 21:22	115:20 126:14	84:10,16 86:4,5
legion 8:10	85:4,5 95:19,21	locked 11:12 61:23	127:12	86:8,11,14,17
legitimate 119:4	98:22 103:8,17	locution 106:13	mainly 26:3	89:17 90:10
length 55:24 56:21	107:1 118:6	long 13:16,23 21:8	maintain 122:24	91:24 92:1,14
91:13	likely 52:4 78:11	33:16,20,24 41:1	123:1	94:10,19 96:24
lengthen 41:1	limit 56:1 87:3	56:24 57:7 58:18	major 4:10 79:12	102:6,8 103:23
52:24	limitations 59:12	58:20,23 59:6	114:6 117:22	109:13 114:4
lengthening 42:2	limited 35:13,14	60:4,20 61:9	majority 85:24	124:17
lengthens 40:22,23	53:13	64:17,20,22	make 5:24 13:6,6,7	materials 10:21,23
lengthier 20:16,22	limited-time 55:1	89:16 90:11,13	16:8 23:5 37:17	15:1 16:19 74:2
lengthy 24:24 25:9	limits 55:24 56:14	95:16 97:22	43:13 49:2,13	75:4,5 76:18
53:11,23,24	56:20 58:23	longer 29:12 41:13	57:24 64:9 67:6	84:21 110:2,18
less 37:16 69:16	59:21 60:10	52:2,12 55:3	69:15 70:4 75:4	matter 10:15,19
78:10 95:15	109:3	57:22 115:5	83:12 84:5 86:9	24:14 31:25

50:16 60:12 80:6	67:15 92:25	73:24 88:3 89:14	66:7	36:7 38:1,19,22
83:8 100:8,9,11	93:18 98:18	93:1 103:21,25		72:24 73:1 74:3
100:13 107:9	<b>Mike</b> 29:16	108:22 109:1	<b>N</b>	75:1,2 92:6
113:21 125:25	<b>milestones</b> 51:21	112:18 113:20	<b>name</b> 2:1 21:24	99:19 101:16
<b>matters</b> 108:13	54:20	115:17 116:13	71:9	115:9
<b>may</b> 10:14 22:19	<b>millions</b> 76:8	125:24 127:12	<b>names</b> 6:3 23:21	<b>nice</b> 11:25 46:5
23:10 33:13	<b>Milosevic</b> 58:4	<b>mostly</b> 12:18 20:15	91:12 119:3	<b>night</b> 21:21
37:20 40:1,7	<b>mind</b> 11:10 44:8	68:7	<b>narrowed</b> 84:16	<b>nine</b> 58:3
61:3,6 63:5	45:7 51:11 65:4	<b>motion</b> 80:19	<b>narrowing</b> 83:6	<b>Ninety</b> 66:12
71:22 72:1 81:9	88:4	81:10,12,14,23	<b>nation</b> 14:23	<b>noble</b> 82:15
89:1,15 96:8	<b>minds</b> 34:17	83:15 85:12,13	<b>national</b> 8:20 9:19	<b>nobly</b> 13:23
99:23 100:7	<b>mine</b> 8:2 23:19	85:22 88:11,15	14:8,19 15:10	<b>nobody</b> 90:9 108:6
103:7,17 112:4	<b>mini</b> 16:12	88:18,20,23,24	83:20 85:5 95:3	<b>non</b> 55:5,17
124:25 126:10	<b>minute</b> 97:4	89:4,12 90:6,17	95:7,17,24 96:1	104:20
128:4,8,12	<b>minutes</b> 11:5 30:4	97:9 99:1,21,25	<b>Nazi</b> 58:2	<b>nonetheless</b> 98:3
<b>maybe</b> 7:12 36:24	53:14,15 54:8	100:16,20 101:2	<b>near</b> 3:25 62:18	<b>non-verbally</b>
41:13 42:19	55:2,3 57:4,9	101:11,24 102:5	<b>nearly</b> 109:15	64:16
95:22 97:14	<b>misconduct</b> 115:19	104:3,14,21	<b>necessarily</b> 9:14	<b>normal</b> 116:9
<b>MAYFAIR</b> 1:14	116:9	124:5,21 125:8	45:14 121:6	<b>normally</b> 10:18
<b>McKee</b> 37:11	<b>missing</b> 78:23	125:22 126:10	126:18,24	107:24
<b>MCLE</b> 2:18	123:4	126:17 127:17	<b>necessary</b> 82:12	<b>north</b> 72:20
<b>mean</b> 93:14 100:11	<b>mistake</b> 64:10	127:24 128:5,6	89:24 102:12	<b>Northern</b> 16:6
<b>meaningful</b> 51:1	<b>misuse</b> 69:10	128:18,21	105:2 111:11	<b>Notary</b> 130:16
<b>means</b> 3:2,19 8:14	<b>MODERATOR</b>	<b>motions</b> 72:8	<b>need</b> 9:15 10:7	<b>note</b> 18:14 19:24
78:8	9:21	79:14,15 85:10	29:14 44:7 58:12	21:13,14,17,20
<b>meant</b> 83:12,13	<b>moment</b> 12:20	85:16,18 86:21	79:2 89:5 95:7	21:23 22:7 27:3
96:14 106:19	31:11 55:10	87:5,7,9,18 88:5	101:12 105:15	28:2,3,4,5 29:3
<b>mechanism</b> 122:17	61:13 102:16	88:10 99:3	106:2 118:5,19	31:5 42:17 64:12
<b>medi</b> 107:23,23	<b>momentum</b> 49:24	102:23 103:4	<b>needs</b> 51:12 85:22	118:24
<b>median</b> 57:17	<b>money</b> 36:5,14	123:21 124:13	104:1 126:17,18	<b>notebook</b> 10:20
<b>mediation</b> 5:10	37:5 97:14 125:2	127:10,16	<b>negative</b> 26:17	28:10,15 29:9
<b>medical</b> 6:14 47:17	<b>monitors</b> 24:19	128:10	31:19 66:11	30:16
<b>meet</b> 116:8 118:21	<b>monographs</b> 8:9	<b>mouth</b> 8:15 120:15	<b>negatively</b> 58:9,10	<b>notebooks</b> 23:10
<b>meeting</b> 2:10	<b>month</b> 53:25 75:1	120:18	<b>neither</b> 93:12	23:20 25:6 26:8
<b>member</b> 6:6 7:23	96:4	<b>movant</b> 79:19	130:7,10	30:5
13:25 73:15,16	<b>months</b> 28:9 50:21	80:18,21 83:14	<b>never</b> 22:13 23:15	<b>notes</b> 10:12,20
74:19	58:3 83:3	92:15 104:15	42:13 52:21 57:3	18:16 19:23 20:1
<b>members</b> 8:25	<b>more</b> 11:14 13:7,7	<b>movants</b> 84:24	62:25 97:5	20:2,7,13,15,19
27:11	14:9,13 17:13	<b>movant's</b> 80:25	108:12 114:19	20:21 21:3,12
<b>men</b> 76:5	19:14 20:16,22	<b>move</b> 47:19 105:14	118:20	22:7,11 24:5,11
<b>mention</b> 35:17	22:25 23:5 28:3	<b>moved</b> 97:24	<b>Nevertheless</b> 9:23	26:9,24 27:7,16
<b>mentioned</b> 61:2	29:13 32:4,8	<b>movement</b> 5:10	<b>new</b> 1:4,16 2:19	27:23 28:20,22
74:10,20 75:20	34:19 37:17 50:4	<b>moving</b> 44:10	6:4,6,13,20 7:8	28:24 29:9 30:1
87:3 94:17 96:6	53:4 55:12 66:15	83:24 101:25	9:14 12:7,8,14	30:24 31:6,24
96:20	68:10 72:2 83:11	<b>much</b> 6:1 19:18	13:12 28:6 32:25	42:21 43:2 47:11
<b>merged</b> 78:18	86:9 91:25 94:11	34:19 44:25	43:11 52:6,14	47:14 117:13
<b>merits</b> 114:5,23	94:11 95:15,17	47:14 85:5 87:13	63:10 65:24 69:8	<b>note-taking</b> 28:1
118:11 124:10	102:4 103:18	87:15 95:13	73:8,11 74:9,15	<b>nothing</b> 10:2 19:19
<b>message</b> 92:22	111:14 114:3,8	102:4 114:24	80:3 81:4,6 94:9	<b>notice</b> 26:16
<b>met</b> 14:13 94:13	114:23 115:2	116:23 121:11	104:6 108:18,23	<b>notion</b> 27:9 89:2
<b>metaphysical</b> 98:1	126:3,4 127:2	124:22	109:16 110:10	103:22 127:10
<b>methodology</b>	<b>morning</b> 2:13	<b>Munsterman</b> 14:8	110:11,20,22	<b>notwithstanding</b>
119:22,22	21:24 71:8 84:6	<b>must</b> 10:9,10 80:11	113:8 114:11	51:5
<b>methods</b> 121:21,22	<b>most</b> 2:20 6:21	92:19 96:22 97:5	118:14 127:9	<b>novel</b> 18:13
<b>Michael</b> 73:2	14:23 15:5,18	98:6 99:10,11,12	128:13,20	<b>novelty</b> 27:5
<b>middle</b> 42:5 44:4	26:24 38:15	122:24,25	130:16	<b>no-material-fact</b>
<b>might</b> 10:19,22	42:20 46:2,15	<b>mutual</b> 107:24	<b>Newark</b> 6:10 73:3	97:12
17:1 39:3 54:14	47:9 57:25 64:15	<b>myself</b> 19:22 27:1	<b>next</b> 21:23 32:4	<b>number</b> 5:7 8:16

8:23 16:8 21:25 27:8 32:17 43:12 57:18,21 58:15 70:8 72:13 78:5 95:4 <b>numerous</b> 8:11 <b>Nuremberg</b> 58:2 <b>nuts</b> 35:9 <b>nutshell</b> 12:5	114:22 126:20 128:1 <b>once-a-week</b> 55:4 <b>one</b> 2:22 8:23,25 10:24 11:7,8,14 12:15 15:25 18:4 21:5 22:3,5 23:21 25:10 27:2 27:6,8 28:2,3,4 28:22 34:16 35:8 36:8 37:20 38:1 38:3,5,7 40:16 40:20 44:8,13,15 44:17,25 45:20 46:17 51:16 53:18 55:15 57:13 59:1 62:5 62:13,22 64:1,3 64:16,18 65:13 70:8 71:14 73:23 73:24 74:6,10 79:8-85:4,6-87:2 87:4 88:17 91:12 93:8 98:18 102:16 103:4,14 106:12 108:2,14 117:6,23 120:8 123:21 126:13 127:19 128:1,7 <b>onerous</b> 90:2 123:15 <b>ones</b> 15:25 58:20 71:21 <b>ongoing</b> 43:18 71:3 <b>only</b> 4:9 8:20 9:5 10:9 11:5,7 12:25 61:16 71:21 80:20 81:10,14 86:13 91:9 92:14 99:21 99:25 100:20 104:20 109:14 110:14,19 113:2 126:1 <b>onto</b> 78:18 <b>open</b> 19:7 41:24 44:8 64:12 65:4 108:2 <b>opened</b> 7:10 65:17 <b>opening</b> 55:7 57:10 59:16 <b>openings</b> 55:18 59:10 <b>operated</b> 109:16 109:17 <b>operates</b> 101:6 <b>operating</b> 108:24	<b>opinion</b> 33:14 45:20 106:7 119:18 120:1,2,4 120:4,5,5,13,19 121:1,2,12,14 122:19 <b>opinions</b> 111:7 112:24 113:3 <b>opponent</b> 83:22 84:1 <b>opponents</b> 84:25 98:12 <b>opponent's</b> 107:5 <b>opportunity</b> 3:23 28:12 30:21 39:25 40:19 70:3 83:25 104:16 <b>opposed</b> 32:23 62:25 95:13 <b>opposes</b> 98:7 <b>opposing</b> 79:18 80:23-81:1-99:14 111:20 <b>opposition</b> 86:6 95:20 <b>option</b> 81:13 <b>opt-in</b> 95:10,15 <b>oral</b> 112:18 <b>ORANGE</b> 1:16 <b>order</b> 9:10 59:5 67:6 79:17 82:1 84:3 87:4 89:2,6 94:12 102:3 107:12 115:20 116:2 123:14 124:12,19,23 125:7,19,23 126:25 128:2,16 <b>orders</b> 123:12,19 125:10 <b>ordinarily</b> 32:12 87:21 <b>organized</b> 15:22 <b>original</b> 25:14 <b>other</b> 7:8 10:24 11:10 15:13 16:15 21:15,18 22:3,5 31:21 37:25 38:24 44:22 54:20 57:6 62:14 65:16 73:7 74:12 75:8 81:11 81:25 84:15 90:18 92:17 97:7 101:1 102:3,8,21 103:1 106:15,16 109:9 117:2 118:16 125:5	<b>others</b> 16:17 67:14 <b>otherwise</b> 35:5 79:18 97:5 99:9 100:17 <b>ought</b> 91:13 93:8,9 93:11 95:22 98:11,12 100:14 100:19,19 121:24 125:25 <b>out</b> 7:2,3 8:18 9:8 10:10 14:19,21 15:5,6 16:21 19:12 21:13 24:16 28:17 32:10 36:1 43:8 45:7 48:7 51:10 53:25 60:7 80:12 83:15 87:16 89:18 91:5 94:4 95:3 104:17 115:25 126:12 <b>outcome</b> 61:10 <b>outgrowth</b> 2:13 5:4 <b>outlawed</b> 96:12 <b>outliar</b> 93:10 <b>outlined</b> 101:17 <b>outlived</b> 67:24 <b>outpouring</b> 47:5 <b>outset</b> 60:16 86:15 <b>outside</b> 65:8 <b>outstanding</b> 74:6 <b>over</b> 3:20 4:2 6:14 22:11 28:6,21 36:18 48:13,15 56:15 71:6 104:12,22 107:17 111:16 115:21 116:3 120:6,8 <b>overarching</b> 13:24 <b>overlap</b> 124:16 <b>overriding</b> 29:4 <b>overview</b> 12:5 75:12 79:10 109:24 <b>overwhelming</b> 49:24 51:4 78:5 <b>overwhelmingly</b> 43:5 <b>own</b> 6:11 7:4 60:16 63:11 84:1 116:15 <b>O'Connor</b> 14:1	21:23 <b>page</b> 21:25 29:15 63:3 93:21,21 105:9 110:1,17 <b>pages</b> 91:25,25 92:9,9 105:10 <b>paid</b> 14:17 <b>painstaking</b> 71:14 <b>panel</b> 6:1 8:1 27:4 27:11,19 67:11 70:7,21 72:16 82:4 119:10 <b>panelists</b> 2:23 5:21 18:11 129:5 <b>paper</b> 11:9 12:22 36:17 <b>papers</b> 83:24 84:15 98:20 <b>paper-wise</b> 123:16 <b>paragraph</b> 104:9 <b>parallel</b> 107:15 <b>pareing</b> 104:25 <b>part</b> 5:14 13:25 29:24 47:9 72:14 76:1 80:17 86:2 88:3 89:15 91:19 105:17 112:12 115:24 <b>partial</b> 54:4 93:7 94:17,21 128:5 <b>participants</b> 23:22 43:24 <b>participated</b> 43:7 <b>participation</b> 46:9 <b>particular</b> 22:19 22:21 48:14 91:15 124:10,24 <b>particularly</b> 3:8 24:16 28:8 32:22 49:23 52:12 55:17 64:17 74:7 <b>parties</b> 23:13,23 47:25-79:15-99:2 104:24 124:6 130:9 <b>partner</b> 7:1,3,16 74:4 <b>party</b> 79:18 80:5 80:24 81:1,12,19 81:21 82:22 83:8 85:12 96:24 97:24 98:7 101:25 102:19 102:24 111:5,20 116:8 <b>party's</b> 116:4 <b>passed</b> 26:22 <b>past</b> 3:12 95:9
<b>O</b> <b>obfuscating</b> 84:18 <b>objection</b> 36:24,25 37:9 <b>objections</b> 45:11 <b>objectives</b> 75:16 <b>obligation</b> 70:3 83:14 <b>obligations</b> 84:14 85:1 126:15 <b>observe</b> 61:17 <b>obviously</b> 24:8 34:12 44:14 68:8 71:3 79:24 82:1 85:23 109:8 <b>occasion</b> 24:2 <b>occur</b> 71:11 72:4 72:15 <b>October</b> 73:3 <b>off</b> 27:5 31:10 35:4 46:1 69:11,11 75:15 87:8 107:25 127:24 128:18,25 <b>offered</b> 93:16 <b>office</b> 24:17 73:5 90:15 <b>officers</b> 126:13 <b>officials</b> 14:3 <b>often</b> 12:13 43:21 52:5 68:10 115:17 <b>oftentimes</b> 116:15 116:21 <b>Oh</b> 11:14 26:20 66:2 <b>okay</b> 11:23 38:8 47:16 55:18 70:6 86:24 89:13 99:19 101:15,23 105:13 129:1 <b>old</b> 13:14 14:14 83:4 106:11 <b>old-fashioned</b> 26:25 <b>omission</b> 100:25 <b>once</b> 2:4 20:8 24:7 25:18 44:15 52:6			<b>P</b> <b>pad</b> 22:7 <b>pads</b> 21:14,14,20	

patent 2:19 56:6 116:14,19	108:4,8,18 111:24 112:6,16	pointed 95:3	prepared 16:19 26:4 122:17 123:1,20	pro 102:19,22,24 103:3,4,12,19 105:4,6
<b>PATERSON</b> 79:11	personal 98:23	points 16:15 24:16	preparing 88:13 124:16,17,19 125:10 128:2	probably 2:8 9:11 11:6 14:9 31:19 32:20 37:2 53:10 53:13,15 60:11 79:1 82:16 85:19 92:10 96:4 98:18 103:18 116:7
Patricia 13:21	personnel 25:15	Policy 8:8	present 16:12 26:9 26:10 28:12 60:17 61:9 62:12 74:21 105:15	problem 17:18 27:14 34:8 42:11 46:6 50:24 51:14 53:10 60:20 63:22 65:9,12 75:25 76:1,1,4 76:15 78:15,17 78:18 86:2,4 91:22 100:6,14 100:18 102:18 105:21 108:1,21 115:3 117:17,21 127:8,15
pattern 48:11 50:18,23 51:2 55:7 57:3	person's 111:21 112:17	political 32:21 73:10	presentation 3:10 25:2 27:22 49:20 74:24 129:6	problematic 30:25 42:10,10
Patterson 3:3 74:3 79:9 93:24 94:5 98:16 99:7 108:20,22 113:13,16	perspective 27:1 27:15 49:23	poll 35:7,9	presented 26:14	problems 9:17 62:15 75:24 76:2 76:20,21 91:3 106:12 113:14 114:13,15
paused 12:21	persuade 30:13	polled 84:4	President 2:2 3:13 13:10,19 15:22 73:13,13	procedural 80:13
pay 42:25	Peter 3:4,6,8 74:13 74:16,18 109:23 110:3,5 113:11 122:4 125:9	pool 69:15	pressed 126:3	procedure 31:5 38:20 44:21 71:17 110:9
paying 29:1	phenomenon 5:4,6 8:12	position 50:22 61:23 110:15 113:9 119:6 121:4	pressure 126:5	proceed 87:17 88:5
Pearlman 3:4 74:14,14 109:23 119:15 120:17 125:12	Phi 8:5	positions 118:9	presuming 51:12	proceeding 71:19
pedigree 82:15	phrases 110:4	positive 26:5 46:10	presumption 44:7 51:3,5,7	proceedings 1:21 33:18 130:4
pen 76:6,10	physician 112:3	possible 105:3	pretrial 89:2,5,9 123:12,14,19 124:12,19,23 125:7,19,23 126:11,15,25 127:13,19,21,25 128:2,12,15,16	process 13:7 28:1 30:22 45:1,2,3 45:13 47:3 55:9 58:10 66:9 67:7 70:5 71:10,13 75:6,10,11,13,15 76:13,16,19 79:22 80:16,18 81:7,9 84:11,11 94:8,22 109:11 109:13 114:10 122:16 123:14 123:14 124:7 125:14,18,20,23 126:22
pencil 76:13	picked 26:14 36:1	postpone 127:1	pretty 29:12 60:4 87:15 93:3	produce 58:11 107:19,19 108:13
pending 88:18 89:4,11 127:15	picking 18:7 66:3	postponement 126:15	prevent 63:12	
Pennsylvania 59:11	<del>pick-and-shovel</del> 66:4	potential 82:3	pre-motion 93:17	
pens 21:14	picture 31:15 34:15,20	powerful 34:22 35:5	Prias 79:2	
people 5:7 24:13 25:22 43:12 46:24 48:24 49:14,16 67:11 67:11 69:11,12 72:18 75:22,23 87:6 97:3 99:14 104:7 107:25 108:22 121:7	pieces 8:10 59:9 93:6	practical 22:15,23 31:25 90:5 94:16	primacy 33:18	
percent 66:13,20 69:24 93:12	pictures 47:1	practicalities 126:19	primer 75:5	
perception 5:14	piece 36:17	practice 3:2 15:4 16:1 23:19 26:25 35:13 43:20 46:7 60:8,24 71:12 72:11 79:23 80:14 85:9,21 87:11 88:19 89:3 89:8 95:5 104:15 110:9 113:22 124:14,24 125:6 128:24	principal 110:23 112:7 120:25,25	
peremptory 67:9	pieces 8:10 59:9 93:6	practiced 24:23	Principle 15:2 18:15 23:8 34:6 47:19,21 48:15 61:5	
perfect 75:25 76:10,14	pilot 4:22 41:18	practices 4:14 74:17 124:9	principles 4:5,8,17 4:18,24 5:3,16 5:22 8:14 9:3 12:2 13:13,14 14:14,15 15:12 16:10,19 17:9,14 18:10 28:23 29:5 32:11 50:3 65:19 121:21,22	
perfectly 68:1	place 17:20 61:12 72:10 75:10 76:13 77:13 83:2 87:6 88:6,25 89:6 130:5	practicing 94:7	Prior 73:3	
perhaps 2:20 14:5 15:18 17:13,25 77:15	places 9:14 12:9 95:14	practitioners 91:10-109:20	private 5:11	
period 127:23	plain 47:22	preceding 5:5	privilege 2:18 107:6	
PERLMAN 110:6	plaintiff 102:22	preclude 81:3	privileged 106:23	
permit 19:23 21:11 26:24 32:14 46:3	plaintiffs 74:16 78:9	precluding 122:18		
permitted 32:12 45:22 54:7 61:7	plan 87:22	preliminary 23:11 24:1 29:10 48:16 83:3 109:12		
permitting 24:11	<del>play 45:7-46:10</del> 72:12	premature 98:8		
Perretti 74:5	playing 72:8 116:10	premium 41:14		
persistent 28:4	plead 14:25	preparation 25:7 85:11 109:11,13 124:23 128:6		
person 3:10 12:3	pleadings 103:3	prepare 25:7 88:17 115:13 123:2,16 124:2 125:7 126:24		
	please 70:12,19			
	pleased 9:4			
	pneumatic 59:8			
	pockets 95:20			
	point 19:9 24:8 41:19 46:1 54:21 72:7 80:12 89:22 94:7 97:16 104:17 107:25 114:22 115:5			



<b>produced</b> 109:12	<b>protects</b> 109:1	39:1,10 40:4,10	<b>readbacks</b> 22:8	<b>recently</b> 2:9 46:15
<b>produces</b> 61:22	<b>proud</b> 108:18	41:11 42:4 43:10	<b>reading</b> 21:3	82:8 115:18
<b>producible</b> 118:18	<b>prove</b> 92:19	44:19,22,24 45:7	<b>reads</b> 36:12	<b>recesses</b> 61:8
<b>product</b> 15:9 17:3	<b>proven</b> 97:1,12,13	45:24,25 46:3,4	<b>ready</b> 89:7	<b>recognize</b> 79:1
17:24 106:22	<b>provide</b> 5:19 48:23	54:19 57:22 77:6	<b>real</b> 12:19 36:19	<b>recollect</b> 20:24
109:14 112:14	80:3 111:2,4,5	86:1,20 91:20	36:21 66:4 88:24	<b>recollection</b> 27:17
113:7 118:4,18	111:11,24 112:9	98:2 122:14	100:18,21 102:7	<b>recommendations</b>
121:21	112:10,16 117:4	127:22	115:4 123:25	75:1
<b>products</b> 74:7	<b>provided</b> 16:14	<b>questioning</b> 33:15	<b>reality</b> 29:25	<b>record</b> 2:4 15:3
<b>profession</b> 70:16	34:10 50:17	<b>questionnaires</b>	114:20	83:18,20,22
<b>Professor</b> 8:7	111:17 112:15	16:16,24	<b>realize</b> 93:3	84:22 85:7 94:11
12:11 13:3 14:7	113:5	<b>questions</b> 10:15	<b>really</b> 2:5 5:3 9:4	94:14 103:6,9
27:12,20 29:11	<b>provides</b> 79:17	11:8,17 16:12	9:12 13:22 14:17	<b>recording</b> 9:19
31:8 34:5 43:9	80:16 117:4	32:11,13,15,18	19:11 27:3 29:14	<b>red</b> 12:23
48:20 51:23	<b>providing</b> 94:2	32:24 33:2 34:3	29:21 31:14 32:6	<b>redo</b> 54:9
54:11,25 55:21	<b>provision</b> 108:7	35:22 36:8 38:15	34:15 44:24	<b>redrafting</b> 49:5
57:15 61:14 69:2	<b>Public</b> 6:19 130:16	38:16 40:1,1,9	45:19 48:23 49:8	<b>refer</b> 25:20
<b>professors</b> 4:9	<b>publication</b> 73:24	40:11,15,16,21	50:25 51:1 56:12	<b>reference</b> 84:5
<b>program</b> 2:23,25	<b>published</b> 70:18	40:23 41:23,25	58:20,23 60:24	110:12
3:13 4:22 8:4 9:8	<b>publishing</b> 24:19	43:6,21,22 44:5	61:1 62:10,16	<b>referred</b> 27:10
41:18 70:11 71:7	<b>pull</b> 76:7	44:16 45:10,10	67:24 69:19 70:1	<b>referring</b> 30:16
76:4	<b>purpose</b> 12:2	45:23 47:12,15	75:5 76:25 77:25	<b>refine</b> 92:8
<b>programs</b> 2:8,12	65:18 68:16,17	61:3 67:25 71:22	78:21 82:9 83:16	<b>Refo</b> 13:21
3:21 68:15 70:9	71:16,21 119:9	72:16 115:11	84:16 85:2 86:8	<b>reform</b> 9:15
<b>progress</b> 67:4 71:3	122:9	<b>quibble</b> 99:23	86:10,16 88:16	<b>refreshingly</b> 77:8
<b>progressed</b> 95:9	<b>purposes</b> 81:10,11	<b>quickly</b> 17:21 93:3	91:13 92:7,19	<b>regard</b> 21:2 40:6
<b>prohibition</b> 64:4,6	81:14,15,23	109:24	94:20 95:4 96:6	95:12 108:25
<b>project</b> 4:7,21,22	99:21 100:16,20	<b>quite</b> 11:24 28:17	98:22 99:24,25	124:17
5:6,16 8:14 9:2	100:23 101:10	84:12 97:22	100:9 101:20	<b>regarded</b> 73:24
12:1 13:20 15:21	101:11 104:21	116:17	102:13,17 103:8	<b>regarding</b> 19:5
15:22 16:4,4,18	<b>pursuant</b> 37:22	<b>quote</b> 106:15	104:8,10 105:5	25:15
17:11 48:18	<b>push</b> 38:11	109:5	113:20 114:15	<b>regularly</b> 14:13
68:19	<b>put</b> 8:19,20 9:2		115:6 117:1	74:8 112:5,11
<b>prominently</b>	13:11,12 21:23	<b>R</b>	118:6,7 119:10	<b>Rehnquist</b> 73:18
116:13	21:24 36:3 42:15	<b>R</b> 130:1	120:10,25 121:4	<b>rejected</b> 99:11,12
<b>prompt</b> 3:18 5:19	44:22 57:3 60:10	<b>radical</b> 62:10	121:11,16	<b>rejects</b> 80:25
<b>promptly</b> 129:4	67:25 72:16 76:8	<b>raising</b> 16:2 71:21	126:22	<b>relate</b> 112:23
<b>prompts</b> 25:2	77:11 95:24	<b>rare</b> 19:1 102:24	<b>reason</b> 96:11 98:9	<b>related</b> 81:8
<b>proper</b> 102:3	104:2 110:3	103:11	<b>reasonable</b> 57:23	<b>relating</b> 106:18
<b>properly</b> 91:18,20	115:1 118:1	<b>rarely</b> 113:25	58:13 59:13	<b>relative</b> 130:8,10
93:22,25 94:24	120:17 122:8	114:3	60:21 67:7	<b>relevant</b> 10:5 35:1
101:16 104:2,8	127:24 128:18	<b>rather</b> 27:15 37:13	<b>reasonably</b> 60:1	38:17 73:16
<b>property</b> 116:14	128:24	42:25,25 43:18	126:7-127:3	118:13
<b>proposal</b> 92:25	<b>puts</b> 115:6 120:14	45:3 56:17 61:24	<b>reasons</b> 32:16	<b>reliable</b> 13:7 15:7
105:3 123:18	<b>putting</b> 3:6 25:13	84:17	71:25 126:2	121:21
<b>proposed</b> 3:1,7	56:17 108:16	<b>rating</b> 35:15	128:22	<b>reliably</b> 121:23
79:12,14 80:1,25	119:3 124:12	<b>rationale</b> 51:19	<b>reassured</b> 20:4	<b>reliance</b> 110:19
81:17 83:19 85:5		98:11	<b>reassuring</b> 19:20	<b>relied</b> 110:10
105:16 109:25	<b>Q</b>	<b>reach</b> 3:16 4:13	<b>recall</b> 106:4,5,5	<b>relief</b> 92:20 97:16
114:11 118:24	<b>quality</b> 119:17	11:13 65:3 68:21	<b>recede</b> 123:7	<b>relies</b> 113:6
127:9	120:13 121:11	68:21 126:12	<b>recedes</b> 123:8	<b>reluctant</b> 48:12
<b>proposing</b> 110:9	121:14	<b>reached</b> 54:4	<b>receive</b> 11:11	<b>rely</b> 27:16
<b>proposition</b> 85:2	<b>question</b> 34:12,25	95:23	84:19 90:22	<b>relying</b> 28:22
90:5 100:8	36:2,3,5,6,15,19	<b>reaction</b> 26:17	126:5	<b>remain</b> 58:12
<b>pros</b> 34:2	36:21,23 37:3,7	<b>read</b> 8:2 20:7 21:5	<b>received</b> 84:7	<b>remaining</b> 54:6
<b>protected</b> 112:18	37:8,9,10,13,14	36:7 40:16 48:8	<b>receives</b> 122:25	<b>remarks</b> 55:8
<b>protection</b> 109:17	37:14,15,17,21	98:20	<b>recent</b> 3:20 29:17	<b>remember</b> 31:23
112:14 118:16	37:23 38:9,19,22	<b>readback</b> 22:6	74:22 82:10	59:25 97:22

122:8	64:13	66:20,23 68:9,13	119:9,9,11	120:9 127:23
remind 10:12	resolution 3:19	72:18 79:2 81:22	121:17,18 122:8	says 32:11 33:14
43:22 63:16	resolved 125:11	86:1 87:1,15	122:9,11,21	51:6 60:20 86:13
129:2	resolving 5:20	88:6 90:11,20	127:9 128:13,20	86:15 89:11
reminder 126:16	respect 3:5 13:4	92:10 96:8	ruled 23:12	101:25 102:5
126:19	14:7 24:9 29:8	101:21 105:12	rules 2:19,19 3:1	118:24 121:17
remove 67:10	47:24 49:5 59:5	114:20 117:12	3:11,15 9:24	scared 60:7
removed 28:18	67:16 69:17 82:4	122:15,23	11:2 13:12 14:22	scheduled 87:16
rendering 109:6	85:6 102:14	126:12	15:19 18:6 35:16	scheduled 88:6
renewed 17:15	respectfully 31:4	rights 33:19	40:6 44:14 60:22	128:15
69:8	respond 79:19	rigors 24:10	64:21,23 65:2	scheduling 87:4
repetition 56:14	81:19 101:16	Riker 74:4	71:7,17,20,23	Scherer 74:4
rephrase 37:15	104:9,10,16	rip 20:10	73:17 74:1,11,13	scholar 12:20
rephrased 40:17	respondents 19:22	ripple 123:6	75:6,13,21,22	school 8:6 12:19
reply 79:20 81:3	24:12 48:3 52:17	rising 71:24	77:11,12,24,25	71:24
92:5 104:16	responding 81:12	Rizman 1:25	78:4,19 85:4	science 14:6 15:1
report 2:11 9:2	90:12,12	130:15	89:19 93:9,9	119:19
43:5 77:14,15	response 3:6 11:18	road 35:1 95:24	95:2,11 96:1	scientific 116:15
105:25 106:1,14	80:24 107:12	114:2	102:25 103:10	120:20
106:14 107:18	responses 18:23	robbery 36:4,16	105:17 110:9,10	scout 20:6
108:6 109:1,6,7	84:7,8 104:20	38:10,20	110:11,24 113:9	scout/girl 20:6
109:11 111:2,4,5	responsive 105:7	Robert 8:7 13:9	116:10 123:6	screen 35:25 36:4
111:24 112:17	rest 27:4,10 44:20	robust 61:22	ruling 45:10	101:17
115:13 116:22	115:1,7	role 30:11 46:10	runaway 66:21	screening 16:16
116:24 117:5,5,8	restate 37:7,16	72:8,12 117:14	run-of-the-mill	se 102:19,22,24
118:1,8,9 122:17	result 48:17 87:10	rolling 70:4	93:11	103:3,4,12 105:5
reported 1:25	94:16 97:2	room 11:13 20:3	rushing 26:3	105:6
130:5	resulted 114:16	61:8 79:24	Russians 76:12	search 63:6 114:24
reporter 8:13	116:4	roots 12:14		114:25 119:11
14:11 23:24	results 29:7 54:24	row 59:25	S	119:13,16,16,25
reports 107:16	resume 12:18	rule 3:8 71:10,10	Saddle 74:15	121:15
109:12,18 112:9	retain 113:21	71:13,16 72:2,4	salutary 105:24	season 12:13
112:14,17	retained 98:16	72:10 74:22,23	same 11:11 24:9	Seattle 91:4
115:21 116:18	112:1,2,10	75:6 79:7,13,14	24:20 38:3 42:23	second 2:25 3:13
require 79:15	rethinking 67:24	79:17,21 80:3,15	56:15 96:21	31:22 38:7 70:11
82:17 83:20	retrieved 36:18	80:18 81:6,17,20	117:21 122:13	70:12 72:12
112:5 124:6	return 16:16 17:20	82:3,4,9,13,14	122:19 126:21	81:21 82:9 112:7
required 21:16	69:7	82:18,20 83:5,6	127:5	Secondly 80:1
59:3 82:22 99:23	returning 12:21	83:11,19,20,25	San 3:9 74:21 91:4	section 32:22
108:12 109:7	reveal 116:1	84:13 85:6 86:13	sanction 115:19,23	73:15
111:2,4,24 112:9	reversed 62:20	87:1,8,14,21,25	sanctions 78:19,23	sections 34:6
112:16 116:7	98:25	88:9 91:6 92:11	Sandler 7:2	secure 71:17
123:20 126:20	review 7:18 14:24	93:20,24 94:9	Sandra 14:1	see 2:23-5:17 18:12
requirement 89:20	15:11 45:23	95:24 96:2,6,9	sanguine 67:14	22:11 28:7 30:6
94:13 106:14	reviewed 14:24	96:11,18 97:2	sat 41:16	33:13 35:23,25
128:16	15:9 41:12	100:15,17 101:6	satellite 104:7	36:19 38:2,13
requirements	reviewing 103:9	101:8,13,18	120:6	40:5 47:13 53:10
95:12 123:7	revision 83:2 85:5	102:4 103:12,15	satirical 9:9	64:10,18 67:10
requires 83:7	96:10	103:16,17 104:4	satisfaction 43:15	67:13 72:11
112:11	rewarding 11:20	104:6,19 105:21	56:6 58:4	78:14 85:12,16
requiring 111:14	rewrite 90:25	106:13 108:11	satisfy 119:1	93:20 95:6 98:17
research 17:3	rewriting 80:1	108:15,25 109:1	satisfying 15:8	101:3 106:5
29:17 63:11	ribbon 14:2	109:3,8,14 110:2	save 126:7	110:17 114:6
researched 54:13	ride 126:20	110:19,20,25	saved 108:16	115:17 117:22
reserve 61:9	right 2:24 6:11,17	113:17,18	saw 24:23 91:3	128:4
126:17	28:2 38:13,14	114:11,11,15	115:18	seeing 36:21 66:7
reshape 46:2	44:19 48:21	117:3,10,13,25	saying 91:13 92:4	66:8
resistant 19:10	54:13 55:1 65:24	118:6,14,15	98:17 104:8	seek 63:3

seeking 41:5	57:12 58:19	33:25 108:23	67:16 69:10	stage 13:4 79:6
seeks 71:15	several 9:3 16:17	single 51:10	78:22 89:1 90:13	87:18 92:6
seem 27:6 34:10	34:16 61:16 74:2	sits 6:10	90:25 95:19	stake 50:3
36:10 41:4 58:14	shaking 45:16	sitting 53:21 72:24	103:17 104:22	standard 18:12
103:8	54:16	situations 119:2	105:17 106:25	78:2 80:2 96:5,7
seemed 36:12 37:3	shape 2:11	six 14:2 73:19	114:1,4 115:4	96:20 118:22
46:5 54:12	share 127:5	75:20 84:24 85:1	116:22 117:24	119:1
110:20,21	shared 109:1	sleep 97:17	118:1 120:20	standards 95:3
seems 24:8 58:13	Shari 14:7	sleeves 70:4	121:25 122:1	standpoint 22:16
105:2 120:10	sheet 11:8 23:21	Slobodan 58:4	124:1	Stanley 1:25
seen 9:11 28:3	shift 79:21	small 92:7	sometimes 35:10	130:15
95:17 115:13	ship 66:9	smart 75:23	43:2,3 56:7	staring 123:23
selected 16:10	Shipp 73:2 87:10	smarter 99:15	66:11 67:8 98:9	start 9:8 18:11
23:11 24:2	87:12 114:14,19	social 8:7 14:6	127:25	20:3,8 22:20
selection 7:13 67:8	124:3,8 125:5	15:1	somewhat 41:2	23:16 26:16 30:1
73:21	128:14,19	Society 7:22	82:7	31:20 43:8 44:15
self-contained	short 9:9 70:14	solution 75:25	somewhere 84:21	75:11 88:13
104:14	shorten 85:8	76:14	son's 47:1	89:22 90:4
Senator 7:12	shorter 20:17	solutions 76:19	soon 73:13	107:14 113:13
send 88:20	show 55:8 92:19	some 3:20 4:19	sophistication	124:3
sending 76:5	showed 36:23	9:14 10:23 12:9	113:24	started 7:2 8:18
sends 122:25	showing 9:9 21:5	12:17 13:17	Sorry 11:23	12:1 15:16 41:20
senior 6:22	107:11	14:18 17:24,25	sort 26:22 43:23	93:24 107:11
sense 43:12 46:9	shown 98:11	18:10,12,19,23	43:24 48:15 49:2	119:8
48:22 49:2,10,15	shows 24:9 94:14	22:6,18,18 25:7	55:4,8 56:12	starting 6:13 72:19
55:12 63:1	side 53:13,14,14	25:18,18 28:20	60:6	73:7 129:4
sent 99:3	60:17 62:13	30:17,18 35:21	sound 11:22 14:12	starts 20:9 31:10
sentence 39:2 42:7	77:22,23 90:18	36:1 37:25 50:24	89:15 119:21,22	61:15
91:13	102:8,22 103:5	53:25 54:14 56:1	120:5	state 2:9 4:14 5:8
sentencing 42:4	121:6	59:12 60:21	sounds 56:24	7:8,11 14:3,9,19
44:5 45:5,25	sidebar 36:22,22	66:22 67:14,24	110:7	15:14 41:10,18
separate 77:4	37:14 41:15	69:24 75:9 76:17	south 72:19	41:21 46:14
107:15	45:23	76:20,23 79:5,23	so-called 15:21	53:19 68:15
series 61:18	sidelined 43:25	83:3 87:6 89:18	space 76:4,5,7	78:10 106:6
serious 20:18	sides 37:20 40:19	95:3,13,14 96:8	sparked 17:15	108:20,24,25
serve 69:15 72:1	54:8 60:22	96:11,16 102:21	speak 3:23 24:15	109:16,21
served 6:22 8:16	sidetracked 3:20	103:7,19 104:3	64:1	113:17 114:10
73:18	signal 31:14 44:8	105:5,15 106:1,5	speaking 39:3	stated 118:9
ses 103:19	signed 117:6	106:23 107:25	64:18 127:4	statement 57:10
session 47:8	significant 15:18	111:10 115:18	speaks 70:1	80:19,25 81:20
set 31:5 59:4 79:6	81:16	116:2 121:5	special 21:17	82:17 84:1,2,9
92:7 105:25	Simandle 19:4,9	123:7 124:15,16	27:10	84:10 86:3,14
106:9 127:12,19	24:13 35:12 48:7	127:3	specialized 116:25	90:8 91:23 93:21
130:6	72:21 82:11,14	somebody 31:10	specific 121:19	102:6 103:23
Seton 7:18	86:15,18,22	107:22 117:19	specifically 52:17	statements 16:13
sets 9:12 13:15	92:21,23 95:6,8	118:3 126:23	59:2 103:10	22:22 80:17
23:21 43:23	97:10,17,21	somehow 19:20	spectacular 78:12	84:19 89:17,24
60:21	102:3 104:6,13	someone 11:15	speedy 71:18	94:10,18 124:16
settled 60:4	105:12 115:10	23:4 77:17 112:1	spend 11:5 30:4	states 1:10 6:7,15
settlement 124:1	115:15 125:16	112:4	75:23 86:9 120:7	6:19 7:19,22,24
126:22,24	125:17,21 127:8	something 4:20 5:1	121:8	15:7 23:8 61:5
seven 16:10 83:3	similar 35:13	10:3 18:5,17	spent 75:20 76:8	61:13 66:14
109:15,15	80:16 94:8 113:8	22:25 25:13	97:13 114:25	72:21 109:9
Seventh 4:21,22	simply 37:7 103:22	26:17 29:20	spill 104:22	status 21:17 27:10
9:1 15:20,21	106:6 108:7	31:20 34:9,10	split 84:12	stay 70:12,19
16:4,9,18 17:14	111:12 119:3	43:11,16 44:6,25	spoke 21:2 82:20	stenographically
43:4 48:18 49:7	121:13 122:9	46:19 49:6 59:17	spoliation 123:5	130:5
51:25 54:24	since 15:12 33:22	60:25 64:11 67:4	spread 17:9,11	step 17:18 93:1

115:9	suggest 56:7	48:6 62:16,24	31:24 42:17	terms 3:2 11:6
Steve 8:1,5,19,24	suggested 46:3	64:23 79:11	47:11,14 64:3,12	24:12 45:8 48:15
9:6 12:3,4 18:3	68:18 122:2	90:25 93:20 99:8	113:18 121:8	59:10 81:18
29:6 34:2 43:4	suggestion 52:1	99:12 100:22	talk 10:16 18:14	102:12 114:6,7
48:17 50:14	suggestions 52:18	102:21 128:24	18:22 36:8 44:6	terrible 58:8
51:19 54:23	63:23	surprise 80:8	50:11 51:17	test 100:8
57:12 61:12	suggests 18:15	surprised 41:22	55:24 60:25 69:5	testify 74:21 89:18
65:18 68:14,24	43:10	42:19 91:3	70:14 86:3 87:17	107:21 111:12
70:24	sum 49:19	surprising 85:20	89:1 107:1,16	112:3,4,6 117:16
stewards 69:9 70:3	summarize 53:12	survey 84:5 125:24	113:12	122:20
stewardship 33:18	summary 72:6,7	suspect 13:1	talked 5:7 55:23	testifying 111:25
stick 59:21,22,23	76:23 77:1,16,22	sustain 120:22	58:22 59:20	122:18
still 18:13,24 39:2	77:24 78:1,3,6	sustainable 121:2	65:18	testimony 22:20
57:17 80:12 83:5	78:10 79:13,15	sustained 85:11	talking 8:18 19:11	52:10 77:19,20
84:18 100:10	79:22 80:2,4,10	sweating 66:8	38:25 42:6 67:23	108:5 112:10,12
101:7,25,25	80:22 81:3,12,24	sweeping 28:6	67:23 77:23	114:5 116:7
117:4,24 122:12	83:9 85:9,10,18	sympathize 92:24	79:12 86:16	118:2 121:19
stipulated 128:3	85:22,25 87:6,8	symposia 8:16	121:16	thank 3:5 9:7
stipulations 23:12	88:18,24 89:4,12	symposium 8:10	talks 47:20 76:17	12:11 18:1,3
24:3 25:5	90:6 92:10,15	8:20	121:18	20:11 54:5 68:25
stop 32:2 38:20	93:4,7,25 94:17	system 5:10,14,19	Task 73:21	70:6,21 79:4
56:17	94:21,22 96:9,23	5:24 16:2 41:10	taught 10:1,4	82:6-85:14 99:18
straight 83:16	97:6,23 98:4,7	65:25 66:14,19	tax 24:24	110:6 113:11
stray 48:13	98:10,21,25	66:23,25 68:17	teacher 10:5 12:20	122:4 129:5
streamlining 25:1	99:14 102:5	68:23 69:7,9,13	13:1	Thanks 75:18
25:9	103:4,13 104:21	69:24 70:2 77:13	teachers 10:1,11	their 11:4 20:19
strengths 107:1,4	105:14 111:7,8	78:10	10:14,17,24 11:3	21:20 27:16 30:5
stressful 66:3	111:13,13		teams 76:8	30:6,21 39:25
strict 103:16	115:16 123:21		technical 9:17 11:6	42:16 45:10 47:3
stuck 62:1 101:12	124:4,13,21		technological	47:9 48:3 52:9
students 10:16	125:11,17,22		24:18 78:17	54:1 60:17 67:25
studied 5:4	126:9 127:10,15		tell 7:12 9:23 10:7	68:4 69:22 75:1
studies 8:22 27:13	127:17,24 128:5		21:15,21 27:20	83:6,15 84:1,25
29:7	128:5,9,17,21		28:9 29:6 33:12	86:12 91:11
study 4:7 29:15	summation 16:14		37:8 39:9,24	98:13 100:10
stuff 87:23 88:2	49:20 50:11		52:2 54:23 63:14	107:11,12
style 96:10	56:21 60:21		63:14,15,18	110:13,18
subject 8:21 10:2,3	summations 50:10		75:14 82:11	116:15 119:3
10:6 84:12	50:14 53:9 54:9		86:15 87:20,23	124:17 126:2,6
117:24 118:2	59:10		98:23 101:9	theme 29:4 34:5
submissions 75:8	sun 12:16 14:10		105:20 110:7	themes 59:7
submit 16:12	Superior 6:12		114:17 115:12	themselves 85:12
32:13,14 40:2	41:17		120:23	themselves 30:24
submitted 87:22	supplement 84:1		teller 36:11	61:7 87:2
submitting 103:22	supplemental		tellers 38:11	theoretic 60:23
substance 106:6	77:15,15 84:2,9		telling 11:1 45:12	theories 30:21
111:9,11,14	supplied 19:5 23:9		tells 62:11	theory 52:9 105:25
118:7	supply 121:22		ten 34:1 53:14	they'd 68:9
substantial 57:21	support 15:4 83:17		54:8 55:2 57:9	thing 11:14 18:4
58:15 61:20	supported 16:20		73:24 92:18,19	19:1 22:3,5 23:8
118:5,19	84:21		95:23 97:15	25:10 31:19
substantially	supposed 55:22		110:1	38:14 39:4 45:14
80:14	83:9 102:13		tend 19:13 26:15	45:15 48:10
substituted 80:11	Supreme 6:5 73:8		27:2,4 31:18	51:23 54:13 55:1
such-and-such	76:22 77:3		79:21 90:24	55:4 56:15,16
120:9,9	sure 5:24 9:25		tension 128:9	57:16 59:1 62:10
sufficient 121:20	21:4,19 31:6,24		ten-minute 71:5	67:12 88:1 99:16
sufficiently 77:2	41:1,13 42:10		ten-point 22:12	122:13 125:6

T	
T 130:1,1	
table 9:12	
tactical 22:23	
take 9:24 10:4,12	
13:11 18:16 20:1	
20:13,15,18	
21:12,21 22:7,10	
24:11 26:8,24	
27:16,23 29:9	
32:15 41:13	
42:21 43:2 54:4	
65:22 69:11,11	
71:5,14 72:9	
79:7 88:6,25	
89:5 91:25 93:1	
93:15 100:23	
106:2 109:24	
111:21 113:12	
115:8	
taken 20:2 110:16	
113:9 121:5	
taker 19:24 21:17	
28:3,3,4 114:1	
takers 27:3	
takes 32:9 60:15	
75:10	
taking 18:15 19:23	
20:20 27:6 28:5	
29:3 30:24 31:5	

<b>things</b> 11:24 16:8 18:12 20:24 25:5 28:8 31:21 34:23 35:3 39:21 43:19 47:5 49:2 50:10 50:11 53:12 55:12 57:10 60:13 69:6 90:15 92:19 93:18 97:1 99:24,25 100:1 115:1 117:6 122:7,21 123:20	114:20,24 115:2 117:10,17,23 119:15 121:18 122:7 124:13 125:5,22 126:2 127:8,11 128:8 <b>thinking</b> 30:4 31:15 34:18 39:5 39:20 42:21 45:5 51:8 97:18 <b>Third</b> 2:19 14:21 33:6,14 73:21 80:13 <b>THIRTY-THIRD</b> 1:6 <b>Thompson</b> 6:18,18 18:22 19:3 21:10 21:11 24:15 25:25 26:1 33:1 33:5,11,13,23 35:11,21,24 37:2 38:2,6,8,22 39:14,24 40:18 40:25 41:8 44:21 46:19,21 47:17 53:6,7 57:1,2,9 62:19,21,23 63:18 67:2,3 71:4 <b>though</b> 10:17 29:21 34:15 43:20 49:17 95:16 102:20 103:18 115:17 <b>thought</b> 10:13 17:6 22:13 25:1 42:16 54:9 59:9,15,17 60:8 62:23 63:9 77:9 91:9 106:22 <b>thoughtful</b> 44:2 68:4 <b>thoughts</b> 12:13 67:5 74:25 <b>threatened</b> 60:4 <b>three</b> 6:2 13:15 24:2 56:22 57:18 75:2 78:13 100:1 100:3 112:20,21 113:4,7 126:1 <b>three-ring</b> 23:20 <b>through</b> 10:18 18:9 32:25 66:8 86:10 92:3,4 103:6 109:24 123:13 124:7,11 <b>throughout</b> 25:17 45:10 64:16 <b>throw</b> 20:10	<b>tile</b> 98:12 <b>time</b> 8:3 13:16 21:8 22:14 26:3 28:6 33:20,24 42:11 46:2 53:14 55:24,25 56:14 56:20 58:13,23 59:21 65:15 66:3 66:15,20 75:24 77:8,17 82:10 85:8 86:10 88:7 88:11 94:4 97:22 97:22 100:24 107:10 108:15 114:24 115:17 120:7 121:5,8 124:20 126:24 129:2 130:5 <b>times</b> 15:14 63:10 66:5 84:6 <b>timing</b> 56:11 79:13 87:3 124:4 128:20 <b>tireless</b> 16:5 <b>today</b> 2:22 3:21 4:19,19 5:21,25 7:14 8:4,16 9:6 17:4 19:11 47:7 53:21 59:2 70:9 71:9 72:3 73:16 82:5 108:23 122:2 <b>together</b> 3:6 8:19 8:20 9:2 13:11 55:12 57:19 72:16 76:9,21 78:4 118:1 124:12 <b>told</b> 9:22 10:11 34:25 37:12 120:15,18 <b>Tom</b> 14:8,9 <b>tone</b> 43:23 <b>tool</b> 29:14,19 31:25 35:5 46:16 94:1 <b>tools</b> 30:12 <b>top</b> 38:9 74:9 <b>topic</b> 3:25,25 6:1 8:24 9:13 65:16 <b>topics</b> 2:17,21 3:22 <b>Tort</b> 8:7 <b>Tortorella</b> 7:16 <b>totally</b> 60:19 62:25 <b>touch</b> 123:11 <b>touched</b> 122:22 <b>touching</b> 88:1 <b>tough</b> 102:10	<b>towards</b> 17:18 30:1 <b>track</b> 15:3 35:4 75:15 107:15 <b>transactional</b> 74:18 <b>transcript</b> 1:21 130:4 <b>transcription</b> 9:18 <b>travel</b> 74:20 <b>traveling</b> 72:20 <b>treat</b> 99:8 <b>treating</b> 28:24 112:3 <b>trees</b> 99:8,22 <b>tremendous</b> 70:14 <b>tremendously</b> 30:20 <b>Trenton</b> 72:25 <b>trial</b> 4:10,11 5:6,18 6:11,25 7:4,5,9 7:11,17-8:11,19 9:5,19 16:13,15 16:23 17:16,19 18:16 20:5,20 21:20 22:17,22 23:9,22 24:7 25:7,18 26:6 27:2,15 28:7,9 28:13,19 29:13 29:13,18 33:16 34:19 36:16 40:22,23 41:1 42:2,5 44:18 45:21,22 46:6 50:2,20 51:9 52:2,6 53:11,16 53:19,23 55:23 56:10,11,21 57:17 58:2,5,8 58:23 59:19 60:4 60:5,6,14,15,23 61:8 63:24 64:2 64:5,17,17 65:20 66:15 73:12 77:18,21 85:23 87:7 88:12,13,17 88:21,24 89:7,9 89:11 98:18 100:23 101:3,8 101:10,12,14,19 104:23 106:10 107:3 109:13 115:11,14,16,16 122:10,13,19 123:16,22 124:2 125:4,15 <b>trials</b> 3:17 4:5 5:11	5:12 15:8,17 17:17 18:17 40:25 46:15,21 52:24 55:3 56:1 56:18,19 58:7,18 58:19 66:13 94:3 116:19 <b>tried</b> 5:8,17 7:7 43:15 58:4 62:17 66:13 <b>tries</b> 71:14 83:11 <b>trilogy</b> 76:23,24 98:23 <b>trivial</b> 93:13 <b>true</b> 16:3 121:7 130:3 <b>Trump</b> 7:20 <b>Trustees</b> 2:10 110:16 113:10 <b>trustworthy</b> 77:18 <b>truth</b> 10:11 41:4 114:24 119:11 119:13,16,17,25 120:21 121:15 <b>try</b> 3:16 4:4,13,13 4:14 9:13 16:10 16:21 17:20,21 17:21,22 19:11 30:11 62:18 65:23 67:5 79:8 121:13 123:17 <b>trying</b> 18:8 25:22 31:1,21 45:1,8 102:22 105:21 108:19 120:11 120:12 121:16 125:1 127:12 <b>turn</b> 12:13 19:15 26:6 27:20 30:6 53:16 71:6 116:3 123:11 <b>turned</b> 115:21,25 <b>tweak</b> 63:5 <b>Twelve</b> 86:22 <b>two</b> 2:12,21 3:21 4:2 5:5 6:24 11:8 24:1 27:3,6 30:4 32:5 42:24 53:9 56:22 57:18 60:2 60:5 70:7 72:3 74:10 75:2 78:13 86:23,25 110:23 123:20,22 126:20 <b>type</b> 35:11 95:10 <b>t's</b> 98:3 <hr/> U <hr/>
---	---	---	--	--

<b>ultimate</b> 117:15	40:24	<b>values</b> 41:4	<b>vocal</b> 2:21	50:21 60:5 75:2
<b>ultimately</b> 118:10	<b>unnecessary</b> 126:8	<b>vanishing</b> 5:6 8:11	<b>vociferously</b> 89:19	123:23,24,24
124:21 125:8	<b>unpacked</b> 50:25	8:19 17:19 65:19	<b>voir</b> 16:16 69:10	<b>weighed</b> 44:12
<b>unacceptable</b>	<b>unreasonable</b>	<b>variables</b> 60:13		<b>weighing</b> 45:4
69:14	56:25	<b>variant</b> 117:21	<b>W</b>	<b>weightlessness</b>
<b>unaccompanied</b>	<b>Unretained</b> 108:3	<b>variations</b> 79:24	<b>wacky</b> 58:16	76:6
102:5	<b>until</b> 11:3,13 20:3	<b>variety</b> 71:15	<b>Wait</b> 97:4	<b>well</b> 5:20 14:4 15:2
<b>unanimously</b> 83:1	28:13 61:10	<b>various</b> 16:15 52:9	<b>waiting</b> 127:17	15:4 17:22 18:22
<b>uncontested</b>	78:20 123:20	<b>verb</b> 90:24	<b>walks</b> 4:12	18:25 28:13 29:3
124:18	124:12 125:3,7	<b>verbally</b> 64:15	<b>Walls</b> 35:16	31:8 33:13 37:24
<b>undecided</b> 125:22	<b>unusual</b> 28:17	<b>verdict</b> 54:4	<b>wanes</b> 28:5	41:12 47:10 59:9
126:9	<b>unwittingly</b>	<b>version</b> 82:10	<b>want</b> 3:5 31:16	59:15,18 61:14
<b>under</b> 12:16 14:10	105:18	100:10,25	34:11 39:3,19	66:19 67:3 68:2
44:20 80:2 81:6	<b>unworkable</b> 60:24	110:24	42:15 44:6 47:5	72:1 82:14 91:19
85:4 108:25	<b>updated</b> 13:16	<b>versus</b> 33:3 109:21	50:20 55:14	92:3 95:1,9 97:8
109:14 113:17	25:17	<b>very</b> 2:6 3:4 4:23	56:14,15 65:16	98:15,19 100:5
113:18 114:10	<b>upheld</b> 50:19	5:25 6:1,11,24	75:3 78:12 88:1	101:20 110:20
114:11 117:10	<b>use</b> 11:6 16:17	7:9 8:23 14:18	88:4 89:8 90:6	110:21 113:16
118:17 126:17	17:25 22:23 30:5	18:25 19:9,18	95:4 98:19,20	114:12 115:8
<b>undercuts</b> 31:1	31:7 49:16 53:3	20:5 21:8 25:1,8	100:8,13 102:15	117:3 119:8,19
<b>understand</b> 29:24	53:8 55:11 56:7	25:24 28:4 30:22	105:5,10 107:2	123:9 126:10
30:9 34:9 46:13	56:11	30:25 32:21	114:16 118:10	<del>well-known</del> 74:5
49:10,14 82:21	<b>used</b> 9:13 14:14	34:24 39:25 43:9	118:16 127:23	<b>well-pleaded</b> 97:9
98:5,8 103:2	15:6 24:22,25	46:16 50:1 52:1	128:6,12 129:1,5	<b>well-written</b> 8:24
118:20 119:4	25:16 32:3 41:21	52:11 54:10	<b>wants</b> 90:9 107:22	<b>went</b> 6:20 8:6
124:10	48:11 52:21 53:3	59:13 61:20	111:21	28:10 36:18
<b>understandable</b>	56:9,13 76:13	63:19 64:12 66:2	<b>wasn't</b> 25:11 42:1	53:22 96:10
47:23	77:1 91:7,18,20	66:3 68:3 70:14	43:17 55:9 77:1	<b>were</b> 4:8 5:8 13:15
<b>understanding</b>	92:13 93:25	72:1 74:5 76:15	91:3 95:16 96:17	13:17,18 14:2,17
29:5 68:20	94:24 96:22	76:16 77:9 80:16	<b>waste</b> 124:20	15:5 16:24 17:2
<b>understands</b>	106:13	81:18 82:18 84:4	<b>watch</b> 67:8	17:6 22:10 32:5
117:20	<b>useful</b> 21:9 35:5	84:8 85:5 89:15	<b>watching</b> 22:9	33:9,10 36:9
<b>undertaken</b> 15:19	46:16 52:1 92:2	90:11 92:12	<b>water</b> 3:9 119:23	41:23 43:6 50:9
<b>underway</b> 80:7	92:8 94:1	95:13 100:24	<b>way</b> 3:2 5:20 11:24	53:24 54:5 58:18
<b>undisputed</b> 80:17	<b>usefulness</b> 67:25	103:1,16 105:24	15:16 21:13	59:4,7,13,16,22
81:23 82:17 86:3	<b>useless</b> 90:2	106:8,24 110:20	25:11 26:9,10,13	61:19 76:4 80:12
86:14,16 91:23	<b>using</b> 17:5 26:8	110:21 113:8,8	29:21,22 34:12	84:8,23 92:12
91:24 92:7	30:1,12 52:22	116:17,25	34:22 37:16	95:12,13 97:19
101:24 102:9	<b>usually</b> 15:15	117:25 118:25	41:13,14,15 43:8	106:8,9,11,23
103:23	26:17 28:2 37:15	123:15	44:1 45:3 46:5	107:11 108:9
<b>undue</b> 118:19	87:17	<b>vett</b> 4:8	51:1 62:12,17	109:20,21
<b>uneasy</b> 27:25	<b>utility</b> 95:16	<b>video</b> 9:9,16,19	65:23 76:1 85:25	110:24
<b>unenlightening</b>	<b>utter</b> 124:20	11:21	92:8 100:6 101:5	<del>weren't</del> 77:10
106:8	<b>U.S</b> 6:5 24:17,23	<b>videotaped</b> 61:18	111:23 112:15	<b>west</b> 1:16 61:15
<b>unfamiliar</b> 11:6	33:3 72:22 73:1	<b>videotaping</b> 61:21	113:15 116:24	<b>we'll</b> 77:23 79:7
<b>unfold</b> 43:8	<b>V</b>	<b>view</b> 24:8 72:7	118:1 121:13	96:3 97:5 99:4
<b>uniform</b> 95:18	<b>Valerie</b> 29:16	89:23 94:7	122:7,18	104:3 105:14
<b>uniformity</b> 95:7	<b>valid</b> 120:4,19,19	100:18 102:11	<b>ways</b> 18:7 20:15	129:4
96:1	120:23,24 121:1	103:25 127:5	21:8 55:11 66:24	<b>we're</b> 2:21 8:15
<b>unit</b> 73:5	121:2	<b>viewed</b> 55:9 69:3	76:20 78:14	19:10 20:5 24:10
<b>United</b> 1:10 6:7,15	<b>valuable</b> 23:7	<b>viewpoint</b> 93:10	<b>weaknesses</b> 12:17	26:3 30:10,10
6:19 7:19,22,24	29:14 34:19	<b>views</b> 71:15 74:22	107:1,3,4	45:8 49:12 51:13
15:7 61:13 66:14	38:15 44:8 47:9	91:11 126:2	<b>wears</b> 27:5	53:12 65:14
72:21	52:5 67:16	<b>vigorous</b> 80:7	<b>weave</b> 89:1	67:22,23 69:8,10
<b>University</b> 8:8	<b>value</b> 20:19,23	<b>vigorously</b> 78:20	<b>weeded</b> 94:4	70:4 71:9 75:11
<b>unless</b> 79:17 87:4	21:7 46:8,11	<b>violate</b> 63:22	<b>week</b> 22:6 52:6,6	79:1,6,11 85:7,9
<b>unlike</b> 83:19	70:2 124:11	<b>violations</b> 65:12	59:4,5 63:10	89:11,13 98:17
<b>unnecessarily</b>		<b>virtually</b> 85:21	<b>weeks</b> 9:25 28:11	103:18,24

**Rizman  
Rappaport  
Dillon & Rose, LLC**  
Certified Court Reporters

**66 W. Mt. Pleasant Avenue  
Livingston, NJ 07039  
(973) 992-7650 Fax (973) 992-0666  
1-888-444-DEPS  
E-mail: [reporters@rrdresr.com](mailto:reporters@rrdresr.com)**