

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

KALI MYERS,
an individual,)
Plaintiff,)
vs.)
THE CITY OF SIOUX CITY,)
IOWA; ROBERT PADMORE, in)
his official capacity;)
and CINDY RARRAT, in her)
official capacity,)
Defendants.)

Case No. 5:16-cv-04107-LRR

DEPOSITION OF
KYLIE BUTLER

DATE: Wednesday, January 24, 2018
LOCATION: Sioux City City Hall
Legal Division, Suite 511
405 Douglas Street
Sioux City, Iowa
(712) 279-6318
TIME COMMENCED: 10:40 a.m.
TIME CONCLUDED: 11:27 a.m.

A P P E A R A N C E S

For the Plaintiff:

MR. KAMRON T.M. HASAN, ESQ.
Husch Blackwell LLP
13330 California Street, Suite 200
Omaha, NE 68154
(402) 964-5000 Fax (402) 964-5050
E-mail: kamron.hasan@huschblackwell.com

For the Defendants:

MS. NICOLE M. DuBOIS, ESQ.
City Attorney
MR. CALEB CHRISTOPHERSON, ESQ.
Assistant City Attorney
405 Sixth Street, Suite 511
P.O. Box 447
Sioux City, IA 51102
(712) 279-6318 Fax (712) 224-5203
E-mail: ndubois@sioux-city.org
E-mail: cchristopherson@sioux-city.org



I N D E X

Appearances..... 2
Stipulations..... 4
Reporter's Certificate..... 51

WITNESS:
KYLIE BUTLER
Direct Examination by Mr. Hasan..... 5

S T I P U L A T I O N S

It is stipulated and agreed by and between the parties hereto:

1. That the deposition of KYLIE BUTLER may be taken before Julie A. Pell, Registered Professional Reporter, Certified Realtime Reporter, Certified Shorthand Reporter, Certified Realtime Captioner, General Notary Public, at the time and place set forth on the title page hereof.
2. That the deposition is taken pursuant to notice.
3. That the original deposition will be delivered to Mr. Kamron Hasan, attorney for the Plaintiff.
4. That all objections except as to form and foundation are reserved until time of trial.
5. That the required elements of Federal Rules of Civil Procedure Rule 30(b)(5)(A) and (C) will be set forth within this transcript and, therefore, do not need to be stated aloud on the record by the court reporter.
6. That the testimony of the witness may be transcribed outside the presence of the witness.
7. That the signature of the witness to the transcribed copy of the deposition is waived.

1 KYLIE BUTLER,

2 Of lawful age, being first duly

3 cautioned and solemnly sworn as

4 hereinafter certified, was examined

5 and testified as follows:

6 (Witness' response to oath - "Yes.")

7 DIRECT EXAMINATION

8 BY MR. HASAN:

9 Q. Will you please state and spell your name

10 for the record?

11 A. **Kylie Butler. K-y-l-i-e, B-u-t-l-e-r.**

12 Q. Is it all right if I call you Kylie during

13 this?

14 A. **Yep.**

15 Q. All right. My name is Kamron Hasan. I am

16 one of the attorneys for the plaintiff in this

17 lawsuit.

18 A. **Okay.**

19 Q. Kylie, have you ever had your deposition

20 taken?

21 A. **Nope.**

22 Q. Ever attended a deposition?

23 A. **No.**

24 Q. I will kind of give you some description of

25 the process so you kind of know what's going to be

happening. It's essentially an interview between you

1 and me where I'll be asking you questions and you'll

2 be giving your answers. The point of the deposition

3 is to prepare this lawsuit for trial, to develop the

4 facts of the case.

5 A. **Uh-huh.**

6 Q. You understand that you're under oath?

7 A. **Yes.**

8 Q. So will you answer truthfully and fully

9 today?

10 A. **Yes.**

11 Q. For depositions it's important that we give

12 audible answers because Julie is taking down

13 everything in written format. So it's important to

14 try to avoid uh-huhs and huh-uhs and head nods and

15 things like that.

16 A. **Oh, okay.**

17 Q. Does that make sense?

18 A. **Yeah.**

19 Q. Also, it's important because she is taking

20 down everything that we do tr-- do our best not to

21 speak over each other so that way she's able to track

22 everything.

23 A. **That's fine.**

24 Q. I will do my best not to speak over you, and

25 I'd just ask that you do your best not to interrupt

1 me also.

2 A. **Okay.**

3 Q. Throughout this deposition I may ask

4 questions that I would call bad. They are maybe

5 confusing, you don't understand them. If you don't

6 understand something or you don't quite know what I

7 am talking about, please let me know because I will

8 do my best to restate it in such a way that you can

9 better understand it. Is that fair?

10 A. **Yeah.**

11 Q. Okay. If you need a break during this -- I

12 hope it doesn't take too long, but if you need during

13 the middle, please just let me know. I am happy to

14 break whenever if you need one. I may ask to let us

15 finish a line of questions first to get to a good

16 stopping point, but will you let me know if you need

17 a break?

18 A. **Yes.**

19 Q. Also throughout your attorneys may lodge

20 objections to some of my questions if I asked it in a

21 bad way or for any number of reasons; however, unless

22 your attorney instructs you not to answer the

23 question, whatever the question I asked to you is

24 going to stand, and you'll be required to answer the

25 question even if there is an objection. Understand?

1 A. **That's fine.**

2 Q. Anything about your physical or emotional or

3 mental conditions that would keep you from

4 understanding my questions?

5 A. **No.**

6 Q. Anything about your physical, emotional or

7 mental conditions that will keep you from answering

8 truthfully and fully?

9 A. **No.**

10 Q. Are you on any medication or alcohol that

11 will keep you from understanding my questions?

12 A. **No.**

13 Q. Any medication or alcohol that will keep you

14 from answering truthfully and fully?

15 A. **No.**

16 Q. Kylie, what do you do for a living?

17 A. **I am a cashier at Bomgaars right now in**

18 **Storm Lake.**

19 Q. What's Bomgaars? I am not from here. So...

20 A. **Bom- -- oh, it's just a feed store that...**

21 Q. Okay. Animal feed?

22 A. **Yeah. Yes.**

23 Q. How long have you been doing that?

24 A. **About a month.**

25 Q. What were you doing before that?

- 1 **A. I was an animal control officer.**
 2 Q. For Sioux City?
 3 **A. Yes.**
 4 Q. How long were you in that position?
 5 **A. Well, I fell pregnant a couple years ago,**
 6 **about a year and a half two, years ago, so I quit.**
 7 **But from there I was there probably five and a half**
 8 **years, and this last time I was there probably eight**
 9 **months.**
 10 Q. Okay. So about eight months, and then a
 11 year and a half before that there was a gap?
 12 **A. Yes.**
 13 Q. And then five years before that?
 14 **A. Yes.**
 15 Q. So total you worked for animal control,
 16 Sioux City Animal Control, for six or...
 17 **A. For six years, roughly six.**
 18 Q. A little more than six years maybe, it
 19 sounds like?
 20 **A. Yeah. Uh-huh.**
 21 Q. What did you do before that?
 22 **A. I worked at a meat-processing plant – it's**
 23 **called Tiefenthaler's – in Holstein.**
 24 Q. What's your education background?
 25 **A. Just high school.**

- 1 Q. Locally, or this area?
 2 **A. It was in Hinton.**
 3 Q. Okay. I am from Arizona, so I am still
 4 getting to know the area. So is that close by?
 5 **A. It's roughly eight, ten miles.**
 6 Q. Okay. I count that as close. Do you have
 7 any certificates, trainings, anything like that, any
 8 formal education outside of high school?
 9 **A. I attended college for a year, but I pretty**
 10 **much messed around and didn't go.**
 11 Q. I...
 12 **A. So now I am paying for that.**
 13 Q. No, I think I can understand. I can
 14 understand that. But how about relating to animals?
 15 Any certificates?
 16 **A. No.**
 17 Q. Any trainings?
 18 **A. Huh-uh. No.**
 19 Q. Have you attended any seminars or
 20 conferences as related to your animal control job?
 21 **A. No.**
 22 Q. Any additional training related to that
 23 animal control job?
 24 **A. No.**
 25 Q. Did animal control, the people in charge,

- 1 whether that be – well, first off, was Cindy Rarrat
 2 in charge?
 3 **A. Yes.**
 4 Q. Did Cindy or anyone else in a position of
 5 power give you any training when you were an animal
 6 control officer?
 7 **A. No. Well, I – well, they trained me to do**
 8 **the job and the ordinances –**
 9 Q. Will you tell me about that, please?
 10 **A. – but – they gave me an ordinance book,**
 11 **and I pretty much read it.**
 12 Q. Okay.
 13 **A. And that was my training.**
 14 Q. So, essentially, here's a copy of the
 15 ordinances?
 16 **A. Yeah. And then they put me with people that**
 17 **were officers to kind of learn the computer system**
 18 **and kind of what to do in that – situations, in the**
 19 **situations that you – like, traps, how to pull an**
 20 **animal from a trap or how to use a catch pole. They**
 21 **taught me how to do that.**
 22 Q. Okay.
 23 **A. The officers that – I think Megan Lalk and**
 24 **Dave Kracke trained me.**
 25 Q. Okay. I met Megan last week, and I think

- 1 Dave's coming in later today.
 2 **A. Yeah.**
 3 Q. So I will get to meet him. I am going to
 4 call that shadowing. Is that...
 5 **A. Yes.**
 6 Q. Is that fair?
 7 **A. Yes.**
 8 Q. Aside from the shadowing, was the training
 9 that you received what you mentioned, them just
 10 handing you the book of codes and saying this is it?
 11 **A. Pretty much. They told me this is the book**
 12 **of codes. Learn it. And I pretty much went from**
 13 **there as to what to do.**
 14 Q. Sure.
 15 **A. So...**
 16 Q. Okay.
 17 **A. I don't really know how else to explain it.**
 18 Q. No, I am just – again, this is a con – I
 19 am just trying to learn exactly your training going
 20 into your job. So...
 21 **A. No, that's fine. That's fine.**
 22 Q. Let's talk about that shadowing a little
 23 bit. Did the shadowing ever include instruction on
 24 identifying dog breeds?
 25 **A. It was in the ordinances. And then pretty**

1 much when we impounded a dog we kind of based it off
2 what we knew, but other than that we – looking at a
3 dog, I mean, it could be a mutt. We just go by what
4 we think it is.

5 Q. How do you – how do you come to the
6 determination on what you think it is?

7 **A. Well, they do have a poster in the back of
8 certain dog breeds. Me, I just kind of know animals.
9 So I just kind of went with what my gut instinct was.**

10 Q. Just going with your gut?

11 **A. Yeah.**

12 Q. How is it that – you said you know animals.
13 Will you tell me about that, please?

14 **A. Well, I – I don't know how to explain it.
15 It's just something that I learned throughout my
16 years. I am an animal person.**

17 Q. Okay.

18 **A. I have owned different dogs. But, I mean,
19 like I said, there's a little poster in back of
20 the – in – it's called our intake room. And it
21 gives dog breeds.**

22 Q. Sure.

23 **A. So we've had to look at that a time or two.**

24 Q. Like a big chart showing a bunch of
25 pictures?

1 **A. Yes. Yes. But other than that, I mean, you
2 can't really base it off – I mean, I don't know how
3 to explain it. I really don't.**

4 Q. Well, let's kind of get to it. I want to
5 start kind of broad, and we'll see if we can get you
6 to discuss kind of your background for identifying
7 dogs, but let's – we'll walk there together.

8 So have you – did you ever attend or review
9 the National Animal Control Association training
10 course –

11 **A. No.**

12 Q. – or the manual?

13 **A. No.**

14 Q. Okay. You ever visit any dog shows?

15 **A. No.**

16 Q. Have you ever read the American Kennel Club
17 or United Kennel Club breed standards?

18 **A. No.**

19 Q. Did the city animal control officers ever
20 give you those standards?

21 **A. No.**

22 Q. No?

23 **A. Not that I am aware of.**

24 Q. Okay. So you said that you had this
25 experience with animals in general. I want to focus

1 on dogs. Will you tell me about...

2 **A. Well, I have had different dog breeds my
3 whole life. Like I said, it's all a guess of what it
4 is. I mean, you could look at a Sheltie, and it
5 could be a poodle. You know what I mean? So, I
6 mean, I don't – I don't really know how to explain
7 it, honestly.**

8 Q. Yeah. Let's talk about it, though. You
9 said you could look at a Sheltie and it's really a
10 poodle. How do you know that?

11 **A. I don't. I don't know. You know what I
12 mean? I don't.**

13 Q. So let's talk a little bit about the pit
14 bull ban. Or, first off, are you aware that this
15 lawsuit regard – relates to the pit bull ordinance?

16 **A. Yes. I didn't know I'd get dragged into it,
17 but...**

18 Q. Yeah. Sorry about that. Essentially, like
19 I said, we're trying to develop facts for figuring
20 out how this thing is enforced. The purpose of
21 today's deposition is to figure out how this thing is
22 enforced.

23 **A. Yeah.**

24 Q. How animal control officers identify dogs to
25 be pit bulls. That's the subject matter of the

1 lawsuit.

2 **A. Okay.**

3 Q. And since you were an animal control officer
4 who was listed as someone who helped enforce the
5 code, that's why you're here today.

6 **A. Okay.**

7 Q. So, again, sorry for dragging you in today.
8 I hope it wasn't a problem.

9 **A. I am like – I got that subpoena and I was
10 just like, oh, gosh, I know about this, but why – I
11 don't know the dog, truthfully.**

12 Q. That's fine. Yeah. So I am going to ask
13 you – I know that you weren't on the dog for Kali
14 Myers in this case.

15 **A. Yeah. Yeah.**

16 Q. That's fine.

17 **A. I think that was Dave.**

18 Q. Yeah, it was.

19 **A. Yeah.**

20 Q. Yeah. He's coming in later. That was Dave.
21 And is it Chris Strawn?

22 **A. Yes.**

23 Q. Is that – is Chris his first name?

24 **A. Yeah.**

25 Q. I know that Officer Strawn was also someone

1 that picked up Kali's dog. So we'll talk to them
2 later. They're coming – Dave's coming in today, and
3 I think Chris is coming in on the 30th. So I will
4 talk to them about that.

5 I am talking more about how you as an animal
6 control officer, how you enforced the pit bull ban.
7 That's kind of why I wanted to talk to you today.

8 **A. Okay.**

9 Q. Does that make sense?

10 **A. Yeah.**

11 Q. So how were you – in your role as an animal
12 control officer, how did you familiarize yourself
13 with the pit bull ban?

14 **A. Well, just certain dogs that you bring in,
15 you can just – the blocky head, the short and
16 stoutness, the muscles. You know, that's pretty much
17 how I based it, but...**

18 Q. Well, how...

19 **A. I could look at a pit bull and I can look at
20 a lab, and I can know that that's a pit bull and
21 that's a lab. You know what I mean?**

22 Q. So what is it about them that lets you make
23 that distinguishing determination? How did you know?

24 **A. Just the blocky head and, like I said, the
25 muscles.**

1 Q. Okay.

2 **A. Usually if you see a lab they're not going
3 to have as much muscle mass as a pit bull. And the
4 hair, I mean, they have shorter hair. I don't know.**

5 Q. Okay. We'll kind of talk through all of
6 that, but before we get to the individual traits of a
7 dog, how about the wording, the ban itself? What's
8 your interpretation of what the pit bull ban banned?

9 **A. Basically it – according to the statute, it
10 goes by looks, but it says if the dog – if the dog
11 has predominant characteristics of being a pit bull,
12 American Pit Bull Terrier or American Staffordshire
13 Terrier. And the other breed I missed.**

14 Q. Yeah. No. Actually, I am going to hand you
15 a copy of it. This is not marked, but it's a copy of
16 the full section of the pit bull ban.

17 Section 7.10.010 says, "Pit Bull Defined." Do you
18 see that?

19 **A. Yes.**

20 Q. Is that what you're talking about as far as
21 the determination of what the...

22 **A. Yes.**

23 Q. So I want to focus specifically on the
24 word – the phrase, "the appearance and
25 characteristics of being predominantly the breeds

1 Staffordshire Bull Terrier, American Bull" – sorry
2 – "American Pit Bull Terrier or American
3 Staffordshire Terrier." Do you see that?

4 **A. Yep.**

5 Q. You know, you mentioned blocky head and
6 muscles, but for mixed-breed dogs, how would you come
7 up with what the predominant characteristics or
8 appearance were?

9 **A. I just go off the looks, but...**

10 Q. It's kind of just what you think a pit bull
11 would look like?

12 **A. Yes. Uh-huh.**

13 Q. That's a yes? Sorry.

14 **A. Yes.**

15 Q. So how did you – when you were acting as an
16 animal control officer, how was it that you would
17 come to encounter a dog that may be subject to the
18 pit bull ban?

19 **A. Either the dog was at large or in custody or
20 we got a complaint about illegal pit bull from
21 somebody outside of animal control. That was
22 basically how you would come in contact with them.**

23 Q. And what would happen at that point?

24 **A. You would go to – either if the dog was at
25 large, you would try to impound it by catching it.**

1 **Sometimes you weren't able to catch it. If you got
2 called to an illegal pit bull, you would determine it
3 was a pit bull by its looks. If it looked pit bull,
4 we ended up having to take it just for our safety.**

5 **And then, like I said, we had other people
6 down there that would kind of put together two and
7 two. They would help me determine whether the dog
8 was a pit bull or not, and so it wasn't just a
9 one-sided thing. It was you would go and you would
10 ask the poundmaster, which is Cindy –**

11 Q. Yeah.

12 **A. – whether this dog was a pit bull or not.**

13 Q. So you mentioned that if you – if you run
14 into one of these circumstances where you come in
15 contact with the dog, how quickly is it that you make
16 that determination?

17 **A. Usually when I see the dog.**

18 Q. Just right then?

19 **A. Yes.**

20 Q. Is it based on visual identification?

21 **A. Pretty much.**

22 Q. Pretty much, or is there anything else that
23 you consider?

24 **A. Just visual.**

25 Q. Just how it looks?

- 1 **A. Yeah.**
 2 Q. At the time you make the determination, do
 3 you have a reference as to what these purebreds
 4 actually look like? Do you have – let's use an
 5 example. Do you have the breed characteristics for
 6 these three purebreds handy when you're looking at
 7 the dog to determine if it's...
 8 **A. No.**
 9 Q. How about pictures of those purebreds?
 10 **A. No.**
 11 Q. How about pictures of mixed breeds that have
 12 been determined to be predominantly those purebreds?
 13 **A. The only time we did pictures was when the**
 14 **dogs went home we would take pictures of them – or,**
 15 **I mean, when they were taken outside of Sioux City.**
 16 **We would have them on file, pictures on file.**
 17 Q. Sure. Of the dogs that you impounded?
 18 **A. Yes.**
 19 Q. How about when identifying the dog? Did you
 20 have reference pictures –
 21 **A. No.**
 22 Q. – that you would ever use?
 23 **A. No. No.**
 24 Q. No? Who was responsible for making the
 25 ultimate determination?

- 1 **A. The poundmaster, Cindy.**
 2 Q. Was there ever, like, a deliberation process
 3 on dogs that, you know, maybe it's a pit bull, maybe
 4 it's not?
 5 **A. No.**
 6 Q. So you said that it's a -- did you use the
 7 word "guess" earlier? You're guessing at what the
 8 dog breed is?
 9 **A. Yes, pretty much.**
 10 Q. So if you're guessing at a dog breed, were
 11 there ever circumstances where people disagreed as to
 12 what their guess of a dog breed was?
 13 **A. No.**
 14 Q. That never happened?
 15 **A. Not for me.**
 16 Q. So is it...
 17 **A. Well, I don't know. I brought in a dog one**
 18 **time, and I thought it was a pit bull, and everybody**
 19 **else thought it was a Boxer mix. So we put it down**
 20 **as a Boxer mix.**
 21 Q. Okay.
 22 **A. But that's about the only time that I have**
 23 **ever had that happen.**
 24 Q. When that happened did you guys discuss
 25 specific characteristics of the dog?

- 1 **A. No.**
 2 Q. It was just kind of you said "I think it's a
 3 pit bull" and everyone else said it's a Boxer?
 4 **A. Yeah.**
 5 Q. How about the flip, where you bring in a dog
 6 that you think is not a pit bull and someone else
 7 determines that, yes, I think it is a pit bull? Did
 8 that ever happen?
 9 **A. Yes.**
 10 Q. How...
 11 **A. But it wasn't a dog that I brought in.**
 12 Q. Okay.
 13 **A. It was a dog that somebody else brought in.**
 14 Q. Will you tell me about that, please?
 15 **A. There was – I kind of went through the dog**
 16 **kennels one day just because I like to look through**
 17 **them when I am working. Otherwise, I usually don't**
 18 **because I get attached.**
 19 **But other than that, there was a dog in**
 20 **there, and I thought it was a pit bull. And I am**
 21 **like, hey, can you come look at this? Because they**
 22 **had it down as a lab mix.**
 23 Q. Yeah.
 24 **A. And it – the head and the body looked pit**
 25 **bull, but I had Chris, who – I don't know if you**

- 1 **have met him.**
 2 Q. Is it Chris Wall?
 3 **A. Yeah. I don't know if you have met him yet.**
 4 Q. Yeah. He's a nice guy. I met him last
 5 week.
 6 **A. He went in there, and he determined that,**
 7 **yeah, that's a pit bull.**
 8 Q. Okay.
 9 **A. I don't know how he did it, but that's about**
 10 **all I – all I can tell you. I don't know of any**
 11 **other times.**
 12 Q. Sure. But there -- okay.
 13 **A. I am sure it's happened with other officers,**
 14 **but it's never happened with me.**
 15 Q. Okay. Well, thank you. Let's talk about,
 16 you know, you mentioned this experience and you're
 17 looking at the dog and just you know it's a pit bull.
 18 I am going to talk a little bit about the specific
 19 characteristics that I can think of that dogs have.
 20 **A. Okay.**
 21 Q. And for each one of them I am going to ask
 22 you whether that's something that you would take into
 23 consideration when determining if the dog is
 24 predominantly or if it has the characteristics that
 25 are predominantly one of the purebreds that are

- 1 listed in the statute.
 2 **A. Okay.**
 3 Q. Is that fair?
 4 **A. Yeah.**
 5 Q. How about the coloring?
 6 **A. No.**
 7 Q. The coat texture?
 8 **A. No.**
 9 Q. Would you ever go up and, like, actually
 10 handle the dog to see if that was a certain breed?
 11 **A. No.**
 12 Q. Would anyone else ever do that?
 13 **A. I don't think so.**
 14 Q. How about the coat length?
 15 **A. Yes.**
 16 Q. The overall body size?
 17 **A. Yes.**
 18 Q. The overall body type?
 19 **A. Yes.**
 20 Q. How about how long the body was?
 21 **A. Yes.**
 22 Q. The weight?
 23 **A. No. Because they can range in different**
 24 **weight because you can get a fatty one in –**
 25 Q. You can have really fat dogs.

- 1 **A. – or you can get a skinny one in.**
 2 Q. Right.
 3 **A. You know what I mean?**
 4 Q. Yeah. No, I understand that. My mom fed
 5 her dog from the table every single day. And she
 6 didn't know, but my -- when my grandma went blind, my
 7 grandma would feed the dog off the plate every single
 8 day.
 9 **A. Oh.**
 10 Q. And the dog put on, like, 35 pounds in,
 11 like, six months.
 12 **A. Yes. See?**
 13 Q. So I understand that. Okay. Going back to
 14 what we were talking about. You mentioned muscle
 15 mass is something you take into account?
 16 **A. Yes.**
 17 Q. How about, like, chest size?
 18 **A. Yes.**
 19 Q. I think the term is called topline angle,
 20 like the angle from the shoulders back to the hips?
 21 **A. No.**
 22 Q. What about how long the legs are?
 23 **A. Not really.**
 24 Q. The head shape?
 25 **A. Yes.**

- 1 Q. The head length?
 2 **A. No.**
 3 Q. Width?
 4 **A. No.**
 5 Q. How about the muzzle shape?
 6 **A. I am going to go with yes on that one.**
 7 Q. You kind of wavered there. What made you...
 8 **A. Because the – their heads can be different.**
 9 **Their snout, they can be different lengths. So I...**
 10 Q. Would that make a difference to you then?
 11 **A. Yes. So I should answer yes on that; right?**
 12 Q. I mean, yeah. Whatever you're -- whatever
 13 you think. Yeah.
 14 **A. Okay. I don't know.**
 15 Q. How about, like, eye color?
 16 **A. No.**
 17 Q. The ears, the shape of the ears?
 18 **A. Yes.**
 19 Q. How about how long or big the ears are?
 20 **A. Yes.**
 21 Q. The neck?
 22 **A. Yes.**
 23 Q. Do you ever look at the teeth or the jaws?
 24 **A. No.**
 25 Q. Jaw shape?

- 1 **A. No.**
 2 Q. Is that something you mentioned earlier?
 3 No.
 4 Okay. Do you ever look at the tongue,
 5 tongue color?
 6 **A. Well, you kind of see it when they're going**
 7 **(indicating).**
 8 Q. Okay.
 9 **A. So, I mean, I don't really look at it, but**
 10 **I – it's – when you're chasing a dog and they're**
 11 **out of breath you're going to see it. So...**
 12 Q. Yeah. Okay. How about the tail? Do you
 13 look at the shape of the tail?
 14 **A. Yes.**
 15 Q. Or how big the tail is?
 16 **A. Yes.**
 17 Q. Do you take into consideration behavior,
 18 like the gait, how it's walking around?
 19 **A. No.**
 20 Q. How about how agile a dog may be?
 21 **A. No.**
 22 Q. How about just overall behavior, like
 23 aggression or timidity or lovingness?
 24 **A. Yeah, I look at that.**
 25 Q. How would you classify that?

1 **A. I mean, well, I don't know. Some of them**
2 **are timid and some of them are aggressive. You know**
3 **what I mean? I just...**

4 Q. Yeah. Let me clarify then. Do you take
5 that behavior into consideration –

6 **A. No. No.**

7 Q. – as far as, like, determining what breed
8 it is?

9 **A. No. No. Sorry. I didn't know the answer**
10 **to that.**

11 Q. No. No. All of the – the list of things I
12 am going through right now, I am specifically asking
13 if these are things that you may consider.

14 **A. Oh, okay. Then, no. No, I don't do that.**

15 Q. No for behavior?

16 **A. Yes.**

17 Q. But yes for the things you said yes to
18 earlier?

19 **A. Yes. Yes.**

20 Q. How about do you ever ask about DNA?

21 **A. No.**

22 Q. I just went through – we went through a lot
23 of different physical – what I would think of as
24 characteristics when you look at a dog, different
25 markers on a dog.

1 **A. Okay.**

2 Q. Would you agree with that?

3 **A. Yes.**

4 Q. Anything else that you can think of as far
5 as markers or characteristics of a dog that you would
6 consider when making a breed determination?

7 **A. No.**

8 Q. Okay. So we've got that realm of
9 characteristics. The wording of the statute – I am
10 going to point to it here – says, "appearance and
11 characteristics of being predominantly of the
12 breeds," and then there's three purebreds; is that
13 right?

14 **A. Yes.**

15 Q. Okay. So it's appearance and
16 characteristics of being predominant. So – well, I
17 guess, first off, how can you – how would you make a
18 determination that a dog is a purebred?

19 **A. I just go by looks. That's all I can tell**
20 **you.**

21 Q. Okay. So then for – if it's not a purebred
22 or you – you're trying to determine, like, I want to
23 make a call on what I think the predominant of breed
24 this dog is – are you with me?

25 **A. Yeah.**

1 Q. When you're trying to make that
2 determination, how do you – how do you say, this is
3 the predominant breed? Because we went through that
4 long list of characteristics. So what is it that
5 makes the dog predominantly...

6 **A. Like I said, I just – I kind of know**
7 **animals. So I just – I kind of know what I am**
8 **looking for. I don't know how to explain it.**

9 Q. Okay. So is it – it's not like a
10 scientific calculation?

11 **A. No.**

12 Q. Or it's not like an objective where you have
13 a – an objective calculation where you have, like, a
14 chart and you're checking off boxes on yes...

15 **A. No. We just – we pretty much look at the**
16 **dog and state what we think it is.**

17 Q. Okay.

18 **A. I mean, whether that's right or wrong, I**
19 **don't know.**

20 Q. So it's kind of – it's based on what you
21 think...

22 **A. Or what anybody else there thinks that the**
23 **dog is because I always get a second opinion on a pit**
24 **bull.**

25 Q. Okay.

1 **A. I always do because I am not going to be the**
2 **one to make that call.**

3 Q. So would it be fair for me to say that as an
4 animal control officer your determination of what you
5 think the predominant breed of a dog is is based on
6 your personal belief of what that dog would look
7 like?

8 **A. Yes.**

9 Q. In your experience was that true for all of
10 the animal control officers?

11 **A. Probably. I'd assume so, yeah. But, I**
12 **mean, like I said, there was different shifts. So we**
13 **never really worked with some people.**

14 Q. Sure. Yeah. I am just asking you about –
15 this whole deposition, I am only going to ask you
16 about things that you know.

17 **A. Okay.**

18 Q. I don't want you to speculate as to other
19 people. I just want you to answer about what you
20 know. Okay?

21 **A. Oh, okay.**

22 Q. Okay. So is it fair for me to classify it
23 as you know it when you see it?

24 **A. Pretty much.**

25 Q. Pretty much, or is there anything else that

1 goes into it or...

2 **A. No. I just know if – and like I said,**

3 **whether that's wrong or right, I don't know.**

4 Q. Okay. So you make a call and you say that's

5 it, but that may not be; right?

6 **A. Correct.**

7 Q. Would you ever compare, like, an – a real

8 live in-person comparison of a dog you're trying to

9 make the determination of with another dog that's

10 also right there in person to compare, you know, we

11 know this dog is a registered Staffordshire Bull

12 Terrier, and then compare it next to a mixed breed to

13 see how do they compare?

14 **A. Well, yeah. I mean, the dogs – the pit**

15 **bulls go back in a different room because, obviously,**

16 **they're not legal here, so we can't adopt them out.**

17 **We work with rescues.**

18 **So there's different dogs back there. And**

19 **you kind of determine whether they look alike by**

20 **looking at them. You know, I don't really know how**

21 **to explain it, but...**

22 Q. I think that makes sense, but if they're all

23 kind of sectioned off together, in your experience

24 were there ever times where – well, first off, did

25 the dogs all look the same?

1 **A. They were all – I mean, their heads were,**

2 **but, I mean, they all had their own quiriness or**

3 **looks that – I mean, I don't know.**

4 Q. So, like, different characteristics?

5 **A. They all – there were some with the same**

6 **color. There were some with the same heads. There**

7 **were some with the same body, but there's also some**

8 **that – they were all different in their own way.**

9 Q. Okay. So there were variances with, like,

10 head shapes?

11 **A. Yes.**

12 Q. And variances with body types?

13 **A. Yes.**

14 Q. And variances with muscle mass?

15 **A. Some of them were long, and some of them**

16 **were tall. Some of them were short. Some of them**

17 **were fat.**

18 Q. Yeah.

19 **A. I mean, it's all going to depend on how you**

20 **feed the dog or how you take care of it.**

21 Q. Some skinny and some with, like, pointy ears

22 and like...

23 **A. Yeah. Some with no ears.**

24 Q. Oh, no ears.

25 **A. Cropped ears.**

1 Q. I don't know if I have ever seen a dog with

2 no ears. That's...

3 **A. Well, cropped ears.**

4 Q. Does that mean they're, like...

5 **A. They kind of like cut them off.**

6 Q. Oh.

7 **A. Yeah. I don't know. I – it's kind of**

8 **horrible.**

9 Q. Yeah.

10 **A. But we have had dogs come in where their**

11 **ears have been cropped. Pit bulls do.**

12 Q. I saw a picture on the news the other day of

13 a cat that was left out and when it was, like, frigid

14 out. And it had – its ears got frostbitten. And I

15 saw, like, some of them – so I imagine that that's

16 what you're describing, and it's really kind of

17 gross.

18 **A. Yeah. It's horrible.**

19 Q. How about like, you know, different tails?

20 **A. Some of them had no tails, and some of them**

21 **had tails. I mean, some of them had thick tails.**

22 **Some of them had skinny tails.**

23 Q. Yeah.

24 **A. It just...**

25 Q. Different faces?

1 **A. Yeah. Different eye colors. I mean, you**

2 **have brown. You had black eyes. So I don't know.**

3 Q. So all different physical features?

4 **A. Yes.**

5 Q. But all of them, nevertheless, you guys

6 said, that's a pit bull?

7 **A. Yes.**

8 Q. How would you use that chart that you

9 mentioned earlier with all of the different purebreds

10 on there? How would you use that?

11 **A. I never used it. So...**

12 Q. Why do you...

13 **A. To tell you the truth, I never used it.**

14 Q. Did you ever see anyone else use it?

15 **A. (Witness shakes head side to side.)**

16 Q. No?

17 **A. No.**

18 Q. Why?

19 **A. It's just back there just in case, I assume.**

20 **I don't know if the new – the new people use it**

21 **because I didn't really work with them that long, but**

22 **I've never used it personally.**

23 Q. So in your opinion why do you think it was

24 there?

25 **A. I don't know. Just to be there.**

1 Q. Okay.

2 **A. I have no idea.**

3 Q. How many breeds were on there?

4 **A. Oh.**

5 Q. Ballpark?

6 **A. 100, 150.**

7 Q. And they were all purebreds?

8 **A. Yes.**

9 Q. All right. So let's say – whether it's you

10 or you plus another person or it's Cindy. Let's say

11 the animal control officer makes a determination that

12 a dog is – falls under the definition of pit bull

13 under the ordinance. Let's say that happens. What

14 happens next?

15 **A. With the dog?**

16 Q. Yes.

17 **A. We place it in the back away from everybody**

18 **because we – like I said, we can't adopt them out.**

19 **And then after they – we hold them for ten days, see**

20 **if an owner comes, or if the owner wants to take them**

21 **outside of Sioux City they can. And then other than**

22 **that, they work with the rescues that take them in.**

23 **We work with Pit Bull Rescue, and we work with Noah's**

24 **Hope.**

25 Q. Were there ever circumstances where in your

1 experience obviously were there ever circumstances

2 where a dog was determined by someone in animal

3 control to be a pit bull but then released back to

4 the owner to go home?

5 **A. There was. There was one that came in. And**

6 **it looked like a pit bull, but it had a Boxer head.**

7 Q. Okay.

8 **A. So I think Cindy determined that to be a**

9 **Boxer mix because it wasn't enough pit bull. I don't**

10 **know, but they sent it back home.**

11 Q. How about if the determination is made that

12 the dog – you know, Cindy, you, whoever the animal

13 control officer is says, that is a pit bull, but,

14 nevertheless, lets it go home as a pit bull?

15 **A. I don't think that's ever happened.**

16 Q. Never in your experience?

17 **A. No.**

18 Q. You mentioned pictures being taken. When

19 did that happen?

20 **A. Usually when the dogs went – got sent**

21 **outside of Sioux City, like the owners came and they**

22 **wanted to take their dog outside of Sioux City. We**

23 **would take pictures of them –**

24 Q. Okay.

25 **A. – just to have on our file.**

1 Q. Do you think pictures are a fair way to

2 identify a dog?

3 **A. No.**

4 Q. Why is that?

5 **A. Because there's certain angles. Like I can**

6 **take a picture and I can look beautiful. Then I**

7 **will – the next day I will take another picture and**

8 **you wouldn't know. Same with a dog.**

9 Q. So what's the point of taking the picture?

10 **A. I have no idea. That's just how they did**

11 **it.**

12 Q. Did they take the picture every single time?

13 **A. They have been for the past year, but, like**

14 **I said, I don't know if they're still doing it or**

15 **not.**

16 Q. Sure. No. I am – again, I am just asking

17 you about what you know from your experience.

18 **A. Yeah. Yeah.**

19 Q. So what about, like, an appeal process?

20 What happens if the owner disputes that a dog is a

21 pit bull?

22 **A. (Indicating.) I don't know the appeal**

23 **process, truthfully.**

24 Q. Did you ever tell an owner that you – so if

25 you picked up a dog and said it's a pit bull, did you

1 ever tell the owner anything related to their ability

2 to dispute that termination?

3 **A. No.**

4 Q. Did any...

5 **A. Because I didn't even know about it until a**

6 **couple months ago. I was like, you can appeal that?**

7 **I didn't know about that.**

8 Q. So no one ever told you that there was an

9 appeal process?

10 **A. No. No.**

11 Q. Did you receive any training or explanation

12 from Cindy or any – Chris, anyone there that –

13 about an appeal process?

14 **A. No.**

15 Q. Did you receive any instruction or guidance

16 on how to enforce – specifically on how to enforce

17 the pit bull ban?

18 **A. Like I said, I just got it handed to me and**

19 **told me to read it.**

20 Q. Okay. But it wasn't – you didn't get any

21 direction on here's how we want you to enforce this

22 law?

23 **A. Not really, no. It just kind of came with**

24 **the job. So...**

25 Q. Did anyone ever tell you your – is it fair

1 for me to call them your bosses, like Cindy? Is she
 2 your boss? Was she your boss?
 3 **A. Yes.**
 4 Q. Was Chris your boss?
 5 **A. Yes.**
 6 Q. Any other bosses or...
 7 **A. (Witness shakes head side to side.)**
 8 Q. No?
 9 **A. No.**
 10 Q. So is it fair for me to call both of them
 11 collectively your bosses?
 12 **A. Yes.**
 13 Q. Did your bosses ever give you any
 14 instruction on what to tell a dog owner when you
 15 picked up a dog under the pit bull ban?
 16 **A. (Witness shakes head side to side.)**
 17 Q. (Shakes head side to side.)
 18 **A. No. Like I said, I just – like I said, I**
 19 **just kind of had to talk to them kind of the way I**
 20 **could talk to them. I never got any guidance on how**
 21 **to talk to them. It's just something you kind of –**
 22 **I don't know.**
 23 Q. Yeah. No. That's fine. How about when
 24 your bosses were making a determination on a breed?
 25 Did they ever tell you how they were making that

1 determination specifically?
 2 **A. No.**
 3 Q. Did they ever mention the owner as a reason
 4 for enforcing –
 5 **A. No.**
 6 Q. – it or discuss the owner as a reason for
 7 making the determination a dog was a pit bull?
 8 **A. No.**
 9 Q. In your personal opinion – again, I don't
 10 want you to speculate about things that you don't
 11 have experience on. Okay?
 12 **A. Okay.**
 13 Q. But in your personal opinion are certain
 14 breeds more aggressive than others?
 15 **A. No.**
 16 Q. How about having – in your opinion are
 17 physical features or characteristics like the ones we
 18 discussed earlier, are they indicative of how a dog
 19 is going to behave?
 20 **A. No.**
 21 Q. I think you mentioned earlier that if it's a
 22 pit you take it away for your safety. Did you say
 23 that?
 24 **A. Yeah. Not my safety. I mean, not because I**
 25 **am feeling like – that the dog's going to attack me.**

1 Q. Yeah.
 2 **A. Not that way. But like – I don't know how**
 3 **to explain it, but just in case it were to come back**
 4 **that that dog was a pit bull and I didn't take it.**
 5 Q. You mean as far as covering your butt –
 6 **A. Yes.**
 7 Q. – to make sure?
 8 **A. That. That's what I meant.**
 9 Q. So if you suspect a dog's a pit, then you
 10 take it to make sure that you're not going to get in
 11 trouble from your bosses for not taking it?
 12 **A. Or it's going to come back and it's going to**
 13 **either – I am not saying that all pit bulls are**
 14 **mean, but it – what if it bit somebody? You would**
 15 **have to take it anyways.**
 16 Q. Yeah.
 17 **A. So that's what I am trying to say. And**
 18 **that's the speculation.**
 19 Q. Yeah. So – okay. So when you say it's
 20 speculation, do you – do you mean – I am going to
 21 rephrase that question.
 22 When you say it's speculation, you're
 23 talking about you segregate it to make sure that you
 24 personally are protected down the road in case there
 25 was an adverse action later on?

1 **A. Yes. Yes. And then at that point I**
 2 **would – I usually showed Cindy my pit bulls that I**
 3 **brought in, and she would determine whether it was a**
 4 **pit bull or not.**
 5 Q. So was it ultimately Cindy's determination
 6 that mattered?
 7 **A. It's basically Cindy or Chris.**
 8 Q. Okay. So it's ultimately your bosses'
 9 determination?
 10 **A. Yes.**
 11 Q. You mentioned that if a dog bit someone
 12 you'd have to pick it up anyway. Why is that?
 13 **A. You have to make sure it has a rabies shot.**
 14 **If it doesn't have a rabies shot and it broke skin,**
 15 **you have to quarantine it for ten days.**
 16 Q. So are there other mechanisms under the city
 17 code of identifying dogs that are dangerous or
 18 aggressive?
 19 **A. I don't think so.**
 20 Q. Well, you mentioned a dog biting someone.
 21 You're going to be able to identify a dog that way;
 22 right?
 23 **A. Yes.**
 24 Q. Or I – there's also, I believe, a dangerous
 25 dog and vicious dog?

1 **A. And high risk.**
 2 Q. And high risk?
 3 **A. Yep.**
 4 Q. So there are other code sections out there
 5 to protect against those types of animals?
 6 **A. Yes.**
 7 Q. It's not just the pit bull ban. There are
 8 other ways. I mean, obviously, the pit bull ban is
 9 specific to those breeds, but then there are other
 10 code provisions for the dangerous, high-risk, vicious
 11 animals?
 12 **A. Yes. Those are dogs that have either bitten**
 13 **or chased somebody. You know, because you have got**
 14 **to protect people. If the dog's going to go out and**
 15 **chase somebody aggressively, you can't just let it.**
 16 Q. You mentioned protecting the people. Do
 17 you, in your opinion, personal opinion, do you think
 18 that's what the pit bull ban is doing?
 19 **A. I don't know. I am not – I can't answer**
 20 **that question.**
 21 Q. No. That's fair. It's your -- I am just
 22 asking for your personal opinion.
 23 **A. Okay.**
 24 Q. I am just asking for your personal opinion.
 25 You mentioned earlier using pictures to identify a

1 dog. Do you think it's possible for an individual to
 2 identify the predominant breed of a dog based on a
 3 photograph?
 4 **A. No.**
 5 Q. Ever?
 6 **A. Probably not.**
 7 Q. So if I were to show you some photographs
 8 today and ask you to identify the predominant breed
 9 of a dog, would you be able to do that?
 10 **A. I can't do that.**
 11 Q. Would you be able to tell me whether you
 12 think based on that photograph a dog has part of one
 13 of these purebred dogs in it?
 14 **A. No.**
 15 Q. Regardless of the picture?
 16 **A. Correct.**
 17 MR. HASAN: Can we take just a quick break?
 18 THE WITNESS: Yeah.
 19 MS. DuBOIS: Sure.
 20 (A recess was taken from
 21 11:19 a.m. to 11:23 a.m.)
 22 Q. (By Mr. Hasan) So you mentioned before we
 23 broke about the ability to identify a dog based on a
 24 photograph; right?
 25 **A. Yes.**

1 Q. Are you aware or up to speed on any of the
 2 current scientific research about an individual's
 3 ability to accurately identify the breed of a dog
 4 just based on a visual?
 5 **A. No.**
 6 Q. Did anyone -- during your time with animal
 7 control, did anyone ever discuss that at animal
 8 control?
 9 **A. No.**
 10 Q. What did you do to prepare for today's
 11 deposition?
 12 **A. Want to know the truth?**
 13 Q. Yeah.
 14 **A. Nothing.**
 15 Q. That's -- works for me. Did you -- aside
 16 from speaking with the city's attorneys -- actually,
 17 did you speak with the city's attorneys? Just a yes,
 18 no. Did you speak with the city's attorneys?
 19 **A. Yes.**
 20 Q. What did you talk about?
 21 MS. DuBOIS: Objection. Privileged.
 22 MR. CHRISTOPHERSON: Privileged.
 23 MR. HASAN: Okay. I would like to --
 24 Yeah, I want to get this on the record.
 25 MS. DuBOIS: Okay.

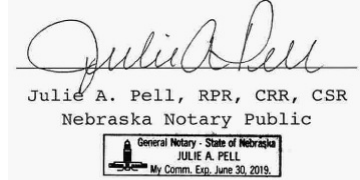
1 MR. HASAN: -- seek to reserve the right to
 2 challenge the objection and submit follow-up
 3 questions on this issue on the basis that Ms. Butler
 4 was not in a managerial position but was a regular
 5 employee and, as such, no longer subject to the
 6 attorney-client privilege because no longer an
 7 employee and post-employment conversations would not
 8 constitute privileged discussions.
 9 MS. DuBOIS: And I would just offer for the
 10 record as well that all questions in this deposition
 11 are related to her employment and her term of
 12 employment with the city, and we maintain that an
 13 attorney-client privilege should be maintained and
 14 should stand.
 15 Q. (By Mr. Hasan) Okay. And I will clarify.
 16 My question does relate to whether after you ended
 17 your employment whether you spoke to the city's
 18 attorneys -- again, this is a yes or no I am asking
 19 you, Kylie -- after you ended your employment with
 20 the city whether you spoke to the city's attorneys
 21 about preparing for today's deposition?
 22 MS. DuBOIS: And, again, I would raise the
 23 objection that it's continuing in nature.
 24 Q. (By Mr. Hasan) Okay. But just a yes/no of
 25 whether you spoke to them?

1 **A. Yes.**
 2 Q. Under the circumstances I just described,
 3 after you ended your employment and in anticipation
 4 for today's deposition?
 5 **A. Yes.**
 6 Q. Did you speak to anyone else aside from the
 7 attorneys?
 8 **A. No.**
 9 MR. HASAN: Okay. That's all I have for
 10 now then. Any questions?
 11 MS. DuBOIS: I have no questions.
 12 MR. HASAN: All right.
 13 THE WITNESS: Are we done?
 14 MR. HASAN: Yeah. You have...
 15 MS. DuBOIS: You're done. Thank you.
 16 THE WITNESS: Oh, my gosh.
 17 MR. HASAN: Before we jump off, you do have
 18 the right under the rules to read and sign the
 19 transcript here.
 20 THE WITNESS: Okay.
 21 MR. HASAN: Essentially, Julie's been
 22 taking everything down during this deposition. So
 23 she's going to put it into a transcript. And you
 24 have the right to review that and make any changes or
 25 edits that you want to, or you have the right to

1 waive that.
 2 Again, right now, your -- the city
 3 attorneys can give you advice on whether you want to
 4 review or make any changes, but you do have the right
 5 to waive that right.
 6 THE WITNESS: Okay.
 7 MR. HASAN: Would you like to receive the
 8 transcript, or would you like to just waive that
 9 right?
 10 THE WITNESS: I will just waive it.
 11 (The deposition concluded at 11:27 a.m.)

1 C E R T I F I C A T E
 2 I, Julie A. Pell, RPR, CRR, CSR, CRC, duly
 3 commissioned, qualified, and acting under a general
 4 notarial commission within and for the State of
 5 Nebraska, do hereby certify that:
 6 KYLIE BUTLER
 7 was by me first duly sworn to tell the truth, the
 8 whole truth, and nothing but the truth; that the
 9 foregoing deposition was taken by me at the time and
 10 place herein specified and in accordance with the
 11 within stipulations; that I am not counsel, attorney,
 12 or relative of either party or otherwise interested
 13 in the event of this suit.

14 IN TESTIMONY WHEREOF, I have hereunto set my
 15 hand officially and attached my notarial seal at
 16 Lincoln, Nebraska, this 29th day of January, 2018.



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25

1	ago [3] 9/5 9/6 40/6 agree [1] 30/2 agreed [1] 4/2 alcohol [2] 8/10 8/13 alike [1] 33/19 aloud [1] 4/20 also [7] 6/19 7/1 7/19 16/25 33/10 34/7 44/24 always [2] 31/23 32/1 American [6] 14/16 18/12 18/12 19/1 19/2 19/2	background [2] 9/24 14/6 bad [2] 7/4 7/21 Ballpark [1] 37/5 ban [12] 15/14 17/6 17/13 18/7 18/8 18/16 19/18 40/17 41/15 45/7 45/8 45/18 banned [1] 18/8 base [1] 14/2 based [9] 13/1 17/17 20/20 31/20 32/5 46/2 46/12 46/23 47/4 basically [3] 18/9 19/22 44/7 basis [1] 48/3 beautiful [1] 39/6 before [8] 4/5 8/25 9/11 9/13 9/21 18/6 46/22 49/17 behave [1] 42/19 behavior [4] 28/17 28/22 29/5 29/15 being [6] 5/2 18/11 18/25 30/11 30/16 38/18 belief [1] 32/6 believe [1] 44/24 best [4] 6/20 6/24 6/25 7/8 better [1] 7/9 between [2] 4/2 5/25 big [3] 13/24 27/19 28/15 bit [5] 12/23 15/13 24/18 43/14 44/11 biting [1] 44/20 bitten [1] 45/12 black [1] 36/2 Blackwell [1] 2/3 blind [1] 26/6 blocky [3] 17/15 17/24 19/5 body [6] 23/24 25/16 25/18 25/20 34/7 34/12 Bom [1] 8/20 Bomgaars [2] 8/17 8/19 book [3] 11/10 12/10 12/11 boss [3] 41/2 41/2 41/4 bosses [6] 41/1 41/6 41/11 41/13 41/24 43/11 bosses' [1] 44/8 both [1] 41/10 Box [1] 2/10 Boxer [5] 22/19 22/20 23/3 38/6 38/9 boxes [1] 31/14 break [4] 7/11 7/14 7/17 46/17 breath [1] 28/11 breed [18] 14/17 18/13 19/6 21/5 22/8 22/10 22/12 25/10 29/7 30/6 30/23 31/3 32/5 33/12 41/24 46/2 46/8 47/3 breeds [10] 12/24 13/8 13/21 15/2 18/25 21/11 30/12 37/3 42/14 45/9 bring [2] 17/14 23/5 broad [1] 14/5 broke [2] 44/14 46/23 brought [4] 22/17 23/11 23/13 44/3 brown [1] 36/2 bull [52] bulls [5] 15/25 33/15 35/11 43/13 44/2 bunch [1] 13/24 BUTLER [7] 1/14 3/7 4/4 5/1 5/10 48/3 51/6 butt [1] 43/5
2	angle [2] 26/19 26/20 angles [1] 39/5 animal [25] 8/21 9/1 9/15 9/16 10/20 10/23 10/25 11/5 11/20 13/16 14/9 14/19 15/24 16/3 17/5 17/11 19/16 19/21 32/4 32/10 37/11 38/2 38/12 47/6 47/7 animals [7] 10/14 13/8 13/12 14/25 31/7 45/5 45/11 another [3] 33/9 37/10 39/7 answer [7] 6/8 7/22 7/24 27/11 29/9 32/19 45/19 answering [2] 8/7 8/14 answers [2] 6/2 6/12 anticipation [1] 49/3 any [24] 7/21 8/10 8/13 10/7 10/7 10/15 10/17 10/19 10/22 11/5 14/14 24/10 40/4 40/11 40/12 40/15 40/20 41/6 41/13 41/20 47/1 49/10 49/24 50/4 anybody [1] 31/22 anyone [8] 11/4 25/12 36/14 40/12 40/25 47/6 47/7 49/6 anything [7] 8/2 8/6 10/7 20/22 30/4 32/25 40/1 anyway [1] 44/12 anyways [1] 43/15 appeal [5] 39/19 39/22 40/6 40/9 40/13 appearance [4] 18/24 19/8 30/10 30/15 Appearances [1] 3/2 area [2] 10/1 10/4 Arizona [1] 10/3 around [2] 10/10 28/18 aside [3] 12/8 47/15 49/6 ask [9] 6/25 7/3 7/14 16/12 20/10 24/21 29/20 32/15 46/8 asked [2] 7/20 7/23 asking [7] 6/1 29/12 32/14 39/16 45/22 45/24 48/18 Assistant [1] 2/9 Association [1] 14/9 assume [2] 32/11 36/19 attached [2] 23/18 51/15 attack [1] 42/25 attend [1] 14/8 attended [3] 5/21 10/9 10/19 attorney [7] 2/8 2/9 4/13 7/22 48/6 48/13 51/11 attorney-client [2] 48/6 48/13 attorneys [9] 5/15 7/19 47/16 47/17 47/18 48/18 48/20 49/7 50/3 audible [1] 6/12 avoid [1] 6/14 aware [3] 14/23 15/14 47/1 away [2] 37/17 42/22	C calculation [2] 31/10 31/13 CALEB [1] 2/9 California [1] 2/4 call [8] 5/11 7/4 12/4 30/23 32/2 33/4 41/1 41/10 called [4] 9/23 13/20 20/2 26/19 came [3] 38/5 38/21 40/23 can't [6] 14/2 33/16 37/18 45/15 45/19
3	30 [1] 4/18 30th [1] 17/3 35 pounds [1] 26/10	
4	402 [2] 2/5 2/5 405 [2] 1/21 2/10 447 [1] 2/10	
5	5000 [1] 2/5 5050 [1] 2/5 51 [1] 3/4 511 [2] 1/20 2/10 51102 [1] 2/11 5203 [1] 2/11 5:16-cv-04107-LRR [1] 1/3	
6	6318 [2] 1/22 2/11 68154 [1] 2/4	
7	7.10.010 [1] 18/17 712 [3] 1/22 2/11 2/11	
9	964-5000 [1] 2/5 964-5050 [1] 2/5	
A	a.m [5] 1/23 1/24 46/20 46/20 50/11 ability [3] 40/1 46/23 47/3 able [5] 6/21 20/1 44/21 46/9 46/11 accordance [1] 51/10 according [1] 18/9 account [1] 26/15 accurately [1] 47/3 acting [2] 19/15 51/3 action [1] 43/25 actually [4] 18/14 21/4 25/9 47/16 additional [1] 10/22 adopt [2] 33/16 37/18 adverse [1] 43/25 advice [1] 50/3 after [4] 37/19 48/16 48/19 49/3 again [7] 12/18 16/7 39/16 42/9 48/18 48/22 50/2 against [1] 45/5 age [1] 5/2 aggression [1] 28/23 aggressive [3] 29/2 42/14 44/18 aggressively [1] 45/15 agile [1] 28/20	
B	B-u-t-t-e-r [1] 5/10 back [12] 13/7 13/19 26/13 26/20 33/15 33/18 36/19 37/17 38/3 38/10 43/3 43/12	

<p>C</p> <p>can't... [1] 46/10 capacity [2] 1/7 1/8 Captioner [1] 4/7 care [1] 34/20 case [6] 1/3 6/4 16/14 36/19 43/3 43/24 cashier [1] 8/17 cat [1] 35/13 catch [2] 11/20 20/1 catching [1] 19/25 cautioned [1] 5/2 cchristopherson [1] 2/12 certain [5] 13/8 17/14 25/10 39/5 42/13 Certificate [1] 3/4 certificates [2] 10/7 10/15 certified [4] 4/6 4/6 4/7 5/3 certify [1] 51/5 challenge [1] 48/2 changes [2] 49/24 50/4 characteristics [15] 18/11 18/25 19/7 21/5 22/25 24/19 24/24 29/24 30/5 30/9 30/11 30/16 31/4 34/4 42/17 charge [2] 10/25 11/2 chart [3] 13/24 31/14 36/8 chase [1] 45/15 chased [1] 45/13 chasing [1] 28/10 checking [1] 31/14 chest [1] 26/17 Chris [8] 16/21 16/23 17/3 23/25 24/2 40/12 41/4 44/7 CHRISTOPHERSON [1] 2/9 CINDY [12] 1/8 11/1 11/4 20/10 22/1 37/10 38/8 38/12 40/12 41/1 44/2 44/7 Cindy's [1] 44/5 circumstances [5] 20/14 22/11 37/25 38/1 49/2 city [19] 1/6 1/6 1/20 1/20 1/21 2/8 2/9 2/11 9/2 9/16 14/19 21/15 37/21 38/21 38/22 44/16 48/12 48/20 50/2 city's [5] 47/16 47/17 47/18 48/17 48/20 city.org [2] 2/12 2/12 Civil [1] 4/18 clarify [2] 29/4 48/15 classify [2] 28/25 32/22 client [2] 48/6 48/13 close [2] 10/4 10/6 Club [2] 14/16 14/17 coat [2] 25/7 25/14 code [4] 16/5 44/17 45/4 45/10 codes [2] 12/10 12/12 collectively [1] 41/11 college [1] 10/9 color [3] 27/15 28/5 34/6 coloring [1] 25/5 colors [1] 36/1 come [9] 13/5 19/6 19/17 19/22 20/14 23/21 35/10 43/3 43/12 comes [1] 37/20 coming [5] 12/1 16/20 17/2 17/2 17/3 COMMENCED [1] 1/23 commission [1] 51/4 commissioned [1] 51/3 compare [4] 33/7 33/10 33/12 33/13 comparison [1] 33/8 complaint [1] 19/20 computer [1] 11/17 con [1] 12/18 concluded [2] 1/24 50/11 conditions [2] 8/3 8/7</p>	<p>conferences [1] 10/20 confusing [1] 7/5 consider [3] 20/23 29/13 30/6 consideration [3] 24/23 28/17 29/5 constitute [1] 48/8 contact [2] 19/22 20/15 continuing [1] 48/23 control [22] 9/1 9/15 9/16 10/20 10/23 10/25 11/6 14/9 14/19 15/24 16/3 17/6 17/12 19/16 19/21 32/4 32/10 37/11 38/3 38/13 47/7 47/8 conversations [1] 48/7 copy [4] 4/25 11/14 18/15 18/15 Correct [2] 33/6 46/16 could [6] 13/3 15/4 15/5 15/9 17/19 41/20 counsel [1] 51/11 count [1] 10/6 couple [2] 9/5 40/6 course [1] 14/10 court [2] 1/1 4/21 covering [1] 43/5 CRC [1] 51/2 cropped [3] 34/25 35/3 35/11 CRR [1] 51/2 CSR [1] 51/2 current [1] 47/2 custody [1] 19/19 cut [1] 35/5 cv [1] 1/3</p>	<p>27/9 29/23 29/24 32/12 33/15 33/18 34/4 34/8 35/19 35/25 36/1 36/3 36/9 Direct [2] 3/8 5/6 direction [1] 40/21 disagreed [1] 22/11 discuss [4] 14/6 22/24 42/6 47/7 discussed [1] 42/18 discussions [1] 48/8 dispute [1] 40/2 disputes [1] 39/20 distinguishing [1] 17/23 DISTRICT [2] 1/1 1/1 DIVISION [2] 1/2 1/20 DNA [1] 29/20 do [50] 4/20 6/20 6/20 6/24 6/25 7/8 8/16 8/16 9/21 10/6 11/7 11/18 11/21 12/13 13/5 13/5 13/7 15/10 18/17 19/3 21/2 21/4 21/5 25/12 27/23 28/4 28/12 28/17 29/4 29/14 29/20 31/2 31/2 32/1 33/13 35/11 36/12 36/23 39/1 43/20 43/20 45/16 45/17 46/1 46/9 46/10 47/10 49/17 50/4 51/5 does [4] 6/17 17/9 35/4 48/16 doesn't [2] 7/12 44/14 dog [80] dog's [3] 42/25 43/9 45/14 dogs [19] 13/18 14/7 15/1 15/24 17/14 19/6 21/14 21/17 22/3 24/19 25/25 33/14 33/18 33/25 35/10 38/20 44/17 45/12 46/13 doing [4] 8/23 8/25 39/14 45/18 don't [46] 7/5 7/5 7/6 12/17 13/14 14/2 14/3 15/6 15/6 15/11 15/11 15/12 16/11 18/4 22/17 23/17 23/25 24/3 24/9 24/10 25/13 27/14 28/9 29/1 29/14 31/8 31/19 32/18 33/3 33/20 34/3 35/1 35/7 36/2 36/20 36/25 38/9 38/15 39/14 39/22 41/22 42/9 42/10 43/2 44/19 45/19 done [2] 49/13 49/15 Douglas [1] 1/21 down [7] 6/12 6/20 20/6 22/19 23/22 43/24 49/22 dragged [1] 15/16 dragging [1] 16/7 DuBOIS [1] 2/8 duly [3] 5/2 51/2 51/7 during [5] 5/11 7/11 7/12 47/6 49/22</p>
	<p>D</p> <p>dangerous [3] 44/17 44/24 45/10 DATE [1] 1/19 Dave [3] 11/24 16/17 16/20 Dave's [2] 12/1 17/2 day [6] 23/16 26/5 26/8 35/12 39/7 51/16 days [2] 37/19 44/15 Defendants [2] 1/9 2/7 Defined [1] 18/17 definition [1] 37/12 deliberation [1] 22/2 delivered [1] 4/13 depend [1] 34/19 deposition [18] 1/13 4/4 4/10 4/12 4/25 5/18 5/21 6/2 7/3 15/21 32/15 47/11 48/10 48/21 49/4 49/22 50/11 51/9 depositions [1] 6/11 described [1] 49/2 describing [1] 35/16 description [1] 5/23 determination [18] 13/6 17/23 18/21 20/16 21/2 21/25 30/6 30/18 31/2 32/4 33/9 37/11 38/11 41/24 42/1 42/7 44/5 44/9 determine [6] 20/2 20/7 21/7 30/22 33/19 44/3 determined [4] 21/12 24/6 38/2 38/8 determines [1] 23/7 determining [2] 24/23 29/7 develop [2] 6/3 15/19 did [38] 9/21 10/25 11/4 12/23 14/8 14/19 17/12 17/23 19/15 21/13 21/19 22/6 22/24 23/7 24/9 33/24 36/14 38/19 39/10 39/12 39/24 39/25 40/4 40/11 40/15 40/25 41/13 41/25 42/3 42/22 47/6 47/7 47/10 47/15 47/17 47/18 47/20 49/6 didn't [9] 10/10 15/16 26/6 29/9 36/21 40/5 40/7 40/20 43/4 difference [1] 27/10 different [17] 13/18 15/2 25/23 27/8</p>	<p>doing [4] 8/23 8/25 39/14 45/18 don't [46] 7/5 7/5 7/6 12/17 13/14 14/2 14/3 15/6 15/6 15/11 15/11 15/12 16/11 18/4 22/17 23/17 23/25 24/3 24/9 24/10 25/13 27/14 28/9 29/1 29/14 31/8 31/19 32/18 33/3 33/20 34/3 35/1 35/7 36/2 36/20 36/25 38/9 38/15 39/14 39/22 41/22 42/9 42/10 43/2 44/19 45/19 done [2] 49/13 49/15 Douglas [1] 1/21 down [7] 6/12 6/20 20/6 22/19 23/22 43/24 49/22 dragged [1] 15/16 dragging [1] 16/7 DuBOIS [1] 2/8 duly [3] 5/2 51/2 51/7 during [5] 5/11 7/11 7/12 47/6 49/22</p>
		<p>E</p> <p>E-mail [3] 2/5 2/12 2/12 each [2] 6/21 24/21 earlier [7] 22/7 28/2 29/18 36/9 42/18 42/21 45/25 ears [11] 27/17 27/17 27/19 34/21 34/23 34/24 34/25 35/2 35/3 35/11 35/14 edits [1] 49/25 education [2] 9/24 10/8 eight [3] 9/8 9/10 10/5 either [5] 19/19 19/24 43/13 45/12 51/12 elements [1] 4/17 else [13] 11/4 12/17 20/22 22/19 23/3 23/6 23/13 25/12 30/4 31/22 32/25 36/14 49/6 emotional [2] 8/2 8/6 employee [2] 48/5 48/7 employment [6] 48/7 48/11 48/12 48/17 48/19 49/3 encounter [1] 19/17 ended [4] 20/4 48/16 48/19 49/3 enforce [4] 16/4 40/16 40/16 40/21</p>

E	G	hereinafter [1] 5/3 hereof [1] 4/9 hereto [1] 4/3 hereunto [1] 51/14 hey [1] 23/21 high [5] 9/25 10/8 45/1 45/2 45/10 high-risk [1] 45/10 him [4] 12/3 24/1 24/3 24/4 Hinton [1] 10/2 hips [1] 26/20 his [2] 1/7 16/23 hold [1] 37/19 Holstein [1] 9/23 home [4] 21/14 38/4 38/10 38/14 honestly [1] 15/7 hope [3] 7/12 16/8 37/24 horrible [2] 35/8 35/18 how [79] however [1] 7/21 huh [5] 6/5 6/14 9/20 10/18 19/12 Huh-uh [1] 10/18 huh-uhs [1] 6/14 huhs [1] 6/14 Husch [1] 2/3 huschblackwell.com [1] 2/5
<p>enforced [3] 15/20 15/22 17/6 enforcing [1] 42/4 enough [1] 38/9 ESQ [3] 2/3 2/8 2/9 essentially [4] 5/25 11/14 15/18 49/21 even [2] 7/25 40/5 event [1] 51/13 ever [33] 5/18 5/21 12/23 14/8 14/14 14/16 14/19 21/22 22/2 22/11 22/23 23/8 25/9 25/12 27/23 28/4 29/20 33/7 33/24 35/1 36/14 37/25 38/1 38/15 39/24 40/1 40/8 40/25 41/13 41/25 42/3 46/5 47/7 every [3] 26/5 26/7 39/12 everybody [2] 22/18 37/17 everyone [1] 23/3 everything [4] 6/13 6/20 6/22 49/22 exactly [1] 12/19 Examination [2] 3/8 5/6 examined [1] 5/3 example [1] 21/5 except [1] 4/15 experience [8] 14/25 24/16 32/9 33/23 38/1 38/16 39/17 42/11 explain [7] 12/17 13/14 14/3 15/6 31/8 33/21 43/3 explanation [1] 40/11 eye [2] 27/15 36/1 eyes [1] 36/2</p>	<p>gait [1] 28/18 gap [1] 9/11 gave [1] 11/10 general [3] 4/8 14/25 51/3 get [13] 7/15 12/3 14/4 14/5 15/16 18/6 23/18 25/24 26/1 31/23 40/20 43/10 47/24 getting [1] 10/4 give [6] 5/23 6/11 11/5 14/20 41/13 50/3 gives [1] 13/21 giving [1] 6/2 go [12] 10/10 13/3 19/9 19/24 20/9 25/9 27/6 30/19 33/15 38/4 38/14 45/14 goes [2] 18/10 33/1 going [28] 5/24 7/24 12/3 12/19 13/10 16/12 18/2 18/14 24/18 24/21 26/13 27/6 28/6 28/11 29/12 30/10 32/1 32/15 34/19 42/19 42/25 43/10 43/12 43/12 43/20 44/21 45/14 49/23 good [1] 7/15 gosh [2] 16/10 49/16 got [9] 16/9 19/20 20/1 30/8 35/14 38/20 40/18 41/20 45/13 grandma [2] 26/6 26/7 gross [1] 35/17 guess [4] 15/3 22/7 22/12 30/17 guessing [2] 22/7 22/10 guidance [2] 40/15 41/20 gut [2] 13/9 13/10 guy [1] 24/4 guys [2] 22/24 36/5</p>	
<p>F</p> <p>faces [1] 35/25 facts [2] 6/4 15/19 fair [9] 7/9 12/6 25/3 32/3 32/22 39/1 40/25 41/10 45/21 falls [1] 37/12 familiarize [1] 17/12 far [4] 18/20 29/7 30/4 43/5 fat [2] 25/25 34/17 fatty [1] 25/24 Fax [2] 2/5 2/11 features [2] 36/3 42/17 fed [1] 26/4 Federal [1] 4/17 feed [4] 8/20 8/21 26/7 34/20 feeling [1] 42/25 fell [1] 9/5 figure [1] 15/21 figuring [1] 15/19 file [3] 21/16 21/16 38/25 fine [7] 6/23 8/1 12/21 12/21 16/12 16/16 41/23 finish [1] 7/15 first [8] 5/2 7/15 11/1 15/14 16/23 30/17 33/24 51/7 five [2] 9/7 9/13 flip [1] 23/5 focus [2] 14/25 18/23 follow [1] 48/2 follow-up [1] 48/2 follows [1] 5/3 foregoing [1] 51/9 form [1] 4/15 formal [1] 10/8 format [1] 6/13 forth [2] 4/9 4/19 foundation [1] 4/16 frigid [1] 35/13 frostbitten [1] 35/14 full [1] 18/16 fully [3] 6/8 8/8 8/14</p>	<p>H</p> <p>hair [2] 18/4 18/4 half [3] 9/6 9/7 9/11 Hall [1] 1/20 hand [2] 18/14 51/15 handed [1] 40/18 handing [1] 12/10 handle [1] 25/10 handy [1] 21/6 happen [4] 19/23 22/23 23/8 38/19 happened [5] 22/14 22/24 24/13 24/14 38/15 happening [1] 5/25 happens [3] 37/13 37/14 39/20 happy [1] 7/13 has [4] 18/11 24/24 44/13 46/12 HASAN [4] 2/3 3/8 4/13 5/14 have [48] 5/18 8/23 10/6 10/19 13/7 13/18 14/8 14/16 15/2 18/3 18/4 21/3 21/4 21/5 21/11 21/16 21/20 22/22 24/1 24/3 24/19 25/25 31/12 31/13 35/1 35/10 35/11 36/2 37/2 38/25 39/10 39/13 42/11 43/15 44/12 44/13 44/14 44/15 45/12 45/13 49/9 49/11 49/14 49/17 49/24 49/25 50/4 51/14 having [2] 20/4 42/16 He's [2] 16/20 24/4 head [13] 6/14 17/15 17/24 19/5 23/24 26/24 27/1 34/10 36/15 38/6 41/7 41/16 41/17 heads [3] 27/8 34/1 34/6 help [1] 20/7 helped [1] 16/4 here [5] 8/19 16/5 30/10 33/16 49/19 here's [2] 11/14 40/21 hereby [1] 51/5 herein [1] 51/10</p>	<p>I</p> <p>I'd [3] 6/25 15/16 32/11 I'll [1] 6/1 I've [1] 36/22 IA [1] 2/11 idea [2] 37/2 39/10 identification [1] 20/20 identify [8] 15/24 39/2 44/21 45/25 46/2 46/8 46/23 47/3 identifying [4] 12/24 14/6 21/19 44/17 illegal [2] 19/20 20/2 imagine [1] 35/15 important [3] 6/11 6/13 6/19 impounded [1] 19/25 impounded [2] 13/1 21/17 in [74] in-person [1] 33/8 include [1] 12/23 indicating [2] 28/7 39/22 indicative [1] 42/18 individual [3] 1/3 18/6 46/1 individual's [1] 47/2 instinct [1] 13/9 instruction [3] 12/23 40/15 41/14 instructs [1] 7/22 intake [1] 13/20 interested [1] 51/12 interpretation [1] 18/8 interrupt [1] 6/25 interview [1] 5/25 into [9] 12/20 15/16 20/14 24/22 26/15 28/17 29/5 33/1 49/23 IOWA [3] 1/1 1/7 1/21 is [74] issue [1] 48/3 it [128] it's [50] 5/25 6/11 6/13 6/19 8/20 9/22 10/5 13/15 13/20 15/3 15/9 18/15 19/10 21/7 22/3 22/4 22/6 23/2 23/3 24/13 24/14 24/17 28/10 28/18 30/15 30/21 31/9 31/12 31/20 31/20 34/19 35/7 35/16 35/18 36/19 37/9 37/10 39/25 41/21 42/21 43/12 43/12 43/19 43/22 44/7 44/8 45/7 45/21 46/1 48/23 its [2] 20/3 35/14 itself [1] 18/7</p>

J	LRR [1] 1/3	neck [1] 27/21
Jaw [1] 27/25	M	need [5] 4/20 7/11 7/12 7/14 7/16
jaws [1] 27/23	made [2] 27/7 38/11	never [8] 22/14 24/14 32/13 36/11 36/13 36/22 38/16 41/20
job [5] 10/20 10/23 11/8 12/20 40/24	mail [3] 2/5 2/12 2/12	nevertheless [2] 36/5 38/14
Julie [3] 4/5 6/12 51/2	maintain [1] 48/12	new [2] 36/20 36/20
Julie's [1] 49/21	maintained [1] 48/13	news [1] 35/12
jump [1] 49/17	make [18] 6/17 17/9 17/22 20/15 21/2 27/10 30/17 30/23 31/1 32/2 33/4 33/9 43/7 43/10 43/23 44/13 49/24 50/4	next [3] 33/12 37/14 39/7
K	makes [3] 31/5 33/22 37/11	nice [1] 24/4
K-y-i-e [1] 5/10	making [5] 21/24 30/6 41/24 41/25 42/7	NICOLE [1] 2/8
KALI [2] 1/3 16/13	managerial [1] 48/4	Noah's [1] 37/23
Kali's [1] 17/1	manual [1] 14/12	nods [1] 6/14
KAMRON [3] 2/3 4/13 5/14	many [1] 37/3	Nope [1] 5/20
kamron.hasan [1] 2/5	marked [1] 18/15	NORTHERN [1] 1/1
keep [4] 8/3 8/7 8/11 8/13	markers [2] 29/25 30/5	notarial [2] 51/4 51/15
Kennel [2] 14/16 14/17	mass [3] 18/3 26/15 34/14	Notary [1] 4/8
kennels [1] 23/16	matter [1] 15/25	nothing [2] 47/14 51/8
kind [30] 5/23 5/24 11/17 11/18 13/1 13/8 13/9 14/4 14/5 14/6 17/7 18/5 19/10 20/6 23/2 23/15 27/7 28/6 31/6 31/7 31/20 33/19 33/23 35/5 35/7 35/16 40/23 41/19 41/19 41/21	mattered [1] 44/6	notice [1] 4/11
knew [1] 13/2	may [9] 4/4 4/22 7/3 7/14 7/19 19/17 28/20 29/13 33/5	now [5] 8/17 10/12 29/12 49/10 50/2
Kracke [1] 11/24	maybe [4] 7/4 9/18 22/3 22/3	number [1] 7/21
KYLIE [10] 1/14 3/7 4/4 5/1 5/10 5/11 5/18 8/16 48/19 51/6	mean [31] 13/3 13/18 14/1 14/2 15/4 15/5 15/6 15/12 17/21 18/4 21/15 26/3 27/12 28/9 29/1 29/3 31/18 32/12 33/14 34/1 34/2 34/3 34/19 35/4 35/21 36/1 42/24 43/5 43/14 43/20 45/8	O
L	meant [1] 43/8	oath [2] 5/4 6/6
lab [4] 17/20 17/21 18/2 23/22	meat [1] 9/22	objection [4] 7/25 47/21 48/2 48/23
Lake [1] 8/18	meat-processing [1] 9/22	objections [2] 4/15 7/20
Lalk [1] 11/23	mechanisms [1] 44/16	objective [2] 31/12 31/13
large [2] 19/19 19/25	medication [2] 8/10 8/13	obviously [3] 33/15 38/1 45/8
last [3] 9/8 11/25 24/4	meet [1] 12/3	off [12] 11/1 13/1 14/2 15/14 19/9 26/7 30/17 31/14 33/23 33/24 35/5 49/17
later [4] 12/1 16/20 17/2 43/25	Megan [2] 11/23 11/25	offer [1] 48/9
law [1] 40/22	mental [2] 8/3 8/7	officer [10] 9/1 11/6 16/3 16/25 17/6 17/12 19/16 32/4 37/11 38/13
lawful [1] 5/2	mention [1] 42/3	officers [6] 11/17 11/23 14/19 15/24 24/13 32/10
lawsuit [4] 5/16 6/3 15/15 16/1	mentioned [14] 12/9 19/5 20/13 24/16 26/14 28/2 36/9 38/18 42/21 44/11 44/20 45/16 45/25 46/22	official [2] 1/7 1/8
learn [3] 11/17 12/12 12/19	messed [1] 10/10	officially [1] 51/15
learned [1] 13/15	met [4] 11/25 24/1 24/3 24/4	oh [10] 6/16 8/20 16/10 26/9 29/14 32/21 34/24 35/6 37/4 49/16
left [1] 35/13	middle [1] 7/13	okay [62]
legal [2] 1/20 33/16	miles [1] 10/5	Omaha [1] 2/4
legs [1] 26/22	missed [1] 18/13	on [44] 4/9 4/20 8/10 12/23 13/6 15/1 16/13 17/3 18/23 20/20 21/16 21/16 22/3 26/10 27/6 27/11 29/25 30/23 31/14 31/20 31/23 32/5 34/19 35/12 36/10 37/3 38/25 40/16 40/16 40/21 41/14 41/20 41/24 42/11 43/25 46/2 46/12 46/23 47/1 47/4 47/24 48/3 48/3 50/3
length [2] 25/14 27/1	mix [4] 22/19 22/20 23/22 38/9	one-sided [1] 20/9
lengths [1] 27/9	mixed [3] 19/6 21/11 33/12	ones [1] 42/17
let's [10] 12/22 14/4 14/7 15/8 15/13 21/4 24/15 37/9 37/10 37/13	mixed-breed [1] 19/6	only [3] 21/13 22/22 32/15
lets [2] 17/22 38/14	mom [1] 26/4	opinion [9] 31/23 36/23 42/9 42/13 42/16 45/17 45/17 45/22 45/24
life [1] 15/3	month [1] 8/24	ordinance [3] 11/10 15/15 37/13
Lincoln [1] 51/16	months [4] 9/9 9/10 26/11 40/6	ordinances [3] 11/8 11/15 12/25
line [1] 7/15	more [3] 9/18 17/5 42/14	original [1] 4/12
list [2] 29/11 31/4	MR [4] 2/3 2/9 3/8 4/13	others [1] 42/14
listed [2] 16/4 25/1	MS [1] 2/8	otherwise [2] 23/17 51/12
little [5] 9/18 12/22 13/19 15/13 24/18	Ms. [1] 48/3	out [9] 15/20 15/21 28/11 33/16 35/13 35/14 37/18 45/4 45/14
live [1] 33/8	Ms. Butler [1] 48/3	outside [7] 4/23 10/8 19/21 21/15 37/21 38/21 38/22
living [1] 8/16	much [13] 10/10 11/11 12/11 12/12 13/1 17/16 18/3 20/21 20/22 22/9 31/15 32/24 32/25	over [2] 6/21 6/24
LLP [1] 2/3	muscle [3] 18/3 26/14 34/14	overall [3] 25/16 25/18 28/22
Locally [1] 10/1	muscles [3] 17/16 17/25 19/6	own [2] 34/2 34/8
LOCATION [1] 1/20	mutt [1] 13/3	owned [1] 13/18
lodge [1] 7/19	muzzle [1] 27/5	owner [9] 37/20 37/20 38/4 39/20 39/24 40/1 41/14 42/3 42/6
long [9] 7/12 8/23 9/4 25/20 26/22 27/19 31/4 34/15 36/21	MYERS [2] 1/3 16/14	owners [1] 38/21
longer [2] 48/5 48/6	N	P
look [20] 13/23 15/4 15/9 17/19 17/19 19/11 21/4 23/16 23/21 27/23 28/4 28/9 28/13 28/24 29/24 31/15 32/6 33/19 33/25 39/6	name [3] 5/8 5/14 16/23	P.O [1] 2/10
looked [3] 20/3 23/24 38/6	National [1] 14/9	PADMORE [1] 1/7
looking [5] 13/2 21/6 24/17 31/8 33/20	nature [1] 48/23	
looks [6] 18/10 19/9 20/3 20/25 30/19 34/3	ndubois [1] 2/12	
lot [1] 29/22	NE [1] 2/4	
lovingness [1] 28/23	Nebraska [2] 51/5 51/16	

<p>P</p> <p>page [1] 4/9</p> <p>part [1] 46/12</p> <p>parties [1] 4/3</p> <p>party [1] 51/12</p> <p>past [1] 39/13</p> <p>paying [1] 10/12</p> <p>Pell [2] 4/5 51/2</p> <p>people [9] 10/25 11/16 20/5 22/11 32/13 32/19 36/20 45/14 45/16</p> <p>person [4] 13/16 33/8 33/10 37/10</p> <p>personal [6] 32/6 42/9 42/13 45/17 45/22 45/24</p> <p>personally [2] 36/22 43/24</p> <p>photograph [3] 46/3 46/12 46/24</p> <p>photographs [1] 46/7</p> <p>phrase [1] 18/24</p> <p>physical [5] 8/2 8/6 29/23 36/3 42/17</p> <p>pick [1] 44/12</p> <p>picked [3] 17/1 39/25 41/15</p> <p>picture [6] 35/12 39/6 39/7 39/9 39/12 46/15</p> <p>pictures [11] 13/25 21/9 21/11 21/13 21/14 21/16 21/20 38/18 38/23 39/1 45/25</p> <p>pit [56]</p> <p>place [3] 4/8 37/17 51/10</p> <p>plaintiff [4] 1/4 2/2 4/14 5/15</p> <p>plant [1] 9/22</p> <p>plate [1] 26/7</p> <p>please [6] 5/8 7/7 7/13 11/9 13/13 23/14</p> <p>plus [1] 37/10</p> <p>point [6] 6/2 7/16 19/23 30/10 39/9 44/1</p> <p>pointy [1] 34/21</p> <p>pole [1] 11/20</p> <p>poodle [2] 15/5 15/10</p> <p>position [3] 9/4 11/4 48/4</p> <p>possible [1] 46/1</p> <p>post [1] 48/7</p> <p>post-employment [1] 48/7</p> <p>poster [2] 13/7 13/19</p> <p>poundmaster [2] 20/10 22/1</p> <p>pounds [1] 26/10</p> <p>power [1] 11/5</p> <p>predominant [8] 18/11 19/7 30/16 30/23 31/3 32/5 46/2 46/8</p> <p>predominantly [6] 18/25 21/12 24/24 24/25 30/11 31/5</p> <p>pregnant [1] 9/5</p> <p>prepare [2] 6/3 47/10</p> <p>preparing [1] 48/21</p> <p>presence [1] 4/23</p> <p>pretty [12] 10/9 11/11 12/11 12/12 12/25 17/16 20/21 20/22 22/9 31/15 32/24 32/25</p> <p>privilege [2] 48/6 48/13</p> <p>privileged [3] 47/21 47/22 48/8</p> <p>probably [4] 9/7 9/8 32/11 46/6</p> <p>problem [1] 16/8</p> <p>Procedure [1] 4/18</p> <p>process [6] 5/24 22/2 39/19 39/23 40/9 40/13</p> <p>processing [1] 9/22</p> <p>Professional [1] 4/5</p> <p>protect [2] 45/5 45/14</p> <p>protected [1] 43/24</p> <p>protecting [1] 45/16</p> <p>provisions [1] 45/10</p> <p>Public [1] 4/8</p> <p>pull [1] 11/19</p>	<p>purebred [3] 30/18 30/21 46/13</p> <p>purebreeds [8] 21/3 21/6 21/9 21/12 24/25 30/12 36/9 37/7</p> <p>purpose [1] 15/20</p> <p>pursuant [1] 4/10</p> <p>put [5] 11/16 20/6 22/19 26/10 49/23</p> <p>Q</p> <p>qualified [1] 51/3</p> <p>quarantine [1] 44/15</p> <p>question [6] 7/23 7/23 7/25 43/21 45/20 48/16</p> <p>questions [10] 6/1 7/4 7/15 7/20 8/4 8/11 48/3 48/10 49/10 49/11</p> <p>quick [1] 46/17</p> <p>quickly [1] 20/15</p> <p>quirkiness [1] 34/2</p> <p>quit [1] 9/6</p> <p>quite [1] 7/6</p> <p>R</p> <p>rabies [2] 44/13 44/14</p> <p>raise [1] 48/22</p> <p>range [1] 25/23</p> <p>RARRAT [2] 1/8 11/1</p> <p>read [4] 11/11 14/16 40/19 49/18</p> <p>real [1] 33/7</p> <p>really [13] 12/17 14/2 14/3 15/6 15/9 25/25 26/23 28/9 32/13 33/20 35/16 36/21 40/23</p> <p>realm [1] 30/8</p> <p>Realtime [2] 4/6 4/7</p> <p>reason [2] 42/3 42/6</p> <p>reasons [1] 7/21</p> <p>receive [3] 40/11 40/15 50/7</p> <p>received [1] 12/9</p> <p>recess [1] 46/20</p> <p>record [4] 4/21 5/9 47/24 48/10</p> <p>reference [2] 21/3 21/20</p> <p>regard [1] 15/15</p> <p>Regardless [1] 46/15</p> <p>registered [2] 4/5 33/11</p> <p>regular [1] 48/4</p> <p>relate [1] 48/16</p> <p>related [4] 10/20 10/22 40/1 48/11</p> <p>relates [1] 15/15</p> <p>relating [1] 10/14</p> <p>relative [1] 51/12</p> <p>released [1] 38/3</p> <p>rephrase [1] 43/21</p> <p>reporter [4] 4/6 4/6 4/7 4/21</p> <p>Reporter's [1] 3/4</p> <p>required [2] 4/17 7/24</p> <p>Rescue [1] 37/23</p> <p>rescues [2] 33/17 37/22</p> <p>research [1] 47/2</p> <p>reserve [1] 48/1</p> <p>reserved [1] 4/16</p> <p>response [1] 5/4</p> <p>responsible [1] 21/24</p> <p>restate [1] 7/8</p> <p>review [3] 14/8 49/24 50/4</p> <p>right [24] 5/11 5/14 8/17 20/18 26/2 27/11 29/12 30/13 31/18 33/3 33/5 33/10 37/9 44/22 46/24 48/1 49/12 49/18 49/24 49/25 50/2 50/4 50/5 50/9</p> <p>risk [3] 45/1 45/2 45/10</p> <p>road [1] 43/24</p> <p>ROBERT [1] 1/7</p> <p>role [1] 17/11</p> <p>room [2] 13/20 33/15</p> <p>roughly [2] 9/17 10/5</p> <p>RPR [1] 51/2</p>	<p>Rule [1] 4/18</p> <p>rules [2] 4/18 49/18</p> <p>run [1] 20/13</p> <p>S</p> <p>safety [3] 20/4 42/22 42/24</p> <p>same [5] 33/25 34/5 34/6 34/7 39/8</p> <p>saw [2] 35/12 35/15</p> <p>saying [2] 12/10 43/13</p> <p>says [4] 18/10 18/17 30/10 38/13</p> <p>school [2] 9/25 10/8</p> <p>scientific [2] 31/10 47/2</p> <p>seal [1] 51/15</p> <p>second [1] 31/23</p> <p>section [2] 18/16 18/17</p> <p>Section 7.10.010 [1] 18/17</p> <p>sectioned [1] 33/23</p> <p>sections [1] 45/4</p> <p>see [13] 14/5 18/2 18/18 19/3 20/17 25/10 26/12 28/6 28/11 32/23 33/13 36/14 37/19</p> <p>seek [1] 48/1</p> <p>seen [1] 35/1</p> <p>segregate [1] 43/23</p> <p>seminars [1] 10/19</p> <p>sense [3] 6/17 17/9 33/22</p> <p>sent [2] 38/10 38/20</p> <p>set [3] 4/8 4/19 51/14</p> <p>shadowing [4] 12/4 12/8 12/22 12/23</p> <p>shakes [4] 36/15 41/7 41/16 41/17</p> <p>shape [5] 26/24 27/5 27/17 27/25 28/13</p> <p>shapes [1] 34/10</p> <p>she [5] 6/19 26/5 41/1 41/2 44/3</p> <p>she's [2] 6/21 49/23</p> <p>Sheltie [2] 15/4 15/9</p> <p>shifts [1] 32/12</p> <p>short [2] 17/15 34/16</p> <p>shorter [1] 18/4</p> <p>Shorthand [1] 4/7</p> <p>shot [2] 44/13 44/14</p> <p>should [3] 27/11 48/13 48/14</p> <p>shoulders [1] 26/20</p> <p>show [1] 46/7</p> <p>showed [1] 44/2</p> <p>showing [1] 13/24</p> <p>shows [1] 14/14</p> <p>side [8] 36/15 36/15 41/7 41/7 41/16 41/16 41/17 41/17</p> <p>sided [1] 20/9</p> <p>sign [1] 49/18</p> <p>signature [1] 4/24</p> <p>since [1] 16/3</p> <p>single [3] 26/5 26/7 39/12</p> <p>sioux [12] 1/6 1/20 1/21 2/11 2/12 2/12 9/2 9/16 21/15 37/21 38/21 38/22</p> <p>sioux-city.org [2] 2/12 2/12</p> <p>situations [2] 11/18 11/19</p> <p>six [5] 9/16 9/17 9/17 9/18 26/11</p> <p>Sixth [1] 2/10</p> <p>size [2] 25/16 26/17</p> <p>skin [1] 44/14</p> <p>skinny [3] 26/1 34/21 35/22</p> <p>snout [1] 27/9</p> <p>solemnly [1] 5/2</p> <p>somebody [5] 19/21 23/13 43/14 45/13 45/15</p> <p>someone [6] 16/4 16/25 23/6 38/2 44/11 44/20</p> <p>something [6] 7/6 13/15 24/22 26/15 28/2 41/21</p> <p>Sometimes [1] 20/1</p> <p>sorry [5] 15/18 16/7 19/1 19/13 29/9</p>
---	---	--

<p>S</p> <p>sounds [1] 9/19 speak [5] 6/21 6/24 47/17 47/18 49/6 speaking [1] 47/16 specific [3] 22/25 24/18 45/9 specifically [4] 18/23 29/12 40/16 42/1 specified [1] 51/10 speculate [2] 32/18 42/10 speculation [3] 43/18 43/20 43/22 speed [1] 47/1 spell [1] 5/8 spoke [3] 48/17 48/20 48/25 Staffordshire [4] 18/12 19/1 19/3 33/11 stand [2] 7/24 48/14 standards [2] 14/17 14/20 start [1] 14/5 state [3] 5/8 31/16 51/4 stated [1] 4/20 STATES [1] 1/1 statute [3] 18/9 25/1 30/9 still [2] 10/3 39/14 stipulated [1] 4/2 stipulations [2] 3/3 51/11 stopping [1] 7/16 store [1] 8/20 Storm [1] 8/18 stoutness [1] 17/16 Strawn [2] 16/21 16/25 Street [3] 1/21 2/4 2/10 subject [3] 15/25 19/17 48/5 submit [1] 48/2 subpoena [1] 16/9 such [2] 7/8 48/5 suit [1] 51/13 Suite [3] 1/20 2/4 2/10 sure [12] 12/14 13/22 21/17 24/12 24/13 32/14 39/16 43/7 43/10 43/23 44/13 46/19 suspect [1] 43/9 sworn [2] 5/2 51/7 system [1] 11/17</p>	<p>texture [1] 25/7 than [6] 9/18 13/2 14/1 23/19 37/21 42/14 thank [2] 24/15 49/15 that [203] them [37] 7/5 12/9 17/1 17/4 17/22 19/22 21/14 21/16 23/17 24/21 29/1 29/2 33/16 33/20 34/15 34/15 34/16 34/16 35/5 35/15 35/20 35/20 35/21 35/22 36/5 36/21 37/18 37/19 37/20 37/22 38/23 41/1 41/10 41/19 41/20 41/21 48/25 then [20] 9/10 9/13 11/16 12/25 20/5 20/18 27/10 29/4 29/14 30/12 30/21 33/12 37/19 37/21 38/3 39/6 43/9 44/1 45/9 49/10 there's [6] 13/19 30/12 33/18 34/7 39/5 44/24 therefore [1] 4/20 these [5] 20/14 21/3 21/6 29/13 46/13 they're [8] 17/2 18/2 28/6 28/10 33/16 33/22 35/4 39/14 thick [1] 35/21 thing [3] 15/20 15/21 20/9 things [6] 6/15 29/11 29/13 29/17 32/16 42/10 thinks [1] 31/22 this [33] 4/19 5/12 5/15 6/3 7/3 7/11 9/8 10/1 12/10 12/11 12/18 14/24 15/14 15/20 15/21 16/10 16/14 18/15 20/12 23/21 24/16 30/24 31/2 32/15 33/11 40/21 47/24 48/3 48/10 48/18 49/22 51/13 51/16 though [1] 15/8 thought [3] 22/18 22/19 23/20 three [2] 21/6 30/12 through [7] 18/5 23/15 23/16 29/12 29/22 29/22 31/3 throughout [3] 7/3 7/19 13/15 Tiefenthaler's [1] 9/23 time [13] 1/23 1/24 4/8 4/16 9/8 13/23 21/2 21/13 22/18 22/22 39/12 47/6 51/9 times [2] 24/11 33/24 timid [1] 29/2 timidness [1] 28/23 title [1] 4/9 to get [1] 47/24 today [7] 6/9 12/1 16/5 16/7 17/2 17/7 46/8 today's [4] 15/21 47/10 48/21 49/4 together [3] 14/7 20/6 33/23 told [3] 12/11 40/8 40/19 tongue [2] 28/4 28/5 too [1] 7/12 topline [1] 26/19 total [1] 9/15 tr [1] 6/20 track [1] 6/21 trained [2] 11/7 11/24 training [7] 10/22 11/5 11/13 12/8 12/19 14/9 40/11 trainings [2] 10/7 10/17 traits [1] 18/6 transcribed [2] 4/23 4/25 transcript [4] 4/19 49/19 49/23 50/8 trap [1] 11/20 traps [1] 11/19 trial [2] 4/16 6/3 trouble [1] 43/11 true [1] 32/9 truth [5] 36/13 47/12 51/7 51/8 51/8 truthfully [5] 6/8 8/8 8/14 16/11 39/23</p>	<p>try [2] 6/14 19/25 trying [6] 12/19 15/19 30/22 31/1 33/8 43/17 two [4] 9/6 13/23 20/6 20/7 type [1] 25/18 types [2] 34/12 45/5</p>
<p>T</p> <p>T.M [1] 2/3 table [1] 26/5 tail [3] 28/12 28/13 28/15 tails [5] 35/19 35/20 35/21 35/21 35/22 take [20] 7/12 20/4 21/14 24/22 26/15 28/17 29/4 34/20 37/20 37/22 38/22 38/23 39/6 39/7 39/12 42/22 43/4 43/10 43/15 46/17 taken [7] 4/5 4/10 5/19 21/15 38/18 46/20 51/9 taking [5] 6/12 6/19 39/9 43/11 49/22 talk [13] 12/22 15/8 15/13 17/1 17/4 17/7 18/5 24/15 24/18 41/19 41/20 41/21 47/20 talking [5] 7/7 17/5 18/20 26/14 43/23 tall [1] 34/16 taught [1] 11/21 teeth [1] 27/23 tell [14] 11/9 13/13 15/1 23/14 24/10 30/19 36/13 39/24 40/1 40/25 41/14 41/25 46/11 51/7 ten [3] 10/5 37/19 44/15 ten miles [1] 10/5 term [2] 26/19 48/11 termination [1] 40/2 Terrier [6] 18/12 18/13 19/1 19/2 19/3 33/12 testified [1] 5/3 testimony [2] 4/22 51/14</p>	<p>U</p> <p>uh-huhs [1] 6/14 uhs [1] 6/14 ultimate [1] 21/25 ultimately [2] 44/5 44/8 under [8] 6/6 37/12 37/13 41/15 44/16 49/2 49/18 51/3 understand [9] 6/6 7/5 7/6 7/9 7/25 10/13 10/14 26/4 26/13 understanding [2] 8/4 8/11 UNITED [2] 1/1 14/17 unless [1] 7/21 until [2] 4/16 40/5 up [9] 17/1 19/7 20/4 25/9 39/25 41/15 44/12 47/1 48/2 us [1] 7/14 use [8] 11/20 21/4 21/22 22/6 36/8 36/10 36/14 36/20 used [3] 36/11 36/13 36/22 using [1] 45/25 usually [5] 18/2 20/17 23/17 38/20 44/2</p>	
	<p>V</p> <p>variances [3] 34/9 34/12 34/14 vicious [2] 44/25 45/10 visit [1] 14/14 visual [3] 20/20 20/24 47/4</p>	
	<p>W</p> <p>waive [4] 50/1 50/5 50/8 50/10 waived [1] 4/25 walk [1] 14/7 walking [1] 28/18 Wall [1] 24/2 want [12] 14/4 14/25 18/23 30/22 32/18 32/19 40/21 42/10 47/12 47/24 49/25 50/3 wanted [2] 17/7 38/22 wants [1] 37/20 wasn't [5] 16/8 20/8 23/11 38/9 40/20 wavered [1] 27/7 way [8] 6/21 7/8 7/21 34/8 39/1 41/19 43/2 44/21 ways [1] 45/8 we'll [4] 14/5 14/7 17/1 18/5 we're [1] 15/19 we've [2] 13/23 30/8 Wednesday [1] 1/19 week [2] 11/25 24/5 weight [2] 25/22 25/24 went [10] 12/12 13/9 21/14 23/15 24/6 26/6 29/22 29/22 31/3 38/20 weren't [2] 16/13 20/1 WESTERN [1] 1/2 what's [5] 5/24 8/19 9/24 18/7 39/9 whatever [3] 7/23 27/12 27/12 whenever [1] 7/14 WHEREOF [1] 51/14 whether [15] 11/1 20/7 20/12 24/22 31/18 33/3 33/19 37/9 44/3 46/11 48/16 48/17 48/20 48/25 50/3 whoever [1] 38/12 whole [3] 15/3 32/15 51/8 why [8] 16/5 16/10 17/7 36/12 36/18 36/23 39/4 44/12</p>	

W

Width [1] 27/3
will [21] 4/12 4/19 5/8 5/23 6/8 6/24 7/7
7/16 8/7 8/11 8/13 11/9 12/3 13/13
15/1 17/3 23/14 39/7 39/7 48/15 50/10
within [3] 4/19 51/4 51/11
witness [7] 3/6 4/22 4/23 4/24 36/15
41/7 41/16
Witness' [1] 5/4
word [2] 18/24 22/7
wording [2] 18/7 30/9
work [5] 33/17 36/21 37/22 37/23
37/23
worked [3] 9/15 9/22 32/13
working [1] 23/17
works [1] 47/15
would [44] 7/4 8/3 19/6 19/11 19/16
19/22 19/23 19/24 19/25 20/2 20/6
20/7 20/9 20/9 21/14 21/16 21/22
24/22 25/9 25/12 26/7 27/10 28/25
29/23 30/2 30/5 30/17 32/3 32/6 33/7
36/8 36/10 38/23 43/14 44/2 44/3 46/9
46/11 47/23 48/7 48/9 48/22 50/7 50/8
wouldn't [1] 39/8
written [1] 6/13
wrong [2] 31/18 33/3

Y

year [4] 9/6 9/11 10/9 39/13
years [7] 9/5 9/6 9/8 9/13 9/17 9/18
13/16
Yep [3] 5/13 19/4 45/3
yes/no [1] 48/24
yet [1] 24/3
you'd [1] 44/12
you'll [2] 6/1 7/24
you're [19] 6/6 16/5 18/20 21/6 22/7
22/10 24/16 27/12 28/10 28/11 30/22
31/1 31/14 33/8 35/16 43/10 43/22
44/21 49/15
yourself [1] 17/12