

DU PAGE COUNTY
AD-HOC ADULT BUSINESS COMMITTEE

ROOM 3500B

May 14, 2019

12:31 p.m.

PROCEEDINGS HAD and testimony taken before the
AD HOC ADULT BUSINESS COMMITTEE, taken at the DuPage County
Administration Building, 421 North County Farm Road,
Wheaton, Illinois, before LINDA M. CIOSEK, C.S.R. No.
084-002892, a Notary Public qualified and commissioned for
the State of Illinois.

1 MEMBERS PRESENT:

2 MS. JULIE RENEHAN, Chair.

3 MS. DAWN DE SART, Member.

4 MR. SAM TORNATORE, Member.

5 MR. TIM ELLIOTT, Member.

6 MR. SEAN NOONAN, Member.

7 ALSO PRESENT:

8 MR. CONOR MC CARTHY, Assistant State's Attorney.

9 MR. PAUL HOSS, Planning and Zoning Administration
Coordinator.

10

MR. JIM STRAN, Building & Zoning Department Manager.

11

MR. KEITH BRIGGS, Chief of Security, DuPage County
office of Homeland Security.

12

13 MS. JOAN OLSON, Chief Communications Officer.

14 MS. DEBORAH HOUDEK, Code Enforcement Officer.

15 MS. JESSICA INFELISE, zoning Administration
Coordinator.

16 MR. ANTHONY HAYMAN, Assistant State's Attorney.

17 MR. NICK KOTTMEYER, Superintendent of Public Works.

18 MS. LIZ CHAPLIN, DuPage County Board.

19 MS. EILEEN SCHWALM, Clerk.

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Ad-Hoc Adult Business Committee Meeting
May 14, 2019

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1 CHAIR RENEHAN: The time is now, what, 12:31 should
2 we say? My name is Julie Renehan. I'd like to call the Ad
3 Hoc Adult Committee to order. If we could take a roll call,
4 please.

5 THE CLERK: Member DeSart?

6 MEMBER DE SART: Here.

7 THE CLERK: Member Elliott?

8 MEMBER ELLIOTT: Here.

9 THE CLERK: Member Noonan?

10 MEMBER NOONAN: Here.

11 THE CLERK: Member Tornatore?

12 MEMBER TORNATORE: Here.

13 THE CLERK: Member Zay?

14 (No response.)

15 THE CLERK: And Chair Renehan?

16 CHAIR RENEHAN: Here.

17 We have a quorum. So I would like to
18 thank you all for your participation in our committee.
19 We've worked now for four months, and today we'll hear our
20 final witness remarks. We'll hear from Attorney Clyde
21 DeWitt who has flown from, I believe, Las Vegas for
22 presentation.

1 MR. DE WITT: Correct.

2 CHAIR RENEHAN: He serves as counsel for Zebulon
3 Adult Boutique, so if we could please extend him the
4 courtesy that we have our other witnesses as he answers our
5 questions and puts on a presentation for us. That's all I
6 really have to say at this point.

7 Do we have any public comment?

8 THE CLERK: No.

9 CHAIR RENEHAN: Having no public comment, I would
10 like to entertain a motion for approval of the minutes of
11 April 9th.

12 MEMBER ELLIOTT: So moved.

13 MEMBER NOONAN: Second.

14 CHAIR RENEHAN: All in favor?

15 (Whereupon, all members
16 responded aye.)

17 CHAIR RENEHAN: The minutes are approved.

18 We have two presentations on the schedule
19 today. We're going to start with DuPage County State's
20 Attorney Anthony Hayman, overview of additional case law.
21 And you've provided all of these to us already?

22 (Whereupon, the oath was

1 received way back?

2 MR. HAYMAN: Right. As I point out, my memo and my
3 summaries aren't the evidence, it's the actual studies
4 themselves, but this is just to help you as you get through
5 them to look for the key nuggets of information in each of
6 the studies.

7 CHAIR RENEHAN: All right. So we will enter this
8 into the record then for consideration. And anything else?

9 MR. HAYMAN: That was it.

10 CHAIR RENEHAN: Okay.

11 MR. HAYMAN: Just to present the memo.

12 CHAIR RENEHAN: That was quick. Thank you, Tony.

13 At this point we can move on to our group
14 two, Mr. Clyde DeWitt. And I see we also have Jeff Fawell
15 also present.

16 MR. FAWELL: I'd like to just say I'm here as local
17 counsel. Mr. DeWitt is corporate counsel for Zebulon
18 Enterprise, and I'm -- as local, Mr. DeWitt brought me in to
19 be here for you to work with you to answer any questions.
20 Zebulon wants to -- I'll just be brief, but Zebulon wants to
21 work with the County Board to address the issue of human
22 trafficking. That's something we abhor, everyone abhors.

1 We have nothing to do with it. We want to -- we want to
2 show that the adult business -- we are the only adult
3 business in the unincorporated DuPage, but we stand by the
4 County Board in wanting to combat human trafficking. That's
5 something that nobody wants. I'd also point out that it's
6 something that happens in the shadows, in the dark. It
7 doesn't happen -- Zebulon is an open business. We've been
8 here for four decades. We are a local business. We want to
9 -- we operate in the open, and we want to partner with the
10 County Board to make a stand against human trafficking and
11 prostitution. Those are crimes. Those are things that
12 should not exist in DuPage County. We are none of that.
13 And I'm just --

14 Mr. DeWitt has brought me in to be local
15 counsel. I was born and raised in DuPage, I'm happy to work
16 with the County Board to answer any questions, to be a
17 conduit with Mr. DeWitt if he's not available, but we
18 support the County Board in its taking a stand against human
19 trafficking and prostitution.

20 CHAIR RENEHAN: Okay. I appreciate that as Chair
21 hearing that, and we recognize -- the County recognizes that
22 Zebulon is a legal business Constitutionally in this area,

1 so thank you.

2 Mr. DeWitt, are you ready? I think I
3 need to swear you in.

4 (Whereupon, the oath was duly
5 administered.)

6 CHAIR RENEHAN: Please state your name and address
7 for the record.

8 MR. DE WITT: Clyde DeWitt. I'm an attorney in Las
9 Vegas, Nevada. My office is 410 S. Rampart, Suite 420, Las
10 Vegas, Nevada, 89145. The submission that we put in is
11 there.

12 CHAIR RENEHAN: Yes. Can you note that Mr. DeWitt
13 had given us a 12-page --

14 MR. DE WITT: A corrected submission with a B in
15 background.

16 CHAIR RENEHAN: All right. All of the information we
17 are submitting that into our record for consideration as
18 well. Thank you.

19 Go ahead and proceed.

20 MR. DE WITT: A couple of things. Maybe I'll back
21 into this and talk about what Mr. Fawell was mentioning,
22 which is human trafficking. I am on the advisory board for

1 the Association of Club Executives. This is a national
2 organization of hundreds of strip joints, okay, or whatever
3 you want to call them, gentlemen's clubs. It's basically a
4 trade organization. In Michigan somewhere, I believe, ICE
5 apprehended an entertainer at one such place, and much was
6 made of it. And one of the members of the board, who also
7 was on the school board in St. Louis, said, "You know, I've
8 looked into this human trafficking. It's horrible. And
9 people are pointing the finger at our businesses -- not
10 mine, I don't own one -- but at other businesses, and we
11 don't want it any more than anybody else." So, anyway, they
12 got to work and put together some information and then
13 contacted ICE, the Federal government, and said, "Hey, we
14 want to help." And so at first ICE kind of looked at them,
15 "You're a bunch of strip clubs and you want to help fight
16 human trafficking?" "Yeah, because we don't like it." So,
17 anyway, finally convinced them that, yeah, we're serious and
18 developed a program where we trained employees of these
19 clubs. And I say we advisedly. I wasn't involved in the
20 training process, although I went to one of the training
21 sessions, and it was useful and very informative. But they
22 have held training sessions for 14,000 employees of strip

1 clubs, gentlemen's clubs. That's the word du jour, I guess.
2 But anyway, so if you're interested in, you know, me using
3 my connections that I have, I'm on the advisory -- legal
4 advisory board of this organization, I would be happy to
5 help because I don't like it any more than you do.

6 CHAIR RENEHAN: Thank you.

7 MR. DE WITT: Okay. So, I guess the first question
8 is who am I? I'm a lawyer. I represent a company called
9 Firestorm Investments. That's a California corporation.
10 I'm licensed to practice law in California and Texas, as
11 well as Nevada, and I practiced in California for 25 years.
12 And I've represented Firestorm and its predecessors since
13 1980-something. And Firestorm is a holding company. It's
14 100 percent owned by a gentleman named Steven D. Wiener, who
15 has been in this business for a long time. In fact, he
16 inherited it from his father who unfortunately died last
17 year, but anyway, he's been running things for at least 25
18 years. And Firestorm owns 100 percent of Zebulon, as well
19 as some other corporations that have similar businesses
20 around the country. So, as a result of that, I've been
21 zipped around all over the place to make appearances like
22 this, for whatever reason.

1 In any event, to respond to what has to
2 be in some of your heads, what's this wise guy from Las
3 Vegas doing coming and telling us in suburban Chicago about
4 how we should do things? Well, I'm not really telling you
5 how to do things, but just so you'll know.

6 I grew up in Park Ridge until I was 10.
7 Palatine, I lived there until I was 21. I am a graduate of
8 Palatine High School. When I was in high school, I played
9 in a rock and roll band at Lake Park High School every
10 Saturday, and at some place in Villa Park that apparently no
11 longer exists. I'm actually a little familiar with DuPage
12 County, and I'm still a Cub's fan.

13 So, there was some concern about why
14 didn't -- how come somebody who works there doesn't show up?
15 I've represented these folks long enough, I know how things
16 operate, and I inquired about this particular place and I've
17 dealt with this business before 20 years ago, Mr. Fawell and
18 I represented a disagreement with the State's Attorney's
19 Office, but you know, I put this up here because I went over
20 this with everyone. Do you think we should come and
21 testify? Then I looked at this and I said, well, look, is
22 it reasonable to believe? Yes, yes, they already made up

1 their minds. And one of the people said to me something to
2 the effect of, well, do you think if one of the members of
3 this committee probably owns a house and the city created a
4 committee to study the question of whether they should pass
5 an ordinance that would take his house away, do you think he
6 would go to the city committee, or do you think he would
7 send his lawyer? Or she. They said you can speak for us,
8 and I will do so.

9 My understanding is that the charter of
10 this committee, and I've never seen a document that charters
11 this committee, I've seen some conversation in a transcript
12 from something, I think County Board meeting or something,
13 that said it's to decide whether it would be a good idea to
14 pass a licensing ordinance that would address the secondary
15 effects of Zebulon. So, I've dealt with licensing
16 ordinances a lot, adult licensing. In fact, the primary
17 case about that topic is FW/PBS versus City of Dallas. The
18 law firm who handled that was Western & DeWitt. I didn't
19 argue it, my partner did, so we're pretty familiar with
20 this. And so, there's two aspects of licensing of the
21 businesses that are protected by the First Amendment. And
22 this is what the Court said in our case: One, is it can't

1 be a discretionary decision. That concept I'm real familiar
2 with because gaming licensing -- and I'm sure in Illinois,
3 alcohol licensing, if you apply for some kind of an alcohol
4 license, the licensing agency, whatever it may be, has
5 discretion to decide, well, are you suitable to be a
6 licensee? You know, do you have the funds so you can run
7 your business? Are you capable of running a business?
8 What's your experience running a business? You're probably
9 all familiar with that. Gaming is that on steroids. You
10 can't have that where the First Amendment is involved where
11 it's an express of business because then if the licensing
12 agency can say, "Well, we really don't like your speech, so
13 we don't think you're suitable." Or, "Yeah, we love your
14 speech. Here's your license right away."

15 The other thing that they said is you
16 can't -- you have to have some kind of time limit on things.
17 Why is that? Well, my unpopular speech business, which is
18 actually what I represent, and so I go into the licensing
19 board and go to the window and say, "Here's my application
20 for a license and the supporting documents." The guy says,
21 "Hmmm, I don't like this kind of speech", and puts it in his
22 bottom drawer. Well, if you don't get a license, you can't

1 operate. That's a form of censorship. It's a prior
2 restraint, and that's what the Court said in our case.

3 And what was significant about it is that
4 the Dallas ordinance, on its face, said that the licensing
5 agency, which I think was the Police Chief, has 30 days
6 between the application and the licensing response. That
7 is, within 30 days you could grant the license or deny the
8 license and give the reason so that it can be taken to
9 court. What the problem was, though, the license
10 application had to include zoning approval. Zoning approval
11 could take forever. So the Supreme Court said, "Wait a
12 minute. That looks nice. It says 30 days, but it's really
13 illusory. The fact of the matter is it could take forever
14 if the planning department or whatever regulates zoning
15 decides they're just going to put it in the bottom drawer."
16 And so, it's the same as if there were no rules at all.

17 The other aspect of this goes back to a
18 case, the stuff you've been submitted, is Renton versus
19 Playtime Theater. And actually that was really the second
20 decision, but it was the one that kind of nailed down --
21 Young versus American Mini Theatres, which my former partner
22 argued, was the Detroit one. Detroit said, hey, you know,

1 they have clusters of businesses that seemed to cause
2 problems: Pool halls, liquor places, shoe shine parlors,
3 secondhand stores. Shoe shine parlors, you know what
4 numbers rackets are, that was a problem back in the 60's.
5 The shoe shine parlors were really fronts for gambling. So,
6 anyway, they said they had to disperse, be some feet apart
7 or something. And then after having that successfully for a
8 while, they said, well, let's add adult theaters to that.
9 And the Supreme Court said kind of, okay, if it's secondary
10 effects, but it was kind of a mixed-up opinion which Renton
11 straightened out quick.

12 The important thing about Renton is, and
13 what the argument the Supreme Court concentrated on, was
14 that you're putting a requirement on one kind of speech that
15 doesn't apply to another kind of speech. That is a content
16 regulation of speech. So regulation of speech is of content
17 of speech. And to regulate content of speech, the three of
18 us will remember from law school, you have to have a
19 compelling interest and narrowly tailored and all of that
20 stuff, and it isn't any of that. And what the Supreme Court
21 did is made up a fix and said, "Okay, you can have special
22 regulations for one kind of speech that don't apply to

1 speech generally if they're directed to the secondary
2 effects." So, that would include licensing.

3 So, a licensing ordinance -- if you have
4 a license ordinance that says anybody who has a theater has
5 to have a license, a theater is defined as anybody who
6 displays movies, okay? That's okay as long as the license
7 complies with those rules I talked about a few minutes ago.
8 But if you say some kind of theaters have to have a license
9 and other kinds don't, then it has to be based on secondary
10 effects. That's what all these studies are upon.

11 Anyway, where we are, is I guess you're
12 looking for a licensing ordinance. Now, I'm sort of in the
13 dark about some of this because I saw something on the
14 internet that said there was a draft ordinance, and I
15 haven't seen it, so I don't know how to address it because
16 I've seen -- I'm sure I've seen it before somewhere because
17 I've seen hundreds of these ordinances that range from --
18 hey, I copy things, too, so I assume it's, you know,
19 relatively resembles one that I've seen before, but I
20 haven't seen it, so I can't address it.

21 I do have a question about that. I was
22 given a packet.

1 MR. HAYMAN: Yeah, I think I gave you my copy, but
2 that's --

3 MR. DE WITT: Well, you can have it back. But,
4 anyway, you were talking about there was a different packet.
5 This just talks about prostitution and massage parlors.

6 MR. HAYMAN: Yeah.

7 MR. DE WITT: There's another packet that talks about
8 the studies and things?

9 MR. HAYMAN: Yeah. It's going to be in the record.

10 MR. DE WITT: Is this what's in the record from,
11 like, January?

12 MR. HAYMAN: No, this is brand new. It hasn't been
13 put on the internet yet.

14 CHAIR RENEHAN: I don't have it.

15 MR. DE WITT: I really can't respond to it, but I --

16 CHAIR RENEHAN: This is just articles.

17 MR. DE WITT: No. The one I got is a letter, and it
18 mostly talks about two things. One is all these arrests for
19 prostitution at massage parlors, and I guess there was a
20 place that was a photograph studio or something that there
21 was prostitution going on. That's easy. That's illegal,
22 you just go and arrest everybody. But prostitution isn't

1 protected by the First Amendment, and so you can go forward
2 with making it illegal and doing away with it however
3 Illinois law provides. I don't know what you have here in
4 nuisances and things like that, but it should be pretty easy
5 to extinguish prostitution if you can catch them, and
6 apparently the state's attorney here has done a good job of
7 it. That's fine.

8 Anyway, I can't respond to that other
9 than generally, but what I said, you know, that those rules
10 that -- if you're looking to make a licensing ordinance,
11 those are the rules that apply. And my client will tell me,
12 if one is enacted, to scrutinize it with a microscope. And
13 this isn't the only client I've ever represented in this
14 industry, it's lots of them. But lots of them told me to do
15 that. And there have been times I said, "You know, they
16 didn't do anything wrong. This ordinance is prostitution."
17 "Don't you want to file a lawsuit?" "I wish I could, but
18 there's nothing wrong." "Okay." "Sorry." So, anyway, I'll
19 look at that when it's passed.

20 If people want to ask questions, I'll do
21 the best I can to answer them.

22 CHAIR RENEHAN: Member Elliott?

1 MEMBER ELLIOTT: Yeah. I'm a litigator, an attorney
2 myself, and your testimony today creates an issue for me
3 because we're really in a fact-gathering mode, and the other
4 people, as you today, have provided testimony under oath,
5 but it's testimony based on their personal observations,
6 their personal experiences. You're really providing sort of
7 more legal argument. It's under oath, but it's more legal
8 argument, so I'm struggling to get my arms around that.

9 MR. DE WITT: Give it a shot. Ask me a question.

10 MEMBER ELLIOTT: Okay. So, we haven't met. You and
11 I have not met.

12 MR. DE WITT: No, we haven't.

13 MEMBER ELLIOTT: And I assume you haven't spoken to
14 any of the other committee members prior to today.

15 MR. DE WITT: I guess Mr. Fawell knows a number of
16 you, but I don't.

17 MEMBER ELLIOTT: My question is -- honestly I'm
18 troubled by -- I've gone through your statement today, the
19 written piece that you and Mr. Fawell submitted, and there's
20 a couple statements in here that frankly anger me. One of
21 them you say, "These hearings", in other words what we're
22 doing as a committee, "have not been an honest inquiry, but

1 rather a calculated use of the public's concern with
2 prostitution as a pretext for implementing altogether a
3 different agenda." And then above you say, "These
4 proceedings are largely theater intended to reach a
5 preordained result."

6 That comes as news to me, so I guess my
7 question to you: What is the preordained result that you
8 believe we're trying to reach?

9 MR. DE WITT: It's here. I mean, that's what I'm
10 talking about only. At the very outset of this proceeding
11 back in December I think it was, January, this is your
12 agenda, and you ask the questions and all of them are
13 answered. That's what troubled my client.

14 MEMBER ELLIOTT: What do you think is the preordained
15 result? Because you're representing a client here, and you
16 are claiming that we have a preordained result. Which, by
17 the way, if that was the case, I'd like to have known about
18 it because I don't know what it is. What is the preordained
19 result that you believe this committee has --

20 MR. DE WITT: Well, it had on its face the idea that
21 you were either going to -- well, if you look in there at
22 the beginning, the Chair --

1 MEMBER ELLIOTT: You're going to point to Chairman
2 Cronin's comments?

3 MR. DE WITT: Yeah, the statement, "We really want to
4 get rid of these places and move them out of the County."
5 That sounded like a preordained result, we're going to do
6 the best we can to get rid of that place. I don't know if
7 that meant make it close down altogether, or kill it with a
8 thousand cuts, but I think there was a reason for my client
9 to be concerned that that's what was going on. And I will
10 tell you, there's a lot of precedent for that. And like I
11 said, I'm telling you the reasons for the concern. I'll
12 give you an example:

13 Flying here I was reading a book about
14 the history of Las Vegas, and one of the more interesting
15 things that went on in 1951, I think, the Kefauver
16 Commission. The Kefauver Commission was Estes Kefauver,
17 turned out to be the vice presidential candidate from 1976.
18 He was a senator from Tennessee, and he made a resolution in
19 Congress to have the commission, and of course then it
20 became the Kefauver Commission. It went around the country
21 to make inquiry about organized crime. Well, in all of
22 those hearings, the people from organized crime all took the

1 Fifth and they didn't really learn anything, but when they
2 got done, they already knew everything and the result was
3 preordained.

4 Another one, which was even worse, the
5 Army McCarthy hearings: I know there's 203 employees of the
6 State Department that are members of the Communist Party, or
7 something like that, we've all seen. And that's what -- and
8 this comes from my client, not necessarily me. That's my
9 client's concern. And if you're really trying to find out
10 stuff, ask me questions. I won't know the answer to
11 everything, not that anybody else would, but I -- anyway,
12 give it a shot.

13 MEMBER ELLIOTT: That was really my question. I'll
14 just tell you it doesn't sit well with me to have someone,
15 particularly someone I've never met -- I respect you as a
16 practitioner and as an attorney. I'm familiar with your
17 record, but to have someone who comes in and tells me that
18 I'm engaged in a pretext in theater and something less than
19 an honest inquiry troubles me greatly.

20 MR. DE WITT: Okay. Well, I'm telling you the basis
21 of that. My client looked at this -- and when I say my
22 client, this is a lot of people, not just one, the people

1 involved in this organization, and that is what they told
2 me. "Haven't they already decided what they're going to
3 decide?" I said, "I hope not." But, you know, there is a
4 concern for that. Is that fair enough?

5 MEMBER ELLIOTT: I understand your position.

6 MR. DE WITT: It's not me taking potshots at you,
7 understand that, but it's raising a concern. And if that
8 concern is unwarranted, great.

9 CHAIR RENEHAN: I thank you for that, and I do vouch
10 for the integrity of our committee. We are looking at all
11 sides of this issue. In fact, that's why we held everything
12 open for a month to hear from you, so I do just want to put
13 that out there.

14 MR. DE WITT: As an aside, I appreciate that. I
15 mean, I was stuck in Los Angeles for seven weeks to have
16 radiation treatment for cancer, and I really couldn't say to
17 the doctor, "I need a couple of days off to go to Chicago."
18 The doctor said, "Oh, no, you won't." And so thank you very
19 much for accommodating me.

20 CHAIR RENEHAN: Yeah. We wish you well with your
21 health concerns.

22 MR. DE WITT: It's looking good, by the way.

1 CHAIR RENEHAN: Can we ask you some questions. I'd
2 like to hear some questions, maybe it would be helpful,
3 about Zebulon in terms of -- can you just tell us a little
4 about the business itself in terms of the viewing booths.
5 And let's say if we wanted to put doors on the viewing
6 booths, is that beneficial?

7 MR. DE WITT: Okay.

8 MR. HAYMAN: Take doors off?

9 CHAIR RENEHAN: Take the doors off, I'm sorry. This
10 is not a place I go to.

11 MR. DE WITT: I don't know if that comes under the
12 category of licensing.

13 MEMBER DE SART: Julie and I were going to take a
14 field trip out there. We need to go.

15 MR. DE WITT: Here's where the dispute about that is:
16 Number one, people who are watching adult movies, they don't
17 really want people watching them watching. And, secondly,
18 it creates a problem if you take doors off because -- and
19 this is my experience with a lot of jurisdictions that have
20 done that -- you have a situation, well now it invites
21 people to show up to try to make new friends. And what some
22 jurisdictions have done, which makes more sense to me, is

1 restroom movie watching apparatus?

2 MR. DE WITT: They don't, but they could. If you're
3 going to require something, don't require something that
4 encourages socializing back there.

5 And let me -- you've asked about half the
6 business, let me talk a second about the other half, and a
7 little bit about not just Zebulon, but the whole industry.
8 Back when these places started, their customers were almost
9 always men. If you look at the retail -- the front part of
10 this place is a retail area, so DVD's and novelties and
11 lingerie and all kinds of things like that. And in order to
12 make money in the retail end of this business, the store has
13 to be a place where women are comfortable, couples are
14 comfortable, because otherwise you lose a lot of business.
15 Videos, DVD's aren't as big a deal as they used to be
16 because you could see all that stuff on the internet. So
17 the retail component of this is way more important now than
18 it once was. And because of just the change in generations,
19 I guess, you know, younger people are comfortable going into
20 businesses like this that sell these kind of products if,
21 you know, they're not dingy, they're clean. That's why they
22 have -- they clean the whole place stem-to-stern every day.

1 My client tells me every Thursday they come in and buff the
2 floors in the middle of the night, and then the next morning
3 they have to send out a crew to take away all the dust that
4 the buffering causes. I'm not an expert at cleaning, but
5 anyway, you know, the place has to be clean. It's well-lit
6 and, you know, it's nice. It's like Blockbuster used to be,
7 when Blockbuster was. And so there's that element of it as
8 well.

9 CHAIR RENEHAN: So would you say there would be
10 meaningful harm if there was a licensing requirement that
11 required cleaning after every use of a booth, for example?

12 MR. DE WITT: It might be a little harsh. But
13 certainly keep the booths clean, yeah. I mean that's sort
14 of like saying you have to clean the restroom every time
15 somebody goes in there. I've been in a lot of public
16 restrooms where it's been a long time since anybody has
17 visited with a cleaning element. Not the County.

18 CHAIR RENEHAN: Okay. You had mentioned reasonable
19 time from application to when you actually would get a
20 license, decision on a license. To you, what is a
21 reasonable amount of time?

22 MR. DE WITT: I'm not the one who decides that, the

1 Courts are, but I can tell you what they've said. Two
2 things. Thing one is 30, 60 days -- 30 days is pretty much
3 when you can get it approved. The second thing is, though,
4 when it's an existing business, you can't say, okay, there's
5 a licensing requirement and you have to close down until you
6 get a license. There's several cases that say -- and you've
7 probably seen them, Anthony, that you can't use a licensing
8 requirement to shut down an existing business until it can
9 apply for a license. There's a lot of good reasons for that
10 besides the First Amendment, just as a matter of fairness.

11 Somebody's business that's in compliance
12 shouldn't have to stop just because there's a new
13 requirement. Plus it's already there. They've seen what's
14 there, and they could have done a licensing ordinance two
15 years ago when --

16 CHAIR RENEHAN: Okay.

17 MR. DE WITT: That's an aside I wanted to talk about
18 is, you know, people are fussing over stuff. You need to
19 see the bigger picture about that. Lawful nonconforming
20 uses, which I think in Illinois is a Constitutional right.
21 I was looking that up a little bit this morning. I don't
22 think it's just in the ordinance, I think it's what the

1 Illinois courts view as a fairness kind of thing required by
2 the Constitution. If you go back to the 19th Century when
3 New York said this is ridiculous, we've got housing next to
4 tanning factories next to things like that, we've got to
5 have zoning. Of course the response said, well, you know,
6 the Blackstonian right, you got from the center of the earth
7 to the heavens, or whatever. I don't remember that from law
8 school, but something like that. Anyway, property rights
9 and all that stuff. And, as a practical matter, the city
10 said, "We've got to do something, at least in the long run.
11 You know, we won't have tanning factories next to houses."
12 So, they put in zoning, but they included the concept of
13 lawful nonconforming uses because two reasons: One, is
14 fundamental fairness; a guy's got a business there. Okay,
15 you can keep going until the business expires of natural
16 causes.

17 And, secondly, politically New York never
18 -- New York was the first place, I think, maybe chime in on
19 this, I think New York was the first place that ever had
20 zoning. And when they did that, you know, just politically
21 it would have been impossible. They never -- the members of
22 the city council would have been bombarded by people that

1 said, "You can't do this, take away my right to do whatever
2 I'm doing." And lawful nonconforming uses made zoning
3 palatable.

4 CHAIR RENEHAN: All right. Well, thank you for that.
5 Member Tornatore has a question.

6 MEMBER TORNATORE: Hi. Thank you. This committee
7 not only was created to ultimately get to what we would hope
8 to be a legal and Constitutional attempt at some type of
9 regulation, but to also be a fact-finding committee. So, in
10 that vein, I've got a couple of questions for you, which
11 hopefully you can give me some answers to. And the purpose
12 of these questions is to figure out if any of the things
13 that we're looking for are ideas that your client would find
14 reasonable, which would hopefully get us to a reasonable
15 licensing ordinance.

16 Do you have video cameras, and are the
17 booths regulated with video cameras? Do you have video
18 cameras in the booth?

19 MR. DE WITT: No.

20 MEMBER TORNATORE: Okay. I assume you have video
21 cameras throughout the store --

22 MR. DE WITT: Yes.

1 MEMBER TORNATORE: -- so that people can't steal
2 DVD's or lingerie or anything else.

3 MR. DE WITT: Well, in the parking lot -- what I said
4 about cleaning up the place, that includes the parking lot.
5 And the clerk on duty is instructed to keep an eye on the
6 parking lot and split up and --

7 MEMBER TORNATORE: So they do or don't have video
8 cameras?

9 MR. DE WITT: Not inside the booths, no.

10 MEMBER TORNATORE: What about within the store?

11 MR. DE WITT: Yes. Pretty much the whole store has
12 video cameras.

13 MEMBER TORNATORE: You mentioned that the retail part
14 is what's important in the business so that couples can come
15 in. Do you know what percentage of the business is retail
16 versus viewing of the movies?

17 MR. DE WITT: I do not.

18 MEMBER ELLIOTT: Like a revenue basis?

19 MEMBER TORNATORE: Yeah, revenue basis.

20 MR. DE WITT: I do not, but I would -- I can just
21 tell you as an industry-wide, it's pretty close. It's
22 different, like in Las Vegas, for example. The retail is

1 way bigger because it's a tourist attraction and everybody
2 comes there and buys stuff to take home. Zebulon, given
3 it's the only one in town, so to speak, I imagine retail is
4 pretty important. I can find out, but I can just tell you
5 as a general proposition -- let me put it to you this way:
6 They're both required to sustain the business' viability.

7 MEMBER TORNATORE: Okay.

8 MR. DE WITT: Is that a good enough answer?

9 MEMBER TORNATORE: Sure, yeah. I know you don't work
10 there behind the counter so you obviously can't tell me that
11 -- and that was one of the reason that we were hoping to get
12 somebody from Zebulon here to answer some of these
13 questions. Do you know when the significant foot traffic is
14 in the business, what the time frame is? Is there more
15 business in early mornings as supposed to late afternoons,
16 historically either at Zebulon or places that you've
17 represented?

18 MR. DE WITT: The general -- one thing is some of
19 these places -- one reason they're open 24 hours is
20 security. Lights are on, somebody's there. There's an
21 alarm and all, and cameras. I mean if nobody's there, too
22 much risk of burglary, so then we have to leave a guard out

1 there when it's closed. So if you're going to have somebody
2 there, you might as well have a clerk there and be open and
3 accommodate people. But like between, you know, depending
4 on what day it is. I'm sure, for example, on weekends,
5 probably a lot of the traffic is later at night than during
6 the week. And I imagine at 3:00 or 4:00 in the morning.

7 MEMBER TORNATORE: And the purpose of my question and
8 some of these others is, again, to determine if we were to
9 enact an ordinance, which we hope to do at some point, what
10 would be reasonable given the industry and something which
11 wouldn't necessarily harm a legal business such as your
12 client's?

13 So if you were able to tell me that
14 there's very little business between the hours of 1:00 a.m.
15 and 6:00 a.m., then I think it's a logical conclusion that a
16 regulation within our ordinance prohibiting the business
17 between 1:00 a.m. and 6:00 a.m. would be reasonable. That's
18 my thought process. And I'm not a First Amendment lawyer,
19 but that's where I'm trying to go with this question.

20 MR. DE WITT: I would suggest this: I mean, I
21 understand there's hours of operation regulations upheld in
22 various places, but I know that just because it would be

1 Constitutional to impose hours of operation, that it's not
2 necessarily a good idea. As I said, the problem is
3 security. Now, think about this: We got cameras
4 everywhere. At night if it's closed, okay, you're making us
5 pay to have a security guard standing outside, which is kind
6 of unreasonable when you can have it open and somebody
7 there. And if we don't put a security guard there, then
8 you've got a parking lot that's a magnet for you name it.
9 And that's one of the problems.

10 MEMBER TORNATORE: I think you could make that
11 argument for Burger King, too. Anywhere that is closed is a
12 potential meeting place for anybody, or for crime. So I
13 don't know that that's peculiar to the adult business
14 industry.

15 MR. DE WITT: No, but the fact of the matter is
16 Burger King is not going to stay open all night here.

17 MEMBER TORNATORE: Most of our Burger Kings and
18 McDonald's are open 24 hours a day.

19 MR. DE WITT: You just answered your own question
20 because if that's the case --

21 MEMBER TORNATORE: That's my point. I answered the
22 question because it applies to Burger King as well as the

1 others, but the reality is that we're not talking about
2 regulating Burger King.

3 MR. DE WITT: Right.

4 MEMBER TORNATORE: What goes on at Zebulon or places
5 -- and I won't even categorize Zebulon with some of the
6 other places because you're a legal business -- are much
7 different than what goes on at Burger King or McDonald's at
8 2:00 in the morning.

9 MR. DE WITT: I would suggest to you that the reason
10 that Burger King and McDonald's are open all night is
11 security so they don't have an empty parking lot. I mean, I
12 don't think they sell a lot of hamburgers at 4:00 in the
13 morning. They might in Las Vegas where everything is open
14 24 hours a day and things like that, but I bet if you talked
15 to the people who own Burger King and McDonald's and say why
16 are you open all night -- now they're open probably
17 drive-thru only, but they may be open in the restaurant,
18 too. But the point is if you ask them, "Why do you stay
19 open 24 hours?" "Because if we close, we run the risk of
20 problems in the parking lot, burglaries," this kind of
21 thing. I don't know, I've never represented a Burger King
22 or McDonald's.

1 MEMBER TORNATORE: Fair enough. Does your client
2 have a policy on how to deal with issues that come up within
3 the business and what their response is, such as a rowdy
4 customer or two people trying to get into a booth, okay, and
5 the person behind the counter at 3:00 in the morning who may
6 not be able to deal with these people, is there a policy we
7 call the police right away?

8 MR. DE WITT: Yeah. I mean, it's simple. If
9 somebody is doing something they're not supposed to, just
10 like any other business, out. And if you don't want to
11 leave, I can get somebody to take you away, but you're not
12 going home.

13 There's no difference how my client's
14 business addresses situations like that. If somebody comes
15 into Burger King drunk and rowdy and making -- they'd just
16 say, "Hey, excuse me, sir, take your business home." And
17 that's what my client does.

18 MEMBER TORNATORE: So hours of operation -- I'm just
19 trying to summarize it in my own head -- for your client is
20 more a security issue than a business issue, staying open 24
21 hours?

22 MR. DE WITT: It depends on how cramped you're going

1 to make the argument. If you're talking about closing from
2 3:00 to 6:00 in the morning, probably it's not a big
3 business issue. If you're talking about being closed at
4 8:00 at night, then it is.

5 MEMBER TORNATORE: Reasonableness has obviously got
6 to be through this whole thing.

7 MR. DE WITT: You got to figure reasonableness.

8 MEMBER TORNATORE: I understand.

9 MR. DE WITT: But, again you, too, just identified --
10 are grocery stores open 24 hours? I bet they are.

11 MEMBER TORNATORE: Some.

12 MR. DE WITT: They're open. They've got people there
13 at 4:00 in the morning, that's when grocery stores do their
14 inventory, put in -- stock the shelves, all that stuff. I
15 remember from the worst job I ever had in my life, which was
16 working on retail grocery inventory when I was in high
17 school. And that happens at businesses, my client's
18 business and everyone like it. At 4:00 in the morning,
19 that's when the clerk straightens everything up and, you
20 know, cleans things up and does the bookkeeping and whatever
21 else needs to be done, other than servicing customers.

22 MEMBER TORNATORE: So just to give you a little bit

1 of perspective, background. The point of this committee was
2 to try to, in some reasonable fashion, regulate adult
3 businesses. Identify what an adult business is, regulate it
4 in some way so that there would be some consistency so that
5 you don't have businesses, unlike your client, coming in
6 here and staying here for six months or a year until they
7 get shut down or they move somewhere else. So in order for
8 us to come up with what we would consider reasonable
9 regulations, we wanted to hear from those businesses that
10 were involved in that business currently in DuPage County.
11 Your client is the longest running business in the County.
12 So maybe I'm -- let me ask you. What would be a reasonable
13 set of rules, restrictions, that you think your client could
14 live with Constitutionally, in your expert opinion, that
15 would not only protect the public, but your client as well
16 to operate a legitimate business?

17 MR. DE WITT: Okay. Remember what I said a little
18 while ago about if you're going to impose a regulation on
19 adult speech, that you don't impose on other places, Burger
20 King, you have to show that the adult place causes secondary
21 effects that the Burger King doesn't. Now, if it's a liquor
22 sales situation, for example, everybody knows that places

1 that serve liquor, there's problems that are different than
2 places that don't. I mean liquor is prohibited in my
3 client's business. But the difference between Zebulon and
4 Burger King is what? Other than there's a lot of people who
5 find adult speech distasteful; however, enough people don't,
6 that apparently they're able to stay in business.

7 That's the point. There's got to be a
8 reason why you impose this regulation on the adult bookstore
9 but not the other businesses that are almost just like it.
10 And I'm all ears. I mean, I don't see a reason. I don't
11 see where my client's business is any more of a problem at
12 4:00 in the morning than Burger King is. I'm not an expert.

13 MEMBER DE SART: But it is different because you have
14 security 24/7.

15 MR. DE WITT: Because what?

16 MEMBER DE SART: Because you're open 24/7, as you
17 said, for security. So it is different. My Burger King and
18 McDonald's aren't open 24/7, but so I don't know where they
19 are, but let's say a mom and pop furniture shop. They're
20 not thinking security in that they have to be open 24/7 for
21 security, but your business is saying you have to be 24/7
22 for security purposes. So I'm saying they are different.

1 MR. DE WITT: Well, it's a little easier using
2 conventional methods of security; you know, alarms and so on
3 for a furniture store. I mean, to steal furniture, you
4 can't just walk in and grab it and leave.

5 MEMBER DE SART: So you're saying adult businesses
6 are a highly cash business? Is that what you're alluding
7 to?

8 MR. DE WITT: No, they're just -- they have stuff
9 that's easy to steal, I guess, is what I'm saying.

10 MEMBER DE SART: Okay, so mom and pop don't own a
11 furniture shop, they own a kitchen shop.

12 MEMBER TORNATORE: 7-Eleven.

13 MEMBER DE SART: Yeah, they own a 7-eleven.

14 MR. DE WITT: Well, liquor stores, which are the most
15 vulnerable, they obviously have to close because of State
16 laws. They've got all these gates. I mean the security at
17 liquor stores is unbelievable, and it's expensive. Zebulon
18 could do all that stuff, I suppose, but it would be
19 imposing, I think, an unreasonable expense.

20 MEMBER DE SART: I'm just saying -- let me just
21 clarify the question then because you're going off somewhere
22 else. You're saying that a 7-Eleven and an adult business

1 are exactly the same, but I'm saying you just said yourself
2 they're not because your adult business has to stay open
3 24/7 for security purposes.

4 MR. DE WITT: No, that's one of the reasons, but
5 another one is -- I mean, well, 7-Eleven probably gets
6 business pretty late, too, but I mean, yeah, 4:00 to 6:00 in
7 the morning, sure, I mean there's not that much business.
8 But, you know, why does that make any difference? Is there
9 a real danger to the town because this place is open all
10 night? I mean, is there any evidence that --

11 MEMBER DE SART: Well, you're saying there's a danger
12 to the business unless you're open all night.

13 MR. DE WITT: Well, no. My point is the reason they
14 stay open in the hours that they really aren't making any
15 profit is because, number one, security; and number two, it
16 gives the clerk -- this is a one-person business -- an
17 opportunity to do things that, you know, you can't do in the
18 daytime when there's people coming in and out all the time.
19 So it works out pretty well. But, turn this around. Why is
20 it a big problem that Zebulon is open all night?

21 MEMBER DE SART: Well, your question to Member
22 Tornatore is how are the two businesses different? And I'm

1 saying that you stated yourself they are different because
2 the 7-Eleven doesn't need to be open for security purposes
3 all night, whereas Zebulon, that's the number one reason
4 you're giving.

5 MR. DE WITT: I would suspect Zebulon is open all
6 night for the same reason.

7 CHAIR RENEHAN: I'm going to interrupt. I think
8 we're kind of getting into the weeds a little bit. We're
9 kind of belaboring the point.

10 Member Noonan?

11 MEMBER NOONAN: Just a couple things. Thanks for
12 coming out. I'm pretty familiar with that as I grew up in
13 the area, so I know it's been there. Again, my opinion is
14 it's a nuisance, it's an eyesore. And, again, I'm entitled
15 to have my opinion. The question again, how many calls of
16 service do you have for law enforcement? Has there been any
17 documented incidents, reported incidents that we're aware
18 of, because I'm not. At this point we don't have any
19 representation from the Sheriff's Office. Because it's
20 unincorporated, I think they would probably be the ones to
21 furnish us with that information. Because if there isn't a
22 history there, you guys have a compelling argument that, you

1 know, it's not a bad place to be operating 24/7.

2 I had a couple of other questions. How
3 many viewing booths do they have there, just out of
4 curiosity?

5 MR. DE WITT: I will submit an answer. I think it's
6 like 16 or something, but I can find out. I will be happy
7 to -- I'll send Mr. Hoss an email.

8 MEMBER NOONAN: And I get it, I mean, you know, and
9 also I can see your argument. That's a whole different
10 dynamic than like a Lover's Lane because Lover's Lane,
11 something like that, they're retail, they don't have these
12 viewing booths, but I would respectfully disagree with you
13 about them being open for purposes of security, because, in
14 my opinion, businesses that open later, all night, in my
15 opinion -- I have a law enforcement background -- draws
16 certain types of people, and it does encourage criminal
17 element sometimes when they're out and about. I would think
18 there would be a higher need for security if you were open
19 24/7, in my opinion, like between midnight and 7:00 because
20 like the old saying, nothing goods ever happens after
21 midnight.

22 So, in my dealings in my professional

1 capacity -- and, again, I know it's a little --

2 MR. DE WITT: Okay, I guess you got two issues. One
3 is for call for service. Call for service thing -- I kind
4 of have a law enforcement background, too, I was an
5 Assistant DA for seven years. The calls for service is a
6 really tough one to use statistically, and I'll tell you
7 why. Every time there's an incident -- I take it you're a
8 police officer or something?

9 MEMBER NOONAN: I am, yes.

10 MR. DE WITT: Every time there's an incident, it's a
11 call for service, okay? So if Zebulon gets robbed, somebody
12 sticks them up, they call the police, say we've been robbed.
13 They'll come out and say, "What did the guy look like? What
14 kind of car was he driving?" That's a call for service. If
15 a drunk driver is driving down Lake Street and gets pulled
16 over and he happens to pull over in front of Zebulon, that's
17 going to be a call for service at Zebulon's address.

18 I went through this in another
19 jurisdiction, and we -- calls for service, it's really a
20 difficult thing to zero in on. And here you've got the
21 Sheriff's Department on one side of the street and Roselle
22 is it on the other side of the street, so you're going to

1 need both of them, and then what are you going to compare it
2 with? And Lake Street is a pretty busy street, so there's
3 going to be lots of calls of service everywhere.

4 The only place, from what I've seen, and
5 of course I haven't seen your data, you have a little of it
6 in your memo that you sent, but it's really difficult to
7 zero it in. The only place that there's a spike which is
8 obvious is places that serve liquor on premises, and I'm
9 sure you're aware of that from your police experience.
10 That's just the nature of the business. And if I were
11 representing a place that was a liquor establishment, I
12 would have a much more difficult time talking to you. But I
13 mean liquor is prohibited in this business. They can't
14 bring it in. And if you come in smelling like it, you're
15 out.

16 So that's kind of -- it's real difficult.
17 I suppose you could take calls for service from both
18 jurisdictions all the way up and down Lake Street, look at
19 the different businesses and see where the spikes on call
20 for service is, and I'm betting you you could spend a lot of
21 time doing that and you could be scratching your heads
22 saying what does this really show? I might be wrong, but

1 that was my experience when I've gone through this analysis
2 before.

3 MEMBER NOONAN: But the property owners or the
4 employees behind the counter or what have you, they're the
5 ones that initiated that. It has nothing to do with a DUI
6 coming to the final stop, doing a field sobriety test in the
7 parking lot. Calls originating from that business, whether
8 it be a retail theft, a threat, a battery, some type of
9 inappropriate behavior in there, burglary. You're not going
10 to have a burglary there during operating hours, but I'm
11 just curious. And then to compare that with the time of the
12 day that those calls have been received, but I don't have
13 that information.

14 MR. DE WITT: I don't either, but like I said, when
15 I've seen it in other jurisdictions, when you look at it,
16 the calls for service, they're always a little higher at
17 night, and then they go down later at night, but there are
18 so many factors. I mean how many patrol cars are on the
19 street? You know, I used to work at intake. On Sundays
20 nights there weren't very many people that got arrested
21 because there weren't very many patrol cars out there.

22 CHAIR RENEHAN: I think at this point we're probably

1 going to cut off questioning just in the interest of time.

2 Mr. DeWitt, we've let you go. Our other witnesses have been
3 on the order of 20 minutes.

4 MR. DE WITT: Okay. Well, I just came here to answer
5 the questions and they kept asking them.

6 CHAIR RENEHAN: Thank you for being here. I
7 appreciate that very much, and I appreciate your patience.

8 MR. DE WITT: I'll get the answer to you.

9 MEMBER NOONAN: Thank you.

10 At this point we're going to move on to
11 old business. Assistant State's Attorney Hayman, you're
12 going to supplement the record?

13 MR. HAYMAN: This is my second memo, which apparently
14 you all definitely have. This does get into some calls for
15 service data. Chief Toerpe and I just ran out of time,
16 given the time constraints that we had when we spoke at a
17 March meeting. And the point here for the second memo just
18 is to illustrate that our encounter spas, places with a live
19 business in particular, have been a real drain on police
20 resources because they do generate so many calls for service
21 in comparison to randomly selected commercial uses in
22 unincorporated DuPage County.

1 What I did was I picked one place for
2 2016/2017 where we had an encounter spa that was open for
3 those entire years, both of those year-periods, and I
4 compared it to other businesses that were also open for
5 those entire two-year period, one of which included a strip
6 mall with a bar, because in a number of the studies, they
7 make reference to places with liquor licenses being the next
8 most common place to adult businesses as having negative
9 perceptions by real estate professionals and by the public,
10 so I selected one with a tavern.

11 The encounter spa strip mall generated,
12 in one year, 30 calls for service, and another year 31 calls
13 for service. The lion's share ratio was dedicated to that
14 -- was for that particular business, not the other
15 businesses in the mall. One of the years it was 23 of the
16 calls, 23 out 30, were to the encounter spa, and then the
17 other year it was 22 out of 31.

18 By comparison, the other two generic
19 businesses, the one that was just a retail service industry,
20 they had one call over the entire two-year period.
21 The tavern had two calls in one year and five calls in the
22 other year.

1 And to get to Mr. DeWitt's comment about
2 calls for service, I did review them individually. I
3 excluded any of the ones that were for auto accidents out in
4 the street. I also, in my memo, identify when the call for
5 service was, for example, for a vehicle lockout or for a
6 medical assist, activated alarms. The calls for service at
7 the encounter spas did not involve those sorts of calls.
8 Those calls were all for criminal damage to property,
9 unauthorized credit card charges, theft, batteries,
10 disorderly conduct charges, and drug possession.

11 CHAIR RENEHAN: Well, thank you for all your work on
12 this. You've done a great job.

13 And is there any other old business?

14 (No response.)

15 CHAIR RENEHAN: New business?

16 (No response.)

17 CHAIR RENEHAN: I just have a comment. We have
18 received testimony, case law and studies. We've instructed
19 attorneys, state's attorneys, to return with an ordinance.
20 We're taking into consideration what we've heard today, and
21 you can expect an ordinance to be received probably by the
22 end of the week.

1 MR. MC CARTHY: That's fair.

2 CHAIR RENEHAN: Any thoughts or comments? Just as a
3 housekeeping note, email to me, Paul and Conor. Do not send
4 it to the whole committee, because then we have a quorum
5 issue.

6 Our next meeting will be May 28th, and we
7 will discuss and deliberate what we received.

8 No other comments, we stand adjourned.
9 Thank you.

10 (Which were all the proceedings
11 had at the above-entitled
12 meeting.)
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A	<p>agenda 20:3,12 ago 11:17 16:7 28:15 38:18 ahead 8:19 airplane 25:1,12 25:20 alarm 32:21 alarms 40:2 49:6 albeit 5:18 alcohol 13:3,3 alluding 40:6 altogether 20:2 21:7 Amendment 12:21 13:10 18:1 28:10 33:18 American 14:21 amount 27:21 analysis 46:1 Angeles 23:15 anger 19:20 answer 6:19 7:16 18:21 22:10 32:8,12 43:5 47:4,8 answered 20:13 34:19,21 answers 4:4 30:11 Anthony 2:16 4:20 28:7 anybody 9:11 16:4,5 22:11 27:16 34:12 anyway 9:11,17 10:2,17 15:6 16:11 17:4 18:8,18 22:11 25:7 27:5 29:8 apart 15:6 apparatus 26:1 apparently 11:10 18:6</p>	<p>39:6 47:13 appearances 10:21 application 13:19 14:6,10 27:19 applies 34:22 apply 13:3 15:15 15:22 18:11 28:9 appreciate 7:20 23:14 47:7,7 apprehended 9:5 approval 4:10 14:10,10 approved 4:17 28:3 April 4:11 area 7:22 26:10 42:13 argue 12:19 argued 14:22 argument 15:13 19:7,8 34:11 37:1 42:22 43:9 arms 19:8 Army 22:5 arrest 17:22 arrested 46:20 arrests 17:18 articles 17:16 aside 23:14 28:17 asked 26:5 asking 47:5 aspect 14:17 aspects 12:20 assist 49:6 Assistant 2:8,16 44:5 47:11 Association 9:1 assume 16:18</p>	<p>19:13 30:20 attempt 30:8 attorney 2:8,16 3:20 4:20 8:8 18:6 19:1 22:16 47:11 Attorney's 11:18 attorneys 49:19 49:19 attraction 32:1 authority 5:19 auto 49:3 available 7:17 aware 42:17 45:9 aye 4:16</p>	<p>bet 35:14 37:10 betting 45:20 big 5:7,13 26:15 37:2 41:20 bigger 28:19 32:1 bit 26:7 28:21 37:22 42:8 Blackstonian 29:6 Blockbuster 27:6,7 board 2:18 6:21 7:4,10,16,18 8:22 9:6,7 10:4 12:12 13:19 bombarded 29:22 book 21:13 bookkeeping 37:20 bookstore 39:8 booth 25:5,9 27:11 30:18 36:4 booths 24:4,6 25:3,6 27:13 30:17 31:9 43:3,12 born 7:15 bothered 25:14 bottom 13:22 14:15 Boutique 4:3 brand 17:12 brief 6:20 BRIGGS 2:11 bring 45:14 brought 6:18 7:14 buff 27:1 buffering 27:4 Building 1:10 2:10</p>
			B	
			<p>B 8:14 back 6:1 8:20 14:17 15:4 17:3 20:11 25:11 26:4,8 29:2 background 8:15 38:1 43:15 44:4 bad 43:1 band 11:9 bar 48:6 based 16:9 19:5 basically 9:3 basis 22:20 31:18,19 batteries 49:9 battery 46:8 beginning 20:22 behavior 46:9 belaboring 42:9 believe 3:21 9:4 11:22 20:8,19 beneficial 24:6 best 18:21 21:6</p>	

<p>bunch 9:15 Burger 34:11,16 34:17,22 35:2 35:7,10,15,21 36:15 38:19,21 39:4,12,17 burglaries 35:20 burglary 32:22 46:9,10 business 1:1,9 7:2,3,7,8,22 10:15 11:17 13:7,7,8,11,17 24:4 26:6,12 26:14 28:4,8 28:11 29:14,15 31:14,15 32:14 32:15 33:11,14 33:16 34:13 35:6 36:3,10 36:14,16,20 37:3,18 38:3 38:10,11,16 39:3,6,11,21 40:6,22 41:2,6 41:7,12,16 45:10,13 46:7 47:11,19 48:14 49:13,15 business' 32:6 businesses 9:9 9:10 10:19 12:21 15:1 26:20 37:17 38:3,5,9 39:9 40:5 41:22 43:14 45:19 48:4,8,15,19 busy 45:2 buys 32:2</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C.S.R 1:11 51:4 calculated 20:1</p>	<p>California 10:9 10:10,11 call 3:2,3 9:3 36:7 44:3,3,11 44:12,14,17 45:19 48:20 49:4 called 10:8 calls 42:15 44:5 44:19 45:3,17 46:7,12,16 47:14,20 48:12 48:12,16,21,21 49:2,6,7,8 cameras 30:16 30:17,18,21 31:8,12 32:21 34:3 cancelled 5:4 cancer 23:16 candidate 21:17 capable 13:7 capacity 44:1 car 44:14 card 49:9 cars 46:18,21 CARTHY 2:8 50:1 case 4:20 12:17 12:22 14:2,18 20:17 34:20 49:18 cases 5:17,19,22 28:6 cash 40:6 catch 18:5 categorize 35:5 category 24:12 cause 15:1 51:8 causes 27:4 29:16 38:20 censorship 14:1 center 29:6 Century 29:2</p>	<p>certain 43:16 certainly 27:13 CERTIFIED 51:14 certify 51:6 Chair 2:2 3:1,15 3:16 4:2,9,14 4:17 5:21 6:7 6:10,12 7:20 7:20 8:6,12,16 10:6 17:14,16 18:22 20:22 23:9,20 24:1,9 25:22 27:9,18 28:16 30:4 42:7 46:22 47:6 49:11,15 49:17 50:2 Chairman 21:1 change 26:18 CHAPLIN 2:18 charges 49:9,10 charter 12:9 charters 12:10 Chicago 11:3 23:17 Chief 2:11,13 14:5 47:15 chime 29:18 CIOSEK 1:11 51:4 city 12:3,6,17 29:9,22 claiming 20:16 clarify 40:21 clean 26:21,22 27:5,13,14 cleaning 27:4,11 27:17 31:4 cleans 37:20 clerk 2:19 3:5,7 3:9,11,13,15 4:8 25:8,11 31:5 33:2</p>	<p>37:19 41:16 client 18:11,13 20:13,15 21:8 22:8,21,22 27:1 30:13 36:1,17,19 38:5,11,13,15 client's 22:9 33:12 36:13 37:17 39:3,11 clients 25:3 close 21:7 28:5 31:21 35:19 40:15 closed 33:1 34:4 34:11 37:3 closing 37:1 Club 9:1 clubs 9:3,15,19 10:1,1 clusters 15:1 Clyde 3:20 6:14 8:8 Code 2:14 combat 7:4 come 11:14,20 25:8 27:1 31:14 36:2 38:8 44:13 45:14 comes 20:6 22:8 22:17 24:11 25:3 32:2 36:14 comfortable 26:13,14,19 coming 11:3 38:5 41:18 42:12 46:6 comment 4:7,9 49:1,17 comments 21:2 50:2,8 commercial</p>	<p>47:21 commission 21:16,16,19,20 51:16 commissioned 1:12 51:5 committee 1:1,9 3:3,18 5:16 12:3,4,6,10,11 19:14,22 20:19 23:10 30:6,9 38:1 50:4 common 48:8 Communicati... 2:13 Communist 22:6 company 10:8 10:13 compare 45:1 46:11 compared 48:4 comparison 47:21 48:18 compelling 15:19 42:22 complete 51:10 compliance 28:11 complies 16:7 component 26:17 concentrated 15:13 concept 13:1 29:12 concern 11:13 20:1 21:11 22:9 23:4,7,8 25:18 concerned 21:9 concerns 23:21 conclusion 33:15</p>
--	---	---	--	---

<p>conduct 49:10 conduit 7:17 Congress 21:19 connections 10:3 Conor 2:8 50:3 consider 38:8 consideration 6:8 8:17 49:20 consistency 38:4 Constitution 29:2 Constitutional 28:20 30:8 34:1 Constitutionally 7:22 38:14 constraints 47:16 contacted 9:13 content 15:15,16 15:17 conventional 40:2 conversation 12:11 convinced 9:17 Coordinator 2:9 2:15 copy 16:18 17:1 corporate 6:17 corporation 10:9 corporations 10:19 correct 4:1 51:9 corrected 8:14 council 29:22 counsel 4:2 6:17 6:17 7:15 counter 32:10 36:5 46:4 country 10:20 21:20</p>	<p>County 1:1,9,10 2:11,18 4:19 6:21 7:4,10,12 7:16,18,21 11:12 12:12 21:4 27:17 38:10,11 47:22 51:2,6 couple 8:20 19:20 23:17 30:10 42:11 43:2 couples 26:13 31:14 course 21:19 29:5 45:5 court 12:22 14:2 14:9,11 15:9 15:13,20 courtesy 4:4 courts 28:1 29:1 cramped 36:22 created 12:3 30:7 creates 19:2 24:18 credit 49:9 crew 27:3 crime 21:21,22 34:12 crimes 7:11 criminal 43:16 49:8 Cronin's 21:2 Cub's 11:12 curiosity 43:4 curious 46:11 currently 38:10 customer 36:4 customers 26:8 37:21 cut 47:1 cuts 21:8</p>	<p style="text-align: center;">D</p> <hr/> <p>D 10:14 DA 44:5 Dallas 12:17 14:4 damage 49:8 danger 41:9,11 dark 7:6 16:13 data 45:5 47:15 DAWN 2:3 day 26:22 33:4 34:18 35:14 46:12 days 14:5,7,12 23:17 28:2,2 daytime 41:18 DE 2:3 3:6 4:1 5:9,13 8:8,14 8:20 10:7 17:3 17:7,10,15,17 19:9,12,15 20:9,20 21:3 22:20 23:6,14 23:22 24:7,11 24:13,15 26:2 27:12,22 28:17 30:19,22 31:3 31:9,11,17,20 32:8,18 33:20 34:15,19 35:3 35:9 36:8,22 37:7,9,12 38:17 39:13,15 39:16 40:1,5,8 40:10,13,14,20 41:4,11,13,21 42:5 43:5 44:2 44:10 46:14 47:4,8 deal 25:4 26:15 36:2,6 dealings 43:22 dealt 11:17 12:15</p>	<p>DEBORAH 2:14 decades 7:8 December 20:11 decide 12:13 13:5 23:3 decided 23:2 decides 14:15 27:22 decision 13:1 14:20 27:20 dedicated 48:13 defined 16:5 definitely 47:14 deliberate 50:7 deny 14:7 department 2:10 14:14 22:6 44:21 depending 33:3 depends 36:22 DeSart 3:5 determine 33:8 Detroit 14:22,22 developed 9:18 DeWitt 3:21 6:14,17,18 7:14,17 8:2,8 8:12 12:18 47:2 DeWitt's 49:1 died 10:16 difference 36:13 39:3 41:8 different 17:4 20:3 31:22 35:7 39:1,13 39:17,22 41:22 42:1 43:9 45:19 difficult 44:20 45:6,12,16 dingy 26:21 directed 16:1</p>	<p>disagree 43:12 disagreement 11:18 discretion 13:5 discretionary 13:1 discuss 50:7 disorderly 49:10 disperse 15:6 displays 16:6 dispute 24:15 distasteful 39:5 doctor 23:17,18 document 12:10 documented 42:17 documents 13:20 doing 11:3 18:2 19:22 30:2 36:9 45:21 46:6 door 25:5,8 doors 24:5,8,9 24:18 25:15,17 25:19 draft 16:14 drain 47:19 drawer 13:22 14:15 draws 43:15 drive-thru 35:17 driver 44:15 driving 44:14,15 drug 49:10 drunk 36:15 44:15 du 1:1 10:1 51:2 DUI 46:5 duly 5:1 8:4 51:5 DuPage 1:9 2:11 2:18 4:19 7:3 7:12,15 11:11 38:10 47:22</p>
---	--	--	--	---

<p>51:6 dust 27:3 duty 31:5 DVD's 26:10,15 31:2 dynamic 43:10</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>early 32:15 ears 39:10 earth 29:6 easier 40:1 easy 17:21 18:4 40:9 effect 12:2 effects 12:15 15:10 16:2,10 38:21 EILEEN 2:19 either 20:21 25:11 32:16 46:14 element 27:7,17 43:17 Elliott 2:5 3:7,8 4:12 18:22 19:1,10,13,17 20:14 21:1 22:13 23:5 31:18 email 43:7 50:3 employees 9:18 9:22 22:5 46:4 empty 35:11 enact 33:9 enacted 18:12 encounter 47:18 48:2,11,16 49:7 encourage 43:16 encourages 26:4 enforcement 2:14 42:16 43:15 44:4</p>	<p>engaged 22:18 enter 6:7 Enterprise 6:18 entertain 4:10 entertainer 9:5 entertaining 25:13 entire 48:3,5,20 51:10 entitled 42:14 establishment 45:11 estate 48:9 Estes 21:16 event 11:1 everybody 17:22 25:1 32:1 38:22 evidence 6:3 41:10 exactly 41:1 example 21:12 25:20 27:11 31:22 33:4 38:22 49:5 excluded 49:3 excuse 36:16 Executives 9:1 exist 7:12 existing 28:4,8 exists 11:11 expect 49:21 expense 40:19 expensive 40:17 experience 13:8 24:19 45:9 46:1 experiences 19:6 expert 27:4 38:14 39:12 expires 29:15 51:16 express 13:11 extend 4:3</p>	<p>extinguish 18:5 eye 31:5 eyesore 42:14</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 14:4 20:20 fact 10:15 12:16 14:13 23:11 34:15 fact-finding 30:9 fact-gathering 19:3 factories 29:4,11 factors 46:18 fair 23:4 36:1 50:1 fairness 28:10 29:1,14 familiar 11:11 12:19 13:1,9 22:16 42:12 fan 11:12 Farm 1:10 fashion 38:2 father 10:16 favor 4:14 Fawell 6:14,16 8:21 11:17 19:15,19 Federal 9:13 feet 15:6 field 24:14 46:6 Fifth 22:1 fight 9:15 figure 30:12 37:7 file 18:17 final 3:20 46:6 finally 5:3 9:17 find 22:9 30:13 32:4 39:5 43:6 fine 18:7 finger 9:9</p>	<p>Firestorm 10:9 10:12,13,18 firm 12:18 first 9:14 10:7 12:21 13:10 18:1 28:10 29:18,19 33:18 five 48:21 fix 15:21 floors 27:2 flown 3:21 25:1 Flying 21:13 folks 11:15 foot 32:13 foregoing 51:9 forever 14:11,13 form 14:1 former 14:21 forth 51:11 forward 18:1 four 3:19 7:8 frame 32:14 frankly 19:20 friends 24:21 front 26:9 44:16 fronts 15:5 fundamental 29:14 funds 13:6 furnish 42:21 furniture 39:19 40:3,3,11 fussing 28:18 FW/PBS 12:17</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gambling 15:5 gaming 13:2,9 gates 40:16 general 32:5,18 generally 16:1 18:9 generate 47:20 generated 48:11</p>	<p>generations 26:18 generic 48:18 gentleman 10:14 gentlemen's 9:3 10:1 getting 42:8 give 14:8 19:9 21:12 22:12 30:11 37:22 given 8:13 16:22 32:2 33:10 47:16 gives 41:16 giving 42:4 go 8:19 12:6 13:18,19 17:22 18:1 23:17 24:10,14 25:11 25:12 29:2 33:19 46:17 47:2 goes 14:17 27:15 35:4,7 going 4:19 14:15 17:9,21 20:21 21:1,5,9 23:2 24:13 25:7 26:3,19 29:15 33:1 34:16 36:12,22 38:18 40:21 42:7 44:17,22 45:1 45:3 46:9 47:1 47:10,12 good 12:13 18:6 23:22 28:9 32:8 34:2 goods 43:20 government 9:13 grab 40:4 graduate 11:7 grant 14:7</p>
--	--	--	---	---

<p>great 23:8 49:12 greatly 22:19 grew 11:6 42:12 grocery 37:10 37:13,16 group 6:13 guard 32:22 34:5,7 guess 10:1,7 16:11 17:19 19:15 20:6 26:19 40:9 44:2 guy 11:2 13:20 44:13 guy's 29:14 guys 42:22</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>half 26:5,6 halls 15:2 hamburgers 35:12 handled 12:18 happen 7:7 happens 7:6 37:17 43:20 44:16 happy 7:15 10:4 43:6 harm 27:10 33:11 harsh 27:12 Hayman 2:16 4:20 5:2,10,15 6:2,9,11 17:1,6 17:9,12 24:8 47:11,13 head 36:19 heads 11:2 45:21 health 23:21 hear 3:19,20 23:12 24:2 38:9</p>	<p>heard 49:20 hearing 7:21 51:8 hearings 19:21 21:22 22:5 heavens 29:7 held 9:22 23:11 help 6:4 9:14,15 10:5 helpful 24:2 hereinabove 51:11 hey 9:13 14:22 16:18 36:16 Hi 30:6 high 11:8,8,9 37:16 higher 43:18 46:16 highly 40:6 historically 32:16 history 21:14 42:22 Hmmm 13:21 Hoc 1:9 3:3 holding 10:13 home 32:2 36:12 36:16 Homeland 2:12 honest 19:22 22:19 honestly 19:17 hope 23:3 30:7 33:9 hopefully 30:11 30:14 hoping 32:11 horrible 9:8 Hoss 2:9 5:8,11 43:7 HOUDEK 2:14 hours 32:19 33:14,21 34:1</p>	<p>34:18 35:14,19 36:18,21 37:10 41:14 46:10 house 12:3,5 housekeeping 50:3 houses 29:11 housing 29:3 human 6:21 7:4 7:10,18 8:22 9:8,16 hundreds 9:2 16:17</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>ICE 9:4,13,14 idea 12:13 20:20 34:2 ideas 30:13 identified 37:9 identify 38:3 49:4 illegal 17:21 18:2 Illinois 1:11,13 13:2 18:3 28:20 29:1 51:1,6 illusory 14:13 illustrate 47:18 imagine 32:3 33:6 implementing 20:2 important 15:12 26:17 31:14 32:4 impose 34:1 38:18,19 39:8 imposing 40:19 impossible 29:21 inappropriate 46:9</p>	<p>incident 44:7,10 incidents 42:17 42:17 include 14:10 16:2 included 29:12 48:5 includes 31:4 individual 5:19 individually 49:2 industry 18:14 26:7 33:10 34:14 48:19 industry-wide 31:21 INFELISE 2:15 information 5:22 6:5 8:16 9:12 42:21 46:13 informative 9:21 inherited 10:16 initiated 46:5 inquired 11:16 inquiry 19:22 21:21 22:19 inside 31:9 instructed 31:5 49:18 intake 46:19 integrity 23:10 intended 20:4 interaction 25:19 interest 15:19 47:1 interested 10:2 interesting 21:14 internet 16:14 17:13 26:16 interrupt 42:7</p>	<p>invented 25:4 inventory 37:14 37:16 Investments 10:9 invite 25:19 invites 24:20 involve 49:7 involved 9:19 13:10 23:1 38:10 issue 6:21 19:2 23:11 36:20,20 37:3 50:5 issues 36:2 44:2</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>January 17:11 20:11 Jeff 6:14 JESSICA 2:15 JIM 2:10 JOAN 2:13 job 18:6 37:15 49:12 jockeys 25:6 joints 9:2 jour 10:1 Julie 2:2 3:2 24:13 July 51:18 jurisdiction 44:19 jurisdictions 24:19,22 45:18 46:15</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>Kaufaver 21:20 keep 27:13 29:15 31:5 keeps 25:13 Kaufaver 21:15 21:16,16</p>
---	---	---	---	--

<p>KEITH 2:11 kept 47:5 key 6:5 kill 21:7 kind 9:14 13:3 13:16,21 14:20 15:9,10,14,15 15:22 16:8 25:19 26:20 29:1 34:5 35:20 42:8,9 44:3,14 45:16 kinds 16:9 26:11 King 34:11,16 34:22 35:2,7 35:10,15,21 36:15 38:20,21 39:4,12,17 Kings 34:17 kitchen 40:11 knew 22:2 know 9:7 10:2 11:5,15,19 13:6 14:22 15:3 16:15,18 18:3,9,15 20:18 21:6 22:5,10 23:3 24:11 26:19,21 27:5,6 28:18 29:5,11,20 31:15 32:9,13 33:3,22 34:13 35:21 37:20 39:18 40:2 41:8,17 42:13 43:1,8 44:1 46:19 known 20:17 knows 19:15 25:1 38:22 KOTTMEYER 2:17</p>	<p>L</p>	<p>Lake 11:9 44:15 45:2,18 Lane 43:10,10 largely 20:4 Las 3:21 8:8,9 11:2 21:14 31:22 35:13 late 32:15 41:6 law 4:20 10:10 12:18 15:18 18:3 29:7 42:16 43:15 44:4 49:18 lawful 28:19 29:13 30:2 laws 40:16 lawsuit 18:17 lawyer 10:8 12:7 33:18 learn 22:1 leave 32:22 36:11 40:4 leaving 25:19 left-hand 5:11 legal 7:22 10:3 19:7,7 30:8 33:11 35:6 legitimate 38:16 let's 15:8 24:5 39:19 letter 5:12 17:17 license 13:4,14 13:20,22 14:7 14:8,9 16:4,5,6 16:8 27:20,20 28:6,9 licensed 10:10 licensee 13:6 licenses 48:7 licensing 12:14 12:15,16,20 13:2,3,4,11,18 14:4,6 16:2,3</p>	<p>16:12 18:10 24:12 27:10 28:5,7,14 30:15 life 37:15 light 25:2 lights 25:9 32:20 limit 13:16 LINDA 1:11 51:4 lingerie 26:11 31:2 lion's 48:13 liquor 15:2 38:21 39:1,2 40:14,17 45:8 45:11,13 48:7 litigator 19:1 little 11:11 24:3 26:7 27:12 28:21 33:14 37:22 38:17 40:1 42:8 44:1 45:5 46:16 live 38:14 47:18 lived 11:7 LIZ 2:18 local 6:16,18 7:8 7:14 lock 25:2 locked 25:4,8 lockout 49:5 logical 33:15 long 10:15 11:15 16:6 27:16 29:10 longer 11:11 longest 38:11 look 6:5 11:21 18:19 20:21 26:9 44:13 45:18 46:15 looked 9:8,14 11:21 22:21</p>	<p>looking 16:12 18:10 23:10,22 28:21 30:13 looks 14:12 Los 23:15 lose 26:14 lot 12:16 21:10 22:22 24:19 25:15 26:14 27:15 28:9 31:3,4,6 33:5 34:8 35:11,12 35:20 39:4 45:20 46:7 lots 18:14,14 45:3 Louis 9:7 love 13:13 Lover's 43:10,10</p>	<p>41:10 43:8 45:13 46:18 meaningful 27:10 means 25:9 meant 21:7 medical 49:6 meeting 5:4 12:12 25:14 34:12 47:17 50:6,12 Member 2:3,4,5 2:6 3:5,6,7,8,9 3:10,11,12,13 4:12,13 5:9,13 18:22 19:1,10 19:13,17 20:14 21:1 22:13 23:5 24:13 30:5,6,20 31:1 31:7,10,13,18 31:19 32:7,9 33:7 34:10,17 34:21 35:4 36:1,18 37:5,8 37:11,22 39:13 39:16 40:5,10 40:12,13,20 41:11,21,21 42:10,11 43:8 44:9 46:3 47:9 members 2:1 4:15 9:6 12:2 19:14 22:6 29:21 memo 5:7 6:2,11 45:6 47:13,17 49:4 memos 5:6 men 26:9 mentioned 27:18 31:13 mentioning 8:21 met 19:10,11</p>
	<p>M</p>		<p>M 1:11 magnet 34:8 making 18:2 34:4 36:15 41:14 mall 48:6,11,15 Manager 2:10 March 47:17 massage 17:5,19 matter 14:13 28:10 29:9 34:15 MC 2:8 50:1 McCarthy 22:5 McDonald's 34:18 35:7,10 35:15,22 39:18 mean 20:9 23:15 25:15 27:13 32:21 33:20 35:11 36:8 39:2,10 40:3 40:16 41:5,6,7</p>		

22:15 methods 40:2 Michigan 9:4 microscope 18:12 middle 27:2 midnight 43:19 43:21 minds 12:1 mine 9:10 Mini 14:21 minute 14:12 minutes 4:10,17 16:7 47:3 mixed-up 15:10 mode 19:3 model 25:12 mom 39:19 40:10 money 26:12 month 23:12 months 3:19 38:6 morning 27:2 28:21 33:6 35:8,13 36:5 37:2,13,18 39:12 41:7 mornings 32:15 motion 4:10 move 6:13 21:4 38:7 47:10 moved 4:12 movie 25:7,9,10 25:16 26:1 movies 16:6 24:16 25:11 31:16 <hr/> <p style="text-align: center;">N</p> <hr/> nailed 14:20 name 3:2 8:6 34:8 named 10:14	narrowly 15:19 national 9:1 natural 29:15 nature 45:10 necessarily 22:8 33:11 34:2 need 8:3 23:17 24:14 28:18 42:2 43:18 45:1 needs 37:21 negative 48:8 Nevada 8:9,10 10:11 never 12:10 22:15 29:17,21 35:21 new 17:12 24:21 28:12 29:3,17 29:18,19 49:15 news 20:6 nice 14:12 27:6 NICK 2:17 night 27:2 33:5 34:4,16 35:10 35:16 37:4 41:10,12,20 42:3,6 43:14 46:17,17 nights 46:20 nobody's 32:21 nonconforming 28:19 29:13 30:2 Noonan 2:6 3:9 3:10 4:13 42:10,11 43:8 44:9 46:3 47:9 North 1:10 Notary 1:12 51:4,15 note 8:12 50:3 novelties 26:10 nuggets 6:5	nuisance 42:14 nuisances 18:4 number 19:15 24:16 41:15,15 42:3 48:6 numbers 15:4 <hr/> <p style="text-align: center;">O</p> <hr/> oath 4:22 5:2 8:4 19:4,7 observations 19:5 obvious 45:8 obviously 32:10 37:5 40:15 office 2:12 8:9 11:19 42:19 officer 2:13,14 44:8 Oh 23:18 okay 5:21 6:10 7:20 9:2 10:7 15:9,21 16:6,6 18:18 19:10 22:20 24:7 27:18 28:4,16 29:14 30:20 32:7 34:4 36:4 38:17 40:10 44:2,11 47:4 old 43:20 47:11 49:13 OLSON 2:13 once 26:18 one-person 41:16 ones 42:20 46:5 49:3 Ooh 25:17 open 7:7,9 23:12 25:19 32:19 33:2 34:6,16 34:18 35:10,13 35:16,16,17,19	36:20 37:10,12 39:16,18,20 41:2,9,12,14 41:20 42:2,5 43:13,14,18 48:2,4 operate 7:9 11:16 14:1 38:16 operating 43:1 46:10 operation 33:21 34:1 36:18 opinion 15:10 38:14 42:13,15 43:14,15,19 opportunity 41:17 order 3:3 26:11 38:7 47:3 ordinance 12:5 12:14 14:4 16:3,4,12,14 18:10,16 28:14 28:22 30:15 33:9,16 49:19 49:21 ordinances 12:16 16:17 organization 9:2 9:4 10:4 23:1 organized 21:21 21:22 originating 46:7 outset 20:10 outside 34:5 overview 4:20 owned 10:14 owners 46:3 owns 10:18 12:3 <hr/> <p style="text-align: center;">P</p> <hr/> p.m 1:4 packet 16:22	17:4,7 PAGE 1:1 51:2 palatable 30:3 Palatine 11:7,8 Park 11:6,9,10 parking 31:3,4,6 34:8 35:11,20 46:7 parlors 15:2,3,5 17:5,19 part 5:10 26:9 31:13 participation 3:18 particular 11:16 47:19 48:14 particularly 22:15 partner 7:9 12:19 14:21 Party 22:6 pass 12:4,14 passed 18:19 patience 47:7 patrol 46:18,21 Paul 2:9 5:7,7 50:3 pay 34:5 peculiar 34:13 people 9:9 12:1 18:20 19:4 21:22 22:22,22 24:16,17,21 25:5,13,18 26:19 28:18 29:22 31:1 33:3 35:15 36:4,6 37:12 39:4,5 41:18 43:16 46:20 percent 10:14,18 percentage 31:15 perceptions 48:9
---	--	--	---	--

<p>period 48:5,20 person 36:5 personal 19:5,6 perspective 38:1 photograph 17:20 picked 48:1 picture 28:19 piece 19:19 place 9:5 10:21 11:10,16 17:20 21:6 24:10 26:10,13,22 27:5 29:18,19 31:4 34:12 38:20 41:9 43:1 45:4,7,11 48:1,8 51:11 places 15:2 21:4 26:8 32:16,19 33:22 35:4,6 38:19,22 39:2 45:8 47:18 48:7 planning 2:9 14:14 played 11:8 playing 25:10,10 Playtime 14:19 please 3:4 4:3 8:6 plus 5:16 28:13 point 4:6 6:2,13 7:5 21:1 33:9 34:21 35:18 38:1 39:7 41:13 42:9,18 46:22 47:10,17 pointing 9:9 police 14:5 36:7 44:8,12 45:9 47:19 policy 36:2,6 politically 29:17</p>	<p>29:20 Pool 15:2 pop 39:19 40:10 position 23:5 possession 49:10 potential 34:12 potshots 23:6 practical 29:9 practice 10:10 practiced 10:11 practitioner 22:16 precedent 21:10 predecessors 10:12 premises 45:8 preordained 20:5,7,14,16 20:18 21:5 22:3 present 2:1,7 6:11,15 presentation 3:22 4:5 5:2 presentations 4:18 presidential 21:17 pretext 20:2 22:18 pretty 12:19 18:4 25:7,13 25:20 28:2 31:11,21 32:4 41:6,19 42:12 45:2 previously 5:1 primary 12:16 prior 14:1 19:14 probably 12:3 13:8 28:7 33:5 35:16 37:2 41:5 42:20 46:22 49:21</p>	<p>problem 14:9 15:4 24:18 34:2 39:11 41:20 problems 15:2 25:15 34:9 35:20 39:1 proceed 8:19 proceeding 20:10 proceedings 1:8 20:4 50:10 51:7 process 9:20 33:18 products 26:20 professional 43:22 professionals 48:9 profit 41:15 program 9:18 prohibited 39:2 45:13 prohibiting 33:16 property 29:8 46:3 49:8 proposition 32:5 prostitution 7:11,19 17:5 17:19,21,22 18:5,16 20:2 protect 38:15 protected 12:21 18:1 proven 25:20 provided 4:21 19:4 provides 18:3 providing 19:6 public 1:12 2:17 4:7,9 27:15 38:15 48:9</p>	<p>51:5,8,15 public's 20:1 pull 44:16 pulled 44:15 purpose 30:11 33:7 purposes 39:22 41:3 42:2 43:13 put 8:10 9:12 11:19 14:15 17:13 23:12 24:5 29:12 32:5 34:7 37:14 puts 4:5 13:21 putting 15:14</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualified 1:12 51:5 question 10:7 12:4 16:21 19:9,17 20:7 22:13 30:5 33:7,19 34:19 34:22 40:21 41:21 42:15 questioning 47:1 questions 4:5 6:19 7:16 18:20 20:12 22:10 24:1,2 30:10,12 32:13 43:2 47:5 quick 6:12 15:11 quorum 3:17 50:4</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rackets 15:4 radiation 23:16 raised 7:15 raising 23:7</p>	<p>Rampart 8:9 ran 47:15 randomly 47:21 range 16:17 ratio 48:13 reach 20:4,8 reading 21:13 ready 5:4 8:2 real 13:1 41:9 45:16 47:19 48:9 reality 35:1 really 4:6 11:4 13:12 14:12,19 15:5 17:15 19:3,6 21:3 22:1,9,13 23:16 24:17 41:14 44:6,19 45:6,22 reason 10:22 14:8 21:8 32:11,19 35:9 39:8,10 41:13 42:3,6 reasonable 11:22 27:18,21 30:14,14 33:10 33:17 38:2,8 38:12 reasonableness 37:5,7 reasons 21:11 28:9 29:13 41:4 received 5:16 6:1 46:12 49:18,21 50:7 recognize 7:21 recognizes 7:21 record 6:8 8:7 8:17 17:9,10 22:17 47:12 reference 48:7</p>
--	---	---	---	--

referenced 5:19	35:21	ridiculous 29:3	SCHWALM	45:17,20 46:16
regulate 15:17	representing	right 6:2,7 8:16	2:19	47:15,20 48:12
38:2,3	20:15 45:11	13:14 25:2	scratching 45:21	48:13,19 49:2
regulated 30:17	require 26:3,3	28:20 29:6	scrutinize 18:12	49:5,6
regulates 14:14	required 27:11	30:1,4 35:3	SEAN 2:6	servicing 37:21
regulating 35:2	29:1 32:6	36:7	second 4:13 5:6	sessions 9:21,22
regulation 15:16	requirement	rights 29:8	14:19 26:6	set 38:13 51:11
15:16 30:9	15:14 27:10	risk 32:22 35:19	28:3 47:13,17	seven 23:15 44:5
33:16 38:18	28:5,8,13	Road 1:10	secondary 12:14	shadows 7:6
39:8	resembles 16:19	robbed 44:11,12	15:9 16:1,9	share 48:13
regulations	resolution 21:18	rock 11:9	38:20	shelves 37:14
15:22 33:21	resources 47:20	roll 3:3 11:9	secondhand	Sheriff's 42:19
38:9	respect 22:15	ROOM 1:2	15:3	44:21
relatively 16:19	respectfully	Roselle 44:21	secondly 24:17	shine 15:2,3,5
remarks 3:20	43:12	rowdy 36:3,15	29:17	shoe 15:2,3,5
remember 15:18	respond 11:1	rules 14:16 16:7	security 2:11,12	shop 39:19
29:7 37:15	17:15 18:8	18:9,11 38:13	32:20 34:3,5,7	40:11,11
38:17	responded 4:16	run 13:6 29:10	35:11 36:20	shorter 5:18
Renehan 2:2 3:1	response 3:14	35:19	39:14,17,20,21	shorthand 51:7
3:2,15,16 4:2,9	14:6 29:5 36:3	running 10:17	39:22 40:2,16	51:14
4:14,17 5:21	49:14,16	13:7,8 38:11	41:3,15 42:2	shot 19:9 22:12
6:7,10,12 7:20	restaurant		43:13,18	shoulder 25:17
8:6,12,16 10:6	35:17	S	see 6:14 26:16	show 7:2 11:14
17:14,16 18:22	restraint 14:2	S 8:9	28:19 39:10,11	24:21 38:20
23:9,20 24:1,9	restrictions	sales 38:22	43:9 45:19	45:22
25:22 27:9,18	38:13	SAM 2:4	seen 12:10,11	shut 25:2 28:8
28:16 30:4	restroom 25:2	SART 2:3 3:6	16:15,16,16,17	38:7
42:7 46:22	25:12,20 26:1	5:9,13 24:13	16:19,20 22:7	side 5:11 44:21
47:6 49:11,15	27:14	39:13,16 40:5	28:7,13 45:4,5	44:22
49:17 50:2	restrooms 27:16	40:10,13,20	46:15	sides 23:11
Renton 14:18	result 10:20 20:5	41:11,21	selected 47:21	significant 14:3
15:10,12	20:7,15,16,19	Saturday 11:10	48:10	32:13
report 51:10	21:5 22:2	saw 16:13	sell 26:20 35:12	similar 10:19
reported 42:17	retail 26:9,10,12	saying 27:14	senator 21:18	simple 36:8
51:7	26:17 31:13,15	39:21,22 40:5	send 12:7 27:3	sir 36:16
REPORTER	31:22 32:3	40:9,20,22	43:7 50:3	sit 22:14
51:14	37:16 43:11	41:1,11 42:1	sense 24:22	situation 24:20
represent 10:8	46:8 48:19	43:20 45:22	sent 45:6	38:22
13:18	return 49:19	says 13:20 14:12	serious 9:17	situations 36:14
representation	revenue 31:18	16:4	serve 39:1 45:8	six 38:6
42:19	31:19	schedule 4:18	serves 4:2	smelling 45:14
represented	review 49:2	school 9:7 11:8,8	service 42:16	sobriety 46:6
10:12 11:15,18	rid 21:4,6	11:9 15:18	44:3,3,5,11,14	socializing 26:4
18:13 32:17	Ridge 11:6	29:8 37:17	44:17,19 45:3	somebody 11:14

27:15 32:12 33:1 34:6 36:9 36:11,14 44:11 somebody's 25:16 28:11 32:20 sorry 18:18 24:9 sort 16:12 19:6 27:13 sorts 49:7 sounded 21:5 spa 48:2,11,16 spas 47:18 49:7 speak 12:7 32:3 special 15:21 speech 13:12,14 13:17,21 15:14 15:15,16,16,17 15:17,22 16:1 38:19 39:5 spend 45:20 spike 45:7 spikes 45:19 split 31:6 spoke 47:16 spoken 19:13 squished 25:7 SS 51:1 St 9:7 stand 7:3,10,18 50:8 standing 34:5 start 4:19 started 26:8 state 1:13 8:6 22:6 40:15 51:1,5 state's 2:8,16 4:19 11:18 18:6 47:11 49:19 stated 42:1 statement 19:18 21:3	statements 19:20 statistically 44:6 stay 34:16 35:18 39:6 41:2,14 staying 36:20 38:6 steal 31:1 40:3,9 stem-to-stern 26:22 steroids 13:9 Steven 10:14 sticks 44:12 stock 37:14 stop 28:12 46:6 store 26:12 30:21 31:10,11 40:3 stores 15:3 37:13 40:14,17 stories 37:10 straightened 15:11 straightens 37:19 STRAN 2:10 street 44:15,21 44:22 45:2,2 45:18 46:19 49:4 strip 9:2,15,22 48:5,11 struggling 19:8 stuck 23:15 studies 5:5,16,20 5:22 6:3,6 16:10 17:8 48:6 49:18 studio 17:20 study 12:4 stuff 14:18 15:20 22:10 26:16 28:18 29:9 32:2 37:14	40:8,18 submission 8:10 8:14 submit 43:5 submitted 14:18 19:19 submitting 8:17 suburban 11:3 successfully 15:7 suggest 33:20 35:9 suitable 13:5,13 Suite 8:9 summaries 5:17 5:18 6:3 summarize 36:19 summary 5:5,15 5:17 Sundays 46:19 Superintendent 2:17 supplement 47:12 support 7:18 supporting 13:20 suppose 40:18 45:17 supposed 32:15 36:9 Supreme 14:11 15:9,13,20 sure 13:2 16:16 32:9 33:4 41:7 45:9 suspect 42:5 sustain 32:6 swear 8:3 <hr/> T <hr/> tailored 15:19 take 3:3 12:5	14:11,13 24:8 24:9,13,18 27:3 30:1 32:2 36:11,16 44:7 45:17 taken 1:8,9 14:8 51:8,10 talk 8:21 26:6 28:17 talked 16:7 35:14 talking 17:4 20:10 35:1 37:1,3 45:12 talks 17:5,7,18 tanning 29:4,11 taps 25:16 tavern 48:10,21 tell 18:11 21:10 22:14 24:3 28:1 31:21 32:4,10 33:13 44:6 telling 11:3,4 21:11 22:20 tells 22:17 27:1 Tennessee 21:18 terms 24:3,4 test 46:6 testify 11:21 testimony 1:8 19:2,4,5 49:18 51:7,10 Texas 10:10 thank 3:18 6:12 8:1,18 10:6 23:9,18 30:4,6 47:6,9 49:11 50:9 Thanks 42:11 theater 14:19 16:4,5 20:4 22:18 theaters 15:8	16:8 Theatres 14:21 theft 46:8 49:9 they'd 36:15 thick 5:7,13 thing 13:15 15:12 25:4 28:2,3 29:1 32:18 35:21 37:6 44:3,20 things 7:11 8:20 10:17 11:4,5 11:15 13:16 16:18 17:8,18 18:4 21:15 26:11 28:2 29:4 30:12 35:14 37:20 41:17 42:11 think 8:2 11:20 12:2,5,6,12 13:13 14:5 17:1 20:11,14 21:8,15 28:20 28:22,22 29:18 29:19 33:15 34:3,10 35:12 38:13 40:19 42:7,20 43:5 43:17 46:22 thinking 39:20 thought 5:14 33:18 thoughts 50:2 thousand 21:8 threat 46:8 three 15:17 Thursday 27:1 TIM 2:5 time 3:1 10:15 13:16 27:14,16 27:19,21 32:14 41:18 44:7,10 45:12,21 46:11
--	--	---	---	--

<p>47:1,15,16 51:10 times 18:15 today 3:19 4:19 19:2,4,14,18 49:20 Toerpe 47:15 told 18:14 23:1 Tony 6:12 topic 12:17 Tornatore 2:4 3:11,12 30:5,6 30:20 31:1,7 31:10,13,19 32:7,9 33:7 34:10,17,21 35:4 36:1,18 37:5,8,11,22 40:12 41:22 tough 44:6 tourist 32:1 town 32:3 41:9 trade 9:4 traffic 32:13 33:5 trafficking 6:22 7:4,10,19 8:22 9:8,16 trained 9:18 training 9:20,20 9:22 transcript 12:11 51:9 treatment 23:16 trip 24:14 troubled 19:18 20:13 troubles 22:19 true 51:9 try 24:21 38:2 trying 20:8 22:9 33:19 36:4,19 turn 41:19 turned 21:17</p>	<p>two 4:18 5:6 6:14 12:20 17:18 25:5 28:1,14 29:13 36:4 41:15,22 44:2 48:18,21 two-year 48:5 48:20 type 25:22 30:8 46:8 types 43:16</p> <hr/> <p style="text-align: center;">U</p> <p>ultimately 30:7 unauthorized 49:9 unbelievable 40:17 understand 23:5 23:7 33:21 37:8 understanding 12:9 unfortunately 10:16 unincorporated 7:3 42:20 47:22 unpopular 13:17 unreasonable 34:6 40:19 unwarranted 23:8 upheld 33:21 use 20:1 25:9 27:11 28:7 44:6 useful 9:21 uses 28:20 29:13 30:2 47:21</p> <hr/> <p style="text-align: center;">V</p> <p>various 33:22</p>	<p>Vegas 3:21 8:9 8:10 11:3 21:14 31:22 35:13 vehicle 49:5 vein 30:10 versus 12:17 14:18,21 31:16 viability 32:6 vice 21:17 video 30:16,17 30:17,20 31:7 31:12 Videos 26:15 view 29:1 viewing 24:4,5 31:16 43:3,12 Villa 11:10 visited 27:17 vouch 23:9 vulnerable 40:15</p> <hr/> <p style="text-align: center;">W</p> <p>Wait 14:11 walk 40:4 want 7:1,1,8,9 9:3,11,14,15 18:17,20 21:3 23:12 24:17 36:10 wanted 24:5 28:17 38:9 wanting 7:4 wants 6:20,20 7:5 wasn't 9:19 watch 25:11 watching 24:16 24:17,17 25:16 26:1 way 6:1 20:17 23:22 26:17 32:1,5 38:4</p>	<p>45:18 we'll 3:19,20 we're 4:19 9:17 12:19 19:3,21 20:8 21:5 30:13 35:1 42:8,8,17 46:22 47:10 49:20 we've 3:19 7:7 22:7 29:3,4,10 44:12 47:2 49:18,20 weeds 42:8 week 33:6 49:22 weekends 33:4 weeks 23:15 well-lit 27:5 went 9:20 11:19 21:15,20 44:18 weren't 46:20,21 Western 12:18 Wheaton 1:11 Wiener 10:14 window 13:19 wise 11:2 wish 18:17 23:20 witness 3:20 witnesses 4:4 47:2 WITT 4:1 8:8 8:14,20 10:7 17:3,7,10,15 17:17 19:9,12 19:15 20:9,20 21:3 22:20 23:6,14,22 24:7,11,15 26:2 27:12,22 28:17 30:19,22 31:3,9,11,17 31:20 32:8,18 33:20 34:15,19 35:3,9 36:8,22</p>	<p>37:7,9,12 38:17 39:15 40:1,8,14 41:4 41:13 42:5 43:5 44:2,10 46:14 47:4,8 women 26:13 word 10:1 words 19:21 work 6:19,21 7:15 9:12 25:20 32:9 46:19 49:11 worked 3:19 working 37:16 works 2:17 11:14 25:1,13 41:19 worse 22:4 worst 37:15 wouldn't 33:11 written 19:19 wrong 18:16,18 45:22</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p style="text-align: center;">Y</p> <p>yeah 5:15 9:16 9:17 13:13 17:1,6,9 19:1 21:3 23:20 27:13 31:19 32:9 36:8 40:13 41:6 year 10:17 38:6 48:12,12,17,21 48:22 year-periods 48:3 years 10:11,18 11:17 28:15 44:5 48:3,15 York 29:3,17,18</p>
--	---	--	--	---

29:19 Young 14:21 younger 26:19 <hr/> Z <hr/> Zay 3:13 Zebulon 4:2 6:17,20,20 7:7 7:22 10:18 12:15 24:3 25:22 26:7 32:2,12,16 35:4,5 39:3 40:17 41:20 42:3,5 44:11 44:16 Zebulon's 44:17 zero 44:20 45:7 zipped 10:21 zoning 2:9,10,15 14:10,10,14 29:5,12,20 30:2 <hr/> 0 <hr/> 084-002892 1:12 51:4 <hr/> 1 <hr/> 1:00 33:14,17 10 11:6 100 10:14,18 12-page 8:13 12:31 1:4 3:1 14 1:3 14,000 9:22 16 43:6 1951 21:15 1976 21:17 1980-something 10:13 19th 29:2 <hr/> 2 <hr/> 2:00 35:8	20 11:17 47:3 2016/2017 48:2 2019 1:3 2022 51:18 203 22:5 21 11:7 22 48:17 23 48:15,16 24 32:19 34:18 35:14,19 36:20 37:10 24/7 39:14,16,18 39:20,21 41:3 43:1,19 25 10:11,17 28th 50:6 <hr/> 3 <hr/> 3 51:18 3:00 33:6 36:5 37:2 30 14:5,7,12 28:2,2 48:12 48:16 31 48:12,17 3500B 1:2 <hr/> 4 <hr/> 4:00 33:6 35:12 37:13,18 39:12 41:6 40 5:5 40-some 5:16 410 8:9 42 5:5 420 8:9 421 1:10 43 5:5 <hr/> 5 <hr/> 50-plus 5:17 <hr/> 6 <hr/> 6:00 33:15,17 37:2 41:6	60 28:2 60's 15:4 <hr/> 7 <hr/> 7-eleven 40:12 40:13,22 41:5 42:2 7:00 43:19 <hr/> 8 <hr/> 8:00 37:4 89145 8:10 <hr/> 9 <hr/> 9th 4:11		
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