

Exhibit

1

McCALEB

vs.

LONG

DAN MCCALEB

October 13, 2023



Lexitas Legal TENNESSEE | 1015 Avery Park Dr | Smyrna, TN 37167 | (615) 595-0073 |
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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

DAN McCALEB, Executive Editor
of THE CENTER SQUARE,
Plaintiff,

Case No. 3:22-cv-00439

vs.

Judge Richardson

MICHELLE LONG, in her
official capacity as
DIRECTOR of the TENNESSEE
ADMINISTRATIVE OFFICE OF
THE COURTS,
Defendant.

Magistrate Judge
Frensley

Videconference Deposition of:
DAN McCALEB
Taken on behalf of the Defendants
October 13, 2023

Commencing at 11:57 a.m.

Deborah H. Honeycutt, LCR, Associate Reporter
Lexitas Legal TENNESSEE
1015 Avery Park Circle
Smyrna, TN 37167
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S T I P U L A T I O N S

The videoconference deposition of
DAN McCALEB was taken by counsel for the
Defendants, by Notice, with all participants
appearing at their respective locations, on
October 13, 2023, for all purposes under the
Tennessee Rules of Civil Procedure.

All objections, except as to the form of
the question, are reserved to the hearing, and said
deposition may be read and used in evidence in said
cause of action in any trial thereon or any
proceeding herein.

It is agreed that Deborah H. Honeycutt,
Notary Public and Licensed Court Reporter for the
State of Tennessee, may swear the witness remotely,
and that the reading and signing of the completed
deposition by the witness is waived.

A P P E A R A N C E S

For the Plaintiff:

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MR. JAMES McQUAID
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For the Defendants:

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Also present:

MS. BRIDGET CONLAN, Liberty Justice Center

* * *

THE REPORTER: Good morning. My name is
Deborah Honeycutt. I am a stenographic reporter
with Lexitas Legal TENNESSEE. My license number is
472.

Today's date is October 13, 2023, and
the time is approximately 11:57 a.m. Central time.

This is the deposition of Dan McCaleb in
the matter of Dan McCaleb, Executive Editor of The
Center Square vs. Michelle Long, in her official
capacity as Director of the Tennessee Administrative
Office of the Courts, filed in the District Court
for the Middle District of Tennessee, Nashville
Division. The Case Number is 3:22-cv-00439.

This deposition is being taken by
videoconference, and the oath will be administered
remotely by me. Any digital exhibits marked during
this deposition will be deemed as "original" for
purposes of said deposition.

At this time, I will ask counsel to
identify yourselves and state whom you represent.
If you have any objections with the procedures I've
outlined, please state so when you introduce
yourself. We will start with the noticing attorney.

1 MR. STAHL: Michael Stahl, representing
2 Michelle Long, the defendant.
3 MR. DOUGHERTY: Buck Dougherty
4 representing the plaintiff, Dan McCaleb. And just
5 one objection for the record. I don't recall this
6 being noticed as a video-recorded deposition which I
7 believe is required under the Rules. We're going to
8 reserve the right to raise that if it's to be
9 recorded, but I just want to get that for the
10 record.

11 THE REPORTER: I am recording that for
12 my purposes only, Mr. Dougherty.

13 MR. DOUGHERTY: Thank you.

14 MR. McQUAID: And James McQuaid also for
15 Plaintiff, Dan McCaleb.

16

17 * * *

18 DAN McCALEB
19 was called as a witness, and after having been duly
20 sworn, testified as follows:

21

22 EXAMINATION

23 QUESTIONS BY MR. STAHL:

24 Q. Okay. Mr. McCaleb, we'll begin. Can you
25 state your name for the record.

1 **A. Dan McCaleb.**

2 Q. And you understand that you're under oath
3 today, sir, right?

4 **A. I do, yes.**

5 Q. And are you represented by counsel?

6 **A. I am.**

7 Q. And who is that?

8 **A. Liberty Justice Center, Buck Dougherty,
9 Mr. Buck Dougherty, lead counsel.**

10 Q. Okay. Thank you. Have you ever given a
11 deposition or provided testimony in a court case
12 before?

13 **A. I gave one deposition many, many years ago,
14 18 or 19 years ago.**

15 Q. What was that case? Do you remember?

16 **A. The case name or number I don't remember. I
17 remember some very few details but no.**

18 Q. Well, let me just go over some procedures so
19 that we are on the same page since it's been a
20 while. The first is that if you can't hear me or
21 you don't understand a question please let me know.
22 It's really important that you understand the
23 questions that I'm asking before you give your
24 answer. So if that comes up, if there's technology
25 issues because we're remote or whatever, just feel

1 free to let me know, please. If you don't
2 understand something or need clarification, I can
3 definitely help you with that. It's best if you let
4 me finish my question before you start to give your
5 answer for a couple of reasons. One, so that you
6 know the question that I'm asking and then, two, so
7 that the court reporter can be sure to get down what
8 everyone is saying because if people start talking
9 over each other, the transcript just gets a little
10 bit messy.

11 In that vein, it's also important that you
12 give verbal responses. So sometimes during
13 depositions people will shake their heads or give
14 uh-huh or huh-uh answers. And, again, that's hard
15 for the transcript to reflect. So please do your
16 best to give verbal responses.

17 If you need a break, that's perfectly fine.
18 Just let me know. We can take a break. I don't
19 think this will take all that long, but if at any
20 time you feel like you need a break, that's
21 perfectly fine. You can let me know or let your
22 attorney know. The only thing that I ask is that if
23 I have asked you a question already, that you answer
24 that question before we go on break. Does that
25 sound good?

1 **A. Yes.**

2 Q. Great. As far as your mental condition
3 today, is there reason why you believe you can't
4 give full and complete answers?

5 **A. No.**

6 Q. Are you under any medication or substances
7 that would impair your ability to give honest
8 testimony?

9 **A. No.**

10 Q. Have you talked with anyone in preparation
11 for today's deposition?

12 **A. My attorney.**

13 Q. Anyone else?

14 **A. No.**

15 Q. Have you reviewed anything in preparation for
16 today's deposition?

17 **A. I have reviewed some of our filings, our
18 amended lawsuit, and my declarations.**

19 Q. And Buck mentioned before we went on the
20 record that you didn't have anything with you today
21 but I'll just ask again for the transcript. Did you
22 bring anything with you today?

23 **A. I brought printouts of what I just mentioned
24 but I don't have them on me here, no.**

25 Q. Okay. Let's just go through some

1 biographical information. What's your address?
 2 **A. My personal address is 726 Windsor Drive,**
 3 **Crystal Lake, Illinois.**
 4 Q. So you're a resident of Illinois then?
 5 **A. Yes.**
 6 Q. Do you have any other addresses in any other
 7 states?
 8 **A. No.**
 9 Q. Are you a resident of any other state?
 10 **A. No.**
 11 Q. What is your occupation?
 12 **A. Journalist.**
 13 Q. How long have you been doing that?
 14 **A. More than 30 years.**
 15 Q. Are you an independent journalist, or do you
 16 work for someone?
 17 **A. I work for The Center Square.**
 18 Q. Okay. And how long have you worked for them?
 19 **A. Since 2017, although we weren't known as The**
 20 **Center Square in 2017.**
 21 Q. What were you known as in 2017?
 22 **A. Illinois News Network.**
 23 Q. And when you say that you're now known as The
 24 Center Square, was that because you changed your
 25 business license or just the name or what

1 precipitated the change from the Illinois News
 2 Network to Center Square?
 3 **A. Well, in 2017 when I joined, we were covering**
 4 **just Illinois only. And then we expanded our**
 5 **coverage to across the country and Illinois News**
 6 **Network didn't work for Tennessee or Pennsylvania,**
 7 **for example.**
 8 Q. Okay. Before you worked for Illinois News
 9 Network, where did you work?
 10 **A. I worked for Shaw Media.**
 11 Q. Was that also in Tennessee -- or in Illinois?
 12 **A. Yes, Illinois. I was in Illinois. Illinois**
 13 **and Iowa, yes.**
 14 Q. All right. Do you know why we are here
 15 today?
 16 **A. Yes.**
 17 Q. What is your understanding of why we're here
 18 today?
 19 **A. I am giving a deposition in a lawsuit against**
 20 **Defendant Michelle Long.**
 21 Q. And what is the purpose of that lawsuit?
 22 **A. To open up the Bench Bar Advisory Commission**
 23 **in Tennessee to public scrutiny, essentially.**
 24 Q. When you say public scrutiny, are you
 25 limiting that to press or is it your understanding

1 that this lawsuit would apply to the entirety of the
 2 public?
 3 **A. The press and the public.**
 4 Q. Okay. The caption in the lawsuit says that
 5 you are the plaintiff as executive editor of The
 6 Center Square. So is it your understanding that you
 7 are filing this suit as a private citizen or as a
 8 member of the press?
 9 **A. As a member of the press.**
 10 Q. Have you reviewed all the pleadings in this
 11 case?
 12 **A. Yes.**
 13 Q. Do you agree with everything that's been
 14 filed on your behalf?
 15 **A. Yes.**
 16 Q. Why did you initiate this lawsuit?
 17 **A. As a 30-plus-year journalist I believe in**
 18 **open government. When I learned that this was**
 19 **closed, I asked the question, what are they hiding,**
 20 **as I would in any situation. So I looked into it**
 21 **further and thought it was appropriate to get the**
 22 **meetings open.**
 23 Q. When you say you learned that they were
 24 closed, how did you learn that they were closed?
 25 **A. I think my first information about it had to**

1 **do with Ms. Long's statement or a policy position**
 2 **that she put out that had to do with concerns about**
 3 **safety and security and closing -- was it the**
 4 **Tennessee Judicial Conference? I started looking**
 5 **into it after that.**
 6 Q. So you believe that you saw a policy from
 7 Michelle Long that indicated that the Tennessee
 8 Rules Advisory Commission on Practice and Procedure
 9 were closed to the public?
 10 MR. DOUGHERTY: Object to the form of
 11 the question.
 12 BY MR. STAHL:
 13 Q. You can answer.
 14 **A. Okay. No. No. Initially it was the**
 15 **Tennessee Judicial Conference, I think is what the**
 16 **name of it is. I think it came from Michelle Long,**
 17 **yes.**
 18 Q. But that was a policy that you saw that
 19 indicated that the Judicial Conference was closed to
 20 members of the public?
 21 **A. I don't know if you'd call it a policy or a**
 22 **rule or whatever but the Judicial Conference was**
 23 **closed.**
 24 Q. Well, what would you call it?
 25 **A. I guess if they're acting on the policy, I'd**

1 **call it a rule that was put in place.**
 2 Q. And where did you see this rule?
 3 **A. On the Tennessee judicial website,**
 4 **tncourts.gov, I believe it is.**
 5 Q. When was the last time you saw this policy?
 6 Or the rule?
 7 **A. When I reviewed my filings, I believe.**
 8 Q. When did you review those filings?
 9 **A. Over the course of this week.**
 10 Q. So within the past week you saw a policy or a
 11 rule on the Tennessee Judicial website from Michelle
 12 Long that said the Tennessee Judicial Conference was
 13 closed to members of the public?
 14 MR. DOUGHERTY: Object to the form of
 15 the question.
 16 **THE WITNESS: I have reviewed a lot of**
 17 **documents in the past week, so I guess I can't state**
 18 **specifically. I definitely read something related**
 19 **to concerns over security and safety for members of**
 20 **the Tennessee Judicial Conference.**
 21 BY MR. STAHL:
 22 Q. Was this lawsuit filed in the last week?
 23 **A. No.**
 24 Q. Do you remember when you filed this lawsuit?
 25 **A. June of 2022.**

1 Q. Okay. So what caused you to believe prior to
 2 June of 2022 that the Tennessee Commission on the
 3 Rules of Practice and Procedure were closed to the
 4 public?
 5 MR. DOUGHERTY: Object to the form of
 6 the question.
 7 **THE WITNESS: I want to say it started**
 8 **with that, with -- with -- I'm sorry -- with the --**
 9 **the policy or the rule from Ms. Long.**
 10 BY MR. STAHL:
 11 Q. So, just to be clear, prior to June of 2022,
 12 you saw a policy or a rule on the Tennessee Judicial
 13 website from Ms. Long saying that the Tennessee
 14 Judicial Commission was closed to the public and you
 15 assumed that the Tennessee Rules of Practice and
 16 Procedure Commission was also closed to the public?
 17 **A. No, I did not assume that.**
 18 Q. So what made you file this lawsuit to open
 19 the meetings of the Tennessee Advisory Commission on
 20 the Rules of Practice and Procedure?
 21 **A. I started looking into it further and one of**
 22 **the things I recall saying is that this, semantics,**
 23 **you call it the Advisory Commission, Bench Bar**
 24 **Committee, that they were supposed to meet**
 25 **periodically. But I did not -- I couldn't find**

1 **anywhere on this judicial website any advisories of**
 2 **any meetings and so that drew more suspicion from**
 3 **me.**
 4 Q. Okay. So you said you looked into it further
 5 and you said that you didn't see any notices
 6 indicating that the Commission meetings were open to
 7 the public; is that right?
 8 **A. Correct. Or -- yes, correct. But if memory**
 9 **serves, I didn't even see any -- not just open to**
 10 **the public, but any schedules of meetings.**
 11 Q. Okay. And why does the lack of scheduled
 12 meetings indicate that meetings aren't open to the
 13 public?
 14 **A. Well, experience in 30 years of journalism.**
 15 **I have gone to a lot of government websites. I have**
 16 **attended a lot of government meetings. And if**
 17 **meetings are open to the public, there's generally**
 18 **supposed to be public notice.**
 19 Q. So you say generally. Does that mean there
 20 are instances when that's not the case?
 21 **A. The public meetings I think there needs to be**
 22 **public notice.**
 23 Q. So when there wasn't public notice that you
 24 could find about the Tennessee Commission on the
 25 Rules of Practice and Procedure, did you do anything

1 else to confirm that those meetings weren't open to
 2 the public?
 3 **A. Did I do anything else? I kept looking, kept**
 4 **digging, I think, kept investigating. In terms of**
 5 **specifics, I don't recall exactly what I did.**
 6 Q. Well, that's difficult for me to understand
 7 that you think you did stuff but you can't tell me
 8 what you did. So I've got to keep asking some
 9 questions about that. So you said you kept digging.
 10 What did that mean?
 11 MR. DOUGHERTY: Object to the form of
 12 the question.
 13 **THE WITNESS: I kept searching this**
 14 **particular website, and I think I went to the State**
 15 **of Tennessee's website, and I just kept looking,**
 16 **what's going on. I had the question what's going on**
 17 **here? Why are these meetings not -- why is there**
 18 **not public notices for these meetings? That's,**
 19 **essentially, it.**
 20 Q. Okay. So when you didn't see the public
 21 notice for the meetings, you continued to look for
 22 the public notice meetings on that website you
 23 visited and other state websites; is that fair?
 24 **A. Yes. Actually, I looked at the federal**
 25 **judiciary website and I noticed something very**

1 **similar to the Tennessee Bench Bar Committee and**
 2 **noticed that they were open as well. Or that they**
 3 **were open, excuse me, not as well.**
 4 Q. Okay. So after not finding a public notice
 5 for the Tennessee Advisory Rule Commission meetings,
 6 did you do anything else to confirm whether those
 7 meetings were open to the public?
 8 **A. I think I have answered the question. I kept**
 9 **looking. But yes, that was the end of it.**
 10 Q. Okay. Well, thinking you answer my question
 11 and answering my questions sometimes is different
 12 for different people. So I'm trying to get some
 13 good clarity on this.
 14 You looked online for public notices of the
 15 Tennessee Advisory Commission meetings in multiple
 16 places; you couldn't find the meeting notices; and
 17 so you filed suit; is that right?
 18 **A. Yes, eventually.**
 19 Q. Did you ever call anyone and ask them, either
 20 in the state government or the Tennessee judiciary,
 21 about the public notice or lack thereof?
 22 MR. DOUGHERTY: Object to the form of
 23 the question.
 24 **THE WITNESS: Can you repeat it?**
 25 //

1 BY MR. STAHL:
 2 Q. Did you ever call anyone in the Tennessee
 3 state government or the Tennessee judiciary to ask
 4 or confirm why you couldn't find a public notice for
 5 the Tennessee Commission meetings on Rules of
 6 Practice and Procedure?
 7 **A. Not that I recall, no.**
 8 Q. Did you email anyone asking that same
 9 question?
 10 **A. Within Tennessee state government, not that I**
 11 **recall, no.**
 12 Q. Have you ever been a named plaintiff before?
 13 **A. No.**
 14 Q. Have you ever been a named defendant before?
 15 **A. No.**
 16 Q. Your pleadings in this case indicate that you
 17 are the executive editor at The Center Square
 18 organization; is that right?
 19 **A. Yes.**
 20 Q. I think The Center Square website has you
 21 listed as vice president of news and content,
 22 though. Can you explain that discrepancy?
 23 **A. I am vice president of news and content for**
 24 **the Franklin News Foundation, which is the 501(c)(3)**
 25 **non-profit that publishes The Center Square, and**

1 **other things.**
 2 Q. So are you still an executive editor at
 3 Center Square?
 4 **A. Yes.**
 5 Q. And what does it mean to be an executive
 6 editor at The Center Square?
 7 **A. I am the top editor. I make final decisions**
 8 **on editorial judgment issues.**
 9 Q. Do you have a particular area that you work
 10 within for The Center Square in doing your editorial
 11 comments, meaning sports, politics, anything like
 12 that, or is it just general editorial purview?
 13 **A. We're focused on government news.**
 14 Q. Okay. How many employees are there at The
 15 Center Square?
 16 **A. I think we are at about 27 or 28 right now.**
 17 Q. Okay. And is that organization online only,
 18 or do they have a print or video arm?
 19 **A. We -- we do do some video. We are print**
 20 **only -- or, excuse me -- online only. We do not**
 21 **have a print arm.**
 22 Q. And you said that The Center Square was born
 23 out of the Illinois News Network in 2017; is that
 24 right?
 25 **A. I joined Illinois News Network in 2017. We**

1 **launched The Center Square in 2019.**
 2 Q. And was The Center Square a completely
 3 separate organization when you launched it or was it
 4 the same as the Illinois News Network under just a
 5 new name?
 6 **A. We folded Illinois News Network into The**
 7 **Center Square.**
 8 Q. Who hired you to The Center Square?
 9 **A. It's the same person who hired me to Illinois**
 10 **News Network. Chris Krug.**
 11 Q. And who is he? Is he the founder of The
 12 Center Square?
 13 **A. He is the president of the Franklin News**
 14 **Foundation which publishes The Center Square.**
 15 Q. Is The Center Square registered as a business
 16 in Tennessee?
 17 **A. I honestly don't know the answer to that**
 18 **question. Well, I think we have tax status. I**
 19 **think that's the best I can say.**
 20 Q. And what is the organizational structure
 21 between The Center Square and Franklin News?
 22 **A. The organizational structure, Franklin News**
 23 **is the 501(c)(3) nonprofit that publishes The Center**
 24 **Square. I do report up to the president of the**
 25 **Franklin News Foundation. We also have other**

1 **separate websites that some of which that I'm**
 2 **directly involved in, that also go up to the**
 3 **Franklin News Foundation.**
 4 Q. Is the president of the Franklin News
 5 Foundation Chris Krug?
 6 **A. Correct, yes.**
 7 Q. Okay. To the best of your knowledge, is
 8 Franklin News registered as a business in Tennessee?
 9 **A. I don't know.**
 10 Q. Do you have the ability to hire and fire
 11 people as executive editor of The Center Square?
 12 **A. Yes.**
 13 Q. Do you decide what gets reported on?
 14 **A. Ultimately, if there is question about it,**
 15 **yes. But I don't get involved in every single daily**
 16 **news coverage decision.**
 17 Q. So maybe you can walk me through. How does a
 18 news article get published on The Center Square? Is
 19 it assigned by you to a reporter? Does someone come
 20 to you with an idea? How does that the process
 21 work?
 22 **A. It's a combination.**
 23 Q. A combination of what?
 24 **A. A combination of me or other editors**
 25 **assigning stories to reporters or reporters going up**

1 **to editors saying I think we should cover this**
 2 **today. We have a daily ongoing what we call a news**
 3 **budget. Not a financial budget. A news budget.**
 4 **Here's the stories that we can work on and we have**
 5 **daily meetings to discuss the options.**
 6 Q. And do you give final approval on what gets
 7 approved for a story, meaning, what gets funded to
 8 investigate that story, or do you only give final
 9 approval for what gets printed on the website? How
 10 does that work?
 11 **A. We have 27, 28 staff on The Center Square.**
 12 **We publish, I don't know, anywhere in the**
 13 **neighborhood of 70 stories a day. I don't give**
 14 **final approval on every single story. More**
 15 **controversial stories, I might. If something comes**
 16 **to my attention, I'll say we need to go get that,**
 17 **but I do not give final approval on every single**
 18 **story. No, I couldn't possibly.**
 19 Q. Do you assign stories to reporters?
 20 **A. Yes.**
 21 Q. Did you assign anyone or have you ever
 22 assigned anyone to do a story or an article on the
 23 Tennessee Commission on the Rules of Practice and
 24 Procedure?
 25 **A. Not directly assign. I made staff aware of**

1 **the lawsuit.**
 2 Q. Can you explain to me what you mean when you
 3 say you made them aware of the lawsuit?
 4 **A. I let staff know that we -- not me**
 5 **personally -- as the executive of The Center Square,**
 6 **we're filing a lawsuit.**
 7 Q. Prior to filing the lawsuit, had you ever
 8 edited or wrote an article about the Tennessee
 9 Commission on Rules of Practice and Procedure?
 10 **A. Me personally, no.**
 11 Q. Had you ever prior to the lawsuit assigned
 12 anyone to write an article or cover a story in some
 13 way about the Tennessee Commission on Rules of
 14 Practice and Procedure?
 15 **A. No.**
 16 Q. Have you written about this case online or
 17 anywhere in print?
 18 **A. Me personally?**
 19 Q. Yes.
 20 **A. No.**
 21 Q. Have you commented about this case in any
 22 video or audio platform?
 23 **A. No.**
 24 Q. Have you written any articles regarding
 25 public access under the First Amendment?

1 **A. Public access in general? Not specific to**
 2 **this case, I guess is what I'm asking?**
 3 Q. That's right.
 4 **A. Yes. I'm sure I have, plenty of times.**
 5 Q. Can you think of any of them?
 6 **A. Can I have a second or a moment to consider?**
 7 **Can you repeat the question first so I know what I'm**
 8 **considering?**
 9 Q. I am trying to figure out if you've ever
 10 written about the First Amendment's right to public
 11 access in any online forum or print forum or
 12 anything like that in general?
 13 **A. I'm sure I have. I would have to get back to**
 14 **you on that, though. In the moment nothing is**
 15 **immediately coming to mind.**
 16 Q. Okay. If the Advisory Commission on the
 17 Rules of Practice and Procedure in Tennessee were
 18 open to the public, would you attend those?
 19 **A. Me personally, no.**
 20 Q. Yes.
 21 **A. No. Me personally, I would not attend them**
 22 **in person. I'm in Chicago or the Chicago suburb.**
 23 **I'm in Illinois. I would not come attend them in**
 24 **person. I would certainly at least initially**
 25 **observe them if they were available via Zoom or a**

1 **Zoom-like platform.**

2 Q. So would you be satisfied with an electronic
3 recording of the videos in terms of public access?
4 MR. DOUGHERTY: Object to the form of
5 the question.

6 **THE WITNESS: No.**

7 BY MR. STAHL:

8 Q. So you wouldn't attend them but you would
9 expect them to be electronically recorded?

10 MR. DOUGHERTY: Object to the form of
11 the question.

12 **THE WITNESS: Live webcast, plus open to**
13 **in-person observation.**

14 BY MR. STAHL:

15 Q. So you say recorded.

16 **A. I'm a little confused by when you use the**
17 **term "recorded".**

18 Q. What about the term "recording" is confusing
19 you?

20 **A. Well, you can live webcast a hearing and then**
21 **put up a recording of the live webcast of the**
22 **hearing at some point after the fact, or you can not**
23 **live webcast it and then you can just put up a**
24 **recording of it at some point after the fact. So I**
25 **just want to differentiate between the two. Live**

1 **webcast is a term I'm using for actually seeing it**
2 **as it's going on.**

3 Q. Okay. So you have no intention of ever
4 physically attending a Tennessee Commission meeting
5 on the Rules of Practice and Procedure?

6 **A. Me personally?**

7 Q. Yes.

8 **A. No immediate intention, no. I might happen**
9 **to find myself needing to.**

10 Q. Would you expect to send someone to cover
11 those meetings if they were open to the public?

12 MR. DOUGHERTY: Object to the form of
13 the question.

14 **THE WITNESS: Can you repeat the**
15 **question?**

16 BY MR. STAHL:

17 Q. If the meetings were open to the public,
18 would you as executive editor of The Center Square
19 expect to send a reporter or someone on behalf of
20 The Center Square to observe those meetings in
21 person?

22 **A. That's very possible, yes.**

23 Q. Have you ever tried to do that before?

24 **A. Specific to this case? No.**

25 Q. Okay. Not specific to this case, but in your

1 time as editor of any organization, your 30 years of
2 journalism as you put it, have you ever assigned
3 anyone to attend the Tennessee Commission on Rules
4 of Practice and Procedure in person?

5 **A. Not that I recall.**

6 Q. And, to be clear, you've never written
7 anything about the Tennessee Rules of Practice and
8 Procedure in your time as a journalist?

9 **A. Me personally?**

10 Q. Yes.

11 **A. No.**

12 Q. Do you host or contribute regularly to any
13 podcasts?

14 **A. Yes.**

15 Q. What podcast is that?

16 **A. I'm on four podcasts.**

17 Q. Okay. What are those?

18 **A. America in Focus. Illinois in Focus.**
19 **Wisconsin in Focus. And Education in Focus.**

20 Q. Have you ever discussed the Tennessee
21 Advisory Commission on Rules of Practice and
22 Procedure in any of those podcasts?

23 **A. No.**

24 Q. What is heartlandernews.com?

25 **A. I don't know.**

1 Q. When you decided to file suit in this case,
2 did you need anyone's permission to do that as
3 executive editor of The Center Square?

4 MR. DOUGHERTY: Object to the form of
5 the question.

6 **THE WITNESS: No. I alerted my**
7 **publisher that we were going to do it, just for**
8 **communication sake.**

9 BY MR. STAHL:

10 Q. When you say --

11 **A. Not permission.**

12 Q. -- your publisher, do you mean Chris Krug?

13 **A. Yes.**

14 Q. So you never spoke to him about the case
15 prior to deciding to file?

16 **A. I don't recall.**

17 Q. Have you ever been to Tennessee, Mr. McCaleb?
18 **A. Yes.**

19 Q. And what did you come to Tennessee for?

20 **A. The last time I was in Tennessee was actually**
21 **for a First Amendment conference.**

22 Q. When was that?

23 **A. 2017 or 2018.**

24 Q. Have you ever attempted to attend any other
25 Tennessee State Commission meetings other than the

1 Tennessee Commission on Rules of Practice and
 2 Procedure?
 3 **A. Me personally?**
 4 Q. Yes.
 5 **A. No.**
 6 Q. Have you ever sent any reporters on your
 7 behalf as an editor, either at The Center Square or
 8 as an editor at another journalistic platform, to
 9 Tennessee State Commission meetings other than the
 10 Tennessee meeting on Rules of Practice and
 11 Procedure?
 12 **A. So I got the first part. Tennessee**
 13 **Commission meetings or like any kind of Tennessee**
 14 **meetings, like legislative meetings, or be specific.**
 15 **Are you talking about the judiciary?**
 16 Q. I'm talking about Tennessee State Commission
 17 meetings, so any commission representing the State
 18 of Tennessee in any capacity.
 19 **A. I guess I'm a little confused by what you**
 20 **mean by commission. Would that include**
 21 **legislative-type of meetings or like committees of**
 22 **legislature, et cetera? I'm just trying to get a**
 23 **better understanding of what you're asking.**
 24 Q. Sure. No. I can appreciate that. Well, let
 25 me ask you this.

1 Are you aware of how many commissions there
 2 are in Tennessee under the Tennessee Supreme Court?
 3 **A. I know I have seen a number. I want to say**
 4 **it was between 15 and 20.**
 5 Q. Okay. So limiting my question to those 15 to
 6 20 committees, have you sent anyone on your behalf
 7 or as an editor either at The Center Square or any
 8 other organization that you've ever worked for as a
 9 journalist to any of those other commission meetings
 10 except the Tennessee Commission on Rules of Practice
 11 and Procedure?
 12 **A. No. It wasn't until I realized that these**
 13 **meetings were closed that it piqued my curiosity.**
 14 Q. What piqued your curiosity?
 15 **A. When government to tries to close meetings,**
 16 **from my 30-plus years of experience, it piques my**
 17 **curiosity. What are they trying to hide, I ask**
 18 **myself.**
 19 Q. So any time that your learn of a government
 20 meeting that's not open to the public you file suit?
 21 MR. DOUGHERTY: Object to the form of
 22 the question.
 23 **THE WITNESS: No. I think this was my**
 24 **first lawsuit --**
 25 **//**

1 BY MR. STAHL:
 2 Q. Okay.
 3 **A. -- on behalf of The Center Square.**
 4 Q. Well, now you just qualified it. Your first
 5 lawsuit on behalf of The Center Square. Does that
 6 mean --
 7 **A. No. My first lawsuit, yes.**
 8 Q. Okay.
 9 **A. I'm saying it's not me personally. But yeah.**
 10 **I have not filed any other lawsuits, here or in**
 11 **previous experiences.**
 12 Q. There was a June 9th, 2023 meeting of the
 13 Commission for the Tennessee Rules of Practice and
 14 Procedure that was recorded and placed on YouTube.
 15 Did you watch that?
 16 **A. I did.**
 17 Q. Have you ever served as member on any state
 18 board or commission in Tennessee?
 19 **A. No.**
 20 Q. What about Chicago or, rather, Illinois?
 21 **A. Like -- repeat the question specifically to**
 22 **Chicago or Illinois.**
 23 Q. Have you ever served as a member on any state
 24 board or commission in Illinois?
 25 **A. No.**

1 Q. Do you believe that there is an access to
 2 justice crisis in Tennessee?
 3 **A. Problem, yes. Crisis, maybe so. That's, you**
 4 **know -- that's subjective, I guess.**
 5 Q. It is subjective. And I'm just asking for
 6 your opinion. What leads you to believe that there
 7 is an access to justice problem and/or crisis in
 8 your opinion?
 9 **A. If you were -- I guess, in terms of the data,**
 10 **there's plenty of people who don't have the means to**
 11 **hire an attorney to represent them. That would be**
 12 **true in Tennessee and many states across the**
 13 **country. I can't unequivocally say every state but**
 14 **certainly that is an issue.**
 15 Q. Do you have any data that's Tennessee
 16 specific to support that statement?
 17 **A. No specific data, no.**
 18 Q. Have you talked with anyone who is a
 19 Tennessee resident who has expressed to you that
 20 they have trouble hiring a lawyer in Tennessee?
 21 MR. DOUGHERTY: Object to the form of
 22 the question.
 23 **THE WITNESS: Who they personally had --**
 24 **repeat the question. I'm sorry.**
 25 **//**

1 BY MR. STAHL:
 2 Q. Have you ever talked with anyone who is a
 3 Tennessee resident who has expressed their
 4 difficulty in hiring a lawyer in Tennessee?
 5 **A. No.**
 6 Q. Do you know what a pro se litigant is,
 7 Mr. McCaleb?
 8 **A. Yes.**
 9 Q. Are you a pro se litigant?
 10 **A. No.**
 11 Q. In your opinion, does this suit involve the
 12 rights of pro se litigants?
 13 MR. DOUGHERTY: Object to the form of
 14 the question.
 15 **THE WITNESS: Go ahead and answer.**
 16 BY MR. STAHL:
 17 Q. Yes, you can answer.
 18 **A. Yes.**
 19 Q. In what way?
 20 **A. Pro se litigants, more than maybe other**
 21 **litigants who have representation, have a more**
 22 **difficult time understanding, accessing, et cetera,**
 23 **with the court system. And by opening these**
 24 **meetings up to the public and a journalist to cover**
 25 **these meetings, they have a better opportunity to**

1 **understand the court system.**
 2 Q. Have you ever spoken with any Tennessee
 3 resident who has acted as a pro se litigant in a
 4 lawsuit?
 5 **A. No.**
 6 Q. Have you ever talked to a Tennessee resident
 7 who has expressed to you their desire to attend the
 8 Tennessee Commission on Rules of Practice and
 9 Procedure?
 10 **A. No.**
 11 Q. As a journalist and as someone who you
 12 mentioned attended a conference on the First
 13 Amendment, have you read the first amendment to the
 14 Constitution?
 15 **A. Yes.**
 16 Q. Why do you think that particular amendment
 17 requires the State of Tennessee to open its Advisory
 18 Commission meetings to the public?
 19 **A. Well, I'm not a lawyer. I'm not a**
 20 **constitutional lawyer. But as a 30-year journalist,**
 21 **you've learned some things here and there. And when**
 22 **policy decisions are being made that can affect a**
 23 **certain body or can affect the taxpayers and voters**
 24 **and general public, that general public should have**
 25 **access to those meetings in my experience.**

1 Q. Where is that found in the First Amendment?
 2 **A. Again, I'm not a lawyer. I'm not a**
 3 **constitutional lawyer.**
 4 Q. I understand. And I don't really want to go
 5 back and forth on this, but I'm going to keep
 6 asking. You've read the First Amendment?
 7 **A. Yes.**
 8 Q. Right?
 9 **A. Yes.**
 10 Q. What part of the First Amendment supports
 11 your claim that the State of Tennessee is required
 12 to open its Advisory Commission meeting to the
 13 public?
 14 **A. They have a right to petition the government**
 15 **to access of the government. Again, that's the best**
 16 **I can do on that one.**
 17 Q. Are you familiar with the Tennessee
 18 Administrative Office of the Courts, otherwise
 19 referred to in these pleadings as the AOC?
 20 MR. DOUGHERTY: Object to the form of
 21 the question.
 22 **THE WITNESS: Yes. Yes. I know it as**
 23 **the TAOC but same thing I guess, yes.**
 24 BY MR. STAHL:
 25 Q. Yes. That's what I'm talking about. So I'm

1 just going to ask you have you ever talked to any
 2 member of the TAOC?
 3 **A. No.**
 4 Q. We mentioned earlier that the TAOC website
 5 lists and I think you numbered 15 to 20 different
 6 commissions. Do you remember talking about that?
 7 **A. Yes. And that was an educated guess but yes.**
 8 Q. Sure. And it doesn't have to be perfect.
 9 **A. Yes.**
 10 Q. Do you have an opinion as to whether or not
 11 the Advisory Commission meetings are meaningfully
 12 different from the work being done in any of those
 13 other commissions?
 14 MR. DOUGHERTY: I object to the form of
 15 the question.
 16 **THE WITNESS: Well, I've watched one of**
 17 **these Advisory Commission meetings. I have not**
 18 **watched any of the other ones, so I can't speak for**
 19 **the other ones.**
 20 BY MR. STAHL:
 21 Q. If you learned that those other commission
 22 meetings were not open to the public, would you
 23 expect to file suit under the First Amendment to
 24 have those meetings open as well?
 25 **A. I guess it would depend on what the**

1 committees are supposed to do. If they are setting
2 policy or recommending policy for the courts to
3 follow or for potential legislation then yes.

4 Q. How would you know if a committee was
5 creating or recommending policy?

6 A. Well, I guess by digging into it, by asking
7 questions. If memory serves, these committees in
8 Tennessee mirror or very closely mirror the same
9 committees in the federal judiciary. And looking
10 into the -- I haven't done this so I can't speak to
11 it, but the mirrored committee meeting at the
12 federal level and its similar name at the state
13 level, I guess you could assume, we don't like to
14 assume, that it's doing something similar that the
15 Federal Judiciary Committee has done.

16 Q. Okay. So I think we walked through this a
17 little bit earlier. But I asked you what you had
18 done to investigate the Tennessee Rules of Practice
19 and Procedure Commission prior to filing suit to
20 have those meetings open to the public.

21 And if I'm right, you hadn't attended any of
22 those; you hadn't watched any of those; so how did
23 you know that that committee was creating policy or
24 recommending policy that would require that
25 committee to be open to the public?

1 MR. DOUGHERTY: Object to the form of
2 the question.

3 THE WITNESS: The Advisory Commission,
4 the Bench Bar Commission, is what you're referring
5 to?

6 BY MR. STAHL:

7 Q. Yes.

8 A. I know what commission you're talking about.
9 Please ask me the question again.

10 Q. Well, I'm trying to understand your earlier
11 statement that you wouldn't necessarily file suit if
12 you learn that a commission was not open to the
13 public unless that commission was creating policy or
14 recommending policy. And I'm trying to understand
15 how you learned or what led you to believe that the
16 Tennessee Commission on Rules of Practice and
17 Procedure satisfied those terms, that it created
18 policy or advised on policy.

19 A. I think just by this committee's name itself.

20 Q. So if a committee has a name that you think
21 indicates it creates policy or recommends policy,
22 you automatically believe that that meeting should
23 be open to the public under the First Amendment?

24 A. Yes.

25 Q. Do you know if the federal analog to the

1 Tennessee Rules of Practice and Procedure, the
2 Federal Rules Advisory Commission, live stream their
3 meetings?

4 A. If you look under the federal version of the
5 Tennessee Commission.

6 Q. Yes.

7 A. I guess I honestly, I'm not positive, but I
8 think they do. But that's -- I have not watched
9 one, a live committee meeting of the Federal Policy
10 Committee.

11 Q. Have you ever attempted to watch one, done a
12 search for it on the YouTube or on the federal
13 websites?

14 A. I did do searches on the federal websites.
15 And I seem to recall -- I can't say specifically
16 that they were live webcasts but I do recall seeing
17 some either YouTube video or some video of the
18 conference meetings.

19 Q. If you were to learn that the Federal
20 Advisory Commission doesn't live stream their
21 meetings but records them and puts them on a
22 platform such as YouTube after the fact, would that
23 change your opinion as to whether the Tennessee
24 Commission on Rules of Practice and Procedure could
25 do the same?

1 MR. DOUGHERTY: Object to the form of
2 the question.

3 THE WITNESS: No.

4 BY MR. STAHL:

5 Q. So if the Federal Advisory Commission were
6 electronically recording their meetings and putting
7 them on a platform after the fact, not live
8 streaming them, would you file suit under the First
9 Amendment to have them open their meeting to the
10 public?

11 MR. DOUGHERTY: Object to the form of
12 the question.

13 THE WITNESS: I'd think long and hard
14 about it, yes.

15 BY MR. STAHL:

16 Q. Did you review your expert's opinion in this
17 case, Mr. Barton?

18 A. I was on the live stream of his deposition.
19 I did get distracted at times, so I can't say I
20 heard every single word from start to finish, but I
21 heard large chunks of it.

22 Q. There was a portion, a statement made in that
23 opinion, that said the Tennessee Rules of Procedure
24 have a direct effect on every citizen in the state
25 of Tennessee. Do you agree with that statement?

1 **A. I'm sorry, I'm going to have to ask you to**
 2 **repeat it one more time.**
 3 Q. Mr. Barton's opinion made a statement that
 4 the Tennessee Rules of Procedure have a direct
 5 effect on every citizen in the state of Tennessee
 6 and I was just wondering if you agree with that
 7 statement?
 8 **A. I can't say one way or the other. I think it**
 9 **has a direct effect on many people in the state of**
 10 **Tennessee. I would need to probably hear arguments**
 11 **for and against to say whether or not I agreed with**
 12 **that 100 percent.**
 13 Q. Do you believe that the Tennessee Rules of
 14 Procedure affect you as a citizen of Illinois?
 15 **A. Only inasmuch as governments close meetings,**
 16 **if no one challenge that, more governments will**
 17 **close meetings. And so it could yes, indirectly,**
 18 **yes.**
 19 Q. Well, I don't mean the meetings. I mean the
 20 actual Tennessee Rules of Procedure for filing a
 21 suit, if you're a citizen of Tennessee and you're
 22 involved in the court system, the Tennessee Rules of
 23 Procedure would apply to you.
 24 But would they apply to you, Mr. McCaleb, as
 25 a citizen of Illinois?

1 **A. Not that I'm aware of.**
 2 Q. Who is John Styf? And I may not be saying
 3 that last name right, S-t-y-f.
 4 **A. Styf.**
 5 Q. Styf. Who is Mr. John Styf?
 6 **A. He is a reporter for The Center Square.**
 7 Q. How do you know him?
 8 **A. He is an employee of mine.**
 9 Q. Does he report to you?
 10 **A. Up through the chain. I'm not his direct**
 11 **supervisor.**
 12 Q. Have you ever had conversations with him?
 13 **A. Yes. I'm in meetings every day with him and**
 14 **the whole staff, yes.**
 15 Q. Have you ever discussed this case with him?
 16 **A. I made him aware of the case, and I made him**
 17 **aware of the court's ruling back in March.**
 18 Q. So to your best recollection, has he written
 19 anything about this case?
 20 **A. Yes.**
 21 Q. Did you provide any editorial comment about
 22 that?
 23 MR. DOUGHERTY: Object to the form of
 24 the question.
 25 **THE WITNESS: I provided a statement**

1 **through -- I think it was through Liberty Justice**
 2 **Center.**
 3 BY MR. STAHL:
 4 Q. So prior to his publishing anything about
 5 this case, you wouldn't have edited anything that he
 6 would have written?
 7 **A. About this case?**
 8 Q. Yes.
 9 **A. No. I stepped aside. I need -- because I am**
 10 **part of the case, I needed to recuse myself from the**
 11 **editing process.**
 12 Q. Okay. Do you know if Mr. Styf lives in
 13 Tennessee?
 14 **A. He does not.**
 15 Q. Who is J.D. Davidson?
 16 **A. J.D. Davidson is John Styf's direct**
 17 **supervisor.**
 18 Q. Does he live in Tennessee?
 19 **A. No.**
 20 Q. Are you aware of anything that Mr. Davidson
 21 might have written about this case?
 22 **A. Not aware. I don't think he has, but I can't**
 23 **say that for sure.**
 24 Q. Who is Steve Wilson?
 25 **A. Steve Wilson was John Styf's previous**

1 **supervisor.**
 2 Q. So am I to assume that Mr. Wilson doesn't
 3 work at The Center Square anymore?
 4 **A. No. He does. We went through a restructure.**
 5 **We went through a restructure.**
 6 Q. Okay. Have you ever talked to Steve Wilson
 7 about this case?
 8 **A. Only to confirm that he was, in fact, John**
 9 **Styf's supervisor when the lawsuit was filed.**
 10 Q. Okay. Is he a Tennessee citizen?
 11 **A. No.**
 12 Q. Has Mr. Wilson written about the case that
 13 you're aware of?
 14 **A. Not that I'm aware of. I don't think so.**
 15 Q. Does Mr. Styf at your direction -- has he
 16 ever traveled to Tennessee to write or research a
 17 story?
 18 MR. DOUGHERTY: Object to the form of
 19 the question.
 20 **THE WITNESS: I don't know the answer to**
 21 **that question.**
 22 BY MR. STAHL:
 23 Q. So is it possible that you would have
 24 directed him --
 25 **A. I'm sorry. I didn't -- no. No, I have not.**

1 **I did not direct him.**
 2 Q. Okay. Just one more question I think,
 3 Mr. McCaleb.
 4 Have you ever been convicted of a felony?
 5 **A. No.**
 6 MR. STAHL: Okay. Buck, why don't you
 7 go ahead and if I've got anything else I'll do it at
 8 the end, but I think I'm done for now.
 9 MR. DOUGHERTY: Okay. Thank you, Mike.
 10
 11 EXAMINATION
 12 QUESTIONS BY MR. DOUGHERTY:
 13 Q. Mr. McCaleb, there was a line of questioning
 14 that Mr. Stahl asked you about Advisory Commission
 15 being recorded versus live stream. Do you recall
 16 that line of questioning?
 17 **A. Yes.**
 18 Q. Would you assign any of your reporters to
 19 cover Advisory Commission meetings if they were open
 20 to the public?
 21 **A. Yes, particularly in this case.**
 22 Q. Is it important as part of your lawsuit that
 23 meetings be open contemporaneously to the public
 24 when they are actually occurring?
 25 **A. Yes.**

1 Q. And then just to follow up, you talked about
 2 at the end there on some of the questioning when
 3 Mr. Styf wrote about this case. Do you recall that?
 4 **A. Yes, this case, this lawsuit. Yes.**
 5 Q. Mr. Stahl asked you some questions. And so
 6 the comments that you did give to Mr. Styf about
 7 this case, were they in your capacity as the
 8 plaintiff?
 9 **A. Yes.**
 10 Q. And when you say you felt you needed to
 11 recuse yourself, by that did you mean you didn't
 12 then give a comment and then have editorial control
 13 over the story itself; is that correct?
 14 **A. I did not. It was the reporters and the**
 15 **reporters' editors' decision whether to include the**
 16 **statement, the full statement, partial statement,**
 17 **not include it at all.**
 18 Q. Is that kind of part of the normal
 19 journalistic code of ethics --
 20 **A. Yes.**
 21 Q. -- since you're pretty involved in the story
 22 that your news agency is reporting on, you kind of
 23 stay out of the editorial process?
 24 **A. Yes.**
 25 MR. DOUGHERTY: I don't have anything

1 further, Mike.
 2
 3 EXAMINATION
 4 QUESTIONS BY MR. STAHL:
 5 Q. Just one more question, Mr. McCaleb.
 6 Have you ever been hired to give an expert
 7 opinion for any reason in any lawsuit?
 8 **A. No.**
 9 MR. STAHL: Well, that's all I have.
 10 MR. DOUGHERTY: All right. I guess we
 11 can go off the record. We'll take a copy of the
 12 transcript whenever you can get it. And really
 13 appreciate you-all's help for covering these.
 14 * * *
 15 THE REPORTER: Mr. Stahl, you are
 16 ordering this transcript?
 17 MR. STAHL: Yes, please.
 18 THE REPORTER: Reading and signing?
 19 MR. DOUGHERTY: We'll waive the signing.
 20 You have an opportunity to look through your
 21 transcript and then sign if everything is fine, but
 22 I think it's fine to waive.
 23 **THE WITNESS: I'm okay with waiving.**
 24 **FURTHER DEPONENT SAITH NOT**
 25 **(Proceedings concluded at 1:01 p.m.)**

1 REPORTER'S CERTIFICATE
 2
 3 STATE OF TENNESSEE
 4
 5 COUNTY OF DAVIDSON
 6
 7 I, Deborah H. Honeycutt, Licensed Court
 8 Reporter, with offices in Hermitage, Tennessee,
 9 hereby certify that I reported the foregoing
 10 videoconference deposition of DAN McCALEB by
 11 machine shorthand to the best of my skills and
 12 abilities, and thereafter the same was reduced to
 13 typewritten form by me. I am not related to any of
 14 the parties named herein, nor their counsel, and
 15 have no interest, financial or otherwise, in the
 16 outcome of the proceedings.
 17 I further certify that in order for this
 18 document to be considered a true and correct copy,
 19 it must bear my original signature, and that any
 20 unauthorized reproduction in whole or in part
 21 and/or transfer of this document is not authorized,
 22 will not be considered authentic, and will be in
 23 violation of Tennessee Code Annotated 39-14-104
 24 Theft of Services.
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 978
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 992
 993
 994
 995
 996
 997
 998
 999
 1000

1

100 41:12
11:57 4:8
13 4:7
15 30:4,5 36:5
18 6:14
19 6:14
1:01 47:25

2

20 30:4,6 36:5
2017 9:19,20,21 10:3
19:23,25 28:23
2018 28:23
2019 20:1
2022 13:25 14:2,11
2023 4:7 31:12
27 19:16 22:11
28 19:16 22:11

3

30 9:14 15:14 27:1
30-plus 30:16
30-plus-year 11:17
30-year 34:20
3:22-cv-00439 4:15

4

472 4:6

5

501(c)(3) 18:24 20:23

7

70 22:13
726 9:2

9

9th 31:12

A

a.m. 4:8
ability 8:7 21:10
access 23:25 24:1,11
25:3 32:1,7 34:25 35:15
accessing 33:22
acted 34:3
acting 12:25
actual 41:20
address 9:1,2
addresses 9:6
administered 4:17
Administrative 4:12
35:18
advised 38:18
advisories 15:1
Advisory 10:22 12:8
14:19,23 17:5,15 24:16
27:21 34:17 35:12 36:11,
17 38:3 39:2,20 40:5
45:14,19
affect 34:22,23 41:14
agency 46:22
agree 11:13 40:25 41:6
agreed 41:11
ahead 33:15 45:7
alerted 28:6
amended 8:18
amendment 23:25
28:21 34:13,16 35:1,6,10
36:23 38:23 40:9
Amendment's 24:10
America 27:18
analog 38:25
and/or 32:7
answering 17:11

answers 7:14 8:4
anymore 44:3
anyone's 28:2
AOC 35:19
apply 11:1 41:23,24
approval 22:6,9,14,17
approved 22:7
approximately 4:8
area 19:9
arguments 41:10
arm 19:18,21
article 21:18 22:22 23:8,
12
articles 23:24
assign 22:19,21,25
45:18
assigned 21:19 22:22
23:11 27:2
assigning 21:25
assume 14:17 37:13,14
44:2
assumed 14:15
attempted 28:24 39:11
attend 24:18,21,23 25:8
27:3 28:24 34:7
attended 15:16 34:12
37:21
attending 26:4
attention 22:16
attorney 4:25 7:22 8:12
32:11
audio 23:22
automatically 38:22
aware 22:25 23:3 30:1
42:1,16,17 43:20,22
44:13,14

B

back 24:13 35:5 42:17
Bar 10:22 14:23 17:1
38:4

Barton 40:17
Barton's 41:3
begin 5:24
behalf 11:14 26:19 29:7
30:6 31:3,5
Bench 10:22 14:23 17:1
38:4
biographical 9:1
bit 7:10 37:17
board 31:18,24
body 34:23
born 19:22
break 7:17,18,20,24
bring 8:22
brought 8:23
Buck 5:3 6:8,9 8:19 45:6
budget 22:3
business 9:25 20:15
21:8

C

call 12:21,24 13:1 14:23
17:19 18:2 22:2
called 5:19
capacity 4:12 29:18 46:7
caption 11:4
case 4:15 6:11,15,16
11:11 15:20 18:16 23:16,
21 24:2 26:24,25 28:1,14
40:17 42:15,16,19 43:5,
7,10,21 44:7,12 45:21
46:3,4,7
caused 14:1
Center 4:11 6:8 9:17,20,
24 10:2 11:6 18:17,20,25
19:3,6,10,15,22 20:1,2,7,
8,12,14,15,21,23 21:11,
18 22:11 23:5 26:18,20
28:3 29:7 30:7 31:3,5
42:6 43:2 44:3
Central 4:8
cetera 29:22 33:22
chain 42:10

challenge 41:16
change 10:1 39:23
changed 9:24
Chicago 24:22 31:20,22
Chris 20:10 21:5 28:12
chunks 40:21
citizen 11:7 40:24 41:5,
14,21,25 44:10
claim 35:11
clarification 7:2
clarity 17:13
clear 14:11 27:6
close 30:15 41:15,17
closed 11:19,24 12:9,19,
23 13:13 14:3,14,16
30:13
closely 37:8
closing 12:3
code 46:19
combination 21:22,23,
24
comment 42:21 46:12
commented 23:21
comments 19:11 46:6
commission 10:22 12:8
14:2,14,16,19,23 15:6,24
17:5,15 18:5 22:23 23:9,
13 24:16 26:4 27:3,21
28:25 29:1,9,13,16,17,20
30:9,10 31:13,18,24
34:8,18 35:12 36:11,17,
21 37:19 38:3,4,8,12,13,
16 39:2,5,20,24 40:5
45:14,19
commissions 30:1
36:6,13
committee 14:24 17:1
37:4,11,15,23,25 38:20
39:9,10
committee's 38:19
committees 29:21 30:6
37:1,7,9
communication 28:8

complete 8:4
completely 20:2
concerns 12:2 13:19
concluded 47:25
condition 8:2
conference 12:4,15,19,
22 13:12,20 28:21 34:12
39:18
confirm 16:1 17:6 18:4
44:8
confused 25:16 29:19
confusing 25:18
Constitution 34:14
constitutional 34:20
35:3
contemporaneously
45:23
content 18:21,23
continued 16:21
contribute 27:12
control 46:12
controversial 22:15
conversations 42:12
convicted 45:4
copy 47:11
correct 15:8 21:6 46:13
counsel 4:21 6:5,9
country 10:5 32:13
couple 7:5
court 4:13 6:11 7:7 30:2
33:23 34:1 41:22
court's 42:17
courts 4:13 35:18 37:2
cover 22:1 23:12 26:10
33:24 45:19
coverage 10:5 21:16
covering 10:3 47:13
created 38:17
creates 38:21
creating 37:5,23 38:13

crisis 32:2,3,7
Crystal 9:3
curiosity 30:13,14,17

D

daily 21:15 22:2,5
Dan 4:9,10 5:4,15,18 6:1
data 32:9,15,17
date 4:7
Davidson 43:15,16,20
day 22:13 42:13
Deborah 4:4
decide 21:13
decided 28:1
deciding 28:15
decision 21:16 46:15
decisions 19:7 34:22
declarations 8:18
deemed 4:19
defendant 5:2 10:20
18:14
depend 36:25
DEPONENT 47:24
deposition 4:9,16,19,20
5:6 6:11,13 8:11,16
10:19 40:18
depositions 7:13
desire 34:7
details 6:17
differentiate 25:25
difficult 16:6 33:22
difficulty 33:4
digging 16:4,9 37:6
digital 4:18
direct 40:24 41:4,9 42:10
43:16 45:1
directed 44:24
direction 44:15
directly 21:2 22:25

Director 4:12
discrepancy 18:22
discuss 22:5
discussed 27:20 42:15
distracted 40:19
District 4:13,14
Division 4:15
documents 13:17
Dougherty 5:3,12,13
6:8,9 12:10 13:14 14:5
16:11 17:22 25:4,10
26:12 28:4 30:21 32:21
33:13 35:20 36:14 38:1
40:1,11 42:23 44:18
45:9,12 46:25 47:10,19
drew 15:2
Drive 9:2
duly 5:19

E

earlier 36:4 37:17 38:10
edited 23:8 43:5
editing 43:11
editor 4:10 11:5 18:17
19:2,6,7 21:11 26:18
27:1 28:3 29:7,8 30:7
editorial 19:8,10,12
42:21 46:12,23
editors 21:24 22:1
editors' 46:15
educated 36:7
Education 27:19
effect 40:24 41:5,9
electronic 25:2
electronically 25:9 40:6
email 18:8
employee 42:8
employees 19:14
end 17:9 45:8 46:2
entirety 11:1

essentially 10:23 16:19
ethics 46:19
eventually 17:18
EXAMINATION 5:22
45:11 47:3
excuse 17:3 19:20
executive 4:10 11:5
18:17 19:2,5 21:11 23:5
26:18 28:3
exhibits 4:18
expanded 10:4
expect 25:9 26:10,19
36:23
experience 15:14 30:16
34:25
experiences 31:11
expert 47:6
expert's 40:16
explain 18:22 23:2
expressed 32:19 33:3
34:7

F

fact 25:22,24 39:22 40:7
44:8
fair 16:23
familiar 35:17
federal 16:24 37:9,12,15
38:25 39:2,4,9,12,14,19
40:5
feel 6:25 7:20
felony 45:4
felt 46:10
figure 24:9
file 14:18 28:1,15 30:20
36:23 38:11 40:8
filed 4:13 11:14 13:22,24
17:17 31:10 44:9
filing 11:7 23:6,7 37:19
41:20
filings 8:17 13:7,8

final 19:7 22:6,8,14,17
financial 22:3
find 14:25 15:24 17:16
18:4 26:9
finding 17:4
fine 7:17,21 47:21,22
finish 7:4 40:20
fire 21:10
Focus 27:18,19
focused 19:13
folded 20:6
follow 37:3 46:1
form 12:10 13:14 14:5
16:11 17:22 25:4,10
26:12 28:4 30:21 32:21
33:13 35:20 36:14 38:1
40:1,11 42:23 44:18

forum 24:11
found 35:1
Foundation 18:24
20:14,25 21:3,5
founder 20:11
Franklin 18:24 20:13,21,
22,25 21:3,4,8

free 7:1
full 8:4 46:16
funded 22:7

G

gave 6:13
general 19:12 24:1,12
34:24
generally 15:17,19
give 6:23 7:4,12,13,16
8:4,7 22:6,8,13,17 46:6,
12 47:6
giving 10:19
good 4:3 7:25 17:13
government 11:18
15:15,16 17:20 18:3,10
19:13 30:15,19 35:14,15

governments 41:15,16
Great 8:2
guess 12:25 13:17 24:2
29:19 32:4,9 35:23 36:7,
25 37:6,13 39:7 47:10

H

happen 26:8
hard 7:14 40:13
heads 7:13
hear 6:20 41:10
heard 40:20,21
hearing 25:20,22
heartlandernews.com
27:24
hide 30:17
hiding 11:19
hire 21:10 32:11
hired 20:8,9 47:6
hiring 32:20 33:4
honest 8:7
honestly 20:17 39:7
Honeycutt 4:4
host 27:12
huh-uh 7:14

I

idea 21:20
identify 4:22
Illinois 9:3,4,22 10:1,4,5,
8,11,12 19:23,25 20:4,6,
9 24:23 27:18 31:20,22,
24 41:14,25
immediately 24:15
impair 8:7
important 6:22 7:11
45:22
in-person 25:13
include 29:20 46:15,17
independent 9:15

indicating 15:6
indirectly 41:17
information 9:1 11:25
initially 12:14 24:24
initiate 11:16
insomuch 41:15
instances 15:20
intention 26:3,8
introduce 4:24
investigate 22:8 37:18
investigating 16:4
involve 33:11
involved 21:2,15 41:22
46:21
Iowa 10:13
issue 32:14
issues 6:25 19:8

J

J.D. 43:15,16
James 5:14
John 42:2,5 43:16,25
44:8
joined 10:3 19:25
journalism 15:14 27:2
journalist 9:12,15 11:17
27:8 30:9 33:24 34:11,20
journalistic 29:8 46:19
judgment 19:8
judicial 12:4,15,19,22
13:3,11,12,20 14:12,14
15:1
judiciary 16:25 17:20
18:3 29:15 37:9,15
June 13:25 14:2,11
31:12
justice 6:8 32:2,7 43:1

K

kind 29:13 46:18,22

knowledge 21:7
Krug 20:10 21:5 28:12

L

lack 15:11 17:21
Lake 9:3
large 40:21
launched 20:1,3
lawsuit 8:18 10:19,21
11:1,4,16 13:22,24 14:18
23:1,3,6,7,11 30:24 31:5,
7 34:4 44:9 45:22 46:4
47:7
lawsuits 31:10
lawyer 32:20 33:4 34:19,
20 35:2,3
lead 6:9
leads 32:6
learn 11:24 30:19 38:12
39:19
learned 11:18,23 34:21
36:21 38:15
led 38:15
Legal 4:5
legislation 37:3
legislative 29:14
legislative-type 29:21
legislature 29:22
level 37:12,13
Lexitas 4:5
Liberty 6:8 43:1
license 4:5 9:25
limiting 10:25 30:5
listed 18:21
lists 36:5
litigant 33:6,9 34:3
litigants 33:12,20,21
live 25:12,20,21,23,25
39:2,9,16,20 40:7,18
43:18 45:15

lives 43:12
long 4:11 5:2 7:19 9:13,
18 10:20 12:7,16 13:12
14:9,13 40:13
Long's 12:1
looked 11:20 15:4 16:24
17:14
lot 13:16 15:15,16

M

made 14:18 22:25 23:3
34:22 40:22 41:3 42:16
make 19:7
March 42:17
marked 4:18
matter 4:10
Mccaleb 4:9,10 5:4,15,
18,24 6:1 28:17 33:7
41:24 45:3,13 47:5
Mcquaid 5:14
meaning 19:11 22:7
meaningfully 36:11
means 32:10
Media 10:10
medication 8:6
meet 14:24
meeting 17:16 26:4
29:10 30:20 31:12 35:12
37:11 38:22 39:9 40:9
meetings 11:22 14:19
15:2,6,10,12,16,17,21
16:1,17,18,21,22 17:5,7,
15 18:5 22:5 26:11,17,20
28:25 29:9,13,14,17,21
30:9,13,15 33:24,25
34:18,25 36:11,17,22,24
37:20 39:3,18,21 40:6
41:15,17,19 42:13 45:19,
23
member 11:8,9 31:17,23
36:2
members 12:20 13:13,
19
memory 15:8 37:7

mental 8:2
mentioned 8:19,23
34:12 36:4
messy 7:10
Michael 5:1
Michelle 4:11 5:2 10:20
12:7,16 13:11
Middle 4:14
Mike 45:9 47:1
mind 24:15
mine 42:8
mirror 37:8
mirrored 37:11
moment 24:6,14
morning 4:3
multiple 17:15

N

named 18:12,14
Nashville 4:14
necessarily 38:11
needed 43:10 46:10
needing 26:9
neighborhood 22:13
Network 9:22 10:2,6,9
19:23,25 20:4,6,10
news 9:22 10:1,5,8
18:21,23,24 19:13,23,25
20:4,6,10,13,21,22,25
21:3,4,8,16,18 22:2,3
46:22
non-profit 18:25
nonprofit 20:23
normal 46:18
notice 15:18,22,23
16:21,22 17:4,21 18:4
noticed 5:6 16:25 17:2
notices 15:5 16:18
17:14,16
noticing 4:25
number 4:5,15 6:16 30:3
numbered 36:5

O

oath 4:17 6:2
object 12:10 13:14 14:5
16:11 17:22 25:4,10
26:12 28:4 30:21 32:21
33:13 35:20 36:14 38:1
40:1,11 42:23 44:18
objection 5:5
objections 4:23
observation 25:13
observe 24:25 26:20
occupation 9:11
occurring 45:24
October 4:7
Office 4:13 35:18
official 4:11
ongoing 22:2
online 17:14 19:17,20
23:16 24:11
open 10:22 11:18,22
14:18 15:6,9,12,17 16:1
17:2,3,7 24:18 25:12
26:11,17 30:20 34:17
35:12 36:22,24 37:20,25
38:12,23 40:9 45:19,23
opening 33:23
opinion 32:6,8 33:11
36:10 39:23 40:16,23
41:3 47:7
opportunity 33:25
47:20
options 22:5
ordering 47:16
organization 18:18
19:17 20:3 27:1 30:8
organizational 20:20,22
original 4:19
outlined 4:24

P

p.m. 47:25
part 29:12 35:10 43:10
45:22 46:18
partial 46:16
past 13:10,17
Pennsylvania 10:6
people 7:8,13 17:12
21:11 32:10 41:9
percent 41:12
perfect 36:8
perfectly 7:17,21
periodically 14:25
permission 28:2,11
person 20:9 24:22,24
26:21 27:4
personal 9:2
personally 23:5,10,18
24:19,21 26:6 27:9 29:3
31:9 32:23
petition 35:14
physically 26:4
piqued 30:13,14
piques 30:16
place 13:1
places 17:16
plaintiff 5:4,15 11:5
18:12 46:8
platform 23:22 25:1 29:8
39:22 40:7
pleadings 11:10 18:16
35:19
plenty 24:4 32:10
podcast 27:15
podcasts 27:13,16,22
point 25:22,24
policy 12:1,6,18,21,25
13:5,10 14:9,12 34:22
37:2,5,23,24 38:13,14,
18,21 39:9

politics 19:11
portion 40:22
position 12:1
positive 39:7
possibly 22:18
potential 37:3
Practice 12:8 14:3,15,20
15:25 18:6 22:23 23:9,14
24:17 26:5 27:4,7,21
29:1,10 30:10 31:13 34:8
37:18 38:16 39:1,24
precipitated 10:1
preparation 8:10,15
president 18:21,23
20:13,24 21:4
press 10:25 11:3,8,9
pretty 46:21
previous 31:11 43:25
print 19:18,19,21 23:17
24:11
printed 22:9
printouts 8:23
prior 14:1,11 23:7,11
28:15 37:19 43:4
private 11:7
pro 33:6,9,12,20 34:3
problem 32:3,7
Procedure 12:8 14:3,16,
20 15:25 18:6 22:24
23:9,14 24:17 26:5 27:4,
8,22 29:2,11 30:11 31:14
34:9 37:19 38:17 39:1,24
40:23 41:4,14,20,23
procedures 4:23 6:18
proceedings 47:25
process 21:20 43:11
46:23
provide 42:21
provided 6:11 42:25
public 10:23,24 11:2,3
12:9,20 13:13 14:4,14,16
15:7,10,13,17,18,21,22,
23 16:2,18,20,22 17:4,7,
14,21 18:4 23:25 24:1,

10,18 25:3 26:11,17
30:20 33:24 34:18,24
35:13 36:22 37:20,25
38:13,23 40:10 45:20,23
publish 22:12
published 21:18
publisher 28:7,12
publishes 18:25 20:14,
23
publishing 43:4
purpose 10:21
purposes 4:20 5:12
purview 19:12
put 12:2 13:1 25:21,23
27:2
puts 39:21
putting 40:6

Q

qualified 31:4
question 6:21 7:4,6,23,
24 11:19 12:11 13:15
14:6 16:12,16 17:8,10,23
18:9 20:18 21:14 24:7
25:5,11 26:13,15 28:5
30:5,22 31:21 32:22,24
33:14 35:21 36:15 38:2,9
40:2,12 42:24 44:19,21
45:2 47:5
questioning 45:13,16
46:2
questions 5:23 6:23
16:9 17:11 37:7 45:12
46:5 47:4

R

raise 5:8
read 13:18 34:13 35:6
Reading 47:18
realized 30:12
reason 8:3 47:7
reasons 7:5
recall 5:5 14:22 16:5

18:7,11 27:5 28:16
39:15,16 45:15 46:3
recollection 42:18
recommending 37:2,5,
24 38:14
recommends 38:21
record 5:5,10,25 8:20
47:11
recorded 5:9 25:9,15,17
31:14 45:15
recording 5:11 25:3,18,
21,24 40:6
records 39:21
recuse 43:10 46:11
referred 35:19
referring 38:4
reflect 7:15
registered 20:15 21:8
regularly 27:12
related 13:18
remember 6:15,16,17
13:24 36:6
remote 6:25
remotely 4:18
repeat 17:24 24:7 26:14
31:21 32:24 41:2
report 20:24 42:9
reported 21:13
reporter 4:3,4 5:11 7:7
21:19 26:19 42:6 47:15,
18
reporters 21:25 22:19
29:6 45:18 46:14
reporters' 46:15
reporting 46:22
represent 4:22 32:11
representation 33:21
represented 6:5
representing 5:1,4
29:17
require 37:24

required 5:7 35:11
requires 34:17
research 44:16
reserve 5:8
resident 9:4,9 32:19
33:3 34:3,6
responses 7:12,16
restructure 44:4,5
review 13:8 40:16
reviewed 8:15,17 11:10
13:7,16
rights 33:12
rule 12:22 13:1,2,6,11
14:9,12 17:5
Rules 5:7 12:8 14:3,15,
20 15:25 18:5 22:23
23:9,13 24:17 26:5 27:3,
7,21 29:1,10 30:10 31:13
34:8 37:18 38:16 39:1,2,
24 40:23 41:4,13,20,22
ruling 42:17

S

S-T-Y-F 42:3
safety 12:3 13:19
SAITH 47:24
sake 28:8
satisfied 25:2 38:17
scheduled 15:11
schedules 15:10
scrutiny 10:23,24
search 39:12
searches 39:14
searching 16:13
security 12:3 13:19
semantics 14:22
send 26:10,19
separate 20:3 21:1
served 31:17,23
serves 15:9 37:7

setting 37:1
shake 7:13
Shaw 10:10
sign 47:21
signing 47:18,19
similar 17:1 37:12,14
single 21:15 22:14,17
40:20
sir 6:3
situation 11:20
sound 7:25
speak 36:18 37:10
specific 24:1 26:24,25
29:14 32:16,17
specifically 13:18 31:21
39:15
specifics 16:5
spoke 28:14
spoken 34:2
sports 19:11
Square 4:11 9:17,20,24
10:2 11:6 18:17,20,25
19:3,6,10,15,22 20:1,2,7,
8,12,14,15,21,24 21:11,
18 22:11 23:5 26:18,20
28:3 29:7 30:7 31:3,5
42:6 44:3
staff 22:11,25 23:4 42:14
Stahl 5:1,23 12:12 13:21
14:10 18:1 25:7,14 26:16
28:9 31:1 33:1,16 35:24
36:20 38:6 40:4,15 43:3
44:22 45:6,14 46:5 47:4,
9,15,17
start 4:25 7:4,8 40:20
started 12:4 14:7,21
state 4:22,24 5:25 9:9
13:17 16:14,23 17:20
18:3,10 28:25 29:9,16,17
31:17,23 32:13 34:17
35:11 37:12 40:24 41:5,9
statement 12:1 32:16
38:11 40:22,25 41:3,7
42:25 46:16

states 9:7 32:12
status 20:18
stay 46:23
stenographic 4:4
stepped 43:9
Steve 43:24,25 44:6
stories 21:25 22:4,13,15,
19
story 22:7,8,14,18,22
23:12 44:17 46:13,21
stream 39:2,20 40:18
45:15
streaming 40:8
structure 20:20,22
stuff 16:7
Styf 42:2,4,5 43:12 44:15
46:3,6
Styf's 43:16,25 44:9
subjective 32:4,5
substances 8:6
suburb 24:22
suit 11:7 17:17 28:1
30:20 33:11 36:23 37:19
38:11 40:8 41:21
supervisor 42:11 43:17
44:1,9
support 32:16
supports 35:10
supposed 14:24 15:18
37:1
Supreme 30:2
suspicion 15:2
sworn 5:20
system 33:23 34:1 41:22

T

talked 8:10 32:18 33:2
34:6 36:1 44:6 46:1
talking 7:8 29:15,16
35:25 36:6 38:8
TAOC 35:23 36:2,4

tax 20:18
taxpayers 34:23
technology 6:24
Tennessee 4:5,12,14
10:6,11,23 12:4,7,15
13:3,11,12,20 14:2,12,
13,15,19 15:24 17:1,5,
15,20 18:2,3,5,10 20:16
21:8 22:23 23:8,13 24:17
26:4 27:3,7,20 28:17,19,
20,25 29:1,9,10,12,13,
16,18 30:2,10 31:13,18
32:2,12,15,19,20 33:3,4
34:2,6,8,17 35:11,17
37:8,18 38:16 39:1,5,23
40:23,25 41:4,5,10,13,
20,21,22 43:13,18 44:10,
16
Tennessee's 16:15
term 25:17,18 26:1
terms 16:4 25:3 32:9
38:17
testified 5:20
testimony 6:11 8:8
thereof 17:21
thing 7:22 35:23
things 14:22 19:1 34:21
thinking 17:10
thought 11:21
time 4:8,21 7:20 13:5
27:1,8 28:20 30:19 33:22
41:2
times 24:4 40:19
incourts.gov 13:4
today 6:3 8:3,20,22
10:15,18 22:2
today's 4:7 8:11,16
top 19:7
transcript 7:9,15 8:21
47:12,16,21
traveled 44:16
trouble 32:20
true 32:12

U

uh-huh 7:14

Ultimately 21:14

understand 6:2,21,22
7:2 16:6 34:1 35:4 38:10,
14

understanding 10:17,
25 11:6 29:23 33:22

unequivocally 32:13

V

vein 7:11

verbal 7:12,16

version 39:4

versus 45:15

vice 18:21,23

video 19:18,19 23:22
39:17

video-recorded 5:6

videoconference 4:17

videos 25:3

visited 16:23

voters 34:23

W

waive 47:19,22

waiving 47:23

walk 21:17

walked 37:16

watch 31:15 39:11

watched 36:16,18 37:22
39:8

webcast 25:12,20,21,23
26:1

webcasts 39:16

website 13:3,11 14:13
15:1 16:14,15,22,25
18:20 22:9 36:4

websites 15:15 16:23
21:1 39:13,14

week 13:9,10,17,22

Wilson 43:24,25 44:2,6,
12

Windsor 9:2

Wisconsin 27:19

wondering 41:6

word 40:20

work 9:16,17 10:6,9 19:9
21:21 22:4,10 36:12 44:3

worked 9:18 10:8,10
30:8

write 23:12 44:16

written 23:16,24 24:10
27:6 42:18 43:6,21 44:12

wrote 23:8 46:3

Y

years 6:13,14 9:14 15:14
27:1 30:16

you-all's 47:13

Youtube 31:14 39:12,17,
22

Z

Zoom 24:25

Zoom-like 25:1