

Transcript of Proceedings

Date: June 24, 2013

Case: APPLEWHITE, et al. vs. COMMONWEALTH OF PA, et al.



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1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA

2 VIVIETTE APPLEWHITE; WILOLA :
SHINHOLSTER LEE; GROVER FREELAND; :
3 GLORIA CUTTINO; NADINE MARSH; DOROTHY :
BARKSDALE; BEA BOOKLER; JOYCE BLOCK; :
4 HENRIETTA KAY DICKERSON; DEVRA MIREL :
("ASHER") SCHOR; THE LEAGUE OF WOMEN :
5 VOTERS OF PENNSYLVANIA; NATIONAL :
ASSOCIATION FOR THE ADVANCEMENT OF :
6 COLORED PEOPLE, PENNSYLVANIA STATE :
CONFERENCE; HOMELESS ADVOCACY PROJECT, :
7

**CERTIFIED
TRANSCRIPT**

8 Petitioners, : C.A. No.

9 vs. : 330 M.D. 2012

10 THE COMMONWEALTH OF PENNSYLVANIA; :
THOMAS W. CORBETT, in his capacity as :
Governor; CAROLE AICHELE, in her :
11 capacity as Secretary of the :
Commonwealth, :
12

13 Respondents. :
:

14 ** PRETRIAL CONFERENCE **

15 Reporter's Transcript of Proceedings before
THE HONORABLE ROBERT SIMPSON

16 (Also attending via videoconference:
17 THE HONORABLE BERNARD L. MCGINLEY)

18
19 Harrisburg, Pennsylvania

20 Monday, June 24, 2013

21 10:00 a.m.

22
23
24 BEFORE:
Adam D. Miller, Registered Professional Reporter



1 A P P E A R A N C E S

2 On behalf of Petitioners:

3 MICHAEL A. RUBIN, ESQUIRE
4 michael.rubin@aporter.com
5 WHITNEY A. MOORE, ESQUIRE
6 whitney.moore@aporter.com
7 DANA E. PETERSON, ESQUIRE
8 dana.peterson@aporter.com
9 ARNOLD & PORTER, LLP
10 555 Twelfth Street NW
11 Washington, DC 20004-1206
12 202.942.5000

13 -and-
14 JENNIFER R. CLARKE, ESQUIRE
15 jclarke@pilcop.org
16 PUBLIC INTEREST LAW CENTER OF PHILADELPHIA
17 United Way Building
18 1709 Benjamin Franklin Parkway, Second Floor
19 Philadelphia, Pennsylvania 19103
20 215.627.7100

21 On behalf of Respondents:

22 TIMOTHY KEATING, ESQUIRE
23 tkeating@attorneygeneral.gov
24 Senior Deputy Attorney General
25 PENNSYLVANIA OFFICE OF ATTORNEY GENERAL
16th Floor, Strawberry Square
Harrisburg, Pennsylvania 17120
717.787.3391

-and-
D. ALICIA HICKOK, ESQUIRE
alicia.hickok@dbr.com
TODD N. HUTCHISON, ESQUIRE
todd.hutchison@dbr.com
DRINKER BIDDLE & REATH, LLP
One Logan Square
18th & Cherry Streets
Philadelphia, Pennsylvania 19103

-and-
KEVIN P. SCHMIDT, ESQUIRE
GOVERNOR'S OFFICE OF GENERAL COUNSEL
333 Market Street, 17th Floor
Harrisburg, Pennsylvania 17101
717.783.6563

1 THE COURT: Good morning.

2 ALL COUNSEL: Good morning, Your
3 Honor.

4 THE COURT: It's Monday, June 24,
5 2013. It's about 10:00 a.m. We're here for a
6 pretrial conference in the Applewhite matter, the
7 voter ID case.

8 As you probably know by now, there
9 is a judge who's been assigned to handle the
10 trial. That's Judge McGinley. He is available to
11 us, I believe, by video conference. He is in his
12 home chambers in Pittsburgh, as far as I can tell.

13 There he is. I see him on the --
14 JUDGE MCGINLEY: How are you,
15 Judge?

16 THE COURT: I see him on the screen
17 now.

18 Judge McGinley is a -- he has the
19 longest priority of commission in the Commonwealth
20 Court. That means he would be the most senior
21 commissioned judge. He is also --

22 JUDGE MCGINLEY: The oldest.

23 THE COURT: I was careful not to
24 say that.

25 He actually is not the oldest, as

1 far as I can tell. But he has the most senior
2 priority of commission. He's also the president
3 judge of the Court of Judicial Discipline. So we
4 pretty much leave him alone and let him do
5 whatever he wants to do. So when we get to the
6 trial part of the pretrial conference, Judge
7 McGinley will be in contact with you.

8 It's my understanding that we are
9 on track to start the trial in three weeks, which
10 would mean Monday, July 15th. I think he'd like
11 to start a little bit later, maybe 1:00 or 1:30.
12 He'll explain that to you. So Judge McGinley --
13 when we get to the trial part, Judge McGinley will
14 discuss with you the nuts and bolts of the trial
15 itself.

16 This is the agenda for today. I'd
17 like to talk to you about the pleadings, where we
18 are with the pleadings. I'd like to talk to you
19 about discovery. I gather there's at least one
20 discovery issue that I need to address.

21 I will talk to you about the
22 proposed decorum order. I gave you a copy of
23 that. It's almost exactly the same as the last
24 decorum order. And I don't expect it to be very
25 controversial.

1 Then I will address petitioners'
2 counsel and see if you have any questions of
3 respondents' counsel or if there's anything else
4 you want to bring to my attention. I'll make the
5 same offer to respondents' counsel and then get to
6 the trial.

7 Please -- I thought today was to be
8 the close of the pleadings. Are we on track to
9 close the pleadings? Let me ask petitioners'
10 counsel first. I know it's not your pleading
11 that's outstanding. But is there anything you
12 want to say about the pleadings.

13 MR. RUBIN: No, Your Honor.

14 THE COURT: Who will speak for
15 respondents' counsel?

16 MR. KEATING: Timothy Keating, Your
17 Honor.

18 THE COURT: All right.

19 MR. KEATING: We are ready to file
20 our answer to the amended petition today.

21 THE COURT: Okay. Are there any
22 problems with the pleadings that I'm going to need
23 to deal with?

24 MR. KEATING: Well, we are going to
25 put in some new matter along with our responses,

1 but...

2 THE COURT: Okay. My sense is
3 there's nothing about the pleadings that's really
4 going to need to delay anything. Even if there is
5 new matter in here, I think we pretty much know
6 what's -- where we're going, as far as the
7 pleadings go. So...

8 And I haven't heard anything yet
9 that's makes me think that it's going to change
10 our schedule.

11 All right. Let's get to a bigger
12 issue: discovery. I know petitioners have a
13 issue regarding discovery because I received
14 something Friday. So there's a question about --
15 there's an application for me to continue the
16 deposition of Jonathan Marks.

17 Could you flesh that out for me.
18 Who will speak for -- counsel.

19 MR. RUBIN: For petitioners,
20 Michael Rubin, Your Honor. And good morning, Your
21 Honor, by video conference.

22 This is a very narrow issue but a
23 very critical issue to the Court. Jonathan Marks,
24 as you know, is -- his official title is
25 commissioner of the Bureau of Commissions,

1 Elections, and Legislation, Department of State.
2 He runs the elections, as you know. You've seen
3 him many times; I'm sure.

4 This relates to testimony that he
5 gave at his deposition in this case that was just
6 taken and specifically concerning the Department
7 of State identification, which is what the
8 respondents have identified as the, essentially
9 the cure for the constitutional problems that the
10 photo ID law raises. And one of questions is who
11 can get this ID and whether it can be gotten
12 easily.

13 The evidence has shown that it
14 can't be obtained easily. One in eight people
15 that go to get it are turned away without the ID,
16 for various reasons. And those people are put
17 into what's called an exception process.

18 And I have a printout here of a
19 document that was produced after Mr. Marks'
20 deposition that goes through in a lot of the
21 detail, what the story is for why those people did
22 not receive the ID initially and for -- there are
23 over 600 names on here -- why many of them still
24 have not received the ID.

25 Some of them, as of April and March

1 of this year, were sent letters saying, Go back to
2 PennDOT now, finally, after six months to get an
3 ID. They weren't mailed the ID like they were
4 told -- we were told they would be at the last
5 hearing.

6 We have a lot of questions about
7 this. This was responsive to our discovery
8 request. It should have been produced initially.
9 It should have been produced before the deposition
10 was done. We learned about it -- and we had a
11 smaller version of it that was produced.
12 Mr. Marks told us there was a larger, more updated
13 version.

14 We asked for that at the
15 deposition. It was produced. It was printed the
16 day after the deposition but wasn't produced to us
17 for a week later, on the Friday before discovery
18 closed.

19 So we would like an opportunity, on
20 this critical part of the case, to take a very
21 short, focused deposition to understand what this
22 evidence is, why some of it appears to be
23 internally inconsistent --

24 THE COURT: May I ask you to pause
25 for a moment?

1 MR. RUBIN: Absolutely, Your Honor.

2 THE COURT: What do you mean by
3 "short"?

4 MR. RUBIN: Obviously -- I would
5 say we could be done in two hours; probably closer
6 to one hour. Obviously, it is a large document.
7 It goes -- I can hand up a copy if you like, Your
8 Honor. But it goes through one set of columns,
9 and then more columns and more columns. So there
10 would be some just time explaining what the
11 columns are, which just takes some time.

12 But we identified in our motion the
13 four key questions we want to understand what
14 the -- why we're seeing what we're seeing in here.
15 So I'm thinking under two hours we could be done.

16 Just for context, you gave us 24
17 hours to finish up depositions. We didn't come
18 close to using anywhere near that 24 hours. We
19 have taken --

20 THE COURT: So you banked some?

21 MR. RUBIN: Well, I wouldn't put it
22 that way, Your Honor. But if that's the way Your
23 Honor would like to think of it...

24 Hopefully respondents would agree
25 we took short, focused depositions. We didn't

1 need to reduplicate. That's how we've done it
2 always throughout this case. And we would ask for
3 a brief opportunity to -- respondents have said
4 it's the key, critical issue in this case -- to
5 really sort of understand it before we come to
6 court.

7 THE COURT: Okay. Let me just --
8 before I ask respondents to respond, let me just
9 point out that Judge McGinley -- can you hear me,
10 Judge?

11 JUDGE MCGINLEY: Yes.

12 THE COURT: Every time you're
13 moving papers around, we hear you very well. I
14 don't know where your microphone is there, but be
15 careful with that.

16 JUDGE MCGINLEY: I'll be a little
17 more careful. Thanks, Judge.

18 THE COURT: Thanks.
19 Anything else on this issue?

20 MR. RUBIN: No, Your Honor.

21 THE COURT: Who will speak for
22 respondents?

23 MS. HICKOK: Your Honor, Alicia
24 Hickok. I speak for the respondents on this
25 matter.

1 Mr. Marks at the remand hearing had
2 testified about this exceptions table. You will
3 recall that testimony. He was asked in depth
4 about it. There are people who are on the
5 exceptions table who were on the exceptions table
6 at the time of the remand hearing that still have
7 not managed to get their ID. These are the people
8 that they're talking about who were asked to come
9 back to PennDOT before the process changed.

10 We did provide an updated table
11 that shows the people who came into the exceptions
12 process afterwards. But Mr. Marks was asked quite
13 a few questions at his current depositions about
14 the exceptions process. And they are
15 mischaracterizing that testimony today to tell you
16 that there are far more people without their IDs
17 than what he testified to.

18 And our position is that discovery
19 closed. And Mr. Marks, as you know, was deposed
20 before the preliminary injunction, testified at
21 the preliminary injunction, testified at the
22 remand hearing, and then was deposed again. And
23 this is something that they have known that this
24 exceptions process existed since last fall.

25 THE COURT: Do you have a reference

1 for me from the remand transcript?

2 MS. HICKOK: Yes, Your Honor.

3 Your Honor, on September 25th he
4 testified at pages 194 to 197, 198 to 201 -- to
5 236; sorry. 198 to 236. And then on
6 September 27th he testified again on pages 495, it
7 looks to 522.

8 THE COURT: Well, that's his
9 testimony. But is all the testimony about this
10 document?

11 MS. HICKOK: The 25th is entirely
12 about the exceptions, and part of the 27th is.

13 THE COURT: Okay.

14 MS. HICKOK: This isn't all his
15 testimony, but it's the parts that contain
16 relevant testimony.

17 THE COURT: All right. I think I
18 understand this issue. I'm probably going to
19 allow the two-hour deposition. I guess it's
20 re-re-deposition at this point, but -- so long as
21 it's scheduled in a way not to delay the trial.

22 I would like to just reference what
23 I've seen in the -- I want to remember the
24 testimony I heard. The document looks familiar to
25 me. I think I've seen it, or at least part of it,

1 before. So let me just see what we have.

2 Are there other discovery issues of
3 which I should be aware?

4 MR. RUBIN: Your Honor, just one
5 point in terms of the testimonies that you're
6 going to go back and look at and we'll have an
7 opportunity --

8 THE COURT: You're winning here;
9 you know that?

10 MR. RUBIN: I do understand that,
11 Your Honor. The testimony -- this was the
12 document that was produced in December. And I'm
13 holding up the version that was produced after his
14 deposition. This document, the new version, has a
15 lot more information than what we were previously
16 produced.

17 So, yes, we were -- there was
18 testimony about this process in general. We have
19 a lot more information now that wasn't disclosed
20 that should have been. So that's just the point I
21 wanted to make.

22 In terms of discovery, Your Honor,
23 there were some witnesses who we have been able to
24 identify through the matching of the databases,
25 who we have disclosed on a rolling basis to

1 respondents. And we're going to want to -- and
2 it's not really discovery; it's more of a
3 trial-preservation issue. But we're going to want
4 to take trial-preservation depositions for some of
5 those witnesses who cannot get to PennDOT, let
6 alone come to Harrisburg to testify.

7 So that's just one additional issue
8 that's out there.

9 THE COURT: And I noticed that. Is
10 there any response from respondents to the
11 requests for preservation depositions?

12 MR. KEATING: Yes, Your Honor.
13 Whether they're preservation depositions or
14 regular depositions, they were depositions, and
15 discovery has closed. They've had more than
16 enough time to determine what witnesses they want
17 to call for the purposes of this trial who may or
18 may not have had difficulties getting an ID.

19 If they want to list these
20 individuals as witnesses for the trial itself,
21 that's one thing. I object to that too, by the
22 way. But for the purposes of continuing and doing
23 depositions three weeks before trial, after
24 discovery has closed, we don't think it's
25 appropriate; and we do object to it.

1 THE COURT: Anything else?

2 MR. KEATING: They have already
3 issued deposition notices on some of these
4 witnesses. And I think there's like four of them
5 they've noticed for this week alone in different
6 places.

7 THE COURT: Well, you know what,
8 I'm more concerned at this point with you
9 explaining to me what the prejudice is to you sort
10 of procedurally, rather than just saying you think
11 they're out of time.

12 I understand the idea that
13 witnesses who are infirm may be discovered as we
14 go along or who have some sort of problem that
15 occurs. Is there some way that -- is there some
16 reason that you can't accommodate what seems to be
17 a professional request to cooperate with
18 preserving that testimony?

19 MR. KEATING: We'd love to
20 cooperate with the other side, Your Honor.
21 However, we've got three weeks to get ready for
22 trial. We don't yet have their expert report. We
23 have to get our expert together. We have a lot of
24 things going on and very limited resources. Time
25 after time we have given them everything they've

1 wanted. But discovery has to end sooner or later,
2 Judge; and it's already ended.

3 THE COURT: All right. I doubt
4 that I'm going to preclude them doing this if they
5 give you two weeks' notice; in other words, it's
6 two weeks before trial. So get on it.

7 MR. RUBIN: We've already issued
8 the notices, Your Honor. And we've also offered,
9 simultaneous, to work with them on scheduling and
10 reschedule them whenever is convenient.
11 Obviously, they have the Attorney General's office
12 and they also have outside counsel.

13 THE COURT: The -- speaking of
14 witnesses. I guess I'm anticipating a little bit
15 about the trial itself. My sense last year was
16 that both sides were able to work out disclosure
17 of what witness would be needed on what days. I
18 don't think I entered any kind of order that
19 regimented that. I don't think it was needed.

20 My suggestion to Judge McGinley
21 would be to just let you work it out, continue to
22 work it out, because it seemed to work last year.

23 Would you agree with that?

24 MS. CLARKE: Yes, Your Honor.

25 MR. KEATING: Your Honor, two

1 things. Number one, can we have a sense of how
2 long the trial is going to be?

3 THE COURT: Well, I'll get to that.
4 I'm just -- I'm thinking about trial witnesses
5 right now. Both sides seemed to work it out.

6 MR. KEATING: Well, do we have a
7 limitation on new witnesses that they want to come
8 up with between now and trial?

9 THE COURT: All right. Let me get
10 to the trial part of it. Then I'll save the
11 resolution of this till we get to the trial part.

12 Are there any other discovery
13 issues?

14 MR. KEATING: Your Honor, this is
15 not discovery. Relative to motions in limine,
16 we're wondering when is the cut-off point for
17 those to be filed with the Court.

18 THE COURT: That is something that
19 Judge McGinley will need to address. So I don't
20 have an answer for you. I'm in the "pre" part of
21 "pretrial."

22 MR. RUBIN: Your Honor, on -- I'm
23 sorry.

24 MR. KEATING: (Indicating.)

25 THE COURT: Anything else for

1 respondents?

2 MR. KEATING: No, Your Honor.

3 MR. RUBIN: In terms of discovery,
4 I think it's labeled discovery of experts, Your
5 Honor. Obviously, expert reports are due,
6 pursuant to the Court's order, on July 1st. And I
7 believe there's some language in there, unless
8 sort of good cause is shown for an extension.

9 We are not anticipating asking for
10 an extension. We are pushing our experts very
11 hard to finish their work and get their reports
12 in. I think the July 1st date is -- having that
13 date is a motivating factor and is a good hammer
14 to use to make sure it gets done. We anticipate
15 doing that. But as things happen between now and
16 next Monday, we may be coming back for a little
17 extra time. But I don't anticipate needing that.

18 The other discovery issue on
19 experts is the respondents, in their pretrial
20 submission, disclosed Dr. William Wecker, who --
21 statistician out in California. And they had
22 language that's a little confusing to us. It
23 says: Respondents will be rebutting the expert
24 testimony that has not yet been produced. They
25 will not be offering an expert report other than

1 in rebuttal.

2 So it's unclear whether they're
3 intending to submit an expert report at all; if
4 so, when. Our understanding of the Court's order
5 is that expert disclosures are due simultaneously
6 on July 1st. If by this language the respondents
7 are suggesting they're going to submit it at some
8 other time, petitioners would object to that. But
9 it may be a nonissue in terms of the discovery.
10 Or this may be more of a trial issue.

11 THE COURT: Stick with me. I'll
12 get to the point in our agenda where you can ask
13 questions of respondents' counsel. I saw the same
14 information you saw in pretrial memoranda, and I
15 anticipated somebody raising it today. So I
16 don't -- that's really a question that I can't
17 answer. It's a question that perhaps the
18 respondents' counsel can answer. So I'll give you
19 an opportunity to ask them the question.

20 MR. RUBIN: Thank you, Your Honor.

21 THE COURT: Decorum order. I've
22 given you copies of a proposed decorum order.
23 It's almost exactly the same as last year. This
24 doesn't really impact counsel so much. It impacts
25 the people in the gallery, the press.

1 I did not make arrangements for an
2 overflow courtroom because we didn't use it after
3 the first day of trial, and it just seemed like it
4 was not helpful. So other than that and the
5 movement or rearrangement of one paragraph, it's
6 exactly the same as the decorum order we had for
7 the remand hearing.

8 Is there any reason why this
9 Decorum Order 3 can't be signed and filed today?

10 MS. CLARKE: Your Honor, I'm
11 Jennifer Clarke for petitioners. We have no
12 objection. It's fine.

13 MR. KEATING: None for respondents,
14 Your Honor.

15 THE COURT: Anyone else in the
16 courtroom that wants to be heard on the decorum
17 order?

18 In anticipation for this, our
19 prothonotary has been in contact with both the
20 Capitol Police and AOPC. So we'd had some input
21 from them. They basically said, "Do what you did
22 last year." So that's what we're going to do.

23 All right. Now, plaintiffs'
24 counsel, you seem to have at least one question of
25 respondents' counsel with regards to the expert

1 disclosure. And as I understood your question, it
2 was what disclosure, if any, can be anticipated
3 from respondents' -- what expert disclosure, if
4 any, can be anticipated from respondents by the
5 July 1 deadline.

6 Is that a fair characterization of
7 your inquiry?

8 MR. RUBIN: Yes, Your Honor.

9 MS. HICKOK: Your Honor,
10 petitioners have consistently refused to disclose
11 even who their experts are or what subject their
12 experts will be testifying on, taking the position
13 that they did not need to put it in the pretrial
14 and that it would be disclosed July 1st, when they
15 issue however many expert reports they issue.

16 Because of the nature of expert
17 testimony, individual fact witnesses can only
18 counter so much of the expert testimony. Some of
19 it will be needed to be analyzed by an expert in
20 order to be able to demonstrate the faultiness
21 that underlies the premise and in order to be
22 helpful to the Court.

23 Accordingly, we have retained an
24 expert witness for the purpose of analyzing their
25 expert reports and testifying as to the flaws in

1 them so that you would be able to understand, and
2 Judge -- the Honorable McGinley would be able to
3 understand the weaknesses in their testimony.

4 THE COURT: Well, you do anticipate
5 this person will be testifying at trial, then?

6 MS. HICKOK: Yes, Your Honor.

7 THE COURT: Well, certainly by
8 July 1st you would need to disclose the
9 qualifications of the expert.

10 MS. HICKOK: We could certainly
11 disclose the qualifications. But we can't issue a
12 report because we haven't seen the reports that he
13 will rebutting.

14 THE COURT: Well, I think it's fair
15 that they see your expert report in advance of
16 trial. So how would you propose to resolve this
17 issue?

18 MS. HICKOK: Well, if they told us
19 what reports we'd be getting and how many, we
20 could tell you how long it would take to rebut
21 them. But we don't even know --

22 THE COURT: Okay. Sounds like
23 you're going to have a report on July 1st or
24 before July 1st.

25 MS. HICKOK: Well, they're saying

1 they might ask for an extension of time. And they
2 have not said how many reports we would have.

3 THE COURT: The -- next Monday,
4 which would be July 1st, is two weeks before
5 trial.

6 MS. HICKOK: Yes, Your Honor.

7 THE COURT: Reasonably, what's your
8 best good-faith estimate as to how much time your
9 expert would need?

10 I think they get it beforehand. I
11 think they get it beforehand.

12 MS. HICKOK: I understand, Your
13 Honor. But --

14 THE COURT: I understand your
15 problem.

16 MS. HICKOK: Our problem is, if we
17 have 500 pages that produce on July 1st, of
18 various people doing various statistical analyses
19 and complicated analyses, a person going through
20 that can't possibly do it in 20 hours or 30 hours.

21 If they give us a 25-page expert
22 report or they give us an expert report that is
23 Mr. Barreto's updated slightly, then we certainly
24 could do it in a week.

25 But asking us how long it will take

1 to analyze a complete unknown is very difficult
2 from our perspective because it is completely
3 unknown.

4 THE COURT: This would be the basis
5 for them to request a continuance of trial; you
6 understand that?

7 MS. HICKOK: Your Honor, if they
8 can tell us what we would be looking at in terms
9 of an expert report -- are we looking at one? are
10 we looking at two? what are the topics? how long
11 are they going to be? -- that kind of information
12 would enable me to answer you as to how long it
13 would take to do a rebuttal.

14 THE COURT: Well, this is another
15 area I anticipated would come up today. I can
16 understand that respondents can't pin themselves
17 down on the rebuttal report. I think you get it
18 at least seven days before trial.

19 MR. RUBIN: Your Honor, may I be
20 heard? Just to clarify for the record, at one of
21 the depositions Mr. Keating asked us who our
22 experts were going to be. I told him we hadn't
23 decided yet.

24 However, they, of course, know who
25 one of our experts is because they've been

1 producing directly to that expert the data on the
2 database matching. We anticipate having two
3 experts that would be within Dr. Wecker's area of
4 expertise, one of whom they already know about,
5 Dr. Siskin, from BLDS. That's not a surprise or
6 state secret. We already told them that. They
7 produced the data. It's going to be doing
8 database matching; very similar to what they did
9 last summer, but doing a better job at it,
10 hopefully.

11 They will also be hearing about,
12 potentially, from a different, one other expert,
13 some additional analysis based upon
14 Dr. Barreto's --

15 THE COURT: Who is this other
16 expert?

17 MR. RUBIN: It's a Dr. Marker is
18 likely going to be the expert. So that's still
19 being resolved. But it will be very short
20 testimony, very short report; not doing a whole
21 new survey. It will be based on Dr. Barreto's
22 work.

23 So this was -- should -- could have
24 been anticipated months ago. This is one of the
25 issues that we had with the databases not being

1 produced on a timely basis. The Court's always
2 envisioned -- it's always been envisioned that
3 there would be simultaneous exchanges of reports.

4 (Indiscernible cross-talk.)

5 THE COURT: A new undisclosed
6 expert. I'm a little concerned about that.
7 You -- both sides disclosed experts. And now I'm
8 hearing about somebody for petitioners who has not
9 yet been disclosed. I mean, identity is one
10 thing. I mean, you can certainly come up with the
11 identity if you don't have a report yet.

12 MR. RUBIN: As we understood the --
13 and just to be clear, this is only within the area
14 of Dr. Wecker. We probably will have a third
15 expert on communications as well, Your Honor. But
16 all of those, Your Honor, depend upon the work, as
17 we told -- as we stated when we asked for a
18 continuance, that all of their work also depends
19 upon knowing where the database matching ends up;
20 because who you're communicating with depends on
21 who doesn't have ID. So it's all intertwined and
22 it's very -- so there are lots of different pieces
23 that need to fall into place, Your Honor.

24 THE COURT: Who's this other
25 expert?

1 MR. RUBIN: Dr. Mutz is the
2 communications expert, Your Honor.

3 THE COURT: Okay. Well, you need
4 to disclose the qualifications of these people you
5 just identified. And I'm really disappointed with
6 this. I'm really disappointed that we're getting
7 into this problem at the pretrial conference
8 stage, three weeks before trial.

9 So all these things should be
10 disclosed. The qualifications of these experts
11 and the, you know, the names of the experts and
12 the areas of expertise need to be disclosed within
13 two days.

14 You know, Judge McGinley, I'm sorry
15 to do this to you, but it looks like after today
16 there may be problems with this part of discovery.
17 It may impact the trial date.

18 The problem with impacting the
19 trial date is we have a goal of August the 9th to
20 complete the testimony at the new hearing and
21 issue a decision of -- on the preliminary
22 injunction extension. So any significant delay of
23 the trial will also imperil a timely decision on
24 the preliminary injunction and thus imperil a
25 timely appeal to the Supreme Court in advance of

1 the November election.

2 So these problems with expert
3 discovery impact a year's scheduling. And that's
4 what's concerning me and causing grave
5 disappointment at this stage of the proceedings.

6 All right. So, my fellow jurist,
7 good luck with this.

8 All right. So getting back to the
9 agenda, we have -- well, let me try to resolve
10 this. I don't see how respondents can issue a
11 report until they've seen your reports. The
12 chances of your getting an extension of time for
13 these reports, now that I find out that there are
14 going to be several of them, are pretty slim in my
15 view, slim to almost none. I'm not going to
16 preclude that because that's going to be Judge
17 McGinley's decision because he will have the final
18 say about the trial.

19 But -- well, I'm disappointed; you
20 know that. I don't think I need to keep harping
21 on that.

22 Respondents, you're going to get a
23 very, very, very short timeline to respond to
24 these reports.

25 MS. HICKOK: Yes, Your Honor.

1 THE COURT: There may have to be a
2 short delay of the trial. But, honestly, if we
3 delay the trial more than about a week, we're
4 really running into problems with everything else
5 that has been planned for rest of the year on this
6 case, so I don't want to do it. And I don't think
7 the people of Pennsylvania want to this hanging
8 around forever either. I think everyone wants
9 closure on this. And we're trying to do that.

10 MS. HICKOK: I agree, Your Honor.

11 MR. RUBIN: And, Your Honor, the
12 petitioners agree that we do not want a, at this
13 stage, a delay of the trial. We have worked very
14 hard to move forward and be prepared for trial.
15 The schedule of simultaneous expert disclosure was
16 always sort of envisioned by both parties.

17 Dr. Wecker -- we object to having a
18 report so close to trial from Dr. Wecker, who we
19 know from previous cases will submit a very
20 complicated, detailed report that will require us
21 to work with our experts on the eve of trial to
22 figure out what it is that Dr. Wecker's saying and
23 why what he's saying is not accurate.

24 So we don't -- there -- the
25 database is the database. They've had 16 months

1 to do a better match to database and come in and
2 say, Here's now what the number is.

3 THE COURT: You know what, I am not
4 persuaded about this late disclosure of database
5 information. It's just not persuasive to me
6 anymore. Every time I hear from you, it's a
7 complaint about the compliance of respondents for
8 discovery.

9 At this point, complaining doesn't
10 help me. At this point, getting it done helps me.
11 So pointing fingers is not useful.

12 MR. RUBIN: Understood, Your Honor.
13 We will plan on getting it done for a July 15th
14 trial date.

15 THE COURT: All right. So we've at
16 least disclosed -- we've at least discussed this
17 issue of the expert discovery. And I -- so we --
18 qualifications need to be exchanged immediately.

19 And you're going to have to -- and
20 I'm speaking to respondents' counsel -- within 24
21 hours of receipt of the ex- -- of the report,
22 you're going to have to give us in writing and
23 give to Judge McGinley in writing your best
24 estimate of how much time you need to produce a
25 report, a rebuttal report.

1 MS. HICKOK: Yes, Your Honor.

2 THE COURT: So you'll have 24 hours
3 the respond to what you get. So save a day. Keep
4 that day open.

5 All right. Let me just go back to
6 my agenda here. Counsel for petitioners, do you
7 have any more questions of respondents' counsel?

8 MR. RUBIN: No, Your Honor.

9 THE COURT: Is there anything else
10 you want to bring to my attention -- and Judge
11 McGinley's attention?

12 MR. RUBIN: No, Your Honor.

13 THE COURT: Okay. Counsel for
14 respondents, do you have any questions of counsel
15 for petitioners?

16 MR. KEATING: Other than those --
17 you've already identified potential trial
18 depositions. How many more do you believe that
19 you're going to try to identify between now and
20 trial?

21 MS. CLARKE: There are two
22 additional witnesses who we hope to be able to
23 preserve their testimony by video.

24 THE COURT: Are these in the papers
25 I got Friday?

1 MS. CLARKE: Yes.

2 THE COURT: These are the same
3 people?

4 MS. CLARKE: The same people who
5 are identified as testifying by video. There were
6 six altogether. We've set four trial depositions
7 so far. So there are two additional people who we
8 anticipate testifying by video.

9 THE COURT: It's -- Theresa
10 Kukowski.

11 MS. CLARKE: Yes. She's one of the
12 two that we haven't notified so -- notified them
13 that we want do that by video deposition.

14 THE COURT: And Patricia Norton?

15 MS. CLARKE: Yes.

16 THE COURT: So those are the two?

17 MS. CLARKE: Well, there are six
18 altogether that we identified as testifying by
19 video.

20 THE COURT: These are the two new
21 ones.

22 MS. CLARKE: No. Miss Norton is
23 not one of the new ones. The other one is a
24 witness in Philadelphia. We've notified them of
25 four, and there are two others that we may or may

1 not be taking.

2 THE COURT: All right. I guess I'm
3 not getting this. Do they have all the names?

4 MS. CLARKE: They have all the
5 names, Your Honor. All of the names of the people
6 were disclosed in the witness list that was
7 exchanged last week. It's -- they have the names.
8 And they know we want to take them or present them
9 by video.

10 THE COURT: Okay.

11 MR. RUBIN: Your Honor --

12 THE COURT: Just bear with me for a
13 moment, please. So I understand, do you
14 anticipate requesting any more depositions to
15 preserve trial testimony?

16 MS. CLARKE: Yes, we anticipate --

17 THE COURT: I mean of people who
18 have not already been identified for this purpose.

19 MS. CLARKE: All of the people
20 who -- the answer's no. We have identified all of
21 our witnesses on the witness list. Everyone on
22 the witness list has already been identified.
23 Everyone who we want to preserve testimony has
24 already been identified, both on the witness list
25 and previously.

1 It's just that we haven't sent out
2 the notice for exactly when and where we want to
3 preserve the testimony for two of the six people.

4 THE COURT: All right.

5 MR. RUBIN: And, Your Honor, on the
6 filing of that on Friday, that only added a name
7 for the designated witness for the League of Women
8 Voters. We previously just designated an unnamed
9 person until we found out who it was going to be.

10 And then two of the previously
11 disclosed witnesses, both of them Theresas, one
12 had been listed as by video and one live, and it
13 should have been swapped.

14 So the Friday was not disclosing
15 new information. It was just clarifying.

16 THE COURT: All right. I will note
17 on your list you reserve the right to name
18 additional witnesses. You may reserve that right,
19 but I'm not sure the Judge is going to let you do
20 that. I certainly haven't agreed to let you
21 augment your witness list.

22 MR. RUBIN: Understood.

23 THE COURT: Mr. Keating, does that
24 answer your question?

25 MR. KEATING: It's a, it's a start

1 to answering my question concerning the witnesses
2 identified. I think another question I have is
3 this: We had previously sent out interrogatories
4 asking you to identify all individuals who haven't
5 been able to get valid ID and tell us what steps
6 they took to get such IDs and why they haven't
7 been able to get them.

8 Are you going to provide that,
9 those response to those interrogatories to us
10 concerning these witnesses before the depositions?
11 It could help truncate the depositions quite a
12 bit, I think. I think it's information we should
13 have prior to taking the deposition.

14 MR. RUBIN: We fully responded to
15 those interrogatories, Your Honor, which were
16 directed towards the petitioners and what the
17 petitioners themselves knew, which is where
18 interrogatories should be directed to.

19 These individuals were not people
20 that are known to the petitioners; rather to
21 counsel who identified them through their
22 investigation. We have -- so there's nothing that
23 our petitioners can disclose about this. It's --
24 they're available for -- they were available for
25 deposition for discovery purposes. We'll

1 certainly cooperate with respondents if they want
2 to take discovery depositions before the
3 preservation depositions. But we fully responded
4 to the interrogatory requests already.

5 THE COURT: Okay. Let me get this
6 right. There's been no interrogatory answer
7 regarding the testimony of these witnesses whose
8 testimony you seek to preserve by videotape?

9 MS. CLARKE: There has been no
10 interrogatories answers because the individuals
11 who we identified were individuals who counsel
12 identified, counsel located.

13 However, out of courtesy and
14 understanding that the respondents would want to
15 know who these people are, we, as we located them,
16 we informed respondents by letter both of the
17 names, the address -- the names and the substance
18 of the testimony of each of the individuals who we
19 have identified.

20 So beginning on --

21 THE COURT: The substance of the
22 testimony seems to be sort of at issue here. What
23 did you disclose about that?

24 MS. CLARKE: So, for example, there
25 is an individual who is infirm and unable to get

1 to PennDOT and lacks ID. There is an individual
2 who went to PennDOT but who was given the wrong
3 form and turned away. So it is, it's a one- or
4 two- or three-sentence description of the
5 substance of the person's testimony.

6 And there were, there were a series
7 of four different letters that we sent. As we
8 located the individuals and determined that they
9 would be suitable trial witnesses, we did inform
10 respondents' counsel.

11 MR. KEATING: Your Honor, they
12 don't just represent the petitioners who were
13 named in this suit. They represent --

14 THE COURT: I'm not buying that
15 either.

16 MR. KEATING: Okay.

17 THE COURT: But my question to you
18 is, my question to you is: Have you received
19 letters about these witnesses briefly describing
20 what they're going to testify about?

21 MR. KEATING: No.

22 THE COURT: Well, then, I can't, I
23 can't solve this now. Please give them the
24 letters at least four days, four business days
25 before the -- it's a he said/she said thing. I

1 don't -- I can't fix this.

2 MS. CLARKE: Your Honor, we'll send
3 additional copies today.

4 THE COURT: Thank you. That would
5 be great.

6 Any other questions of petitioners'
7 counsel from respondents' counsel?

8 MR. KEATING: No, Your Honor.

9 THE COURT: Is there anything else
10 that you want to bring to my attention?

11 MR. KEATING: Your Honor, the only
12 other thing we have were questions about a motion
13 in limine as we're going to the trial, and you
14 indicated that's not what we're going to be
15 discussing here.

16 THE COURT: I don't have an answer
17 for you about motions in limine. But we are
18 getting to the part of the pretrial conference
19 where we may get to that.

20 Let's talk about the trial now.

21 Petitioners, how long do you think
22 the trial's going to go?

23 MR. RUBIN: We estimate about five
24 days for our witnesses. That depends partially on
25 how long the trial days are. I see from the

1 decorum order that the first day is going to start
2 at 1:00 o'clock. So if they're longer trial days,
3 it'll be shorter. And we intend to be very -- as
4 focused as we can and be very focused on both new
5 witnesses and previously testifying witnesses.

6 We want to clarify that the
7 Court -- as you instructed, the record that exists
8 already from the two prior hearings is
9 incorporated and is already part of this permanent
10 record on the permanent injunction.

11 So we don't intend to repeat that
12 record unnecessarily and -- or at all -- if it can
13 be avoided. So we're estimating with those
14 caveats about five days.

15 THE COURT: And how much time do
16 respondents think they need?

17 MR. KEATING: I don't think it
18 would be more than three days, Your Honor,
19 assuming they -- they're going to call, I assume,
20 a lot of our own witnesses as if theirs. So I
21 don't anticipate taking that long.

22 And we would agree that any prior
23 testimony in prior hearings is part of the
24 evidentiary record.

25 THE COURT: Since you mentioned

1 that, it's clear that Judge McGinley will be
2 trying the case, not me. And I've also offered
3 him my two law clerks who sat in or everything.

4 That's Josh Mazin is my
5 administrative law clerk. Lucinda Glinn is a law
6 clerk here in Harrisburg. They have seen all the
7 witnesses. They've seen all the testimony.
8 They've heard your arguments. They know your --
9 they know counsel. And I have offered their
10 institutional memory to Judge McGinley for his
11 use.

12 If there is an objection to the
13 assignment to Judge McGinley or if there's an
14 objection to his use of my law clerks, you need to
15 make that, raise that objection in writing by July
16 1st.

17 It would be my intention to have
18 nothing to do with this case as of today, quite
19 frankly. I anticipate a hard break. I'm going to
20 to enter a decorum order. I may have to enter
21 something, some sort of discovery resolution order
22 today. And that will be it.

23 I've already told my law clerks I
24 don't expect to talk to them about the case. They
25 would be totally at the --

1 MR. KEATING: Mercy?

2 THE COURT: -- at the direction of
3 Judge McGinley. But we wanted to give you -- I
4 mentioned this to counsel before, so I hope it's
5 not a surprise to you. But I wanted to give you
6 an opportunity to object to it if you think
7 there's something wrong with that proposal.

8 It sounds like we've got about
9 eight days. I understand these things can
10 sometimes be inaccurate. But I found the
11 estimates of counsel last year to be very
12 accurate. So I, you know, this sounds like a good
13 estimate.

14 This is the courtroom. I can't
15 remember if this is the -- the trial will be here.
16 I can't remember whether the trial was here last
17 year or whether it was next door. But I've made
18 tentative arrangement for rooms to be available
19 for counsel like last time.

20 Now, last year the Commonwealth did
21 not want a room because you have offices, you
22 know, a few blocks away. Mr. Keating, do you want
23 me to reserve a room for your use right outside --
24 it may not be on this floor, but it would --

25 MR. KEATING: Like a conference

1 room?

2 THE COURT: Right.

3 MR. KEATING: Yes, Your Honor.

4 We'd appreciate it.

5 THE COURT: Somewhere where your
6 witnesses can sit and, you know...

7 MR. KEATING: We don't have that
8 many, Your Honor. We don't need a very big room.

9 THE COURT: Well, then I will make
10 arrangements for both counsel. Let me chide the
11 petitioners a little bit, however, because I'm
12 going to ask you specifically to return the room
13 to us in the same condition in which you find it.

14 It was a little rough when we got
15 it back, and my secretary cleaned up the room. So
16 I'm pretty sure that's not in Judge McGinley's
17 secretary's list of duties. So we're going to ask
18 you to just give it back to us the way you get it.

19 There is also a room right outside
20 the courtroom for, available for the court
21 reporter. I'm assuming, having heard nothing to
22 contrary, that that was satisfactory for the court
23 reporter's use.

24 I also assume that you are -- that
25 arrangements have been made for daily copy again?

1 MR. KEATING: Yes, Your Honor.

2 MR. RUBIN: (Nodded.)

3 THE COURT: I thought it was very
4 helpful for me to have daily copy. And I'm sure
5 Judge McGinley would like daily copy as well, to
6 the extent it's available at the same time it is
7 to counsel.

8 What was delivered to me last year
9 was a rough copy, which is fine. But ultimately
10 the pagination didn't necessarily follow the
11 ultimate result, so I couldn't always find what I
12 wanted when we got the real transcript. So I
13 would even say delay it a little bit so that we
14 get something with an accurate pagination.

15 All right. Let's get back to a
16 topic that I started to get into at the -- earlier
17 in the pretrial conference, which is cooperation
18 by counsel as to disclosure of the witnesses for
19 the coming day.

20 This seemed to work. I thought you
21 did a good job. And I thought it was very
22 professional. I'd like you to continue that. And
23 I hope that Judge McGinley doesn't have to
24 interfere with that.

25 Judge McGinley, we're getting to

1 the part of the pretrial conference where counsel
2 will want to hear from you about a number of
3 topics. They've already mentioned motions in
4 limine. And I'm sure they'd like to know your
5 schedule and how to contact you.

6 Is there anything you want to share
7 with us now?

8 JUDGE MCGINLEY: I would like this
9 thing to start on July 25th.

10 THE COURT: On July 25th or 15th?

11 JUDGE MCGINLEY: 15th. I have two
12 different dates, but the 15th is the date.

13 I would like to drive over from
14 Pittsburgh on Monday morning and start up around
15 1:00 o'clock, go till 3:30 -- but that's very
16 flexible. You'll get one ten-minute break.

17 Tuesday through Thursday we'll
18 start at 9:30, go to 12:00, ten-minute break.
19 We'll start at 1:00, 1:30 and go to 3:30; not in
20 stone. We'll go to 4:00 -- depending upon the
21 witnesses. We'll be flexible.

22 On Friday, I would like to have a
23 shortened day to drive over to Pittsburgh. I
24 think we could do this, if everybody's accurate,
25 in eight solid trial days, which would be two

1 weeks. If necessary, I can work on Saturdays; but
2 I don't anticipate that will be necessary. And if
3 necessary, we can go late; but I don't anticipate
4 that will be necessary.

5 I think this thing can be done in
6 two weeks. And nothing's perfect, especially at
7 trial work. But I intend to move forward. I
8 expect you to cooperate and help me in moving
9 forward to getting this resolved. And then we'll
10 get this up to the Supreme Court.

11 But if you need me, my chambers are
12 up there. My secretary is Terry Barnes. And just
13 stop in and get any information you might need to
14 contact my chambers here in Pittsburgh or me
15 personally or my clerks. She'll give you the
16 names of the two clerks that I'm going to have
17 pretty much be hands-on. That's Charles Peron and
18 Jim Roberts.

19 And our door's always open. We'll
20 cooperate with you as best we can.

21 Anybody have any questions?

22 MS. HICKOK: Your Honor, I
23 apologize. It's Alicia Hickok. I have been
24 scheduled for several months to present at the
25 Trial Judges Conference on the 26th, that morning.

1 I know you had said that you had hoped to have a
2 short day in the mornings on both Fridays. If it
3 were possible to --

4 JUDGE MCGINLEY: I'm sorry. Not a
5 short morning on Friday. I expect to do testimony
6 until -- throughout the morning and maybe until
7 1:00 o'clock and then drive back to Pittsburgh on
8 Fridays. But that's not written in stone. What
9 is your date for presentation?

10 MS. HICKOK: It's the 26th of July.
11 And I'm presenting at midmorning that morning.

12 JUDGE MCGINLEY: Let me get back to
13 you on that; okay? Give us a way to communicate
14 with you. I want to talk to Judge Simpson, see
15 what he thinks. He has a better feel for this
16 than I do. But that would cost us -- what is the
17 day, the 26th? Is that --

18 MS. HICKOK: That's Friday, Your
19 Honor.

20 JUDGE MCGINLEY: Friday. And
21 you're in midmorning? I'm inclined to grant that.
22 We'll give you that -- we'll stop -- we'll take
23 Friday off.

24 MS. HICKOK: Thank you, Your Honor.

25 JUDGE MCGINLEY: Okay. The 26th

1 we'll take off.

2 MS. HICKOK: Thank you very much,
3 Your Honor.

4 JUDGE MCGINLEY: Anything further?

5 THE COURT: Judge McGinley, do you
6 have a preference as far as the marking of
7 exhibits?

8 JUDGE MCGINLEY: I have always in
9 the past asked counsel to give me a list of
10 exhibits marked and agreed upon. If you can do
11 that -- it sounds as if a lot of these exhibits
12 are working exhibits that are easily agreed upon
13 and admitted into evidence. But I want to know --
14 if we can do it -- the exhibits numbered and the
15 witnesses, a list of witnesses, particularly the
16 expert witnesses that you intend to call.

17 THE COURT: Judge McGinley, do you
18 have any response to my request for information
19 about submission of motions in limine? When do
20 you want them?

21 JUDGE MCGINLEY: When can I get
22 them?

23 THE COURT: I gather from the
24 question that you want them as -- you want as much
25 time as you can get.

1 JUDGE MCGINLEY: At their earliest
2 convenience.

3 THE COURT: Does that answer your
4 question?

5 MS. HICKOK: Yes, Your Honor.

6 MR. KEATING: Yes, Your Honor.

7 THE COURT: The sooner the better
8 is what he's saying.

9 All right. Are there any other
10 questions for Judge McGinley?

11 MR. KEATING: Yeah. Just thinking
12 off the top of my head. I've been reviewing this
13 case. And if there's some way of resolution to
14 the case between the parties, what role would you
15 want to take, Judge McGinley, relative to
16 discussing any parameters in that respect?

17 JUDGE MCGINLEY: Why don't you meet
18 with Judge Simpson for 15, 20 minutes, if Judge
19 Simpson has that available --

20 THE COURT: I do.

21 JUDGE MCGINLEY: -- in his
22 chambers. And I could probably hook into his
23 phone system. And I know you don't want to
24 discuss this openly right now. And I understand
25 that. I'm sensitive to that.

1 THE COURT: Well --

2 JUDGE MCGINLEY: Is that okay with
3 you, Judge?

4 THE COURT: My concern is that, as
5 the fact finder in a nonjury case, I don't think
6 you can participate in any of that. I'm happy to,
7 I'm happy to meet with counsel right after this,
8 if for some reason you want to meet. But I don't
9 think Judge McGinley can get involved with that.

10 MR. RUBIN: Your Honor, the
11 petitioners strongly agreed with that. We were
12 approached by respondents about --

13 THE COURT: Well, I'll talk --

14 MR. RUBIN: Well, to ask the
15 question, Your Honor, indelicately, if this goes
16 to the en banc panel, will you be sitting on the
17 en banc panel?

18 THE COURT: I will be sitting on
19 the en banc panel.

20 MR. RUBIN: And that may --

21 THE COURT: Everybody will be
22 sitting --

23 MR. RUBIN: That was my assumption,
24 Your Honor, which I think also raises concerns
25 about any involvement, judicial involvement. I

1 think the best way for any discussions to happen
2 would be bilateral. And if there's any area that
3 we think jointly judicial involvement or a third
4 party could be helpful in, would be best if both
5 parties were to approach the Court instead of
6 doing anything unilaterally and over the
7 objections of petitioners.

8 We'd ask the respondents not to do
9 this. We think it's not -- it's more of a
10 grandstanding approach than a legitimate approach.
11 We asked them to approach us and talk to us
12 privately, and we were refused.

13 THE COURT: Well, okay. So there
14 we are.

15 Clearly, Judge McGinley, as the
16 fact finder, cannot be involved in anything. I
17 don't think it's, it interferes with my ability to
18 sit as a judge of the law. But if I become
19 involved, I would anticipate there's going to be a
20 motion for recusal, so that I may not be involved
21 in the posttrial or exceptions --

22 JUDGE MCGINLEY: You just might not
23 be involved. You can leave it at that.

24 THE COURT: -- posttrial or the
25 exception procedure.

1 So that's the risk you have in
2 getting me involved in this.

3 But I -- you know, if there's some
4 way that I could help you in some way, that's --
5 that would be great. I would love to move this
6 along. But there's risk in having me involved in
7 it. Is that a fair summary?

8 MR. RUBIN: Yes, Your Honor.

9 THE COURT: Now, let me just make
10 sure my notes are accurate. Here are the things
11 that I believe I've decided today.

12 As far as the -- I'm probably going
13 to allow the two-hour deposition of -- continued
14 deposition of Mr. Marks, but I want to take a look
15 at the, I want to take a look at the transcript.
16 I will decide that within a day or two.

17 As far as the experts go, there
18 should be an immediate exchange of qualifications
19 of the experts. And within 24 hours of receiving
20 the plaintiffs' expert reports, you, respondents'
21 counsel, need to give us your best good-faith
22 estimate as to how much time you need to respond.

23 MR. KEATING: Understood.

24 THE COURT: Rule of thumb with me
25 would be they get it seven days ahead of trial.

1 And if they don't have it at least seven days
2 ahead of trial, I think you're going to impact the
3 trial date. Ultimately, that's going to be Judge
4 McGinley's decision. But just know, if you want
5 more than seven days, if it's going to be
6 something where -- if disclosed to petitioners
7 less than seven days before trial, that's going to
8 be an issue. So just keep that in mind.

9 All right. These people taking --
10 the preservation of testimony, you say it's six?

11 MS. CLARKE: Up to six. Four for
12 sure and two possible.

13 THE COURT: And immediately you
14 will disclose the anticipated -- a summary of
15 their testimony; in other words, two or three
16 sentences which say, This is what we're going to
17 be inquiring about.

18 MS. CLARKE: We'll send them
19 another copy of the letters; yes.

20 THE COURT: And, obviously, this
21 needs to be done ahead of trial, not like on the
22 threshold of trial, taking deposition. Because
23 that only -- I tend to think that's not fair. It
24 tends to distract the other side from trying to do
25 things.

1 I know issues arise at the last
2 minute that are unanticipated. But I would
3 strongly urge you to use your best efforts to get
4 this done ahead of trial.

5 MS. CLARKE: We will, Your Honor.
6 We have an interest in that too.

7 THE COURT: I'm sure you do.
8 Have I addressed or at least
9 identified all the issues that you would want
10 sorted out before we part company here?

11 MR. KEATING: Your Honor, I'm a
12 little concerned when opposing counsel say they
13 will send us, quote, another copy of the letter
14 unquote, suggesting that they've already
15 identified the parameters --

16 THE COURT: You know what?

17 MR. KEATING: Okay.

18 THE COURT: I don't want to get to
19 the blame thing. I want to get you the
20 information you want, and I'll just move on.
21 That's all I want to do.

22 MR. KEATING: Okay.

23 THE COURT: I understand what they
24 said. I understand what you said. I just want
25 the information exchanged so we can move on.

1 MR. KEATING: What I'm suggesting
2 to the Court is the information they provided is
3 not what we understand that we're looking for.
4 But, fine. Thank you.

5 THE COURT: Okay. Well, the -- I
6 think you get a couple of sentences of disclosing,
7 you know, what these people are going to talk
8 about, a summary.

9 MR. KEATING: Okay.

10 THE COURT: All right.

11 MR. RUBIN: Your Honor, when you
12 say "immediately," do we have -- we're all
13 traveling back to various places. Can it be first
14 thing tomorrow morning? Is that immediately
15 enough for you?

16 THE COURT: That's immediately
17 enough for me.

18 MR. RUBIN: We'll try to do it
19 today, but --

20 THE COURT: Actually, there's a
21 level of mistrust here that I'm a little surprised
22 about. You really worked well together last
23 year -- maybe not together, but you worked well
24 sort of resolving this.

25 And what I'm seeing now is

1 something a little bit different, and I don't like
2 it. And I'm not trying to say it's one side or
3 the other side. But there's just this real arm's
4 length kind of thing that -- I know this is an
5 important case for you and your people.

6 But ultimately we're professionals
7 here; we've got to get this done. And I need you
8 to help. I need you to work together to a certain
9 extent. I need you to stand a little taller to do
10 this. And I don't need the finger-pointing. And
11 I'm pretty sure that Judge McGinley isn't going to
12 want the finger-pointing either.

13 So -- I have people that are -- I
14 have both sides that aren't being as full in
15 disclosure as I would have expected. I'm a little
16 disappointed. No, I'm a lot disappointed.

17 You, you can really mess this up.
18 You can really mess this up now. We're right on
19 the brink of getting this done, and I don't want
20 to lose it. That's been my constant message since
21 we've been on the phone periodically all this
22 year. I don't want to lose this. And I need more
23 cooperation from you and I need more transparency
24 from both sides. So you've got to work a little
25 harder on this.

1 Having said that, it's been an
2 honor to serve with you. I won't miss you. I'm
3 more than happy to take a hard break here and give
4 this to Judge McGinley. But I've seen some really
5 good lawyers here. And I'm an old trial lawyer.
6 I appreciate good trial work. I appreciate real
7 professional work. And I've seen a lot of it
8 here. Let's not forget where we -- you know, how
9 we got through this last year.

10 Is there anything else that I need
11 to address today?

12 There being nothing further to come
13 before the Court, we stand adjourned until the
14 call of the crier.

15 My law clerks can take a
16 representative of both sides up to Judge
17 McGinley's chambers so you can inquire there as
18 how best to make contact.

19 Thank you. We are adjourned.

20 ALL COUNSEL: Thank you, Your
21 Honor.

22 (Proceedings concluded at 11:01 a.m.)
23
24
25

C E R T I F I C A T I O N

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I, ADAM D. MILLER, Registered Professional Reporter, certify that the foregoing is a true and accurate transcript of the foregoing proceedings, at the time, place and on the date herein before set forth.

I further certify that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this hearing was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.



Adam D. Miller
Registered Professional Reporter, Notary Public

1	4:00 44:20	amended 5:20
1 21:5	5	analyses 23:18,19
10:00 3:5	500 23:17	analysis 25:13
11:01 56:22	522 12:7	analyze 24:1
12:00 44:18	6	analyzed 21:19
15 48:18	600 7:23	analyzing 21:24
15th 4:10 30:13 44:10,11,12	9	answer's 33:20
16 29:25	9:30 44:18	answering 35:1
194 12:4	9th 27:19	answers 36:10
197 12:4	A	anticipate 18:14,17 22:4 25:2 32:8 33:14,16 39:21 40:19 45:2,3 50:19
198 12:4,5	a.m. 3:5 56:22	anticipated 19:15 21:2,4 24:15 25:24 52:14
1:00 4:11 39:2 44:15,19 46:7	ability 50:17	anticipating 16:14 18:9
1:30 4:11 44:19	Absolutely 9:1	anticipation 20:18
1st 18:6,12 19:6 21:14 22:8,23,24 23:4,17 40:16	accommodate 15:16	anymore 30:6
2	accurate 29:23 41:12 43:14 44:24 51:10	AOPC 20:20
20 23:20 48:18	added 34:6	apologize 45:23
201 12:4	additional 14:7 25:13 31:22 32:7 34:18 38:3	appeal 27:25
2013 3:5	address 4:20 5:1 17:19 36:17 56:11	appears 8:22
236 12:5	addressed 53:8	Applewhite 3:6
24 3:4 9:16,18 30:20 31:2 51:19	adjourned 56:13,19	application 6:15
25-page 23:21	administrative 40:5	approach 50:5,10,11
25th 12:3,11 44:9,10	admitted 47:13	approached 49:12
26th 45:25 46:10,17,25	advance 22:15 27:25	April 7:25
27th 12:6,12	agenda 4:16 19:12 28:9 31:6	area 24:15 25:3 26:13 50:2
3	agree 9:24 16:23 29:10,12 39:22	areas 27:12
3 20:9	agreed 34:20 47:10,12 49:11	arguments 40:8
30 23:20	ahead 51:25 52:2,21 53:4	arise 53:1
3:30 44:15,19	Alicia 45:23	arm's 55:3
4	altogether 32:6,18	arrangement 41:18
495 12:6		arrangements 20:1 42:10,25
		assigned 3:9
		assignment 40:13
		assume 39:19 42:24
		assuming 39:19 42:21

Index: assumption..cooperation

assumption 49:23
attention 5:4 31:10,11 38:10
Attorney 16:11
augment 34:21
August 27:19
avoided 39:13
aware 13:3

B

back 8:1 11:9 13:6 18:16 28:8 31:5
 42:15,18 43:15 46:7,12 54:13
banc 49:16,17,19
banked 9:20
Barnes 45:12
Barreto's 23:23 25:14,21
based 25:13,21
basically 20:21
basis 13:25 24:4 26:1
bear 33:12
beginning 36:20
big 42:8
bigger 6:11
bilateral 50:2
bit 4:11 16:14 35:12 42:11 43:13 55:1
blame 53:19
BLDS 25:5
blocks 41:22
bolts 4:14
break 40:19 44:16,18 56:3
briefly 37:19
bring 5:4 38:10
brink 55:19
Bureau 6:25
business 37:24
buying 37:14

C

California 18:21
call 14:17 39:19 47:16 56:14
called 7:17
Capitol 20:20
careful 3:23 10:15,17
case 3:7 7:5 8:20 10:2,4 29:6 40:2,18,
 24 48:13,14 55:5
cases 29:19
causing 28:4
caveats 39:14
chambers 3:12 45:11,14 48:22 56:17
chances 28:12
change 6:9
changed 11:9
characterization 21:6
Charles 45:17
chide 42:10
clarify 24:20 39:6
clarifying 34:15
Clarke 16:24 20:10,11 31:21 32:1,4,
 11,15,17,22 33:4,16,19 36:9,24 38:2
 52:11,18 53:5
cleaned 42:15
clear 26:13 40:1
clerk 40:5,6
clerks 40:3,14,23 45:15,16 56:15
close 5:8,9 29:18
closed 8:18 11:19 14:15,24
closer 9:5
closure 29:9
columns 9:8,9,11
commission 3:19 4:2
commissioned 3:21
commissioner 6:25

Commissions 6:25
Commonwealth 3:19 41:20
communicate 46:13
communicating 26:20
communications 26:15 27:2
company 53:10
complaining 30:9
complaint 30:7
complete 24:1 27:20
completely 24:2
compliance 30:7
complicated 23:19 29:20
concern 49:4
concerned 15:8 26:6 53:12
concerns 49:24
concluded 56:22
condition 42:13
conference 3:6,11 4:6 6:21 27:7
 38:18 41:25 43:17 44:1 45:25
confusing 18:22
consistently 21:10
constant 55:20
constitutional 7:9
contact 4:7 20:19 44:5 45:14 56:18
context 9:16
continuance 24:5 26:18
continue 6:15 16:21 43:22
continued 51:13
continuing 14:22
contrary 42:22
controversial 4:25
convenience 48:2
convenient 16:10
cooperate 15:17,20 36:1 45:8,20
cooperation 43:17 55:23

copies 19:22 38:3
copy 4:22 9:7 42:25 43:4,5,9 52:19 53:13
cost 46:16
counsel 5:2,3,5,10,15 6:18 16:12 19:13,18, 20:24,25 30:20 31:6,7,13, 14 35:21 36:11,12 37:10 38:7 40:9 41:4,11,19 42:10 43:7,18 44:1 47:9 49:7 51:21 53:12 56:20
counter 21:18
couple 54:6
court 3:1,4,16,20,23 4:3 5:14,18,21 6:2,23 8:24 9:2,20 10:6,7,12,18,21 11:25 12:8,13,17 13:8 14:9 15:1,7 16:3,13 17:3,9,17,18,25 19:11,21 20:15 21:22 22:4,7,14,22 23:3,7,14 24:4,14 25:15 26:5,24 27:3,25 29:1 30:3,15 31:2,9,13,24 32:2,9,14,16,20 33:2,10,12,17 34:4,16,23 36:5,21 37:14,17,22 38:4,9,16 39:7,15,25 42:2,5,9,20,22 43:3 45:10 47:5,17,23 48:3,7,20 49:1,4,13,18,21 50:5,13,24 51:9,24 52:13,20 53:7,16,18,23 54:2, 5,10,16,20 56:13
Court's 18:6 19:4 26:1
courtesy 36:13
courtroom 20:2,16 41:14 42:20
crier 56:14
critical 6:23 8:20 10:4
cross-talk 26:4
cure 7:9
current 11:13
cut-off 17:16

D

daily 42:25 43:4,5
data 25:1,7
database 25:2,8 26:19 29:25 30:1,4
databases 13:24 25:25
date 18:12,13 27:17,19 30:14 44:12 46:9 52:3

dates 44:12
day 8:16 31:3,4 39:1 43:19 44:23 46:2,17 51:16
days 16:17 24:18 27:13 38:24,25 39:2,14,18 41:9 51:25 52:1,5,7
deadline 21:5
deal 5:23
December 13:12
decide 51:16
decided 24:23 51:11
decision 27:21,23 28:17 52:4
decorum 4:22,24 19:21,22 20:6,9,16 39:1 40:20
delay 6:4 12:21 27:22 29:2,3, 43:13
delivered 43:8
demonstrate 21:20
Department 7:1,6
depend 26:16
depending 44:20
depends 26:18,20 38:24
deposed 11:19,22
deposition 6:16 7:5,20 8:9,15,16,21 12:19 13:14 15:3 35:13,25 51:13,14 52:22
depositions 9:17,25 11:13 14:4,11, 13,14,23 24:21 31:18 32:6 33:14 35:10,11 36:2,3
depth 11:3
describing 37:19
description 37:4
designated 34:7,8
detail 7:21
detailed 29:20
determine 14:16
determined 37:8
difficult 24:1
difficulties 14:18

directed 35:16,18
direction 41:2
directly 25:1
disappointed 27:5,6 28:19 55:16
disappointment 28:5
Discipline 4:3
disclose 21:10 22:8,11 27:4 36:23 52:14
disclosed 13:19,25 18:20 21:14 26:7,9 27:10,12 30:16 33:6 34:11 52:6
disclosing 34:14 54:6
disclosure 16:16 21:1,2,3 29:15 30:4 43:18 55:15
disclosures 19:5
discovered 15:13
discovery 4:19,20 6:12,13 8:7,17 11:18 13:2,22 14:2,15,24 16:1 17:12, 15 18:3,4,18 19:9 27:16 28:3 30:8,17 35:25 36:2 40:21
discuss 4:14 48:24
discussed 30:16
discussing 38:15 48:16
discussions 50:1
distract 52:24
document 7:19 9:6 12:10,24 13:12, 14
door 41:17
door's 45:19
doubt 16:3
drive 44:13,23 46:7
due 19:5
duties 42:17

E

earlier 43:16
earliest 48:1

easily 7:12,14 47:12
efforts 53:3
election 28:1
elections 7:1,2
en 49:16,17,19
enable 24:12
end 16:1
ended 16:2
ends 26:19
enter 40:20
entered 16:18
envisioned 26:2 29:16
essentially 7:8
estimate 23:8 30:24 38:23 41:13
 51:22
estimates 41:11
estimating 39:13
eve 29:21
everybody's 44:24
evidence 7:13 8:22 47:13
evidentiary 39:24
ex- 30:21
exception 7:17 50:25
exceptions 11:2,5,11,14,24 12:12
 50:21
exchange 51:18
exchanged 30:18 33:7 53:25
exchanges 26:3
exhibits 47:7,10,11,12,14
existed 11:24
exists 39:7
expect 40:24 45:8 46:5
expected 55:15
expert 15:22,23 18:5,23,25 19:3,5
 20:25 21:3,15,16,18,19,24,25 22:9,15
 23:9,21,22 24:9 25:1,12,16,18 26:6,
 15,25 28:2 29:15 30:17 47:16 51:20

expertise 25:4 27:12
experts 18:4,10,19 21:11,12 24:22,
 25 25:3 26:7 27:10,11 29:21 51:17,19
explain 4:12
explaining 9:10 15:9
extension 18:8,10 23:1 27:22 28:12
extent 43:6 55:9
extra 18:17

F

fact 21:17 49:5 50:16
factor 18:13
fair 21:6 22:14 51:7 52:23
fall 11:24 26:23
familiar 12:24
faultiness 21:20
feel 46:15
fellow 28:6
figure 29:22
file 5:19
filed 17:17 20:9
filing 34:6
final 28:17
finally 8:2
find 42:13 43:11
finder 49:5 50:16
fine 20:12 43:9 54:4
finger-pointing 55:10,12
fingers 30:11
finish 9:17 18:11
fix 38:1
flaws 21:25
flesh 6:17
flexible 44:16,21
floor 41:24

focused 8:21 9:25 39:4
follow 43:10
forever 29:8
forget 56:8
form 37:3
forward 29:14 45:7,9
found 34:9 41:10
frankly 40:19
Friday 6:14 8:17 31:25 34:6,14 44:22
 46:5,18,20,23

Fridays 46:2,8
full 55:14
fully 35:14 36:3

G

gallery 19:25
gather 4:19 47:23
gave 4:22 7:5 9:16
general 13:18
General's 16:11
give 16:5 19:18 23:21, 30:22, 37:23
 41:3,5 42:18 45:15 46:13,22 47:9
 51:21 56:3
Glinn 40:5
goal 27:19
good 3:1,2 6:20 18:8,13 28:7 41:12
 43:21 56:5,6
good-faith 23:8 51:21
grandstanding 50:10
grant 46:21
grave 28:4
great 51:5
guess 12:19 16:14 33:2

H

hammer 18:13

judge 3:9,10,14,15,18,21,22 4:3,6,12, 13 10:9,10,11,16,17 16:2,20 17:19 22:2 27:14 28:16 30:23 31:10 34:19 40:1,10,13 41:3 42:16 43:5,23,25 44:8,11 46:4,12,14,20,25 47:4,5,8,17, 21 48:1,10,15,17,18,21 49:2,3,9 50:15,18,22 52:3 55:11 56:4,16

Judges 45:25

judicial 4:3 49:25 50:3

July 4:10 18:6,12 19:6 21:5,14 22:8, 23,24 23:4,17 30:13 40:15 44:9, 46:10

June 3:4

jurist 28:6

K

Keating 5:16,19,24 14:12 15:2,19 16:25 17:6,14,24 18:2 20:13 24:21 31:16 34:23,25 37:11,16,21 38:8,11 39:17 41:1,22,25 42:3,7 43:1 48:6,11 51:23 53:11,17,22 54:1,9

key 9:13 10:4

kind 16:18 24:11 55:4

knew 35:17

knowing 26:19

Kukowski 32:10

L

labeled 18:4

lacks 37:1

language 18:7,22 19:6

large 9:6

larger 8:12

late 30:4 45:3

law 7:10 40:3,5,14,23 50:18 56:15

lawyer 56:5

lawyers 56:5

League 34:7

learned 8:10

leave 4:4 50:23

Legislation 7:1

legitimate 50:10

length 55:4

letter 36:16 53:13

letters 8:1 37:7,19,24 52:19

level 54:21

limine 17:15 38:13,17 44:4 47:19

limitation 17:7

limited 15:24

list 14:19 33:6,21,22,24 34:17,21 42:17 47:9,15

listed 34:12

live 34:12

located 36:12,15 37:8

long 12:20 17:2 22:20 23:25 24:10,12 38:21,25 39:21

longer 39:2

longest 3:19

lose 55:20,22

lot 7:20 8:6 13:15,19 15:23 39:20 47:11 55:16 56:7

lots 26:22

love 15:19 51:5

Lucinda 40:5

luck 28:7

M

made 41:17 42:25

mailed 8:3

make 5:4 13:21 18:14 20:1 40:15 51:9 56:18

makes 6:9

managed 11:7

March 7:25

marked 47:10

Marker 25:17

marking 47:6

Marks 6:16,23 8:12 11:1,12,19 51:14

Marks' 7:19

match 30:1

matching 13:24 25:2,8 26:19

matter 3:6 5:25 6:5 10:25

Mazin 40:4

Mcginley 3:10,14,18,22 4:7,12,13 10:9,11,16 16:20 17:19 22:2 27:14 30:23 40:1,10,13 41:3 43:5,23,25 44:8,11 46:4,12,20,25 47:4,5,8,17,21 48:1,10,15,17,21 49:2,9 50:15,22 55:11 56:4

Mcginley's 28:17 31:11 42:16 52:4 56:17

means 3:20

meet 48:17 49:7,8

memoranda 19:14

memory 40:10

mentioned 39:25 41:4 44:3

Mercy 41:1

mess 55:17,18

message 55:20

Michael 6:20

microphone 10:14

midmorning 46:11,21

mind 52:8

minute 53:2

minutes 48:18

mischaracterizing 11:15

mistrust 54:21

moment 8:25 33:13

Monday 3:4 4:10 18:16 23:3 44:14

months 8:2 25:24 29:25 45:24

morning 3:1,2 6:20 44:14 45:25 46:5, 6,11 54:14

mornings 46:2
motion 38:12 50:20
motions 17:15 38:17 44:3 47:19
motivating 18:13
move 29:14 45:7 51:5 53:20,25
movement 20:5
moving 10:13 45:8
Mutz 27:1

N

named 37:13
names 7:23 27:11 33:3,5,7 36:17
 45:16
narrow 6:22
nature 21:16
necessarily 43:10
needed 16:17, 21:19
needing 18:17
Nodded 43:2
nonissue 19:9
nonjury 49:5
Norton 32:14,22
note 34:16
notes 51:10
nothing's 45:6
notice 16:5 34:2
noticed 14:9 15:5
notices 15:3 16:8
notified 32:12,24
November 28:1
number 17:1 44:2
numbered 47:14
nuts 4:14

O

object 14:21,25 19:8 29:17 41:6
objection 40:12,14,15
objections 50:7
obtained 7:14
occurs 15:15
offer 5:5
offered 16:8 40:2,9
offering 18:25
office 16:11
offices 41:21
official 6:24
oldest 3:22,25
one- 37:3
open 31:4 45:19
openly 48:24
opportunity 8:19 10:3 13:7 19:19
 41:6
opposing 53:12
order 4:22,24 16:18 18:6 19:4,21,22
 20:6,9,17 21:20,21 39:1 40:20,21
outstanding 5:11
overflow 20:2

P

pages 12:4,6 23:17
pagination 43:10,14
panel 49:16,17,19
papers 10:13 31:24
paragraph 20:5
parameters 48:16 53:15
part 4:6,13 8:20 12:12,25 17:10,11,20
 27:16 38:18 39:9,23 44:1 53:10
partially 38:24
participate 49:6

parties 29:16 48:14 50:5
parts 12:15
party 50:4
past 47:9
Patricia 32:14
pause 8:24
Penndot 8:2 11:9 14:5 37:1,2
Pennsylvania 29:7
people 7:14,16,21 11:4,7,11,16 19:25
 23:18 27:4 29:7 32:3,4,7 33:5,17,19
 34:3 35:19 36:15 52:9 54:7 55:5,13
perfect 45:6
periodically 55:21
permanent 39:9,10
Peron 45:17
person 22:5 23:19 34:9
person's 37:5
personally 45:15
perspective 24:2
persuaded 30:4
persuasive 30:5
petition 5:20
petitioners 6:12,19 19:8 20:11 21:10
 26:8 29:12 31:6,15 35:16,17,20,23
 37:12 38:21 49:11 50:7 52:6
petitioners' 5:1,9 38:6
Philadelphia 32:24
phone 48:23 55:21
photo 7:10
pieces 26:22
pin 24:16
Pittsburgh 3:12 44:14,23 45:14 46:7
place 26:23
places 15:6 54:13
plaintiffs' 20:23 51:20
plan 30:13

planned 29:5
pleading 5:10
pleadings 4:17,18 5:8,9,12,22 6:3,7
point 10:9 12:20 13:5,20 15:8 17:16
 19:12 30:9,10
pointing 30:11
Police 20:20
position 11:18 21:12
possibly 23:20
posttrial 50:21,24
potential 31:17
potentially 25:12
pre 17:20
preclude 16:4 28:16
preference 47:6
prejudice 15:9
preliminary 11:20, 27:21,24
premise 21:21
prepared 29:14
present 33:8 45:24
presentation 46:9
presenting 46:11
preservation 14:11,13 36:3 52:10
preserve 31:23 33:15,23 34:3 36:8
preserving 15:18
president 4:2
press 19:25
pretrial 4:6 17:21 18:19 19:14 21:13
 27:7 38:18 43:17 44:1
pretty 4:4 6:5 28:14 42:16 45:17
 55:11
previous 29:19
previously 13:15 33:25 34:8,10 35:3
 39:5
printed 8:15
printout 7:18

prior 35:13 39:8,22,23
priority 3:19 4:2
privately 50:12
problem 15:14 23:15,16 27:7,18
problems 5:22 7:9 27:16 28:2 29:4
procedurally 15:10
procedure 50:25
proceedings 28:5 56:22
process 7:17 11:9,12,14,24 13:18
produce 23:17 30:24
produced 7:19 8:8,9,11,15,16 13:12,
 13,16 18:24 25:7 26:1
producing 25:1
professional 15:17 43:22 56:7
professionals 55:6
proposal 41:7
propose 22:16
proposed 19:22
prothonotary 20:19
provide 11:10 35:8
provided 54:2
purpose 21:24 33:18
purposes 14:17,22 35:25
pursuant 18:6
pushing 18:10
put 5:25 7:16 9:21 21:13

Q

qualifications 22:9,11 27:4,10 51:18
question 6:14 19:16,17,19 20:24
 21:1 34:24 35:1,2 37:17,18 47:24
 48:4 49:15
questions 5:2 7:10 8:6 19:13 31:7,14
 38:6,12 45:21 48:10
quote 53:13

R

raise 40:15
raises 7:10 49:24
raising 19:15
re-re-deposition 12:20
ready 5:19 15:21
real 43:12 55:3 56:6
rearrangement 20:5
reason 15:16 49:8
reasons 7:16
rebut 22:20
rebuttal 19:1 24:13,17 30:25
rebutting 18:23 22:13
recall 11:3
receipt 30:21
receive 7:22
received 6:13 7:24 37:18
receiving 51:19
record 24:20 39:7,10,12,24
recusal 50:20
reduplicate 10:1
reference 11:25 12:22
refused 21:10 50:12
regimented 16:19
regular 14:14
relates 7:4
relative 48:15
relevant 12:16
remand 11:1,6,22 12:1 20:7
remember 12:23 41:15,16
repeat 39:11
report 15:22 18:25 19:3 22:12,15,23
 23:22 24:9,17 25:20 28:11 29:18,20
 30:21,25

reporter 42:21	role 48:14	set 9:8 32:6
reporter's 42:23	rolling 13:25	share 44:6
reports 18:5,11 21:15,25 22:12,19 23:2 26:3 28:11,13,24 51:20	room 41:21,23 42:1,8,12,15,19	She'll 45:15
represent 37:12,13	rooms 41:18	short 8:21 9:3,25 25:19,20 28:23 46:2,5
representative 56:16	rough 42:14 43:9	shortened 44:23
request 8:8 15:17 24:5 47:18	Rubin 5:13 6:19,20 9:1,4,21 10:20 13:4,10 16:7 17:22 18:3 19:20 21:8 24:19 25:17 26:12 27:1 29:11 30:12 31:8,12 33:11 34:5,22 35:14 38:23 43:2 49:10,14,20,23 51:8 54:11,18	shorter 39:3
requesting 33:14	Rule 51:24	shown 7:13 18:8
requests 14:11 36:4	running 29:4	shows 11:11
require 29:20	runs 7:2	side 15:20 52:24 55:2,3
reschedule 16:10		sides 16:16 17:5 26:7 55:14,24 56:16
reserve 34:17,18 41:23		signed 20:9
resolution 17:11 40:21 48:13		significant 27:22
resolve 22:16 28:9	<hr/> S <hr/>	similar 25:8
resolved 25:19 45:9	said/she 37:25	Simpson 46:14 48:18,19
resolving 54:24	sat 40:3	simultaneous 16:9 26:3 29:15
resources 15:24	satisfactory 42:22	simultaneously 19:5
respect 48:16	Saturdays 45:1	Siskin 25:5
respond 10:8 28:23 31:3 51:22	save 17:10 31:3	sit 42:6 50:18
responded 35:14 36:3	schedule 6:10 29:15 44:5	sitting 49:16,18,22
respondents 7:8 9:24 10:3,8,22,24 14:1,10 18:1,19,23 19:6 20:13 21:4 24:16 28:10,22 30:7 31:14 36:1,14, 39:16 49:12 50:8	scheduled 12:21 45:24	slightly 23:23
respondents' 5:3,5,15 19:13,18 20:25 21:3 30:20 31:7 37:10 38:7 51:20	scheduling 16:9 28:3	slim 28:14,15
response 14:10 35:9 47:18	screen 3:16	smaller 8:11
responses 5:25	secret 25:6	solid 44:25
responsive 8:7	secretary 42:15 45:12	solve 37:23
rest 29:5	secretary's 42:17	Someplace 42:5
result 43:11	seek 36:8	sooner 16:1 48:7
retained 21:23	send 38:2 52:18 53:13	sort 10:5 15:9,14 18:8 29:16 36:22 40:21 54:24
return 42:12	senior 3:20 4:1	sorted 53:10
reviewing 48:12	sense 6:2 16:15 17:1	sounds 22:22 41:8,12 47:11
risk 51:1,6	sensitive 48:25	speak 5:14 6:18 10:21,24
Roberts 45:18	sentences 52:16 54:6	speaking 16:13 30:20
	September 12:3,6	specifically 7:6 42:12
	series 37:6	stage 27:8 28:5 29:13
	serve 56:2	stand 55:9 56:13

start 4:9,11 34:25 39:1 44:9,14,18,19
started 43:16
state 7:1,7 25:6
stated 26:17
statistical 23:18
statistician 18:21
steps 35:5
Stick 19:11
stone 44:20 46:8
stop 45:13 46:22
story 7:21
strongly 49:11 53:3
subject 21:11
submission 18:20 47:19
submit 19:3,7 29:19
substance 36:17,21 37:5
suggesting 19:7 53:14 54:1
suggestion 16:20
suit 37:13
suitable 37:9
summary 51:7 52:14 54:8
summer 25:9
Supreme 27:25 45:10
surprise 41:5
surprised 54:21
survey 25:21
swapped 34:13
system 48:23

T

table 11:2,5,10
takes 9:11
taking 21:12 33:1 35:13 39:21 52:9, 22
talk 4:17,18,21 38:20 40:24 46:14 49:13 50:11 54:7

talking 11:8
taller 55:9
ten-minute 44:16,18
tend 52:23
tentative 41:18
terms 13:5,22 18:3 19:9 24:8
Terry 45:12
testified 11:2,17,20,21 12:4,6
testify 14:6 37:20
testifying 21:12,25 32:5,8,18 39:5
testimonies 13:5
testimony 7:4 11:3,15 12:9,15,16,24 13:11, 15:18 18:24 21:17,18 22:3 27:20 31:23 33:15,23 34:3 36:7,8,18, 22 37:5 39:23 40:7 46:5 52:10,15
Theresa 32:9
Therasas 34:11
thing 14:21 26:10 37:25 38:12 44:9 45:5 53:19 54:14 55:4
things 15:24 17:1 18:15 41:9 51:10 52:25
thinking 9:15 17:4 48:11
thinks 46:15
thought 5:7 43:3,20,21
three-sentence 37:4
threshold 52:22
thumb 51:24
Thursday 44:17
till 17:11 44:15
time 9:10,11 10:12 11:6 14:16 15:11, 24,25 18:17 19:8 23:1,8 28:12 30:6, 24 39:15 41:19 43:6 47:25 51:22
timeline 28:23
timely 26:1 27:23,25
times 7:3
Timothy 5:16
title 6:24

today 4:16 5:7,20 19:15 20:9 27:15 38:3 40:18,22 51:11 54:19 56:11
told 8:4,12 22:18 24:22 25:6 26:17 40:23
tomorrow 54:14
top 48:12
topic 43:16
topics 24:10 44:3
totally 40:25
track 4:9 5:8
transcript 12:1 43:12 51:15
transparency 55:23
traveling 54:13
trial 3:10 4:6,9,13,14 5:6 12:21 14:17, 20,23 15:22 16:6,15 17:2,4,8,10,11 19:10 20:3 22:5,16 24:5,18 27:8,17, 19,23 28:18 29:2,3,13,14,18,21 30:14 31:17,20 32:6 33:15 37:9 38:13,20,25 39:2 41:15,16 44:25 45:7, 51:25 52:2, 3,7,21,22 53:4 56:5,6
trial's 38:22
trial-preservation 14:3,4
truncate 35:11
Tuesday 44:17
turned 7:15 37:3
two- 37:4
two-hour 12:19 51:13

U

ultimate 43:11
ultimately 43:9 52:3 55:6
unable 36:25
unanticipated 53:2
unclear 19:2
underlies 21:21
understand 8:21 9:13 10:5 12:18 13:10 15:12 22:1,3 23:12,14 24:6,16 33:13 48:24 53:23,24 54:3

understanding 4:8 19:4 36:14 41:9
understood 21:1 30:12 34:22 51:23
undisclosed 26:5
unilaterally 50:6
unknown 24:1,3
unnamed 34:8
unnecessarily 39:12
unquote 53:14
updated 8:12 11:10 23:23
urge 53:3

V

valid 35:5
version 8:11, 13:13,14
video 3:11 6:21 31:23 32:5,8,13,19
33:9 34:12
videotape 36:8
view 28:15
voter 3:7
Voters 34:8

W

wanted 13:21 16:1 41:3,5 43:12
weaknesses 22:3
Wecker 18:20 26:14 29:17,18
Wecker's 25:3 29:22
week 8:17 15:5 23:24 29:3 33:7
weeks 4:9 14:23 15:21 16:6 23:4 27:8
45:1,6
weeks' 16:5
William 18:20
winning 13:8
witnesses 13:23 14:5,16,20 15:4,13
16:14 17:4,7 21:17 31:22 33:21
34:11,18 35:1,10 36:7 37:9,19 38:24
39:5,20 40:7 42:6 43:18 44:21 47:15,
16

Women 34:7
wondering 17:16
words 16:5 52:15
work 16:9,16,21,22 17:5 18:11 25:22
26:16,18 29:21 43:20 45:1,7 55:8,24
56:6,7
worked 29:13 54:22,23
working 47:12
writing 30:22,23 40:15
written 46:8
wrong 37:2 41:7

Y

year 8:1 16:15,22 19:23 20:22 29:5
41:11,17,20 43:8 54:23 55:22 56:9
year's 28:3