

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 WILLIAM DEANS,)
5 Plaintiff,) Case No. 2:16-cv-2405-APG-PAL
6 vs.) Las Vegas, Nevada
7 LAS VEGAS CLARK COUNTY) Tuesday, November 1, 2016
8 LIBRARY DISTRICT, et al.,) Courtroom 6C, 9:11 a.m.
9 Defendants.) MOTION FOR PRELIMINARY
INJUNCTION HEARING
C E R T I F I E D C O P Y

10
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12
13 BEFORE: THE HONORABLE ANDREW P. GORDON,
14 UNITED STATES DISTRICT JUDGE

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16
17
18 APPEARANCES:

19 See next page

20 COURT REPORTER:

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25 Proceedings reported by machine shorthand, transcript produced
by computer-aided transcription.

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1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 1, 2016; 9:11 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: All rise.

5 THE COURT: Thank you. Please be seated.

6 COURTROOM ADMINISTRATOR: This is the time set for
7 the Preliminary Injunction Hearing in 2:16-cv-2405-APG-PAL,
8 Deans vs. Las Vegas Clark County Library, et al.

9 Counsel, your appearances, please.

10 MR. RANDAZZA: Mark John Randazza appearing for
11 plaintiff, Mr. Williams Deans.

12 THE COURT: Good morning.

13 MR. SPERLEIN: D. Gill Sperlein with the Randazza
14 firm for Deans.

15 THE COURT: Good morning.

16 MR. SHEPARD: Alex J. Shepard also representing
17 plaintiff.

18 THE COURT: Good morning to you as well.

19 MR. KENNEDY: Dennis Kennedy and Kelly Stout on
20 behalf of defendant Las Vegas Clark County Library District.
21 Also present is Jennifer Schember who is the client
22 representative. She is the Library Operations Director for the
23 Library District.

24 THE COURT: Good morning to all three of you.

25 MR. HINCKLEY: Good morning. Richard Hinckley and

1 Diane Welch for the College of Southern Nevada, defendants
2 Summerlin and Perkins.

3 THE COURT: Good morning to both of you as well.

4 We're here for the Preliminary Injunction Hearing. I
5 have reviewed, several times, the various briefs that were
6 filed. I have exhibits for plaintiff and for defendant Library
7 District. Is the College of Southern Nevada intending to
8 present any exhibits today?

9 MR. HINCKLEY: We'd join the one that we might use
10 with the other defendant.

11 THE COURT: Excellent. Thank you.

12 Are the parties ready to proceed?

13 MR. RANDAZZA: Yes, Your Honor.

14 THE COURT: Mr. Randazza, do you want to call your
15 first witness?

16 MR. RANDAZZA: Your Honor, if I may give a brief
17 opening.

18 THE COURT: If you feel the need.

19 MR. RANDAZZA: I do, because I want to make sure that
20 we are focused on what we're trying to educate everybody here
21 about today.

22 THE COURT: Okay.

23 MR. RANDAZZA: That is, that Mr. Deans comes here
24 today deprived of three important rights that we're seeking
25 protection therefore. Not only for himself, but as we've gone

1 through our discovery just leading up to this hearing, we've
2 discovered that there are many of his fellow citizens who have
3 been deprived of these rights as well due to the overbroad and
4 vague nature of the regulations that we are challenging.
5 Obviously his right to free speech in a public forum has been
6 infringed. Also, his liberty interest and his right to access
7 the public library, along with, at least it has been revealed
8 to us, 341 fellow citizens deprived of that right in what we
9 think is an arbitrary and capricious manner through a process
10 that's completely devoid of any due process safeguards. And
11 then his right to petition, not only as guaranteed by the
12 First Amendment, but as elevated by Nevada Revised Statute
13 293.127565. Not as the defense would have us believe, narrowed
14 by Chapter 293.

15 So the first question we're going to try to figure
16 out here is, is this is a public forum. Is it a limited public
17 forum? Is it a general purpose public forum?

18 It is our position that library plazas are presumably
19 public forums. Remember, we're not talking about the interior
20 of the library. We're talking about this plaza outside, open
21 to the public, for public use, for frankly a multitude of uses,
22 and not simply ingress and egress. This has been the argument
23 that we have heard and with some pleas to compare it to the
24 post office in *Kokinda*. However, that case was, as you may
25 recall, about a pathway that was only there for ingress and

1 egress. Meanwhile, we have a multipurpose ingress/egress --
2 area here for ingress/egress, people traversing across it
3 getting from one place to another, people gathering, people
4 discussing. Frankly, it's even a smoking area. So if we would
5 have no greater right to petition than we would have to smoke a
6 cigarette, I think we have a problem.

7 The process by which Mr. Deans was denied use of the
8 library, you can see from the incident reports and as we will
9 show, it began with him being told that he had to constrain his
10 First Amendment protected activities to a specific spot. Now,
11 that spot, they have tried to tell us, is very clearly
12 demarcated on their website and had he only known to go onto a
13 website for the college that he went to, then figure out he had
14 a separate sovereign to deal with, looked that up, then got to
15 the place where it says where he can petition, we would have
16 what I think is a very unclear instruction. When I look at the
17 words that are on that site, and I think as we look at that we
18 will all probably have differing opinions about where it says
19 to go, I don't know how a person of ordinary intelligence could
20 look at the text on that site and come to the same conclusion
21 that apparently Mr. Kushner came to.

22 And I know also that, you know, everybody involved in
23 this I think is at least a person of ordinary intelligence, if
24 not highly above average intelligence, but we have had a moving
25 target as far as what this space is.

1 THE COURT: Well, I'm a person of reasonable
2 intelligence, too, and I have read all this in your brief.

3 MR. RANDAZZA: Okay.

4 THE COURT: So, I don't need you to repeat it for the
5 fourth time in an opening statement.

6 MR. RANDAZZA: Thank you, Your Honor. Well, then
7 I'll just get right to it and call Mr. Deans.

8 THE COURT: Okay. Thank you.

9 MR. RANDAZZA: Mr. Deans.

10

11 WILLIAM DEANS,
12 called as a witness on his own behalf, having been first duly
13 sworn, was examined and testified as follows:

14

15 THE COURT: And let me ask defendants, do you intend
16 to make an opening statement now or do you want to reserve to,
17 in a sense, your part of the case-in-chief?

18 MR. KENNEDY: Your Honor, I'll reserve it if it
19 becomes necessary.

20 THE COURT: Okay. That's fine.

21 Mr. Deans, if you would, please.

22 COURTROOM ADMINISTRATOR: Please remain standing.

23 You do solemnly swear that the testimony you are now
24 to give in this cause now before the Court will be the truth,
25 the whole truth, and nothing but the truth, so help you God?

1 THE WITNESS: I do.

2 COURTROOM ADMINISTRATOR: Please state your name for
3 the record spelling your last name and giving your city and
4 state of residence.

5 THE WITNESS: William Deans, D-e-a-n-s. Allentown,
6 Pennsylvania.

7 THE COURT: You may proceed when you're ready.

8 Just pull the microphone in front of you if you
9 would, please. Our acoustics aren't always that good here.

10 Thank you.

11

12 DIRECT EXAMINATION OF WILLIAMS DEANS

13 BY MR. RANDAZZA:

14 Q. Good morning, Mr. Deans.

15 A. Good morning.

16 Q. Please just give us an introduction to the Court, who you
17 are, what do you do.

18 A. I'm William Deans. I'm a political activist. I believe
19 in direct democracy. I believe in the people's right to
20 choose, and I believe in it even when I don't necessarily agree
21 with the issue at hand. I believe in --

22 MR. KENNEDY: Objection, Your Honor. He's making a
23 speech. The question was, what's your occupation.

24 THE WITNESS: I'm a petition circulator.

25 THE COURT: Overruled. Go ahead. You can continue.

1 BY MR. RANDAZZA:

2 Q. What do you mean when you don't believe in the petition at
3 hand?

4 A. I'm sorry, sir. I could not hear you.

5 Q. Well, your -- please repeat your last line and then
6 continue.

7 A. I am a petition circulator. I'm a political activist. I
8 register or tell how a person can register to vote. I travel
9 the country allowing the people access to the ballot through
10 the ballot initiative process.

11 Q. How do you do that?

12 A. In order to get an issue on the ballot you have to collect
13 signatures. You have to have people sign petitions. In order
14 to have someone sign a petition you have to go where the people
15 are located.

16 Q. Okay. How many times have you done this?

17 A. I've done this over a thousand times.

18 Q. Have you taught other people how to do it?

19 A. I have taught many other people how.

20 Q. Could you tell us, briefly, just give us a class on how to
21 do it, how your method is.

22 A. First, I'm going to tell you, you know, a little bit about
23 the theory of it and then I'll get into more specifics.

24 You have to have access to the public. You're trying
25 to get a large number of signatures. That is your goal to

1 qualify the issue for the ballot. In order to do that, you
2 need -- one of the first decisions you make, most important
3 decisions is where you're going to go. You need to pick a
4 place which is a good spot to collect those signatures. What
5 makes a spot a good spot? You have to have access to the
6 public. Library, guaranteed access to the public. If you're
7 on someone's private storefront, you may not.

8 You have to have a spot where the people aren't in a
9 rush. People who go to the library might spend an hour and a
10 half or two hours there. If you have somebody whose groceries
11 are melting or they're about to cross the street when the
12 crosswalk changes, or maybe they're trying to get in and out,
13 you know, somebody who's on a mission to go to the DMV or the
14 post office, if -- if they're in an in-and-out mode, they're
15 not going to necessarily want to take the time -- it's a short
16 period of time, but they might not feel like it. It has to be
17 a place that people feel comfortable. You know, a place that's
18 well lit or during the day where you have security.

19 Great places to go might be, you know, Farmer's
20 Market or a parade, but there's not always a Farmer's Market or
21 a parade available. The library has terrific hours. You're
22 able to locate a library in every city. Every city in
23 America's got one or more libraries just about and you can even
24 tell ahead of time which libraries might -- might be a good
25 bet. You know, there's statistics on circulation and that sort

1 of thing.

2 There are many places that if you go to these places,
3 you have wasted your day before you even go there. The library
4 really is one of the best and quintessential places that a
5 petition circulator might go.

6 The people at the library are typically civically
7 minded. They have a -- like a thirst for knowledge and they're
8 there for that purpose. The people are typically registered to
9 vote at a higher rate than certain other places that you'd go.
10 The traffic into and out of the library is steady. If you go
11 to a movie theater, you might have a big crowd. You want to
12 always be signing. You want to always have people signing.
13 And so you want to study flow of traffic instead of bursty
14 traffic.

15 The other thing that you want to do, after you know
16 where you're going, is you want to position yourself properly.
17 There's a lot of buildings that have multiple entrances and
18 exits. This library on West Charleston, there's two of these
19 plazas and you can stand in either one but, do you have -- am I
20 able to request an exhibit? Like an aerial photograph to show?

21 MR. RANDAZZA: I have Exhibit 32. Can -- may I
22 approach?

23 THE COURT: You may.

24 MR. SPERLEIN: It's on screen if you want to.

25 MR. RANDAZZA: Is it on screen?

1 THE WITNESS: Out of range.

2 THE COURT: Hold on. It will come up.

3 MR. RANDAZZA: Out of range. Well . . .

4 THE COURT: It will take a minute for the screen to
5 come up.

6 (Counsel conferring.)

7 THE COURT: Hold on a second. Let's go off the
8 record and fix the screen for just a minute.

9 (Brief pause in proceedings.)

10 THE COURT: Back on the record.

11 BY MR. RANDAZZA:

12 Q. All right, Mr. Deans. You were teaching us about
13 placement.

14 THE WITNESS: Your Honor, I know that the last time
15 we were together that I wasn't afforded an opportunity to speak
16 and you had mentioned that the sidewalk in front of this
17 library lets out into the parking lot. But I've been doing
18 this a long time and by looking at this, I know right away that
19 I -- I can see how you might think that but, you can see right
20 away that the -- that the flow of traffic, in an area like
21 this -- this isn't a metropolis downtown -- is going to be to
22 and from a place. It's going to be to or from this university.
23 There's a lot of students that are going to be going to and
24 from class, to and from lunch and when they do that, they're
25 going to take public transportation or maybe they'll have lunch

1 at Denny's. And you can see from the aerial view how they're
2 probably going to walk.

3 If you were a car, you might come along this street
4 (indicating).

5 BY MR. RANDAZZA:

6 Q. Which street are you referring to?

7 A. If I can just draw here.

8 Q. Okay.

9 A. If you were a car --

10 THE COURT: That's Community College Boulevard.

11 THE WITNESS: You may come down Community College
12 Boulevard. But if you're a student or any other individual
13 going to the university -- and those are the people I'm trying
14 to approach. People in cars, of course, I can't -- what you're
15 going to do is, is you're going to get off the bus here
16 (indicating), or here's another bus stop (indicating), and then
17 you got to kind of funnel into this crosswalk (indicating).
18 There's also people that go back and forth to Walmart or
19 Denny's or any of these other businesses. And then, being a
20 student, they're going to take a direct route. That route cuts
21 across the plaza. It cuts across the circle. There's a --
22 there's a -- if you can zoom in or look at a closer diagram,
23 you can see that the sidewalk on either side of the plaza cuts
24 through the center. They don't -- in my knowledge from having
25 witnessed these people, in addition to just what I know from

1 experience, they -- they don't walk the long way, and they
2 certainly don't mind cutting across the plaza. So, you know,
3 there's people that ask me where to go. I -- I have to tell
4 many people where I think is a good spot to go circulate and if
5 I were to advise someone, I would point these things out to
6 them and I would tell them that, hey, the center of that plaza
7 looks like your best bet. You're going to be able to access
8 people coming into the library from either sidewalk and you're
9 going to be able to access the general public and the students
10 and the teachers that are going about their daily lives using
11 public transportation going to class.

12 Now, someone might say, well, you know, there's more
13 cars parked in the back, but I -- I really, at least from this
14 aerial shot, don't see any reason for anyone other than those
15 people that are parked there for two hours to take that back
16 entrance. Also, the spot between the two pillars does not
17 catch the people which are coming into the library.

18 When you want to collect signatures, you have to
19 interact with people in a way that's going to facilitate that
20 signature. People sign because they'd like to sign. So, if
21 you start talking to them right away by yelling at them because
22 they're far away from you, or if you're talking to them from
23 behind, or even the side of their head as they're walking past,
24 you start out with an uphill battle that you're not going to
25 win. You look at who you're talking to. If you want to

1 properly communicate with that person, you start talking to
2 them from a little distance away. You have a very short pitch
3 and by the time they reach you, you want them to have heard
4 your pitch.

5 Now, occasionally you'll ask someone, "Are you
6 registered to vote?" and they'll say, "Oh, I am. Thank you so
7 much. I'm already registered. Keep up the good work" and
8 they'll keep walking. You need to, you know, follow along with
9 that person for a brief period just to let that person know
10 that, hey, we're not simply registering people to vote or
11 telling them how to get registered, we also have a petition
12 that we're hoping you might like to sign. And if you convey
13 that to people by going along with them just for, you know,
14 just long enough to say that, they often say, "Oh, I'm sorry.
15 I didn't realize that," especially if they just saw you talking
16 to someone right before they registered. And once that person
17 begins to sign, you stop talking and you talk to the next
18 person. The easiest time to get someone to sign is when
19 someone else has signed. If you got five people signing at
20 once people come up to you because they see this going on. And
21 even if somebody declines to sign, you want to be sure that you
22 have a friendly interaction with that person because just like
23 if someone sees someone signing, the next person's more likely
24 to come along and join them. If you have a negative
25 interaction with someone and the next person witnesses that,

1 maybe they were someone who would have signed, but they're
2 going to skip by you because they just witnessed this negative
3 interaction.

4 Also, there's people that go into the library and
5 they come out and they change their mind, or maybe they go to
6 lunch and they come back from lunch and they change their mind.
7 So, you always want to put a good face on the issue. And you
8 don't want to spend time arguing with someone because it's a
9 numbers thing. You have to qualify the issue for the ballot.
10 And if you spend half an hour arguing with someone, how many
11 people did you just miss?

12 And this -- this -- this notion that you would want
13 to block the door, it's exactly the opposite of the motivation
14 that a petition circulator would have. I mean, that would be a
15 really rookie thing to do. There's -- nobody ever signed a
16 petition because a door patrol wouldn't let them out of the
17 building unless they signed. It's just -- it's just not how it
18 works.

19 Your -- you have to -- this isn't a good job for
20 people who just want to get a certain number of hours on, like,
21 a community service sheet. This is a good job for people who
22 believe in it who want to work. Your enthusiasm and your
23 optimism and your excitement and the fact that you care about
24 what you're doing, that carries over. And so, people who care
25 about the issue or care that people have a right to decide the

1 issue are much more likely to be successful. And I -- I'd put
2 myself in -- into that boat.

3 You know, I -- I wasn't getting paid to tell people
4 how to register to vote. That's just on my own time. From
5 time to time I do get paid to collect signatures, but I also do
6 it when I don't get paid. I feel lucky that I can get paid to
7 do something that I believe in that I support, you know, and I
8 believe in the process. I believe that we're better off to let
9 the people decide the issues they care about -- even if I --
10 even if I don't believe in the issue I'll still get signatures
11 on it -- than we are to try to suppress the, you know,
12 viewpoints that you don't agree with.

13 So -- so -- you know, I believe in letting the
14 process work and it's self-correcting. When you're collecting
15 these signatures, your interaction with the people, I think
16 that there's a tendency to play that down, but that is key. It
17 is so important that you are viewed favorably among the public.
18 And remember, they're going to be voting on this issue.

19 Now, I, myself, I'll collect signatures on an issue I
20 don't care about, but I got to tell you, there's a lot of
21 petition circulators that stick to the issues they want to
22 pass. So if you're trying to -- if the purpose for getting
23 these signatures is to get the issue on the ballot, why would
24 you want to turn off the same people? Even if they don't sign
25 it, they're still a voter. They're still going to vote on the

1 issue. Why would you want to turn off those people? So --
2 so -- and if you're someone who is getting paid, who is paying
3 that bill? It's someone who wants that issue on the ballot and
4 they probably want it to pass. The person who's paying the
5 bill wants you to put a good face on their issue.

6 I'm a professional. This is a career. This isn't
7 something that if I lose my name, it doesn't matter because I'm
8 only doing it for this week. The people who hire me expect for
9 me not to cause them to look poorly. I -- whether or not I
10 should be, I'm a reflection on them and I -- I take that to
11 heart.

12 BY MR. RANDAZZA:

13 Q. Okay. Let's -- you told us a lot about the theory. Let's
14 apply that to the incident on the day in question when you
15 were -- what arose -- what arose all this. I'm sorry. I don't
16 have the date perfectly recalled here but, you said you weren't
17 getting paid to register people to vote.

18 A. That's correct. I was not. There is no payment for
19 telling someone how to register to vote.

20 Q. Were you paid for anything that day?

21 A. I was getting paid per ballot signature. I believe it's
22 about 2 dollars per ballot signature. And so, if I was just
23 out there to maximize profit, there wouldn't be any incentive
24 for me to tell people how to register to vote but --

25 Q. Why not?

1 A. Well, it takes up time and it's a numbers game. If you
2 spend a lot of time telling people how to go to the website and
3 that sort of thing, that's -- that's somebody whose signature
4 you didn't get. But, I want the people involved in the
5 government. I think it's important. I think it's valuable and
6 so I'm willing to sacrifice, you know, 2 dollars or whatever
7 the signature price is to help someone who wants to learn how
8 to register to vote to accomplish that. There's a lot of
9 people that wouldn't know what website to go to. It's past the
10 cutoff date for the paper forms. They need a little bit of
11 hand holding. And if you -- if you tell them where to go,
12 they'll be able to do it. And if you don't tell them where to
13 go, they're not going to fight an uphill battle to get
14 registered. They'll just do it next time and that might never
15 happen.

16 Q. So, on the date of the incident, tell me about what you
17 did.

18 A. I arrived at the library. I observed, you know, what was
19 going on. There's people in the plaza eating and talking on
20 the cell phone and chatting about who knows what. There's
21 people going back and forth to the university or any other
22 place in either of those directions. I noticed, you know, the
23 people were going into the library by certain routes, that they
24 preferred to stay in the shade and based on those things, you
25 know, I positioned myself in the center circle, you know,

1 approximately in the center circle and the people, as they're
2 coming by, I'm asking them if they're registered to vote and if
3 someone says yes, well, I hope they sign the petition; if they
4 say no, I will -- you know, "Would you like to get registered?
5 We'll point you in the right direction."

6 MR. RANDAZZA: Could we bring up Exhibit 28, please.

7 MR. SPERLEIN: Give me just a second. I have the one
8 that's annotated.

9 (Brief pause in proceedings.)

10 BY MR. RANDAZZA:

11 Q. So, you stood where?

12 A. In the center circle.

13 Q. Okay.

14 A. That way (indicating).

15 Q. Go on. We'll get this dialed in while you're talking.

16 A. Okay. It's not actually pictured in this diagram but you
17 can see the edge of the building. It's kind of like a
18 sidewalk -- I'm sorry. My dots have -- there's kind of a
19 sidewalk that extends from the sides of the plaza and I had
20 positioned myself in the center. That way, if someone was
21 coming into the library from either sidewalk, I would have an
22 opportunity to speak with that individual, or if someone was
23 simply going laterally across the plaza, I'd have a -- an
24 opportunity to catch that individual as well, and I could do it
25 in a fashion that might actually elicit a signature. Wouldn't

1 have to yell at them or talk to the back of their head or
2 anything of that nature.

3 Q. Then what happened?

4 A. I collected a few signatures without incident and the
5 security guard from the library came out of the double doors,
6 and I want to be sure and point out that she was nothing but
7 nice and kind and polite to me. However, she told me that I
8 had to register.

9 THE COURT: You're saying this is a security --
10 BY MR. RANDAZZA:

11 Q. Did she use that word?

12 THE COURT: Hang on a second.

13 You're saying this is a security guard?

14 THE WITNESS: Yes, sir. Yes, Your Honor.

15 THE COURT: How do you know she was a security guard?

16 THE WITNESS: The lady was dressed as a security
17 guard.

18 THE COURT: Okay. All right.

19 THE WITNESS: I witnessed her at the security guard's
20 post inside the library on numerous occasions.

21 THE COURT: That's sufficient. I just wanted to make
22 sure. I -- I was confused from our last hearing. I thought
23 somebody from the Library District management was the one that
24 originally approached you, but it was a security guard that
25 approached you.

1 THE WITNESS: Yes, Your Honor, the security guard
2 originally approached me.

3 THE COURT: Okay.

4 THE WITNESS: However, after she told me that I
5 needed to register -- and yes, she did use that word to answer
6 your question -- I explained to her that -- and this was a
7 totally amicable conversation -- I explained to her that some
8 people might for some activities, but that I was engaged in
9 political speech and that I didn't think that applied to me and
10 she . . . you know, went back in to the library and I didn't
11 know -- you know, I -- I thought maybe that was resolved at
12 that point.

13 BY MR. RANDAZZA:

14 Q. Then what happened?

15 A. Well, then a member of the library management came out.
16 And I hadn't been asked to leave or anything, you know, by the
17 security guard, and that individual was I now know to be
18 Sam Kushner and he said that I had to register and I explained
19 to him why I felt that was not a requirement that applied to
20 me. He then --

21 Q. What was your explanation?

22 A. Well, my explanation was that I'm engaged in telling
23 people how to register to vote and getting signatures on a
24 petition and that is a protected First Amendment activity. It
25 goes to the very core of, you know, why we have the First

1 Amendment. This is political speech. It's not -- I'm not
2 handing out advising fliers or anything.

3 THE COURT: Is that what you said to him, that this
4 was --

5 THE WITNESS: That's what I explained --

6 THE COURT: -- that this was First Amendment speech,
7 it's political speech, that's why we have -- here's what I want
8 you to do. Instead of editorializing, when you answer the
9 question, tell him what did you say to him and what did he say
10 to you.

11 THE WITNESS: Your Honor, I do not remember my exact
12 words.

13 THE COURT: Okay. That's fine. Then paraphrase if
14 you want. That's fine.

15 THE WITNESS: I did explain that what I was doing was
16 protected by the First Amendment.

17 THE COURT: Okay.

18 THE WITNESS: Absolutely.

19 THE COURT: Okay.

20 THE WITNESS: And that was my belief as to why I
21 didn't have to register. I wasn't simply being obstinate; I
22 thought that there was a misunderstanding about something and I
23 was trying to clear it up.

24 He then told me that I would have to stand -- I'm
25 sorry. There's -- the exhibit is off the screen but, between

1 the two far pillars.

2 THE COURT: The box "B" that we talked about at the
3 TRO hearing?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay.

6 THE WITNESS: I knew that wasn't the case. I knew
7 that that couldn't be, when -- the moment he said it. You
8 know, I had been there and I knew that that just wasn't a
9 possibility.

10 THE COURT: What did he -- what do you recall him
11 saying to you in terms of describing this is where you have to
12 be?

13 THE WITNESS: That I must stand between the two
14 pillars which bound box "B."

15 THE COURT: Okay. So he pointed the two pillars to
16 you out?

17 THE WITNESS: Yes, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. RANDAZZA: I have here Exhibit 527. We're having
20 some technologic problems finding it, but if I can show it to
21 the witness.

22 THE COURT: You may.

23 BY MR. RANDAZZA:

24 Q. Can you describe what you're looking at there.

25 A. This is the plaza --

1 Q. Exhibit 527.

2 A. This is the plaza in front of the West Charleston Library.
3 There's a opening between these two pillars corresponding to
4 box "B" corresponding to the area that Mr. Kushner had told me
5 that I must stand.

6 Q. Can you diagram on there about where he told you to go?

7 A. Yes, sir.

8 (Witness complies).

9 Q. Thank you.

10 What happened next?

11 A. I continued to try to explain that I didn't meet whatever
12 requirement it was to register, that I was not, in fact,
13 engaged in activity that would require that and that I didn't
14 believe that what he was doing was right or allowable and he
15 told me that I had to leave. I . . . thought that that wasn't
16 the case and he -- he actually went back into the library and
17 that was an unclear moment for me. I -- I wasn't sure what I
18 should do at that point.

19 Q. So what did you do?

20 A. Well, I continued to collect signatures on the petition
21 and to tell the people who weren't registered to vote how they
22 could go about doing so and another member of the library
23 management came out and I had a similar argument -- if you'd
24 like to characterize it as that because I know it has been --
25 with her and basically reiterated the same things. She told me

1 that I had to leave. You know, I, at one point, told her that,
2 you know -- you know, should I call the police to get this
3 resolved. I felt that it was clear that I had a right to be
4 there, that I wasn't doing anything wrong, and that maybe there
5 was some misunderstanding that the -- that the police could set
6 straight. However, she went back in and again I thought, well,
7 maybe that's the end of that. You know, maybe she would look
8 up some further information or check with somebody above her
9 and determine that I -- that I could, in fact, be there.

10 Eventually though I noticed the police inside the
11 library. I -- I approached the police. I thought, in my mind,
12 you know, that the police would assess the situation and
13 explain to the library that what I was doing was, in fact,
14 allowable, you know, and if there was any -- anything that they
15 needed to tell me, I figured they'd tell me that or reiterate
16 some rules or something, but I just felt like they would
17 resolve the situation so that everything could continue and I
18 could continue to collect signatures.

19 I was . . . very surprised when -- there's -- there's
20 a transcript -- you know, when Officer Summerlin came out the
21 door and told me I was blocking it. And if you can look at the
22 transcript, I tried to ask her, you know, "Did the -- Did the
23 library manager tell you that?" Because, you know, I couldn't
24 believe what I was hearing. And if she had indicated that to
25 me at the time, maybe I could have said, "Look, the library

1 manager has an agenda. I would do anything about that." Of
2 course that's not what happened.

3 Q. About how wide are the doors?

4 A. 200 inches. There's -- there's a -- there's a diagram.
5 About 200 inches.

6 Q. Okay. And about how far did you position yourself from
7 the doors?

8 A. 16 feet. Maybe -- maybe a little bit further, but I'm
9 happy with that characterization.

10 Q. So your basic station or place was -- and, I'm sorry. I
11 don't know if we'll be able to pull that back up, but I have
12 this blown up so that I can play along here.

13 It's your exhibit.

14 You say you were stationed at the center circle
15 (indicating)?

16 A. Yes.

17 Q. Now . . . there actually is a key on this that shows
18 distances so I have made a ruler here. If you'd like to see
19 that it's to scale, sir. Trust me?

20 MR. KENNEDY: Yeah. I trust you.

21 BY MR. RANDAZZA:

22 Q. So, I've got it there to scale.

23 Now, Mr. Deans, you're working from memory about how
24 far you were. Can you use that ruler and show me how many
25 feet, according to the architectural diagram, how far you were.

1 A. I was at least 16 and, you know, I -- I had to walk to
2 greet people, but majority of my time I was in excess of 16.
3 Looks like about 30 feet.

4 Q. Did you ever do anything you could describe as blocking
5 the doors?

6 A. Absolutely not.

7 Q. Well, how are you so certain?

8 A. Uh, by the time I would walk with someone -- and most
9 people I don't have to accompany for any distance. The vast
10 majority of people their answer is yes or no. But if someone
11 gave an answer which indicated that they thought I was asking a
12 different question than I was, you know, by the time I would
13 get near the door, I'd be done. That was -- that was the end
14 of our conversation. I'd be better off getting another person
15 and I'm -- and I'm certainly not incentivized to continue to
16 just argue with a person that I know is not going to sign and
17 certainly I wouldn't block the door; I'd stand in the middle,
18 the center circle.

19 Q. Okay. Thank you. That's all I need for that exhibit.

20 Do we have the encounter here?

21 MR. SPERLEIN: I believe we do.

22 MR. RANDAZZA: And how -- we have designated the next
23 video as . . . which exhibit is it designated as?

24 MR. SPERLEIN: I'm sorry, counsel. I think we're
25 having some technical; I don't think we're going to get it. We

1 have the DVD if we want to play it later.

2 MR. RANDAZZA: Do we have that capability?

3 THE COURT: Of playing a DVD?

4 MR. RANDAZZA: Yes, Your Honor.

5 THE COURT: We do.

6 MR. RANDAZZA: Okay.

7 I have here Exhibit 22.

8 I don't know that we're actually getting it.

9 THE COURT: Let's go off the record for a minute.

10 (Brief pause in proceedings.)

11 THE COURT: Mr. Randazza, can we move on and we'll
12 come back and play this --

13 MR. RANDAZZA: Yeah, we'll skip back to this --

14 THE COURT: -- once we figure it out.

15 MR. RANDAZZA: -- while we figure it out.

16 THE COURT: Thanks.

17 MR. RANDAZZA: All right. We can go back on the
18 record.

19 THE COURT: Yes.

20 BY MR. RANDAZZA:

21 Q. All right. Mr. Deans, we'll get back to that exhibit
22 later but, are you familiar with Exhibit 1, the declaration of
23 Steven Cooper?

24 A. Yes, I am.

25 Q. Have you reviewed it?

1 A. Yes, I have.

2 Q. Is Mr. Cooper mistaken about anything in that exhibit?

3 MR. KENNEDY: Excuse me. Your Honor, we've objected
4 to Exhibit 1. It's an affidavit. It's -- it's hearsay. We
5 make that objection for the record. We understand the Court
6 can take virtually any evidence it wants at this hearing, but
7 we just do lodge the objection.

8 THE COURT: Is this --

9 MR. HINCKLEY: We'd join that objection --

10 THE COURT: Okay.

11 MR. HINCKLEY: -- relative to the ability to examine
12 Mr. Cooper.

13 THE COURT: Is Mr. Cooper going to testify?

14 MR. RANDAZZA: Your Honor, we have his sworn
15 statement under penalty of perjury. They have not chosen to
16 call him to cross-examine him so we have not -- we do not have
17 him available today. He is not available today. He has -- I
18 asked him to come today. He said he has to work at a new job
19 that he's starting today, so this is the best evidence we have
20 for him.

21 He will be available at trial. He will be
22 subpoenaed, if need be.

23 THE COURT: Well, given that this is an Evidentiary
24 Hearing I am troubled by the fact that it's hearsay and there's
25 no opportunity to cross-examine, but I'll at least allow you to

1 present this information and I'll give it the weight that I
2 figure out it deems it might need.

3 But go ahead.

4 BY MR. RANDAZZA:

5 Q. Is anything in there untrue to the best of your knowledge?

6 A. No.

7 Q. Did you see Mr. Cooper that day?

8 A. Yes, I did.

9 Q. Did you know Mr. Cooper before?

10 A. I did not.

11 Q. How did you come to meet Mr. Cooper?

12 A. I overheard him talking in the plaza.

13 Q. When?

14 A. He was there at the time of the incident. He's actually
15 in one of the photos that was submitted in the background, off
16 to the side. I later encountered him again at the library in
17 the plaza, again talking on his mobile phone.

18 Q. Did you approach him?

19 A. I did approach him, the second time.

20 Q. Tell me about your conversation with him.

21 A. I was very happy that somebody was there to witness the
22 event.

23 MR. KENNEDY: Your Honor, we're -- if he's going to
24 relate the conversation, this is, again, hearsay.

25 THE COURT: Yeah. I'm going to sustain that

1 objection.

2 BY MR. RANDAZZA:

3 Q. Okay. Just from your point of view, not what Mr. Cooper
4 said, just what you said.

5 MR. KENNEDY: Well, that's --

6 THE WITNESS: I'm not clear on the question,
7 Your Honor.

8 MR. KENNEDY: That would still be hearsay,
9 Your Honor.

10 THE COURT: Well, you can testify about what you
11 knew, what you did, what you saw, what you said, but you can't
12 testify about what somebody else who is not a party to this
13 said or what they knew or didn't know.

14 God it?

15 THE WITNESS: Your Honor, I'll try my best.

16 THE COURT: Okay. That's fine.

17 THE WITNESS: Feel free to admonish me.

18 I approached Mr. Cooper. I was happy to have, you
19 know, someone who may have witnessed these events, someone who
20 I know was there just -- just feet away and . . . I told
21 Mr. Cooper who I was and I confirmed with Mr. Cooper that he
22 was the same gentleman. I knew he was but, I double checked
23 that. Mr. Cooper, he was a little bit -- I think he might have
24 been embarrassed about his telephone call. It was some sort of
25 adult industry.

1 THE COURT: Objection sustained. Mr. Kennedy is
2 about to get up. That's sustained.

3 MR. KENNEDY: Thank you, Your Honor.

4 THE COURT: Again, you can't testify about what was
5 in his mind because you weren't in his mind and you can't
6 testify about what he said because that would be hearsay.

7 THE WITNESS: He appeared embarrassed to me.

8 THE COURT: Okay.

9 THE WITNESS: I gave him a minute to get off his call
10 and I asked him essentially if he was willing to just convey
11 what happened that day and he was happy to. He -- I --

12 MR. KENNEDY: Objection. Move to strike.

13 THE COURT: I'm going to overrule that.

14 THE WITNESS: I -- I asked him and he did provide a
15 account of what happened that day and it does match what
16 actually occurred.

17 THE COURT: You're saying the declaration that's
18 Exhibit 1 matches what occurred?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. RANDAZZA: We have the video queued up, at least
22 the first one.

23 THE COURT: Okay.

24 MR. RANDAZZA: It has been previously marked as
25 Exhibit . . .

1 MR. SHEPARD: 22.

2 MR. RANDAZZA: 22. So we'd like to move this into
3 evidence. We're going to have Mr. Deans authenticate it.

4 THE COURT: Okay.

5 (Video played.)

6 MR. RANDAZZA: I think we just have here another
7 minute and a half of him walking so, no sense in subjecting the
8 Court to that.

9 Now I have here . . . it's our previously filed
10 Document 12-3. It's a declaration of Danielle Diaz who
11 transcribed this tape for ease of reference for the Court.
12 I -- I apologize. I probably should have told you that
13 beforehand so you could follow along but, in your
14 deliberations, Your Honor, you may wish to review that instead
15 of the tape.

16 BY MR. RANDAZZA:

17 Q. Mr. Deans . . .

18 A. Yes.

19 Q. That document I just handed you, can you identify it?

20 A. It is the transcript of the video which we just watched.

21 Q. Have you reviewed that thoroughly?

22 A. Yes, I have.

23 Q. That video, who created it?

24 A. I did.

25 Q. Did you edit it?

1 A. I did not.

2 Q. Did you make any alterations to it?

3 A. None.

4 Q. It is a true and correct representation of the events of
5 that day?

6 A. Absolutely.

7 Q. That transcript, is there any deviation on that transcript
8 from your memory of the incident?

9 A. None.

10 Q. Now, you hear in that -- in that video we heard you were
11 told "all the information you need is right here." What did
12 you understand that to mean?

13 A. I . . . understood it to mean that there was no additional
14 information for me to look up; that the information provided
15 was the information.

16 Q. Okay. So, let's go to the beginning of the encounter
17 here. At Line 22 on Page 1 here, it says, "Did she tell you I
18 block" -- and then what's -- can you read the next line for us?

19 A. The library manager interrupts and says, "I did not.
20 Sir -- sir" --

21 Q. Okay. Now, I have here the Notice of Trespass previously
22 filed as Document 3-3.

23 THE COURT: He's -- is it an exhibit in one of the
24 booklets already?

25 MR. RANDAZZA: It is, Your Honor.

1 THE COURT: He's got the booklets. You can just tell
2 him which one to look at.

3 BY MR. RANDAZZA:

4 Q. Mr. Deans, do you recognize this?

5 A. Yes, I do.

6 THE COURT: And he's got them in the binders in front
7 of him if you want to direct him to which binder.

8 MR. RANDAZZA: Yes, Your Honor. We're directing him
9 to which -- I've got an ECF number on it but this one doesn't
10 have the --

11 MR. SPERLEIN: Can I ask what exhibit number it is on
12 your copy or his . . .

13 MR. RANDAZZA: It isn't on here.

14 THE WITNESS: I'm sorry, what was the exhibit number?

15 MR. RANDAZZA: We're getting there --

16 MR. SPERLEIN: We're working on that.

17 MR. RANDAZZA: -- Mr. Deans.

18 THE WITNESS: Sorry.

19 MR. SPERLEIN: Exhibit 507.

20 THE WITNESS: I have located the Notice of Trespass
21 in Exhibit 507.

22 THE COURT: Mr. Kennedy?

23 MR. KENNEDY: Your Honor, I think we're talking about
24 two different documents here.

25 THE WITNESS: It does not match.

1 MR. KENNEDY: Yeah. These are two different things.
2 I just say that because we don't want to get down the road.

3 THE COURT: Agreed.

4 Are you talking about Exhibit 538? Mr. Randazza, are
5 you talking about 538?

6 MR. RANDAZZA: I believe we are.

7 That's it, Your Honor. Exhibit 538.

8 THE WITNESS: I have located Exhibit 538. It does
9 match.

10 BY MR. RANDAZZA:

11 Q. Have you seen this before?

12 A. Yes, I have.

13 Q. When was the first time you saw it?

14 A. At the library at Clark County. It was handed to me by
15 the officer.

16 Q. During the incident we just heard?

17 A. Yes.

18 Q. Were you ever handed anything else?

19 A. No.

20 Q. I'd like to -- Gill, do we have the other two videos
21 available?

22 MR. SPERLEIN: Yes, sir.

23 MR. RANDAZZA: I have two more videos that I'd like
24 Mr. Deans to authenticate.

25 THE COURT: Have they been disclosed to the

1 defendants?

2 MR. RANDAZZA: They have, Your Honor.

3 THE COURT: Okay.

4 MR. SPERLEIN: The first is Exhibit 539.

5 (Video played.)

6 THE COURT: Pause it for a minute, will you, please.

7 I'm just wondering if we have confidentiality for
8 this --

9 MR. RANDAZZA: I don't think we need the rest of it
10 either.

11 THE COURT: I just didn't want to put his personal
12 identifying information in the record.

13 THE COURT: Agreed.

14 MR. KENNEDY: And it is on there, Your Honor.

15 THE COURT: The video itself?

16 MR. KENNEDY: It is on the -- in the video.

17 THE COURT: Well, if that video comes into evidence,
18 we'll have to strike it at that point, or seal it.

19 MR. KENNEDY: And that's agreed.

20 MR. RANDAZZA: We'll stipulate to strike out his
21 phone number.

22 BY MR. RANDAZZA:

23 Q. Mr. Deans, who took this video?

24 A. I took the video.

25 Q. Whose voice is that on the person off camera?

1 A. My voice.

2 Q. Have you ever met this man before?

3 A. Never met him before.

4 MR. RANDAZZA: Can we play the next one.

5 (Video played.)

6 MR. KENNEDY: Could we pause it just for a second.

7 THE COURT: Yeah. Pause it, please.

8 MR. KENNEDY: Because at the end, having watched
9 this, at the end of the video, they're asked to give their
10 consent to the taping and I believe they say no.

11 THE COURT: Mr. Randazza, is that correct?

12 MR. RANDAZZA: They do say that, yes, Your Honor.

13 THE COURT: Then how do we have the right to put this
14 into evidence and show it?

15 MR. RANDAZZA: They are in a public place,
16 Your Honor. They have no reasonable expectation of privacy.
17 If he wanted to videotape this and then put it on CNN, he would
18 have every right to do that. The fact that he asked them, he
19 may have been being polite, but he was under no legal
20 obligation to ask them that and they have no legal right to
21 stop him from doing it. Now, if they were in a place where
22 they had a reasonable expectation of privacy, that would be
23 another story.

24 THE COURT: Mr. Kennedy.

25 MR. KENNEDY: Well, Your Honor, I -- I don't know how

1 we use this and put it in evidence when the question should be
2 asked at the outset, "Can I videotape you and do you consent to
3 it?" because he engages in a conversation with them and then
4 says, "Do I have your consent to do this?" and they say no
5 and -- and -- so I -- I -- I mean, I have my own reasons for
6 wanting this to be in evidence, as you'll see later, but I
7 just -- I think I have an obligation to stand up for these two
8 people and just say they have not consented to this.

9 THE COURT: Okay.

10 Mr. Hinckley, anything to add?

11 MR. HINCKLEY: No. Thank you.

12 THE COURT: All right.

13 MR. KENNEDY: Because, Your Honor, they can be
14 videotaped, you know, standing there but when you have a
15 conversation with them, that's altogether different.

16 THE COURT: And I'm -- as I sit here, don't recall
17 Nevada law on two party consent to audio or video. Here's what
18 we're going to do. I'll allow you to play this video since
19 we're here at the hearing. I'm going to seal this portion of
20 the transcript, and this video, until we figure out whether it
21 actually comes in or not and whether I need to strike it or
22 not, but I'm going to let you, since we're here and we're
23 gathered for this hearing and I don't have a motion --
24 previously filed Motion to Strike or Exclude, I'm going to play
25 it but we're going to seal it.

1 And obviously I'm not blaming Mr. Kennedy for not
2 filing one ahead of time but, given the exigency of
3 circumstances.

4 MR. KENNEDY: I understand.

5 THE COURT: Preliminary Injunctions come quickly.

6 MR. RANDAZZA: Your Honor, I would like to state on
7 the record this is their exhibit. We disclosed it to them.
8 They are the ones who put it into evidence.

9 THE COURT: Understood.

10 MR. RANDAZZA: We also -- I do happen to have a good
11 recollection of Nevada law on this and that is that if it is
12 obvious that they are taping somebody, you have a right to do
13 it. The only restriction is surreptitiously doing so. So if
14 you -- if they know that it's happening, they can walk away if
15 they want.

16 THE COURT: Understood. And I'll disagree with you
17 at this point. I just don't have --

18 MR. RANDAZZA: Okay.

19 THE COURT: -- that completely briefed in front of
20 me. So I'm going to let you play it. We're just going to seal
21 this portion of the record though.

22 MR. RANDAZZA: Thank you, Your Honor.

23 THE COURT: And is there any objection to having the
24 people who are in court right now sit and stay through this?
25 Any objection?

1 I don't know who's in the audience, who they are,
2 what roles they have but, unless somebody objects, I'm not
3 going to clear the courtroom.

4 All right. We'll continue. You may proceed and play
5 the video.

6 (Video played.)

7 BY MR. RANDAZZA:

8 Q. Okay. And that was Exhibit 540 for the record.

9 So, Mr. Deans . . .

10 A. Yes.

11 Q. Who made that video?

12 A. I made the video.

13 Q. Who's the voice off camera?

14 A. It is my voice off camera.

15 Q. This gentleman's name, I got his first name is Austin.
16 What did you observe Austin doing there?

17 A. Austin was conducting a survey in the plaza. I had just
18 arrived at the -- at the library. He was, you know, concluding
19 with the people that he was already conducting the survey with.

20 Q. Did he ask you to participate in the survey?

21 A. Yes, he did. He asked if he could interrupt me so that I
22 could participate in the survey and -- it was a joint effort
23 between him and the -- his lady friend to be clear.

24 Q. What, if anything, do you recall him asking you?

25 MR. KENNEDY: Objection. Hearsay.

1 THE COURT: Sustained.

2 ///

3 BY MR. RANDAZZA:

4 Q. Did you share any information with him?

5 A. I did.

6 Q. What did you tell him?

7 A. I told him the name that I thought would apply to a
8 certain color. I told him all the information in the -- in the
9 video, of course.

10 Q. So, did he show you a color?

11 A. Yes. I was -- I was shown a piece of fabric and I was --
12 I provided an answer to a survey about what color that piece of
13 fabric was. After I had answered the survey I engaged in a
14 little bit of conversation about why my particular thoughts on
15 the name of that color might not be accurate.

16 Q. How long did you observe Austin and the woman in the video
17 there?

18 A. A minute or -- a brief period of time, but long enough to
19 get a good sense for it.

20 Q. After the video terminated, did they leave?

21 A. I am unclear how long they stayed after the video
22 terminated.

23 Q. Do you have any idea how long they were there before the
24 video began?

25 A. I know they were there at least long enough to ask four

1 other individuals.

2 MR. RANDAZZA: Your Honor, at this time I have no
3 further questions for Mr. Deans.

4 THE COURT: Okay. Cross-exam?
5

6 CROSS-EXAMINATION OF WILLIAM DEANS

7 BY MR. KENNEDY:

8 Q. Mr. Deans, I'm Dennis Kennedy. I represent the Library
9 District.

10 A. It's a pleasure.

11 Q. How long had you been in Las Vegas before you went to the
12 library on West Charleston?

13 A. I had arrived a couple of days prior. I provided a copy
14 of my boarding pass which has the exact date and time and I
15 believe you probably have that.

16 Q. That's right. You arrived on the night of the 11th of
17 October; correct?

18 A. The boarding pass is the definitive authority and if
19 that's what it says, then yes.

20 Q. That is what it says.

21 How did it come to pass that on the 13th of October
22 you chose to go to the West Charleston branch of the library?

23 A. It took me a couple of days to get situated. At that
24 point I assessed the different places that I might go and for
25 the reasons that I've already stated and for the reasons in my

1 declaration, libraries are a terrific spot to circulate
2 petitions.

3 Q. Had you been to Las Vegas previously?

4 A. I have been to Las Vegas previously, yes, I have.

5 Q. Had you ever been to the West Charleston branch of the
6 library previously?

7 A. No, I had not.

8 Q. And at the time that you went there what did you know
9 about the history of that branch of the library, if anything?

10 A. There are things I could surmise, but I did not know.

11 Q. Okay. So, you did not know about any -- any events that
12 had occurred there in the prior let's say 20 years since the
13 library had been open?

14 A. No, I did not.

15 Q. You don't know any of the uses that the library had
16 permitted for the plaza area; correct?

17 A. I was able to observe uses which the library was
18 permitting in the plaza area so I'd have to say that's probably
19 not.

20 Q. Okay. How long were you in the plaza area?

21 A. I can't say for sure.

22 Q. 30 minutes?

23 THE COURT: Let's be clear. Which day are you
24 talking about?

25 MR. KENNEDY: October 13th.

1 THE COURT: Okay. Thank you.

2 BY MR. KENNEDY:

3 Q. That was the first and only time up to October 13th that
4 you went to the plaza area; correct?

5 A. Yes, it was. It was analogous to other libraries. I've
6 been to many libraries.

7 Q. I'm asking you about this particular library because
8 that's the library at issue in this proceeding.

9 You had spent a grand total of how long in that
10 plaza?

11 A. I'm unsure, but, if -- you know, less than an hour.

12 Q. Okay. And so you had observed what was going on in that
13 plaza for less than one hour; correct?

14 A. That is correct.

15 Q. I am asking you what, if anything, you know about the uses
16 that had been permitted in that plaza by the Library District
17 during the prior 20 years, sir.

18 A. I had not researched uses of the Library District in the
19 first 20 years.

20 Q. Okay. So is it fair to say, sir, that other than what you
21 were able to observe during the less than one hour that you
22 were there you don't know what uses had been permitted for that
23 plaza during the prior 20 years?

24 MR. RANDAZZA: Objection. Relevance.

25 THE COURT: Overruled.

1 THE WITNESS: I know uses -- uses which are always
2 provided to like plazas and through that knowledge -- just like
3 I know a public sidewalk, you can circulate petitions --
4 through that knowledge, I knew that the use was permitted. Did
5 I know that because I researched it before I went to collect
6 signatures? No. I knew it from my history of 10 years of
7 collecting signatures.

8 BY MR. KENNEDY:

9 Q. Okay. I won't belabor this. You had no prior history at
10 that plaza; yes or no?

11 A. Yes.

12 Q. No, you had no prior history?

13 A. No, I had no prior history.

14 Q. Okay.

15 A. Excuse me.

16 Q. Had you done any sort of study as to traffic patterns,
17 whether it be vehicular traffic or foot traffic, with respect
18 to that library or particularly that plaza?

19 A. Yes. Insomuch as I had ascertained it was a university
20 related library and through my experience, which I don't know
21 if you'd call that a study or not, but through a lot of
22 experience, I know that university located libraries have good
23 foot traffic.

24 Q. As to this particular library?

25 A. No, not as to this particular library.

1 Q. Okay. The answer is you had done nothing; correct?

2 A. Correct.

3 Q. So you don't know how many people drive to that location
4 per day, do you?

5 A. I do not know the numerical number of people that drive to
6 that location per day.

7 Q. And you don't know how many people walk to that location,
8 do you?

9 A. I -- I -- I do not have a numerical number of people that
10 walk to that location.

11 Q. Now, sir, did you read the Motion for Temporary
12 Restraining Order in this case before it was filed?

13 A. I -- I believe I did. I'm unclear as to the filing.

14 Q. Did you, in fact, execute a declaration, a sworn statement
15 in support of that Motion for Temporary Restraining Order?

16 A. I believe so.

17 Q. And in your declaration, in your sworn statement, sir,
18 were all the statements you made in there true and correct to
19 the best of your knowledge?

20 A. To the best of my knowledge, absolutely.

21 Q. And so then, it's also true, is it not, that the
22 statements made in the Motion for Temporary Restraining Order
23 that was filed in this action were true to the best of your
24 knowledge?

25 A. To the best of my knowledge, yes, they were.

1 Q. Okay.

2 MR. KENNEDY: Could we pull up, please, Kelly, the
3 Motion for Temporary Restraining Order.

4 And for the record, Your Honor, it's Document 3 filed
5 10-15 of '16.

6 Could we go to Page 9, please.

7 BY MR. KENNEDY:

8 Q. Do you see Page 9, sir, on the video?

9 A. I -- yes, I do.

10 Q. Okay. Go down to Line 22, please.

11 Who is the Jane Doe that you refer to? Is that a
12 library person or a police officer?

13 A. I'm sorry. I need to read more for context to make sure
14 that I . . .

15 Is this -- I believe this may be Mr. Kushner.

16 Q. I'm sorry?

17 A. I -- I believe -- if I have my context correct, I'm not
18 sure I do, this may be Mr. Kushner.

19 Q. Okay. In any event, this is somebody from the library;
20 correct?

21 A. Yes.

22 Q. Not a police officer. And you say, sir, in your Motion
23 for Temporary Restraining Order, "In this case defendant
24 Jane Doe simply decided that she did not want Mr. Deans to
25 engage in his activism in the center of the public plaza and

1 instead took it upon herself to create a free speech spot."

2 Isn't that what is written on your behalf?

3 A. Yes, it is.

4 Q. And that's not true, is it, sir? No one took it upon
5 themselves on the afternoon of October 13th to create a free
6 speech spot. Isn't that correct?

7 A. I believe that to be incorrect as I have stated. I -- I
8 knew that the spot I was told could not be an official spot.
9 It was totally implausible.

10 Q. Isn't it true, sir, that that spot, which you have pointed
11 out on Exhibit 509 previously, was previously designated;
12 correct?

13 A. That is not correct. I have read the spot that was
14 designated. There's an exhibit. We can pull it up. That
15 text, to me, and to many other people, does not designate area
16 "B."

17 Q. And -- and so you think that the library, on the spot,
18 just arbitrarily designated a free speech spot that day?

19 A. That -- I -- I -- I can't -- that is my belief.

20 Q. Okay. Let's go to the next page, which is Page 10. And
21 let's go up to Line 1 on Page 10.

22 Thank you, Kelly.

23 And Line 1, the first sentence it starts with,
24 "However, for her to simply take it upon herself to be the sole
25 source of the designation of such a zone and to then

1 arbitrarily impose it is beyond the pale." That's what was
2 written on your behalf, isn't it?

3 A. Yes, it is.

4 Q. So is it your -- is it your testimony here today, sir,
5 that someone from the Library District took it upon herself to
6 be the sole source of the designation of the zone and then
7 arbitrarily imposed it on you?

8 A. Yes. I believe that that is, in fact, what occurred.

9 Q. Hadn't that zone been previously designated by the
10 library?

11 A. A different zone, in my reading, had been previously
12 designated. I knew that zone could not have been the
13 designated zone. So yes, I believe that that individual made
14 it up. I still believe it. I -- I think that they made it up
15 and . . . it's not, in fact, the zone matching the -- the zone
16 I was told, matching what was on the Secretary of State or the
17 library's website.

18 Q. So, this library person just made it up on the spot?

19 A. It appears so to me. I can't see any other way around it.

20 Q. And down on Line 9, sir, on the same page, you refer to it
21 as "a previously unestablished free speech spot."

22 So, is it your testimony that prior to October 13th,
23 2016, when you were there, that there had not been previously
24 established a free speech area?

25 A. Well, of course the whole area is free speech area but, if

1 you want to say that a spot was previously established, by that
2 description, it was not the spot between those two pillars.
3 So, no, there was not the spot between the two pillars
4 specified as a free speech spot as far as I can tell.

5 Q. Now, that day, the library employees asked you to move to
6 that spot; correct? They designated a spot and asked you to go
7 there; correct?

8 A. Ordered, yes.

9 Q. Okay. And you refused to do that; correct?

10 A. I believed it to be in violation of my First Amendment
11 rights. I encouraged them to seek the truth and when they did
12 not, yes, I refused to do that. That is correct.

13 Q. And you suggested that the police be called; correct?

14 A. I was willing to call them. I -- my experiences with
15 police are overwhelmingly positive. 99 out of a hundred times
16 when the police show up, they explain to the other person the
17 law. I had every expectation that the police would clear up
18 this misunderstanding about the law.

19 Q. And the police were called, weren't they?

20 A. Yes, the police were called.

21 Q. And they showed up, didn't they?

22 A. Yes, they did show up.

23 Q. And you were unhappy with the advice and instruction that
24 they gave; correct?

25 A. I was unhappy with the untruth. I was unhappy that I was

1 told that I could have all my questions answered and then when
2 I attempted to ask -- I held a lot of questions till the end
3 and when I attempted to ask those questions, I was told that I
4 was arguing. I was unhappy that my rights were being violated
5 and so were everyone else's that might want to exercise their
6 right to tell people how to register to vote or to collect
7 signatures.

8 Q. And we heard that argument on the -- on the audio portion
9 of the video; correct? That we just listened to?

10 A. Correct.

11 Q. Now, would you go to Page 11 of the Motion for Temporary
12 Restraining Order, please. And would you go down to Line 17.
13 And the sentence begins, "This was a series of flunkies who did
14 not appreciate a citizen failing to immediately bow to their
15 asserted authority. They invented a reason to cite Mr. Deans
16 in an attempt to silence him"; correct? That's what was
17 written on your behalf?

18 A. That is correct.

19 Q. Why, sir, do you refer to all of these people as flunkies?

20 A. I assume that's legal terminology. I trust my attorney to
21 convey in the light that is understood by lawyers and judges
22 and so far, I got nothing but great things to say about him.

23 Q. About those flunkies?

24 A. About Mr. Randazza.

25 Now, I'm sure -- I said something nice and I stand by

1 it, about the security officer, absolutely. But what I don't
2 have something nice to say about is, you know, the violation of
3 the First Amendment rights.

4 Now, you know, maybe at a cocktail party, they're
5 great. Maybe the whole rest of their lives they're great. My
6 grandmother worked for many years to get a library built and
7 she eventually did but, in the instance that they are
8 restricting my rights, and presumably the rights of anyone
9 else, in that instance, I might not appreciate it, even if the
10 rest of their lives I'm totally happy with.

11 Q. This group of flunkies, does it also include the police
12 officers, or is it just library people?

13 A. I would have to say that Officer Summerlin did lie about
14 my blocking the door and in that regard I -- again, even if I
15 support everything else she did, and 99 percent of my
16 experiences with the police are, in fact, positive, but in that
17 regard, I -- I cannot be satisfied. I -- I -- you must
18 understand that.

19 Q. So, just so we're clear. The library people employees are
20 flunkies; the police are liars; correct?

21 A. The characterization seems to apply more broadly than I'm
22 implying it. In this instance, it was a lie. To say that
23 someone's a liar because they ever lied in their life, well
24 everybody's a liar then.

25 Q. Now, you were trespassed, according to Exhibit 538 --

1 Kelly, can you pull that one up for us -- for failure to comply
2 with a reasonable staff -- failure to comply with staff
3 instruction; correct?

4 A. Correct.

5 Q. And you were also told, weren't you, at the time that you
6 were given the Notice of Trespass by the police officer, that
7 you were being trespassed; correct?

8 A. Correct.

9 Q. Yeah, because we heard that on the audio portion of the
10 video; right?

11 A. I've never disputed that I was being trespassed.

12 Q. So you knew at that point, you knew you had been
13 trespassed; correct?

14 A. Correct.

15 Q. And that you had to leave the property; correct?

16 A. Correct.

17 Q. Now, except for Judge Gordon's order entered after the
18 hearing on the Temporary Restraining Order which allowed you to
19 engage in petitioning activities in two places, that trespass
20 order still remains in effect; correct?

21 A. I understood it to not remain in effect during the
22 Restraining Order but that it would resume effect. That was my
23 understanding. And the Restraining Order had not ended.

24 Q. The -- didn't you ask that the Restraining Order be
25 vacated in your Motion for Temporary Restraining Order?

1 A. I'm sorry?

2 Q. Let's go to --

3 THE COURT: I think you misspoke, Mr. Kennedy. You
4 said did he ask for the Restraining Order to be vacated.

5 MR. KENNEDY: Okay. Yep. I'm sorry.

6 BY MR. KENNEDY:

7 Q. Didn't you ask that the Notice of Trespass be vacated as a
8 part of your Motion for Temporary Restraining Order?

9 A. I -- I believe that we have.

10 Now --

11 Q. And -- and -- so, that's right. You did. Okay.

12 Now, Judge Gordon didn't vacate the Notice of
13 Trespass, did he? He said you could engage in petitioning
14 activity in two places; correct?

15 A. Correct.

16 Q. Now, in fact, in your lawyer's reply memoranda that they
17 submitted in this case after the hearing on the Temporary
18 Restraining Order, the reply to the university and the reply to
19 the Library District, your lawyers say in both of those
20 pleadings on your behalf, don't they, that the trespass
21 order -- the Notice of Trespass remains in effect? They say
22 that, don't they?

23 A. I'm not a lawyer. Something can remain in effect in my
24 little pea brain while it's suspended -- along -- you know,
25 something may be under review for a long period of time, it's

1 suspended, but it's still in effect. There's no conflict there
2 to me. If there is some conflict, I was never made aware of
3 it, at least not in a way that I comprehended.

4 MR. KENNEDY: Kelly, can you pull up, please, the
5 reply to the CSN opposition.

6 Can you go to Page 3 for me, please.

7 BY MR. KENNEDY:

8 Q. Down at Line 17 -- I'm sorry, Page 3. One more. There we
9 go.

10 Line 17, do you see that? It says -- are you with
11 me? The highlighted portion?

12 A. I do see the line, yes.

13 Q. "Absent injunctive relief, there is nothing other than
14 their word that prevents them from arresting Deans if he goes
15 to any public library."

16 So that meant that pending this hearing, you could
17 still be arrested if you went to a public library. That's what
18 your lawyers wrote on your behalf; correct?

19 A. I am not aware that that is what that means. It may, in
20 fact, be what it means. But as I -- as I understood it, there
21 was a temporary relief from that, and I have to be able to go
22 into the library to notify them, supposedly. I -- I don't know
23 if that's true. I think it's not, and I have to be able to
24 tell them, by law, that I'm going to videotape or record our
25 interactions is my understanding. I think I may be required to

1 give them that notice. So -- so if I have to give them the
2 notice -- and, you know, I -- I do not believe that I am
3 required to register with the library, period, but I wanted to
4 be courteous. I've been courteous as much as possible. I
5 always told everybody to have a nice day and that sort of
6 thing, and to make sure that I noticed the library, to be
7 courteous, and also to prepare for the case. I -- I did, on
8 occasion, have need to enter the library and I was not aware I
9 was doing anything wrong at the time.

10 MR. KENNEDY: Kelly, can we go to the reply that was
11 filed to the library's opposition, please, Page 7.

12 BY MR. KENNEDY:

13 Q. Down at Line 23, this is Document 13 filed 10-26-16, so
14 that's well after the hearing on the Temporary Restraining
15 Order, and in Line 23 . . . the sentence that starts, in the
16 middle of Line 23, "Absent injunctive relief, Mr. Deans cannot
17 circulate petitions on library property, speak to patrons on
18 library property, read books in any library, or even enter the
19 areas explicitly designated as public forum." That's what your
20 lawyers wrote on your behalf; correct?

21 A. Correct, and I interpreted it in light of there's a
22 temporary period of time that I do have access and, I was
23 providing information, videos, to my counsel which he -- I was
24 never advised otherwise. So I -- I proceeded to do exactly
25 what I believed I was supposed to do, yes.

1 Q. And so despite what your lawyers wrote and submitted to
2 this Court, twice, you felt otherwise?

3 MR. RANDAZZA: Objection, Your Honor. Asked and
4 answered and he's engaging in legal debate with the witness,
5 not factual questioning.

6 THE COURT: Well . . . I don't think that question
7 has been asked and answered and I don't -- I'm not going to
8 take the question as asking for a legal conclusion. The
9 question was, you felt otherwise.

10 MR. KENNEDY: Right.

11 THE COURT: That's -- that's overruled.

12 BY MR. KENNEDY:

13 Q. Despite what your lawyers wrote twice and said to this
14 Court about the suspension and the Notice of Trespass still
15 being in effect, you believed otherwise. Is that what you're
16 saying?

17 A. I believed that there was a temporary ability for me to do
18 all things necessary to circulate petitions and to collect
19 signatures at the library.

20 Q. Well, you were here, weren't you, when Judge Gordon made
21 his decision on the Temporary Restraining Order; correct?

22 A. I was here.

23 Q. Okay. And could we go to the transcript of that
24 proceeding, which I believe is Exhibit 530.

25 Now, Exhibit 530 -- could we go to Page 55, please,

1 Kelly.

2 So, Line 16 on Page 55 of Exhibit 530. It starts
3 "I'm going to allow." This is Judge Gordon entering his order,
4 sir, and you remember this, I'm sure, because you were sitting
5 here, and I quote, "I'm going to allow him to conduct his
6 activities. I'm going to restrict him though to, at this
7 stage, the areas designated on Exhibit A and B of this Exhibit
8 No. 2 to the plaintiff's ex parte motion for Temporary
9 Restraining Order."

10 So those areas were "A" and "B" on that order;
11 correct?

12 A. I believed that I was able to gather signatures in area
13 "A" and "B."

14 Q. And the balance of your motion, sir, for Temporary
15 Restraining Order was denied, wasn't it?

16 A. It was denied.

17 Q. And part of that motion which was denied, sir, was a
18 request to lift the suspension and trespass; correct?

19 A. That is correct.

20 I'm not a lawyer. I rely on --

21 MR. RANDAZZA: Objection. Calls for a legal
22 conclusion.

23 THE COURT: Well, I'll sustain it but to the extent
24 you're asking for his personal opinion because you're asking
25 about what actions he took, that portion is overruled. So you

1 can go ahead and ask him.

2 MR. KENNEDY: And that is what I'm asking.

3 THE COURT: That's fair.

4 BY MR. KENNEDY:

5 Q. You were here and you heard the decision and yet your
6 opinion was otherwise?

7 A. My -- my opinion is that I'm not qualified to know the
8 nuances and that's why I clarified with my attorney --

9 Q. Okay.

10 A. -- and followed, to the best of my ability.

11 Q. Now, I don't want to know what your attorney told you
12 because I don't want to invade the privilege, but since you
13 have told us that you clarified this with your lawyers as to
14 what you were able to do, these are the same lawyers, are they
15 not, that wrote the reply memoranda in this case which we have
16 just discussed?

17 A. Yes, they are.

18 Q. And those are the same lawyers, are they not, who wrote in
19 those two reply memoranda that the . . . suspension and Notice
20 of Trespass remain in effect; correct?

21 A. Correct.

22 Q. Now, you told us earlier that you have visited the library
23 since the Court entered the Temporary Restraining Order;
24 correct?

25 A. That is correct.

1 Q. Well, let's -- let's chronicle your visits.

2 You went there the very next day, didn't you, to the
3 library?

4 A. Yes, I believe I did.

5 Q. And you went inside the library; correct?

6 A. I'm required to notice them. I dispute that, but I --
7 at -- you -- I heard you say -- I heard you say it, that I'm
8 required to give them notice. I dispute that, but I -- I -- I
9 wanted to do whatever it is that I am supposed to do to have
10 the most --

11 THE COURT: Mr. Deans, he didn't ask you that
12 question.

13 THE WITNESS: I -- I apologize, Your Honor.

14 THE COURT: That's all right. So, listen to his
15 question and answer his question.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: And then they can follow up with
18 questions if you need to.

19 THE WITNESS: I'm sorry, Your Honor.

20 THE COURT: That's okay. That's all right.

21 BY MR. KENNEDY:

22 Q. And you went in the library and you made a video of your
23 encounter; correct?

24 A. Yes, I did.

25 MR. KENNEDY: Kelly, can we play the first of

1 these -- we have a series of videos, Your Honor, of Mr. Deans
2 going into the library. And this is Exhibit -- is this 535?

3 MS. STOUT: Um-hmm.

4 MR. KENNEDY: Okay. It's Exhibit 535.

5 (Video played.)

6 MR. KENNEDY: We're going to go back and restart it.
7 Technology triumphs again over the best of intentions.

8 There we go.

9 (Video played.)

10 BY MR. KENNEDY:

11 Q. Mr. Deans, you took that video; correct?

12 A. I did, yes.

13 Q. And that was Tuesday, October the 18th; correct?

14 A. Yes.

15 Q. The day after the Temporary Restraining Order was entered?

16 A. Yes.

17 Q. And then you went back the next day, didn't you, on the
18 Wednesday, the 19th?

19 A. Yes, I did.

20 MR. KENNEDY: Okay. Kelly, can we -- can we play the
21 video?

22 (Video played.)

23 MR. KENNEDY: And that was exhibit what, Kelly?

24 MS. STOUT: 536.

25 MR. KENNEDY: 536.

1 That was the second consecutive day on October 19th.
2 You went back again the next day on October 20th, didn't you?

3 THE WITNESS: Yes, sir.

4 MR. KENNEDY: Okay. Can we play the next video.

5 (Video played.)

6 MR. KENNEDY: Kelly, what exhibit was that?

7 MS. STOUT: 537.

8 BY MR. KENNEDY:

9 Q. So, on three consecutive days, October 19th, 20th, and
10 21st you visited the library and -- excuse me. The dates were
11 October 17th, 18th, 19th, and 20th, you visited the library,
12 videotaped your interactions with the library people; correct?

13 A. That is correct.

14 Q. And you say you did that because you thought you were --
15 you were obligated to tell them that you were going to be out
16 front collecting petition signatures; correct?

17 A. To make my presence known and I also videotaped it, you
18 know, I had a lot of apprehension about what someone might say
19 occurred in the registration process so -- and, in fact, I --
20 I've tried, as best I could, to do exactly what you said was
21 required there and now I'm on the stand. Essentially I must
22 have done -- I must have notified them incorrectly. So -- so
23 this is a powerful incentive for people not to want to go
24 through this notification process.

25 Q. And the next day when you went back to the library,

1 Saturday, October 22nd, you -- you increased your presence
2 didn't you? You did more than notify them that you were there;
3 correct?

4 A. I may have -- again, if I'm wrong about the date, I
5 apologize -- but, I -- I looked at one point for security
6 cameras to show, you know, just the facts of the -- of what had
7 happened, if there were any, and I used the -- the wi-fi to
8 convey the -- I think the video that you played or one of the
9 videos to my -- to my attorney.

10 Q. In fact, you walked around the entirety of the library,
11 didn't you?

12 A. I walked around the accessible portion of the library,
13 yes.

14 Q. Um-hmm. At this point you still personally believed that
15 you had not been trespassed; correct? That you were free to
16 walk around the library?

17 A. I believed that I, number one, had received a Notice of
18 Trespass and that, number two, I was able to dispute that
19 notice and everything that I -- and that I had a temporary
20 ability to do the things necessary to collect signatures. So,
21 if I am allowed to dispute it and it's temporarily restrained,
22 I was there to -- to -- in an attempt to further that dispute
23 because there's cameras or any sort of other information that
24 can just show the facts, that would be great.

25 Q. And you did the same thing the next day, on Sunday,

1 October 23rd, didn't you? You went inside the library, walked
2 all around the library making your presence known; correct?

3 A. My goal was not what you may imply by that statement.
4 My -- I went there to further my signature collecting, to
5 further telling people how to register. Now, there was a
6 cutoff and I'm not sure which day you're talking about, and to
7 further my dispute which --

8 Q. Well, sir, your dispute didn't have anything to do with
9 what was going on inside the library, did it?

10 A. Of course. If there's cameras in the library or any other
11 sort of -- you know, if there's a security station and the
12 person has a camera view of the outside, I -- that might be
13 very important.

14 Q. But you were inside the library and we're talking about
15 what you may or may not do in the plaza outside the library;
16 correct?

17 A. We are talking about that as one issue. I'm also
18 disputing the trespass and to look for video cameras or
19 anything else of that nature. I -- I -- I thought that the
20 trespass was suspended for two weeks, truly, and I -- I did not
21 understand, and still don't understand, that I was doing
22 anything wrong.

23 Q. So, for the seven days -- pardon me. For six out of the
24 seven days after the Temporary Restraining Order was issued you
25 went to the library, first talking to people at the -- at the

1 desk and then, on the last two days, walking around inside the
2 library making your presence known; correct?

3 A. Correct.

4 Q. Now, isn't it true, sir, that by going inside the library,
5 putting your camera in the face of people you're talking to
6 and --

7 MR. RANDAZZA: Objection. Mischaracterizes the
8 evidence.

9 THE COURT: Well, I don't have the evidence in front
10 of me so I don't know if it does or not so it's overruled.

11 MR. RANDAZZA: I'm talking about the videos that we
12 just saw, Your Honor.

13 THE COURT: I think he's talking about the following
14 Saturday and Sunday.

15 MR. KENNEDY: I am.

16 And then --

17 THE COURT: Overruled.

18 BY MR. KENNEDY:

19 Q. -- on the following Saturday and Sunday, when your
20 activities on the prior four or five days had not provoked any
21 reaction at all from anybody, you stepped up your presence,
22 didn't you? You didn't just go to the desk, ostensibly to tell
23 people that you were going to be present outside; what you did
24 the next two days was you conspicuously walked around the
25 interior of the library. Isn't that correct?

1 A. Yes, I walked the interior of the library. No, it was not
2 a stepping up of my presence in terms of motive.

3 Q. You were trying to provoke a reaction, weren't you?

4 A. Absolutely not.

5 Q. Well, let me ask you this then. After that Sunday,
6 October 25 of 2016, you went back inside the library again,
7 didn't you?

8 A. I -- I -- I don't dispute it. I don't have -- I don't
9 know the dates but, yes.

10 Q. And what part of the library did you then go to, sir?

11 A. Uh . . . I went to -- there -- again, if I'm wrong about
12 the dates, I'm trying my best. There's two sets of restrooms.
13 There's -- there's, you know, one restroom kind of as you walk
14 in to the right. You know, you go in a little ways and there's
15 a restroom to the right and there's another restroom to the
16 left there, kind of in the back.

17 Q. Isn't it true, sir, that on Monday, October 25th of 2016
18 you went into the library and you went to the children's
19 section and sat down?

20 A. I -- I have sat down in the children's section. You know,
21 again, I -- I -- I had to communicate a series of videos and
22 photos to my attorney that I had just taken that I wanted to
23 upload to him.

24 Q. And you knew it was the children's section, didn't you,
25 because in the children's section there are a number of small

1 little tables and little chairs for little kids; right?

2 A. There's also adults there.

3 MR. RANDAZZA: Objection. Relevance.

4 THE COURT: Wait. Wait. Wait. Wait. Wait.

5 I'm sorry. Mr. Randazza?

6 MR. RANDAZZA: I'm objecting on relevance,
7 Your Honor.

8 THE COURT: Overruled.

9 What was your answer, sir?

10 BY MR. KENNEDY:

11 Q. You knew it was the children's section?

12 A. I knew it was the library and there's tables and chairs
13 and there's a restroom and if I used the restroom and sit down
14 in a chair to -- to convey the photos --

15 THE COURT: Mr. Deans, did you know it was the
16 children's section or not?

17 THE WITNESS: Yes. I know it is the children's
18 section.

19 BY MR. KENNEDY:

20 Q. Because you have to go through a door and on that door
21 what does it say?

22 A. I don't know what it says.

23 Q. Okay. Doesn't it say Young People's Library?

24 A. I don't dispute that, certainly.

25 Q. Isn't it true that by going and sitting by yourself in the

1 children's section you were trying to provoke some sort of
2 reaction from the library?

3 A. Categorically deny it 100 percent. Absolutely not.

4 Q. And then you left; correct? On that Monday?

5 A. I -- I did leave.

6 Q. And then you came back the next day on Tuesday, the 26th
7 of October; correct?

8 A. Yes. I believe that my attorney had requested photographs
9 of the area based on something that you guys were up to behind
10 the scenes that I'm not quite sure exactly, but -- but yeah, I
11 did.

12 Q. So you went inside the library and you walked around and
13 you were taking pictures of the library itself and of the
14 people there; correct?

15 A. And I was told, you know, look -- you see these pictures
16 that were presented or whatever, in other words, the pictures
17 that you had entered into evidence or I don't know, I don't
18 want to misspeak and so that we . . . should have some sort of
19 evidence in effort to further this dispute and I was asked to
20 provide that evidence and I did so to the best of my ability
21 without any incident that I was aware of and certainly with no
22 intention to provoke an incident.

23 Q. You went back into the children's section again and you
24 took pictures inside the children's section of the library,
25 didn't you?

1 A. Yes. I did do that.

2 Q. What did that have to do with this case, sir?

3 A. I thought that you were -- again, this is -- this is not
4 my thing but, I understood it that somehow the defense -- and I
5 know there's multiple parties on the defense so I don't want to
6 say it was you in particular -- was trying to interject
7 something about it so they wanted, you know, to be sure that I
8 was whatever in the clear and so I provided them with --
9 with -- with what they were asking for and to further -- I
10 assume if my attorney asked me for something, it's to further
11 the dispute. So I -- as far as I know, you have brought this
12 into the -- you, plural, I don't know who it is -- had brought
13 this into the case and we were, you know, trying to avoid this
14 tangent.

15 Q. And so -- and I'll get off this topic but -- you thought
16 that by going into the children's section of the library and
17 taking pictures of the people who were in there and using the
18 children's section of the library was important to this case?

19 A. I think this is a giant distraction to the case and I'd
20 like to minimize it. What does this have do with my ability to
21 circulate petitions? But if I'm -- if I am going to be denied
22 my ability to circulate petitions because of something you
23 have -- something ridiculous, it's just totally crazy, if
24 you -- if you're saying something ridiculous and crazy and I
25 need to respond to that or my attorney needs to respond to that

1 to further my ability to be there, then I trust my attorney
2 to -- to act in a way which progresses this case and I have no
3 reason to believe otherwise.

4 Q. At the time that you were sitting in the children's
5 section, taking pictures of the patrons of the library who were
6 using the children's section, did it occur to you that the
7 presence of an adult male, by himself, in the children's
8 section of the library taking pictures of the children who were
9 there might cause a problem in the library?

10 MR. RANDAZZA: Objection. Assuming facts that are
11 not in evidence. We have no evidence there were children in
12 that room.

13 THE COURT: Overruled at this point.

14 BY MR. KENNEDY:

15 Q. Did it occur to you that that might cause a problem in the
16 library?

17 A. No. There's many adults in the children's section. I
18 knew that photos had previously been taken in the -- in the
19 children's section. I did not attempt to do it in a way which
20 would cause anyone any problem. I attempted to do exactly --
21 and you see on the videos I always -- you know, I ask people's
22 permission or whatever and they might say yes or they might say
23 no, but I -- I attempted to do things in a way which I think is
24 not going to be a problem. And no, I -- I do not see anything
25 wrong with providing evidence or exhibits or whatever this

1 Court may need to reach a decision. I might not understand why
2 some of these things are necessary, but I trust my attorney's
3 judgment that to avoid these things being somehow a problem or
4 used against me, that we should have whatever evidence is
5 necessary to counteract it.

6 Q. Did any of the pictures of the children that you took in
7 the children's section of the library --

8 MR. RANDAZZA: Objection, Your Honor. We still don't
9 have that in evidence.

10 THE COURT: Wait. Wait. Wait. Everybody stop.

11 There's no question pending yet. Let him finish his
12 question before you object because I don't know what the
13 question is.

14 Go ahead.

15 BY MR. KENNEDY:

16 Q. Did any of those pictures that you took of those children
17 in the children's section of the library make it into this case
18 as exhibits?

19 THE COURT: Don't answer the question. Hold on.

20 MR. RANDAZZA: I object, Your Honor. There is no
21 evidence there were children in the room. There is no evidence
22 there were children in the pictures and frankly, I think this
23 line of questioning is shameful.

24 THE COURT: Well, I'm going to sustain the objection
25 because I don't know if there were -- I haven't heard yet that

1 there were any pictures of any children taken so I'm going to
2 sustain the objection.

3 BY MR. KENNEDY:

4 Q. You took pictures of children in the children's section,
5 didn't you?

6 A. I -- I was not taking pictures of children. I was taking
7 pictures of the area. I'm unaware of --

8 THE COURT: Did you look at the pictures you took?

9 THE WITNESS: Your Honor, I only may have looked at
10 them just to make sure they were not totally blurry or
11 something like that. I have no --

12 THE COURT: That's fine. Did you --

13 THE WITNESS: I have no idea what's in the pictures
14 other than my attempt to photograph the area as best I could
15 because I --

16 THE COURT: When you looked at the pictures, did you
17 see any kids in the pictures?

18 THE WITNESS: I'm happy to answer that question. I
19 don't want to answer it wrong. I don't know. If there were
20 children, yes, I would have taken the photo. If there wasn't
21 children, yes, I would have taken the photo.

22 THE COURT: So the answer is you don't know?

23 THE WITNESS: The answer is I don't know.

24 THE COURT: That's fine.

25 THE WITNESS: I was trying to -- I was -- that wasn't

1 my subject matter.

2 THE COURT: That's fine.

3 BY MR. KENNEDY:

4 Q. Then I'll be fair about this. At the time you were taking
5 pictures there were children present in that area?

6 A. I -- I can't dispute that.

7 Q. Okay. You just don't know --

8 A. I don't know if there's any in the photos. I don't know.
9 I mean, I'm --

10 THE COURT: That's fine.

11 BY MR. KENNEDY:

12 Q. Isn't it true, sir, that by going to the library shortly
13 after the Temporary Restraining Order was entered and taking
14 videos of people that you encountered and then for several days
15 subsequent to that, walking around the interior of the library,
16 making your presence known, and then after that going into the
17 children's section of the library on two occasions, on two
18 different days, and taking pictures, you were trying to cause
19 trouble in the library, weren't you?

20 A. Absolutely not. I hope when all this is over that I can
21 answer that gentleman's questions in the video about did I have
22 a problem with him. I am a supporter of libraries and I do not
23 wish to cause a problem with libraries. It's -- it's -- it's
24 ridiculous. I -- there's no reason for me to poke a stick at
25 the library. I wouldn't do it and I'm always, in fact, trying

1 not to, even inadvertently.

2 MR. KENNEDY: Nothing further, Your Honor.

3 THE COURT: All right.

4 Mr. Randazza, how much time do you think you're going
5 to need for redirect?

6 MR. HINCKLEY: Your Honor, can I take a few minutes
7 on some questions.

8 THE COURT: Oh, I'm sorry. Yes. Yes. How much time
9 do you need?

10 MR. HINCKLEY: 10 minutes.

11 THE COURT: Oh, that's fine.

12 Hang on one second. Off the record.

13 (Discussion off the record.)

14 THE COURT: Okay. Continue.

15

16 DIRECT EXAMINATION OF WILLIAM DEANS

17 BY MR. HINCKLEY:

18 Q. Good morning, Mr. Deans.

19 A. Good morning.

20 Q. Have you ever lived in Las Vegas, Nevada?

21 A. That may be a technical definition, but I'm here now. So
22 I --

23 Q. So no, but you've just been staying in Las Vegas for the
24 last weeks given this matter. Would that be fair?

25 A. That would be fair. My official residence is, in fact, in

1 Pennsylvania but I travel a great deal.

2 Q. Okay. When you were petition gathering on October 14th,
3 were you employed by or contracted with a particular entity?

4 A. I was collecting signatures on . . . you know, behalf of
5 the proponent. I was not an employee, but I was -- I am a paid
6 petition circulator, yes.

7 Q. And you told us previously that you were getting
8 approximately \$1.50 for signature obtained; right?

9 A. I believe I said --

10 THE COURT: You said approximately 2 dollars per
11 ballot signature.

12 BY MR. HINCKLEY:

13 Q. 2 dollars?

14 A. Yes. That's -- that's an approximate, but yes.

15 Q. Okay. How did you know about the West Charleston Library
16 in Las Vegas, Nevada?

17 A. The Internet.

18 Q. How did you come to select it?

19 A. You know, it's a college campus library. I mean, it's --
20 it's a -- traditionally, for me, it's a place where I have good
21 access to the public. There's a lot of people who are
22 civically minded. They have time -- you know, all the things
23 I've -- I've already said. So -- so --

24 Q. Well, my question is, how did you select the West
25 Charleston Library as compared to any of the others in the

1 metropolitan area?

2 A. It's a area that was located around other things. It's
3 not an island and, you know, I'm -- I was close to it. It
4 was -- I -- for instance, a library in Reno would be harder for
5 me to get to so, you know, the closer to --

6 Q. So you didn't have any real criteria other than you just
7 happened upon it and said, given its circumstances, including
8 the surrounding area, I choose it? And again, I'm not trying
9 to mischaracterize; I'm just trying to summarize and move on.

10 A. Like, for instance, the area in front of the library is a
11 great reason to choose that library. There are a lot of
12 libraries that have similar plazas but, some of them don't and
13 if -- and if there was a library that was not as accessible to
14 the public, didn't have people going by, then -- then I would
15 not be as likely to choose that library.

16 Q. On October 13th, I think you've testified this morning
17 that you were there approximately less than an hour before you
18 were trespassed and asked to leave? About an hour? Less than
19 an hour; right?

20 A. Something around there, sure. I don't -- I don't bicker
21 with that.

22 Q. And do you recall how many signatures you gathered on your
23 petition in that approximate hour period of time?

24 A. I -- I don't recall a numerical number of signatures,
25 but --

1 Q. Would it be less than 20? More than 50?

2 A. It would be -- I'm going to guess . . . 10 or 15, but I
3 really don't -- I don't know and I want to stress that I don't
4 know but, a handful of signatures.

5 Q. But you've made a reasonable estimate of 10 or 15?

6 A. Yeah. Something -- you know, and . . .

7 Q. Prior to coming to Las Vegas did you make any effort to
8 learn the Nevada law regarding petition gatherers?

9 A. No, which is why the library is great, because I'm
10 protected -- and that area is great because I don't have to.
11 I'm protected by the First Amendment there so I don't need to
12 learn the nuances --

13 Q. So your answer is no?

14 A. That -- that's correct.

15 Q. Prior to coming to Las Vegas did you learn what the
16 Las Vegas Clark County Library District's rules are regarding
17 petition gatherers?

18 A. No, I did not.

19 Q. Thank you.

20 Why haven't you appealed -- or let me ask this. Have
21 you appealed to the Library District management the Notice of
22 Trespass that was issued to you?

23 A. I appealed to the superior of the person who -- well, a
24 higher ranking individual to the person who gave me the -- the
25 trespass.

1 Q. Are you talking about Lieutenant Perkins of CSN Police
2 Department?

3 A. Yes, and he specified that he had the ability to -- to
4 evaluate the case and that he may overturn the trespass but --
5 you know, he is not --

6 Q. Is --

7 A. -- going to do that until his investigation is done and if
8 there's any discrepancy, he's going to essentially rule against
9 me on that.

10 Q. Have you read Exhibit 537, the Notice of Trespass that
11 we've gone over a little bit this morning? The Notice of
12 Trespass?

13 A. I have read the Notice of Trespass.

14 Q. And there's no mention of the College of Southern Nevada
15 or the College of Southern Nevada Police Department anywhere on
16 that Notice of Trespass, is there?

17 A. No. I was told that the police were the representative at
18 the -- at the time of the trespass, I thought.

19 Q. And, in fact, the Notice of Trespass, Exhibit 538, states
20 who to appeal to, does it not?

21 A. It says . . . "If you wish to appeal this decision, you
22 must do so by written request to the Library Director within 14
23 days of the above date." However, the lieutenant specified
24 that he could do that. So, I've considered the matter
25 appealed. Since he said it.

1 Q. And you had a meeting with him in person, did you not?

2 A. And one on the --

3 Q. Yes.

4 A. -- telephone in my --

5 Q. Yes; right?

6 A. Yes.

7 Q. And then you also had a telephone conversation with him;
8 correct?

9 A. That's -- that's correct. In my lawyer's presence.

10 Q. And you handed the telephone to your attorney at the time
11 of that phone call; correct?

12 A. He -- I was in my attorney's office. He called. I
13 answered it. The call was placed on speaker phone, yes.

14 Q. And can you confirm for us today that the purpose of
15 Lieutenant Perkins' phone call to you was to respond to your
16 complaint concerning Officer Summerlin?

17 A. I had multiple complaints.

18 Q. Can you answer my question, please?

19 A. No, I can't confirm that.

20 Q. So you can't confirm today that the purpose of
21 Lieutenant Perkins' call to you was concerning your complaint
22 about Officer Summerlin? You can't do that this morning?

23 A. I can't confirm that was his only intent. That was --

24 Q. No, I didn't ask you that. I asked if that was his
25 purpose in calling you. It's an easy question.

1 A. I don't know his purpose. I know what he actually talked
2 about.

3 Q. So you don't know what the purpose of his phone call was?

4 A. What he actually talked about included more than that.

5 Q. Okay. Thank you.

6 Did -- I'd like to take you back to October 13th.
7 You're gathering petitions there in the east entrance plaza
8 area of the library. Did any of the library patrons or
9 pedestrians that you contacted, had conversation with, complain
10 to you that you were bothering them?

11 A. Not that I recall.

12 Q. To leave you -- to leave them alone. Did they say similar
13 words to you that day?

14 A. I don't know. However, what I'm happy to admit is, from
15 time to time, I ask someone, "Are you registered to vote?" and
16 they'll say, "You're getting my kid hooked on drugs." I say,
17 "Hey, this is a petition to, you know, help out with automatic
18 voter register to get automatic voter register on the ballot"
19 and occasionally those people say, "Oh, I'm so sorry. I didn't
20 know that," and they sign, and occasionally the person will --
21 will say, you know, something else just as derogatory, but I
22 get an awful lot of assumptions about what the petition is and
23 yes, some people are unhappy even before they know what it is,
24 not due to any interaction that I had, but due to their
25 preconceived notion of, you know, I'm getting their kid hooked

1 on drugs or something crazy.

2 Q. Do you recall your testimony this morning, Mr. Deans, that
3 even when you're standing at what I believe you've described as
4 perhaps your starting point in terms of the point in time when
5 you start to speak to someone, do you recall your testimony
6 this morning that you would sometimes then walk beside them to
7 continue the conversation?

8 A. Briefly, so that they understand I'm --

9 Q. No, I don't need to know why --

10 A. Okay. Yes. Yes. Yes. That -- that is --

11 Q. -- I just asked if you recall your testimony that you
12 would walk next to someone as they were walking wherever they
13 were going?

14 A. Yes.

15 Q. Okay.

16 A. That is correct.

17 Q. And do you also recall your testimony this morning that
18 you said, with reference to that activity of walking beside
19 someone, do you recall saying, "By the time I got near the
20 door, I might be finished"? Do you recall that or similar
21 words to that effect?

22 A. Meaning . . .

23 Q. Just yes or no. Do you recall that testimony this
24 morning? Was that your testimony?

25 A. Okay. Yes.

1 Q. Thank you.

2 Where were you standing when Officer Summerlin first
3 contacted you on the afternoon of October 13th?

4 A. I -- I had walked towards the door to greet her.

5 Q. In fact, you were about three to five feet from the door;
6 correct?

7 A. Not circulating petitions.

8 Q. No. I just asked you, were you standing three to five
9 feet from the door when she first contacted you?

10 A. I -- I don't think it was three feet or even five but,
11 yes, I had approached the door.

12 Q. And you weren't as close as I am from here to the clerk's
13 desk (indicating)?

14 A. I -- I hate to say but, I don't know. But yes, I had
15 approached the door to greet the officer, absolutely. And
16 I'm . . .

17 Q. Now, you testified this morning that Mr. Kushner said
18 these words to you: "You have to leave." Was that your
19 testimony this morning?

20 A. He expressed that if I didn't register, that I had to
21 leave.

22 Q. So you have to leave. Is that a fair summary of what
23 you're testifying Mr. Kushner said to you?

24 A. Yes, but I don't know if it was verbatim. That is what he
25 said.

1 Q. Did Ms. Jakus, I believe -- J-a-k-u-s. She was a woman
2 that subsequently approached you -- did she tell you that you
3 had to leave?

4 A. Yes.

5 Q. At any time did Mr. Kushner or Ms. Jakus use the word in
6 their conversation, to the best of your memory, the word
7 "trespass"?

8 A. I believe that they did. I really couldn't say if they
9 used the word "trespass."

10 Q. Okay. At some point in time you became aware, though, you
11 understood that you were viewed as a trespasser by the library
12 personnel; correct?

13 A. When I really knew that was when the police were there.
14 It was still under discussion.

15 Q. So you believe this was a continuum of some type but, the
16 idea was starting and then it really became clear to you when
17 Officer Summerlin approached you. Is that a fair
18 characterization of your testimony and your recollection?

19 A. Yes. It was abundantly clear when Officer Summerlin -- I
20 had explained the reasons that I believed --

21 Q. Yes. We've gone over that.

22 A. And as I -- and as I told the Court, I thought that, you
23 know, maybe they'd go in and ponder it and, you know, ponder it
24 and realize --

25 Q. We've heard that testimony. Thank you for your response.

1 If I could have my colleague go to Page 3 of Exhibit
2 501.

3 That's a picture of you, is it not? Exhibit 501? It
4 should be on the screen.

5 A. Oh. Yes. That is a picture of me.

6 Q. And that's a picture that was taken on October 13th
7 somewhere in the afternoon between the hours of 3:00 -- excuse
8 me -- between the hours of 2:00 and 3:00 approximately; right?

9 A. Yes, sir.

10 Q. And you recognize the police officer that's addressing
11 you?

12 A. It's Officer Summerlin.

13 Q. That's Officer Summerlin. We see the back of her head.

14 I'd like you to look to the very right of the
15 picture, and you see another person's just very partial body
16 shot.

17 Is that Ms. Jakus?

18 A. I can't identify from that picture who that is.

19 Q. Looking closely, do you see that that person is not
20 wearing a police uniform?

21 A. I see that they have a badge of some sort hanging. It
22 does not appear to be a police uniform.

23 Q. Civilian clothing it looks like; right?

24 A. Yes.

25 Q. And so, you can't tell us or from your memory with this

1 picture you don't recall whether that was Ms. Jakus or not?

2 A. Ms. Jakus was present and -- and this very well may be
3 her. I just don't want to identify a faceless person and then
4 you say --

5 Q. I was just wondering if you recalled from your memory.

6 What about let's go to the hands that are depicted on
7 the left. Very minimal clothing is shown. Do you recall that
8 to be Officer Burnett of the College of Southern Nevada Police
9 Department?

10 A. That officer was present and that very well may be them.

11 Q. And you recall that person to be a police officer; right?

12 A. Yes, I do.

13 Q. Okay.

14 THE COURT: Can I ask, do you know who took this
15 picture?

16 THE WITNESS: I do not know who took the picture.

17 THE COURT: Okay. Thank you.

18 MR. HINCKLEY: That's all my questions, Your Honor.
19 Thank you very much.

20 THE COURT: All right. Before we get into redirect,
21 how much time do you think you have on redirect?

22 MR. RANDAZZA: Probably about 20 minutes, Your Honor.

23 THE COURT: All right. We're going to take a break
24 and take our lunch break right now. After you finish with
25 Mr. Deans, do you have any other witnesses to put on?

1 MR. RANDAZZA: That's going to depend on Mr. Deans'
2 answers.

3 THE COURT: I'm sorry?

4 MR. RANDAZZA: That's going to depend on what happens
5 at redirect, Your Honor.

6 THE COURT: Okay.

7 MR. RANDAZZA: I can't answer that right now.

8 THE COURT: And then the defendants, how many
9 witnesses do you have?

10 MS. STOUT: We have three Library District employees
11 that we'll put on.

12 THE COURT: How much time do you think you're going
13 to need to get all those witnesses on and off on direct at
14 least?

15 MS. STOUT: My direct of all three should be
16 approximately an hour.

17 THE COURT: Total or each?

18 MS. STOUT: Total.

19 THE COURT: Okay.

20 MS. STOUT: Sorry.

21 THE COURT: And . . .

22 MR. HINCKLEY: I have one witness potentially and
23 depending on cross, I would hope no more than 20, 25 minutes.

24 THE COURT: Okay.

25 MR. KENNEDY: Your Honor, can I ask one question?

1 THE COURT: Certainly.

2 MR. RANDAZZA: Mr. Randazza's witness is not going to
3 be one of these two people (indicating) who have been sitting
4 in here, is it? No? Okay.

5 THE COURT: Okay. Then let's resume at 1 o'clock.

6 You can step down.

7 Off the record.

8 THE WITNESS: Thank you, Your Honor.

9 COURTROOM ADMINISTRATOR: All rise.

10 (Recess was taken at 11:48 a.m.)

11 (Proceedings resumed at 1:08 p.m.)

12 COURTROOM ADMINISTRATOR: All rise.

13 THE COURT: Thank you. Please be seated.

14 Parties ready to resume?

15 Mr. Randazza, before you begin, I've got some
16 questions and that way that may shape some of your responses so
17 let me ask the witness a couple of questions first.

18 MR. RANDAZZA: Yes, Your Honor.

19 THE COURT: Mr. Deans, are you still gathering
20 signatures for that petition you were working on?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: What's the deadline by which you must
23 submit your signatures under the state statute? Do you know?

24 THE WITNESS: I believe it to be November 8th. I
25 have not verified.

1 And your -- I would like to clarify my answer.

2 THE COURT: Sure. Yeah.

3 THE WITNESS: I believe that's when I need to submit
4 my signatures and then there may be some additional time for
5 them to collate, process, and submit the signatures.

6 THE COURT: Validate signatures and do whatever else
7 they do?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Okay. But your collection work would be
10 done by September [sic] 8th?

11 THE WITNESS: That is my belief, Your Honor.

12 THE COURT: Do you have in mind right now any
13 additional signature gathering plans in the next year here in
14 Nevada?

15 THE WITNESS: I would certainly gather signatures in
16 Nevada depending on which issues become available.

17 THE COURT: Okay.

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: As of right now you don't have any
20 concrete plans to do so but, it's a possibility. Is that what
21 you're saying?

22 THE WITNESS: If I could stay here and continue,
23 absolutely. The only reason that I would go, that I can see
24 right now, is if there was nothing available, which happens
25 from time to time.

1 THE COURT: Okay. All right. I know you're from
2 Pennsylvania. I wasn't sure if your plan was to return to
3 Pennsylvania and then come out on an as-needed basis.

4 THE WITNESS: I've only been in Pennsylvania once in
5 two years. That is my official residence. I am almost
6 exclusively travel. I mostly travel.

7 THE COURT: Okay. All right. Where else in Clark
8 County have you gathered signatures other than this particular
9 library on West Charleston?

10 THE WITNESS: I gathered signatures at a grocery
11 store, a couple of grocery stores. I've gathered signatures in
12 passing, just, you know, if I'm getting gas or something and
13 somebody looks like they might be interested. I've gathered
14 signatures on a sidewalk . . . I don't know if I'd call it
15 downtown but, public sidewalk closer to downtown.

16 THE COURT: Okay. Any other libraries here in
17 Clark County that you've gathered signatures at?

18 THE WITNESS: I have not and I was unclear as to how
19 all this might come into play. So, I've tried to steer clear
20 of . . . try as I might, I'm still somehow in violation. Like
21 when I -- when I see the -- the order, you know, I have to stay
22 in area "A" and "B" but, obviously I have to be able to park
23 and walk to area "A" and walk to area "B."

24 THE COURT: Of course.

25 THE WITNESS: And, you know, I -- I didn't know that

1 the order, and I still don't know that the order eliminated my
2 requirement to check in. I thought that the trespass was the
3 only thing that was included in that. So if I have to check
4 in, then obviously I have to go inside to check in because the
5 statute has not yet been declared unconstitutional so, so I --
6 I didn't -- I truly did not intend to do anything but follow
7 your order and got no . . . They could have said at any point
8 that they feel I'm in violation of that order. No one ever
9 said that to me.

10 THE COURT: Okay. And I'm not saying you are. I'm
11 not saying you are. I'm not addressing that issue right now.
12 My -- my question was just more in terms of have you gathered
13 even before this at any other libraries in Clark County.

14 THE WITNESS: No, Your Honor.

15 THE COURT: Okay. So this was the first Clark
16 County -- Las Vegas Clark County Library District library at
17 which you gathered signatures?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Okay. And I heard you testify earlier
20 when you were asked, I think by Mr. Hinckley, why you picked
21 this one. In your research to find this particular library had
22 you looked at any of the other libraries, either online or
23 through some other research, any other libraries here in Las
24 Vegas for purposes of this trip?

25 THE DEFENDANT: Yes, Your Honor.

1 So, what I had done is, I had put into the GPS, you
2 know, "library" and then it shows a list and then you can look
3 on, you know, like satellite area and this one is on a college
4 campus. I -- I know from experience that that is a good bet.
5 So, I -- I went there.

6 THE COURT: Okay. So you didn't sit down and say,
7 well, Summerlin Library has this, West Charleston has this,
8 Sunrise has that, I'm going to go with this one; you just kind
9 of were looking at more geographic location and what was around
10 it?

11 THE WITNESS: Well, I could also see that there was a
12 big plaza and that's very important because not all the
13 libraries have that.

14 THE COURT: Um-hmm.

15 THE WITNESS: So you have to have somewhere that you
16 can circulate and I knew, even from the air, you can see that
17 that is like a Roman, you know, a Greek forum area. I just --
18 I -- that's a good reason to go there.

19 THE COURT: Okay. I didn't know if there were other
20 libraries as well. Sahara West has a big open plaza.
21 Summerlin library has a large open plaza. I didn't know if you
22 had weighed those or just kind of honed on this one and this
23 was the one you decided to go to.

24 THE WITNESS: I looked at the list provided in the
25 GPS which were the close by one and that was the first one that

1 seemed to meet my criteria.

2 THE COURT: Okay. And I'm going to jump around just
3 a little bit to fill the holes in on my questions because most
4 of them got -- were asked and answered during your direct and
5 cross but let me see . . .

6 Mr. Kennedy asks you about the days you were -- let
7 me restart. Let me start over.

8 After the TRO you went back to the library and
9 Mr. Kennedy asked you about going there and we saw the couple
10 of videotapes when you went to the front desk and videoed. On
11 those days that you went there to take the video did you gather
12 signatures on petitions on those days as well?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: How long did you spend on that first day
15 when you checked in on that Tuesday? How long did you spend
16 that afternoon or that day collecting signatures?

17 THE WITNESS: I can't be certain, Your Honor. Couple
18 hours. A few hours.

19 THE COURT: Okay. How about on Wednesday, the next
20 day?

21 THE WITNESS: I -- I do not know on a day by day
22 breakdown how many hours I spent which day, but I've spent a
23 number of hours collecting signatures there.

24 THE COURT: So on each of those days that you went
25 there that Mr. Kennedy asked you about you spent at least an

1 hour or two gathering signatures out front?

2 THE WITNESS: Not -- not every day.

3 THE COURT: Okay.

4 THE WITNESS: You know, for instance, when I had
5 gone -- there was a time that I had gone to measure some of the
6 measurements in the -- in the plaza and I did not -- I don't
7 believe I gathered any signatures at that time.

8 THE COURT: Okay.

9 THE WITNESS: I . . . intended to gather signatures
10 every available time but sometimes scheduling, you know, didn't
11 permit or, you know, maybe just -- there was one day it rained.
12 I don't know if that was after -- you know, so there's
13 different factors that can affect that.

14 THE COURT: On the day -- on the -- I think you
15 mentioned two days that Mr. Kennedy asked you about when you
16 were in the children's -- young people's part of the library.
17 Did you gather signatures on either of those two days, or
18 attempt to gather signatures?

19 THE WITNESS: Yes, I did.

20 THE COURT: Okay. Couple hours or a short period of
21 time? How long were you out there on those two days, do you
22 remember?

23 THE WITNESS: I'm sorry, I don't know which days I
24 spent how long and . . .

25 THE COURT: Okay. On the days that you -- we saw the

1 videos on the two days at least that you went in and videoed
2 the front desk people and told them I'm required to videotape
3 this. Did you videotape every day you went into the library?

4 THE WITNESS: I videotaped every time that I went to
5 the front desk, at first. Eventually a library manager told me
6 that I was relieved of that responsibility as far as the
7 library was concerned.

8 THE COURT: Okay.

9 THE WITNESS: And --

10 THE COURT: What responsibility did she say you were
11 relieved of?

12 THE WITNESS: The responsibility -- I don't want
13 to -- to come in and notify.

14 THE COURT: To come in and notify them?

15 THE WITNESS: I don't know what the words they used
16 and I don't want to misquote them but --

17 THE COURT: Well, and here's, I guess, my -- my . . .
18 confusion, question, whatever it is.

19 On the video you're going in and telling them I'm
20 required to tell you I'm videotaping our interactions. You
21 don't tell them I'm checking in or giving you notice that I'm
22 going to gather signatures. So what I'm trying to figure out
23 is, did the librarian tell you, you don't have to tell us
24 you're videotaping anymore or did she say you don't have to
25 give us notice you're gathering signatures?

1 THE WITNESS: That I didn't have to give them notice
2 blanket -- she asked me how many days was I going to be
3 collecting signatures and could I provide her with a schedule
4 and I explained to her that -- that I was -- I wanted to gather
5 signatures every available day I had; that the petition may end
6 based on number of signatures gathered. So, I can't
7 necessarily specify a cutoff day. If you hit the number or,
8 you know, let's say they find the wording is invalid and it's
9 not going to count anyway, I don't know all the reasons so, I
10 explained I thought I'd be there as many days as I could until
11 the drive was over and I asked her, is that enough information,
12 is that, you know, sufficient? and she said that it was.

13 THE COURT: Okay. All right. Those are the
14 questions I had. Thank you, sir.

15 Mr. Randazza, you can follow up.

16 MR. RANDAZZA: Thank you, Your Honor.

17 First, as a housekeeping measure, Your Honor,
18 Exhibits 32, 28, 527, 22, 1, 3, 538, 539, and 540 previously
19 submitted, I'd like to move those into evidence. I was under
20 the impression we had a blanket agreement that we were -- we
21 were doing that, but I don't think I had that -- that right.
22 So I'd like to move those into evidence.

23 THE COURT: Is there any objection to any of those
24 exhibits, Mr. Kennedy?

25 MR. KENNEDY: No, Your Honor. We have an agreement

1 with pretty much everything is going to come in with a few
2 reserved objections.

3 THE COURT: Okay. I hadn't seen any stipulation so I
4 wasn't aware. So, I'm going to -- Mr. Hinckley, any objection?

5 MR. HINCKLEY: No, Your Honor.

6 MR. KENNEDY: Yeah, we don't have any objection to
7 that. Virtually all the exhibits have been agreed upon.

8 THE COURT: Okay. So, I will confirm that the
9 following exhibits are admitted into evidence: 32, 28, 527,
10 22, 1, 3, 5, 38, 539, and 540.

11 COURTROOM ADMINISTRATOR: It's 538.

12 MR. RANDAZZA: 538. Not 5, 38.

13 THE COURT: Oh, I'm sorry. 538, not 5, 38. Thank
14 you.

15 All right.

16 (Exhibits 1, 3, 22, 28, 32, 527, 538, 539,
17 and 540 were received into evidence.)

18

19 REDIRECT EXAMINATION OF WILLIAM DEANS

20 BY MR. RANDAZZA:

21 Q. Mr. Deans . . .

22 A. Yes.

23 Q. When you returned to the library, you saw a number of
24 exhibits where you videotaped your interactions, took some
25 photos. Why did you do that?

1 A. I was afraid that if I didn't have definitive proof of
2 what had gone on, that anything could be said, such as I was
3 blocking the door. There's a history of this. So I didn't
4 want a repeat of that and I'm -- and I'm truly afraid that if I
5 can't prove it, anybody could say anything or insinuate
6 anything and I have -- I have no way to counteract that other
7 than video.

8 I believe that most people are honest most of the
9 time. You know, most police officers are more honest than the
10 general population, not less honest, but there are certain
11 websites that you can go to where they have people that had a
12 video of what occurred and then there's a . . . you know,
13 statement from the officer of what occurred that they just
14 don't sync up and I didn't want to run into a situation where I
15 was running -- running afoul of someone who was making
16 something up or where I hadn't notified someone and I was
17 guilty of some sort of wire tapping law violation. I wanted to
18 make sure that, you know, I covered my ass. I mean, I was
19 trying to do what I needed to do to stay safe.

20 Q. Speaking of photos, you saw some photos of you taken
21 earlier?

22 A. Yes, I saw those.

23 Q. Did anyone ask your permission to take those photos?

24 A. No.

25 Q. Did you give your permission?

1 A. No, I did not.

2 Q. Tell me about how you understood the order on the
3 Temporary Restraining Order.

4 A. I understood it to mean that I had the ability for a
5 period of two weeks to collect signatures for this petition or
6 to tell people how to register to vote within areas "A" and
7 areas "B." I did not understand that there was a restriction
8 on things like parking in the parking lot, or walking to or
9 from the spot, or using the restroom, or registering or . . . I
10 don't even know if there was a restriction on the other free
11 speech area on the other side of the -- of the library imposed
12 on that, although I didn't use that area because it didn't make
13 sense to, you know. Based on the flow of traffic it made more
14 sense to be in area "A." In fact, I didn't really use area "B"
15 because there's not much reason to be there. So -- so -- so I
16 thought that I was able to use area "A" and "B" to circulate
17 petitions, but also to do all of the other things, you know,
18 customary with that or -- or necessary or reasonable for
19 someone who was at that library.

20 Q. So, you only collected signatures inside area "A"?

21 A. I think -- I -- yes. I think area "A" was -- the circular
22 area. I don't want to mislabel the areas. "B" is the square
23 and "A" is the circle?

24 Q. Yes. As we discussed at the TRO hearing, yes.

25 A. Okay. Then area "A" in front of the library, and to be

1 very clear, while at the library, area "A."

2 Q. But during questioning, Mr. Kennedy was questioning you,
3 could you see how he could read it that you were only permitted
4 to be in area "A" to gather signatures only in area "A" and
5 "B"?

6 A. Not -- how could you walk to area "A" if you really were
7 restricted to just area "A"? There has to be some sort of
8 broader interpretation of that. How could you meet the
9 requirement in the statute? Which I was not relieved of, I
10 didn't believe. How could I use the restroom? You know, maybe
11 I was supposed to go somewhere else. I don't -- I don't know.
12 I -- at this point I'm not sure. But it doesn't -- it didn't
13 seem reasonable to me that that was what it meant and no one
14 explained it to me that that was intended in that way and we
15 have an authoritative source but, in my mind, I thought I was
16 within the -- the limits of what I was supposed to be doing.

17 Q. Okay. So, you didn't feel like you could do some kind of
18 crazy Wiley E. Coyote thing and jump into area "A"?

19 A. No. No. Just --

20 Q. So, you -- there was some questioning about your presence
21 in the young people's room.

22 A. Yes.

23 MR. RANDAZZA: I would like to move into evidence
24 514.

25 And while we're queuing that up . . .

1 THE COURT: Any objection? Any objection to 514?

2 MR. KENNEDY: Let's see and confirm what that is,
3 Your Honor.

4 No. No objection to that.

5 THE COURT: 514 is admitted.

6 (Exhibit 514 was received into evidence.)

7 BY MR. RANDAZZA:

8 Q. Why did you go into that room?

9 A. I needed to use the wi-fi. I had walked into the front
10 door and it was the first available seat and table to sit down
11 to do that.

12 Q. You didn't go in there to cause trouble?

13 A. No. Absolutely not.

14 Q. Were you the oldest person in the room?

15 A. No, I was not the oldest person in the room.

16 Q. Were you the youngest person in the room?

17 A. No, I certainly was not either the youngest person.

18 Q. Can you recall where you might fall in the continuum?

19 A. I probably -- somewhere in the middle.

20 Q. Do you recall observing other adults in the room?

21 A. Oh, yes. Absolutely.

22 Q. Do you recall observing what they were doing?

23 A. Well, I know that there were three adults together at a
24 table filing an insurance claim and doing some DMV paperwork.
25 I don't want to speculate too much about what they were doing,

1 but they had DMV -- they had DMV paperwork, claim paperwork
2 that they were not quietly going through together.

3 There were also people on their phone and there was,
4 like, you know, somebody behind the desk, maybe.

5 Q. I'm just talking about patrons.

6 A. Oh, okay.

7 Yeah. So -- so, you know, some of them were looking
8 at the books or I think there was a teacher at one point who I
9 have no reason to know why she was there but I -- I believe she
10 was a teacher because she said she was outside when she signed
11 the petition that I was circulating at another time.

12 Q. Were there any signs that said you're not allowed to be in
13 there if you're male or adult?

14 A. No.

15 Q. Did anybody tell you that?

16 A. No.

17 Q. Did anybody tell you they didn't want you in there?

18 A. No one told me that they didn't want me in there.

19 Q. Did anybody tell you that in the library at all?

20 A. No.

21 Q. So all those days you were there, nobody told you you
22 can't be in here?

23 A. No one ever told me that I couldn't be in there.

24 Q. Did that reinforce or contradict your understanding of the
25 TRO?

1 A. Well, that reinforced it. Had it been contradicted, I
2 would have looked into it further immediately.

3 Q. You testified earlier that you didn't do any research at
4 all on the library before getting there. Well, except you did
5 testify that you looked at the aerial shot. But you didn't do
6 history --

7 A. No. I didn't do any --

8 Q. -- anything on the history of the library?

9 A. -- research of that nature but, I've done research on it.

10 Q. Hold on. Before?

11 A. No.

12 Q. So why didn't you do a history -- research of the 25-year
13 history of the building?

14 A. I wouldn't -- I would hope that to exercise my right to
15 petition or my right to tell someone how to vote that that
16 would not be a prerequisite of engaging in that activity.

17 Q. What about conducting these studies, these traffic flow
18 studies or research or surveys?

19 A. There's no justification for me doing that. It doesn't
20 make sense economically or to gather more signatures. If it
21 doesn't work out there, I can always move. Based on the amount
22 of time that I had spent and my previous history, I felt there
23 was a good chance that that would be a place worth checking
24 out.

25 Q. Did you do any research subsequent?

1 A. Yes. Yes, I have. Obviously I'm interested myself
2 because I have preconceived notions about what this space is
3 and I've been told by certain individuals that my preconceived
4 notions are wrong.

5 Q. What research did you do?

6 A. I actually read a lot of dry reading, the trustee's
7 minutes from their -- from their meetings. I read, like a --
8 basically instructions to architects and how to design
9 libraries.

10 Q. Okay. Does that --

11 A. There's a book.

12 Q. Would that be Exhibit 15, which I'd like to move into
13 evidence, previously disclosed?

14 THE COURT: Any objection to 15?

15 MR. KENNEDY: Yes.

16 THE COURT: Grounds?

17 MS. STOUT: We'd object on the relevance, Your Honor,
18 as well as authenticity.

19 THE COURT: As well as what?

20 MS. STOUT: As well as authenticity.

21 THE COURT: Mr. Randazza?

22 MR. RANDAZZA: Your Honor, he will authenticate where
23 he found it and how and what it is. We're not introducing it
24 for the truth of the matter in it, but rather what he found
25 upon doing research. I'm rebutting the fact that he didn't do

1 any research. Now, we're not -- to be clear, we're not saying
2 he did this beforehand. This is what he's done since.

3 THE COURT: Well, your response would go to a hearsay
4 objection. They're not objecting on hearsay grounds. They're
5 objecting on authenticity and relevance. How is this relevant?

6 MR. RANDAZZA: Your Honor, we have the publication
7 indications of the book here which are showing on Exhibit 15,
8 Page 4 of 21 shows that it was published on this date, shows
9 what it was. If their objection is really that this is not
10 authentic . . .

11 THE COURT: Well, what's the relevance?

12 MR. RANDAZZA: The relevance is to be shown on Page 9
13 of 21 to show the reasonableness of Mr. Deans' position that he
14 probably could have petitioned there without doing
15 pre-research.

16 It's generally accepted that the outside of a library
17 plaza is a public place, a public forum.

18 THE COURT: Where on Page 9 of 21 do you see that?

19 MR. RANDAZZA: I'm looking at top -- I'm sorry. It's
20 29-3 is the pagination.

21 THE COURT: I'm there.

22 MR. RANDAZZA: And if you look at Article 2 here,
23 2.01, "Community Engagement" and then if you skip to Page 29-5,
24 3.09, "Building Design."

25 (Brief pause in proceedings.)

1 And also, Your Honor, I would call your attention to
2 29-4, 3.05, Urban Design talking about library's connection to
3 civic life.

4 THE COURT: Well, I'm not sure it means what you say
5 it means but I'm going to overrule the objection given that
6 we're not in front of a jury and I'll figure out what kind of
7 weight to give to this.

8 MR. RANDAZZA: Thank you, Your Honor.

9 THE COURT: So, Exhibit 15 will be admitted.

10 (Exhibit 15 was received into evidence.)

11 BY MR. RANDAZZA:

12 Q. Any other research you did? You said about the minutes.

13 A. Yes. So -- so, I read all of the minutes going back quite
14 a ways and there were a number of statements which seem to
15 indicate that the trustees and the library was a strong
16 supporter of freedom of speech and the First Amendment and that
17 they had, in fact, intended for their libraries to be used as
18 such. There was even a design in one -- it was a -- it was
19 like an attachment to one of the -- of the minutes, I don't
20 know the date of it, about a library that they were building.

21 Are you able to find that?

22 MR. RANDAZZA: Can we move into evidence, Your Honor,
23 Exhibit 7, which is the minutes of the Las Vegas County Library
24 District Board of Trustees meeting June 10th, 2004?

25 THE COURT: Any objection?

1 MR. KENNEDY: Again, Your Honor, the same objection.
2 Authenticity and relevance and hearsay.

3 THE COURT: Well, in theory, it's a statement by a
4 party opponent since it's your client's statements. Is there
5 any reason to believe these are not authentic or erroneous?

6 MR. KENNEDY: No, but in terms of relevance, this is
7 all post hoc stuff. Knowledge of this was done before going
8 there.

9 THE COURT: Understood. And I'll -- I'll overrule
10 the objection but take it subject to that comment from
11 Mr. Kennedy.

12 So, 7 is admitted for whatever potential value you
13 think it has.

14 (Exhibit 7 was received into evidence.)

15 BY MR. RANDAZZA:

16 Q. If we move -- if we move to Page 6.

17 Can you scroll up?

18 All right. Can we scroll up, please.

19 I'd like to turn your particular attention to where
20 it says "Executive Director Walters."

21 Can you see that, Mr. Deans?

22 A. Yes.

23 Q. Can you review that and the next paragraph and tell me if
24 you saw -- these were part of your research. Is that why you
25 pointed these out?

1 THE COURT: I think you're looking at the wrong
2 portion on the screen.

3 There you go. I think that's more what he wants you
4 to look at.

5 MR. RANDAZZA: Yeah. Instead of us going through the
6 whole thing I'd just like to point out where we think it's
7 relevant.

8 BY MR. RANDAZZA:

9 Q. Did you review these minutes?

10 A. Yes, I have.

11 MR. RANDAZZA: I'd like to move into -- Exhibit 8
12 into evidence, similar meeting minutes.

13 THE COURT: Mr. Kennedy?

14 MR. KENNEDY: Again, Your Honor, just the relevance
15 objection. This is all post hoc.

16 THE COURT: Well, I'll take it -- allow it into
17 evidence.

18 Mr. Hinckley, same objection? I presume you join
19 that?

20 MR. HINCKLEY: Just join the objection and
21 understand, it's continuing.

22 THE COURT: Yeah. I'll allow it into evidence
23 subject to those comments.

24 (Exhibit 8 was received into evidence.)

25 MR. RANDAZZA: Page 10. I mean, we would agree that

1 much of this is irrelevant, Your Honor, but the relevant
2 portion we found on Page 10. At the bottom of Page 10.

3 We would agree to the objection except for everything
4 that I've circled here (indicating), the bottom paragraph on
5 Page 10.

6 BY MR. RANDAZZA:

7 Q. Did you review this in your research, sir?

8 A. Yes, I did. And it was exactly in lines with my
9 preconceived notions based on everything that I have learned
10 about every other like library.

11 MR. RANDAZZA: We'd also like to move in Exhibit 9.
12 And if we could look at Page 5.

13 THE COURT: Mr. Kennedy, same objection?

14 MR. KENNEDY: Same objection, Your Honor.

15 THE COURT: Mr. Hinckley? Same?

16 MR. RANDAZZA: We will limit it to the relevant
17 portions of Page 5.

18 THE COURT: I'll admit the exhibit subject to those
19 comments.

20 (Exhibit 5 was received into evidence.)

21 THE COURT: Where on Page 5 do you think is relevant?

22 MR. RANDAZZA: Only the top four paragraphs we would
23 say are relevant.

24 BY MR. RANDAZZA:

25 Q. Did you review these, sir?

1 A. Yes.

2 MR. RANDAZZA: Moving in Exhibit 10.

3 THE COURT: Do you want me to read these or --

4 MR. RANDAZZA: Again, I will limit it to what we
5 contend is relevant to make the --

6 THE COURT: Do -- do you want me to read and consider
7 these now or . . .

8 MR. RANDAZZA: Yes, Your Honor.

9 THE COURT: Then you better slow down. Give me a
10 second to read these.

11 (Brief pause in proceedings.)

12 THE COURT: Okay. You want Number 10 now you said?

13 MR. RANDAZZA: No. We're going to skip 10,
14 Your Honor.

15 THE COURT: All right.

16 BY MR. RANDAZZA:

17 Q. Did you do any other research aside from the meeting
18 minutes of the Library District?

19 A. Yes. I've looked at their terms. I've looked at their
20 policies in regards to freedom of speech and their privacy
21 policies and the publicly available pdf's on their website.

22 Q. So had you done this research before, would you have been
23 more careful?

24 A. No. I -- I -- it confirmed all of my preconceived notions
25 about where I was and what I was doing.

1 Q. And what were those preconceived notions?

2 A. That I was in a public forum collecting signatures on a
3 petition in accordance with my First Amendment rights, telling
4 people how to register to vote in accordance with my First
5 Amendment rights and that I was not violating library policies.

6 MR. RANDAZZA: I'd like to also move in Exhibit 2,
7 which I think may have already been moved in.

8 (Counsel conferring.)

9 MR. HINCKLEY: I don't believe it was admitted.

10 MR. RANDAZZA: Yeah, it has the photos on it.

11 THE COURT: Either of the defendants have an
12 objection to this exhibit?

13 MR. HINCKLEY: No.

14 MR. KENNEDY: Let's see, that's the Incident Report.
15 No objection.

16 THE COURT: All right.

17 (Exhibit 2 was received into evidence.)

18 BY MR. RANDAZZA:

19 Q. Do you see in this Incident Report --

20 THE COURT: 2 is admitted.

21 COURTROOM ADMINISTRATOR: No. I don't have it on my
22 list here.

23 THE COURT: 2 -- 2 is admitted now then.

24 COURTROOM ADMINISTRATOR: Okay. Thank you.

25 THE WITNESS: Yes. I have seen the Incident Report.

1 BY MR. RANDAZZA:

2 Q. It says, "The man refused to stay in the designated
3 location so the PIC" -- I presume that means person in
4 charge -- "explained that he would be asked to leave the
5 library for the day."

6 Do you dispute that?

7 A. No one ever used the word "day."

8 Q. Is it true that six officers arrived?

9 A. At least four.

10 Q. And then what happened after that?

11 THE COURT: Are you saying what's in the document or
12 what's his recollection of what happened?

13 MR. RANDAZZA: No. I want his recollection as to
14 what happened after that --

15 THE COURT: Okay.

16 MR. RANDAZZA: -- after he was -- they were alleging
17 that he was told he had to leave for the day.

18 You dispute that or you confirm that?

19 THE WITNESS: I confirm I was asked to leave.

20 BY MR. RANDAZZA:

21 Q. Is there any information missing from this document?

22 A. I mean, there's a -- there's a significant amount of
23 goings back and forth which are not listed here but, there's
24 also inaccuracies. Like, "check in." Whereas, I was told
25 "register."

1 Q. Okay.

2 MR. RANDAZZA: I have no further questions for you.

3 THE COURT: Any follow-up, Mr. Kennedy?

4 MR. KENNEDY: Yes, Your Honor.

5

6 RECROSS-EXAMINATION OF WILLIAM DEANS

7 BY MR. KENNEDY:

8 Q. Mr. Deans, when I questioned you this morning, I asked you
9 if you had done any research at all about this property or this
10 library branch and you told me that you had not; correct?

11 A. Not of the variety I thought you were asking me about, no.

12 Q. I'm sorry?

13 A. That's correct, not of the type of research I thought you
14 were referring to.

15 Q. But you've now said that you did some significant research
16 regarding this branch of the library. Am I correct?

17 A. After the fact I did significant research, that is
18 correct, but not -- not beforehand.

19 Q. Now, you testified, and correct me if I'm wrong, you said
20 that the research that you did after the incident confirmed all
21 of your preconceived notions about the plaza in this branch; is
22 that correct?

23 A. That's correct.

24 Q. And you looked at Exhibits 15, 7, 8, and 9 and you said
25 those were the basis of your testimony that all of your

1 preconceived notions had been confirmed; correct?

2 A. That was some of the basis of my believing that, yes.

3 Q. Is there anything in Exhibit 15, sir, anything at all that
4 talks about this library branch?

5 A. I'm sorry. I'd have to look at Exhibit 15.

6 (Court, witness, and counsel conferring.)

7 BY MR. KENNEDY:

8 Q. And in fairness, sir, I'll tell you that since you
9 testified that Exhibit 15 confirmed your preconceived notions,
10 I just want you to look in there and point out to me where it
11 is in Exhibit 15 that this branch is mentioned.

12 A. I -- I have not yet located and looked through Exhibit 15,
13 but I am willing to accept if you would like to claim that it
14 does not mention the branch by name.

15 Q. No. I'm asking you, sir. You said that Exhibit 15 was
16 one of the exhibits --

17 A. I'm sorry. I have not yet -- I have not yet located
18 Exhibit 15.

19 Q. Why don't you look at 15 and see if you can find the
20 specific provision or provisions that you just testified about.

21 A. Is this the handbook?

22 Q. It's Exhibit 15.

23 THE COURT: Yes.

24 THE WITNESS: Oh. So . . . this shows me what a
25 designer is thinking when they design one of these plazas.

1 This is, to me, instructions on how to design a library.
2 Presumably architects go through school. They learn this
3 information and apply these concepts --

4 BY MR. KENNEDY:

5 Q. Who designed this branch, sir? Do you know?

6 A. I do not know which architect designed this branch.

7 Q. Is it the person who wrote Exhibit 15?

8 A. No. Obviously it is not.

9 Q. Okay. And Exhibit 15 does not mention this library or
10 this branch, does it?

11 A. It does not mention that branch of that library, no, sir,
12 it does not.

13 Q. Okay. And you also said that Exhibit 7 was one of the
14 sources that provided you with the information confirming --
15 and I quote what you said -- "all your preconceived notions."
16 Let's have a look at Exhibit 7.

17 Exhibit 7 are the minutes of a June 10th, 2004, Board
18 of Trustees meeting; correct?

19 A. That's correct.

20 Q. Where in Exhibit 7 is this branch mentioned?

21 A. I -- I'm willing to happily -- if you can -- if you know
22 that the branch by name is not mentioned in this exhibit, I
23 don't think I need to use a lot of time but, I'm willing to
24 read it to verify that if you really would like for me to do
25 so. I'll read every word right now again and make sure that

1 I'm not going to --

2 Q. You testified, sir, that this was one of the documents
3 that you studied to inform your conclusion that all of your
4 preconceived notions had been confirmed. I'm asking you if
5 this branch is mentioned in these minutes. I will tell you I
6 don't think it is, but, maybe you can find it.

7 A. So, to be clear, if I learned from reading that the area I
8 was in I can reasonably expect to be a public forum, even if it
9 does not mention the branch by name, that is still information,
10 in general, which seems applicable to that branch.

11 Q. Where do we find that?

12 (Brief pause in proceedings.)

13 BY MR. KENNEDY:

14 Q. Okay. It's not there. Is it?

15 A. Doesn't mention the branch by name. It does say in these
16 exhibits, by my interpretation, that the plaza in that branch
17 is a public forum by design based on the design . . . I want to
18 call it a textbook, but it does not mention by name that
19 branch.

20 Q. Well, let's -- let's -- I'll ask the aggregate question
21 about Exhibit 7, 8, or 9. Is there anything in those three
22 exhibits which you testified informed your conclusion that all
23 your preconceived notions were correct? Is there anywhere in
24 any of those exhibits that this branch or this plaza is
25 discussed?

1 A. To truly answer that I need to look through them. I'm
2 happy to do so. It seems --

3 THE COURT: Let me have you look at Exhibit 7, Page
4 6. At the top it says Document 12-6, Page 7 of 9.

5 Are you there?

6 THE WITNESS: Page 6 of 9. Yes. Yes, Your Honor.

7 THE COURT: Go to Page 7 of 9.

8 The fourth full paragraph down, I think this is what
9 your lawyer was asking you about. "Executive Director Walters
10 stated that it has been the Board's policy to provide meeting
11 rooms as access points for such use free of charge."

12 Is that what you're talking about?

13 THE WITNESS: That would be one instance, yes,
14 Your Honor.

15 THE COURT: Okay. That reply -- that relates to
16 meeting rooms and performing art centers, not the public plaza
17 out front; correct?

18 THE WITNESS: That is correct, Your Honor. I think
19 there was at some point some statement that nothing in the
20 library was a area that would be open to such use.

21 BY MR. KENNEDY:

22 Q. What are you talking about?

23 A. I'll withdraw that statement until I can locate it.

24 Q. See, the reason I asked you is that this case, you were
25 trespassed on the 13th of October. We are now 18 days later

1 and you have testified that during those 18 days -- probably
2 not including today, so that would be 17 days -- you read all
3 of these documents and you drew from those documents
4 information confirming all your preconceived notions. So, the
5 reason I think my question to you is fair is, we're not doing
6 ancient history here; we're doing the last two weeks.

7 A. It may be reasonable to you that I could locate quickly
8 the relevant sections. I am not going to be fast and efficient
9 at locating those sections. Given sufficient time, I am sure
10 that I could.

11 Q. Well, your lawyer asked you about some particular
12 sections, if those were the sections you were talking about.
13 And Judge Gordon just pointed out one. And I followed those
14 sections during the questioning. Those didn't have anything to
15 do with this plaza or this branch. Right?

16 A. Those particular -- this particular statement I am -- this
17 particular paragraph I'm willing to say does not have to do
18 with the plaza at that branch. I can -- I --

19 Q. And after you testified that it confirmed all of your
20 preconceived notions you said preconceived notions about the
21 plaza being a public forum. Is there anything in any of these
22 exhibits, 7, 8, 9, or 15, that talks about this plaza being a
23 public forum?

24 A. Does one of these exhibits -- I -- not this particular
25 plaza by name. I'm -- I'm happy to say that by name it does

1 not.

2 Q. How about any plaza on any branch library in this library
3 system?

4 A. There is a Board of Trustees meeting minutes that does. I
5 do not know if it is one of the three that you have selected.

6 Q. I didn't select these; your lawyer selected them.

7 A. I do not know if it is one of the three that --

8 Q. Okay.

9 A. -- are mentioned.

10 Q. Now, let's go back to something else that you testified to
11 on redirect. You said that the reason you made videos of your
12 visits to the library on the days that we have discussed
13 earlier was to record and memorialize what happened; correct?

14 A. Multiple reasons, but yes, correct.

15 Q. Because you said you were afraid and you feared that
16 somebody might contend that something occurred that didn't
17 occur and that's why you were doing the videos; right?

18 A. That is absolutely one reason why.

19 Q. Okay. But, on the two days that you just walked around
20 the library making your presence known and felt, you didn't
21 record any videos then, did you?

22 A. It wouldn't make sense. I wasn't interacting with the --

23 MR. RANDAZZA: Objection. Facts that are not in
24 evidence.

25 THE WITNESS: So --

1 THE COURT: Wait. Wait. Wait. Wait. Wait.

2 Well, I don't have any evidence that he did record
3 videos those days, so . . .

4 MR. RANDAZZA: I haven't seen any evidence that he
5 "just walked around the library to make his presence known"
6 either.

7 THE COURT: Well, we had testimony earlier on -- on
8 cross-exam. So the objection's overruled.

9 BY MR. KENNEDY:

10 Q. You didn't make videos on those days, did you?

11 A. If I didn't interact, I did not necessarily make a video.
12 I'm not interacting with the staff, so I -- I didn't feel that
13 I was at much at risk. At this point I wish I had because
14 obviously I was at risk, but because I wasn't interacting with
15 the staff, I didn't realize that I was -- I mean, look, this --
16 the one time I didn't, I'm -- I'm -- I'm somehow doing
17 something wrong. So I wish I had videotaped that too, but I
18 didn't because I wasn't interacting with the staff at that
19 point.

20 Q. And on the two days, October 25 and October 26, when you
21 were in the children's library, you have testified that you
22 took a number of pictures; correct?

23 A. On one date I took a number of pictures, that is correct.

24 Q. Where are those?

25 A. Uh . . . they were uploaded to a drop box and I do not

1 know of their current status.

2 Q. Now, you looked at Exhibit 514; correct?

3 Kelly, can you pull that up for me, please?

4 That's the e-mail exchange.

5 A. Yes. I have seen the e-mail exchange.

6 Q. And you testified earlier that no one ever told you that
7 your presence in the children's section of the library was
8 somewhat problematic; correct? You said no one ever told you
9 that?

10 MR. RANDAZZA: Objection. He was never asked that
11 question. Not in evidence.

12 MR. KENNEDY: He -- he -- he said that.

13 THE COURT: That's what I -- that's what I heard him
14 testify in response to your question.

15 MR. KENNEDY: Yep.

16 THE COURT: Overruled.

17 BY MR. KENNEDY:

18 Q. My question again, and I'll -- I'll re --

19 A. No one told me that. If somebody --

20 THE COURT: Wait. Wait. Wait. Everybody stop.
21 We're talking more than once.

22 Mr. Kennedy, ask your question.

23 MR. KENNEDY: I'll repeat the question again.

24 BY MR. KENNEDY:

25 Q. Do you recall testifying here about 20 minutes ago that no

1 one ever told you that your presence in the children's section
2 of the library was problematic; correct?

3 A. They didn't tell me; they told my attorney and my attorney
4 declined to indicate that it was problematic --

5 Q. So you --

6 A. -- to me, and so no one told me that it was a problem.

7 Q. So, my question to you is -- just confirming what you
8 said -- your lawyer never raised with you the issue of you
9 sitting in the children's section of the library by yourself;
10 is that correct?

11 A. I was provided these e-mails. I couldn't believe it. I
12 didn't understand what was going on. It seemed preposterous.
13 It's ridiculous. And I don't understand what goes on behind
14 the scenes with this stuff. I really don't understand how this
15 is relevant. It is offensive to me and . . . I was under no
16 impression that this was anything of an actual person's actual
17 concern, that somebody might somewhere be concerned -- I -- I
18 don't even -- I -- it doesn't -- nothing that I was doing was a
19 cause for concern and I still don't . . . believe that I was
20 told not to be in those -- in the library if I have a
21 legitimate purpose for doing so. I -- I --

22 THE COURT: You don't think it was reasonable for the
23 library to question why a single man without any children was
24 sitting in the kid's library taking pictures? You don't think
25 that's a reasonable inquiry? You don't think somebody might be

1 concerned, do we have a potential pedophile here? No -- no --
2 not casting aspersions on you; I'm just trying to say --

3 THE WITNESS: Well -- well, Your Honor --

4 THE COURT: -- you're saying that the library
5 overreacted but I can -- in all candor, I can foresee someone,
6 a parent, or someone saying wait a minute, we've got a guy by
7 himself with no kids in the children's library taking pictures
8 of kids. You don't think that could cause some concern?

9 THE WITNESS: Your Honor, I -- I think they -- they
10 knew why I was there. This isn't a --

11 THE COURT: Why would they know that?

12 THE WITNESS: Because they, themselves, had taken
13 photographs of the area because I was engaged in -- in this
14 suit and . . . I have no interest in causing panic at the
15 library. I truly was using the library to upload the --

16 THE COURT: And I'm not disputing that but, I find it
17 difficult to believe when you just said I can't imagine anybody
18 got upset by a single man sitting in the library -- children's
19 library without kids taking pictures. I can imagine people
20 getting a little concerned, for whatever that's worth. I'm not
21 saying you were there for an untoward purpose. I'm not saying
22 you were there for any reason improper. I'm just simply saying
23 I find it hard to believe your reaction to be so visceral and
24 violent to that.

25 THE WITNESS: Your Honor, to be clear, I -- at the

1 time that I had gone in and sat to upload the video, I didn't
2 take photos in that section at that time.

3 THE COURT: You told me earlier that you took photos
4 in the children's library. Maybe a different day.

5 THE WITNESS: Yes. Yes. Yes, I did and yes, it was
6 a different day. They --

7 THE COURT: Okay. After this one?

8 THE WITNESS: After this one.

9 THE COURT: So after the library had told you they
10 got concerns about a guy sitting in the library, the next day
11 you went back to the children's library and took pictures in
12 the children's library? After you saw this e-mail?

13 THE WITNESS: I did not believe this to be someone's
14 legitimate concern.

15 THE COURT: Okay.

16 THE WITNESS: I believed it to be just a ridiculous
17 smear and a lie and I -- and something that needed to be
18 disproved and a distraction that I -- I'm terribly upset to see
19 that somehow it's -- it's become a -- a portion of this case.

20 THE COURT: I'm distressed on both sides, that
21 there's a lot of distractions the way this case has developed
22 since my TRO. I'm just going to throw that out there but,
23 regardless, we are here while we're here and how this has
24 developed over time . . . I'm not sure if there's any innocent
25 party in this except maybe CSN which has done nothing but, in

1 any event, it is what it is and I -- again, I'm not casting
2 aspersions on you, I'm just -- I find it hard to understand
3 that you had such a visceral reaction to the library's reaction
4 to what was going on.

5 THE WITNESS: To me it appeared to be a smear and
6 just on the face of it, you know, just totally untrue
7 accusation.

8 THE COURT: And you may be right. You may be right.
9 I don't know the answer to that as I sit here.

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. KENNEDY: I'm done, Your Honor.

13 THE COURT: Mr. Hinckley?

14 MR. HINCKLEY: Thank you.

15

16 REXCROSS-EXAMINATION OF WILLIAM DEANS

17 BY MR. HINCKLEY

18 Q. Mr. Deans, as you gather signatures, you want to comply
19 with the law of the location where you're at, don't you?

20 A. Of course I'd like to comply with the law.

21 Q. And you want the protection of the law as you gather
22 signatures; correct?

23 A. Yes. I would like the protection of the law.

24 Q. With all of your travels to various states should you know
25 the peculiarities of the law of the state that you're traveling

1 to?

2 A. If you're in an area which is private, like a private
3 business, if you're in an area that's not -- if you're in a
4 questionable area, there might be laws that vary from state to
5 state, but one of the nice things about a public forum is that
6 you don't need to know all those laws in advance. So -- so if
7 this was a -- a question about can I be in front of Walmart
8 while there is another competing petition going on or something
9 like that, sure, I could get into the weeds, but this place is
10 nice because I don't have to get into the weeds.

11 Q. And you didn't research Nevada's laws, case laws, et
12 cetera relative to public buildings. Is that your testimony
13 today?

14 A. Well, before the date, no, I had not.

15 Q. Okay.

16 A. That's correct.

17 Q. Okay.

18 MR. HINCKLEY: Thank you very much. That's all.

19 THE COURT: I have one follow-up. Just a minute,
20 please.

21 (Brief pause in proceedings.)

22 THE COURT: You testified twice now, once in response
23 to your attorney and once in response to Mr. Kennedy, that
24 after the TRO or after the incident you've done some research
25 and one of the things you pointed to was Exhibit 9. Pull up

1 Exhibit 9 in that booklet if you will. It's in front of you.

2 THE WITNESS: Your Honor, I am at Exhibit 9.

3 THE COURT: Okay. This is the Board of Trustees
4 meeting from September 9th, 20 -- 2004. On Page 5, and I think
5 this is where your attorney quotes from, in his reply, but if
6 you look at the second -- the first full paragraph where the
7 Board of Trustees was talking about the Library Rules of
8 Conduct.

9 Do you see that?

10 THE WITNESS: Exhibit 9 . . .

11 THE COURT: Page 5. At the top it will say "6 of 8,"
12 at the top.

13 THE WITNESS: I -- yes. Yes, Your Honor. I have --
14 I have located the paragraph.

15 THE COURT: Okay. I'm just trying to see, is this
16 the area you were talking about? Because on the third full
17 paragraph it says, "In practice, the District has always
18 allowed people to gather signatures." Is that what you're
19 talking about?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Okay. And it goes on to say, "allowed
22 people to gather signatures for a petition as long as they do
23 not interfere with people coming and going from the library.
24 N.R.S." statute -- "N.R.S. 293.127565 guarantees that the
25 public will be able to gather signatures for petitions at any

1 public building. Each library may designate a space outside
2 the building for petitioners."

3 Did that confirm your prior understanding? Or did
4 this contradict your prior understanding?

5 THE WITNESS: This does not appear to corral me to
6 the box. So, as long as I am not corralled to the box, it --
7 it confirms my understanding and, you know, like, as -- as I
8 say, I wasn't blocking the door, which is how I hear
9 interfere --

10 THE COURT: Did you have any belief after reading
11 that that the library can designate a space for you to use as a
12 petitioner? Or did you think you could free range?

13 THE WITNESS: I thought that they did designate spots
14 to guarantee access and that in the -- you know, if they had --
15 if they don't have a public forum, sure, they can designate a
16 spot. If it's not a public forum, they can tell you you got to
17 be in this spot but, I didn't -- I did not read this as within
18 a public forum you can't operate, you have to be confined
19 within a spot.

20 THE COURT: Had you read this before you went out
21 there to gather signatures and were issued a Notice of Trespass
22 would you have changed what you did?

23 THE WITNESS: I would have likely been able to prove
24 that the spot I was told to stand in was not, in fact, the spot
25 listed on the website.

1 THE COURT: What in here tells you that?

2 THE WITNESS: Well, it tells me that there are spots
3 designated. So that would have allowed me to see and provide
4 me with the proof that what I was being told was untrue and --
5 and it was a made up area on the fly and it did not match with
6 the description.

7 THE COURT: And -- and does the Secretary of State's
8 web page show the space that you're allowed to be in?

9 THE WITNESS: It provides text. It does not have an
10 image.

11 THE COURT: Okay.

12 THE WITNESS: But yes, Your Honor, there is a web
13 page that has the text --

14 THE COURT: Okay.

15 THE WITNESS: -- of the spot I'm -- provided to me.

16 THE COURT: Two paragraphs down below it said,
17 "Trustee Carter asked if there was any provision that groups
18 cannot interfere with patrons when soliciting for signatures,
19 et cetera. Ms. Ledebor answered that N.R.S. is clear in
20 stating that the District can determine when and where groups
21 can congregate for petitioning."

22 Again, does this -- does that confirm or contradict
23 your preconceived notion before you went out there?

24 THE WITNESS: Absolutely confirmed because this
25 language uses the word "groups."

1 I know in Florida there was a case with a gentleman
2 that I knew personally. He was an individual in a state park
3 and they found -- I don't know if it actually -- they might
4 have settled or something. I don't know how far it went -- but
5 they found that because he was an individual and not a group
6 that he . . . wasn't going to encounter the same issues. Just
7 like you might -- if Your Honor wanted to have a million man
8 parade, you might need a permit for that. But if you want to
9 walk down the street, you might not. And so -- so the word
10 "group" is a good sign when I read this, not a bad sign.

11 THE COURT: You testified earlier that there are
12 instances when you're gathering signatures and you have I
13 presume multiple boards or clipboards because if someone is
14 willing to sign, you hand them the board and then you talk to
15 someone else; is that right?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: To try to maximize the number of
18 signatures you can gather. And I thought you said maybe at one
19 point that sometimes you have up to five people signing at the
20 same time; is that right?

21 THE WITNESS: Depending on the circumstance,
22 Your Honor. Very different circumstances, but yes, Your Honor.
23 Sometimes.

24 THE COURT: If you had a group of five plus yourself,
25 would that potentially interfere with ingress and egress to the

1 library doors at this library, in your opinion?

2 THE WITNESS: Not from the distance that I was.

3 THE COURT: I guess it depends where you are when
4 you're doing this.

5 THE WITNESS: And also, were I in such a danger, I'd
6 steer clear of that danger. So I don't need to treat one
7 person as if they're five people.

8 THE COURT: Okay. Thank you.

9 Any follow-up questions?

10 MR. RANDAZZA: Just a couple, Your Honor.

11 If you'll . . . first, we were asked where are those
12 pictures. We have -- we have the photos that he took. We can
13 bring them up and move them into evidence. They have not --
14 they have been disclosed. Nobody has --

15 THE COURT: Are they relevant to today's proceedings?

16 MR. RANDAZZA: Well, to the extent that there is some
17 question as to whether these rooms were regularly used by
18 adults, regularly single guys in there, they're quite relevant.
19 If you see this for what it is and we don't need to talk about
20 it, I'll move on.

21 THE COURT: I'm -- I don't see the relevance at this
22 stage, but if you want to put them on, that's fine.

23 MR. RANDAZZA: I just feel that my client has been --

24 THE COURT: That's fine.

25 MR. RANDAZZA: The attempt of this was to smear my

1 client.

2 THE COURT: I understand.

3 MR. RANDAZZA: All right. And the implication that a
4 single man couldn't be in there without causing shock and
5 alarm, well, we're going to show some picture of at least one
6 single man lying on the floor that I didn't get an e-mail
7 about, so we'll bring these up. These have not yet been added
8 to anybody's exhibit list. We frankly didn't think we'd need
9 them but . . .

10 MR. RANDAZZA:

11 Q. Mr. Deans, did you take this photograph?

12 A. Yes, I did.

13 Q. And does it say -- where does it say children's library?

14 A. I -- I do not see children's library.

15 Q. Okay. Are you an old person?

16 A. I don't like to think so. No, I -- I'm not.

17 Q. The next image, please.

18 Okay. And this is -- what is this of?

19 A. This looks into the Young People's Library.

20 Q. Okay. The next image.

21 What's this of?

22 A. This is a group of . . . I wouldn't call them children at
23 the table that I was at. I believe it to be the table, or the
24 table beside it.

25 Q. Are these the people you said were filling out forms?

1 A. Oh, after -- after you zoom in, I can actually see DMV
2 so --

3 THE COURT: I can see where it says DMV.

4 THE WITNESS: So, yes. Yes. I'm sorry. I didn't
5 immediately recognize this.

6 BY MR. RANDAZZA:

7 Q. Okay. And this child filling out the DMV forms, how old
8 do you think that child is, if you had to guess?

9 A. 30. I don't know.

10 Q. Okay. Next image.

11 How about -- how about these people? Is this the
12 same room?

13 A. Yes, it is the same room.

14 Q. Okay. And this -- well, can we get back to the person
15 down at the bottom there.

16 Is that facial hair on him?

17 A. He may have a mustache.

18 Q. All right. Would you call him a child?

19 A. Absolutely not.

20 Q. Next image. Actually, that's good enough. That's it.
21 This is just bathroom doors. We don't need anymore.

22 MR. KENNEDY: Can we go back to that one we just
23 skipped?

24 THE COURT: Yes.

25 MR. RANDAZZA: Oh, the bathroom doors? Sure.

1 MR. KENNEDY: Yeah.

2 THE COURT: Why did you take that picture?

3 THE WITNESS: Because I had used that restroom and,
4 you know, if someone wants to claim that there's no reason to
5 be in there, you know, I -- is that restroom not as available
6 to patrons as the other restroom? And, in fact, you know,
7 let's say there's one handicap stall in the other restroom,
8 which there is. Is a handicapped individual supposed to --
9 single handicapped man supposed to wait for that stall to
10 become available when there's a stall that's available attached
11 to the Young People's Library? I -- to me, there's many
12 reasons to be there and the restroom was one of them.

13 THE COURT: What possible relevance could that have
14 to the issues that I have to resolve?

15 THE WITNESS: I think none of this has any relevance
16 to any of your issues.

17 THE COURT: Then why did you take the pictures?

18 THE WITNESS: Because there's a distraction that
19 somehow --

20 THE COURT: What was the distraction?

21 THE WITNESS: The distraction is a smear that I --
22 that somehow I have to contend with. And so, my hope is -- is
23 that it will go away so that we can focus on the truly relevant
24 issues.

25 THE COURT: So -- so I'm clear and I can understand

1 this. You took these in response to the Library District
2 asking your attorney to tell you not to go into the children's
3 library by yourself; is that right?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: Okay. All right. I see how we devolved
6 into this.

7 You can continue. If it's relevant.

8 MR. RANDAZZA: Okay.

9 BY MR. RANDAZZA:

10 Q. I'd like to bring up the meeting minutes that you said you
11 looked at. Go back to Exhibit 7, Page 7 of 9.

12 THE COURT: Which -- which meeting minutes are we on?
13 Exhibit 7 you said?

14 MR. RANDAZZA: June 10th, 2004, where Your Honor
15 brought up "Executive Director Walter's stated."

16 THE WITNESS: Okay.

17 MR. RANDAZZA: Next page.

18 THE COURT: Page 6? Page 7 of 9.

19 MR. RANDAZZA: No, the other way.

20 (Counsel conferring.)

21 BY MR. RANDAZZA:

22 Q. Can you look at the rest of that page? Was any of the
23 rest of that page relevant to you?

24 A. "Public forums cannot be regulated by and content use,
25 only when, where, and how can be regulated." I apologize to

1 the Court for being slow in finding the relevant section. If I
2 had --

3 Q. And it is true that nothing here says this is only
4 applicable to the West Charleston Library?

5 A. I do not believe so.

6 Q. In fact, nothing here specifically says that public forums
7 cannot be regulated at the West Charleston Library?

8 A. It's a blanket statement.

9 Q. So nothing here says all the libraries except West
10 Charleston which is a special free speech nadir?

11 A. Yes, that is correct.

12 Q. That's not there either.

13 Can we go to Exhibit 27.

14 We have talked a lot about this but nobody's ever
15 bothered to bring it in and I'd like to move this into
16 evidence. This is the designation of the public areas.

17 THE COURT: Any objection, Mr. Kennedy?

18 MR. KENNEDY: No, Your Honor.

19 THE COURT: Mr. Hinckley?

20 MR. HINCKLEY: No objection.

21 THE COURT: 27's admitted.

22 (Exhibit 27 was received into evidence.)

23 BY MR. RANDAZZA:

24 Q. Can you read the part that corresponds with West
25 Charleston Library.

1 A. "At the far east entrance" -- I'm not sure if -- I assume
2 they mean at the far edge of the center circle.

3 Q. At the far edge of the center circle?

4 A. Yes.

5 MR. RANDAZZA: Can we bring up the schematic again?

6 Here, I'll just . . . rather than us try to find this
7 again, bring my trusty board out.

8 THE COURT: It's Exhibit 28.

9 You can approach.

10 MR. RANDAZZA: Thank you, Your Honor.

11 BY MR. RANDAZZA:

12 Q. Sir, what's your IQ?

13 A. I presume I'm of average intelligence. I know probably 90
14 percent of people believe that.

15 Q. Can you point to the center circle on this drawing.

16 A. (Witness complies).

17 MR. RANDAZZA: Can the record reflect that he's
18 pointed to the center circle?

19 THE COURT: At least his interpretation of it.

20 MR. KENNEDY: Yeah.

21 MR. RANDAZZA: Well, if we have an expert in
22 geometric shapes who'd like to dispute that that is the circle
23 at the center . . .

24 THE COURT: We're going to see what Mr. Kennedy comes
25 up with.

1 MR. RANDAZZA: Oh, I can't wait.

2 Thank you.

3 THE COURT: You're welcome.

4 Any follow-up from either defendant?

5 MR. KENNEDY: No, Your Honor.

6 THE COURT: Mr. Hinckley?

7 MR. HINCKLEY: No. Thank you.

8 THE COURT: All right. Mr. Deans, you can finally
9 step down.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Thank you.

12 Watch your step as you come around the side. People
13 miss that last step.

14 THE WITNESS: Yes, Your Honor.

15 (Witness excused.)

16 THE COURT: Does the plaintiff have any additional
17 witnesses? Any additional witnesses, Mr. Randazza?

18 MR. RANDAZZA: No, Your Honor.

19 THE COURT: All right. So you're going to rest, at
20 least in terms of the Preliminary Injunction Hearing?

21 MR. RANDAZZA: Yes, Your Honor.

22 THE COURT: Who's going to go first? Mr. Kennedy,
23 your side, or is Mr. Hinckley's side going to go first?

24 MR. KENNEDY: We'll go ahead, Your Honor.

25 THE COURT: All right.

1 MR. KENNEDY: Ms. Stout will take it over from here.

2 THE COURT: Fabulous.

3 Ms. Stout, who is your first witness?

4 (Brief pause in proceedings.)

5 MR. RANDAZZA: Actually, Your Honor . . .

6 THE COURT: Yes.

7 MR. RANDAZZA: You are going to be -- are you going
8 to be calling -- if they're going to be calling Ms. Schember,
9 which I believe they were, she's at counsel table . . . we are
10 resting but I do need to investigate Ms. Schember.

11 MS. STOUT: I'm sorry?

12 MR. RANDAZZA: Are you calling Schember?

13 MS. STOUT: I do intend to call her, yes.

14 MR. RANDAZZA: All right. Then I can do all of my
15 questions on cross.

16 THE COURT: Okay.

17 Stand up here and you'll be sworn in.

18 (Counsel conferring.)

19 COURTROOM ADMINISTRATOR: Do you solemnly swear that
20 the testimony you're about to give in this cause now pending
21 before this Court will be the truth, the whole truth, and
22 nothing but the truth, so help you God?

23 THE WITNESS: Yes.

24 COURTROOM ADMINISTRATOR: Okay. You can sit.

25 And I'm going to ask you to please state your name

1 for the record in the mic.

2 THE WITNESS: Sam Kushner.

3 COURTROOM ADMINISTRATOR: Spell your last name,
4 please.

5 THE WITNESS: K-u-s-h-n-e-r.

6 COURTROOM ADMINISTRATOR: Okay. And the city and
7 state where you reside.

8 THE WITNESS: Las Vegas, Nevada.

9 COURTROOM ADMINISTRATOR: Thank you.

10 THE COURT: You may proceed when you're ready.

11 MS. STOUT: Thank you.

12

13 DIRECT EXAMINATION OF SAM KUSHNER

14 BY MS. STOUT:

15 Q. Mr. Kushner, can you please give us your job title.

16 A. Assistant branch manager.

17 Q. And at what branch are you an assistant branch manager?

18 A. West Charleston Library.

19 Q. And is the West Charleston part of the Las Vegas Clark
20 County Library District?

21 A. Yes.

22 Q. How long have you been an assistant branch manager?

23 A. Since the summer of 2010.

24 Q. Can you briefly describe your duties and responsibilities
25 as an assistant branch manager.

1 A. In the absence of the branch manager, run the -- run the
2 branch. Make sure all of the desks are staffed and all of the
3 operations are running.

4 Q. In the event of an incident of some kind, be it an injury
5 or something irregular that happens in the course of the
6 library, are you aware of there being a protocol or procedure
7 that's followed?

8 A. Yes.

9 Q. Can you briefly describe what that procedure would entail.

10 A. Well, depending on the irregularity, I mean, it can range
11 from a clogged toilet to power outage to somebody angry so,
12 there's not just one procedure.

13 Q. So it's going to be fact specific. Is that --

14 A. Based on the situation.

15 Q. Okay. In the event that you have an incident or a --
16 someone circulating a petition, what -- what would you, as
17 assistant branch manager, do?

18 A. Well, ordinarily petitioners will come in and check in
19 with staff and when they do, we'll go ahead and show them the
20 designated location for them to stand when they do their
21 petition.

22 Q. Were you working on October 13th of this year?

23 A. Yes.

24 Q. And are you aware of there being an incident involving a
25 petitioner?

1 A. Yes.

2 Q. Do you know who that petitioner was?

3 A. Yes.

4 Q. Can you please tell us.

5 A. Mr. Deans.

6 Q. When did you first hear about Mr. Deans circulating a
7 petition?

8 A. It was about a quarter after the hour. I think the hour
9 was 2 o'clock. I don't remember for -- specifically, but I
10 think it was about a quarter after the hour, our security guard
11 came and told me that there was a petitioner outside who was
12 refusing to come in and check in with staff.

13 Q. And upon hearing this information what did you do?

14 A. I went out to speak with the petitioner.

15 Q. And where did you encounter the petitioner?

16 A. Outside the east entrance, about 15 to 20 feet from the
17 door. A little bit to the left of the door.

18 Q. And did you approach him?

19 A. Yes.

20 Q. And what -- what happened when you approached him?

21 A. Well, I introduced myself and I told him that there's a
22 check-in procedure, that he should check in with staff when
23 conducting petitioning and that we also had a location for him
24 to stand and I showed him the location.

25 Q. When you say you showed him the location, how did you show

1 him?

2 A. I walked out to the location that we have and pointed.

3 Q. And did -- and did Mr. Deans follow you and come over to
4 the location?

5 A. He didn't go all the way to that location, he came about
6 halfway.

7 Q. And what -- how did Mr. Deans respond to this information,
8 when you showed him the designated location?

9 A. He just didn't go -- go to the designated location.

10 Q. Did he make any statements?

11 A. I don't remember whether he said anything. I know that it
12 was -- it was obvious that he wasn't going to go to that
13 designated location.

14 Q. When you say it was obvious, how was it obvious to you?

15 A. He didn't go there.

16 Q. So, at this point you had showed him the designated
17 location and you had -- and you had perceived that he was not
18 going to move there. What did you do next?

19 A. I told him that if he wasn't going to follow my
20 instruction, I was going to have to ask him to leave for the
21 day.

22 Q. And how did he respond to that statement?

23 A. He took out his phone and started dialing.

24 Q. Did he inform you who he was calling?

25 A. Said he was calling the police, saying that I was

1 infringing upon his rights.

2 Q. And how did you respond to that statement?

3 A. I told him to let me know that -- when they got there and
4 I'd be inside.

5 Q. And did you remain outside?

6 A. No. I went inside.

7 Q. Approximately how long did this interaction take?

8 A. Less than five minutes. Pretty quick.

9 Q. Did you have further interaction with Mr. Deans on
10 October 13th?

11 A. No.

12 Q. Were you present while anyone else on the library staff
13 interacted with Mr. Deans?

14 A. Yes.

15 Q. Can you -- can you identify that person, or persons?

16 A. Actually . . . I was present when others were interacting
17 with him but I don't remember if library staff were the ones
18 interacting with him later, about 45 minutes after the hour.
19 The police were talking to him at that time but I don't
20 remember if any library staff spoke with him at that time.

21 Q. You said at about 2:45 the police were speaking with him?

22 A. Yes.

23 Q. How is it that the police came to be speaking with him?

24 A. I called them and they arrived.

25 Q. Why did you call them?

1 A. Because he still hadn't followed my instruction and he
2 was -- he hadn't left. So we didn't have any other recourse
3 but to call the police.

4 Q. How did you know that he had -- hadn't complied with your
5 instruction?

6 A. I could see out the window that he was not standing in the
7 designated location and that he hadn't left the premises.

8 Q. If you would, I'd like you to look at Exhibit 29 that has
9 already been admitted.

10 COURTROOM ADMINISTRATOR: 29 has not been admitted.

11 MS. STOUT: Oh, it has not.

12 We'd like to move -- to have Exhibit 29 admitted.

13 THE COURT: Any objection to 29?

14 MR. RANDAZZA: We do object to that one, Your Honor.
15 It's been altered.

16 MS. STOUT: Your exhibit?

17 MR. RANDAZZA: The -- the one we've used has been the
18 one that's been unadulterated.

19 THE COURT: They used 28. 29 has the "X" and "Y"
20 boxes drawn on them. I don't know if it's relevant for the
21 witness.

22 MS. STOUT: My apologies.

23 THE COURT: That's all right. I don't know if it
24 matters for your questioning or not.

25 Mr. Hinckley, any objection to either one of those?

1 MR. HINCKLEY: None. No.

2 MS. STOUT: I'm sorry. Turn to Exhibit 28.

3 THE WITNESS: Okay.

4 MS. STOUT: We would move to have Exhibit 28 admitted
5 then.

6 THE COURT: You may -- any objection to 28,
7 Mr. Randazza?

8 MR. RANDAZZA: To Exhibit 28, no.

9 THE COURT: 28's admitted.

10 (Exhibit 28 was received into evidence.)

11 BY MS. STOUT:

12 Q. Mr. Kushner, do you recognize the area depicted in
13 Exhibit 28?

14 A. Yes.

15 Q. Can you please identify that for us.

16 A. That's the area outside the east entrance of the library,
17 West Charleston Library.

18 Q. And are you familiar with this area?

19 A. Yes.

20 Q. Could you identify for us approximately where you saw
21 Mr. Deans standing and circulating his petition when you first
22 encountered him.

23 A. Like I said, about 15 to 20 feet from the door.

24 Do you want me to point at this drawing?

25 THE COURT: You may be able to pull it up on the

1 screen.

2 COURTROOM ADMINISTRATOR: Do you have it on the
3 lectern connected or . . .

4 MS. STOUT: Um-hmm.

5 COURTROOM ADMINISTRATOR: Okay.

6 THE COURT: You might need to re-connect it again.
7 (Brief pause in proceedings.)

8 MS. STOUT: If we can go off the record a moment, I
9 believe I may have another adapter.

10 THE COURT: Sure.

11 (Brief pause in proceedings.)

12 THE COURT: I'm going to step off the bench for a
13 minute while you fix that up.

14 (Brief pause in proceedings.)

15 THE COURT: Let's go back on the record.

16 You may proceed when you're ready.

17 BY MS. STOUT:

18 Q. Mr. Kushner, we're speaking of a exhibit that's been
19 marked Number 28. While we were in recess I gave you an
20 additional copy of Exhibit 28. Mr. Randazza had an opportunity
21 to review it.

22 Using the screen, can you indicate to us where,
23 approximately, Mr. Deans was standing when you first
24 encountered him outside of the library.

25 A. Pointing to the screen?

1 THE COURT: It's a touch screen.

2 THE WITNESS: Okay.

3 THE COURT: So if you touch it, you can circle.

4 THE WITNESS: In that -- in that general vicinity
5 (indicating).

6 BY MS. STOUT:

7 Q. Okay. I'm sorry. I know you had stated earlier, can you
8 please repeat. Approximately how far from the doors would you
9 estimate that space was?

10 A. Roughly 15 to 20 feet.

11 Q. All right. Can you now please mark the exact -- that spot
12 on the additional copy of Exhibit 28 that I handed you.

13 A. Yeah. (Witness complies).

14 Q. We've heard testimony today that there's also a sidewalk
15 adjacent to this -- to the east entrance area; is that correct?

16 A. Yes.

17 Q. Approximately where is the sidewalk located?

18 A. Do you want me to draw on the map?

19 Q. Yes, please.

20 A. (Witness complies). About there. Yeah.

21 Q. Approximately there? I'm sorry.

22 A. Yes. Yes, approximately there.

23 Q. Okay. And how far towards the parking lot would the --
24 does the sidewalk extend to?

25 A. The sidewalk butts up against the parking lot.

1 Q. So the entire distance between the marks you had just made
2 to indicate the sidewalk and the parking lot is sidewalk area.
3 Is that your testimony?

4 A. Well, I'm going to mark again here.

5 Q. Okay.

6 A. The sidewalk carries on in either direction along the
7 parking lot.

8 Q. Okay. If you would, would you please turn to
9 Exhibit . . . 518.

10 THE COURT: It's in the other booklet.

11 THE WITNESS: Okay.

12 BY MS. STOUT:

13 Q. Do you recognize this area?

14 A. Yes.

15 Q. And what is this area?

16 A. It's the area just outside of the east entrance of the
17 library, West Charleston Library.

18 Q. Can you look also at Exhibit 515, 516, and 517 briefly.

19 A. (Witness complies). Okay.

20 Q. Do you recognize -- is it the same location in all of
21 these photos?

22 A. They seem to be. The 515 is most likely the east
23 entrance. The east and west entrance are very, very similar.
24 517 and 518 are definitely the east entrance.

25 MS. STOUT: We'd seek to admit Exhibits 515 through

1 518 at this time.

2 THE COURT: Any objection?

3 MR. RANDAZZA: I'm trying to get a look at them,
4 Your Honor, but no. No.

5 THE COURT: They're admitted.

6 (Exhibits 515, 516, 517, and 518 were received.)

7 BY MS. STOUT:

8 Q. Mr. Kushner, are these -- are these photos an accurate
9 representation of what the east entrance looks like currently?

10 A. Yes.

11 Q. And is that also an accurate representation of what it
12 looked like on October 13th?

13 A. Yes.

14 Q. All right. Looking at Exhibit 515 . . . exhibits a set of
15 doors.

16 A. I'm sorry?

17 Q. You're looking at 515, with a set of doors?

18 A. Yes.

19 Q. It appears that those doors are four panels across.

20 You're -- are you familiar with the doors at the West
21 Charleston branch?

22 A. Yes.

23 Q. Do all four panels open?

24 A. The two center panels open. The -- so the answer to the
25 question is no.

1 Q. You said the two center panels open?

2 A. Yes.

3 Q. Do they swing out? How -- what direction do they open?

4 A. They slide. It -- side to side.

5 Q. Okay. So when someone is entering or exiting, they can --
6 is it correct that they would only be able to enter or exit
7 through those center two panels?

8 A. On the east side of the building, yes.

9 Q. Can -- do you have an estimate of the size or the width of
10 the opening?

11 A. I could guess between --

12 Q. We'd prefer that you don't guess.

13 A. No. I've never measured it.

14 Q. All right. Earlier Mr. Deans represented that he
15 occasionally will speak with many petitioners at once, as many
16 as five. Given your knowledge of this space, if there were
17 five or six people standing 15 to 20 feet from the entrance, do
18 you believe that that would possibly obstruct someone's ability
19 to enter or exit?

20 A. Yes.

21 Q. Given that difficulty, the library has designated a space;
22 correct?

23 A. Yes.

24 Q. Looking back again at Exhibit 28 --

25 A. Okay.

1 Q. -- which is the map you had been marking on.

2 A. Yeah.

3 Q. Can you please -- can you please designate on the map and
4 show us where that designated space is.

5 A. The paper or the screen?

6 Q. On the screen first, if you would.

7 THE COURT: Hang on a minute.

8 COURTROOM ADMINISTRATOR: Is it the ELMO?

9 MS. STOUT: No. It's the -- it's my laptop.

10 THE WITNESS: (Witness complies).

11 BY MS. STOUT:

12 Q. You've -- you've indicated the area directly opposite the
13 doors?

14 A. Yes.

15 Q. On the opposite side of the circular plaza; is that
16 correct?

17 A. Yes.

18 Q. For the record, would you now mark that same area on
19 Exhibit 28.

20 A. Yes. (Witness complies).

21 Q. Is this the area that you showed Mr. Deans on
22 October 13th?

23 A. Yes.

24 Q. Have you in the past showed -- shown other petitioners
25 where the designated area is?

1 A. Yes.

2 Q. What area have you shown them?

3 A. The same one that I marked on this map.

4 Q. On October 13th did you make an ad hoc decision and
5 spontaneously choose this location?

6 A. No.

7 Q. How did you know what location to choose?

8 A. We've determined this location for petitioners in advance.
9 The Library District has.

10 THE COURT: How did you know that?

11 THE WITNESS: How did I know where the location was?

12 THE COURT: Um-hmm. Yes.

13 THE WITNESS: Because it was disseminated between all
14 the people in charge of the branch that that's the location.

15 THE COURT: Is there a picture?

16 THE WITNESS: No picture.

17 THE COURT: How did you know that location? Did
18 somebody walk you out and say this is where it is?

19 THE WITNESS: Yes.

20 THE COURT: Do you remember -- was it a long time
21 ago? Recently?

22 THE WITNESS: Long time ago. We've had petitioners
23 for years.

24 THE COURT: Okay. So, someone had previously told
25 you that's the location?

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 You may continue.

4 MS. STOUT: Just a couple additional questions.

5 BY MS. STOUT:

6 Q. Earlier you testified that you had informed Mr. Deans that
7 there is a check-in procedure if you're circulating a petition.
8 Did Mr. Deans inquire as to the requirements of this -- of the
9 check-in procedure?

10 A. Not to me.

11 Q. Are you -- were you made aware of him asking anyone the
12 specific steps or procedure for checking in?

13 A. No.

14 MS. STOUT: Thank you.

15 (Counsel conferring.)

16 MS. STOUT: Also, we'd like to have the exhibit that
17 Mr. Kushner marked admitted as Exhibit 28A.

18 THE COURT: Any objection?

19 MR. RANDAZZA: Could I see it? Because it -- is it
20 exactly the same as we're seeing on the screen here?

21 THE COURT: It's -- yeah. You'll need --

22 MS. STOUT: May I approach?

23 THE COURT: Ms. Stout, you want to come, yeah,
24 retrieve it, if you would.

25 MR. RANDAZZA: That's fine.

1 THE COURT: 28A is admitted.

2 (Exhibit 28A was received into evidence.)

3 THE COURT: Mr. Hinckley, any objection?

4 MR. HINCKLEY: No. That's fine.

5 THE COURT: I apologize for not checking with you.

6 (Brief pause in proceedings.)

7 BY MS. STOUT:

8 Q. If you would please turn to Exhibit 2.

9 A. Okay.

10 Q. Exhibit 2 has previously been admitted.

11 Have you seen this document before?

12 A. Yes.

13 Q. Do you -- do you recognize the document?

14 A. Yes.

15 Q. Can you identify it for us?

16 A. It's an Incident Report that I filled out on October 13th.

17 Q. When you say you filled it out, can you -- can you
18 describe to us what information you provided. I'm sorry, what
19 of the text here did you -- did you provide?

20 A. The -- the entire -- the entirety of the text.

21 Q. So you identified -- so you added in the names of the
22 witnesses as well as the description?

23 A. Yes.

24 Q. Okay. Have you had a chance to review this document since
25 you first drafted it?

1 A. Yes.

2 Q. Is it -- is it accurate? Are there any facts that are
3 inaccurate? I'm sorry.

4 A. No, there aren't any facts that are inaccurate.

5 Q. Are there -- do you have any additional facts that you
6 feel you would need to be added in order to make this document
7 complete?

8 A. No.

9 MS. STOUT: No further questions at this time.

10 THE COURT: Mr. Hinckley?

11 MR. HINCKLEY: Thank you.

12

13 CROSS-EXAMINATION OF SAM KUSHNER

14 BY MR. HINCKLEY:

15 Q. Good afternoon, Mr. Kushner.

16 A. Good afternoon.

17 Q. I'd like to just cover as briefly as we can as quickly as
18 we can the conversation you had with Mr. Deans outside.

19 You approached him. Did you identify yourself?

20 A. Yes.

21 Q. And what was the first thing you said to him concerning
22 his presence there that day?

23 A. Concerning his presence, I merely told him that we had --
24 that we have a check-in procedure for petitioners, you know,
25 that was the first thing I said to him.

1 Q. Did you ask him if he was gathering signatures for a
2 petition?

3 A. No.

4 Q. How did you know that he was gathering signatures for a
5 petition that day?

6 A. As I approached him, he was having somebody sign a
7 petition.

8 Q. Okay. So you told him that he had to register. He
9 responded in however he -- in whatever manner he did. What did
10 you ask him next, or say to him next?

11 A. I told him -- I told him that I would show him where our
12 designated location was for petitioners.

13 Q. And you described that you walked over to the spot and
14 pointed?

15 A. Yes.

16 Q. Did you say anything further to Mr. Deans after that?

17 A. Yes. When it was obvious that he wasn't going to stand in
18 the designated location, I asked him to leave for the day.

19 Q. And what was your basis for doing that? What was your
20 rationale for doing that?

21 A. He wasn't following staff instruction.

22 Q. And did you have some authority or a handbook or a policy
23 that you had in your head when you said that to him?

24 A. I have the authority to ask people to leave as the person
25 in charge of the library.

1 Q. Okay. And what is your basis for doing that? What's your
2 authority? Is there a handbook that you've read as an
3 assistant manager? Is there a policy that you've seen written
4 by a Library District that you've read that gives you that
5 authority?

6 A. We have something called a PIC Manual, Person-in-Charge
7 Manual that I've read. It doesn't -- that manual doesn't give
8 me the authority; my job position does.

9 Q. But that PIC Manual tells you what to do, does it not?

10 A. It gives guidelines, yeah.

11 MR. RANDAZZA: Objection. Hearsay.

12 THE COURT: Overruled.

13 MR. RANDAZZA: I mean, do we have the manual?

14 THE COURT: Well, I presume he's not offering it for
15 the truth of the matter asserted. He's getting to his state of
16 mind as to why he did what he did.

17 MR. HINCKLEY: And I asked him what his basis for
18 making the statement and we've -- and he said generally that it
19 was the manual that gave guidelines.

20 THE COURT: Overruled.

21 BY MR. HINCKLEY:

22 Q. And after you asked him -- directed him to leave for the
23 day did you have any further conversation with him? Did you
24 say anything else?

25 A. Yes. I told him that -- after he said he was calling the

1 police, I told him that I would be inside, once -- asked him to
2 let me know when they arrived.

3 Q. Did you hear him talk on the phone to anyone receiving the
4 phone call that you saw him make?

5 A. No.

6 Q. And that at that point you departed and left the area and
7 went back into the library?

8 A. Yes.

9 Q. Who did you speak with concerning your conversation with
10 Mr. Deans inside the library?

11 A. I approached several of the people that act as person in
12 charge and explained what happened, just in case that they were
13 called upon to deal with the situation.

14 Q. Okay. Did you talk to two people you say?

15 A. Several. At least . . . at least four.

16 Q. And what was the reason that you spoke to four people,
17 approximately?

18 A. Each of those people act as person in charge occasionally
19 and they needed to be aware of the situation that this
20 gentleman was asked to leave for the day and was refusing.

21 Q. Okay. Can we just quickly go with last names of those
22 four, please. Best -- to your recollection.

23 A. Rush, Josephson, Jakus, Merkel.

24 Q. And after you spoke to those four, what did you do after
25 that?

1 A. Continued my normal daily work.

2 Q. Did you have anything further then to do with Mr. Deans?

3 A. Him personally, no. I had looked out the window and
4 noticed that he hadn't left so, about 2:45 I called the police
5 since apparently he was unable to get the police to come.

6 Q. Okay. Let me ask you one thing before we go to your phone
7 call.

8 What -- do you understand Ms. Jakus -- am I saying
9 her name correctly? Jakus?

10 A. Yeah.

11 Q. Do you understand her to be the branch manager of the West
12 Charleston branch?

13 A. Yes.

14 Q. Is she your supervisor?

15 A. Yes.

16 Q. And when you conversed with her, did you give her a
17 recommendation?

18 A. I don't remember.

19 Q. Did you tell her of your decision to tell him to leave for
20 the day?

21 A. Yes.

22 Q. What was the length of time between the time you spoke
23 with Ms. Jakus and the time that you phoned the College of
24 Southern Nevada Police Department?

25 A. Less than half an hour.

1 Q. I'm sorry. I didn't hear that.

2 A. Less than half an hour.

3 Q. Okay. Tell me what you said as best you recall, please,
4 on the phone call to the CSN PD.

5 A. I said that there was a man that wasn't following staff
6 instruction and I asked for them to send somebody over.

7 Q. When Officer Summerlin came into the library branch, did
8 you speak with her personally?

9 A. I don't remember.

10 Q. Okay. So you wouldn't recall any conversation you had
11 with her then; correct?

12 A. Correct.

13 Q. Okay.

14 MR. HINCKLEY: Do I have to hit any button to make
15 that go?

16 BY MR. HINCKLEY:

17 Q. This is Exhibit 506.

18 Mr. Kushner, would you take a look at that and tell
19 me if you recognize it. I'm just pushing the paper up a little
20 bit so you can see the entirety of the page.

21 THE COURT: You can zoom out if you want, on the top.
22 Yeah.

23 BY MR. HINCKLEY:

24 Q. Do you recognize that document -- that page, Mr. Kushner?

25 A. No. I don't recognize it.

1 Q. You don't recall having read that so forth?

2 A. I may have, but I don't remember.

3 Q. Would it be likely that it is from the PIC Manual, if I'm
4 saying that word correctly?

5 A. It's possible.

6 Q. Did you give Mr. Deans, when you were conversing with him,
7 a trespass warning?

8 A. I asked him to leave for the day. I didn't read the
9 trespass warning.

10 Q. Okay. When you asked him to leave for the day, in your
11 view as an assistant manager, did you trespass him? Did you
12 give him a trespass warning?

13 A. No.

14 MR. HINCKLEY: That's all my questions. Thank you.

15 THE COURT: Mr. Randazza?

16 MR. RANDAZZA: Yes, Your Honor.

17

18 CROSS-EXAMINATION OF SAM KUSHNER

19 BY MR. RANDAZZA:

20 Q. Hi, Mr. Kushner.

21 A. Hello.

22 Q. I'd like to go back to 506 and . . . was this moved into
23 evidence?

24 MR. HINCKLEY: It wasn't.

25 MR. RANDAZZA: Are we just presuming we're doing

1 that?

2 MR. HINCKLEY: Well, I plan to speak with Ms. Jakus
3 about it and we'll see where she goes.

4 MR. RANDAZZA: Okay.

5 Well, why don't we move it into evidence now.

6 THE COURT: Any objection to 506 coming into
7 evidence?

8 MR. KENNEDY: No. That -- that's out of the --

9 THE COURT: 506 is in.

10 (Exhibit 506 was received into evidence.)

11 BY MR. RANDAZZA:

12 Q. So this is the -- is this part of the PIC Manual?

13 A. I just said I don't remember but, it may be.

14 Q. Have you ever read the PIC Manual?

15 A. Yes.

16 Q. When?

17 A. Shortly after it was produced.

18 Q. Can you give me a --

19 A. I don't remember.

20 Q. -- who was president at the time?

21 A. I don't remember when it was produced.

22 Q. Like, was it last year? 10 years ago?

23 A. Between those times.

24 Q. So it could have been 367 days ago or it could have been
25 nine years ago?

1 I mean, can you narrow it down for me at all?

2 A. Definitely within the last six years it was produced.

3 Q. So based on that, you called the police without issuing a
4 trespass warning?

5 A. Yes.

6 Q. But this says you're not supposed to do that; is that
7 correct?

8 A. That's what this says.

9 Q. How many times have you called the police without issuing
10 a trespass warning?

11 A. I don't remember.

12 Q. So many you can't remember or . . .

13 A. I don't keep track.

14 Q. So, safe to say it's happened multiple times?

15 A. It has happened multiple times.

16 Q. And it's not a rare occurrence?

17 A. Calling the police is a rare occurrence.

18 Q. But you can't remember how many times you've done it?

19 A. No.

20 Q. Now, when Mr. Deans was out there, was he interfering with
21 ingress or egress from the library at all?

22 A. He was impeding access to the library.

23 Q. How?

24 A. By standing where he was.

25 Q. 15 to 20 feet away?

1 A. Yes.

2 MR. RANDAZZA: Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 MR. RANDAZZA: Let the record reflect I have a
6 Stanley LeverLock tape measure that I'd like to use.

7 Would you mind holding that?

8 THE WITNESS: No.

9 MR. RANDAZZA: This is 15 feet (indicating).
10 This is 20 (indicating).

11 You're telling me he was impeding the doorway from
12 this distance?

13 THE WITNESS: I didn't say he was impeding the
14 doorway; I said he was impeding access to the library.

15 BY MR. RANDAZZA:

16 Q. How was he doing that from this distance?

17 A. He was standing between where people park and the door.
18 People would have to have walked around him in order to get to
19 the door.

20 Q. You really expect us to believe that he --

21 COURT REPORTER: Sir, I can't hear you.

22 THE WITNESS: Do you want me to continue holding
23 this?

24 MR. RANDAZZA: Yes, I do.

25 ///

1 BY MR. RANDAZZA:

2 Q. You're telling me that he was able to goaltend the door
3 from that distance?

4 A. I didn't say goaltend.

5 MS. STOUT: Objection. Argumentative.

6 THE COURT: Sustained.

7 BY MR. RANDAZZA:

8 Q. Okay. You can fold up that 20-foot tape measure.

9 I'd like to turn to Exhibit 505.

10 Actually, no. Let's go back to your drawing, if we
11 could instead. Is that Exhibit 28? Did we call it 28A?

12 MS. STOUT: 28A.

13 THE COURT: 28A.

14 What happened to it? Who has it?

15 MR. RANDAZZA: Or we can just bring up 28A.

16 There we go.

17 BY MR. RANDAZZA:

18 Q. Now, I have -- 28A, you sketched out a little diagram
19 there?

20 COURTROOM ADMINISTRATOR: It's right here.

21 MR. RANDAZZA: Could I hold 28A?

22 THE COURT: You may.

23 MR. RANDAZZA: May I approach the witness?

24 THE COURT: You may.

25 ///

1 BY MR. RANDAZZA:

2 Q. Could you reproduce that here just for demonstrative
3 purposes?

4 A. On the screen?

5 Q. Yes. Please.

6 A. (Witness complies).

7 Q. Thank you.

8 So, this place down here (indicating) that you
9 designated as where you told him to stand, you didn't make that
10 up on the spot?

11 A. No.

12 Q. Oops. What's going on here?

13 A. I didn't tell him to stand there.

14 Q. Can we -- can we --

15 COURTROOM ADMINISTRATOR: Do you want to clear it?

16 MR. RANDAZZA: I think he had it a little bit more up
17 but, I mean, is that more --

18 THE COURT: Wait a minute. We'll clear it.

19 BY MR. RANDAZZA:

20 Q. Yeah. Why don't -- why don't you just do it again. Just
21 that spot. Don't worry about where he was at this time.

22 A. (Witness complies).

23 Q. Okay. That a -- so, who has told you before that that's
24 the spot?

25 A. I don't recall.

1 Q. On this drawing, do you see anything you would describe as
2 a center circle?

3 A. Yes.

4 Q. Can you point to it?

5 A. (Indicating). Yes.

6 Q. Put your finger on it and make a mark.

7 A. (Witness complies).

8 Q. Is it not working?

9 A. A circle or a mark?

10 Q. The center circle. Please put an "X" through the center
11 circle.

12 A. (Witness complies).

13 Q. Thank you.

14 Now, have you ever seen other people sent over to
15 this -- I'm just going to call this, well, area "B" as we
16 called it before. How's that?

17 Is that okay with everybody?

18 Area "B" being the --

19 A. Which one are you referring to as area "B"?

20 Q. The one you circled down at the bottom there between the
21 two pillars.

22 A. Okay.

23 Q. Just for the sake of the record, area "B."

24 Have you seen other people in charge enforce that
25 area?

1 A. Yes.

2 Q. How many?

3 A. I don't recall.

4 Q. Can you name any of them?

5 A. Yes.

6 Q. Name them, please.

7 A. Steve Dimoulas. Jenny Wrightsill (phonetic). Tracy
8 Josephson. Florence Jakus. Scott Clonen (phonetic). Carlito
9 Sanchez. There are probably others I can't recall.

10 Q. Thank you.

11 In your opinion, is that a reasonable place for them
12 to be put?

13 A. Yes.

14 Q. On what do you base that opinion?

15 A. It allows patrons access to the building without being
16 impeded and it allows the petitioners a location to stand where
17 they can communicate with people entering and exiting the
18 building.

19 Q. If he were to stand here (indicating), would that be
20 reasonable?

21 A. No.

22 Q. Do you know who came up with this spot?

23 A. I do not know.

24 Q. Now, if I -- if I could turn your attention to
25 David Bowie, please -- let's turn your attention back to --

1 let's keep this in the background, but if we could come back to
2 505.

3 Does this look like it could be from the PIC Manual?

4 A. Yes.

5 Q. Which is the manual you relied upon for your authority to
6 trespass Mr. Deans?

7 A. My authority is not granted by the PIC Manual.

8 Q. I'm sorry. You said that. It's granted by your job?

9 A. By the Library District.

10 Q. The Library District has endowed you with that power?

11 A. Authority.

12 Q. Now, if you look at this, this says -- can you see where
13 it says, "Each library will designate an area for signatures to
14 be gathered that's no less than 50 feet from the main entrance
15 and in such an area that does not cause a safety concern"?

16 A. Okay.

17 MR. RANDAZZA: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 MR. RANDAZZA: Your Honor, I've handed the witness
21 the large blowup of Exhibit 28 along with a ruler to scale that
22 we've already discussed.

23 BY MR. RANDAZZA:

24 Q. Sir, would you measure the distance from the doors using
25 that ruler to about where you say that that area begins.

1 A. (Witness complies). Okay.

2 Q. How many feet is it?

3 A. Looks like -- looks like 65.

4 MR. RANDAZZA: May I reapproach to take my exhibit
5 back?

6 THE COURT: You may.

7 BY MR. RANDAZZA:

8 Q. 65 is more than 50; right?

9 A. Yes.

10 Q. Okay. And this rule says no less than 50?

11 A. This paper says no less than 50.

12 Q. Okay. Now, when you told him he would have to leave for
13 one day, told my client to leave for one day, but the trespass
14 order says one year. Did you order it to be one year?

15 A. I asked him to leave for one day.

16 Q. Who told him to leave for a year?

17 A. I believe it was Florence Jakus that issued the trespass.

18 Q. Okay. Did you see anything happen in between you telling
19 him he had to leave for a day and Ms. Jakus saying he had to
20 leave for a year?

21 A. Yes.

22 Q. What did you see happen?

23 A. In the -- in this area here?

24 Q. Yes, sir.

25 A. I saw Ms. Jakus speaking with him. I saw the police

1 speaking with him.

2 Q. Any punches thrown?

3 A. No.

4 Q. Anything violent happen?

5 A. No.

6 Q. Just speaking?

7 A. Yes.

8 Q. Shouting?

9 A. I didn't hear shouting.

10 Q. Now, you testified that you said that there was a check-in
11 procedure for petitioners. Is that true?

12 A. Yes.

13 Q. Not a registration procedure?

14 A. No.

15 Q. You didn't use the word "registration"?

16 A. I don't recall using that term.

17 Q. You recall using the word "check-in"?

18 A. Yes.

19 Q. Describe the procedure.

20 A. Petitioner enters the building, seeks the person in
21 charge.

22 Q. How do they find the person in charge?

23 A. Ask any staff member.

24 Q. So they come in and they say, "Who's in charge around
25 here?"

1 A. Yes.

2 Q. They bring them to you?

3 A. If I'm in charge at the time.

4 Q. Okay. And how many times have you engaged in this
5 procedure?

6 A. I haven't counted.

7 Q. A lot?

8 A. Yes.

9 Q. More than a hundred?

10 A. Probably not.

11 Q. More than 50?

12 A. It's hard to estimate.

13 Q. But so many you couldn't tell me how many?

14 A. Correct.

15 Q. All right. What's the procedure? Is it different every
16 time or is it the same every time?

17 A. Well, each person is different.

18 Q. Okay. Tell me about the last one you remember.

19 A. The petitioner will approach me, tell me they're checking
20 in and I'll ask -- I will usually ask if they've already been
21 shown the location where -- our designated location for them to
22 stand. If they haven't been shown, I'll walk out there and
23 show them.

24 Q. What do you mean "check in"? Like, you're saying they'll
25 check in. What do they have to do?

1 A. Tell me they're there.

2 Q. So they have to come up and say, "I'm here"?

3 A. And tell me that they're petitioning.

4 Q. So, "I'm here. I'm petitioning"?

5 A. Yes.

6 Q. And that's how it's gone every time you've done it?

7 A. That's sufficient.

8 Q. Well, that's not what I asked you. Sounds very efficient.

9 Doesn't sound like a procedure.

10 A. I don't -- I don't recall.

11 Q. You don't recall if you've done it differently?

12 A. I don't recall if that's the way it's done every single

13 time.

14 Q. Well, do you recall if that's the way it's done every time

15 you do it?

16 A. I don't recall.

17 Q. Have you ever engaged in banter with the person?

18 A. I don't recall.

19 Q. Do you ever smile at them?

20 A. Yes.

21 Q. Okay. But you don't recall if you ever engage in

22 conversation with them?

23 A. No.

24 Q. Do you have any memory issues?

25 A. Not that I'm aware of.

1 Q. Head injuries, anything like that?

2 A. No.

3 Q. Okay. But you can't recall a single incident of a
4 check-in procedure where you maybe have or maybe haven't talked
5 to the person?

6 A. I speak to people on a daily basis.

7 Q. Do you ever ask them their name?

8 A. Yes.

9 Q. During the check-in procedure?

10 A. I don't recall. Probably not.

11 Q. Well, of all these times you can't recall, you're sitting
12 here in a federal courthouse under oath telling me you've done
13 it so many times you can't remember, you can't remember any of
14 this stuff, and you can't remember if you ever asked someone
15 their name when they checked in?

16 MS. STOUT: Objection. Argumentative.

17 THE WITNESS: Correct.

18 THE COURT: Sustained.

19 MR. RANDAZZA: I can break that up into a bunch of
20 little pieces but I think I've made my point.

21 Can we bring up Exhibit 515, please.

22 Actually, skip that. Bring it to 517.

23 BY MR. RANDAZZA:

24 Q. Can you draw there, like, just so we can remember, from
25 the schematic, where the area is.

1 A. There being what?

2 Q. Area "B."

3 A. What's area "B"?

4 Q. Well, we discussed that earlier. Do you not remember?

5 A. Are you talking about the place I designated -- I showed
6 where we --

7 Q. Yes, sir.

8 A. -- designate for --

9 Q. Yes.

10 A. Well, this -- can I erase that?

11 THE COURT: Hit the "clear" button on the right side.

12 There you go.

13 THE WITNESS: (Witness complies).

14 BY MR. RANDAZZA:

15 Q. Have you interacted with petitioners after they've signed
16 in, or checked in?

17 A. I don't recall.

18 Q. You don't recall ever interacting with them or not
19 interacting with them?

20 A. After check-in procedures?

21 Q. Yes.

22 A. I don't recall.

23 Q. Do you ever recall looking out the window and seeing if
24 they're still out there?

25 A. Yes.

1 Q. Do you ever recall any of them being more than a single
2 person?

3 A. Yes.

4 Q. What, two people? Three people? A crowd?

5 A. I do recall at least two people at one occasion.

6 Q. Okay. And I'm sorry, maybe it's pedantic, but any of them
7 have a table?

8 A. Yes.

9 Q. They set it up in this spot?

10 A. Yes.

11 Q. More than 50 feet from the door; correct?

12 A. Yes.

13 Q. And you say that's reasonable?

14 A. Yes.

15 Q. Now, you testified earlier that my client was blocking the
16 door from 20 feet away.

17 A. No, I didn't.

18 Q. He was impeding access?

19 A. Yes.

20 Q. Okay. So it was hard for people to get in and out?

21 A. He was impeding access.

22 Q. Did anybody tell you it was hard for them to get in or out
23 of the door?

24 A. No.

25 Q. So, did anybody look like they were in distress?

1 A. I hadn't noticed anyone.

2 Q. So what are you basing that opinion that he was impeding
3 them on?

4 A. His location.

5 Q. So not his interaction with other human beings?

6 A. No.

7 Q. So this was a hypothetical? He could impede or he did
8 impede?

9 A. Could.

10 Q. Okay. So not that he did?

11 A. I . . . no.

12 Q. Does the library allow handicap people to come to the
13 facilities?

14 A. Yes.

15 Q. If somebody's got a table set up in this reasonable area,
16 how are they going to get into the plaza?

17 A. By the ramp access that's off to the -- from this picture,
18 off to the right of that picture as well as off to the left of
19 that picture.

20 Q. But if they want to get in through this one (indicating),
21 too bad for them?

22 A. The person would have to set up the table off to the side
23 a little bit so the person -- somebody can go up that ramp.

24 Q. So they'd have to move their table, that's already per se
25 in a reasonable place as far as you're concerned?

1 A. If they're blocking the ramp, they would have to move the
2 table.

3 Q. Two or three people there, standing right in that spot, I
4 mean, really the spot is almost -- what I'm seeing here is
5 almost -- it's almost co-extensive with the handicapped access.
6 But a man standing 20 feet away could be impeding access. But
7 multiple people standing right there (indicating), corralled
8 there, they're not impeding handicapped access?

9 A. I haven't seen that happen.

10 Q. You haven't seen it or you don't remember?

11 A. I don't remember having seen something like that happen.

12 Q. People come and use this plaza and they just want to talk
13 to other people. Do they need to go through the check-in
14 procedure?

15 A. No.

16 Q. They want to hand out leaflets, can they do it without
17 doing the check-in procedure?

18 MS. STOUT: Objection. Assumes facts not in
19 evidence.

20 THE COURT: Overruled.

21 THE WITNESS: If they're not -- what was the
22 question? Do they have to go -- no.

23 BY MR. RANDAZZA:

24 Q. So, if Mr. Deans wants to talk to somebody about something
25 in the square, he can do that, but if he wants to get a

1 signature, he has to do it in this reasonable area?

2 A. Yes.

3 Q. So what if he wants to talk to them about the measure
4 before or after getting the signature?

5 A. If he's petitioning, he has to stand in the designated
6 location.

7 Q. Well, what if he's petitioning and talking to them about
8 religion or politics or football?

9 A. He'd have to stand in the designated location if he's
10 petitioning.

11 Q. So no matter what he's doing, if he's petitioning and
12 speaking, he must be corralled to this area?

13 A. Yes.

14 MR. RANDAZZA: Thank you.

15 No further questions.

16 THE COURT: Follow-up -- well, hang on a second. Let
17 me ask a couple of questions. That may educate Mr. Kennedy's
18 follow-up.

19 Mr. Kushner, did you tell -- did you talk to the CSN
20 police at all when they got there?

21 THE WITNESS: Yes.

22 THE COURT: And what did you tell them?

23 THE WITNESS: I told them that there was a petitioner
24 outside and would not follow staff instructions.

25 THE COURT: Did you tell the police that he was

1 blocking the entrance?

2 THE WITNESS: No.

3 THE COURT: Did you tell them he was blocking access
4 or impeding access?

5 THE WITNESS: No. I think I only told them that he
6 wasn't following staff instruction.

7 THE COURT: Okay.

8 THE WITNESS: There were multiple officers. I don't
9 think I spoke to Officer Summerlin.

10 THE COURT: You did speak to Officer Summerlin?

11 THE WITNESS: I don't think so. I think I spoke to
12 one of the other officers.

13 THE COURT: Did you tell Mr. Deans that he needed to
14 get any approval in order to be out there?

15 THE WITNESS: Approval?

16 THE COURT: Yes.

17 THE WITNESS: No. Just that he needed to check in.

18 THE COURT: Is that plaza open to the public?

19 THE WITNESS: Yes.

20 THE COURT: Do you place any restrictions or limits
21 on access to that plaza?

22 THE WITNESS: For -- for petitions we ask them to
23 stand in a specific location. Otherwise, no. And people
24 registering people to vote as well.

25 THE COURT: Have you seen, in the time you've worked

1 there, any CSN students or other folks out there milling about
2 in the plaza?

3 THE WITNESS: Yes.

4 THE COURT: What's the common use you see of that
5 plaza?

6 THE WITNESS: Common use is ingress and egress of the
7 library.

8 THE COURT: Okay. Any other uses you see on a
9 regular basis?

10 THE WITNESS: Occasionally I'll see somebody out
11 there smoking.

12 THE COURT: Okay. Ever see people out there talking,
13 conversing, having debates, or chatting?

14 THE WITNESS: Occasionally.

15 THE COURT: Okay. Do you ever see students or anyone
16 out there conducting surveys or things like that? Asking
17 questions? Maybe not gathering petition signatures, but asking
18 questions or talking to people about things?

19 THE WITNESS: I don't remember anything like that.

20 THE COURT: If there was a person out there gathering
21 signatures related to the baseball all-star game, would they
22 have to check in?

23 THE WITNESS: If they're gathering signatures, we
24 consider that -- I would consider that a petition, I would have
25 them check in.

1 THE COURT: What if there was a -- somebody from
2 Comcast trying to sign customers up or some other commercial
3 operation trying to sign customers up?

4 THE WITNESS: There's no soliciting permitted in the
5 library.

6 THE COURT: So soliciting is permitted?

7 THE WITNESS: Right.

8 THE COURT: So you would do what then?

9 THE WITNESS: I would ask them to stop.

10 THE COURT: When someone, a petitioner or a vote --
11 voting registrar comes in to check in, what information do they
12 have to give to the library staff when they check?

13 THE WITNESS: Just let us know what they're doing.

14 THE COURT: Do they have to identify themselves?

15 THE WITNESS: No.

16 THE COURT: Do they have to tell what they're
17 petitioning about?

18 THE WITNESS: No.

19 THE COURT: What if the Girl Scouts are selling
20 cookies out in the plaza?

21 THE WITNESS: Soliciting is not permitted.

22 THE COURT: All right. Those were my questions.

23 Mr. Kennedy, any follow-up? I'm sorry. Ms. Stout.

24 We've got the real lawyer up this time. I apologize.

25 ///

1 REDIRECT EXAMINATION OF SAM KUSHNER

2 BY MS. STOUT:

3 Q. Just a few follow-up questions.

4 Going back to the check-in procedure that we've
5 discussed. Are there any specific particular or magic words
6 when a person checks in?

7 A. No.

8 Q. Is it possible that every person who has checked in may
9 have used slightly different language?

10 A. Yes.

11 Q. And you had testified earlier that you checked in multiple
12 people?

13 A. Yes.

14 Q. Over the course of your employment?

15 A. Yes.

16 Q. And can you remind us how long you've been an assistant
17 branch manager?

18 A. Six years. Since 20 -- summer of 2010, so . . .

19 Q. And is it your experience that there may, at times, be
20 more than one person checking in for -- on a particular day to
21 circulate a petition?

22 A. Yes.

23 Q. Do people sometimes circulate petitions in groups?

24 A. Yes.

25 Q. And sometimes people circulate petitions individually as

1 Mr. Deans did?

2 A. Yes.

3 Q. Are there -- are there activities that are prohibited in
4 the plaza, other than soliciting which you had mentioned?

5 A. Yes.

6 Q. Would you be able to give us a complete list of all
7 prohibited activities?

8 A. No.

9 Q. Why not?

10 A. Anything that's illegal. So, that would be a long list,
11 wouldn't it?

12 Q. I believe it would be.

13 So, you had mentioned no soliciting. You had said
14 that there are restrictions obviously on petitioning or voter
15 registration and in addition to that there are other prohibited
16 activities; is that correct?

17 A. Yes.

18 Q. So, would it be -- sorry. Strike that.

19 During the time that you've been a branch manager how
20 many different types of activities have you had to, you know,
21 address or speak to someone about, that occurred in the east
22 entrance area?

23 A. As assistant branch manager? Different types of
24 activities, I've had . . . I couldn't count. I don't -- I
25 don't remember.

1 Q. More than five?

2 A. Yes.

3 Q. More than 10?

4 A. Probably, yes.

5 Q. Approximately how often do you need to speak to someone
6 about their behavior or their conduct that is occurring in the
7 east entrance?

8 A. That entrance specifically? Outside?

9 Q. Yes.

10 A. It's very rare.

11 MS. STOUT: No further questions at this time.

12 THE COURT: Let me ask one before you step down. I
13 forgot to ask you an earlier question and I think I asked you
14 this earlier. The designated area that we've sort of referred
15 to as area "B" that you drew the circle on, you know that's the
16 location because someone told you that previously?

17 THE WITNESS: Yes.

18 THE COURT: Did anybody ever show you anything in
19 writing saying this is where it is or show you a visual
20 depiction of that?

21 THE WITNESS: The, um . . . recently, within the last
22 couple of years, the Library District had to register the
23 locations with some governing body and at that time I think we
24 wrote down a description of it.

25 THE COURT: Were you involved in that process?

1 THE WITNESS: I think it was the branch manager.

2 THE COURT: Do you remember what was written down?

3 THE WITNESS: Word for word, no.

4 THE COURT: Okay. Did you ever hear that area
5 referred to in reference to the center circle?

6 THE WITNESS: Yes.

7 THE COURT: Tell me what you recall about that.

8 THE WITNESS: I think it was the far edge of the --
9 they might have said the center circle.

10 THE COURT: Where would that be -- well, hold on a
11 second.

12 Pull up Exhibit 28.

13 Where would the far edge of the center circle be,
14 according to your understanding?

15 THE WITNESS: (Indicating).

16 THE COURT: Okay. The record will reflect --

17 THE WITNESS: But that's not what we had determined.

18 THE COURT: Well, hang on a second. The record's
19 going to reflect that you drew a blue line on the eastern edge
20 of the inside circle on Exhibit 28.

21 Now, clarify what you were going to say.

22 THE WITNESS: I was under the impression it was the
23 far edge of the circle.

24 THE COURT: And why did you have that understanding?

25 THE WITNESS: That's where I was shown and that's all

1 of the descriptions that we had. I think there was a
2 miscommunication when the -- the location was designated, but I
3 don't know.

4 THE COURT: Which time? The center circle you're
5 talking?

6 THE WITNESS: Yeah. When it was labeled center
7 circle, I think it was a miscommunication.

8 THE COURT: Why do you think that?

9 THE WITNESS: Because we've always had it as the far
10 edge of the circle. I don't know who had it the center.

11 THE COURT: Okay. All right.

12 I'm done with my questioning if you want to follow up
13 on that. Ms. Stout, anything further?

14 MS. STOUT: Just a couple follow-up questions.

15 THE COURT: Yep.

16 BY MS. STOUT:

17 Q. Please turn to Exhibit 27.

18 THE COURT: It's on your screen there.

19 MS. STOUT: I believe that this exhibit was
20 previously admitted.

21 THE COURT: Yeah.

22 MR. RANDAZZA: Can we see that on the screen?

23 THE WITNESS: Okay.

24 MR. RANDAZZA: Oh, I apologize.

25 (Counsel conferring.)

1 BY MS. STOUT:

2 Q. Is this the document that you referenced a few minutes ago
3 that was registered with the Secretary of State?

4 A. Yes.

5 Q. How do you know that to be true?

6 A. I recognize this document.

7 MS. STOUT: No further questions.

8 THE COURT: Mr. Hinckley?

9 MR. HINCKLEY: Nothing from the redirect. Thank you.

10 THE COURT: Mr. Randazza?

11 MR. RANDAZZA: Just a couple short ones.

12 THE COURT: All right.

13

14 RE CROSS-EXAMINATION OF SAM KUSHNER

15 BY MR. RANDAZZA:

16 Q. Is smoking allowed in the center circle?

17 A. Smoking is not permitted within a certain number of feet
18 from the door. I don't remember the number of feet.

19 Q. Is it permitted in the plaza at all?

20 A. Yes.

21 Q. Are people allowed to run through the plaza?

22 A. If I saw somebody running, I would ask them to walk.

23 Q. Is there a policy against running through the plaza?

24 A. Nothing written.

25 Q. Is there a smoking room inside the library?

1 A. No.

2 Q. So if somebody said, "Where can I smoke?" what would you
3 tell them?

4 A. Outside.

5 Q. Anybody ever ask you that?

6 A. I don't remember.

7 Q. Are you in meetings where they develop the policies for
8 the library? Do they include you in that process?

9 A. No.

10 Q. Never, or none that you remember?

11 A. No. I'm not involved in creating policies for the
12 library.

13 Q. And you testified earlier it was rare that there were
14 problems outside?

15 A. Yes.

16 Q. What does "rare" mean?

17 A. Not frequent.

18 Q. Well, once a day? Once a month? Once a year? My God,
19 Mr. Deans really stands out in my mind?

20 A. Maybe once or twice a year.

21 Q. That's all problems?

22 A. Outside in that east plaza? Maybe once or twice a year.

23 Q. Kids skateboarding?

24 A. If we see a kid skateboarding, we'll ask him to stop.

25 Q. Naturally.

1 There's a sign that says that, isn't there?

2 A. I don't recall. Probably.

3 MR. RANDAZZA: Thank you.

4 THE COURT: Any follow-up, Ms. Stout?

5 MS. STOUT: No more questions, Your Honor.

6 THE COURT: Mr. Kushner, you can step down finally.
7 Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: Watch your step as you come around there.

10 MR. KENNEDY: I'll go get Ms. Jakus and Mr. Kushner
11 is excused so he can remain in the courtroom.

12 THE COURT: Yes.

13 Is there any reason to keep him on? We're not going
14 to recall them, are we?

15 MR. RANDAZZA: None for us, Your Honor.

16 THE COURT: Mr. Hinckley?

17 MR. KENNEDY: No.

18 THE COURT: You're excused.

19 Just leave that up there. Thank you, Mr. Kushner.
20 Thanks for coming up.

21 (Witness excused.)

22 THE COURT: Let's take a 10 minute afternoon break
23 before we put the next witness on.

24 (Recess was taken at 3:39 p.m.)

25 (Proceedings resumed at 3:57 p.m.)

1 THE COURT: All right. Let's go back on the record.
2 If you'd stand up, please, and be sworn in.

3 COURTROOM ADMINISTRATOR: Do you solemnly swear that
4 the testimony you are about to give in the cause now pending
5 before this Court will be the truth, the whole truth, and
6 nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 COURTROOM ADMINISTRATOR: Have a seat.
9 Please state your name for the record.

10 THE WITNESS: My name is Florence Jakus.

11 COURTROOM ADMINISTRATOR: Spell your last name.

12 THE WITNESS: J-a-k-u-s.

13 COURTROOM ADMINISTRATOR: And give your city and
14 state of residence, please.

15 THE WITNESS: Las Vegas, Nevada.

16 COURTROOM ADMINISTRATOR: Thank you.

17 THE COURT: Any relation to Matthew Jakus?

18 THE WITNESS: No.

19 THE COURT: You may proceed when you're ready,
20 Ms. Stout.

21 MS. STOUT: Thank you.

22

23 DIRECT EXAMINATION OF FLORENCE JAKUS

24 BY MS. STOUT:

25 Q. Ms. Jakus, can you identify your employer for us, please.

1 A. My employer is the Las Vegas Clark County Library
2 District.

3 Q. Do you work at a particular branch of the district?

4 A. I work at the West Charleston branch.

5 Q. How long have you worked at the West Charleston branch?

6 A. 24 years.

7 Q. Have you had the same position that entire time?

8 A. No, I have not.

9 Q. Can you tell me what your first position was?

10 A. My first position was Health Science Librarian.

11 Q. Approximately how long did you hold that position?

12 A. Approximately 12, 13 years.

13 Q. And at that point you took on a different position?

14 A. Yes. Assistant branch manager.

15 Q. And approximately how long did you hold that position?

16 A. Not sure. I know I've been branch manager approximately
17 five, five and a half years now.

18 Q. So the interim time between those two you had one position
19 and it was assistant branch manager; is that correct?

20 A. Yes.

21 Q. Okay. Can you describe your responsibilities as branch
22 manager.

23 A. As branch manager I'm responsible for the running of the
24 building itself along with the staff. I supervise department
25 heads and also supervise them with their direct reports. I

1 make sure that the facility is working optimally for the
2 comfort of the people using the library and they're receiving
3 materials and services that they need.

4 Q. Earlier Mr. Kushner informed us that he is considered a
5 PIC, a person in charge; that there's more than one person that
6 falls within that category. Are you a person in charge when
7 you're working?

8 A. Yes.

9 Q. As a person in charge would you be someone notified of
10 irregularities in operations, safety --

11 A. Definitely. Yes, I would be.

12 Q. -- and patron issues?

13 Were you working on October 13th of this year?

14 A. Yes, I was.

15 Q. Are you aware that the plaintiff, Mr. Deans, was engaged
16 in circulating a petition on that date?

17 A. Yes.

18 Q. How did you become aware of his activities?

19 A. Mr. Kushner, my assistant branch manager and the PIC at
20 the time, had informed that he had asked Mr. Deans to stay in
21 the designated area if he was going to petition, and he was
22 not.

23 Q. Approximately what time did you receive this information?

24 A. Approximately 2:30.

25 Q. And how -- what did you do after you received this

1 information?

2 A. I told Mr. Kushner I would go out and talk with the
3 gentleman -- we did not know his name at the time -- and inform
4 him as to he needed to stay in the designated area.

5 Q. And did you go outside?

6 A. I did go outside.

7 Q. Did you go outside alone or with another staff member?

8 A. I went out with another staff member.

9 Q. Who was that staff member?

10 A. His name was Steve Dimoulas. He's a librarian.

11 Q. And why did Mr. Dimoulas go with you?

12 A. I'm not quite sure why. He tagged along.

13 Q. Did you ask him to accompany you?

14 A. Not specifically I don't believe.

15 Q. Okay. When you went outside, what happened?

16 A. The gentleman, Mr. Deans, that was in the area near the
17 door and I introduced myself and I asked his name. He decided
18 not to share his name. I explained that, you know, there was a
19 designated area and Mr. Kushner had mentioned -- described the
20 area to him and showed him the area and he said he could, you
21 know, be anywhere in this area, in this entire area of the
22 plaza and I said no, there is a designated area and he started
23 talking about Nevada Revised Statutes and different rights.

24 Q. I'm going to show you an exhibit that's been previously
25 admitted as Exhibit 28.

1 Have you seen this diagram before?

2 A. Yes, I have.

3 Q. Do you know what the diagram depicts?

4 A. This is the east entrance area at the West Charleston
5 Library.

6 Q. And is that the area where Mr. Deans was located on
7 October 13th?

8 A. Yes.

9 Q. Using the touch screen, can you touch approximately where
10 Mr. Deans was located when you first encountered him.

11 A. He was approximately right here (indicating).

12 Q. Can you estimate a -- do you have an estimate of how far
13 that location is from the doors to the library?

14 A. That's probably 10 to 12 feet from the door of the
15 library.

16 Q. Okay. And when you first encountered him, was he actively
17 engaged in petitioning? Was he speaking with someone?

18 A. I don't believe he was speaking with anybody at the time.
19 He was just in the general area.

20 Q. Okay. You said that you told him that there is a
21 designated area. Can you show us where that designated area
22 is.

23 A. Designated area is down here (indicating).

24 Q. Is that the area that you showed Mr. Deans, on
25 October 13th?

1 A. I'm not sure if I actually walked over to the area to show
2 him. I know Mr. Kushner had shown him the area. So I'm not --
3 but I did say he needed to stay in the designated area. I'm
4 not sure if I actually walked over and showed him or not.

5 THE COURT: Can I interrupt for just a minute.

6 Ms. Jakus, on that Exhibit 28, where it says "doors,"
7 that's a big area. The doors would be a very thin part. Are
8 they -- where on that are the doors actually located?

9 THE WITNESS: The doors, I think, are actually
10 located right -- right here (indicating). I think this is
11 the -- where it says "doors," it's actually the interior --

12 THE COURT: Let me -- let me correct you if I can,
13 because I think those are pillars, the Stonehenge looking
14 pillars. I think those are on the circle if I'm not mistaken.

15 THE WITNESS: Okay. Then -- then the door would
16 be . . . if -- okay. This would actually be the door
17 (indicating), the sliding glass door.

18 THE COURT: Okay. So right where the check -- sort
19 of the checkerboard --

20 THE WITNESS: Yes.

21 THE COURT: Right at the top of that box that says
22 "doors"; right?

23 THE WITNESS: Yes.

24 THE COURT: Okay. Thank you very much.

25 You may proceed, Ms. Stout.

1 BY MS. STOUT:

2 Q. The area that you marked as the area designated for
3 petitioning, is that a very narrow area? You marked it
4 essentially as a line on the map.

5 A. It can probably -- I've had petitioners that come up like
6 this (indicating) between the columns, so it's like this whole
7 area here (indicating).

8 Q. Do petitioners -- so petitioners don't have to remain
9 standing directly between the columns at the very, very -- on
10 the curb?

11 A. No, not -- no. They do not.

12 Q. On October 13th did Mr. Deans ask you any questions
13 regarding the designated area?

14 A. Not that I remember.

15 Q. Did he ask you any questions regarding the check-in
16 procedure?

17 A. No. I explained the check-in procedure to him. He did
18 not ask about it.

19 Q. So, you had testified that you had informed him of the
20 designated area. How did Mr. Deans respond?

21 A. He started talking about Nevada Revised Statutes and his
22 rights to petition and I said I -- I understood his rights to
23 petition, but our policy and guidelines rule, one, that you had
24 to come in and notify the person in charge that you were here,
25 and two, be in the designated area to petition.

1 Q. Did Mr. Deans indicate whether or not he intended to
2 comply and move to the designated area?

3 A. He did not indicate he was willing to move to the
4 designated area. He said he needed to be closer than further
5 out. He wanted to be closer to the door, he said to me.

6 Q. I'm sorry. I missed the last part.

7 A. He said he needed to be closer to the door.

8 Q. Closer to the door than he would have been had he been in
9 the designated area?

10 A. Yes.

11 Q. Did you -- did you discuss with Mr. Deans what, if any,
12 consequences there might be if he did not move to the
13 designated area?

14 A. I know Mr. Kushner had said if -- he would be asked to
15 leave for the day if he did not stay in the designated area.
16 I -- I said I really needed him to stand in the designated
17 area, that, you know, that was the responsibility of the
18 petitioner to stay in the designated area. I don't know if I
19 acknowledged -- I stated any specific warnings or anything.

20 Q. But you had been informed that Mr. Kushner had provided
21 those warnings?

22 A. Yes.

23 Q. We're aware that the police were called. Do you know who
24 called the police?

25 A. I believe Mr. Kushner did.

1 Q. Did you discuss calling the police with Mr. Kushner before
2 he made the call?

3 A. We did.

4 Q. And can you describe that conversation.

5 A. He indicated that he would like to call the campus police
6 and I said, "Yes, please do," because I thought maybe if the
7 police came over and explained to Mr. Deans what needed to be
8 done, that maybe he would listen to them since he didn't seem
9 to be listening to multiple requests from staff.

10 Q. When Mr. Kushner called the police, had you made a
11 decision as to whether or not you wanted him to be trespassed?

12 A. Not at that point, no.

13 Q. During your time as branch manager and assistant branch
14 manager had there been other instances where you have called
15 the police without the intention to have someone trespassed?

16 A. Definitely. Yes.

17 Q. Can you describe to us why you might make that call if
18 you're not asking them to have someone trespassed.

19 A. People may have been argumentative, swearing, drunk, not
20 willing to leave the property, or stand in this -- in the case
21 of Mr. Deans, stand in the designated area. Those are all
22 examples of why I would call the police.

23 Q. I'd like you to look at Exhibit 505 -- I'm sorry -- 506.

24 A. Okay.

25 Q. Are you familiar with this document?

1 A. Yes.

2 Q. Can you identify the document, please.

3 A. It's the Trespass Law for the Library District.

4 Q. Is this -- is this one of the policies and procedures for
5 the Library District?

6 A. Yes, it is.

7 Q. You said earlier that Mr. Kushner had informed you that he
8 had talked about having Mr. Deans leave for the day.

9 A. Correct.

10 Q. I don't see where that's written on this policy. Is it --
11 am I miss -- is it written on this policy?

12 A. To just leave for the day?

13 Q. Um-hmm.

14 A. I . . . I don't specifically see it written on the policy
15 but we have asked people to leave for the day if they've been
16 argumentative or not obey -- you know, listening to our
17 instructions about behavior in the library or outside of the
18 library on the property of the library.

19 Q. Under "Action," the first enumerated item says, "It is a
20 library policy that staff should deal with all behavior
21 problems as they arise and not call the police until other
22 means fail to control the problem."

23 In your experience, is that how incidents are handled
24 at the West Charleston branch?

25 A. Yes, it is.

1 Q. In light of this particular policy is there a formula or a
2 specific set of rules or steps that are always followed no
3 matter what incident occurs?

4 A. We definitely try to reason with the person that is
5 causing the disruption or whatever the behavior problem and ask
6 them multiple times to, you know -- you know, please, you know,
7 not do that behavior or to, you know, instruct them and if they
8 don't, eventually we -- we will ask them to leave for a day or
9 tell them they will be left for a day like Mr. Kushner did. So
10 we -- you know, we want to give everybody a chance to, you
11 know, settle down and not have to, you know, tell them to be
12 trespassed off library property. That's not our aim in life.

13 Q. So if you're -- if it's your goal to give everyone a
14 chance --

15 A. Yes.

16 Q. -- does everyone -- do some people get more chances, than
17 others, based on the circumstances?

18 A. No. There's consistency by people in charge to make sure
19 that we follow consistent pattern to make sure that we're
20 consistent with all people.

21 Q. If someone was being violent, would that situation be
22 handled differently than someone who was being argumentative?

23 A. Yes.

24 Q. How do you decide how to address a situation?

25 A. I listen to what the person say -- says. I explain the

1 policies that we have for -- for what their -- whatever the
2 incident is and ask them, you know, to please obey our
3 policies. That's basically the formula.

4 Q. Does a person's behavior -- physical stance, demeanor,
5 tone of voice -- does that play into your decision in terms of
6 how you handle a situation?

7 A. If they're being violent, if they're swearing, I'll
8 probably -- I'll be more apt to, you know, respond in the way
9 of being a little bit more fearful for my safety and my staff's
10 safety so, I would respond with more, you know, probably
11 calling the police sooner rather than later, if necessary.

12 Q. Are you aware or do you know whether or not Exhibit 506
13 that we're looking at, the Trespass -- titled Trespass Law, is
14 this the current and most recent version of the policy?

15 A. As far as I know this is the most current version of the
16 policy.

17 Q. Do you know whether or not the policy is being updated or
18 not?

19 A. I don't have any information on that.

20 Q. Okay. I'd like you to turn to Exhibit 516. This exhibit
21 had earlier been admitted.

22 Do you recognize this area?

23 A. I believe that this is the east area outside the east
24 doors of the library.

25 Q. And is this an accurate depiction of what the area looked

1 like on October 13th?

2 A. Yes.

3 Q. Is it still accurate with respect to its appearance today?

4 A. As far as I know, yes.

5 Q. When did you last see the area?

6 A. Yesterday.

7 Q. All right. Have you look then at 517.

8 A. So 517 is another view of the same area from a different
9 angle.

10 Q. All right. The area that's been designated for
11 circulating petitions, is that area visible in either or both
12 of these photos?

13 A. It's predominant in 517 more so than in 516.

14 Q. Can you show us generally where that area is by working on
15 the touch screen.

16 A. We're looking at this -- this -- these -- this area right
17 here (indicating).

18 Q. Can you mark the area also on 516.

19 A. So it will be, I believe, over in here (indicating).

20 Q. Looking at 517, are those the main doors off the east
21 entrance?

22 A. Those are the main doors off the east entrance, yes.

23 Q. And then there are -- in looking, there are pillars to
24 each side --

25 A. Correct.

1 Q. -- is that correct?

2 Are those pillars flush with the wall or are they set
3 out further into the plaza?

4 A. Are you talking about flush to the wall of the door?

5 Q. I'm sorry. Yes. Are they flush with the door or are they
6 set further out in the plaza?

7 A. They're set further out into the plaza. They're not flush
8 to the door.

9 Q. In 516 we can see a sidewalk. Do you see -- do you see
10 that?

11 A. Yes.

12 Q. Does the sidewalk continue and extend on the other side of
13 the plaza?

14 A. Yes, it does.

15 Q. If one kept walking on the sidewalk, past the plaza on to
16 the other side, how far does the sidewalk go?

17 A. Um, it goes all the way down to the, um, end of the
18 parking area.

19 Q. Does it connect down there with the sidewalk that runs
20 parallel to Charleston?

21 A. No, it does not.

22 Q. Would it be fair to say that it essentially dead ends into
23 the parking lot?

24 A. Yes.

25 Q. If one were to walk down that, could one get to anywhere

1 other than the parking lot, without leaving the sidewalk?

2 A. No.

3 Q. If you'd turn to Exhibit 520.

4 I'll put on the record that while we were at recess
5 all of the counsel for all parties agreed that all exhibits
6 that had been designated, we stipulate that they be admitted.

7 MR. RANDAZZA: We did.

8 THE COURT: Mr. Hinckley, you agree?

9 MR. HINCKLEY: Yes.

10 THE COURT: All right. Then all of the exhibits in
11 the binders that have been presented are admitted.

12 (Exhibits admitted.)

13 BY MS. STOUT:

14 Q. Looking at Exhibit 520, there's a -- you see a bench in
15 the photo?

16 A. Yes. Right here (indicating).

17 Q. Are there any other benches in the plaza area that --
18 sorry -- the east plaza area?

19 A. I think that might be the only bench in this plaza area,
20 yes.

21 Q. Are there any tables in the area?

22 A. No tables.

23 Q. Is there any other structure where people would easily sit
24 or congregate?

25 A. No.

1 Q. In your experience, do people often sit and congregate for
2 extended periods of time?

3 A. No. Not usually.

4 Q. What types of activities occur in the plaza on a -- on a
5 daily or regular basis?

6 A. People are entering and leaving the library. People may
7 sit down and have a cigarette or something. They may eat a
8 snack. That sort of thing.

9 Q. Would it be fair to describe these activities as temporary
10 short-term activities?

11 MR. RANDAZZA: Objection. Leading.

12 BY MS. STOUT:

13 Q. What is the duration that someone usually spends?

14 THE COURT: Sustained.

15 THE WITNESS: Probably not more than 15 minutes.

16 BY MS. STOUT:

17 Q. Are there activities that are prohibited in the east
18 entrance area?

19 A. What do you mean by "activities"?

20 Q. Or is there conduct or behavior that is prohibited?

21 A. We expect the same behavior that they would do inside the
22 library, that they would be respectful and, you know, not
23 bother people and go about their business coming or entering
24 the library or having their cigarette or snack. That's all.

25 Q. Is there a specific and finite list of activities or

1 behaviors that are prohibited?

2 A. No. There's not a finite list.

3 Q. Could you draft a list?

4 A. Probably not. I mean, you know, our Rules of Conduct have
5 a list of different behaviors that we expect in the library,
6 but it's not a comprehensive list.

7 Q. During your tenure with the Library District in recent
8 years have you seen conduct or behavior that was new to you
9 that you hadn't seen happen before?

10 A. No.

11 Q. No?

12 Is it easily categorized in terms of prohibited
13 conduct?

14 A. Yes.

15 Q. How would you categorize it?

16 A. The conduct -- you know, if people are boisterous or
17 disruptive to other people, if they're drunk, they're -- you
18 know, behavior that is -- could be of safety issues to other
19 people in the library or outside the library, those types of
20 behaviors.

21 Q. When there are issues in the plaza area in the east
22 entrance, who, on the staff, is most likely to observe that
23 behavior?

24 A. We have a security guard inside the east entrance. Lots
25 of times they will notice it. That would be the primary

1 person, or somebody looking out.

2 Q. If they do notice that, what is the procedure they usually
3 follow?

4 A. They would notify the person in charge of the building.

5 Q. Do they ever address or speak with the person directly?

6 A. They may.

7 Q. In the event that a security guard notices someone
8 engaging in prohibited behavior and they speak with them
9 directly and the person complies, would they necessarily --
10 what would they do next?

11 A. What would the security guard do next?

12 Q. Yes.

13 A. Probably just let the person in charge know that they had
14 spoken with somebody outside on the plaza or in the library
15 about an issue.

16 Q. Would they need to have a person in charge come out and
17 speak with that person?

18 A. Not necessarily.

19 Q. On October 13th, after the police arrived, Mr. Deans was
20 ultimately trespassed.

21 A. Yes.

22 Q. How did the decision -- how -- how was the decision made
23 to trespass him?

24 A. I -- I made the decision. I asked the police to trespass
25 him because he was unwilling to comply with our request of

1 petitioning in a particular area that's designated for
2 petitioning.

3 Q. And you made this -- and after you made that request, what
4 happened?

5 A. Mr. Deans did not want to speak to the officers near me
6 so, they -- he asked the officers to move over to the other
7 side to speak to them.

8 Q. Were you able to hear the conversation once they moved to
9 the side?

10 A. No, not really.

11 Q. When that conversation -- when that conversation
12 concluded, what action was taken by either the officers or by
13 Mr. Deans?

14 A. The officers trespassed him. He was given an appeal form
15 that I had provided the officers.

16 Q. Who gave him the appeal form?

17 A. One of the officers did. I had given the officers the
18 appeal form.

19 Q. Did you have any further interaction with Mr. Deans on
20 October 13th after that point?

21 A. No, I did not.

22 MS. STOUT: No further questions at this time.

23 THE COURT: Mr. Hinckley?

24 MR. HINCKLEY: Thank you.

25 ///

1 CROSS-EXAMINATION OF FLORENCE JAKUS

2 BY MR. HINCKLEY:

3 Q. Good afternoon, Ms. Jakus.

4 A. Good afternoon.

5 Q. Could you remind me how long you have been the branch
6 manager at the West Charleston Library, please.

7 A. I believe it's just over five years now.

8 Q. And as the branch manager you're the most senior Library
9 District official at the library branch?

10 A. Yes.

11 Q. And so you, as part of your responsibilities as branch
12 manager, is to have operations comport with Library District
13 policy?

14 A. Correct.

15 Q. And concerning specifically the events on October 13th
16 concerning Mr. Deans, was Library District policy followed?

17 A. Yes, it was.

18 Q. Did you first learn of Mr. Deans' presence outside the
19 east entrance when Mr. Kushner came in and reported that to
20 you?

21 A. Yes, I did.

22 Q. What understanding did you have after Mr. Kushner's report
23 concerning what had been asked of Mr. Deans to do?

24 A. I had understood that Mr. Kushner had asked him to stay in
25 the designated area and to follow our policies. He was not

1 doing that and that's when I went out to speak to him again to
2 ask him again to stand in the designated area.

3 Q. Okay. Before you go outside, again, I want to ask what
4 you understood Mr. Kushner had done relative to Mr. Deans.

5 A. I had understood that he had explained the policies to
6 him, the designated area, had warned him that he would be asked
7 to leave for at least a day if he did not comply.

8 Q. Did you understand him that he told Mr. Deans if he didn't
9 move, he would be trespassed for the day or that he told him he
10 needed to leave for the day?

11 A. As far as I know, Mr. Kushner had said that he had asked
12 him to leave for the day.

13 Q. Okay. And you've addressed this with counsel to some
14 degree. What does that mean to you as branch manager that
15 Mr. Deans had to leave for the day? Tell me what that means to
16 you.

17 A. Usually we ask somebody to leave for the day because
18 they're not complying with the policies and procedures that we
19 have and it's a temporary one-day thing.

20 Q. And what's the purpose of that one-day action?

21 A. That we hope they'll come back and comply the next day.

22 Q. Is that a trespass?

23 A. It's not a trespass.

24 Q. What is it if you ask someone who is otherwise present on
25 public property to leave?

1 A. Maybe just they're sleeping in the library or whatever, we
2 just ask them --

3 Q. I'm sorry. I didn't hear you.

4 A. If we ask them -- if we have somebody -- for example, the
5 other day we had somebody that was sleeping in the library and
6 I told them that if he continued sleeping, he would have to
7 leave for the day because sleeping in the library is not
8 allowed. So we're just asking them to take a time-out and then
9 they can come back the next day.

10 Q. Is the reason that the one-day action is not mentioned in
11 Exhibit 506, which is the Trespass Law, is that because it is
12 not part of the policy?

13 MR. RANDAZZA: Objection. Leading.

14 THE COURT: Sustained.

15 BY MR. HINCKLEY:

16 Q. Does the Trespass Law, Exhibit 506, address in any respect
17 the one-day --

18 A. I don't believe it does. The Trespass Law is usually used
19 as a one-year thing. I believe administration is looking at
20 revising that in the future. That has not been completely
21 revised to the best of my knowledge.

22 Q. Okay. Is there anything else that you concluded from
23 Mr. Kushner other than he had designated the spot, he had asked
24 him to leave for the day before you went out to contact
25 Mr. Deans? Anything else?

1 A. Well, he hadn't asked him to leave for the day; he said he
2 would be asked to leave for the day if he didn't comply.

3 Q. Okay.

4 A. So Mr. Kushner had not asked him to leave for the day at
5 that time.

6 Q. Okay. Anything else before you went out?

7 A. Mr. Kushner mentioned that Mr. Deans had said he was
8 calling the police and I believe Mr. Kushner said fine, let me
9 know when they arrive, and I went out to talk to Mr. Deans.

10 Q. And at that point you went out to contact Mr. Deans.

11 Would you tell me what you said to him, please.

12 A. I introduced myself. I asked his name. He didn't share
13 it with me. He started talking about the N.R.S. statutes and
14 his right to petition. I finally said, "I -- I do understand
15 your rights to petition." I said, "We are just asking you,
16 one, to let us know when you -- you come in -- come in and let
17 us know that you're here to petition, and two, that you would
18 please use the designated area."

19 Q. And then he responded in whatever manner he did. What did
20 you say next?

21 A. You know, I again asked him if he would please -- you
22 know, if he was going to petition, he needed to be in the
23 designated area. He could not be as close to the doors as he
24 was because he was in -- hindering people from entering and
25 exiting in an easy way.

1 Q. What did you say next?

2 A. I asked him to please stop standing in the area he was and
3 to stand in the designated area and . . . in the meantime, I
4 believe Sam called the police and they came out.

5 Q. Okay. After you told him, as you indicated a minute ago,
6 that you asked him to stand in the designated area, did you say
7 anything else to him?

8 A. I don't remember that I did.

9 Q. Okay. At that point did you depart and go back inside?

10 A. I did go inside for a brief moment of time when they said
11 the police had come over.

12 Q. Okay. And who did you speak with first when you went back
13 inside the library after speaking with Mr. Deans?

14 A. I believe I spoke with Sam first.

15 Q. And what did you say to him?

16 A. I just -- you know, he told me the police had -- were
17 coming over and I said, "Well, you know, I would really like
18 them to have him leave or, you know, be trespassed," because at
19 this point Mr. Deans didn't seem to want to comply with our
20 policies regarding petitioning.

21 Q. So you didn't hear Mr. Kushner's call to the police?

22 A. No, I did not.

23 Q. It was at that moment that you had concluded that he,
24 Mr. Deans, would be trespassed?

25 A. Yes.

1 Q. Okay. Any other conversation with Mr. Kushner that you
2 recall?

3 A. Not that I recall.

4 Q. Okay. What happened next relative to the incident
5 concerning Mr. Deans?

6 A. The police had arrived. They -- they came on the west
7 entrance so they walked through the building. I -- I did ask
8 the police -- I explained that he was not complying with our
9 policies for petitioning and I did ask the police to trespass
10 him.

11 Q. Do you remember speaking with a female officer?

12 A. Yes, Dr. -- Officer Summerlin.

13 Q. Okay. And let's go through what you indicated to her,
14 please.

15 Do you recall what you first said?

16 A. I don't know if I recall after two weeks, but I think I
17 indicated that I wanted him trespassed since he wasn't
18 following the petitioning policies that we had.

19 Q. Okay. What else did you say? I just want to try and push
20 you to as much detail as you can provide us here today, please.

21 A. Um . . . I really don't remember at that moment exactly
22 what I said to Officer Summerlin.

23 Q. Might you have said to her that, in addition, that he
24 was -- that you wanted him trespassed, that he was not willing
25 to follow your request relative to the spot, would you also

1 have said that he was causing a disturbance near the front
2 doors?

3 A. That's a possibility.

4 MR. RANDAZZA: Objection. Leading. And is the
5 lawyer testifying?

6 THE COURT: Sustained.

7 BY MR. HINCKLEY:

8 Q. Do you recall anything else that you said to him -- or --
9 excuse me -- to Officer Summerlin?

10 A. You know, I did say that he was too close to the doors;
11 that he needed to be back in the petition area if he was going
12 to be petitioning.

13 Q. Okay.

14 MR. HINCKLEY: Can the Court put up the overhead?

15 BY MR. HINCKLEY:

16 Q. This is Exhibit 506 and you recognize that --

17 A. Yes.

18 Q. -- correct?

19 And when was the last time you read this, Ms. Jakus?

20 A. Probably read it last week when I was reviewing things for
21 this.

22 Q. Okay. Let me be a little more precise. When would you
23 have read this prior to October 13th?

24 A. Not recently.

25 Q. Okay. But after reading it last week that helped inform

1 your answer to the Court a few minutes ago that all policies of
2 the library were followed concerning Mr. Deans on October 13th?

3 A. I believe so.

4 Q. Okay. Did the library staff issue a trespass warning to
5 Mr. Deans?

6 A. I gave the trespass warning to Officer -- oh, trespass
7 warning. He did -- he -- he was going to be said to be asked
8 to leave for the day. I may have said that he would be
9 trespassed. I don't remember for sure. It's been two weeks
10 already.

11 Q. Okay. And the policy requires --

12 A. Um-hmm.

13 Q. -- that before the police are called that the library
14 staff must issue a trespass warning. Is that a fair
15 characterization of what the Trespass Law policy states?

16 A. Yes.

17 Q. Okay. Do you recall saying to Officer Summerlin that
18 Mr. Deans had been asked to leave the premises?

19 MR. RANDAZZA: Objection. Leading.

20 THE COURT: Overruled.

21 BY MR. HINCKLEY:

22 Q. Do you remember the question?

23 A. Yes. I did ask -- I did tell Dr. -- Officer Summerlin
24 that he had been asked to -- that he would be asked to leave,
25 yes.

1 Q. What did you ask Officer Summerlin to do specifically?

2 A. I asked her that if he wasn't going to leave, if he
3 would -- that I -- I would have him trespassed. I gave her the
4 trespass information. I gave her the appeal so he could
5 appeal.

6 Q. Okay. Let's go back to your statement and then we'll go
7 on from there.

8 A. Okay.

9 Q. When you say that you asked her to trespass him -- I don't
10 want to put words in your mouth -- would that be fair? To
11 trespass him?

12 A. Yes.

13 Q. What does that mean to you as the branch manager?

14 A. That means that he cannot come on our property for a
15 designated period of time. Generally that's a year, but that
16 can be appealed. We've had people that have had less trespass
17 time than a year.

18 Q. Okay. Did you say anything else to Officer Summerlin
19 concerning the trespass?

20 A. I explained to Officer Summerlin that, you know, we had
21 asked him multiple times to, you know -- you know, abide by our
22 policy for petitioners to stand in the petition area and not be
23 too close to the doors and -- because he was hindering people
24 from entering and leaving. And that, you know, he had not
25 complied with our request.

1 Q. Okay. Did you give Officer Summerlin anything?

2 A. I gave her an appeal form so that he could appeal it
3 through the Library District.

4 Q. Is that the Notice of Trespass? Is that the document
5 you're thinking of?

6 A. I believe that is.

7 Q. Who wrote, in the Notice of Trespass, "Failure to follow
8 staff instruction"?

9 A. Sam did. Mr. Kushner.

10 Q. Okay. And you got that from him obviously?

11 A. Yes.

12 Q. Okay. Did you hand her anything else?

13 A. I don't remember.

14 Q. Okay. What did you do then relative to Officer Summerlin?
15 Did the conversation continue? Did it stop? What did you do?

16 A. It stopped. They moved away from where I was standing to
17 speak with Mr. Deans because he did not want to speak in front
18 of us.

19 Q. And I'm talking about you and Officer Summerlin are still
20 in the library. Has -- has the conversation -- and so let's
21 assume the conversation has ended.

22 A. Okay.

23 Q. Where did officer Summerlin go?

24 A. Outside.

25 Q. And did you go with her?

1 A. I -- I did go with her.

2 Q. Okay. And where did you then at that time first contact
3 Mr. Deans? Where was he at?

4 A. He was right outside the door on the right side of the --
5 one of the first pillars.

6 Q. Okay. Did you speak to Mr. Deans then?

7 A. I -- I don't remember. I -- you know, I did say that, you
8 know, if he didn't leave, he would be trespassed, I'm sure.
9 The police -- the police were there and he did ask to talk to
10 the police in a -- in another area of the plaza.

11 Q. Okay. So you've gone outside. He's immediately outside
12 the door as you've described. Where were you standing relative
13 to Officer Summerlin?

14 A. I was standing next to her.

15 Q. Okay. Do you recall saying anything else that you haven't
16 already related to Mr. Deans during that conversation?

17 A. I do not remember anything else.

18 Q. Okay.

19 MR. HINCKLEY: That's all the questions that I have.
20 Thank you very much.

21 THE COURT: Mr. Randazza?

22 MR. RANDAZZA: Thank you, Your Honor.

23 ///

24 ///

25 ///

1 CROSS-EXAMINATION OF FLORENCE JAKUS

2 BY MR. RANDAZZA:

3 Q. Good afternoon, Ms. Jakus.

4 A. Good afternoon.

5 Q. I'd like to take a look at 517.

6 That's 16. But leave that up.

7 MR. SPERLEIN: Do you want the one --

8 MR. RANDAZZA: That's fine. 16. That's 516.

9 BY MR. RANDAZZA:

10 Q. Can you see here -- you can look on the screen. Do you
11 see this slot here (indicating)?

12 A. Yeah.

13 Q. This arrow that's pointing down (indicating). Can you see
14 that arrow that I just masterfully drew?

15 A. Yes.

16 Q. What building is that?

17 A. That yellow building?

18 Q. Yes, ma'am.

19 A. That is a college campus building on the college campus.

20 It has a library in it and classrooms.

21 Q. From where you're standing in this picture, how would you
22 say is the quickest way to get there, on foot?

23 A. Walk straight south.

24 Q. Thank you.

25 Can we see 517.

1 Now here, you said that -- can you draw again where
2 this spot is. Where we can petition.

3 A. (Witness complies).

4 Q. Now, if you look at your . . . I'd like to approach the
5 witness again with --

6 THE COURT: You may.

7 MR. RANDAZZA: -- my map.

8 Don't get rid of this but can you bring up, is it 28,
9 please.

10 BY MR. RANDAZZA:

11 Q. Now, can you -- using that ruler, can you measure from the
12 doors to where that location is that you've just drawn. And I
13 believe -- am I correct you said the doors begin kind of where
14 that checkerboard pattern begins?

15 A. So if we're looking at where the doors are, right above
16 the word "doors," down to approximately where that begins,
17 we're looking at 70 feet on this ruler.

18 Q. Okay. So, if you look at this Exhibit 28, so you're
19 saying from here (indicating) to about -- about there
20 (indicating) --

21 A. Yeah.

22 Q. -- is about 70 feet?

23 A. According to this ruler, yes.

24 Q. Okay. And if we look at Exhibit 505 -- don't close
25 that -- don't.

1 Do you see here -- do you recognize this document?

2 A. Yes.

3 Q. What is it?

4 A. It's a document that's on our website talking about
5 petitioners.

6 Q. Do you see this line here (indicating)?

7 A. Yes.

8 Q. Is that area for signatures less than 50 feet from the
9 main entrance? It's not, is it?

10 A. No.

11 MR. RANDAZZA: Bring back 516. 516.

12 BY MR. RANDAZZA:

13 Q. Now, when you -- you say you've worked at this branch for
14 24 years?

15 A. Yeah.

16 Q. You've seen a lot of things go on in that plaza?

17 A. Not really. It's not a busy plaza.

18 Q. No?

19 Are children allowed in it?

20 A. People walk in and out of the library all the time through
21 this entrance, sir.

22 Q. Has anybody ever walked due south to get to the campus
23 building?

24 A. They may. I don't know.

25 Q. You've never seen it?

1 A. I've seen people walking through the parking lot. I've
2 seen people on the sidewalk, down on the sidewalk down by the
3 road.

4 Q. Do you know what Pokemon is?

5 A. It's a game that you play on your iPad.

6 Q. Did the library designate itself a PokeStop?

7 A. We're not a PokeStop, no.

8 MR. RANDAZZA: Can you pull up the exhibit that
9 contradicts that, please, and we'll move on and I'll get back
10 to that.

11 BY MR. RANDAZZA:

12 Q. So you said that out in the plaza -- okay. So, I'm going
13 to direct your attention to this (indicating).

14 A. Um-hmm.

15 Q. It's from the CSN Library blog from July 15th, 2016.

16 A. Okay. This is talking about the CSN Library though.

17 Q. No?

18 MR. HINCKLEY: I think the objection is foundation on
19 this one.

20 THE COURT: Sustained.

21 MR. RANDAZZA: Can you scroll to the top of that.

22 BY MR. RANDAZZA:

23 Q. Do you recognize this?

24 A. No, I do not recognize this document. This document -- it
25 says, "Back to CSN Library Services."

1 MR. RANDAZZA: Can you scroll down to the URL.

2 THE WITNESS: So as far as I know, it's the CSN
3 Library, which is the College of Southern Nevada.

4 BY MR. RANDAZZA:

5 Q. And where is your library located?

6 A. We are not located next door to the -- we're located north
7 on -- north of the College of Southern Nevada's Library.

8 Q. So your -- your library is not on the CSN campus?

9 A. No. We -- we have a long-term lease.

10 Q. Okay. So, it's actually sort of an island that isn't on
11 CSN?

12 A. If you like to say that, yes.

13 But, that's not our library. That's -- that's the
14 CSN Library that -- where that blog is.

15 THE COURT: Ms. Jakus, is the Las Vegas Clark County
16 Library District part of the CSN Library system?

17 THE WITNESS: No, we are not. We are not part of the
18 college system at all.

19 BY MR. RANDAZZA:

20 Q. Are there any rules against people eating inside the
21 library?

22 A. Our library, no.

23 Q. So you can eat a sandwich in the library?

24 A. Sure.

25 Q. Can you smoke inside?

1 A. No.

2 Q. If you want to smoke, where do you go?

3 A. Outside.

4 Q. Where?

5 A. You can -- anywhere outside you want to be.

6 Q. Can you go in the plaza?

7 A. Sure.

8 Q. That bench that we saw a picture of earlier, do you see

9 people hanging out there?

10 A. I see people sitting there once in awhile, having a

11 cigarette.

12 Q. Is that the only thing people sit there for?

13 A. They may have a sandwich. They may be drinking something.

14 Q. Do you ever see people congregating out there?

15 A. Not really, no.

16 Q. Ever see anyone play Hacky Sack out there?

17 A. No.

18 Q. Anybody ever skateboard out there?

19 A. No. It's against the rules.

20 Q. Did you pass the rule before people skateboarded there or

21 do people skateboard and then you pass the rule?

22 A. I don't know when they passed the rule, sir.

23 Q. Was it within the past 24 years?

24 A. Well, since the library's only been built 24 years, I

25 guess it was within the past 24 years.

1 Q. I mean, was that a problem that they passed a rule?

2 A. They passed a rule because kids were, at times, teenagers
3 were, you know, providing a safety issue when people are trying
4 to come in and out of the library on the plaza. Also, there's
5 some steps going down to the road and they were using their
6 skateboards to go down the steps.

7 Q. Safe to say that's not ingress and egress to the library?

8 A. No, but --

9 Q. That's --

10 A. And, you know, on the plaza itself we don't allow
11 skateboarding because, again, danger of safety of people coming
12 in and out of the library.

13 Q. There's even a sign that says that; right?

14 A. I believe so.

15 Q. I'd like to turn your attention to Exhibit 10. Oh, wait.
16 No. I'm sorry. Scratch that.

17 I'd like to bring you back to a photograph we had
18 before, 517.

19 Now, can you point to about where Mr. Deans was --
20 was standing when he was petitioning?

21 A. When I was talking to him? Yes.

22 THE COURT: Wait. Wait. Wait. You both said two
23 different things. What do you want her to point to?

24 MR. RANDAZZA: Actually, you know what, move 517.
25 Let's go back to the map.

1 THE COURT: 28 you mean?

2 MR. RANDAZZA: Yes, sir.

3 BY MR. RANDAZZA:

4 Q. Now, you said earlier -- can you -- can you put your
5 finger on and it will make a spot there -- where Mr. Deans was
6 engaged in his petitioning activity.

7 A. It was in this area here (indicating).

8 Q. Is that where you said before?

9 A. Yes.

10 Q. And he was blocking the doors?

11 A. Yeah. He was -- people had to deviate to get around him.

12 Q. You personally saw that?

13 A. I did.

14 Q. Can you describe the first person who complained about it?

15 A. Nobody complained about it; they just walked around him.

16 Q. So if we bring up that -- that picture again, 517 . . . so
17 he was where?

18 A. Right in this area (indicating).

19 Q. Okay. So, he -- that's a pretty big area there.

20 Now, the doors, does this door here (indicating)
21 open?

22 A. No. That part of the door does not open. It's a sliding
23 door.

24 Q. Okay. So this --

25 A. So the doors on either side do not open.

1 Q. Okay. So this part (indicating) that I'm giving diagonal
2 stripes across, that opens?

3 A. Yes.

4 Q. Okay. So he's not actually in front of the part that
5 opens?

6 A. But people are coming out and trying to leave.

7 Q. People who didn't complain to you.

8 A. Nobody -- nobody --

9 Q. How long did you watch him?

10 A. I noticed him for probably -- I watched him for about five
11 minutes or so.

12 Q. And where were you?

13 A. I was inside.

14 Q. Where?

15 A. The lobby.

16 Q. So, if we come back to the -- to Exhibit 28, can you show
17 me where?

18 A. Inside the doors in the lobby.

19 Q. You're making these very long lines. I mean, is that --
20 were you really literally in that entire area?

21 A. Oh. I'm sorry. Not in that entire area, but, you know.

22 Q. Okay. So you were . . .

23 A. Right there (indicating). Inside the door.

24 Q. Let me try this again.

25 A. Okay.

1 Q. Just make a spot where you were.

2 A. (Witness complies).

3 Q. Okay. And make a spot where Mr. Deans was while you

4 observed him blocking people.

5 A. (Witness complies).

6 Q. Okay. So, you're watching here (indicating). He's behind

7 this pillar (indicating)?

8 A. He's not behind the pillar; he's within --

9 Q. In front of?

10 A. In front of the pillar.

11 Q. Do you see here a series of concentric circles?

12 A. Yes.

13 Q. Can you place an "X" on the center circle?

14 A. (Witness complies).

15 Q. Now, who made the decision to trespass Mr. Deans?

16 A. I did.

17 Q. For one year?

18 A. Well, he could appeal it.

19 Q. With the appeal form?

20 A. Yes.

21 Q. Can you describe the appeal form?

22 A. It gives you information about who to call and contact in

23 writing for appeal through the Library District.

24 Q. So it has a phone number?

25 A. It has -- I believe it has a phone number and it has an

1 address.

2 MR. RANDAZZA: Could we bring that up.

3 THE WITNESS: I'm not sure about the phone number
4 actually, but I know it has an address.

5 BY MR. RANDAZZA:

6 Q. This is what you're describing as an appeal form?

7 A. Yes.

8 Q. When did you start calling that an appeal form?

9 A. That's always been called an appeal form as far as I know.

10 Q. So that's not a Notice of Trespass; that's actually an
11 appeal form?

12 A. Well, it's because it says you can appeal the decision.
13 It could be also called the Notice of Trespass, but it also
14 provides them with the information for appealing.

15 Q. So, can you show me on here where it says the procedure
16 for the appeal.

17 A. It says, "If you wish to appeal this decision, you can do
18 so in writing to the library director."

19 Q. Okay. Does it say what kind of evidence you can submit?

20 A. Um . . . it says if you -- no. It just says you must do
21 so in writing to the library director within 14 days of the
22 above date.

23 Q. So it doesn't say what the standard is?

24 A. The standard?

25 Q. For an appeal.

1 A. No.

2 Q. Do you know what the standard is?

3 A. No, I don't know.

4 Q. Okay.

5 A. People can appeal for any reason they want. They may feel
6 that, you know, they shouldn't have been trespassed from the
7 library for tearing out pages in a book.

8 Q. That happened on June 6th of this year?

9 A. Yeah.

10 Q. Let's talk about that incident.

11 So somebody was tearing pages out of a book. What
12 did you do?

13 A. I actually, um -- and this is going back to June. We
14 asked him if he -- you know, we said he had been observed
15 tearing pages out of the book and he said no and we actually
16 found the book in the stacks that he had been using -- he had
17 been looking at and pages had been torn out and when he came in
18 the next time, I believe we appealed him -- we trespassed him
19 for that and he did appeal and he -- he was back in the library
20 in August.

21 Q. How did he appeal?

22 A. He wrote a letter to the director of the Library District
23 and --

24 Q. Do you have it with you?

25 A. No, I do not.

1 Q. Can you prove it exists?

2 A. I don't have a copy of it, sir.

3 Q. Okay. So what was your initial judgment of his trespass?
4 What was his sentence?

5 A. The standard trespass notice is generally for one year.
6 The Library District is looking into changing that, but it has
7 not gone through the entire process yet as far as I know.

8 Q. But Mr. Deans was initially told that he could only -- he
9 had to leave for the day.

10 A. Yeah.

11 Q. And then you came out to speak to him?

12 A. Yes.

13 Q. And did he become violent?

14 A. He did not become violent.

15 Q. Did he swear at you?

16 A. No, he did not.

17 Q. Did he yell?

18 A. No.

19 Q. Did he disagree with you?

20 A. Yes.

21 Q. So then you upgraded his sentence to a year, for arguing
22 with you?

23 A. He was arguing with us. He refused to comply. We asked
24 him multiple times to use the designated area; he did not use
25 it.

1 Q. Okay. So -- but he wouldn't use the designated area and
2 he got a day, but then he argued with you and he got a year.
3 Is that accurate?

4 A. Could you repeat that?

5 Q. Well, he was initially told he had to leave for the day.
6 Then he argued with you, so he got a year. Is that accurate?

7 A. I'm not sure if that's really accurate. I mean, you
8 know --

9 Q. So he argued with you, then he got a year?

10 A. -- we asked -- we --

11 THE COURT: Wait. Wait. Wait. Wait. Wait.

12 THE WITNESS: Well, wait. Wait. Wait.

13 THE COURT: Everybody stop.

14 You're both talking at the same time. Let her finish
15 her answer.

16 Go ahead, Ms. Jakus.

17 THE WITNESS: I -- you know, he had been asked
18 multiple times. He refused to comply. At that point, you
19 know, I felt that he was not going to comply by just, you
20 know -- I could have said leave for the day and I don't -- at
21 that point I don't think he would have left for the day.

22 BY MR. RANDAZZA:

23 Q. So instead, you told him to leave for the year?

24 A. I trespassed him, yes.

25 Q. Okay. From all Clark County public libraries?

1 A. Yes.

2 Q. And the person destroying books, they got the same thing?

3 A. Yes.

4 Q. And are there any other people who have been trespassed
5 for a year that you can recall?

6 A. Not off the top of my head. There may have been a few in
7 the past year.

8 Q. But none you were involved in the incident?

9 A. I could have been. I just would have to review those
10 Incident Reports.

11 Q. But none that you specifically recall except the one from
12 June 5th -- or June 6th. I may have that date --

13 A. Yeah.

14 Q. -- transposed but . . . You recall that one specifically
15 but none others specifically?

16 A. Yes.

17 Q. Are you the only one with the authority to make the
18 decision to trespass someone for a year?

19 A. No.

20 Q. Who else has that authority?

21 A. Any of the people in charge that are dealing with a
22 person.

23 Q. Can you explain the procedure for petitioning at this
24 library.

25 A. Our procedure is that we would like the person to -- we

1 want the person to come in and let us know that he's
2 petitioning.

3 Q. Can you tell me why?

4 A. Just so that we know somebody's out there petitioning in
5 case somebody comes in and starts complaining to us that
6 somebody's petitioning, so that we're aware of what's going on
7 in our -- our area. We don't keep a record of it or anything.
8 They can even give us several dates if they want to so that
9 they'll know -- you know, they'll be here, like, the next five
10 days or whatever petitioning. We generally show them the
11 petition area and they say thank you and we say thank you and
12 they petition and we go back inside.

13 Q. They ever set up a table?

14 A. In the past I maybe have seen one or two people that have
15 set up a table or will have an umbrella because it's sunny out.

16 Q. What about people who want to go leafletting there?

17 A. That what?

18 Q. Well, they're not actually collecting signatures. What if
19 they just want to go out there and talk to people.

20 A. That's not --

21 Q. Do they have to go through a procedure?

22 A. That's -- I don't have a procedure for that. We're
23 talking specifically about collecting signatures and
24 petitioning.

25 Q. So if somebody conducts a survey out there?

1 A. We've never had anybody doing surveys. Again, that
2 doesn't fall within the petitioning guidelines.

3 Q. You've never had anybody conduct a survey out there or
4 you're just not aware of it?

5 A. Not that I'm aware of at this time, no.

6 Q. So what if I go there and I want to petition, but I also
7 want to discuss Mr. Adelson's plan to bring the Raiders to
8 Las Vegas?

9 A. Feel free to.

10 Q. Can I do that in the petition zone or do I have to do that
11 outside the petition zone?

12 A. Since it's not actually petitioning, it's discussing with
13 somebody . . .

14 Q. What if I'm doing both? What if I have a petition for the
15 legalization of marijuana but I also want to talk about the
16 Raiders coming to Las Vegas, where do I do that?

17 A. I would say if you're petitioning for marijuana, you have
18 a petition and you want people to sign, you would be in the
19 petitioning zone, sir.

20 Q. So, I can walk out of it while we're having the Raiders
21 conversation?

22 A. Not that I'm going to be out there watching you but, you
23 could.

24 Q. And then if I lift the clipboard up, I have to jump back
25 to the spot?

1 A. You know, we take this all on the honor system, sir. You
2 know, we're not going to have somebody out there watching you
3 every minute you're out there if you're petitioning or if
4 you're speaking to somebody about bringing the Raiders to
5 Las Vegas.

6 Q. But you told me the purpose of this check -- this -- what
7 do you call it? Do you call it registration? Check-in?
8 Notification? Do you have a name for it?

9 A. I don't have a particular name. We just like people to
10 let -- petitioners to let us know that they're petitioning so
11 we're aware of what's going on. Sometimes we actually have
12 customers that come into the library and they say, you know,
13 "There's some guy out there petitioning," and we're like,
14 "Yeah. We know about it and . . ." you know.

15 Q. Do you ever have anybody come in and say there's some guy
16 out there ranting about something religious?

17 A. I haven't had anybody ask -- tell me that.

18 Q. Anything else? Any other complaints you've gotten from
19 people out in the plaza?

20 A. We've had people that said that, you know, there are
21 people sleeping out there. We've asked them to leave for the
22 day or forever if --

23 Q. For sleeping out there?

24 A. Yep.

25 Q. Is that not allowed?

1 A. No. It's not allowed on library property.

2 Q. So anywhere?

3 A. Anywhere.

4 Q. So if somebody were taking a survey out there and you
5 weren't aware of it because they didn't check in . . .

6 THE COURT: Is there a question?

7 BY MR. RANDAZZA:

8 Q. If somebody were taking a survey out there, you would not
9 be aware of it?

10 A. No. Not unless they came in and told me they were taking
11 a survey.

12 Q. Would it be allowed without them coming and telling you?

13 A. I guess so since they're doing it already. If they're
14 not, you know, obstructing traffic into and outside the
15 library. I've never had anybody, you know, do that, so . . .

16 Q. I guess I'm trying to find out what the purpose -- you
17 have the -- you say that the purpose of the check-in procedure
18 or the registration procedure, the thing that has no name, is
19 so that you know who's out there and what they're doing.

20 The windows are made of glass?

21 A. Yes.

22 Q. The door -- I'm sorry. That's a -- I didn't -- that
23 wasn't supposed to sound snarky. It's just -- I'm just tired.

24 The doors are made of glass?

25 A. Yes.

1 Q. So you could observe out the doors that Mr. Deans was out
2 there?

3 A. Yes.

4 Q. So what purpose does it serve for him to come in and check
5 in if nobody else has to do that?

6 A. Well . . . that's our policy for petitioners. We don't
7 have another policy for the other things that you've been
8 talking about. Maybe that's something the library needs to
9 look at, but at this point we're only talking about our policy
10 for petitioners, sir.

11 MR. RANDAZZA: Thank you. I have no further
12 questions.

13 THE WITNESS: Thank you.

14 THE COURT: I have a couple of follow-up.

15 Ms. Jakus, were you involved in creating the policy
16 of requiring notice for petitioners?

17 THE WITNESS: No, I was not.

18 THE COURT: Okay. Has anyone explained to you from
19 the Library District the rationale behind that policy?

20 THE WITNESS: They probably have in the past. I
21 don't know if I remember it.

22 THE COURT: Fair enough.

23 To follow up on what Mr. Randazza was saying. If you
24 looked outside through the windows or the glass doors and saw a
25 problem, you could go out and address it; correct?

1 THE WITNESS: I could.

2 THE COURT: So, the advanced notice of a petitioner
3 doesn't necessarily avoid problems created by the petitioner;
4 correct?

5 THE WITNESS: It does not necessarily avoid problems.

6 THE COURT: Is there, in your mind, a sufficient
7 basis that if a problem arises, you could address it on the
8 back end without prior notice?

9 THE WITNESS: Sure.

10 THE COURT: You've explained to Mr. Randazza that
11 your understanding of the need for the notice provision is so
12 that you're aware of what's going on in your area and if
13 someone comes in and says, "Hey, there's someone out there
14 petitioning," you can tell them, "We know" --

15 THE WITNESS: Yeah, they notice -- they let us know
16 and that sort of thing.

17 THE COURT: Okay. Why do you need to have that?

18 THE WITNESS: This is just one of the policies the
19 District put in, you know, um . . . specifically about
20 petitioners, probably at one time they were having a lot of
21 petitioners. One person is not, you know, a very big issue but
22 if you have five or six people petitioning, it can certainly,
23 you know, cause more havoc and traffic congestion.

24 THE COURT: Okay. And I'm not being critical of you.
25 I'm trying to get an understanding of it and obviously if you

1 didn't create the policy, then you wouldn't know.

2 I'm going to jump around with a couple of questions
3 just to fill in the gaps in my understanding so if you lose
4 track of where I'm going, just let me know.

5 THE WITNESS: Okay. Thank you.

6 THE COURT: Look, if you would, at Exhibit 504,
7 please.

8 You can look in the book right in front of you there.

9 THE WITNESS: Oh, the book.

10 THE COURT: That's okay.

11 Tab 504.

12 THE WITNESS: 504.

13 THE COURT: Have you seen that document before?

14 THE WITNESS: Yes.

15 THE COURT: You understand that's apparently the
16 designation by the Library District on the Secretary of State's
17 web page?

18 THE WITNESS: Yes, it is.

19 THE COURT: Have you read this before?

20 THE WITNESS: Yes.

21 THE COURT: It says, "On West Charleston Library at
22 the east entrance at the far edge of the center circle";
23 correct?

24 THE WITNESS: Yes.

25 THE COURT: Is that the same as what you were showing

1 in response to the several questions that you were drawing on
2 the screen there?

3 THE WITNESS: Yes.

4 THE COURT: But you put an "X" on the center circle
5 that was in the interior.

6 THE WITNESS: Okay. So . . .

7 THE COURT: Why don't you look at Exhibit 28.
8 Can somebody pull up 28 for me.

9 Okay. It's on the screen now. And compare what you
10 think Exhibit 504, where on 28 that would be.

11 THE WITNESS: So if -- you're saying if this is the
12 center circle (indicating), then you're saying --

13 THE COURT: No. I'm not saying anything. I'm trying
14 to figure out what that means to you.

15 THE WITNESS: In -- our definition of the far edge of
16 the center circle was this area -- you know, this area here
17 (indicating).

18 THE COURT: Okay. And you drew an "X" on the center
19 circle, the bull's eye.

20 THE WITNESS: We.

21 THE COURT: So why is what you've drawn the outer
22 edge of the center circle? How do you get from one to the
23 other?

24 THE WITNESS: You know, I wasn't actually here when
25 they did this. I think I was off sick in the hospital

1 but . . . never mind.

2 The east entrance at the far edge of the center
3 circle. So, even if you said the far edge of the center
4 circle, you're still looking just this far up (indicating), like
5 this (indicating).

6 THE COURT: Well, earlier you drew the center
7 circle -- you drew an "X" on the center circle there. So,
8 wouldn't the far edge be right -- that immediate perimeter
9 right there?

10 THE WITNESS: Oh. I'm looking at the center circle
11 as this entire thing here (indicating).

12 THE COURT: That's not what you --

13 THE WITNESS: Unless -- unless --

14 THE COURT: That's not what you drew when
15 Mr. Randazza asked you the question.

16 THE WITNESS: Okay. So, I guess it depends on . . .
17 this is where -- to the best of my knowledge, where we've
18 always had petitioners.

19 THE COURT: Okay.

20 THE WITNESS: So maybe the description is not
21 accurate according to what the description is what we have.

22 THE COURT: Okay. And so --

23 THE WITNESS: But there is a differentiation in --

24 THE COURT: All right. So I think you answered my
25 question but let me double-check. On Exhibit 504, that written

1 definition, the spreadsheet there --

2 THE WITNESS: Right.

3 THE COURT: -- were you involved in the creation of
4 that language that says "at the east entrance at the far edge
5 of the center circle"?

6 THE WITNESS: I was not involved in the language; I
7 was involved in designating the area but not in the language of
8 the description as far as I know.

9 THE COURT: Okay. So you designated on Exhibit 20 --
10 you were involved in designating where the area is that you've
11 shown on 28?

12 THE WITNESS: Yes.

13 THE COURT: Do you know, was that before or after
14 this spreadsheet in 504 was put together?

15 THE WITNESS: I think it was before this was put
16 together.

17 THE COURT: Do you know why this 504 was put
18 together?

19 THE WITNESS: This 504 is from the Department of --
20 the State Department, I believe, and it tells people where they
21 can petition.

22 THE COURT: Okay. And you would agree that that
23 doesn't match what you've shown on Exhibit 28, or do you
24 disagree with that?

25 THE WITNESS: I agree the description is not in sync

1 with what's on 528.

2 THE COURT: Okay. And am I correct to assume that at
3 the library, as long as you've been there, you've enforced what
4 you've shown on Exhibit 28 as opposed to what's on Exhibit 504?

5 THE WITNESS: Yes.

6 THE COURT: Okay. Thank you.

7 And how did you know, or did someone tell you -- oh,
8 I'm sorry. You said you helped create the area for what you've
9 shown on 50 -- on 28?

10 THE WITNESS: Yes.

11 THE COURT: Why did you pick that area?

12 THE WITNESS: I really don't remember, the thought
13 process of it when we did it. That was several years ago --

14 THE COURT: Okay.

15 THE WITNESS: -- so . . .

16 THE COURT: All right.

17 THE WITNESS: But we did want to make sure it did not
18 impact on people coming in and out of the entrances.

19 THE COURT: If you would look at Exhibit 505.

20 Does this come out of a booklet or a manual or what
21 does this come --

22 THE WITNESS: This is petitioners. This is on our
23 website.

24 THE COURT: Where in your website would I find it?

25 THE WITNESS: I don't know if it's on the public

1 website or if it's just on the staff website.

2 THE COURT: Is this the PIC Manual? Is it a rules,
3 guidance, and procedures manual or what -- do you know what
4 this comes from?

5 THE WITNESS: Lately, we have on Voyager, which is
6 our internal website, information about this and this is under
7 Library Operations and it talks about petitioners.

8 THE COURT: Were you involved in the creation of this
9 document or the language in the document?

10 THE WITNESS: No.

11 THE COURT: Do you know why it says, at the top,
12 "Each library will designate an area for signatures to be
13 gathered that is no less than 50 feet from the main entrance"?
14 Do you know why that number 50 feet was chosen?

15 THE WITNESS: I do not know why that number was
16 chosen.

17 THE COURT: Do you know when this was created or
18 chosen?

19 THE WITNESS: I'm not sure of the creation date on
20 this document either.

21 THE COURT: All right.

22 THE WITNESS: I was not involved in that.

23 THE COURT: Probably glad right now, aren't you?

24 Does your impression or understanding, does this
25 document apply to all of the libraries or just your particular

1 library?

2 THE WITNESS: All the libraries.

3 THE COURT: So this isn't your West Charleston
4 Library internal web page; this is the Library District?

5 THE WITNESS: No. No. This is the Library District
6 staff page.

7 THE COURT: And I presume 507, same thing? That
8 comes from your web page, as far as you -- as far as you know?

9 THE WITNESS: 507. The Trespass? Yes.

10 THE COURT: Okay.

11 THE WITNESS: And it's for all the libraries.

12 THE COURT: Thank you.

13 Did you ever say to Mr. Deans that he needed to get
14 any kind of approval or prior approval to be taking signatures?

15 THE WITNESS: I told him he needed to come in and let
16 us know he was there. That does not to me indicate approval.

17 THE COURT: Okay. Did you tell him he needed to get
18 approval?

19 THE WITNESS: No.

20 THE COURT: Have you ever attempted to deny anyone
21 approval to collect signatures?

22 THE WITNESS: No.

23 THE COURT: When someone comes in to check in to
24 petition, do you ask them for any information?

25 THE WITNESS: No.

1 THE COURT: Those are all the questions I had. Let
2 me ask, Ms. Stout, any follow-up?

3 MS. STOUT: Just a few quick questions.
4

5 REDIRECT EXAMINATION OF FLORENCE JAKUS

6 BY MS. STOUT:

7 Q. If you could turn to Exhibit 509.

8 Do you recognize this document?

9 A. Yes.

10 Q. It's similar to a document we've been looking at before.

11 Is this the east entrance --

12 A. Yes.

13 Q. -- of the library?

14 A. Yes.

15 Q. There's an area marked in orange.

16 A. Yes.

17 Q. Do you know what that area -- what that orange line
18 indicates?

19 A. It indicates petition areas.

20 Q. Do you know who draw -- who drew that orange line?

21 A. I did.

22 Q. Earlier you had -- you had said that it was -- that the
23 petition zone was not simply the curb, that it extended further
24 in.

25 A. Yes.

1 Q. Is this an accurate representation of the distance --

2 A. Yes.

3 Q. -- in it -- towards the inner circle that it extends?

4 A. Yes.

5 Q. Approximately how deep is this area from the curb as far
6 forward as the petitioners are allowed to walk?

7 A. How many feet?

8 Q. Approximately, if you know.

9 A. It's probably 25 to 30 feet from the curb to the orange
10 line, I think.

11 Q. If you can -- I'm sorry.

12 If you can look at Exhibit 516.

13 A. Yes. Okay.

14 Q. Based on -- based on the area that is designated on
15 Exhibit 509 would this general area be within the petition
16 zone, the area that I just marked?

17 A. Yes.

18 Q. If someone were entering from the sidewalk and going into
19 the library, would they naturally walk past that area?

20 A. They could walk past that area, yes.

21 Q. If they were coming from the other direction, on the
22 sidewalk from the other side of the plaza, would they also be
23 able to walk past that area?

24 A. Yes.

25 Q. If you could turn your attention to Exhibit 506.

1 I'd just like to be clear regarding your testimony.

2 A. Okay.

3 Q. I'm sorry. 505.

4 Earlier Mr. Randazza had you measure the distance
5 from the door to -- measure the distance from the door to the
6 petitioning area; is that correct?

7 A. Yes.

8 Q. Do you recall the distance that you measured?

9 A. I think I said it was about 70 feet, yes.

10 Q. Looking at Exhibit 505, do you see the line that begins
11 "each library will designate an area for signatures"?

12 A. Yes.

13 Q. Does this -- does this policy ask for an area that is more
14 than 50 feet away or less than 50 feet away from the door?

15 A. It says no less than 50 feet from the door. So it has to
16 be more than 50 feet, or 50 feet or more, it sounds like.

17 Q. And based on Mr. Randazza's poster and his ruler, the area
18 designated is more than 50 feet; is that correct?

19 A. Correct.

20 MS. STOUT: No more questions.

21 THE COURT: Let me follow up because you asked a
22 question I meant to ask and then I forgot. Thank you.

23 Go to 509, please.

24 THE WITNESS: 509.

25 THE COURT: You drew the orange line on this;

1 correct?

2 THE WITNESS: Yes.

3 THE COURT: When did you do that?

4 THE WITNESS: The other week.

5 THE COURT: How did you do that?

6 THE WITNESS: How did I do it?

7 THE COURT: What information did you use to decide
8 that's the location?

9 THE WITNESS: We looked at the distance from the
10 doors to make sure we were not impacting people ingressing or
11 degressing [sic] from the library. We did a measurement.

12 THE COURT: On the document itself or out in front of
13 the library?

14 THE WITNESS: In front of the library itself.

15 THE COURT: What did you measure?

16 THE WITNESS: We measured from the door down to
17 this -- this area here (indicating).

18 THE COURT: To the orange -- top of the orange box?

19 THE WITNESS: Yes.

20 THE COURT: And how far did that measure? Do you
21 recall?

22 THE WITNESS: I think it was at least . . . 50 to 60
23 feet.

24 THE COURT: No less than 50 feet, no doubt.

25 And has this document or a similar document ever been

1 made available to library staff at the West Charleston Library?

2 THE WITNESS: This was just done last week.

3 THE COURT: Is there any similar document that's
4 available for the West Charleston Library staff?

5 THE WITNESS: Not at this time. We haven't discussed
6 this with them.

7 THE COURT: Okay. Accept for a minute, if you would,
8 my representation that this differs somewhat from what
9 Mr. Kushner testified was the designated area. If that's the
10 case, what document or information is available to library
11 staff to make sure the staff is consistent in telling
12 petitioners "here's what the designated area is"?

13 THE WITNESS: We have shown people in charge the
14 designated area. I know Mr. Kushner has probably said it's a
15 little bit -- not quite up this far, it's a little bit further
16 back, but there is flexibility in this, at times.

17 THE COURT: Okay.

18 THE WITNESS: You know, so . . .

19 THE COURT: Why would there be flexibility in this?

20 THE WITNESS: Because it is further than 50 feet from
21 the door.

22 THE COURT: Why did you draw the north and south
23 boundaries where you drew them?

24 THE WITNESS: It was just based upon the pillars
25 there.

1 THE COURT: Is there any --

2 THE WITNESS: There was no specific reasoning behind
3 it, I don't think.

4 THE COURT: One may argue -- I'm presuming
5 Mr. Randazza is going to -- that this does not go along the
6 outer edge of the center circle, and that even if you accept
7 your definition of the center circle being that sort of center
8 line, here (indicating) --

9 THE WITNESS: Um-hmm.

10 THE COURT: -- that it doesn't go along the outer
11 edge further north and further south. How would you respond to
12 that argument why it doesn't do that?

13 THE WITNESS: We want to make sure that people are
14 able to enter and leave the plaza area and feel comfortable
15 without having petitioners or other people harass them or try
16 to stop them.

17 THE COURT: Okay. Thank you.

18 THE WITNESS: Thank you.

19 THE COURT: Any follow-up, Ms. Stout?

20 MS. STOUT: Very quickly.

21

22 FURTHER REDIRECT-EXAMINATION OF FLORENCE JAKUS

23 BY MS. STOUT:

24 Q. Earlier we've discussed the pillars looking a bit like
25 Stonehenge so you'll forgive me. When we're looking at the

1 pillars and circles on this map, can you identify how many
2 circles or pillars there are for us? Is that information that
3 you can determine based on the map?

4 A. It's hard to base it on this map.

5 Q. Or based on your personal knowledge then.

6 THE COURT: Do you want me to show her this picture,
7 Exhibit 3-2, that we used at the TRO hearing? Are you trying
8 to find out kind of where it interplays with everything?

9 MS. STOUT: Uh . . .

10 THE COURT: Or maybe I'm not going where you're
11 going.

12 MS. STOUT: I think we have Exhibit 30.

13 THE WITNESS: Exhibit 30?

14 THE COURT: Much better. Thank you.

15 BY MS. STOUT:

16 Q. We're looking at Exhibit 30.

17 A. Okay.

18 THE COURT: And just so the record's clear, that's
19 the second page of Exhibit 30, without the "A" and the "B" on
20 it.

21 BY MS. STOUT:

22 Q. Does that help you identify where the pillars are located?

23 A. Yes.

24 Q. How many circles of pillars do you see?

25 A. I see at least two circles of pillars. You have the one

1 set and then there's another set.

2 Q. Can you mark on this exhibit -- on the touch screen the
3 inner circle?

4 THE COURT: Inner circle of pillars?

5 MS. STOUT: Yes.

6 THE WITNESS: Inner circle of the pillars?

7 This is an inner circle right here (indicating).

8 It's not --

9 COURT REPORTER: I'm sorry. I can't hear you.

10 THE WITNESS: This is the inner circle right here
11 (indicating).

12 BY MS. STOUT:

13 Q. Does that correspond with the area that's designated on
14 Exhibit 509?

15 A. I'm not sure what you're asking.

16 Q. I'll try to rephrase.

17 The area that's been marked in orange on Exhibit
18 509 --

19 A. Yes.

20 Q. -- does that -- it extends forward into the -- into the
21 plaza?

22 A. Yes.

23 Q. The inner most area, does that align with the inner circle
24 of pillars?

25 A. I believe it does, yes.

1 Q. I'd like to provide you with a copy of Exhibit 30 and have
2 you mark on it the inner circle of pillars as you've identified
3 them.

4 May I approach the witness, Your Honor?

5 THE COURT: You may.

6 (Brief pause in proceedings.)

7 THE WITNESS: So you want the inner circle of
8 pillars? It's going to be like that (indicating).

9 BY MS. STOUT

10 Q. Please.

11 A. Okay.

12 MS. STOUT: I'd like to have the exhibit marked as
13 30A.

14 THE COURT: Any objection?

15 MR. RANDAZZA: Yes. I object to this exhibit for
16 this purpose as incomplete. You're -- this is taken from a
17 space without the -- all circles in it. I also don't see a
18 circle here at all. This is purely testimony of counsel that
19 there's a circle of pillars. I mean, I didn't know how long
20 this was going to go but, this attempt to rehabilitate this
21 story is not working for me, so yes, I object to its
22 admissibility on authenticity.

23 THE COURT: Overruled. It's admitted.

24 (Exhibit 30A was received into evidence.)

25 MS. STOUT: No further questions.

1 THE COURT: Mr. Hinckley?

2 MR. HINCKLEY: I have no further -- nothing further.
3 Thank you.

4 THE COURT: Mr. Randazza, any further follow-up?

5 MR. RANDAZZA: No thank you.

6 THE COURT: All right. Ms. Jakus, you can step down.
7 Thank you very much for coming.

8 MR. RANDAZZA: Wait. I'm -- I'm sorry. I thought
9 you were talking about that question. No. I do have
10 follow-up.

11 THE COURT: Okay.

12 Sorry. Got all your hopes up.

13

14 RE CROSS-EXAMINATION OF FLORENCE JAKUS

15 BY MR. RANDAZZA:

16 Q. Do you know the difference between a circle and a spiral?

17 A. I'm not sure of the definition of between those two right
18 now.

19 Q. I'm aware of that.

20 You assisted in designing --

21 THE COURT: That one was meant to be snarky, I think;
22 right?

23 MR. RANDAZZA: It certainly was, Your Honor.

24 THE COURT: Let's not do that anymore. I know it's
25 getting late but --

1 MR. RANDAZZA: I -- caffeine deficient at this point,
2 Your Honor.

3 THE COURT: Understood.

4 MR. RANDAZZA: I apologize.

5 THE COURT: That's okay.

6 BY MR. RANDAZZA:

7 Q. You said you helped create these -- this area for
8 petitioners.

9 A. I believe so, yes.

10 Q. Well, you did or you didn't.

11 A. It was during a time when I was out -- out on surgery
12 leave for a little bit so I'm not exactly sure. We know -- I
13 know we discussed it, so I don't know if I was there when
14 they -- we made the final decision or not.

15 Q. So, if we pull up -- pull up any picture of the outside,
16 but leave this 30 up, please.

17 (Counsel conferring.)

18 BY MR. RANDAZZA:

19 Q. So, looking here (indicating), do you actually see
20 multiple circles?

21 A. Yes, I do. This is a circle here (indicating). And then
22 there's another circle right here with these pillars
23 (indicating).

24 Q. What's this (indicating)?

25 A. And that could be another circle.

1 Q. So that doesn't continue there. Okay.

2 Let's see 509.

3 When did you first see this?

4 A. Meaning, did I first draw on it?

5 Q. Yes.

6 A. About a week ago.

7 Q. And where did you get it?

8 A. Um . . . administration had it.

9 Q. Where did they have it?

10 THE COURT: Wait. Wait. Wait. Let me make sure --

11 THE WITNESS: Okay. Wait a minute. I'm --

12 THE COURT: Hold on. Hold on.

13 THE WITNESS: -- I'm not -- we're not talking about
14 the same thing apparently.

15 THE COURT: Yeah. I think we're -- are you talking
16 about --

17 THE WITNESS: This --

18 THE COURT: Wait a minute. Hold on, Ms. Jakus. Hold
19 on.

20 BY MR. RANDAZZA:

21 Q. This map that you drew on?

22 A. Yes.

23 Q. Where did you get it?

24 A. The map?

25 Q. Yes.

1 A. I didn't get it from anywhere. It was given to me.

2 Q. Okay. Who gave it to you?

3 A. Um . . . I believe we were in administration and we were
4 looking at the map.

5 Q. Who gave it to you?

6 A. Um . . . probably . . . Jen Schember. I'm not sure.

7 Q. Okay. Who else was there?

8 A. Um . . . Kelly and the other lawyer.

9 Q. So, how did you come --

10 A. No, wait. That's wrong. That wasn't then, was it?

11 You know, I really don't remember when I would --
12 when I did this. I'm sorry. The dates are all coming together
13 but . . . we did discuss how far in I thought it should -- you
14 know, it could go and I said it could go up to -- up to where
15 the yellow lines were.

16 Q. How far in it could go?

17 A. Yeah.

18 Q. Not how far in it had gone?

19 A. Right.

20 Q. So this doesn't reflect how it's been; this is how it
21 reflects how it could go?

22 A. I know we've had petitioners that have petitioned down
23 here (indicating), also up in this area (indicating), too.

24 Q. Okay. But when you drew the petition zone for me, under
25 oath you said here (indicating); correct?

1 A. Yeah. Right -- this area (indicating), yes.

2 Q. So, is this where it could go or where it has gone?

3 A. Where it could go.

4 Q. Aspirationally?

5 A. Yes. It's not on this current diagram as delivered to the
6 State of Nevada.

7 Q. Okay. So, did you have a diagram delivered to the State
8 of Nevada?

9 A. I don't know. I was not responsible for that part of it.

10 Q. Okay. So, this diagram . . . you know what, that's good
11 enough. Cut everybody a break.

12 THE COURT: Ms. Stout, any follow-up?

13 MS. STOUT: No additional questions.

14 THE COURT: Yes, ma'am.

15 You may step down. Thank you, Ms. Jakus.

16 THE WITNESS: Thank you.

17 THE COURT: As you come around, watch that last step
18 on the edge.

19 (Witness excused.)

20 THE COURT: It's 5:35 and we're not done, despite the
21 fact that I thought this was going to be a half day based on
22 what the lawyers told me. So, how much more do we have?

23 MR. KENNEDY: We have one more witness.

24 THE COURT: How long do you anticipate realistically
25 that will take?

1 MS. STOUT: My questions for her will be under half
2 an hour.

3 THE COURT: All right. And Mr. Hinckley?

4 MR. HINCKLEY: I still have a potential of one
5 witness but as we discussed the procedure and the timeline, I
6 think we need to have even a little bit more discussion about
7 that and what the Court contemplates and just see really where
8 we are given the issues at hand.

9 THE COURT: And Mr. Randazza, you were saying you had
10 some questions for the defendant's last witness. How long do
11 you anticipate that taking?

12 MR. RANDAZZA: I'm going to guess about a half hour.

13 THE COURT: Which is what you guessed with your first
14 witness and it took an hour and 15 so . . .

15 MR. RANDAZZA: I did the best I could, Your Honor.

16 THE COURT: No. I understand. No. I'm just trying
17 to figure -- is that a realistic guess or is that --

18 MR. RANDAZZA: No -- no plan survives contact.

19 THE COURT: I'm sorry?

20 MR. RANDAZZA: I said no plan survives contact.

21 (Brief pause in proceedings.)

22 THE COURT: Well . . . is there anybody that can't
23 come back tomorrow?

24 MR. RANDAZZA: I -- I can't, Your Honor.

25 THE COURT: You cannot?

1 MR. RANDAZZA: I cannot, Your Honor.

2 THE COURT: Well . . . I'm going to have to finish
3 today then. Because I'm out on Thursday and Friday and I start
4 a trial on Monday.

5 So, why don't we take a five-minute break and let me
6 confirm with my staff they're still available to stick around
7 and we'll go from there. Let's take a five-minute recess.

8 (Recess was taken at 5:38 p.m.)

9 (Proceedings resumed at 5:47 p.m.)

10 THE COURT: Ms. Stout, you're ready with your next
11 witness?

12 COURTROOM ADMINISTRATOR: Please remain standing and
13 raise your right hand, please.

14 Do you solemnly swear that the testimony you're about
15 to give in the cause now pending before this Court will be the
16 truth, the whole truth, and nothing but the truth, so help you
17 God?

18 THE WITNESS: I do.

19 COURTROOM ADMINISTRATOR: Okay. Now you can take a
20 seat.

21 Please state your name and for the record spell your
22 last name.

23 THE WITNESS: Jennifer Schember, S-c-h-e-m-b-e-r.

24 COURTROOM ADMINISTRATOR: And city and state of
25 residence?

1 THE WITNESS: Henderson, Nevada.

2 COURTROOM ADMINISTRATOR: Thank you.

3 THE COURT: You may proceed when you're ready.

4 MS. STOUT: Thank you.

5

6 DIRECT EXAMINATION OF JENNIFER SCHEMBER

7 BY MS. STOUT:

8 Q. Ms. Schember, what is your job title?

9 A. Library Operations Director.

10 Q. What is being the Library Operations Director? What does
11 that entail?

12 A. Well, basically I oversee all our of library branches. We
13 have over 20 branches in the urban and the outlying areas in
14 addition to the contract libraries, the jail facilities, and
15 then I also handle all patron policies and complaints.

16 Q. When you say you "oversee," do you oversee them in every
17 aspect or is there a little bit more specifically than that?

18 A. Well, all of the functions inside of a library basically.
19 So circulation, Young People's Library, adult services, the
20 computer centers. All of that within the library. Like, the
21 building issues would be another department. That would be
22 more of our facilities department.

23 Q. Okay.

24 A. So, but just the library staff and patrons portion of the
25 library.

1 Q. Okay. And so you had also said that policies and
2 procedures fall within your purview; is that correct?

3 A. Yes.

4 Q. Okay. Before we talk about those, I'd like you to look at
5 Exhibit 509.

6 A. Okay.

7 Q. You were here just a moment ago when Florence testified
8 that she had made the orange mark on that.

9 A. Yes.

10 Q. Were you present when this document was created -- I'm
11 sorry -- when the orange mark was placed on this document?

12 A. Yes.

13 Q. Do you remember when that document -- when that mark was
14 made?

15 A. It was approximately one week ago.

16 Q. Do you remember who was present at the time?

17 A. Yes. I was. In addition to myself, we had our PR manager
18 Karen Bramwell and then our Community Engagement Director
19 Matt McNally, in addition to Florence.

20 Q. Do you remember anyone else being present?

21 A. No. It was just the four of us total.

22 Q. Okay. I'd like to direct your attention to Exhibit 502.

23 Do you recognize this document?

24 A. Yes.

25 Q. What is this document?

1 A. Library District's Library Rules of Conduct.

2 Q. Over the years have -- has this document undergone
3 changes?

4 A. Yes. I believe the original document was created in about
5 1991 and there have been about eight revisions since then.

6 Q. Do you know if this is the most recent version of the
7 Library Rules of Conduct?

8 A. Yes, it is.

9 Q. How do you know that?

10 A. Because I actually made the changes this year with the
11 library Board of Trustees.

12 Q. Do you remember when that change was made?

13 A. That change, if you actually scroll down to the bottom of
14 it, the actual date is at the bottom of that. So that would
15 have been July 14th. This year.

16 Q. Can you briefly summarize the changes between the previous
17 version and this version.

18 A. Well, we recently underwent a new strategic planning
19 process. It's our Vision 20/20 process and within that we've
20 changed -- we'd like to change the culture of libraries in
21 general and we felt that our Library Rules of Conduct were a
22 little restrictive in many ways. Two of the major changes that
23 occurred were the -- we used to restrict cell phone usage from
24 the library branches. Now we allow cell phone usage. We used
25 to restrict food and beverage and now we allow that in the

1 libraries as well because we're making it more of a welcoming
2 community place. Those were some of the major changes.

3 Another was the addition imposing health risks to
4 others. We added, we didn't have that in there previously.
5 Another item, as I go down this list . . . failure to comply
6 with reasonable staff instruction was another one that was
7 added, and then the bullet underneath of vulnerable persons and
8 children under the age of 10, that was also added.

9 Q. Looking at the top bullet point, it starts with "conduct
10 that endangers or disturbs," do you see that sentence?

11 A. Yes.

12 Q. And then there's a number of bullet points underneath that
13 are -- that are in -- that set in a little bit further.

14 A. Correct.

15 Q. Can you tell me what the relationship is between the main
16 bullet point and then the ones that are indented underneath it.

17 A. Well, the main bullet point is kind of the main point in
18 all of it. The reason why we list the ones underneath with the
19 bullets is because those are the most common offenses. There,
20 of course, are -- you know, we looked at several library
21 systems when we drafted these rules and there were probably --
22 there were about 70 to 75 different types of violations that
23 we'll all kind of experience every once in awhile, but we're
24 obviously not going to list all of them on this -- on this one
25 sheet, but these are our most common that fall under that

1 category.

2 Q. Is this -- so this list is examples?

3 A. Yes.

4 Q. Of conduct?

5 A. Right.

6 Q. That is prohibited?

7 A. Yes.

8 Q. Can you explain -- you said that failure to comply with
9 reasonable staff instruction, that that was added; is that
10 correct?

11 A. Yes.

12 Q. Can you explain why that was added?

13 A. It was added because, as I mentioned, you know, we
14 couldn't possibly add every violation that staff would
15 experience. So, that was sort of a catchall -- well, it is, it
16 acts as a catchall right now to, you know, items that are not
17 listed on this.

18 Q. Okay. In your experience are -- have people been
19 disciplined or trespassed for conduct or behaviors that are not
20 expressly identified on this list?

21 A. Oh, yes. Definitely.

22 Q. Would you happen to have any examples?

23 A. One, a patron spitting on the floor is one. We don't have
24 that specifically listed on here. We've had a library patron
25 who defecated on the floor in front of the circulation desk.

1 We've had a patron use the restroom and he had feces all over
2 the toilet paper and wrapped the tree outside of our branch. I
3 mean, there's multiple examples that aren't specifically listed
4 on here.

5 Q. Those examples would -- do they fall under the overarching
6 rules even though they're not expressly identified?

7 A. The examples that I just -- yes.

8 Q. Yes.

9 A. Yes.

10 Q. Can you identify -- can you explain how.

11 A. Well, the overarching rule is basically --

12 THE COURT: I -- I think I get it.

13 MS. STOUT: Okay.

14 THE WITNESS: Okay.

15 MS. STOUT: All right. We can move on from there.

16 BY MS. STOUT:

17 Q. At the same time that the Library Rules of Conduct were
18 implemented were there any changes made to the trespass
19 procedure?

20 A. Yes.

21 Q. Can you describe those.

22 A. Sure.

23 At the bottom you'll see our trespass procedure's
24 always typically been one year basically. Over the years, you
25 know, we -- we've realized that not all offenses are created

1 equal. So, we asked the Board for an approval to give us some
2 flexibility within that trespass time frame.

3 Q. And has the Board granted that flexibility?

4 A. Yes.

5 Q. Had -- did they make any requests regarding that -- that
6 change?

7 A. They just -- they didn't -- well, they recommended -- they
8 wanted to make sure that we were going to be consistent across
9 the board basically and I don't recall anything else specific.

10 Q. With the idea of consistency in mind, have you taken any
11 steps to ensure consistency?

12 A. Yes. Well, right now what we are doing, we are allowing
13 the branches to ask people to leave for the day, which they've
14 been doing. If they have to trespass, they trespass for the
15 one-year time frame, with an option -- you know, the patron
16 always has an option to appeal. After a patron appeals, when
17 it comes back to administration, we look at it and we evaluate
18 whether or not we can reduce it down to the -- you know, a
19 three-month time frame or a six-month time frame. That's kind
20 of what we went to the Board for, to ask them permission to do
21 that. And then -- so basically that -- that's done at the
22 administrative level.

23 And as far as actions taken, we have a discipline and
24 security team that has been together for about a year and a
25 half now. Our team evaluated the Rules of Conduct and that's

1 what was presented to the Board. The same team is putting
2 together some procedures and, like, a matrix of various
3 offenses -- specifically the offenses that are listed on here,
4 and then some other federal laws and state laws -- some common
5 offenses as well that would kind of guide us, you know, this --
6 this would be a three-month range, this would be a six-month
7 range, that type of thing, so that we have consistency as soon
8 as we allow the staff to start using that.

9 Q. Until that -- it sounds like that process isn't completed
10 in terms of providing that guidance.

11 A. Correct.

12 Q. In the interim are trespass -- are staff trespassing
13 everyone for one year or are they using the new rule that
14 allows for less than that?

15 A. Well, they're still trespassing for one year.

16 Q. All right. Now I'd direct to you two documents, Exhibit
17 505 and Exhibit 506. You were present earlier when it was
18 testified that these are part of the PIC Manual.

19 A. Yes.

20 Q. Is that your understanding?

21 A. Yes.

22 Q. Can you explain to us how the PIC Manual is intended to be
23 used.

24 A. So, the PIC Manual is basically -- I mean, it's -- gosh, I
25 think it's a hundred and 70 ish pages long. It's for our PICs,

1 the person in charge. It's more of a reference for them.

2 When they first become a person in charge, you know,
3 part of the training process is that they need to go through,
4 you know, and they have to read the manual, but, of course, you
5 know, they -- they -- not everything in the manual comes up on
6 a daily basis. So if, you know, something occurs that they may
7 not have experienced before, then they'll make reference to the
8 PIC Manual.

9 Q. Do you know how many versions of the PIC Manual there have
10 been?

11 A. I don't know exactly. It was created -- I don't even
12 actually know when it was -- the first version was created.
13 It's been around for a very long time, maybe even before I --
14 I've been there, but there have been several revisions to it,
15 just sections of it. We haven't really done a full revision
16 from front to back in a long time, but that is something that
17 we're just starting to do.

18 Q. And why are you starting to do that?

19 A. Well, when we revised the Library Rules of Conduct and
20 with our new strategic plan, there are some things that need to
21 be updated in the manual.

22 Q. With respect to these two provisions identified in 506 and
23 505 --

24 A. Um-hmm.

25 Q. -- are either of these procedures set to be reviewed or

1 revised -- I'm sorry -- revised?

2 THE COURT: Why is that relevant to what I'm doing
3 here today?

4 MS. STOUT: To the extent that there have been
5 questions about whether or not current procedures are being
6 followed, we'd like to demonstrate that there is a process of
7 revision and that the new procedures are being followed though
8 they're not --

9 THE COURT: So what? If they're being revised, I
10 don't care. Why should -- why should I care that they're being
11 revised? Don't I have to enforce the rules as they existed at
12 the time.

13 MS. STOUT: They're being revised to reflect the
14 current policy and procedure.

15 THE COURT: So how is that . . . well, so what you're
16 saying is the current policy isn't reflected in the PIC Manual?

17 MS. STOUT: That there have been changes since then.

18 THE COURT: That aren't reflected in the PIC Manual?

19 MS. STOUT: That's what I expect the testimony to be.

20 THE COURT: Okay. Let's hear that.

21 BY MS. STOUT:

22 Q. Ms. Schember, are either of these two policies being
23 changed in the PIC Manual?

24 A. Well, on the Trespass Law on Exhibit 506, Number 2,
25 "Before the police are called to enforce a Trespass Law, the

1 library staff must issue a trespass warning." For this
2 particular item we -- I mean, there are instances -- we're
3 going to revise that because there are instances where our
4 staff aren't able to trespass somebody or it doesn't quite get
5 to that level just yet and so they are authorized to call the
6 police before they actually issue the trespass warning. So
7 that's an area that would be revised.

8 And then the petitioner item, we've -- I mean, I
9 don't -- we would revise that pending today, if we needed to.

10 THE COURT: You would revise if you needed to?

11 THE WITNESS: Oh, I -- sure. I mean, if --

12 THE COURT: Oh. But you're not -- is it undergoing
13 revision right now?

14 THE WITNESS: The whole -- the whole manual is
15 undergoing revision, but that particular Item Q is not.

16 THE COURT: Okay.

17 BY MS. STOUT:

18 Q. Can you look at Exhibit 503.

19 A. Yes.

20 Q. Do you recognize this document?

21 A. Yes.

22 Q. Can you identify that document?

23 A. It's our Petitioner & Voter Registration Guidelines.

24 Q. Can you explain how this document came about.

25 A. This was the official set of guidelines that was written

1 in 2015. Basically, in about 2004 we established some
2 petitioner guidelines in the sense that we had designated areas
3 in the branches. In 2014 we got a little more formal and
4 actually started submitting the information, the designated
5 zones to the State Department and at that point when we did
6 that, we -- you know, we decided we need to have something a
7 little more formal in writing, so this is the first set of
8 written petitioner guidelines.

9 Q. Were you personally involved in drafting this document?

10 A. No, I was not.

11 Q. Do you know who was?

12 A. Matt McNally, our Community Engagement Director.

13 Q. And did he -- do you know if there was anyone else that
14 was involved in drafting the documents?

15 A. Well, he -- yes. So, he oversees all of our meeting room
16 spaces and our theater areas and he's also responsible for the
17 petitioner and voting registration, so he worked closely with
18 his team, which would be the -- I would imagine the theater
19 managers, the scheduling specialists, the people in charge of
20 the meeting spaces, our PR manager Karen Bramwell. She also
21 works closely with the Petitioner & Voter Registration
22 Guidelines and issues that we have. She's actually the one
23 that submits the information to the Secretary of State. And he
24 probably would have -- oh, and actually he ran it -- he has --
25 usually when we create guidelines like this, we run it by the

1 staff that are impacted by it, so that would be our branch
2 managers. So, you know, he would have brought it to a branch
3 managers' meeting and actually got feedback. And -- and I'm
4 not sure which revision -- which -- do you have the most
5 current? I can't see the date on here. Because this was
6 actually revised once. I believe there was a -- February was
7 the first. Okay. And July was a revision. So, he created it
8 in February 2015, took it to the branch managers after he
9 worked with his entire team, the branch managers gave some
10 input on it, and then he made another revision on July 20th of
11 2015.

12 Q. Okay. And to the best of your knowledge is this the
13 most -- this is the most recent version?

14 A. Yes.

15 Q. Okay. When you were speaking about Mr. McNally, you said
16 that he's in charge of meeting spaces and, I'm sorry, one other
17 area?

18 A. Our performing arts centers, the theaters.

19 Q. Um-humm. Okay. And how do those spaces function?

20 A. Well, they are primarily for rental use. So the meeting
21 rooms, patrons can rent the spaces online, for a fee, and we
22 use the spaces as well for our own library events. The
23 theaters work in the same way. They're more elaborate so you
24 can't reserve those online; you actually have to go in to the
25 building and meet -- meet with somebody and sign a contract for

1 the theaters.

2 Q. Are there any other areas of the library where a member of
3 the public can simply rent the space?

4 A. No. Those are the two areas -- those are the main areas,
5 the meeting rooms and the theaters.

6 Q. Has a -- is a member of the public allowed to rent the
7 east entrance, the plaza area if they wanted to hold an event
8 there?

9 A. No.

10 Q. To your knowledge, has that ever happened?

11 A. Have they ever --

12 Q. Where, in the past, was it -- was the public allowed to
13 rent out that space?

14 A. No.

15 Q. We've heard testimony earlier today that that space is
16 obviously used for entering and exiting the library. Are there
17 other uses for that space?

18 A. The only other -- I mean, primarily entering and exiting
19 the library. The other use would be if somebody is renting a
20 meeting room, they're allowed to put a sign out. Kind of more
21 of directional signage.

22 Q. When you say "directional signage" --

23 A. Um-hmm.

24 Q. -- can you clarify that?

25 A. Like, you know, so-and-so meeting conference room,

1 7:00 p.m. or som -- you know, I -- I -- something like that.

2 Q. So you could give the directions?

3 A. Right.

4 Q. Other than when someone has rented a room and wants to
5 give directions to people attending whatever event they're
6 holding, are people -- are members of the public otherwise
7 allowed to post signs? Is there a community bulletin board or
8 another way that people are allowed to post a message in that
9 area?

10 A. Well, no. They -- the way to do that is they have to
11 submit it through our public relations manager for approval
12 prior to posting.

13 Q. Are you aware of there ever --- of anyone receiving
14 approval to post --

15 A. Oh, yes.

16 Q. -- something there?

17 A. Um-hmm.

18 Q. Can you describe the types of things that have been
19 permitted in the past.

20 A. Maybe some non-profit type organizations. It's not --
21 it's not a community board where people would put things up for
22 sale, nothing like that. It may be -- I know there's some
23 Board -- not LVCCLD, but other organizations that have board
24 meetings and things like that, those have to get posted. There
25 may be some functions, like at West Charleston, there's

1 probably some functions at the community college campus that
2 they're trying to promote to the patrons that come into the
3 library there. So we'll, you know, probably post those.

4 THE COURT: You're posting those in the plaza out
5 front?

6 THE WITNESS: Oh, no, just the community board.

7 THE COURT: That's what I thought her question was
8 going to. Am I mistaken?

9 MS. STOUT: I was going to ask could she clarify
10 where these postings were.

11 THE WITNESS: Oh, okay. Wherever -- yes. Wherever
12 the branch's community -- but no, not -- not in the plaza. We
13 don't have a place in the plaza to post anything like that.
14 That would be --

15 BY MS. STOUT:

16 Q. So there is an area where community organizations are
17 allowed sometimes to post?

18 A. Some, right. Not all branches have an area but, our main
19 library, Clark County Library, it's across from UNLV, they have
20 a huge area in the middle so they have things like that that
21 they allow posting.

22 Q. But in the plaza area is there any --

23 A. No.

24 Q. -- way to --

25 A. No.

1 Q. Okay. I believe Mr. Randazza has earlier asked some
2 questions regarding leafletting. Is that an activity that's
3 permitted in the plaza area?

4 A. No. That also has to get approval from our PR manager.

5 Q. Are you aware of a -- any rules regarding soliciting?

6 A. We don't allow it. I mean, it's actually -- it's in our
7 Rules of Conduct.

8 Q. How long have you worked for the Library District?

9 A. 27 years.

10 Q. In that time are you aware of any outside organization
11 holding an activity in that east entrance area?

12 A. An outside organization . . . no.

13 Q. Are you aware of any activities being held in that area,
14 the east entrance?

15 A. The only two -- I -- I am aware of two activities; one
16 would be when the Library District held -- held a health and
17 fitness fair, which was actually on the opposite end of the
18 library on the west side, we had a promotional display that had
19 a fair -- it had a -- jump ropes there. I mean, if you want to
20 consider that an activity. I'm not sure that anybody picked it
21 up and used it, but it was -- you know, the jump rope was just
22 hanging there, you know, as part of the display. So that was
23 the first one. The second one was part of an African-American
24 heritage month celebration where they used the -- the event
25 occurred inside of the library in the theater area but they --

1 it was a marching band and they started and they entered in
2 through the plaza and they entered the library from that
3 direction.

4 Q. Were they -- was the -- was there a performance held in
5 the east entrance area?

6 A. No.

7 Q. Were they using the area for anything more than entering
8 the building?

9 A. No.

10 Q. Egress and ingress?

11 A. No.

12 Q. Are you aware of any other times that an organization --
13 that any activities have occurred in that area?

14 A. Not on the east side, no.

15 Q. Are there -- the two activities that you mentioned, are --
16 were they Library District activities?

17 A. Yes. They were both ours.

18 Q. So your own programming?

19 A. Yes.

20 Q. Other than what we've already discussed, are you aware of
21 any other use of that specifically -- of the east entrance
22 area?

23 A. No. No.

24 MS. STOUT: No further questions at this time.

25 THE COURT: Mr. Hinckley?

1 CROSS-EXAMINATION OF JENNIFER SCHEMBER

2 BY MR. HINCKLEY:

3 Q. Ms. Schember, your position as Library District Operations
4 Director makes you a senior manager?

5 A. Yes.

6 Q. Does it not?

7 A. It does.

8 Q. Did branch manager Jakus act on October 13th in dealing
9 with Mr. Deans in accordance with Library District policy?

10 A. Yes, she did.

11 MR. HINCKLEY: Thank you very much.

12 THE COURT: Mr. Randazza?

13

14 CROSS-EXAMINATION OF JENNIFER SCHEMBER

15 BY MR. RANDAZZA:

16 Q. Ms. Schember, you said in Exhibit 503 these are your rules
17 as far as petitioning?

18 A. Yes.

19 Q. And voter registration?

20 A. Um-hmm.

21 Q. So somebody has to stay in the spot for voter
22 registration, too?

23 A. Correct.

24 Q. And leafletting?

25 A. Leafletting, we don't -- we don't allow that, unless it's

1 approved by our PR manager.

2 Q. Where is the rule on that?

3 A. It's no soliciting. It's in our Library Rules of Conduct.

4 Q. Soliciting or leafletting?

5 A. Correct.

6 Q. What if I'm just handing out --

7 A. It still needs to be approved by our PR manager.

8 Q. So you're interpreting your "no soliciting rule" to mean I
9 can't hand out fliers to people?

10 A. Correct. Well, there's actually a -- a policy related to
11 that. It's our public posting policy. Can be found on our
12 website, and that --

13 Q. So your public posting policy says I can't go out and hand
14 out tickets and say have you found Jesus or have you found the
15 Oakland Raiders?

16 A. Right. Those have to be approved by our PR manager.

17 Q. Because there's no soliciting?

18 A. It's part of the policy that they have within their
19 department. It's not -- it's not my department; it's our --
20 it's our marketing department.

21 Q. How is the public supposed to know that?

22 A. How is the public supposed to know that they're -- because
23 the paid -- one of our PICs will probably tell them.

24 Q. And when you get to this plaza there is a sign that says
25 "no skateboarding"?

1 A. Um-hmm.

2 Q. Doesn't say ingress and egress only, does it?

3 A. No.

4 Q. Does it say no leafletting?

5 A. No. But we couldn't post signs that everything -- I mean,
6 we can't possibly post signs for everything out there.

7 Q. Can you make a speech there?

8 A. Can I personally?

9 Q. No. May one make a speech there?

10 A. It kind of depends. I mean, if it's somebody just kind of
11 walking around saying things, there's lot of patrons that come
12 in that kind of talk to themselves, sure. But if -- if, you
13 know -- I mean, if you're going to make a program out of it,
14 no.

15 Q. All right. So, like, somebody with a mental health issue,
16 it wouldn't be a problem if they're talking to themselves
17 walking across?

18 A. No.

19 Q. All right. That sounds like that's what you're
20 describing, someone talking to themselves?

21 A. Right.

22 Q. What if I wanted to stand up there and say, "My fellow
23 citizens, we just spent 750 million dollars on a stadium for
24 the Oakland Raiders. I have a problem with that." Would I be
25 allowed to do that?

1 A. Um . . . in general, yes. I mean, you can -- you can
2 speak to whoever you want out in that area, but, if you're
3 causing a disturbance, I mean, if you're standing there and
4 you, you know, are shouting at everybody and you're blocking
5 the entrance by your speech, then yes, we would have a problem
6 with that.

7 Q. Well, what if I'm standing in the center circle there just
8 preaching my Gospel of football or --

9 A. As long as nobody complained.

10 Q. But if I hand out a leaflet that says the same thing on
11 it, I can't?

12 A. Correct, because we have a policy for that specifically.

13 Q. That's what your written policy says on your website?

14 A. Yes.

15 Q. Would you be surprised if I said it didn't?

16 A. Did -- did you check the posting? The --

17 Q. We did. We have no -- there is no evidence in the record
18 yet, and we've entered in every single one of your policies
19 that I can think of.

20 Is -- now, you seem to have a whole bunch of catchall
21 rules. Is there a rule that the plaza can only be used for
22 going in and out of the library?

23 A. Can only be used for going in and out the library. Well,
24 any -- no.

25 Q. So, somebody who cuts across it every day from the bus

1 stop to Building C, they're not violating any rule?

2 A. Correct.

3 Q. They're allowed to do that?

4 A. Right.

5 Q. Do people do that?

6 A. Probably. I don't work at that building but, probably.

7 Q. You said that you felt your policies were too restrictive
8 and you wanted to make it more welcoming.

9 A. Yes.

10 Q. What do you mean by "more welcoming"? What more
11 welcoming?

12 A. As I explained before, allowing food and drink was one
13 example. Previously we did not allow any food or drink in the
14 library. We've since changed that to match our new strategic
15 plan, and the other item was the cell phone usage. We used to
16 restrict usage and now we allow it.

17 Q. You can talk on the cell phone inside the library?

18 A. Yes.

19 Q. So, when somebody gets trespassed from the library --

20 A. Um-hmm.

21 Q. -- the presumption is they're out for a year?

22 A. Yes.

23 Q. In fact, that's automatic?

24 A. Yes.

25 Q. And they can appeal?

1 A. They can appeal, yes.

2 Q. Where are the appeal procedures?

3 A. For the public?

4 Q. Yes.

5 A. So, it's written on the Notice of Trespass.

6 Q. The procedure is?

7 A. The -- yes. The instruction on how to appeal, correct.

8 Q. Okay. What is the procedure?

9 A. So, the procedure is that you have to put your appeal in

10 writing and put it in an envelope and mail it to the address

11 that is listed on the Notice of Trespass.

12 Q. And what are the standards for an appeal?

13 A. From the patron perspective? I'm not sure what you're

14 asking.

15 Q. I appeal.

16 A. Um-hmm.

17 Q. I get trespassed for a year. It seems like we've had an

18 incident of somebody tearing books up, they got a year, or the

19 person who defecated in the library, I presume they got a year.

20 A. Yes.

21 Q. My client argued about the petition spot, he got a year.

22 A. Right.

23 Q. So, it's a year, a year, a year, no matter what you do.

24 A. Yes.

25 Q. Except, you can get a day?

1 A. A day is not a trespass, but yes.

2 Q. Okay. So my client was barred for a day and then as you
3 understand it, he argued about that; correct?

4 A. Correct.

5 Q. And then no library for one year?

6 A. Correct. He was trespassed for one year.

7 Q. Okay. And so, if a citizen gets trespassed for a year and
8 they appeal, what happens then?

9 A. So, we -- executive director receives the appeal by mail,
10 typically. Once in awhile we'll get it by e-mail because it
11 just needs to be in writing. We receive the letter. Our
12 executive director reviews it. Then he asks senior staff to
13 investigate, which is usually me. I had a -- I had an
14 Assistant Library Operations Director up until about a month
15 ago and that person would typically have done the initial
16 investigation and then I would kind of -- I would be the next
17 person in line as part -- as the second part of the
18 investigation and then I would make a final recommendation to
19 the executive director.

20 Q. Okay. How long does that usually take?

21 A. Well, we have 10 days to write a response back to the
22 person who appealed.

23 Q. Now, can you look at this Notice of Trespass. This is
24 the -- what's been described previously as the appeal form?

25 A. It's a Notice of Trespass with appeal information on it,

1 yes.

2 Q. Right. Is there another appeal form that I don't know
3 about?

4 A. No. No.

5 Q. And there's nothing on here that has an e-mail address
6 that says you -- written request within 14 days?

7 A. No, but the reason the e-mail comes into play is because
8 people will get this appeal form and then they'll call the
9 library and they'll say, "Well, do I have to put it in -- you
10 know, do I actually have to mail it or can I e-mail it or is
11 there an easier way?" and then we'll give an e-mail address at
12 that time if they want to e-mail it in.

13 Q. So if they call you and ask about another procedure,
14 somebody may tell them to e-mail it?

15 A. If they ask us for an e-mail address, we will give them an
16 e-mail address.

17 Q. If they ask you for an e-mail address?

18 A. Yes.

19 Q. Otherwise they have to put it in the mail. So --

20 A. Right. It has to be in writing.

21 Q. -- it's going to take at least a, what, a day, two, to get
22 to you?

23 A. A day. Typically, yes.

24 Q. Okay. And once it gets to you, you respond within 10
25 days?

1 A. Yes.

2 Q. Always?

3 A. Yes.

4 Q. Every time you've responded. So if I do more discovery on
5 how long it's taken you, I'm not going to find any that take
6 longer than 10 days?

7 A. From -- 10 days from when we receive it in the office,
8 correct.

9 Q. You'll respond, but, is that response always your
10 decision?

11 A. Yes.

12 Q. You never ask for more information?

13 A. Oh, from the patron?

14 Q. Yes.

15 A. No. The patron usually provides all the information in
16 the letter. I mean, the appeal that they send us can range
17 anywhere from one paragraph to 10 pages. It just --

18 Q. So there's no -- neither a limit nor --

19 A. Correct.

20 Q. -- any rules about what you can submit?

21 A. Right.

22 Q. So it's just a general appeal?

23 A. Yes.

24 Q. Do you suspend the trespass pending the appeal?

25 A. No. The patron is trespassed until we do a full

1 investigation on it until a final decision is made.

2 Q. So, I could get trespassed for a year. Appeal. I wait
3 for the time it takes to get to you --

4 A. Um-hmm.

5 Q. -- then I wait 10 days. Is that written anywhere, the
6 10-day period?

7 A. Yes.

8 Q. Where?

9 A. The 10-day period is written in our PIC Manual.

10 Q. All right. Then at that point you will make your decision
11 then and there based only on the letters as to whether I'm --
12 you know, maybe it was just no cause at all; I should be able
13 to come right back?

14 A. Sometimes patrons will -- you know, they'll say, "Hey, I
15 got kicked out" -- they got, you know, "I got kicked out of the
16 library. I'm sorry. Here you go" and then we still will
17 investigate. So they won't always give a reason specifically.
18 Is that what you mean? I mean, like I said --

19 Q. No, but that's enlightening.

20 A. -- the letters can be anywhere from, you know, a paragraph
21 which is -- could be just a couple of sentences to many pages,
22 several pages.

23 Q. Okay. And then you might reduce it; you might lift it
24 completely?

25 A. Yes.

1 Q. Do you keep a record of those decisions?

2 A. Of course.

3 Q. Are those available to patrons during the appeal process?

4 A. No, they are not. The -- the -- to any patron or do you
5 mean the patron who --

6 Q. The patron who was trespassed.

7 A. Is the record -- well, they are -- they'll already have a
8 copy of the Notice of Trespass and then we send them the
9 decision. So, I'm not sure what other paperwork you're
10 referring to.

11 Q. Well, what I'm saying is, you make your decision?

12 A. Yes.

13 Q. How is somebody supposed to look and see how you make your
14 decisions? Is somebody able to look at the prior decisions,
15 kind of like we do here in court, and say, "Well, this is
16 what's happening to a similarly situated person"? Are they
17 able to look at that?

18 A. No. Other patrons are not allowed to look at any other
19 patron's information.

20 Q. Not even the appeal documents?

21 A. Correct. We have a patron privacy policy that prevents
22 that.

23 Q. Well, what about the decision with the name redacted?

24 A. That's -- we wouldn't -- we wouldn't turn those over.

25 Q. You wouldn't?

1 A. Unless -- without a subpoena, a court ordered subpoena.

2 Q. So if I were trespassed and I asked you for that
3 information with all the private information removed, you still
4 wouldn't let me see it?

5 A. I would not, no. We would not, without a court ordered
6 subpoena. And that's also per an N.R.S. statute.

7 Q. Which one?

8 A. Or privacy policy.

9 Q. And that applies to even non-personal information?

10 A. Well, it is personal information.

11 Q. Well, I just said if we redacted the personally
12 identifying information.

13 A. I would actually -- I mean, we would run it -- if we
14 received that request, we would run it by legal counsel.

15 Q. Who developed the one-year trespass policy?

16 A. I am not sure. It's been around for a very long time.

17 Q. So you don't know how you came up with this automatic --
18 the default is a year?

19 A. The default is a year. Right, and that's not uncommon.
20 There are library districts nationally and even locally here,
21 the North Las Vegas Library District trespasses forever. They
22 have a permanent ban. So it's kind of a standard nationally,
23 the one year, and there are library districts that go beyond,
24 you know, three years, 10 years. There's a range.

25 Q. So, is that how you came up with the year? You said other

1 library districts do it?

2 A. Probably. Initially when it was first developed, I'm
3 sure, because we -- typically when we develop guidelines and
4 policies, we look at other library systems nationally.

5 Q. So you didn't do any studies of your own as far as the
6 effectiveness of a one-year ban?

7 A. Studies of my own, as in . . .

8 Q. The District didn't do any studies of its own.

9 A. Well, we did. Oh, when we -- when we brought this forward
10 to the Board in July, we did study. We looked at 25 library
11 districts nationally.

12 Q. No. I mean, the automatic year ban. What --

13 A. So when it was originally -- when it was originally
14 developed, I was not involved in that process.

15 Q. Okay. Do you know what purpose it's supposed to serve?

16 A. The one-year ban? The purpose is it's supposed to
17 restrict patrons from any of our Las Vegas Clark County Library
18 Districts for one year.

19 Q. Yeah. Why?

20 A. Because they violated one of our policies.

21 Q. Including not listening to instructions?

22 A. Correct.

23 Q. Or defecating on the floor?

24 A. Correct.

25 Q. They're equal?

1 A. It -- it's a violation of our policy, correct.

2 MR. RANDAZZA: Thank you.

3 THE COURT: Anything else? Mr. Randazza, anything
4 else?

5 MR. SPERLEIN: One -- one -- just one moment,
6 Your Honor, please.

7 THE COURT: Sure.

8 MR. SPERLEIN: Thank you.

9 (Counsel conferring.)

10 THE COURT: Ms. Stout, anything further?

11 MS. STOUT: The Court's indulgence. May I have one
12 moment?

13 THE COURT: Certainly. Certainly.

14 (Counsel conferring.)

15 MS. STOUT: No additional questions.

16 THE COURT: All right. Ma'am, you can step down.
17 Thank you for your time. Watch your step as you come around
18 the corner there.

19 (Witness excused.)

20 THE COURT: Any additional witnesses from the Library
21 District?

22 MS. STOUT: No, Your Honor.

23 THE COURT: Mr. Hinckley?

24 MR. HINCKLEY: The College is satisfied with the
25 hearing record. The -- our witness is not under subpoena.

1 We've worked, I think, collegially with the other counsel,
2 there's no request so, we will not present any witnesses at
3 this time.

4 THE COURT: All right.

5 Officer Summerlin, you were here a long time but
6 apparently you don't get to testify.

7 OFFICER SUMMERLIN: I'm okay with that, sir.

8 THE COURT: All right. So, the evidence is then --
9 well, any rebuttal evidence to put on, Mr. Randazza?

10 MR. RANDAZZA: No, Your Honor.

11 THE COURT: All right. Well, then that concludes our
12 hearing. I'm going to take this under submittal. If I need
13 additional briefing, I will ask for it.

14 In the meantime, until I issue a decision, I'm going
15 to keep the TRO that I previously entered in place as a
16 Preliminary Injunction, but in order to avoid problems I want
17 to be real clear what can and can't be done.

18 Mr. Deans can continue his petition-related
19 activities and signature gathering and education -- voter
20 educations speaking to people in the areas previously
21 designated as "A" and "B" of the east plaza entrance to the
22 library on West Charleston Boulevard. If he needs to use the
23 restroom or get a drink or take a break from the weather, he's
24 entitled to go inside to do so so long as he doesn't disturb or
25 otherwise engage in some kind of behavior that would violate

1 the library rules.

2 I don't see the need for any more photography inside
3 the library. So that's not going to happen anymore. Not
4 saying you were right or wrong to do it; I'm just saying going
5 forward, unless there's a need, and if there becomes a need,
6 somebody submit something to the Court and ask for permission
7 to do so. But in the meantime, to preserve the peace and
8 prevent any further devolution of this situation, Mr. Deans
9 won't be taking any more pictures inside the building, absent
10 further order of the Court.

11 He can certainly park outside in the parking lot to
12 get to and from. He can certainly have access on the sidewalk
13 and go about his doing his business so long as it's related to
14 his activities of signature gathering on the petition and/or
15 educating voters.

16 Are there any other questions I can address so that
17 we don't have any confusion going forward?

18 MR. RANDAZZA: Your Honor, my client would like to
19 suggest one modification to that and actually it would be
20 narrowing it a bit.

21 THE COURT: Okay.

22 MR. RANDAZZA: Area "B," we have come to the
23 conclusion that that would be a Title II violation to have
24 petitioning in that area so my client does not wish to have
25 area "B" in the -- in the order.

1 THE COURT: Okay. He doesn't have to go to area "B."
2 If he'd like to, without it being a violation of Title II, I'm
3 not going to restrict him from it but he does -- certainly
4 doesn't need to go there if he doesn't want to. I understand
5 the concern.

6 MR. RANDAZZA: Thank you.

7 THE COURT: Any other questions from any of the
8 defendants as to what is permitted or not permitted or anyone
9 want to clarify anything?

10 MR. KENNEDY: No questions.

11 THE COURT: All right.

12 MR. HINCKLEY: None.

13 THE COURT: Nothing from Mr. Hinckley either.

14 Mr. Randazza, anything further on that?

15 MR. RANDAZZA: No thank you, Your Honor.

16 THE COURT: All right.

17 Mr. Deans, you understand?

18 MR. DEANS: Yes, Your Honor. Thank you very much.

19 THE COURT: All right. And I'm not meaning to cast
20 aspersions at all. I just want to make sure we're all clear
21 because obviously there -- it sounds like there was some
22 confusion or whatever. I want to make sure we're all on the
23 same page.

24 MR. DEANS: I'm very happy to know there won't be a
25 distraction in the future.

1 THE COURT: All right. So, I will get a decision out
2 as quick as I can and if I need supplemental briefing, I will
3 ask for it. But at this point I think I've got a pretty
4 thorough set of briefs on this.

5 So, we're in recess on the matter for now. Thank
6 you.

7 MR. KENNEDY: Thank you, Your Honor.

8 MR. RANDAZZA: Thank you, Your Honor.

9 COURTROOM ADMINISTRATOR: All rise.

10 (Proceedings adjourned at 6:30 p.m.)

11 --oOo--

12 COURT REPORTER'S CERTIFICATE

13

14 I, Heather K. Newman, Official Court Reporter, United
15 States District Court, District of Nevada, Las Vegas, Nevada,
16 do hereby certify that pursuant to Section 753, Title 28,
17 United States Code, the foregoing is a true, complete, and
18 correct transcript of the proceedings had in connection with
19 the above-entitled matter.

20

21 DATED: 12-13-2016 /s/ Heather K. Newman
22 Heather K. Newman, CCR #774
OFFICIAL FEDERAL REPORTER

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