

Page 1

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of

VANCE CHILDERS,

Appellant,

Docket No.

9452

CONFERENCE

DATE: Monday, June 8, 2026

TIME: 10:28 a.m.

BEFORE: Honorable Jay L. Himes

LOCATION: Remote Proceeding

Washington, DC 20005

REPORTED BY: Richard Livengood

JOB NO.: 8259378

A P P E A R A N C E S

ON BEHALF OF APPELLANT VANCE CHILDERS:

LLOYD CUETO, ESQUIRE (by videoconference)

Law Office of Lloyd M. Cueto, P.C.

7110 West Main Street

Belleville, IL 62223

cuetolm@cuetolaw.com

(618) 277-1554

ON BEHALF OF HORSERACING INTEGRITY & SAFETY AUTHORITY:

ALLISON FARRELL, ESQUIRE (by videoconference)

Horseracing Integrity & Welfare Unit

4801 Main Street, Suite 350

Kansas City, MO 64112

afarrell@hiwu.org

ALSO PRESENT:

Susel P. Koepke (by videoconference)

LaShaon Asberry-Beach (by videoconference)

Michael Alanzo (by videoconference)

Page 3

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E X H I B I T S

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(None marked.)

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

2 THE REPORTER: We are now on the audio
3 record at 10:28 a.m. Eastern Daylight Time.

4 THE COURT: Thank you. As you know,
5 I'm Judge Himes. I'm an administrative law judge at
6 the Federal Trade Commission, and I am assigned to
7 this case, Matter of Childers, Docket Number 9452.

8 This is a conference that I called to
9 discuss Mr. Cueto's representation of Mr. Childers in
10 view of the fact that he also represents Dr. McCrosky,
11 a veterinarian, whose review proceeding in a related
12 HISA case was the subject of a decision I issued a
13 week ago. Two of the charges against Mr. Childers, a
14 trainer, arise from the same facts as two of the
15 charges in Dr. McCrosky's separate case. Mr. Cueto's
16 dual representation, therefore, seemed to me to be a
17 matter worthy of discussion.

18 So let me begin by taking the
19 appearances of the parties. I will start by asking
20 counsel for Mr. Childers to identify himself.

21 MR. CUETO: Yes, Your Honor. Lloyd
22 Cueto on behalf of Vance Childers, the appellant.

1 THE COURT: And for the Authority?

2 MS. FARRELL: Allison Farrell on behalf
3 of the Authority.

4 THE COURT: Okay. Ms. Farrell, you are
5 actually HIWU, right, but you're appearing on behalf
6 of the Authority here?

7 MS. FARRELL: Yes, Your Honor.

8 THE COURT: Okay. That's fine.

9 This conference is being conducted by
10 video. Although we've not identified publicly a feed
11 for the public to attend, the proceeding is not
12 confidential. If any member of the public in one way
13 or another has received the link and logged in, that's
14 fine, but they must disable the video and mute their
15 audio.

16 I don't see any people that I can't
17 identify, so that doesn't look like it applies but I
18 want you to appreciate that this is not a confidential
19 proceeding. The transcript I believe will be
20 available publicly. And we do, as you know, have a
21 court reporter here. Will the court reporter identify
22 himself please?

1 THE REPORTER: Yes. My name is Richard
2 Livengood and I was assigned by Veritext to take
3 this -- record of this proceeding.

4 THE COURT: Thank you.

5 Finally, we also have on the video
6 staff from the Office of the Administrative Law Judges
7 and also I see our summer intern as well. I do not
8 see anyone from either the Office of the Secretary or
9 General Counsel, but if another person pops in, that
10 could very well be who it is.

11 Now, I will summarize the logistics for
12 this conference very quickly and then I'll describe
13 this -- what gave rise to this conference itself.
14 We've sent the two sides instructions and procedures
15 on how this conference will be conducted. I'm only
16 going to go over a couple of points. Only persons who
17 are authorized to speak during the conference can do
18 so via the Teams link that was sent.

19 If you are counsel speaking today, you
20 must have your video on at all times. Your audio
21 should be muted when you are not speaking. Before
22 speaking, Counsel, please identify yourselves for the

1 court reporter's benefit.

2 All right, I will be brief again
3 regarding the facts here. HIWU has charged Mr.
4 Childers, who is, as I said, a trainer, with three
5 alleged anti-doping rule violations. Two involve the
6 presence of testosterone in horses named Tigger Attack
7 and Childersattack, both trained by Mr. Childers. The
8 third charge is possession of a banned substance found
9 in Mr. Childers' tack room. During the arbitration
10 hearing, the arbitrator found HIWU had proven all
11 three charges, and Mr. Childers has brought this
12 review proceeding.

13 The possession charge need not be
14 further discussed. The prior HIWU case against Dr.
15 McCrosky, which I referred to earlier, did not involve
16 any facts relating to the possession charge here. The
17 facts underlying the two presence charges for
18 testosterone are, however, the same in this case as
19 they were in Dr. McCrosky's case where Mr. Cueto also
20 represents Dr. McCrosky.

21 The Childersattack charge is the one
22 that most particularly caught my attention. Now, both

1 of you know the details of that charge, so again, I'm
2 going to summarize quickly, and certainly, if I say
3 anything that you think is wrong, wait till I finish
4 and then raise your hand and fix it for me; okay?

5 Now, in his own case, Dr. McCrosky
6 asserted that in 2022 he performed a partial or hemi-
7 castration of Childersattack. That meant that the
8 horse, according to Dr. McCrosky, was a ridgling,
9 which is a horse with one testicle. Dr. McCrosky
10 maintained that he forgot the other testicle needed to
11 be removed until he learned from a HIWU communication
12 that Childersattack had tested positive for
13 testosterone in the fall of 2024.

14 Shortly after that, Dr. McCrosky
15 claimed that he removed the remaining testicle. Dr.
16 McCrosky's account was not persuasive to HIWU. To the
17 contrary, HIWU believed his explanation was
18 untruthful, so it charged Dr. McCrosky with tampering,
19 essentially obstructing HIWU's investigation of
20 Childersattack's positive testosterone finding.

21 After hearing the evidence, the
22 arbitrator in Dr. McCrosky's case held that his

1 account was not credible and that HIWU had proven the
2 tampering charge. Based on a de novo review, I came
3 out the same way.

4 Now, let's return to Mr. Childers' own
5 case. In his pre-hearing brief to the arbitrator,
6 defending the presence charge, Mr. Childers said
7 Childersattack underwent a castration procedure in
8 March 2022, performed by Dr. Donald J. McCrosky. On
9 December 2, 2024, the remaining testicle was
10 surgically removed. That was, of course, Dr.
11 McCrosky's explanation in his own case.

12 So at that point, Mr. Cueto's position
13 for both clients was the same. But when Mr. Childers
14 testified at the arbitration hearing, he admitted he
15 trained Childersattack as a gelding, not as a
16 ridgling, and that if Childersattack had one testicle
17 that would not have gone unnoticed. That testimony,
18 if believed, does not easily square, if at all, with
19 Dr. McCrosky's account previously offered in the
20 arbitration.

21 Shortly after the arbitration hearing
22 here concluded, the arbitrator in the McCrosky case

1 issued his decision, rejecting Dr. McCrosky's defense
2 to the tampering charge as unworthy of belief. Mr.
3 Childers then submitted a supplemental brief in this
4 case and in that supplemental brief, Mr. Childers
5 argued that the McCrosky arbitration decision
6 exonerated him on the presence charge involving
7 Childersattack. Based on the McCrosky decision, Mr.
8 Childers also argued that Dr. McCrosky was a lone bad
9 actor, and Mr. Childers, who had relied on Dr.
10 McCrosky, was himself a victim. That's all language
11 from the supplemental brief itself.

12 Now, if I understand things right, Mr.
13 Cueto, you were at that time as now representing both
14 Mr. Childers and Dr. McCrosky, and you adopted in that
15 supplemental brief the arbitrator's decision which was
16 adverse to one client in an effort to benefit the
17 other. The arbitrator in this case called attention
18 to Mr. Childers' differing positions, rejected Dr.
19 McCrosky's version itself as unsupported by the
20 evidence, and found the presence charge involving
21 Childersattack proven.

22 The arbitrator here further held that

1 even though Mr. Childers argued Dr. McCrosky must have
2 injected Childersattack with testosterone, that
3 nevertheless Mr. Childers failed to prove the source
4 of the testosterone. So absent proof of source, there
5 could be no elimination or reduction in sanctions.

6 You're now here, Mr. Cueto, on Mr.
7 Childers' review proceeding. The issue on the
8 Childers charge as it's currently framed, is that the
9 arbitrator erred in holding that Trainer Childers
10 failed to establish source by a balance of
11 probabilities. That's from your notice of appeal. Do
12 you not sense a conflict between Mr. Childers'
13 position and that of your other client, Dr. McCrosky,
14 who is still entitled to seek full commission review
15 of my decision?

16 MR. CUETO: I don't, Your Honor. And
17 for this reason, if I could just give kind of a
18 general approach to the two matters in my
19 representation. From the outset of the notice that
20 Dr. McCrosky and Trainer Childers received from HIWU,
21 they both desired to have joint representation,
22 although it was never -- any formal waiver was ever

1 reduced to writing, there was a verbal understanding
2 from the outset of this procedure.

3 And everything I'm going to mention is
4 a matter of the record. It's nothing that would be of
5 any confidential conversation with either client, but
6 essentially there were the two tracks and the two
7 responses to the HIWU proceedings were everything Your
8 Honor just laid out. And Dr. McCrosky's case has been
9 his position from the outset, which is the history of
10 the castration with Childersattack and the timeline he
11 provided. At every stage, both in his written
12 responses and his testimony at his proceeding, he
13 acknowledged that Trainer Childers had no awareness of
14 it, no involvement of it, no participation of it, and
15 no knowledge of it.

16 Trainer Childers, in his case,
17 essentially as Your Honor laid out the varying
18 responses throughout his proceedings in kind of a
19 layman's summary, essentially it was, "Well, if Dr.
20 McCrosky told me this happened, I trust him as an
21 owner who's also a vet. If he told me he did
22 something, I assumed as a vet he could do it, but I

1 wasn't there when these things happened. I don't have
2 any personal knowledge if they happened."

3 So the reason our defense in Trainer
4 Childers' case kind of evolved through these
5 proceedings is I think by these various arbitration
6 decisions, and even the most recent decision by Your
7 Honor, the factual background on Childersattack is now
8 the law of the case. The arbitrator has made the
9 decision that Dr. McCrosky was not to be believed, was
10 not credible, was responsible for some way for the
11 testosterone issue, I believe without any reference to
12 Trainer Childers.

13 And then as we get to Trainer Childers'
14 case, it seems that in particular, as you touched on,
15 Your Honor, the fact that Trainer Childers did not
16 prove the source of the testosterone, I think again,
17 that has now changed as the law of the case in which
18 it's been affirmed that Dr. McCrosky was the source of
19 testosterone. And --

20 THE COURT: Can I stop you a minute?

21 MR. CUETO: Yes, sir.

22 THE COURT: As you referred twice to

1 the law of the case, would you please tell me what you
2 mean by that?

3 MR. CUETO: I guess as in the idea that
4 in the proceedings before Your Honor, this is the
5 accepted fact pattern and the findings that have been
6 recorded about these facts and actual ultimate
7 judgments in both the arbitration level and now the
8 appeal level.

9 THE COURT: I'm sorry, you're not --
10 are you saying that the decision in Dr. McCrosky's
11 case, either the arbitrator's decision or mine, is not
12 the law of the case here?

13 MR. CUETO: No, I'm saying I believe
14 that it is.

15 THE COURT: You believe that it is?

16 MR. CUETO: Well, I would assume that
17 for --

18 THE COURT: That would surprise me;
19 okay?

20 MR. CUETO: Okay.

21 THE COURT: It's not in the same case
22 to begin with. And obviously Mr. Childers was not a

1 party in Dr. McCrosky's case, and if somehow those
2 facts apply to him, it would have to be on some other
3 theory than he was a party. And I think the law of
4 the case operates only for the individual case, not
5 across cases. If you were talking cross cases, you'd
6 be talking about something like issue preclusion, but
7 I don't think you want to be arguing that, do you?

8 MR. CUETO: I don't, Judge, and it
9 probably is a misapplication of the term "law of the
10 case" by me here. It was more in recognition of an
11 anticipated consistency in the findings that the same
12 decision-maker, who has heard the testimony and
13 evidence relevant to the same nucleus of facts, would
14 probably apply them consistently in Mr. Childers'
15 case. So you're right, the term "law of the case" was
16 probably inappropriately used by me.

17 THE COURT: Now, you -- I don't
18 believe, but I could be misremembering. I do remember
19 that Dr. McCrosky in his case said Childers didn't
20 know anything about his injecting Tigger Attack. He
21 said they are to stimulate appetite. I don't remember
22 similar testimony about Childersattack and Childers'

1 knowledge from Dr. McCrosky. Are you suggesting there
2 was such testimony there?

3 MR. CUETO: At the risk of not
4 misciting the record, I don't want to conflate the two
5 too much, but I do believe that if it wasn't overtly
6 mentioned in McCrosky's testimony that Trainer
7 Childers had no knowledge, that was reflected in
8 Trainer Childers' testimony of his case, which --

9 THE COURT: Oh, I'm sure. Yeah,
10 absolutely. I listened to it. I don't have the
11 transcript yet from this case, but I did listen to
12 your client's testimony on the video, and yes, I mean
13 he certainly did say he did not know about any of
14 this. I agree with you on that.

15 MR. CUETO: Okay. Yes, sir. So, yeah,
16 I don't want to -- so whether there was any direct
17 testimony from Dr. McCrosky specifically saying
18 Trainer Childers did not know about a castration of
19 Childersattack, that might not have been part of the
20 record, and I might have been drawing an inference
21 from Trainer Childers.

22 THE COURT: Okay. Okay. Go ahead. I

1 interrupted you though.

2 MR. CUETO: So, again, the last thing I
3 would ever want to do, Judge, is jeopardize my
4 clients' rights before the tribunal here. So if the
5 Court advises me that the Court finds there's a
6 conflict, then I'll certainly take the right steps to
7 remedy it. But the reason I've never found a
8 conflict, and I don't believe the HIWU attorneys have
9 ever raised one at any stages of these proceedings, is
10 for the same reasons I stated, sir, that both clients
11 desired to have a dual representation, that both lines
12 of defense were not inconsistent or in conflict with
13 each other, and that the idea of Trainer Childers'
14 rather evolving defenses that brings us before you
15 today is because these decisions have come in, in this
16 kind of stair-step timeline of what the arbitrator and
17 Your Honor have considered Dr. McCrosky's actions.
18 And none of that has ever changed Trainer Childers'
19 testimony that he had no knowledge, involvement or
20 what our request would be a finding of no significant
21 fault.

22 THE COURT: Well, I think you told me a

1 few minutes ago that there was a verbal agreement for
2 joint representation of both Dr. McCrosky and Mr.
3 Childers. Is that right?

4 MR. CUETO: Yes, sir.

5 THE COURT: Was there a waiver by
6 either or both of them of any potential conflict?

7 MR. CUETO: Again, it was in
8 preparation for this, I realized the shortcoming that
9 it was never reduced to writing, but absolutely. Both
10 clients throughout every stage of the proceedings were
11 aware of what the other client's position and defense
12 was going to be and never saw any conflict and would
13 waive any idea of a potential conflict. And --

14 THE COURT: Well, let me -- I don't ask
15 this out of, you know, sort of abstract concern.
16 There was, in fact, an earlier HISA case in which a
17 new attorney appeared on the review proceeding. It
18 wasn't because of a conflict, but it was a new
19 attorney and one of the arguments that was presented
20 was that there was ineffective assistance of counsel.
21 And the case actually went through a number of
22 proceedings.

1 We did the briefing and that was an
2 issue ultimately framed for decision but for a
3 settlement between the parties literally at the 11th
4 hour after all the briefing was in, and we were ready
5 to have an argument, was that point mooted by the
6 party's settlement. And it concerns me that there is
7 the potential, absent an explicit informed waiver,
8 that in three weeks I could see a new attorney come
9 in. The Commission, if there is a review taken from
10 whatever decision I issue here, could see a new
11 attorney come in and I can see an ineffective
12 assistance of counsel argument based on the absence of
13 an informed waiver that there were potential conflicts
14 in this case between Dr. McCrosky and Trainer
15 Childers.

16 So it does seem to me, and I'm not
17 making a judgment honestly, about whether this
18 particular conflict is waivable, but at the very least
19 the parties ought to be trying to acknowledge that
20 they're waiving any conflict. And I think you need to
21 file something in writing to that effect by both of
22 them.

1 MR. CUETO: Okay. Absolutely, Your
2 Honor.

3 THE COURT: Okay?

4 MR. CUETO: Yes, sir.

5 THE COURT: Okay. I mean, Ms. Farrell,
6 do you have anything -- I know you haven't objected to
7 any of this, and it affects both integrity of the
8 proceedings as well as the Authority's involvement, do
9 you have anything you want to add?

10 MS. FARRELL: I will say that in May of
11 2025, Mr. Cueto and I spoke on the phone about this
12 case and he came -- when he came in for Dr. McCrosky,
13 I asked him about the potential for a conflict and he
14 did not find one, if I remember correctly. And then I
15 did follow up in writing with an email asking him.
16 You know, he said that there was no conflict and that
17 if he had identified one in the future that he would
18 let HIWU know.

19 THE COURT: Okay. I don't think that's
20 in the record in the McCrosky case, is it?

21 MS. FARRELL: No, this was just an
22 email between -- you know, from me to Mr. Cueto.

1 THE COURT: Yeah. Okay. I mean, it's
2 not necessarily that there is a conflict back then or
3 at any point --

4 MS. FARRELL: Right.

5 THE COURT: -- but that there could be
6 a conflict down the road. And, in fact, I don't see
7 how you could say there wasn't a conflict when Mr.
8 Childers submitted his reply brief and took the
9 position that the arbitrator's decision in McCrosky's
10 case ought to be applied to Mr. Childers here. That
11 seemed to me to be a pretty clear conflict. But let's
12 leave it that you will submit a written waiver by the
13 two of them; okay?

14 MR. CUETO: I will, Your Honor,
15 absolutely.

16 THE COURT: Because I really don't want
17 to see this case complicated by a new attorney who
18 says somewhere along the way, Mr. -- and you could
19 file this in McCrosky's case too -- a new attorney
20 could come in on an appeal or review application to
21 the Commission and say, "There was a conflict here.
22 This shouldn't have happened." So that's my interest

1 in making sure that insofar as possible, that does not
2 become an issue in either this case or Dr. McCrosky's
3 case; okay?

4 MR. CUETO: Yes, sir. Understood.

5 THE COURT: All right. Now, since I
6 have you both here together, let me ask another
7 question. It -- I -- based on the Authority's
8 response to your what's called a notice of appeal,
9 they seem to have conceded the source dispute that
10 you've raised. Am I overstating that, Ms. Farrell? I
11 thought you said in your -- in the Authority's
12 response that the situation based on the McCrosky
13 decision for Childersattack was substantially the same
14 as a matter of evidence as it was for the Tigger
15 Attack and that the same ineligibility period that the
16 arbitrator used for the Tigger Attack, which was I
17 think ten months, ought to be applied to the
18 Childersattack charge as well, which would then be a
19 significant change from the 2-year, 24-month period to
20 the 10-month period according to the Authority's
21 concession. Am I overstating?

22 MS. FARRELL: No, Your Honor.

1 THE COURT: So have -- just out of
2 curiosity, have the two of you talked at all about
3 what issue remains on the Childersattack charge? I
4 mean, I suppose the arbitrator did not undertake a no
5 fault or no substantial fault analysis. You've pretty
6 much, Ms. Farrell, signaled where you thought the
7 arbitrator ought to come out if that analysis were
8 done, and conceivably this case could be remanded for
9 that purpose. But I'm not overwhelmed by the idea
10 that you'd somehow or another be back here in three
11 months or six months on that issue. So I'm just
12 wondering, you know, isn't that worth discussing?

13 MR. CUETO: Yes, I think so, Your
14 Honor. We have not had a conversation since our
15 filings -- you know, each party's filings, but I would
16 be happy to engage in that conversation with Ms.
17 Farrell and her co-counsel.

18 THE COURT: Okay. I mean, if there is
19 an issue that can be taken out of the case one way or
20 the other, I'm all for taking issues out of cases;
21 okay?

22 MR. CUETO: Yes, sir.

1 MS. FARRELL: Yes.

2 THE COURT: And if you don't take it
3 out, I'll decide it.

4 MR. CUETO: Yes, sir.

5 THE COURT: Okay. All right. Would
6 you do this for me: In a week, would you just advise
7 me that you've conferred? You don't have to tell me
8 where you come out. If you come out in a way that
9 actually does eliminate the issue, then of course tell
10 me that. Other than -- if you don't come out that
11 way, you can just tell me that you've discussed it,
12 and the case is going forward; okay?

13 MR. CUETO: Certainly.

14 THE COURT: Okay.

15 MS. FARRELL: Yes.

16 THE COURT: So that -- do that in a
17 week. Anything else that you -- anyone here would
18 like to raise?

19 MS. FARRELL: No.

20 MR. CUETO: Not from Mr. Childers'
21 position, Your Honor.

22 THE COURT: Okay.

Page 25

1 MS. FARRELL: Not from the Authority.

2 Thank you.

3 THE COURT: Thank you both for
4 attending on relatively short notice; okay?

5 MR. CUETO: Thank you, Judge.

6 THE COURT: Okay. Be well. Bye.

7 MR. CUETO: You too.

8 MS. FARRELL: Bye.

9 (Whereupon, at 10:57 a.m., the
10 proceeding was concluded.)

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CERTIFICATE

1 I, RICHARD LIVENGGOOD, the officer before
2 whom the foregoing proceedings were taken, do hereby
3 certify that any witness(es) in the foregoing
4 proceedings, prior to testifying, were duly sworn;
5 that the proceedings were recorded by me and
6 thereafter reduced to typewriting by a qualified
7 transcriptionist; that said digital audio recording of
8 said proceedings are a true and accurate record to the
9 best of my knowledge, skills, and ability; that I am
10 neither counsel for, related to, nor employed by any
11 of the parties to the action in which this was taken;
12 and, further, that I am not a relative or employee of
13 any counsel or attorney employed by the parties
14 hereto, nor financially or otherwise interested in the
15 outcome of this action.

16 *Richard Livengood*

17 RICHARD LIVENGGOOD

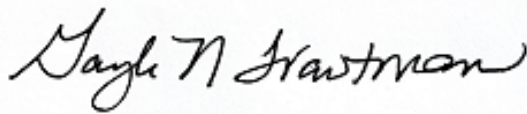
18 Notary Public in and for the

19 State of Maryland

20 Dated: June 25, 2026

21
22 CERTIFICATE OF TRANSCRIBER

1 I, GAYLE TRAUTMAN, do hereby certify that
2 this transcript was prepared from the digital audio
3 recording of the foregoing proceeding, that said
4 transcript is a true and accurate record of the
5 proceedings to the best of my knowledge, skills, and
6 ability; that I am neither counsel for, related to,
7 nor employed by any of the parties to the action in
8 which this was taken; and, further, that I am not a
9 relative or employee of any counsel or attorney
10 employed by the parties hereto, nor financially or
11 otherwise interested in the outcome of this action.

12 
13

14 GAYLE TRAUTMAN
15

16 Dated: June 25, 2026
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[& - attorney]

Page 1

&	9	advise 24:6	arbitration 7:9
& 2:10,12	9452 1:8 4:7	advises 17:5	9:14,20,21
1	a	afarrell 2:15	10:5 13:5 14:7
10 22:20	a.m. 1:12 4:3	affects 20:7	arbitrator 7:10
10:28 1:12 4:3	25:9	affirmed 13:18	8:22 9:5,22
10:57 25:9	ability 26:9	ago 4:13 18:1	10:17,22 11:9
11th 19:3	27:6	agree 16:14	13:8 17:16
2	absence 19:12	agreement 18:1	22:16 23:4,7
2 9:9 22:19	absent 11:4	ahead 16:22	arbitrator's
20005 1:15	19:7	alanzo 2:20	10:15 14:11
2022 8:6 9:8	absolutely	alleged 7:5	21:9
2024 8:13 9:9	16:10 18:9	allison 2:11 5:2	argued 10:5,8
2025 20:11	20:1 21:15	america 1:1	11:1
2026 1:11	abstract 18:15	analysis 23:5,7	arguing 15:7
26:20 27:16	accepted 14:5	anti 7:5	argument 19:5
24 22:19	account 8:16	anticipated	19:12
25 26:20 27:16	9:1,19	15:11	arguments
277-1554 2:8	accurate 26:8	appeal 11:11	18:19
28435 26:16	27:4	14:8 21:20	asberry 2:19
3	acknowledge	22:8	asked 20:13
33888 27:13	19:19	appearances	asking 4:19
350 2:13	acknowledged	4:19	20:15
4	12:13	appeared	asserted 8:6
4801 2:13	action 26:11,15	18:17	assigned 4:6
6	27:7,11	appearing 5:5	6:2
618 2:8	actions 17:17	appellant 1:7	assistance
62223 2:6	actor 10:9	2:2 4:22	18:20 19:12
64112 2:14	actual 14:6	appetite 15:21	assume 14:16
7	actually 5:5	application	assumed 12:22
7110 2:5	18:21 24:9	21:20	attack 7:6
8	add 20:9	applied 21:10	15:20 22:15,16
8 1:11	administrative	22:17	attend 5:11
8259378 1:17	1:3 4:5 6:6	applies 5:17	attending 25:4
	admitted 9:14	apply 15:2,14	attention 7:22
	adopted 10:14	appreciate	10:17
	adverse 10:16	5:18	attorney 18:17
		approach	18:19 19:8,11
		11:18	21:17,19 26:13

[attorney - confidential]

Page 2

27:9 attorneys 17:8 audio 4:2 5:15 6:20 26:7 27:2 authority 2:10 5:1,3,6 25:1 authority's 20:8 22:7,11 22:20 authorized 6:17 available 5:20 aware 18:11 awareness 12:13	belleville 2:6 benefit 7:1 10:16 best 26:9 27:5 brief 7:2 9:5 10:3,4,11,15 21:8 briefing 19:1,4 brings 17:14 brought 7:11 bye 25:6,8	24:13 certificate 25:22 26:22 certify 26:3 27:1 change 22:19 changed 13:17 17:18 charge 7:8,13 7:16,21 8:1 9:2 9:6 10:2,6,20 11:8 22:18 23:3 charged 7:3 8:18 charges 4:13 4:15 7:11,17 childers 1:6 2:2 4:7,9,13,20,22 7:4,7,9,11 9:4 9:6,13 10:3,4,8 10:9,14,18 11:1,3,7,8,9,12 11:20 12:13,16 13:4,12,13,15 14:22 15:14,19 15:22 16:7,8 16:18,21 17:13 17:18 18:3 19:15 21:8,10 24:20 childersattack 7:7,21 8:7,12 9:7,15,16 10:7 10:21 11:2 12:10 13:7 15:22 16:19 22:13,18 23:3	childersattack's 8:20 city 2:14 claimed 8:15 clear 21:11 client 10:16 11:13 12:5 client's 16:12 18:11 clients 9:13 17:4,10 18:10 come 17:15 19:8,11 21:20 23:7 24:8,8,10 commission 1:2 4:6 11:14 19:9 21:21 communicati... 8:11 complicated 21:17 conceded 22:9 conceivably 23:8 concern 18:15 concerns 19:6 concession 22:21 concluded 9:22 25:10 conducted 5:9 6:15 conference 1:10 4:8 5:9 6:12,13,15,17 conferred 24:7 confidential 5:12,18 12:5
b	c		
b 3:1 back 21:2 23:10 background 13:7 bad 10:8 balance 11:10 banned 7:8 based 9:2 10:7 19:12 22:7,12 beach 2:19 behalf 2:2,10 4:22 5:2,5 belief 10:2 believe 5:19 13:11 14:13,15 15:18 16:5 17:8 believed 8:17 9:18 13:9	c 2:1 4:1 called 4:8 10:17 22:8 case 4:7,12,15 7:14,18,19 8:5 8:22 9:5,11,22 10:4,17 12:8 12:16 13:4,8 13:14,17 14:1 14:11,12,21 15:1,4,4,10,15 15:15,19 16:8 16:11 18:16,21 19:14 20:12,20 21:10,17,19 22:2,3 23:8,19 24:12 cases 15:5,5 23:20 castration 8:7 9:7 12:10 16:18 caught 7:22 certainly 8:2 16:13 17:6		

[conflate - evidence]

Page 3

conflate 16:4 conflict 11:12 17:6,8,12 18:6 18:12,13,18 19:18,20 20:13 20:16 21:2,6,7 21:11,21 conflicts 19:13 considered 17:17 consistency 15:11 consistently 15:14 contrary 8:17 conversation 12:5 23:14,16 correctly 20:14 counsel 4:20 6:9,19,22 18:20 19:12 23:17 26:10,13 27:6,9 couple 6:16 course 9:10 24:9 court 4:4 5:1,4 5:8,21,21 6:4 7:1 13:20,22 14:9,15,18,21 15:17 16:9,22 17:5,5,22 18:5 18:14 20:3,5 20:19 21:1,5 21:16 22:5 23:1,18 24:2,5 24:14,16,22 25:3,6	credible 9:1 13:10 cross 15:5 cueto 2:3,4 4:21,22 7:19 10:13 11:6,16 13:21 14:3,13 14:16,20 15:8 16:3,15 17:2 18:4,7 20:1,4 20:11,22 21:14 22:4 23:13,22 24:4,13,20 25:5,7 cueto's 4:9,15 9:12 cuetolaw.com 2:7 cuetolm 2:7 curiosity 23:2 currently 11:8 d d 4:1 date 1:11 dated 26:20 27:16 daylight 4:3 dc 1:15 de 9:2 december 9:9 decide 24:3 decision 4:12 10:1,5,7,15 11:15 13:6,9 14:10,11 15:12 19:2,10 21:9 22:13	decisions 13:6 17:15 defending 9:6 defense 10:1 13:3 17:12 18:11 defenses 17:14 describe 6:12 description 3:2 desired 11:21 17:11 details 8:1 differing 10:18 digital 26:7 27:2 direct 16:16 disable 5:14 discuss 4:9 discussed 7:14 24:11 discussing 23:12 discussion 4:17 dispute 22:9 docket 1:7 4:7 donald 9:8 doping 7:5 dr 4:10,15 7:14 7:19,20 8:5,8,9 8:14,15,18,22 9:8,10,19 10:1 10:8,9,14,18 11:1,13,20 12:8,19 13:9 13:18 14:10 15:1,19 16:1 16:17 17:17 18:2 19:14	20:12 22:2 drawing 16:20 dual 4:16 17:11 duly 26:4 e e 2:1,1 3:1 4:1 4:1 earlier 7:15 18:16 easily 9:18 eastern 4:3 effect 19:21 effort 10:16 either 6:8 12:5 14:11 18:6 22:2 eliminate 24:9 elimination 11:5 email 20:15,22 employed 26:10,13 27:7 27:10 employee 26:12 27:9 engage 23:16 entitled 11:14 erred 11:9 es 26:3 esquire 2:3,11 essentially 8:19 12:6,17,19 establish 11:10 evd 3:2 evidence 8:21 10:20 15:13 22:14
--	---	---	--

evolved 13:4 evolving 17:14 exonerated 10:6 explanation 8:17 9:11 explicit 19:7	finds 17:5 fine 5:8,14 finish 8:3 fix 8:4 follow 20:15 foregoing 26:2 26:3 27:3 forgot 8:10 formal 11:22 forward 24:12 found 7:8,10 10:20 17:7 framed 11:8 19:2 full 11:14 further 7:14 10:22 26:12 27:8 future 20:17	happy 23:16 heard 15:12 hearing 7:10 8:21 9:5,14,21 held 8:22 10:22 hemi 8:6 hereto 26:14 27:10 himes 1:13 4:5 hisa 4:12 18:16 history 12:9 hiwu 5:5 7:3,10 7:14 8:11,16 8:17 9:1 11:20 12:7 17:8 20:18 hiwu's 8:19 hiwu.org 2:15 holding 11:9 honestly 19:17 honor 4:21 5:7 11:16 12:8,17 13:7,15 14:4 17:17 20:2 21:14 22:22 23:14 24:21 honorable 1:13 horse 8:8,9 horseracing 2:10,12 horses 7:6 hour 19:4	identify 4:20 5:17,21 6:22 il 2:6 inappropriately 15:16 inconsistent 17:12 individual 15:4 ineffective 18:20 19:11 ineligibility 22:15 inference 16:20 informed 19:7 19:13 injected 11:2 injecting 15:20 insofar 22:1 instructions 6:14 integrity 2:10 2:12 20:7 interest 21:22 interested 26:14 27:11 intern 6:7 interrupted 17:1 investigation 8:19 involve 7:5,15 involvement 12:14 17:19 20:8 involving 10:6 10:20 issue 11:7 13:11 15:6
f			
fact 4:10 13:15 14:5 18:16 21:6 facts 4:14 7:3 7:16,17 14:6 15:2,13 factual 13:7 failed 11:3,10 fall 8:13 farrell 2:11 5:2 5:2,4,7 20:5,10 20:21 21:4 22:10,22 23:6 23:17 24:1,15 24:19 25:1,8 fault 17:21 23:5,5 federal 1:2 4:6 feed 5:10 file 19:21 21:19 filings 23:15,15 finally 6:5 financially 26:14 27:10 find 20:14 finding 8:20 17:20 findings 14:5 15:11	g g 4:1 gayle 27:1,14 gelding 9:15 general 6:9 11:18 give 11:17 go 6:16 16:22 going 6:16 8:2 12:3 18:12 24:12 guess 14:3	i idea 14:3 17:13 18:13 23:9 identified 5:10 20:17	
	h		
	h 3:1 hand 8:4 happened 12:20 13:1,2 21:22		

19:2,10 22:2 23:3,11,19 24:9 issued 4:12 10:1 issues 23:20	koepke 2:18 l l 1:13 laid 12:8,17 language 10:10 lashaon 2:19 law 1:3 2:4 4:5 6:6 13:8,17 14:1,12 15:3,9 15:15 layman's 12:19 learned 8:11 leave 21:12 level 14:7,8 lines 17:11 link 5:13 6:18 listen 16:11 listened 16:10 literally 19:3 livengood 1:16 6:2 26:1,17 lloyd 2:3,4 4:21 location 1:14 logged 5:13 logistics 6:11 lone 10:8 look 5:17	march 9:8 marked 3:3 maryland 26:19 matter 1:5 4:7 4:17 12:4 22:14 matters 11:18 mccrosky 4:10 7:15,20 8:5,8,9 8:14,18 9:8,22 10:5,7,8,10,14 11:1,13,20 12:20 13:9,18 15:19 16:1,17 18:2 19:14 20:12,20 22:12 mccrosky's 4:15 7:19 8:16 8:22 9:11,19 10:1,19 12:8 14:10 15:1 16:6 17:17 21:9,19 22:2 mean 14:2 16:12 20:5 21:1 23:4,18 meant 8:7 member 5:12 mention 12:3 mentioned 16:6 michael 2:20 mine 14:11 minute 13:20 minutes 18:1 misapplication 15:9	misciting 16:4 misremembe... 15:18 mo 2:14 monday 1:11 month 22:19 22:20 months 22:17 23:11,11 mooted 19:5 mute 5:14 muted 6:21 n n 2:1 4:1 name 6:1 named 7:6 necessarily 21:2 need 7:13 19:20 needed 8:10 neither 26:10 27:6 never 11:22 17:7 18:9,12 nevertheless 11:3 new 18:17,18 19:8,10 21:17 21:19 notary 26:18 notice 11:11,19 22:8 25:4 novo 9:2 nucleus 15:13 number 4:7 18:21
j 9:8 jay 1:13 jeopardize 17:3 job 1:17 joint 11:21 18:2 judge 4:5,5 15:8 17:3 25:5 judges 1:3 6:6 judgment 19:17 judgments 14:7 june 1:11 26:20 27:16 k kansas 2:14 kind 11:17 12:18 13:4 17:16 know 4:4 5:20 8:1 15:20 16:13,18 18:15 20:6,16,18,22 23:12,15 knowledge 12:15 13:2 16:1,7 17:19 26:9 27:5	l l 1:13 laid 12:8,17 language 10:10 lashaon 2:19 law 1:3 2:4 4:5 6:6 13:8,17 14:1,12 15:3,9 15:15 layman's 12:19 learned 8:11 leave 21:12 level 14:7,8 lines 17:11 link 5:13 6:18 listen 16:11 listened 16:10 literally 19:3 livengood 1:16 6:2 26:1,17 lloyd 2:3,4 4:21 location 1:14 logged 5:13 logistics 6:11 lone 10:8 look 5:17 m m 2:4 made 13:8 main 2:5,13 maintained 8:10 maker 15:12 making 19:17 22:1	march 9:8 marked 3:3 maryland 26:19 matter 1:5 4:7 4:17 12:4 22:14 matters 11:18 mccrosky 4:10 7:15,20 8:5,8,9 8:14,18 9:8,22 10:5,7,8,10,14 11:1,13,20 12:20 13:9,18 15:19 16:1,17 18:2 19:14 20:12,20 22:12 mccrosky's 4:15 7:19 8:16 8:22 9:11,19 10:1,19 12:8 14:10 15:1 16:6 17:17 21:9,19 22:2 mean 14:2 16:12 20:5 21:1 23:4,18 meant 8:7 member 5:12 mention 12:3 mentioned 16:6 michael 2:20 mine 14:11 minute 13:20 minutes 18:1 misapplication 15:9	misciting 16:4 misremembe... 15:18 mo 2:14 monday 1:11 month 22:19 22:20 months 22:17 23:11,11 mooted 19:5 mute 5:14 muted 6:21 n n 2:1 4:1 name 6:1 named 7:6 necessarily 21:2 need 7:13 19:20 needed 8:10 neither 26:10 27:6 never 11:22 17:7 18:9,12 nevertheless 11:3 new 18:17,18 19:8,10 21:17 21:19 notary 26:18 notice 11:11,19 22:8 25:4 novo 9:2 nucleus 15:13 number 4:7 18:21

[o - received]

Page 6

o	p	18:11 21:9 24:21 positions 10:18 positive 8:12 8:20 possession 7:8 7:13,16 possible 22:1 potential 18:6 18:13 19:7,13 20:13 pre 9:5 preclusion 15:6 preparation 18:8 prepared 27:2 presence 7:6,17 9:6 10:6,20 present 2:17 presented 18:19 pretty 21:11 23:5 previously 9:19 prior 7:14 26:4 probabilities 11:11 probably 15:9 15:14,16 procedure 9:7 12:2 procedures 6:14 proceeding 1:14 4:11 5:11 5:19 6:3 7:12 11:7 12:12 18:17 25:10	27:3 proceedings 12:7,18 13:5 14:4 17:9 18:10,22 20:8 26:2,4,5,8 27:5 proof 11:4 prove 11:3 13:16 proven 7:10 9:1 10:21 provided 12:11 public 5:11,12 26:18 publicly 5:10 5:20 purpose 23:9
o 4:1 objected 20:6 obstructing 8:19 obviously 14:22 offered 9:19 office 1:3 2:4 6:6,8 officer 26:1 oh 16:9 okay 5:4,8 8:4 14:19,20 16:15 16:22,22 20:1 20:3,5,19 21:1 21:13 22:3 23:18,21 24:5 24:12,14,22 25:4,6 operates 15:4 ought 19:19 21:10 22:17 23:7 outcome 26:15 27:11 outset 11:19 12:2,9 overstating 22:10,21 overtly 16:5 overwhelmed 23:9 own 8:5 9:4,11 owner 12:21	p 2:1,1,18 4:1 p.c. 2:4 part 16:19 partial 8:6 participation 12:14 particular 13:14 19:18 particularly 7:22 parties 4:19 19:3,19 26:11 26:13 27:7,10 party 15:1,3 party's 19:6 23:15 pattern 14:5 people 5:16 performed 8:6 9:8 period 22:15 22:19,20 person 6:9 personal 13:2 persons 6:16 persuasive 8:16 phone 20:11 please 5:22 6:22 14:1 point 9:12 19:5 21:3 points 6:16 pops 6:9 position 9:12 11:13 12:9	q qualified 26:6 question 22:7 quickly 6:12 8:2	
		r r 2:1 4:1 raise 8:4 24:18 raised 17:9 22:10 rather 17:14 ready 19:4 realized 18:8 really 21:16 reason 11:17 13:3 17:7 reasons 17:10 received 5:13 11:20	

[recent - subject]

Page 7

recent 13:6 recognition 15:10 record 4:3 6:3 12:4 16:4,20 20:20 26:8 27:4 recorded 14:6 26:5 recording 26:7 27:3 reduced 12:1 18:9 26:6 reduction 11:5 reference 13:11 referred 7:15 13:22 reflected 16:7 regarding 7:3 rejected 10:18 rejecting 10:1 related 4:11 26:10 27:6 relating 7:16 relative 26:12 27:9 relatively 25:4 relevant 15:13 relied 10:9 remaining 8:15 9:9 remains 23:3 remanded 23:8 remedy 17:7 remember 15:18,21 20:14 remote 1:14	removed 8:11 8:15 9:10 reply 21:8 reported 1:16 reporter 4:2 5:21,21 6:1 reporter's 7:1 representation 4:9,16 11:19 11:21 17:11 18:2 representing 10:13 represents 4:10 7:20 request 17:20 response 22:8 22:12 responses 12:7 12:12,18 responsible 13:10 return 9:4 review 4:11 7:12 9:2 11:7 11:14 18:17 19:9 21:20 richard 1:16 6:1 26:1,17 ridgling 8:8 9:16 right 5:5 7:2 10:12 15:15 17:6 18:3 21:4 22:5 24:5 rights 17:4 rise 6:13	risk 16:3 road 21:6 room 7:9 rule 7:5 s 2:1 3:1 4:1 safety 2:10 sanctions 11:5 saw 18:12 saying 14:10 14:13 16:17 says 21:18 secretary 6:8 see 5:16 6:7,8 19:8,10,11 21:6,17 seek 11:14 seem 19:16 22:9 seemed 4:16 21:11 seems 13:14 sense 11:12 sent 6:14,18 separate 4:15 settlement 19:3 19:6 short 25:4 shortcoming 18:8 shortly 8:14 9:21 sides 6:14 signaled 23:6 signature 26:16 27:13	significant 17:20 22:19 similar 15:22 sir 13:21 16:15 17:10 18:4 20:4 22:4 23:22 24:4 situation 22:12 six 23:11 skills 26:9 27:5 sorry 14:9 sort 18:15 source 11:3,4 11:10 13:16,18 22:9 speak 6:17 speaking 6:19 6:21,22 specifically 16:17 spoke 20:11 square 9:18 staff 6:6 stage 12:11 18:10 stages 17:9 stair 17:16 start 4:19 state 26:19 stated 17:10 states 1:1 step 17:16 steps 17:6 stimulate 15:21 stop 13:20 street 2:5,13 subject 4:12
---	---	---	--

[submit - veterinarian]

Page 8

submit 21:12	tell 14:1 24:7,9	timeline 12:10	typewriting
submitted 10:3	24:11	17:16	26:6
21:8	ten 22:17	times 6:20	u
substance 7:8	term 15:9,15	today 6:19	ultimate 14:6
substantial	tested 8:12	17:15	ultimately 19:2
23:5	testicle 8:9,10	together 22:6	underlying
substantially	8:15 9:9,16	told 12:20,21	7:17
22:13	testified 9:14	17:22	understand
suggesting 16:1	testifying 26:4	took 21:8	10:12
suite 2:13	testimony 9:17	touched 13:14	understanding
summarize	12:12 15:12,22	tracks 12:6	12:1
6:11 8:2	16:2,6,8,12,17	trade 1:2 4:6	understood
summary	17:19	trained 7:7	22:4
12:19	testosterone	9:15	undertake 23:4
summer 6:7	7:6,18 8:13,20	trainer 4:14	underwent 9:7
supplemental	11:2,4 13:11	7:4 11:9,20	unit 2:12
10:3,4,11,15	13:16,19	12:13,16 13:3	united 1:1
suppose 23:4	thank 4:4 6:4	13:12,13,15	unnoticed 9:17
sure 16:9 22:1	25:2,3,5	16:6,8,18,21	unsupported
surgically 9:10	theory 15:3	17:13,18 19:14	10:19
surprise 14:18	thing 17:2	transcriber	untruthful
susel 2:18	things 10:12	26:22	8:18
sworn 26:4	13:1	transcript 5:19	unworthy 10:2
t	think 8:3 13:5	16:11 27:2,4	used 15:16
t 3:1	13:16 15:3,7	transcriptionist	22:16
tack 7:9	17:22 19:20	26:7	v
take 6:2 17:6	20:19 22:17	trautman 27:1	vance 1:6 2:2
24:2	23:13	27:14	4:22
taken 19:9	third 7:8	tribunal 17:4	various 13:5
23:19 26:2,11	thought 22:11	true 26:8 27:4	varying 12:17
27:8	23:6	trust 12:20	verbal 12:1
talked 23:2	three 7:4,11	trying 19:19	18:1
talking 15:5,6	19:8 23:10	twice 13:22	veritext 6:2
tampering 8:18	tigger 7:6	two 4:13,14	version 10:19
9:2 10:2	15:20 22:14,16	6:14 7:5,17	vet 12:21,22
teams 6:18	till 8:3	11:18 12:6,6	veterinarian
	time 1:12 4:3	16:4 21:13	4:11
	10:13	23:2	

[victim - year]

Page 9

victim 10:10	writing 12:1
video 5:10,14	18:9 19:21
6:5,20 16:12	20:15
videoconfere...	written 12:11
2:3,11,18,19	21:12
2:20	wrong 8:3
view 4:10	x
violations 7:5	x 3:1
w	y
wait 8:3	yeah 16:9,15
waivable 19:18	21:1
waive 18:13	year 22:19
waiver 11:22	
18:5 19:7,13	
21:12	
waiving 19:20	
want 5:18 15:7	
16:4,16 17:3	
20:9 21:16	
washington	
1:15	
way 5:12 9:3	
13:10 21:18	
23:19 24:8,11	
we've 5:10 6:14	
week 4:13 24:6	
24:17	
weeks 19:8	
welfare 2:12	
went 18:21	
west 2:5	
witness 26:3	
wondering	
23:12	
worth 23:12	
worthy 4:17	