

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

COURTHOUSE NEWS SERVICE, )

Plaintiff, )

v. )

Civil Action No.:  
2:18cv391

GEORGE E. SCHAEFER, in his )  
Official Capacity as Clerk of )  
the Circuit Court for Norfolk, )  
Virginia )

JACQUELINE C. SMITH in her )  
Official Capacity as Clerk of )  
the Circuit Court for Prince )  
William County, Virginia, )

Defendants. )

TRANSCRIPT OF PROCEEDINGS  
(Bench Trial)

Norfolk, Virginia  
January 31, 2020

BEFORE: THE HONORABLE HENRY C. MORGAN  
United States District Judge

1 Appearances:

2 BRIAN CAVE LEIGHTON PAISNER LLP  
3 By: WILLIAM HIBSHER  
4 HEATHER GOLDMAN  
5 BRYAN HARRISON

6 -- and --  
7 WILLCOX & SAVAGE  
8 By: CONRAD M. SHUMADINE, ESQUIRE  
9 Counsel for Plaintiff

10 THOMPSON McMULLAN PC  
11 By: WILLIAM DANIEL PRINCE, IV  
12 MICHAEL GORDON MATHESON  
13 Counsel for Defendants

14 I N D E X

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16 OF THE PLAINTIFF:

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P R O C E E D I N G S

(Proceedings commenced at 10:11 a.m. as follows:)

COURTROOM DEPUTY CLERK: Civil Action No. 2:18cv391,  
Plaintiff Courthouse News Service v. Defendant George E.  
Schaefer, in his official capacity as Clerk of the Circuit Court  
of Norfolk, Virginia, and Defendant Jacqueline C. Smith, in her  
official capacity as Clerk of the Circuit Court for Prince  
William County, Virginia.

For the plaintiffs, Mr. Hibsher, Ms. Goldman,  
Mr. Harrison and Mr. Shumadine, are you ready to proceed?

MR. SHUMADINE: We're ready.

COURTROOM DEPUTY CLERK: For the defendants,  
Mr. Matheson, Mr. Prince, are you ready to proceed?

MR. PRINCE: Good morning, Your Honor. We are ready  
to proceed.

THE COURT: Counsel, you may use your judgment as far  
as opening statements are concerned. We've been through this  
case pretty thoroughly on pretrial motions, but if you think it  
would be productive to bring in any additional points or  
emphasize any points by way opening statements, you're free to  
do so. First for the plaintiff.

MR. HIBSHER: Good morning, Your Honor. Bill Hibsher  
for the plaintiff, and I do have a couple of remarks. In part

1 responding to some of the questions that Your Honor asked at the  
2 summary judgment motion.

3           As Your Honor knows, Courthouse News Service has  
4 brought this action against the Norfolk and Prince William  
5 Circuit Court clerks because of substantial and pervasive delays  
6 in providing access to newly filed civil complaints during the  
7 six-month period that Courthouse News monitored. These delays  
8 were the result of the clerk's policies and practices of  
9 conducting complete administrative review and processing of  
10 newly filed cases before making them available on the court's  
11 public access terminals. The evidence in this case will show  
12 that, over the years, Courthouse News, like other media, has  
13 been able to review newly filed complaints in courthouses across  
14 the country, and before complete administrative processing. The  
15 advent of technology in recent years has impeded access in some  
16 courts, but it has sped up access in others. Most federal  
17 courts, for example, including the Eastern District of Virginia  
18 since November of 2018, provide access to new filings upon  
19 receipt. That means instantly. Often on the Internet, and  
20 prior to any processing at all.

21           But Courthouse News does not seek or insist on  
22 instantaneous or immediate access no matter how many times that  
23 the defendant says we do. We believe that the First Amendment  
24 requires contemporaneous access, and that means access by the  
25 end of the day unless serious circumstances present prevent

1 that. We seek the kind of traditional access to new complaints  
2 that Courthouse News has had for decades and which existed in  
3 these courts.

4 Now, at the summary judgment argument two weeks ago  
5 Your Honor mentioned the CNS case which had been pending before  
6 the Ninth Circuit for almost two years. Well, the day after  
7 your comment on January 17, the Ninth Circuit issued that  
8 decision affirming the district court in part and reversing it  
9 in part. Now, both sides appropriately made reference to this  
10 complicated Ninth Circuit decision in our proposed conclusions  
11 of law. But defendants also filed a brief after 10:00 last  
12 night in support of a motion to file supplemental authority to  
13 the Planet decision, including their interpretation of that  
14 decision. So Your Honor, we request leave to file a response to  
15 that brief if the Court will permit us to do so.

16 The Planet case affirmed that the First Amendment  
17 required a right of timely access to complaints and that that  
18 right attaches upon filing. And it reiterated that the media is  
19 the guardian of the public's right to know, and that the media  
20 enables public discussion of events. The Ninth Circuit also  
21 stated that the clerk's post-lawsuit practice which had improved  
22 access while the case was being litigated did not render the  
23 case moot, and the panel affirmed its earlier rejection of an  
24 abstention motion, expressly disagreeing with the Seventh  
25 Circuit's Brown decision. Planet concluded that CNS's reporting

1 must be timely in order for it to be newsworthy, citing the  
2 Seventh Circuit's Grove Fresh case.

3           At argument, Your Honor agreed that the First  
4 Amendment's guarantee of access applies to civil complaints, and  
5 you spoke about an order requiring the clerks to provide  
6 contemporaneous access by the end of the day where practical --  
7 where practicable. The recent Planet decision seems to comport  
8 with Your Honor's same-day access where practicable formulation.

9           Now, once a First Amendment right is found to  
10 attach -- and that first step in the analysis is to be performed  
11 by the Court -- the second step is to determine whether  
12 defendant provides a Constitutionally valid reason for its  
13 policies and practices causing delays, and that is a burden that  
14 the defendant carries.

15           But here, instead of offering any evidence to justify  
16 processing delays, defendants have, from the beginning of this  
17 case, denied that there were delays, and they have complained  
18 that if CNS only asked the right person at the clerk's offices,  
19 CNS would have been given access to new complaints without  
20 having to wait until processing was completed. But the evidence  
21 will show that CNS did request access before filing suit,  
22 reaching out to supervisory personnel in both courts to review  
23 new complaints prior to complete process, and CNS was repeatedly  
24 told that it would have to wait until cases were fully processed  
25 and available on the public access terminals.

1           At argument, Your Honor asked if the defendants  
2           disputed these access denials. Well, in Norfolk, the clerk,  
3           Mr. Schaefer, stated at deposition that the deputy clerk, who  
4           our bureau chief spoke with, got it wrong. Mr. Schaefer  
5           admitted that his press access policy, which CNS only learned  
6           about after this case was filed, is not posted anywhere and is  
7           not even written down. In Prince William, our bureau chief will  
8           testify that he visited the Court while training a new reporter  
9           in January of 2018, and that on the first day of training when  
10          he asked the clerk if he could review cases that were not yet  
11          fully processed and posted, she found most on his list. But on  
12          the second day, the supervisory clerk was called to the desk and  
13          said that CNS could no longer review cases before processing was  
14          completed. She now claims that this change in policy occurred  
15          prior to that conversation. But it is undisputed that after  
16          that second day's visit in January of 2018, CNS could not review  
17          new cases until they were posted on the public terminal, at  
18          least until this case was filed. Our reporter can now review  
19          cases that are not fully processed in Prince William once more.

20                 And while both cases -- both courts appear to be  
21          providing press access today, during the six-month time at issue  
22          through today, both courts have posted signs that make clear  
23          that access before posting on the public terminals is not  
24          allowed.

25                 Our focus of this trial will be the extent of the

1 delays. During the relevant period, CNS's expert has analyzed  
2 the delays in the Norfolk and Prince William circuit courts  
3 based on electronic data recorded and produced by the Office of  
4 the Executive Secretary for the same January to June, 2018  
5 period that is the subject of the complaint. That data was made  
6 available to CNS through discovery in this action.

7 Our analysis of the OES data shows that in both  
8 courts, access to newly filed complaints was substantially  
9 delayed during the six-month period at issue. In Norfolk -- I'd  
10 like to show a copy of a summary chart that our expert has  
11 prepared. That is exhibit P6, if I may.

12 THE COURT: All right.

13 MR. HIBSHER: In Norfolk, as Your Honor can see, only  
14 five percent of the cases filed were made available on the day  
15 of filing.

16 THE COURT: Now, when is this time frame? When was  
17 that suit filed? Remind me.

18 MR. HIBSHER: This suit was filed in July of 2018, and  
19 the allegations of the complaint were based on data that was  
20 collected from January to June, 2018. And after we filed suit,  
21 we got the OES electronic data which is what our expert based  
22 her analysis on.

23 THE COURT: All right. So she's -- this data all  
24 relates to how it was being handled prior to the suit being  
25 filed?



1 MR. HIBSHER: Exactly. And that is the focus of the  
2 suit, the period that we investigated.

3 Now, Your Honor also asked at argument whether there  
4 was any data regarding the period subsequent to the focus of the  
5 lawsuit, subsequent to June 30th, and our expert will provide  
6 testimony on that subsequent period as well, Your Honor.

7 THE COURT: What is he going to say?

8 MR. HIBSHER: Our expert is going to say that once the  
9 lawsuit was filed, access to newly filed complaints in both of  
10 these courts gradually but dramatically improved. And we will  
11 have further testimony from our bureau chief -- not based on the  
12 OES testimony, our expert will focus on the OES testimony for  
13 the July 1 through the end of November -- but we have tracking  
14 data that our bureau chief will testify about that indicates  
15 that the improvement in access continued through 2019.

16 So if we turn for a moment to Plaintiff's Exhibit 7,  
17 the computation or the summary by our expert of delays in the  
18 Prince William court during the January to June period based on  
19 the OES data, we see that only 38 percent of the new filings  
20 were made available on that day.

21 Now, defendant's expert reaches a very different  
22 conclusion. He asserts that 90 percent of all new filings are  
23 made available within a day, but he ran a very different, and we  
24 believe unreliable, calculation. Instead of calculating delays  
25 based on same-day, one-day, two-day delays, defendant's expert

1 calculates delays "within one court day". Now, he doesn't  
2 define court day, but it's quite clear that one court day really  
3 means two days. He also used the wrong data fields for his  
4 calculations, and the experts examined different universes of  
5 filings. CNS's expert focused on general civil complaints. The  
6 defendant's expert looked at all of the files throughout that  
7 period, all of the civil filings, many of which are confidential  
8 filings which are never made public. For example, in Prince  
9 William, more than 50 percent of the general civil filings are  
10 concealed carry applications -- 55 percent, I believe -- filings  
11 that are never made public but are included in their expert's  
12 analysis. So we believe that the evidence will make clear that  
13 our expert and her approach to delays in these courts was  
14 correct.

15           Now, you asked a moment ago about the period after  
16 July, and I'd like to show you what has been previously marked  
17 Exhibit 8, which is our expert's analysis, again based on OES  
18 data, for the period immediately follow the lawsuit. Exhibit 8  
19 has a line down the center for July because that is when the  
20 lawsuit in this case was filed. And as you can see, in Norfolk,  
21 access began to improve almost immediately, climbing to  
22 90 percent by November.

23           If we can see Exhibit P9? In Prince William, we see a  
24 similar dynamic: Access improves almost immediately after the  
25 filing of the lawsuit in July, getting up to close to 80 percent

1 in September but then dropping a bit. As I said a moment ago,  
2 we will offer testimony about 2019 which will indicate that in  
3 2019, Prince William continued to improve.

4           So these improvements in access in both of these  
5 courts indicating that the times complaints are made available  
6 as much as 90, in Prince William, 95 percent, on the day that  
7 they're filed, demonstrates that the clerk is able to provide  
8 access to the large majority, to 90 percent and more of new  
9 complaints, by the end of the day. The improvement in access  
10 that the defendants have demonstrated undercuts any suggestion  
11 that to provide timely access would be overly burdensome.  
12 Defendants can perform the processing that they have done  
13 recently in a timely manner because most cases are now posted on  
14 the public access terminals by the end of the day when CNS's  
15 reporters visit the courthouse. It is the rare instance that  
16 CNS now has to ask for an unprocessed case, and defendants now  
17 provide that unprocessed case.

18           Now, defendants will argue that this case is moot as a  
19 result of this improved access. But Your Honor has already  
20 indicated at argument that you did not view the case as moot.  
21 And when a public official corrects offending conduct part way  
22 through the litigation, particularly where they can return to  
23 the offending conduct at any time, a case like this is not moot.

24           CNS has asked Your Honor to consider the injunction  
25 possibility in this case, though we have heard your reluctance

1 to do so at summary judgment argument. The declaratory order  
2 which you described at that time would be a next-best result in  
3 this case. Contemporary access by the end of the day of filing  
4 except where such was not practicable.

5 I said it at argument that injunctive relief had been  
6 granted in four other district courts since 2006. The Planet  
7 decision two weeks ago affirmed the district court's injunction  
8 which precluded the clerk from processing newly filed cases  
9 before providing access, and that to us is the most analogous  
10 part of the Ninth Circuit's decision two weeks ago and is not  
11 mentioned in defendant's submission last night.

12 Our fear in this case is that, without an injunction,  
13 defendants or their successors can return to the practices that  
14 gave rise to this suit and halt the *ad hoc* exceptions that they  
15 have been providing to Courthouse News in recent months. So  
16 while a declaratory order would provide some protection, it  
17 would hardly match an injunction. And so Your Honor, we  
18 respectfully ask the Court to consider that option as trial  
19 proceeds.

20 Thank you.

21 THE COURT: All right.

22 MR. PRINCE: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MR. PRINCE: Good to see you again. Bill Prince on  
25 behalf of the defendant. With me are my clients, Jacqueline

1 Smith, who is the circuit court clerk for Prince William County,  
2 and Mr. Schaefer, George Schaefer, who is the Circuit Court  
3 clerk for the city of Norfolk, as Your Honor knows.

4           May it please the Court. The office of the Clerk of  
5 the Circuit Court is specifically established by the  
6 Constitution of Virginia. The system of Constitutional officers  
7 dates back to the earliest days of our nation. It is based on  
8 the presumption that important services of government should be  
9 directly responsible to their constituents at the ballot box.

10 Circuit Court clerks are elected to an eight-year term. The  
11 Code of Virginia lists hundreds of responsibilities for Circuit  
12 Court clerks. For example, their office records deeds, they  
13 issue marriage licenses, they issue concealed handgun permits,  
14 probate wills, maintain land records, provide administrative  
15 support for judges in the circuit courts in their jurisdiction,  
16 they serve as the administrator for all criminal and civil cases  
17 filed, and they maintain all court files and records, prepare  
18 court orders, prepare jury lists. They issue juror summons and  
19 serve other court process.

20           The plaintiff in this case, CNS, wants this Court to  
21 issue an injunction or a declaration requiring clerks to provide  
22 same-day access to newly filed civil complaints. CNS sends  
23 reporters to courthouses around the country, including Virginia,  
24 to review specific types of new civil complaints and provide  
25 summaries for its daily reporting service. CNS sends its daily

1 litigation reports via email every evening to paying  
2 subscribers, mostly law firms, including my own. The evidence  
3 will show that CNS has a commercial interest in obtaining access  
4 to newly filed civil complaints as quickly as possible. The  
5 faster CNS gets access, the greater the value of its daily  
6 litigation reports.

7           Let's talk about the evidence.

8           The evidence will demonstrate that the clerk's have  
9 policies and procedures for maintaining court records and the  
10 orderly processing of newly filed civil complaints. Their  
11 policies and procedures are reasonable, and they're necessary to  
12 ensure the quality and accuracy of court records maintained by  
13 clerks. Both clerks in this case, Mr. Schaefer and Ms. Smith,  
14 have policies to make newly filed civil complaints available to  
15 the public the same business day they are received for filing.

16           THE COURT: Well, I don't want to hear anything about  
17 policies that nobody knows about unless you ask the right  
18 question of the right person. Those kind of policies which run  
19 contrary to what's posted in the clerk's office are of no  
20 evidentiary value.

21           MR. PRINCE: Both make new civil filings available on  
22 public access terminals located in their offices. Anyone can  
23 access these terminals during normal business hours. The  
24 terminals show a digital image of new civil complaints which are  
25 scanned by deputy clerks when the new civil filings are

1 received. If a filing comes in at the end of the day, it may  
2 not be available till the following business day. The evidence  
3 will show that it may take longer because of a variety of  
4 factors: Office closures, inclement weather, staff shortages,  
5 unusually high filing volume, filings coming in at the end of  
6 the day. Sometimes complaints are filed minutes before the  
7 clerk's office closes, if you can believe it. Sometimes it  
8 takes longer because there are problems with the filing itself  
9 that have nothing to do with the clerks. The filing parties  
10 submitting an incorrect filing fee. Sometimes new filings  
11 contain confidential information, personal identifying  
12 information. Sometimes it may just take longer, especially when  
13 there's a *pro se* filer involved.

14           The evidence will also show that CNS is getting the  
15 level of access it seeks in this lawsuit. The deposition  
16 testimony from CNS's 30(b)(6) designee and its reporters have  
17 been unequivocal: CNS is not suffering delays from access in  
18 Prince William or Norfolk. In fact, they said it's rare that  
19 they do not obtain contemporaneous access to newly filed civil  
20 complaints.

21           The evidence will also show that the Norfolk clerk is  
22 giving CNS access to new civil filings before CNS -- before  
23 administrative processing. It's undisputed that CNS's reporter  
24 in Norfolk can go behind the counter and look at new complaints  
25 in paper before the public does. This has always been

1 Mr. Schaefer's policy. And while CNS may not have understood  
2 it, they never asked him what his policy was.

3 THE COURT: They shouldn't have to ask, Counsel. The  
4 policy should be made available. The burden shouldn't be on the  
5 citizens to ask what the policy is when there's a policy printed  
6 and posted in the clerk's office which suggests otherwise.  
7 We've heard that before, so let's move on to something different  
8 than that.

9 MR. PRINCE: The Court is going to hear a lot about  
10 filing data in this case. The parties have obtained filing data  
11 from the Office of the Executive Secretary for the Supreme  
12 Court. This comes from the technology that the courts use to  
13 receive, process and make new filings available in the public  
14 access terminals. This filing data is a joint exhibit and it's  
15 not disputed. What is in dispute is what the data means. Both  
16 sides have hired experts to interpret the data, and it should  
17 come as no surprise that CNS's expert believes that the  
18 processing times are somewhat longer than our expert does. The  
19 defendant's expert, Dr. Harless, will testify that approximately  
20 90 percent of paper-filed civil complaints are available on the  
21 public access terminals within one court day in Norfolk.

22 THE COURT: What does one court day mean? Does that  
23 mean the same day as it's filed?

24 MR. PRINCE: It can mean the same day it's filed if  
25 it's filed --



1 THE COURT: What does it mean?

2 MR. PRINCE: It means within one court day of the  
3 complaint being filed.

4 THE COURT: Well, that doesn't answer my question,  
5 Mr. Prince. I think you understand that doesn't answer my  
6 question. Does one court day mean on the date it's filed or  
7 not?

8 MR. PRINCE: If it's received on a Wednesday, they  
9 will have it available by the following business day.

10 THE COURT: Well, I think it's misleading to call -- I  
11 mean, when you start defining terms, to mislead people, that's  
12 not --

13 MR. PRINCE: We're not trying to mislead, Your Honor.  
14 That's not our intent.

15 THE COURT: Are you saying that if it's filed by  
16 9:00 in the morning on Wednesday it'll be available by  
17 9:00 Thursday?

18 MR. PRINCE: That -- our expert will testify that  
19 90 percent of them are available -- if it's filed at 9:00 on a  
20 Wednesday, 90 percent are available by 9:00 the following day,  
21 yes.

22 THE COURT: Is that what one court day means?

23 MR. PRINCE: Correct, Your Honor.

24 THE COURT: So it doesn't mean that if it's filed,  
25 that 90 percent of the claims that are filed on Wednesday are

1 available Wednesday?

2 MR. PRINCE: That is not his testimony, Your Honor.

3 But they --

4 THE COURT: Because their testimony is that -- or the  
5 latest statistics they had was that 90 percent was available --

6 MR. PRINCE: Within three business days.

7 THE COURT: -- within one day.

8 MR. PRINCE: I'm sorry, Your Honor?

9 THE COURT: Within one day.

10 MR. PRINCE: Are you talking about CNS's statistics?

11 THE COURT: Yes.

12 MR. PRINCE: I believe their expert is going to  
13 testify -- and they can certainly speak to what their expert  
14 does or doesn't say -- but I believe their expert -- I want to  
15 make sure we get this right. I believe that their expert is  
16 going to testify that around 90 percent are available within  
17 three business days. Our expert says that around -- that  
18 between 90 and 94 percent are available in one court day.

19 MR. HIBSHER: Your Honor, may I clarify?

20 THE COURT: Well, what was that thing you put on the  
21 board? Didn't that say 90 percent in one day?

22 MR. HIBSHER: It did, Your Honor. But that was for  
23 the period of time after this lawsuit --

24 THE COURT: I know.

25 MR. HIBSHER: -- was filed. So that did say that at

1 times it approached 90, and in Prince William 80.

2 And what I also said was that after that period we  
3 continued to track, and in 2019 it approached 90 in Norfolk and  
4 was well in the 90s in Prince William. But during the time at  
5 issue in this case, only five percent were made available. And  
6 that's the January to June, 2018 period.

7 THE COURT: All right. Well, okay. I'm not -- I  
8 don't like to have counsel interrupted like that, but I did  
9 think that they said 90 percent was made available on the date  
10 of filing. That's what they said that those statistics, those  
11 that are undertaken after the suit was filed, that they  
12 gradually rose up to a level of 90 percent. Not within one  
13 court day, but on the date filed.

14 MR. PRINCE: Well, Your Honor, we dispute that there  
15 was ever a gradual increase or change. The clerks -- the  
16 evidence is go to show that the clerks haven't done anything  
17 differently, and that CNS was getting the level of access that  
18 they're getting now at the time, six-month period before this  
19 lawsuit was filed, which is the time period relevant to the  
20 complaint.

21 So just so Your Honor's time frame is -- so we have --

22 THE COURT: Well, I hope we're not talking about  
23 different levels, like for example if you're going to include --  
24 I'm not familiar with the clerk's filing system, which of course  
25 is one of the reasons why I don't feel that it's my job to

1 micromanage the clerk's office. I don't understand what they  
2 do. But I mean, if we've got two experts who are looking at  
3 different things, it wouldn't be the first time that that  
4 happened in this court, but I hope that's not happening today.  
5 For example, if somebody is counting filings which are  
6 confidential by their nature, then that would throw the study  
7 completely off and make it perhaps worthless.

8 MR. PRINCE: One of the key distinctions, Your Honor,  
9 between our expert's opinion and their expert's opinion is that  
10 our expert looked at the entire data set, all civil filings that  
11 were filed in these two jurisdictions.

12 THE COURT: Well, that may not be the proper thing to  
13 be looking at. We'll find out.

14 MR. PRINCE: Well, Your Honor, I believe Your Honor  
15 noted that the last time.

16 THE COURT: I did.

17 MR. PRINCE: Yeah.

18 THE COURT: I did. But I didn't -- I was not told  
19 there were some filings that are kept confidential permanently.

20 Go ahead. Go ahead. Go ahead.

21 MR. PRINCE: Regardless of which interpretation you  
22 think is best, the fact remains that CNS's First Amendment  
23 rights are not being infringed. There is no serious evidence  
24 that rises to the level of a Constitutional violation. The  
25 evidence will show that the clerks provide timely access to

1 newly filed civil complaints. There's no evidence of bad faith.  
2 There's no evidence of intentionally withholding documents from  
3 the press or the public. The policies at issue here deal with  
4 when, not whether, CNS gets access.

5           The evidence will show that when a new civil filing is  
6 received, the clerk's perform an initial review to process the  
7 new filing. They check to make sure the filing fee is correct.  
8 Does the filing contain confidential or personal identifying  
9 information? Is it filed in the correct jurisdiction?

10           The resources of the clerks are not unlimited. They  
11 have budgets. They have staffing issues. They cannot pay  
12 overtime on a regular basis. They do the best they can with  
13 what they have. Assuming, without conceding, that the First  
14 Amendment qualified right of access applies to newly filed civil  
15 complaints, the Constitution does not require perfection.  
16 Requiring clerks to provide same-day access 100 percent of the  
17 time is not reasonable.

18           THE COURT: The Court indicated at the summary  
19 judgment hearing that that was not reasonable.

20           MR. PRINCE: Well, that's what they're asking Your  
21 Honor to do.

22           THE COURT: I told you what I would do at the last  
23 hearing, and it wasn't 100 percent. Wasn't that clear to you at  
24 that time?

25           MR. PRINCE: It was clear, Your Honor, but I, you

1 know --

2 THE COURT: Okay.

3 MR. PRINCE: There simply cannot be anything about a  
4 reasonableness standard here. To establish a right of access  
5 does not mean it's without limitation. Even if the First  
6 Amendment right of access applies, it's a qualified right of  
7 access. That's what the Fourth Circuit has said. It's a  
8 qualified right of access, and that necessarily implies an  
9 element of reasonableness. And the processing time to Norfolk  
10 are irrelevant anyway because CNS can get behind-the-counter  
11 access before the complaints are scanned and before they're  
12 available on the terminals. They're getting exactly what  
13 they're asking for.

14 An injunction --

15 THE COURT: Which makes one wonder why we're here  
16 today.

17 MR. PRINCE: I'm with you, Your Honor.

18 An injunction or declaration requiring same-day access  
19 will not benefit the public at large. We will demonstrate to  
20 you that there is a reason the clerks process new civil filings  
21 the way that they do. There is a legitimate government interest  
22 in the orderly processing of new civil filings and making them  
23 available to everyone.

24 THE COURT: Okay. Is the current kerfuffle going in  
25 the state legislature about the availability of court records

1 something that's influencing this case?

2 MR. PRINCE: Your Honor, I'm not aware of any current  
3 bills before the General Assembly; however, just last year the  
4 General Assembly amended Code Section 17.1-208, and this is the  
5 section that deals with court records and providing public  
6 access to court records. And if I may, Your Honor, I'm going  
7 to --

8 THE COURT: You know what I'm talking about, Counsel?

9 MR. PRINCE: I believe -- if Your Honor is referring  
10 to the issues with OES and obtaining the aggregated case data  
11 from OES, that was addressed in the amended version of 208.

12 So what 208 does is it provides in (B), that court  
13 records are open to the public. And no one's disputing that.  
14 This case is not about whether court records are public and  
15 whether or not they're available. But what the recent changes  
16 to 208 provide is that they provide that the requested court  
17 records shall be provided to the requestor within a reasonable  
18 period of time given the nature of the request and the  
19 availability of staff to respond to the request, but in no event  
20 longer than 30 days from the date a complete request is made by  
21 the requestor.

22 So the General Assembly has provided for access to  
23 court records, and it actually allows, gives a clerk some time  
24 and implies -- not implies. There is an element of  
25 reasonableness here.

1 THE COURT: Well, this talks about copying records.  
2 We're not talking about copying records, are we?

3 MR. PRINCE: No, Your Honor. But this is the section  
4 that provides that court records maintained by clerks shall be  
5 open to inspection in the office of the clerk and provides for  
6 public access to court records. This is where the General  
7 Assembly --

8 THE COURT: Well, 30 days is not reasonable.

9 MR. PRINCE: Well, and the clerks aren't contending  
10 that 30 days is reasonable.

11 THE COURT: That's what the statute says.

12 MR. PRINCE: Well, that's what the General Assembly  
13 has provided. And I didn't write the statute. But the point  
14 here is that there's an element --

15 THE COURT: You think the statute is Constitutional if  
16 it gives the clerk 30 days to supply the records when a suit's  
17 filed, do you think the statute is Constitutional?

18 MR. PRINCE: The statute is Constitutional because  
19 court records are unique, and they're different from your normal  
20 public records. The clerks are charged with maintaining a  
21 significant volume of records of public civil and criminal court  
22 records. They're not subject to FOIA. They're exempt from  
23 FOIA, and for good reason. This case is not about the First  
24 Amendment. The clerks believe in transparency. They believe in  
25 open government. They do the best they can to make the records



1 they maintain publicly available in a timely manner. But there  
2 has to be an element to reasonableness to the principle that  
3 court records are open to inspection to the public.

4 We appreciate the opportunity to show Your Honor what  
5 the clerks do, how and why they do it. It's important. Clerks  
6 perform essential functions for their constituents, and CNS is  
7 asking for extraordinary relief here. This case will have  
8 far-reaching consequences not just for these two clerks, but for  
9 all clerks throughout the Commonwealth.

10 Thank you, Your Honor.

11 THE COURT: All right. When we met at summary  
12 judgment, the Court said that what we needed was a definition of  
13 contemporaneous. A number of courts -- what is it, four or five  
14 courts or courts in four or five states around the country have  
15 dealt with this issue, and all of them have come up with the  
16 same finding: That these records are subject to the First  
17 Amendment, which is why the Court said without ruling that it  
18 believes that the First Amendment did apply. So unless the  
19 Court can be persuaded otherwise, I believe the First Amendment  
20 does apply.

21 The Court also said at the last hearing that it  
22 believed the definition of contemporaneous should be on the same  
23 business day that the report is filed so long as that's  
24 practicable. So the Court made it abundantly obvious that it  
25 didn't expect the clerk to be able to produce 100 percent of the

1 filings on the same day they're filed. That, for any number of  
2 reasons, can't be complied with. The clerk would have to stop  
3 accepting complaints at some given hour during the day and then  
4 let somebody come in after they stopped accepting complaints.  
5 That would be the only way they could make 100 percent  
6 available, and that doesn't seem reasonable or practicable.

7           Now, if I've heard the figures 90 and 95 percent  
8 referred to, that 90 to 95 percent of the civil filings that --  
9 and I suppose this doesn't apply to filings which are  
10 confidential, quite obviously -- have been made available to the  
11 plaintiff on the day they were filed, that seems to me to be  
12 perfect good. That seems to me evidence that the clerks are  
13 trying their best to make them available. There is an  
14 unexplained major difference between the measurements before and  
15 after the suit was filed. And I believe the clerks are going to  
16 say that that's those statistics are not accurate. And maybe  
17 they're not. But I will observe that if the clerks make 90 to  
18 95 percent of them available on the same day they were filed, I  
19 think the clerk is meeting their Constitutional obligations.  
20 And for the Court to go beyond that and grant an injunction --  
21 which I said I didn't want to do -- would require the Court to  
22 get into an analysis of the operation of the clerk's office.  
23 And how am I supposed to learn in the course of a lawsuit how to  
24 operate a clerk's office better than experienced clerks have  
25 learned how to do it over many years? So the last thing I want

1 to do is impose an injunction. As I said, it seems to me that  
2 if 90 to 95 percent of filings are being made available at the  
3 present time, that the clerks are using good faith to try to  
4 make this information available. So that's why I propose that  
5 the clerk -- or that the Court would enter a declaration that  
6 these filings are subject to the First Amendment of the United  
7 States, and unless I'm persuaded otherwise, I believe that  
8 filing 90 to 95 percent of them would be complying with their  
9 Constitutional obligations, particularly if the rest of them  
10 were filed within "one court day." The defendant's definition  
11 of one court day means 24 hours from when they were filed,  
12 apparently. That's the best way I can interpret their  
13 definition of one court day. So that means that the filings  
14 that were filed late in the day or if, on those rare occasions  
15 where somebody comes in the clerk's office with hundreds of  
16 cases that are related, whatever time they come in, I can't -- I  
17 don't know how long it would take to handle that many cases --  
18 but it sounds like the clerk is agreeing that they would make  
19 those available within one court day.

20 Now, every state operates its courts differently. And  
21 I'm sure there are differences between how they operate in  
22 California and Texas and Illinois and wherever else the courts  
23 have decided this, and in Virginia. So the fact that the courts  
24 were granting injunctions in all of those states doesn't mean  
25 that they should necessarily be granted an injunction in this

1 case. An injunction is an extraordinary remedy.

2           The fact that all of those courts found that the First  
3 Amendment applied is very persuasive to the Court. The fact  
4 that they all granted injunctions is somewhat persuasive to the  
5 court. But at the same time I don't know if the defendants are  
6 admitting that they're producing 90 to 95 percent as the  
7 plaintiffs claim they are. It's kind of backwards. It seems  
8 like the defendants are claiming they can't do that, even though  
9 the plaintiff's statistics say they are. So that's a little  
10 weird. But if they're doing it, they have demonstrated they can  
11 do it.

12           The Court also said last time if the clerk suffered  
13 what we've suffered in this court, which is a drastic reduction  
14 in our support staff across the board, at some future date that  
15 may impact the ability of the clerks to perform as well as  
16 they're performing right now, which would mean that the Court  
17 would have to revisit an injunction.

18           So I felt then and I feel now that the best remedy for  
19 both sides is for the Court to simply declare that these filings  
20 are subject to the First Amendment, and if it's undisputed that  
21 90 to 95 percent of the civil filings, absent those that are  
22 confidential, are made available on the same business day as  
23 they're filed, that certainly would meet any reasonableness test  
24 that this Court would impose. So as long as it goes on like  
25 that, it seems to me that there's no need for an injunction.

1           And of course I don't -- I mean, this whole thing  
2 seems backwards to me. The plaintiffs are saying that the  
3 defendants have improved their services. The defendants are  
4 saying, oh, no, we didn't improve our services, they're the same  
5 as they were. So they're just backwards. The whole thing  
6 doesn't make any sense to me, frankly.

7           But if they have improved their services, that's to  
8 their credit. I mean, if they change some policy to make it  
9 more available, all the better for them. If they can change the  
10 way they do things, and by changing it produce 90 to 95 percent  
11 of it, why should I meddle in it myself? I just don't  
12 understand, quite frankly, the position of the parties. It  
13 makes absolutely no sense to me. It seems like the defendant is  
14 saying they can't do -- the defendants are saying yes, the  
15 plaintiffs say that they're fully satisfied, but no, we are not  
16 giving them 90 or 95 percent because we're not capable of doing  
17 it. The whole thing makes no sense to me.

18           So the burden is going to be on the plaintiff to  
19 persuade the Court why they should get an injunction if, as they  
20 say, they're getting 90 to 95 percent of the civil filings on  
21 the same day they're filed. I think that's as good as they can  
22 expect. I don't know how the clerk operates in Virginia as  
23 compared to Texas and California, all these other states, but  
24 that sounds pretty good to me.

25           So I don't understand the defendants are denying

1 they've changed anything, and it seems to the Court if they have  
2 changed something and improved it, that's good. But they seem  
3 to want to deny that that's what they have done. I really don't  
4 understand that.

5           The burden is going to be on the defendant to show  
6 that their statistics belie the statistics produced by the  
7 plaintiff, because if they don't or if they were taken in some  
8 different way, or if we get tied up in some evasive term like  
9 court days, which the Court believes is an evasive term, then  
10 the defendants will not have persuaded the Court that these  
11 statistics are of any value.

12           So let's go ahead with the plaintiff's case. And I'm  
13 most interested, as I say, in showing what the evidence is as to  
14 how many civil filings, what percentage of civil filings are  
15 being produced within one day.

16           MR. HIBSHER: The plaintiff calls William Girder.

17           THE COURT: Nobody's made any motion to exclude  
18 witnesses.

19           MR. MATHESON: Your Honor, if I could be heard on  
20 that? We would like to excuse the witnesses, and also we have  
21 the some witnesses here who are under subpoena today. The  
22 person that I'm most concerned about is Mr. Harless, who I don't  
23 anticipate would be called to testify today and may not be  
24 called to testify for several days. He's a full-time professor  
25 at VCU and has other obligations, and I would like for him to be

1 recognized and be able to leave subject to recall when it's time  
2 for him to take the stand, if that's acceptable to the Court.

3 THE COURT: Well, it ought not take two to three days  
4 to try this case.

5 MR. MATHESON: Well, Your Honor, my understanding is  
6 that the plaintiffs are asking for three days to put on their  
7 case, and the defendants --

8 THE COURT: I can't imagine it taking three days to  
9 put on the plaintiff's case. But if you want to recognize  
10 somebody, it's up to you to get him here. You can handle that  
11 however you want.

12 MR. MATHESON: Okay. Well, then, Your Honor, I am  
13 going to --

14 -- Unless you have a need for Mr. Harless today? --

15 MR. MATHESON: -- I'm going ask him to come back --

16 MR. PRINCE: I do not.

17 MR. MATHESON: -- next week.

18 THE COURT: Of course expert witnesses are normally  
19 permitted to remain in court, but that's not an absolute. I  
20 mean, expert witnesses are normally permitted to remain in  
21 court.

22 MR. MATHESON: And I have no objection to  
23 Ms. Kancherla remaining in court. But the lay witnesses I would  
24 like to be excluded from the courtroom.

25 THE COURT: If there are any witnesses here who are,

1 other than expert witnesses, I'll ask you to please wait outside  
2 in the hall. As far as when you'll be called, you'll have to  
3 depend on the attorneys to let you know how long you'll wait.  
4 The Court will do whatever it can to not make it any more  
5 inconvenient than we have to, but that's between you and the  
6 attorneys.

7 MR. SHUMADINE: May it please the Court, I have one  
8 quick question that you've reminded me of. We have taken the  
9 30(b)(6) deposition of a representative from the Office of  
10 Executive Secretary. They have agreed we may read it. I have  
11 subpoenaed the OES, and I would like to release them. The  
12 statute doesn't make it plain that since it's within the  
13 subpoena power I have the release them. I've told them I  
14 thought you would allow me to.

15 THE COURT: Well, if you've got his deposition and the  
16 other side agrees that you can read the deposition, then you can  
17 release him.

18 MR. SHUMADINE: Fine. Thank you.

19 THE COURT: Okay.

20 MR. SHUMADINE: I'm sorry to interrupt.

21 THE COURT: That's all right.

22 MR. HIBSHER: May the witness take the stand, Your  
23 Honor?

24 WILLIAM GIRDER, having been duly sworn, was examined  
25 and testified as follows:



DIRECT EXAMINATION

BY MR. HIBSHER:

Q. Would you state your name and business address for the record, please?

A. My formal name is William Girdner, G-i-r-d-n-e-r. I go by Bill. Our business is at 30 North Raymond Avenue in Pasadena, California.

Q. Mr. Girdner, by whom are you replied?

A. By Courthouse News Service.

Q. And what is your position at CNS?

A. I'm the editor.

Q. And are you also the founder of CNS?

A. Yes. I started the business.

Q. What is CNS, Mr. Girdner?

A. It's a constellation of publications. One is the New Litigation Reports. That's the most popular. One is the Daily Brief, which reports on appellate opinions throughout the United States. Another is our website, which is broadly and public and reports on more general news, with a focus on politics and the law.

Q. Would you briefly summarize your educational background?

A. I went to Reid College and obtained a literature degree in 1972, and I went to law school at Lewis & Clark and obtained a law degree in 1977.

Q. Did you ever practice law?

1 A. I practiced for four years with Legal Aid Service.

2 Q. And what has your occupation been since you've stopped  
3 practicing law?

4 A. I've been a reporter, a journalist for about 40 years.

5 Q. Would you describe your journalism career prior to starting  
6 CNS?

7 A. I wrote a couple articles for the Los Angeles Herald  
8 Examiner, then I was hired as a staff reporter for the  
9 Los Angeles Daily Journal, a legal paper, and after about  
10 three years, I went into freelance primarily for the Boston  
11 Globe and the New York Times, and I did that for six to  
12 seven years.

13 Q. Your focus on the courts; is that correct?

14 A. Yes, it was. I was based in the courts.

15 Q. And when did you first start covering the courts?

16 A. When I moved out away from the Daily Journal, so in roughly  
17 1985 I started working in the press room in the Central District  
18 of California at the federal court in Los Angeles.

19 Q. When you were covering the federal courthouse in  
20 Los Angeles in the mid '80s, were there other reporters also  
21 covering the courts?

22 A. There were about seven reporters. It got more crowded when  
23 there was a big trial, but on a day-to-day basis there were  
24 seven reporters.

25 Q. So how did you and the other members of the press see newly

1 tiled civil litigation in those days?

2 A. When I started working there, I found a tradition which was  
3 that all of us would troop downstairs to the clerk's office  
4 around 4:30, and we would go up to the intake clerk and we would  
5 ask her for the stack of new civil complaints from that day, and  
6 we would also check the stack of rulings and opinions for that  
7 day. And the result was that we book-ended the work of the  
8 court: We saw the new business on the one end and we saw the  
9 conclusion, the judgments, the rulings and the opinions at the  
10 other end.

11 Q. When did you found Courthouse News Service?

12 A. In 1990.

13 Q. And what about covering the courts prompted you to start  
14 this company?

15 A. In those two stacks I talked about, I thought there was a  
16 lot of news that wasn't being reported. So I started a paper  
17 publication that came out every two weeks called the Central  
18 District Almanac, and covered two stacks: The opinions in the  
19 front and in the back it had summaries of the new civil  
20 complaints.

21 Q. Which court did you initially start covering?

22 A. Well, as the name implies, Central District Almanac covered  
23 the Central District in California, the federal court in  
24 Los Angeles.

25 Q. Did there come a time when you expended coverage to other

1 courts in California?

2 A. Yes. I started faxing out the section at the back, the  
3 summary of new filings from the Central District Almanac, and  
4 that took off very quickly. So I went to L.A. Superior next,  
5 and then I moved through the rest of the California state and  
6 federal courts in San Francisco and Sacramento, San Diego and so  
7 forth.

8 Q. Did you expand beyond California?

9 A. Yeah. I went to Chicago. The big markets first. Chicago,  
10 New York, Boston, Washington D.C., and kept going to Miami,  
11 Dallas, Houston, Phoenix, Portland, Seattle, all the big cities,  
12 and then progressively some of the smaller cities.

13 Q. Did you personally visit these cities as you expanded CNS?

14 A. At the outset I set all of them up.

15 Q. And did other press reporters cover those courts at that  
16 time?

17 A. Yes. I found the same tradition that I found in  
18 Los Angeles in federal court. That was nearly universal. There  
19 was either a wood box or a metal tray that was on the counter or  
20 behind the counter that reporters looked at at the end of the  
21 day, and that tray or that box contained the new civil  
22 complaints filed that day.

23 Q. And you saw them at the end of each day; is that correct?

24 A. That's correct.

25 Q. And have you had an opportunity to observe how clerks

1 typically process or docket new cases in these courts?

2 A. Yes. At times I have asked the clerks to take me through  
3 the process. To actually pretend that I was a complaint. I've  
4 also just seen it from, you know, the public side of the counter  
5 as well.

6 Q. And how would you describe in broad strokes what indexing,  
7 processing look like in these courts?

8 A. There's a basic commonality to all the paper courts. It's  
9 a two-step process. The first step is the intake process, where  
10 the intake clerk receives the new complaint, receives a check,  
11 normally, and it's followed by a flurry of stamping. The clerk  
12 leafs through the complaint, she gives a receipt for the check,  
13 and often will provide a stamped copy for the filer to take  
14 away, the receipt. The intake clerk will then put it in the box  
15 I talked about, either the tray or the wood box, and there it  
16 sits for the rest of the day.

17 Another clerk, the docketing clerk, would come pick up the  
18 new complaints from that box the following morning and enter  
19 them into a docket.

20 Q. So at what stage of this two-step process were you and  
21 other reporters allowed to see the complaint?

22 A. Yeah. Right after they crossed the counter.

23 THE COURT: This is in California?

24 THE WITNESS: No, Your honor. That's everywhere. It  
25 was in Boston, in New York, in Chicago. In all the cities I

1 mentioned. In Dallas. In Houston. Miami. It was common.  
2 This tray? They had one in Prince William. It's everywhere.

3 THE COURT: All right.

4 MR. PRINCE: Your Honor, if I may, we're going to  
5 object to the relevance of this. You know, he's talking about  
6 courts and clerks outside the Commonwealth, not in Virginia, not  
7 in Prince William and not in Norfolk.

8 THE COURT: Well, I think it bears on the First  
9 Amendment issue, Counsel. And all these other states that  
10 you're mentioning have decided cases. So I think it is  
11 relevant. I'll permit the question.

12 MR. HIBSHER: If I may, the tradition of access across  
13 the country is very much an element of the First Amendment --

14 THE COURT: Well, that doesn't mean that you can  
15 testify, Counsel.

16 THE WITNESS: Your Honor, if I could answer your --  
17 question, Your Honor?

18 It may have been aimed at that two-step process, and  
19 that two-step process was in place, I saw it repeatedly, where  
20 the intake clerk brings it in then the docketing clerk does it  
21 later.

22 THE COURT: Right. And you've seen it in the states  
23 you've mentioned?

24 THE WITNESS: Yes, sir.

25 THE COURT: Okay.

1 MR. HIBSHER: Just one more question on this.

2 BY MR. HIBSHER:

3 Q. Mr. Girdner, you said there's a two-step process, the first  
4 being the intake clerk and the second step being the full  
5 processing. At what point in the docketing was the press  
6 allowed to see newly filed complaints?

7 A. Right after intake.

8 THE COURT: All right. Well, the thing of it is, the  
9 clerk has got to make some record of the case being filed before  
10 they put it in the box, else the reporters could remove any case  
11 they wanted to. And the same would apply to a lesser extent to  
12 the opinions. But I mean, somebody could walk off with a newly  
13 filed case, and if the clerk hadn't entered it somehow...

14 THE WITNESS: Your Honor, there was a, usually like in  
15 federal court in Los Angeles, there was an intake log with the  
16 case numbers, and the intake clerk did put a case number on the  
17 case.

18 THE COURT: So there was some form of processing  
19 before it was placed in the box?

20 THE WITNESS: Yes, sir. And the stamping and  
21 processing of the check.

22 THE COURT: All right.

23 BY MR. HIBSHER:

24 Q. Mr. Girdner, how many people does CNS employ nationwide?

25 A. 250.

1 Q. And in Virginia?

2 A. Five.

3 Q. And which courts nationwide does CNS cover?

4 A. We cover the federal courts throughout the U.S. and we  
5 cover state courts in every state in the nation. Courts like  
6 Texas -- I mean, states like Texas have 260 individual counties.  
7 We're not able to send somebody to every individual county.

8 Q. So does CNS cover all of the courts it reports on by  
9 sending reporters to those courts on a daily basis?

10 A. No. Some of -- no, we do not. We cannot. There's many  
11 rural and small courts that we cover online with simple docket  
12 information.

13 Q. And in Virginia how many courts are covered overall?

14 A. I believe all the state courts are covered one way or  
15 another. 120.

16 Q. Federal courts?

17 A. As well, the two districts, two district courts in Virginia  
18 are also covered.

19 Q. And how many courts in Virginia are covered with the  
20 Courthouse News reporter on a daily basis?

21 A. Seven state courts and the two federal courts.

22 Q. Seven out of 120; is that correct?

23 A. That's correct.

24 Q. What factors typically prompt CNS to cover a court with a  
25 live reporter on a daily basis?



1 A. The volume. To a certain extent the quality of litigation.  
2 How much, how many industries are based in that city and that  
3 region. Affluence makes a difference, oddly enough. But -- and  
4 also proximity to another major city. Geography makes a  
5 difference.

6 Q. Now, talking about Courthouse News' publications, you  
7 mentioned Courthouse News' New Litigation Reports. Would you  
8 describe the New Litigation Reports?

9 A. The New Litigation Reports are a summary, are comprised of  
10 summaries of new civil litigation filed that day in either one  
11 court or a set of courts.

12 Q. How often are the New Litigation Reports published?

13 A. Every court day.

14 Q. How many are there nationwide?

15 A. 125 roughly.

16 Q. And how does Courthouse News decide what to include in a  
17 New Litigation Report?

18 A. The criterion is basic and simple: It's any case, any  
19 general civil case against a business or a public entity should  
20 be included by the reporter. And if there's a case against an  
21 individual who has gathered some, either notoriety or fame or  
22 wealth in the community, that would normally be included.

23 Q. And when do the reporters have to file their reports on new  
24 litigation?

25 A. A couple -- within a couple hours after the courts -- after

1 the court closes. So by 6:00 or 6:30.

2 Q. And when are they sent to your subscribers?

3 A. Immediately. As soon as the reporter uploads them.

4 Q. Every court day?

5 A. That's correct.

6 Q. Is it part of your job as editor of CNS to keep track of  
7 delays in access in courts across the country?

8 A. Certainly. I spot-check them for -- and one of the first  
9 things I look at is how current they are.

10 Q. I'd like to show you what has been previously marked as  
11 Plaintiff's Exhibit 45 for identification.

12 It will come up on the screen in a moment, Mr. Girdner.

13 THE WITNESS: If I can get some water at some point,  
14 that would be great.

15 MR. HIBSHER: Yes.

16 THE COURT: Does that water come from the spigots in  
17 the courthouse?

18 COURT SECURITY OFFICER: Yes, Your Honor.

19 THE COURT: I wouldn't advise anybody to drink that.  
20 Pass him some of this.

21 MR. HIBSHER: Your Honor, we attempted to bring in  
22 some water bottles, but that was -- without Your Honor's  
23 permission we could not do that.

24 THE COURT: I'll give you permission to bring water  
25 into the courthouse. All of us have our own separate supply of

1 water. I think the water in the courthouse is not recommended.

2 MR. HIBSHER: Thank you, Your Honor.

3 BY MR. HIBSHER:

4 Q. So Mr. Girdner, would you identify what Plaintiff's

5 Exhibit P45 is?

6 A. Yeah. That's a copy of our Virginia report.

7 Q. What's the date on the top?

8 A. October 19th, 2018.

9 Q. And what is the information that's generally set forth in  
10 this report?

11 A. That's -- it includes on the left-hand side the parties and  
12 the judge's name, location, and the case number in the middle.  
13 It's a summary of the allegations and causes of action. And the  
14 right-hand side is the filing lawyer and his or her firm.

15 Q. And who drafts the summary of the allegations and causes of  
16 action?

17 A. The reporters draft the summary.

18 Q. Is it -- do they read the complaints before they do that?

19 A. They have to. It's -- they couldn't draft the summary  
20 otherwise. So yes.

21 Q. Does this report cover both federal and state courts in the  
22 Virginia area that it covers?

23 A. This is a combined report. Yes.

24 MR. HIBSHER: I'd like to offer this document into  
25 evidence.

1 THE COURT: P45 will be admitted.

2 (Plaintiff's Exhibit No. 45 received in  
3 evidence.)

4 BY MR. HIBSHER:

5 Q. Mr. Girdner, I'd like to show you Plaintiff's Exhibit 46 or  
6 identification. Could you identify this document?

7 A. That's our Southern Virginia State Report which covers the  
8 southern half of the state.

9 Q. And does this, like Exhibit P45, basically report on the  
10 new filings of that day in the manner that you testified about  
11 P45?

12 A. The new filings as soon as we can see them, yes.

13 MR. HIBSHER: Your Honor, I'd like to offer this  
14 document into evidence, P46.

15 THE COURT: P46 will be admitted.

16 (Plaintiff's Exhibit No. 46 received in  
17 evidence.)

18 BY MR. HIBSHER:

19 Q. Mr. Girdner, you mentioned that Courthouse News has a  
20 website; is that correct?

21 A. That is correct.

22 Q. And how many readers does CNS's website have?

23 A. It varies some from month to month, but generally around  
24 600,000 individual readers per month.

25 Q. I'd like to show what you has been previously marked

1 Plaintiff's Exhibit 27 for identification.

2 THE COURT: Well, my book goes from 3 to 7 and then to  
3 45? Where would this exhibit be?

4 MR. HIBSHER: May I hand it up, Your Honor?

5 THE COURT: Well, I'd like to find the book. Is there  
6 a book of exhibits? There should be a book of exhibits for each  
7 witness.

8 (Court and courtroom deputy conferred.)

9 THE COURT: I don't see any -- there's supposed to be  
10 a book of exhibits for every witness separately.

11 MR. HIBSHER: We provided that, Your Honor, but may  
12 have inadvertently left this document out.

13 THE COURT: No, you didn't inadvertently leave it out,  
14 I advertently didn't see it.

15 MR. HIBSHER: Okay. Thank you, Your Honor.

16 BY MR. HIBSHER:

17 Q. Mr. Girdner, would you identify this exhibit,  
18 Plaintiff's 27 for identification?

19 A. That's a screenshot of our web page.

20 Q. And I notice that on the upper left-hand corner there's a  
21 report on a Monsanto verdict. That's a court case. What is the  
22 subject matter of some of the other articles in this website  
23 snapshot?

24 A. Yeah, we covered that litigation really closely. There are  
25 polls that are covered, political polls. There's an

1 environmental story on the Sage Grouse. There's something about  
2 asylum seekers. And there's a scientific story, which we do  
3 quite a few of, on the Mars Rover.

4 Q. So the website which you said has 700,000 readers covers a  
5 wide range of topics beyond civil litigation; is that correct?

6 A. Yes. Six to seven hundred thousand, varies from month to  
7 month, and yes, it covers a wide range of topics.

8 Q. Turning to your subscribers, your paid subscribers, how  
9 many paid subscribers does Courthouse News have and who are  
10 they?

11 A. We have 2,300 paid subscribers, and they are law firms,  
12 media subscribers, academic subscribers such as law schools, and  
13 businesses and public offices, City Council offices, things like  
14 that.

15 Q. Thank you.

16 MR. HIBSHER: Your Honor, I neglected to offer  
17 Plaintiff's Exhibit 27 into evidence. May I do so now?

18 THE COURT: Plaintiff's Exhibit 27 will be admitted.

19 (Plaintiff's Exhibit No. 27 received in  
20 evidence.)

21 THE COURT: Is there anybody else in this same  
22 business?

23 THE WITNESS: Yes, sir. Thompson Reuters, which used  
24 to be West competes in this area. Lexis does and Bloomberg  
25 does. So we have competition.

1 THE COURT: Okay.

2 BY MR. HIBSHER:

3 Q. Sir, you mentioned that you have many law firm subscribers.  
4 What percentage of your subscribers are lawyers or law firms?

5 A. I'd say 90 percent.

6 Q. And you also mentioned other subscribers. I'd like to show  
7 you what has been previously marked Plaintiff's Exhibit 4 for  
8 identification. Would you identify this document, Mr. Girdner?

9 A. Yes. That's a list of or media subscribers that includes  
10 the Boston Globe, Dallas Morning News, CNN, Fox.

11 Q. And you mentioned earlier that the number -- that when you  
12 started covering the courthouses, the number of reporters at  
13 least at the Los Angeles federal court, I think you said there  
14 were seven and that there were many reporters across the  
15 country. Over the years, did you notice that the number of  
16 reporters covering the courts had declined?

17 A. Yes. The number has been decimated. That press room I  
18 talked about is now down to two people, one of the reporters  
19 being ours.

20 Q. And this list of media subscribers included some of the  
21 major media outlets in the country, does it not?

22 A. Including the Los Angeles Times.

23 Q. So what is Courthouse News' role in reporting on new civil  
24 litigations or media subscribers?

25 A. For much of the media we've become their eyes and ears.

1 The L.A. Times that I mentioned, they don't staff the press room  
2 anymore, but they want to see the new civil complaints, so they  
3 subscribe to our news service for federal court in Los Angeles,  
4 the New Litigation Report.

5 Q. And who prepared this list of media subscribers?

6 A. This was done at my direction by our office manager based  
7 on our subscriber lists.

8 MR. HIBSHER: Thank Your Honor. I offer Plaintiff's  
9 P4 into evidence, Your Honor.

10 MR. MATHESON: Your Honor, we have an objection to  
11 this. There's actually two similar exhibits. He can certainly  
12 testify to who CNS's subscribers are. This document is not  
13 evidence. This is a, essentially a demonstrative exhibit that's  
14 hearsay and was prepared for purposes of this trial. But I  
15 think the finer point is, you know, the issue of relevance. The  
16 Fourth Circuit case law has repeatedly held that the fact that a  
17 person requesting a record as a media organization does not  
18 entitle them to any greater level of access to the general  
19 public. So the whole line of questioning about whether and to  
20 what extent CNS is engaging in traditional media functions  
21 really has no bearing on the issues in this lawsuit.

22 THE COURT: Overruled.

23 BY MR. HIBSHER:

24 Q. Mr. Girdner, I'd like to show you what has been --

25 MR. HIBSHER: Your Honor, I offer exhibit P4 into



1 evidence.

2 THE COURT: Exhibit 4 will be admitted.

3 (Plaintiff's Exhibit No. 4 received in  
4 evidence.)

5 BY MR. HIBSHER:

6 Q. Mr. Girdner, I'd like you to take a look at Exhibit P5.

7 A. Yes.

8 Q. What is this list?

9 A. That's a list of our source credits.

10 Q. And are some of the media outlets on this document outlets  
11 that do not subscribe to CNS?

12 A. Yes. It's both. ABC News does not subscribe, for example,  
13 but the L.A. Times does.

14 Q. And if ABC News is on this list of source credits, that  
15 means that ABC News has cited Courthouse News Service as a  
16 source for one of its stories?

17 A. Correct.

18 Q. How does ABC News obtain that CNS story to cite if it's not  
19 a subscriber?

20 A. It would have to be from our website.

21 Q. Is this an exhaustive list of media outlets which have  
22 cited Courthouse News Service?

23 A. No, not at all.

24 Q. How is it prepared?

25 A. Initially by one of our editors simply doing a web search,

1 and after that it's supplemented by our law firm.

2 MR. HIBSHER: I'd like to offer Plaintiff's Exhibit 5  
3 into evidence.

4 THE COURT: Plaintiff's Exhibit 5 will be admitted.

5 (Plaintiff's Exhibit No. 5 received in  
6 evidence.)

7 BY MR. HIBSHER:

8 Q. Mr. Girdner, would you take a look at Plaintiff's Exhibit 3  
9 for identification?

10 A. Yes, sir.

11 Q. Would you identify that document?

12 A. Yeah. That's a list of our academic subscribers including  
13 Boston College, for example. UCLA.

14 Q. And are there any other categories of subscribers included  
15 in this compilation?

16 A. I believe our corporate subscribers are included, and our  
17 academic -- I'm sorry, other public officeholder subscribers.

18 Q. So there are government agencies that describe to  
19 Courthouse News Service?

20 A. Oh, yes.

21 Q. By the way, you mentioned that lawyers are a large part of  
22 your description base. Are all three of the law firms involved  
23 in this court subscribers? Mr. Prince has already said that his  
24 firm is.

25 A. All -- yes. I noted that. All three of the firms

1 represented here are subscribers to our Southern Virginia  
2 Report.

3 Q. So Mr. Girdner, are there any --

4 THE COURT: Southern Virginia Report?

5 THE WITNESS: Yes, sir.

6 THE COURT: Oh, it's a separate report for Southern  
7 Virginia?

8 THE WITNESS: Yeah, there's two reports. One for the  
9 northern half and one for the southern half.

10 THE COURT: Okay.

11 BY MR. HIBSHER:

12 Q. Are there any media outlets that are either published or  
13 distributed in Virginia that are subscribers to Courthouse News?

14 A. Yes. CNN, Fox, the Wall Street Journal. I'm sure they  
15 are -- I'm confident they're distributed in Virginia.

16 Q. And are you aware of any local Virginia publications that  
17 cite Courthouse News Service as its source?

18 A. I've been referred to a number. The one that I can  
19 remember is the Roanoke Times. But there are others.

20 MR. HIBSHER: Your Honor, I'd like to offer Exhibit 3  
21 into evidence if I May.

22 THE COURT: P3 will be admitted.

23 (Plaintiff's Exhibit No. 3 received in  
24 evidence.)

25 BY MR. HIBSHER:

1 Q. Mr. Girdner, how many subscribers receive the two Virginia  
2 reports?

3 A. They're quite popular. 125 subscribers receive the  
4 Northern -- what I call the Virginia Report, which is the  
5 northern half of the state, and roughly 75 subscribers receive  
6 the Southern Virginia report.

7 Q. Most of them law firms?

8 A. Yes.

9 Q. Are some of them multi-person law firms?

10 A. Yeah. A subscriber represents either an office or a firm.  
11 And the subscriber has the right to redistribute the report  
12 throughout the office or firm, depending on description. So  
13 yes.

14 Q. And how does the number of subscribers to CNS's Virginia  
15 Reports to compare to the number of subscribers to similar  
16 reports across the country?

17 A. The Northern Virginia Reports is well up there. It's in  
18 the top 20 percent with popularity of the number of subscribers.  
19 And the Southern Virginia Report is in the top 50 percent.

20 Q. So how do lawyer subscribers rely on the New Litigation  
21 Reports?

22 A. They rely on the reports to tell their clients that they  
23 have been sued, to warn them. Again, preparing a defense. They  
24 also want to see related litigation that may affect their  
25 client. They want to see what their opponents are up to, what

1 cases they're filing. If there are other defendants in this  
2 case that are also being sued. They're human. They work at the  
3 courthouse. They want to know what's happening at the  
4 courthouse. So a wide range.

5 Q. Besides the interest of your lawyer subscribers, in what  
6 ways are civil litigations generally newsworthy?

7 A. I call it the gong of war. What was a private dispute is  
8 brought up into the public sector. The plaintiff invokes the  
9 power of the court, the power of the public. And many of the  
10 cases are certainly ordinary, but some of them are of greater  
11 interest.

12 Q. How does CNS reporters ferret out the newsworthy civil  
13 filings?

14 A. That's why the tradition exists. They have to see the  
15 stack.

16 Q. And is it fair to say that your reporters need to do what  
17 reporters have been doing for years?

18 A. Yes, that's correct.

19 Q. So you mentioned that there were fewer reporters in  
20 courtrooms across the country. Has the press's ability to  
21 promptly see newly filed complaints changed over the years?

22 A. Yes. It's been affected by the advent of two technologies:  
23 Scanning and e-filing.

24 Q. And has that been a positive impact, a negative impact on  
25 access to new cases?

1 A. It's two sides of the access coin. It's had a positive  
2 impact in federal courts and some state courts where the  
3 tradition has been continued, where access is speedy and  
4 widespread. And then a number of state court clerks have used  
5 or have pushed the press behind the technological processes. So  
6 we've become behind what is essentially the docketing process.

7 Q. Have all state courts pushed the press behind processing?

8 A. Certainly not. Hawaii, for example, just recently went to  
9 e-filing statewide, and we see the cases just like in federal  
10 court on receipt. There's a number of states like that.

11 Q. Are you familiar with any state courts that are  
12 predominantly paper filings that provide contemporaneous access?

13 A. Well, Virginia is primarily paper. And --

14 Q. Virginia? The Commonwealth?

15 A. Yeah. Yeah, the Commonwealth of Virginia is primarily  
16 paper. And Richmond, for example, provides, I mean, top-notch  
17 traditional paper access. We see just about everything the same  
18 day.

19 Q. You mentioned that in federal courts you -- most federal  
20 courts you see filings upon receipt; is that correct?

21 A. That's correct.

22 Q. And does that mean before any clerk processing at all?

23 A. Yes.

24 Q. But isn't it true that when this case was filed in the  
25 Eastern District of Virginia in July of 2018, the court delayed

1 access for one day?

2 A. That's correct. It used to be a post-processing court.

3 Q. And today?

4 A. It's not. It's on receipt.

5 THE COURT: What courts that -- I'm sorry, I missed  
6 that.

7 MR. HIBSHER: I asked the witness whether this court,  
8 the Eastern District of Virginia, delayed processing of this  
9 case when it was filed in July for one day and the witness said  
10 yes, but that has changed, and in fact this court changed its  
11 process in the fall of 2018. And I don't want to testify,  
12 but...

13 THE COURT: Okay. Well, then don't.

14 BY MR. HIBSHER:

15 Q. And are cases, Mr. Girdner, which are filed in the Eastern  
16 District of Virginia today made available same day?

17 A. Yes, they are. Like for example cases filed in this  
18 courthouse are made available today.

19 Q. Upon receipt?

20 A. Correct.

21 Q. Now, in this case Courthouse News is seeking  
22 contemporaneous access to newly filed complaints; is that  
23 correct?

24 A. That's correct.

25 Q. So what do you mean by contemporaneous access?

1 A. I mean, traditional access on the end of the day in which  
2 the case has been filed.

3 Q. So is Courthouse News seeking instantaneous access in this  
4 case?

5 A. No.

6 Q. Immediate access?

7 A. No.

8 Q. Special access before the public sees it?

9 A. No.

10 Q. So why is contemporaneous access by the end of the day of  
11 filing so important to Courthouse News Service?

12 A. Courthouse News' cycle follows the basic cycle of life.  
13 News happens during the day, it's reported during the day, it's  
14 consumed, it's read, seen, heard, that day and discussed, and  
15 then everybody goes to sleep and the whole cycle starts again  
16 the next day. If you try to take old news and push it into that  
17 current cycle, the old news automatically goes in underneath,  
18 like a lower strata. It's not as widely read, it's not as  
19 valuable or important.

20 THE COURT: When you used to go around -- excuse me  
21 for interrupting.

22 When you used to go around to these boxes, box one  
23 with the filings, box two with the orders, you went at 4:30, I  
24 think you said?

25 THE WITNESS: That's what I said, yes, Your Honor.



1 THE COURT: Well, if somebody filed something at five  
2 minutes to 5:00 you might not see it.

3 THE WITNESS: Almost all these courts gave us a grace  
4 period.

5 THE COURT: You mean they let you stay after they  
6 closed?

7 THE WITNESS: Yeah. So the federal courts often close  
8 at 4:30 to the public, but folks are still in line. We could  
9 stay until 5:00.

10 THE COURT: Did you ever look at one of these boxes,  
11 did you ever come upon like the asbestos litigation where  
12 somebody might file hundreds of cases in one day?

13 THE WITNESS: I'm not -- I know what you're talking  
14 about, Your Honor, but I have not seen -- I've seen the stacks,  
15 but they weren't in the box, and I don't know if they were put  
16 aside or handled separately. We've reported on, you know, for  
17 example, the insurance litigation in Florida over flooding and  
18 hurricanes. It comes in huge numbers. And I know what you're  
19 talking about, but we haven't seen those in the box, those big  
20 stacks.

21 THE COURT: How do you handle those?

22 THE WITNESS: What's that?

23 THE COURT: How do you handle those?

24 THE WITNESS: We stay late, honestly. Like on those  
25 insurance cases that I'm talking about in Florida, we covered

1 them --

2 THE COURT: You'll stay as late as they let you. I  
3 mean...

4 THE WITNESS: Well, right, exactly.

5 THE COURT: So you might have to come back the next  
6 day sometimes?

7 THE WITNESS: Yeah. I mean like -- just trying to  
8 think.

9 I want to agree with you, but I'm not, but I'm trying  
10 to think if I've seen that example where we didn't get through a  
11 stack of new complaints and had to come back the next day. And  
12 I cannot think of an example, all right?

13 There are cases like a *pro se* or something that will  
14 have a hangup or a problem of some kind and we won't see it that  
15 day. For sure that happens. There are exceptions.

16 THE COURT: All right.

17 BY MR. HIBSHER:

18 Q. Sir, with regard to what you just said, Mr. Girdner, about  
19 exceptions, is it fair to say Courthouse News does not insist on  
20 seeing 100 percent of the new filings on that day?

21 A. The phrase I've repeated is I say we never ask for  
22 perfection. We don't. I don't expect that.

23 Q. Okay. But overall what is the harm to Courthouse News if  
24 new cases are not made available for one, two, three days?

25 A. Our reports are more -- I think Mr. Prince said this in his

1 opening. Our reports are more valuable because they're timely.  
2 We're harmed when they're late, when we're reporting on late  
3 cases. Our reputation is built on speed and thoroughness. So  
4 the reports are less valuable to the subscribers. I think  
5 they're less valuable to the subscribers because they're late.  
6 And I, I believe it's harmful to the court, a veil put on the  
7 court, so that they're less open.

8 Q. So the veil is a veil of silence if the case isn't made  
9 available; is that correct?

10 A. Yeah. Cutting us off from seeing them.

11 Q. So turning to the --

12 THE COURT: What do you do, if anything, when the  
13 court seals its decision?

14 THE WITNESS: We would --

15 THE COURT: Seals it. Doesn't grant access to the  
16 public. In other words, the issue has come up with, you know,  
17 public agencies, I guess we could say, probably mostly state  
18 agencies or municipal cases who settle the case and they don't  
19 want the public to know about it so they ask the judge to seal  
20 it. How do you deal with that?

21 THE WITNESS: Well, we obviously respect a judge's  
22 order to seal a case, but...

23 THE COURT: Have you ever challenged one?

24 THE WITNESS: We have not. But I just want to say  
25 that at conferences I've heard judges say that way too many

1 settlements are sealed. So I'm aware of that opinion by some  
2 Virginia judges. And I suppose we could, maybe we should, but  
3 we have never challenged one.

4 THE COURT: Okay.

5 MR. HIBSHER: Your Honor may be familiar with the  
6 Bernstein case in the Second Circuit where that issue was front  
7 and center where the lower court declined to seal a settlement  
8 between a partner of a law firm and the rest of the law firm  
9 which spelled out sensitive financial interests, and the Second  
10 Circuit said that once a complaint is filed, the allegations  
11 must be made public and it must be made public in a  
12 contemporaneous way. So that's an issue that has been  
13 litigated. But --

14 THE COURT: Well, we've litigated it a number of times  
15 in this court. That's why I'm interested in it.

16 BY MR. HIBSHER:

17 Q. But what about sealing the complaint? Are complaints ever  
18 filed with motions to seal?

19 A. Yes, they are.

20 Q. And how are they handled by the clerks?

21 A. They're set aside. They're separated.

22 Q. And are you fighting to see those complaints which are  
23 accompanying motions to seal?

24 A. Certainly not. I respect the general principle that some  
25 cases are sealed. I understand that. They're not public.

1 Q. Turning to the allegations in the complaint in this suit  
2 regarding the Norfolk and Prince William Circuit Courts, when  
3 did CNS begin covering these courts on daily basis?

4 A. In the fall of 2017.

5 Q. And who made the decision to do that?

6 A. I did.

7 Q. And why?

8 A. As I was saying, the reports are popular. I thought the  
9 coverage was very delayed, and I wanted to improve the coverage.

10 Q. Anything about the filings in these courts that prompted  
11 you to cover them on daily basis?

12 A. Well, there were a number of important filings in the  
13 courts that was -- there was the opioid litigation. They're  
14 both important courts. Norfolk and Prince William are high  
15 volume, they have interesting litigation, and they're in  
16 important commercial areas.

17 Q. Had Courthouse News been covering these courts at all  
18 before you started covering them on a daily basis?

19 A. Yes, we had. I believe it was weekly. It was less than  
20 daily, I'm sure of that.

21 Q. Okay. Prior to filing this lawsuit, did you direct anyone  
22 on your staff to reach out to the Circuit Court clerks or their  
23 deputies to seek access to newly filed complaints before they  
24 were fully processed and posted on the public access terminals?

25 A. Yes. I asked our bureau chief, Ryan Abbott, to press for

1 more timely access.

2 Q. Do you know if he did that?

3 A. I know that he did.

4 Q. And what was the clerk's response when he did that?

5 A. It was categorical rejection of that request --

6 MR. PRINCE: Your Honor?

7 A. -- and a point to the --

8 THE COURT: Well, I think we're getting close to  
9 hearsay here, Counsel.

10 MR. HIBSHER: Okay.

11 MR. PRINCE: That was going to be my objection.

12 BY MR. HIBSHER:

13 Q. Let me ask this, Mr. Girdner: After Mr. Abbott requested  
14 access to newly file complaints before they were processed, did  
15 he and your reporters obtain that access?

16 A. No, we did not.

17 Q. Did there come a point when Courthouse News began to  
18 systematically gauge the delays in these two courts after it  
19 started covering them on a daily basis?

20 A. Yes, we started to track.

21 Q. What does "track" mean?

22 A. We record the case number for each new general case, we  
23 record -- or the reporter does, records the --

24 THE COURT: Excuse me a minute. How much longer are  
25 you going to be, Counsel?

1 MR. HIBSHER: I would think about 10 minutes, Your  
2 Honor.

3 THE COURT: Well, I think this would be a good time to  
4 take a morning recess. We'll take a 15-minute recess.

5 During the recess you should not discuss your case,  
6 your testimony, with anyone, or consult any documents. You  
7 should return to the stand exactly as you leave it now.

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: All right.

10 (Recess taken from 11:43 a.m. to 11:59 a.m.)

11 THE COURT: All right. You may proceed.

12 MR. HIBSHER: Your Honor, may I have the last question  
13 read back, please?

14 (Last question read back.)

15 BY MR. HIBSHER:

16 Q. So you were describing the tracking of these two courts.  
17 When did Courthouse News begin tracking the time that the case  
18 was filed and the time it was made available?

19 A. I didn't finish the description of tracking. Did you want  
20 me to do that?

21 Q. Please do that, yes.

22 A. Okay. The reporter records the case number of the new  
23 complaint, the date that it was filed and the date that we saw  
24 it, and the difference between the two is the delay.

25 Q. And when did you begin tracking these two courts, Norfolk

1 and Prince William circuit courts?

2 A. In the fall of 2017.

3 Q. And you mentioned the reporters conduct the tracking; is  
4 that right?

5 A. That's right.

6 Q. And what did the tracking show about delays in access in  
7 these two courts?

8 A. Well, it showed substantial delays.

9 Q. And Mr. Girdner, you mentioned that your -- strike that.

10 Overall, how many courts has Courthouse News tracked  
11 throughout the country?

12 A. Courthouse News has tracked roughly 125 courts, or is  
13 currently tracking about 125, I believe.

14 Q. And why do you track courts?

15 A. To get an idea of how the access works. In some cases it's  
16 where we've have successful litigation, to make sure that the  
17 tracking, that the access is good. But in other courts it's  
18 just to keep track of the cases and how the court is doing.

19 Q. You mentioned earlier that you instructed your bureau chief  
20 to reach out to these two courts to request access before  
21 processing. Did you ever reach out to the clerks themselves  
22 before filing suit in this case?

23 A. No.

24 Q. Why not, Mr. Girdner?

25 A. We'd had a clear and unequivocal rejection, and we were



1 pointed to signs, and signs were put up that supported that  
2 rejection. And my experience told me that a clerk was not going  
3 to overturn that kind of a policy decision by the staff.

4 Q. How many similar lawsuits has Courthouse News filed against  
5 local clerks?

6 A. Eight, including this one.

7 Q. You mentioned before that you tracked over 100 courts. Is  
8 it fair to say that you don't file a lawsuit every time you  
9 track a court?

10 A. Yes. Obviously. Yes.

11 Q. Okay. Did there come a time when Courthouse News retained  
12 the services of an expert to review the allegations in the  
13 complaint and to assess the delays in Norfolk and Prince William  
14 circuit courts?

15 A. Yes. We retained Ms. Kancherla.

16 Q. And she is with the Alvarez & Marsal firm; is that correct?

17 A. That's correct.

18 Q. What was Ms. Kancherla asked to do?

19 A. She was asked to analyze the delays.

20 Q. And do you know what data she relied on?

21 A. She relied on the OES statistics, the official statistics  
22 from the State of Virginia.

23 THE COURT: All right. Who is -- can you give me this  
24 person's name? Spell it out.

25 THE WITNESS: Amita Kancherla.

1 MR. HIBSHER: A-m-i-t-a, and the last name is  
2 K-a-n-c-h-e-r-l-a.

3 THE COURT: K-a-n-c-h-e-r-l-a?

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 BY MR. HIBSHER:

7 Q. So Ms. Kancherla analyzed the delays and evaluated the  
8 allegations of the complaint based on the OES data; is that  
9 correct?

10 A. That's correct.

11 MR. MATHESON: Your Honor, we object. Under Rule 602,  
12 he needs to have personal knowledge. He can't testify to what  
13 Ms. Kancherla did. They can call her as an expert witness and  
14 she can lay a foundation for her expert testimony.

15 THE COURT: I think he -- I don't know. The question  
16 I thought we were on is what he asked her to do.

17 MR. MATHESON: Well, he's testifying --

18 THE COURT: Which he can testify to.

19 MR. MATHESON: He's testifying what data she relied  
20 upon, what methodology she used. He doesn't have --

21 THE COURT: Well, no, I don't -- I agree with you. He  
22 can't testify what her methodology or data was, but I recall  
23 that he asked her what he asked her to do, and that's what it's  
24 limited to. He can't -- I think he can testify as to what she  
25 reported back as to what she did.

1 MR. MATHESON: Well, Your Honor, I think that would be  
2 her expert opinion that would be subject to cross-examination.

3 THE COURT: Well, not what the opinion was, but what  
4 the data was upon which the opinion was based. If he gave her  
5 certain data to study, he can say that.

6 MR. MATHESON: I have no objection to him saying this  
7 is the information I gave her. It's a far cry from saying this  
8 is what she relied upon in drawing her conclusions. That's her  
9 testimony. That's not for him to testify.

10 THE COURT: That's true. He shouldn't say what she  
11 relied upon. He can say what data she was furnished with.

12 MR. MATHESON: Thank you, Your Honor.

13 BY MR. HIBSHER:

14 Q. Mr. Girdner, do you know --

15 THE COURT: Which is what he was saying. He said he  
16 got some statistics from the state of Virginia.

17 THE WITNESS: That's correct, Your Honor. From the  
18 OES. Office of the Executive Secretary.

19 BY MR. HIBSHER:

20 Q. And Mr. Girdner, what was that data that you furnished to  
21 Ms. Kancherla?

22 A. That was the official statistics from the Office of the  
23 Executive Secretary of the Commonwealth that recorded each step  
24 in the process between when a case was filed and when it became  
25 viewable.

1 Q. Was that data available to CNS when it filed the complaint  
2 in this action?

3 A. No, it was not.

4 Q. And did Ms. Kancherla render reports after she did her  
5 analyses?

6 A. Yes, she did.

7 Q. I'd like to show you what has been previously marked  
8 Plaintiff's Exhibit P6 for identification.

9 MR. HIBSHER: Your Honor, these are the drafts that I  
10 referenced and posted during the opening argument.

11 THE COURT: All right. These were the results of her  
12 work. Do you have her here to testify?

13 MR. HIBSHER: I do, Your Honor.

14 THE COURT: All right. Well, then --

15 MR. HIBSHER: This is her --

16 THE COURT: This is --

17 MR. HIBSHER: -- bottom-line summary.

18 THE COURT: I will let you use this subject to the  
19 fact that she'll be here to verify it.

20 MR. HIBSHER: Absolutely, Your Honor.

21 MR. MATHESON: Well, and Your Honor, these are  
22 demonstrative exhibits that have been offered by the  
23 plaintiffs --

24 THE COURT: Overruled.

25 MR. MATHESON: Thank you.

1 BY MR. HIBSHER:

2 Q. Mr. Girdner, would you take a look at Plaintiff's P6 for  
3 identification?

4 A. I'm looking at it.

5 Q. Do you know what this document is?

6 A. Yeah. It's Amita Kancherla's analysis of delays with a set  
7 of bar graphs analyzing the delays.

8 Q. And that's in the Norfolk Circuit Court?

9 A. Yes.

10 Q. And what period of time did Ms. Kancherla look at prior to  
11 preparing this document to your knowledge?

12 A. For January to June, 2018.

13 Q. And it's based upon the OES data; is that correct?

14 A. Yes.

15 Q. And did she provide --

16 THE COURT: Well --

17 BY MR. HIBSHER:

18 Q. This report --

19 A. That's what --

20 THE COURT: -- that's what it says. I mean...

21 MR. HIBSHER: Right.

22 THE COURT: But you can't go into what she did with  
23 this witness.

24 MR. HIBSHER: Okay.

25 THE COURT: You have to put her on.

1 MR. HIBSHER: Your Honor, I'd like to offer P6 into  
2 evidence.

3 MR. MATHESON: Your Honor, we object. These are  
4 exhibits that are here to assist the Court --

5 THE COURT: For the third time, your objection is  
6 overruled.

7 Go ahead.

8 MR. HIBSHER: Thank you, Your Honor. I'd like to  
9 offer P6 into evidence.

10 THE COURT: P6 will be admitted.

11 (Plaintiff's Exhibit No. 6 received in  
12 evidence.)

13 BY MR. HIBSHER:

14 Q. Would you take a look, Mr. Girdner, at Plaintiff's  
15 Exhibit 7 for identification and tell us what that is?

16 A. Yes. That's also a bar graph showing, starting with the  
17 amount of cases available on the day of filing.

18 Q. And what did Ms. Kancherla conclude about the delays in  
19 Norfolk and Prince William?

20 A. That only 38 percent.

21 THE COURT: Well -- oh. Well, the graph shows what it  
22 did.

23 THE WITNESS: Yeah. Only 38 percent were available on  
24 the day of filing and for Norfolk it was five percent.

25 MR. MATHESON: Your Honor, I just want to renew our

1 objection for the record.

2 BY MR. HIBSHER:

3 Q. Mr. Girdner, you testified that part of your job as  
4 publisher and editor of CNS is to keep abreast of delays in  
5 other courts around the country, particularly courts that  
6 Courthouse News covers. Do you have a sense of how the delays  
7 in Norfolk and Prince William circuit courts compared to similar  
8 courts around the country?

9 A. Yes. They're in the lower rung.

10 THE COURT: What does that mean?

11 THE WITNESS: There are some courts that are worse,  
12 but these delays, especially in Norfolk, are pretty bad compared  
13 to other courts that are delaying access.

14 THE COURT: All right.

15 BY MR. HIBSHER:

16 Q. You mentioned that Courthouse News has filed a total of  
17 eight similar cases in federal courts against local courts.  
18 Does that include this case?

19 A. It does.

20 Q. Seven others?

21 A. Yes.

22 Q. Were they all -- were all seven others fully litigated?

23 A. No. Two of them were settled right off the bat as soon as  
24 we filed the complaint.

25 Q. Did the defendants in those cases enter into consent

1 injunctions?

2 A. Yes, they did.

3 Q. And what was the effect on access to those courts when  
4 Courthouse News first filed the complaints in those cases?

5 A. The clerks reacted by speeding up processing. They would  
6 try to improve their statistics.

7 Q. And has Courthouse News obtained court-ordered injunctions  
8 in any of the seven cases?

9 A. Yes. We've obtained injunctions, I believe, in four.

10 Q. And has Courthouse News ever been denied an injunction by a  
11 federal district judge?

12 A. Yes, once.

13 Q. Okay.

14 A. Once.

15 Q. So in the four cases --

16 THE COURT: Well, in the case that you were just  
17 denied the injunction, what case was that.

18 THE WITNESS: It was Orange County, Your Honor.  
19 Judge -- Orange County in California.

20 THE COURT: Is that one of the reported cases that  
21 have been settled?

22 MR. HIBSHER: No, Your Honor.

23 THE COURT: I mean cited. I don't mean settled.

24 MR. HIBSHER: Yes, it is. It's called Yamasaki, Your  
25 Honor.



1 THE COURT: Was any relief granted in that case?

2 MR. HIBSHER: Summary judgment -- sorry, I'll let the  
3 witness answer that.

4 THE WITNESS: The judge ruled against us. He denied  
5 our motion for summary judgment and then we disagreed of course  
6 with that.

7 THE COURT: Well, he gave summary judgment to the  
8 defendant? Is that what happened?

9 MR. HIBSHER: Yes, Your Honor. Summary judgment was  
10 granted to the defendant in that single case. And the other  
11 cases that district judges issued injunctions, and as we know,  
12 the Seventh Circuit reversed one of those injunctions in Brown  
13 on abstention.

14 THE COURT: All right.

15 BY MR. HIBSHER:

16 Q. So in those situations where Courthouse News --

17 THE COURT: What state was that in?

18 MR. HIBSHER: Illinois. And that was Cook County, the  
19 Brown case, Your Honor.

20 THE COURT: Okay.

21 BY MR. HIBSHER:

22 Q. So in those situations where CNS has obtained injunctions  
23 either via court order or through consent, has there ever been  
24 any request for follow-up relief to the courts that issued those  
25 injunctions?

1 A. No. It's not been necessary. The orders are like a magic  
2 wand. Access is fantastic after an order like that.

3 Q. In each those situations?

4 A. Except for Brown, sorry. I mean, Clerk Brown in Chicago  
5 fought it all the way and did not change one thing she did.

6 Q. And what about in Yamasaki, a case that you lost. Did  
7 access improve in that court once you filed the lawsuit?

8 A. Remarkably so. They were processing very quickly and had  
9 most of the cases in by the first -- by the same day or the next  
10 day. Almost all of them.

11 Q. And what happened when the court granted the defendant  
12 clerk summary judgment in Yamasaki?

13 A. They rolled back. They went back to three days past, and  
14 some cases a week back. They relaxed.

15 Q. So what has access been like in Norfolk and Prince William  
16 since Courthouse News filed this lawsuit?

17 A. It has improved dramatically.

18 Q. How do you know that?

19 A. We've kept tracking the whole time.

20 Q. And the 90 percent figure that we talked about in the  
21 opening argument, that addresses which time frame that we are  
22 talking about in this case? When did they hit 90 percent access  
23 based on your analysis?

24 A. I believe it was about four months after we filed the  
25 lawsuit, as I recall.

1 Q. Okay. During the period that the lawsuit examined, the  
2 delays in access are summarized on the two exhibits that have  
3 gone into evidence, P6 and P7; is that correct?

4 A. That is correct.

5 MR. HIBSHER: Your Honor, I'd like to offer Exhibit 7  
6 into evidence which I neglected to do.

7 MR. MATHESON: Just want to renew our objection for  
8 the record, Your Honor.

9 THE COURT: Exhibit 7 will be admitted.

10 (Plaintiff's Exhibit No. 7 received in  
11 evidence.)?

12 BY MR. HIBSHER:

13 Q. Now, Mr. Girdner, given that the defendants have improved  
14 access in recent months, what is the necessity for relief in  
15 this case?

16 A. So the courts don't roll backwards as I've seen many times  
17 before. So they don't slow down and start delaying access  
18 again.

19 Q. And is that your fear here?

20 A. Oh, certainly is.

21 MR. HIBSHER: Thank you, Mr. Girdner.

22 Your witness.

23 CROSS-EXAMINATION

24 BY MR. PRINCE:

25 Q. Good afternoon, Mr. Girdner.

1 A. Good afternoon, sir.

2 Q. You are the editor and founder of CNS; is that correct?

3 A. That's right.

4 Q. And under you, there are several bureau chiefs assigned to  
5 various geographic regions?

6 A. That's also right.

7 Q. And the CNS bureau chief for the region that includes  
8 Virginia is Ryan Abbott; is that correct?

9 A. Also correct, yes.

10 Q. And you were Mr. Abbott's immediate supervisor?

11 A. That's correct.

12 Q. He reports directly to you?

13 A. He does.

14 Q. You currently employ five people in Virginia; is that  
15 correct?

16 A. I do.

17 Q. This includes Mr. Abbott and four reporters; is that right?

18 A. That's also right.

19 Q. And two of those reporters are the Norfolk reporter  
20 Ms. Rardin, Jocelyn Rardin, and Joan Hennessy; is that correct?

21 A. Yes.

22 Q. Ms. Hennessy is the reporter that covers Prince William?

23 A. That's correct.

24 Q. I believe you testified that you have approximately 2200  
25 subscribers nationwide; is that right?

1 A. I think I said around 23, but it's in that neighborhood.

2 Q. And most of them are law firms; is that correct?

3 A. Yes. Certainly.

4 THE COURT: Excuse me. Who covers the federal courts?

5 THE WITNESS: Same reporters.

6 THE COURT: Do you have some other person or the same  
7 person?

8 THE WITNESS: Yeah. The reporter in Norfolk covers --  
9 wait. No, I'm sorry. I'm wrong. Another person covers the  
10 federal courts. Another reporter.

11 THE COURT: So you have an additional employee?

12 THE WITNESS: We have five in -- well, four reporters  
13 and one bureau chief that covers this area.

14 THE COURT: I thought you said you had four in  
15 Virginia but you have four that cover this area?

16 THE WITNESS: No, sir. We have four in Virginia. Two  
17 reporters are covering the southern half of the state, one of  
18 them covers Richmond City -- not Ms. Rardin, another fellow --  
19 and he covers the federal court from there.

20 THE COURT: And the person that covers -- another  
21 person covers Prince William and Norfolk and the federal court?

22 THE WITNESS: Another reporter covers Norfolk and some  
23 of the surrounding courts. That's Ms. Rardin. A separate  
24 reporter covers Prince William and Fairfax and some of the  
25 surrounding counties there.

1 THE COURT: That sounds like more than two people.

2 THE WITNESS: Yeah. We have four in all.

3 THE COURT: I'm confused. You have four in Southern  
4 Virginia?

5 THE WITNESS: No. Two each.

6 THE COURT: Two in northern and two in southern?

7 THE WITNESS: Correct.

8 THE COURT: Well, what's northern and what is -- is  
9 Richmond northern?

10 THE WITNESS: No, Richmond's -- we've put it in the  
11 Southern Report. I believe that's right. Yes.

12 THE COURT: I don't know. I'm confused. I don't know  
13 who's doing what here.

14 MR. PRINCE: Let the record reflect Richmond is not  
15 Northern Virginia. I just want to get that in the transcript.

16 BY MR. PRINCE:

17 Q. So let me see if I can help here.

18 A. It's in the Southern Virginia Report. What's where  
19 Richmond City is.

20 Q. So CNS has a bureau chief that includes Virginia and that's  
21 Mr. Abbott, correct?

22 A. That's correct.

23 Q. And he oversees four reporters in Virginia?

24 A. That's also correct.

25 Q. Two of those reporters are Ms. Rardin and Ms. Hennessy,

1 correct?

2 A. That's correct.

3 Q. Ms. Hennessy covers the Northern Virginia courts, which  
4 include Prince William; is that right?

5 A. That's right.

6 Q. And then Ms. Rardin, Jocelyn Rardin, is the reporter who  
7 covers courts in the Tidewater area; is that correct?

8 A. That's also correct. Including Norfolk.

9 Q. And that would include the City of Norfolk Circuit Court?

10 A. It would.

11 Q. Would that include the federal courthouse here in Norfolk?

12 A. I believe that the reporter, the second reporter for the  
13 Southern Virginia report, Brad Kirshner, covers the federal  
14 court here from Richmond and he goes to the computer terminals  
15 in Richmond I believe to report on the courts on the cases filed  
16 here in Norfolk.

17 Q. Do you know how many subscribers CNS has in Virginia?

18 A. It's, I think it's 125 subscribers to the Northern Report  
19 and 75 subscribers to the Southern Report.

20 Q. How much does the subscription cost to the New Litigation  
21 Report in Virginia?

22 A. It's moved, it's moved up a bit, but I believe it's 125 per  
23 month.

24 Q. It's getting ready to go up, isn't it?

25 A. No, I don't think so. We've raised it fairly recently.

1           Actually, no, I take it back. Yes, I believe we do have a  
2 notice out for some raises yes.

3 Q.    The New Litigation Reports are summaries of new civil  
4 complaints; is that correct?

5 A.    That's right.

6 Q.    And they're emailed each evening to paying subscribers; is  
7 that right?

8 A.    Correct.

9 Q.    But they do not include every new civil filing filed in  
10 each jurisdiction, do they?

11 A.    No. They focus on civil complaints.

12 Q.    So in other words, CNS does not report on every new civil  
13 filing; is that correct?

14 A.    That is correct.

15 Q.    The reports focus on new complaints against businesses and  
16 government entities, correct?

17 A.    Also correct.

18 Q.    So there's civil filings that are excluded from CNS's  
19 reporting?

20 A.    Such as pawn shop applications, for example.

21 Q.    How about divorces?

22 A.    Yes, they're excluded.

23 Q.    You don't report on probate matters?

24 A.    We do not.

25 Q.    Do you report on trust and estate litigation?



1 A. No.

2 Q. How about name-change applications?

3 A. Certainly not.

4 Q. How about motor vehicle accidents between individuals?

5 A. No.

6 Q. To your knowledge, CNS is not currently experiencing delays  
7 in either of these jurisdictions; is that correct?

8 A. I would characterize them as minor delays. Some of the  
9 cases are delayed, but the overall access is quite good.

10 Q. Well, what is a minor delay to CNS?

11 A. Well, for example, we were talking about 95 percent access  
12 in Prince William, so I meant the fifth percent. I'm referring  
13 to the five percent that are not seen that day.

14 Q. Is CNS currently getting contemporaneous access in Norfolk  
15 and Prince William?

16 A. I would say yes.

17 Q. And contemporaneous means the same day they're received for  
18 filing; is that correct?

19 A. That's also correct.

20 Q. So if a complaint comes in at 4:30 in the afternoon and  
21 it's made available at 9:00 the following morning, is that  
22 contemporaneous?

23 A. No.

24 Q. So it's your position that they have to make that available  
25 the day it's filed?

1 A. That's my position. They can and do make it available.

2 Q. Is the policy that CNS takes issue with the clerk denying  
3 access until after administrative processing occurs?

4 A. It's pushing us onto the terminals post-processing,  
5 post-scanning, and as a result, delaying access.

6 Q. So CNS's, the basis of CNS's complaint is that the clerks  
7 are not providing access until after processing; is that  
8 correct?

9 A. That was the policy we challenged.

10 THE COURT: Well, now the problem is when you use the  
11 term like processing, we don't know what you're talking about.  
12 We know that some activity has to take place before it's made  
13 available, like we were talking about the boxes. So the word  
14 processing is meaningless unless it's broken down into its  
15 elements.

16 BY MR. PRINCE:

17 Q. So what does CNS mean by processing?

18 A. I described the two-step process. There's intake and --

19 THE COURT: Which intake?

20 THE WITNESS: It comes across the counter. When  
21 the -- if a lawyer walks up to the counter in Norfolk or Prince  
22 William or any court or here in this court and says I'm filing  
23 this new complaint, across the counter is a clerk who takes it  
24 in.

25 THE COURT: All right. Well --

1 THE WITNESS: That's intake.

2 THE COURT: -- okay. Are you saying that you're  
3 entitled to see it as soon as the person hands it to the clerk?

4 THE WITNESS: No, sir. Intake is usually within a  
5 couple minutes. There's a line waiting, so there's pressure on  
6 the intake clerk, and he or she gets it in quick, gives a  
7 receipt, stamps it, and sends the filer back out the door so he  
8 or she can get, the clerk can get to the next person in line.

9 THE COURT: Well, they've got to have the check too,  
10 don't they?

11 THE WITNESS: Yeah, yeah. They bring a check and they  
12 get a receipt for the check. That's right.

13 And if I can add, Your Honor, your comment about  
14 processing I totally agree with. Because it used to be pretty  
15 simple terms. There was intake and there was docketing. They  
16 were two separate things. And processing is this broad,  
17 fungible word.

18 THE COURT: Are you claiming that what they should do  
19 as soon as they accept it, stamp it, issue a receipt and take  
20 the check, that you're entitled to see it at that point?

21 THE WITNESS: Yes, Your Honor. After it comes across  
22 the counter. That's where we've seen it in that box that I've  
23 been talking about.

24 THE COURT: Are they giving you access at that point  
25 now?

1 THE WITNESS: There are letting us ask for cases  
2 before they're processed -- I'm sorry, to use that word, Your  
3 Honor. Before they're scanned and indexed, as they call it.  
4 Docketed is what I would say.

5 THE COURT: Well, the next step after, you just said,  
6 would be scanning and indexing it, wouldn't it?

7 THE WITNESS: That's correct. So they're letting us  
8 ask --

9 THE COURT: So they're letting you -- as soon as the  
10 intake clerk receives the complaint, stamps it, you say, issues  
11 a receipt for the check, then that's when you say you're  
12 entitled to see it?

13 THE WITNESS: That's correct.

14 THE COURT: And that's when you say they're currently  
15 showing it to you in Norfolk and Prince William in 90 and  
16 95 percent of the cases on the same day?

17 THE WITNESS: That's right. They're doing two things:  
18 They're processing it much faster, so some of the case is  
19 already processed by the time we get there -- I'm sorry.  
20 They're indexing and scanning much faster, okay? They're also  
21 letting us ask for the cases that have not yet been indexed and  
22 scanned. And in Prince William they're letting us stay until a  
23 little bit after 5:00 to see the final set of cases.

24 THE COURT: All right. So that's the difference  
25 between 90 and 95?

1 THE WITNESS: That's right, Your Honor.

2 THE COURT: Okay. So obviously you've only got one  
3 person, so they can't be in but one place, that's why I was  
4 interested in knowing how many people you had doing that.

5 THE WITNESS: Can I clarify that?

6 THE COURT: Yes.

7 THE WITNESS: Okay. We've got one person at each  
8 place. So one reporter in Prince William is going there at the  
9 end of the day.

10 THE COURT: I understand. And one that goes to  
11 Norfolk?

12 THE WITNESS: Yeah.

13 THE COURT: But this court, you don't have anybody.  
14 You get this off of the electronic filing?

15 THE WITNESS: Yeah. That's right. And it's on --

16 THE COURT: So obviously when you get there, you aim  
17 to get there late in the afternoon, is that what you do?

18 THE WITNESS: That's right.

19 THE COURT: So what you're saying is that by the time  
20 you get there in the afternoon in Norfolk, 90 percent of the  
21 cases have not only been gone through intake, they have also  
22 gone through scanning and docketing?

23 THE WITNESS: No, Your Honor. I would say 90 percent  
24 of them have gone through intake. A large percentage have also  
25 gone through the indexing and scanning, but the ones that have

1 not yet, the reporter can ask for them. That's what's making  
2 the difference.

3 THE COURT: And they will give them to them?

4 THE WITNESS: Yeah.

5 THE COURT: All right. Now the only difference is  
6 that in Prince William they're giving you a few extra minutes,  
7 and that raises the percentage from 90 to 95?

8 THE WITNESS: That's right. It's the same two things  
9 in Prince William. They're scanning and indexing faster and  
10 they're letting our reporter ask for the cases before -- those  
11 that are remaining, before they have been fully indexed.

12 THE COURT: Okay. You may proceed.

13 MR. PRINCE: Thank you, Your Honor.

14 BY MR. PRINCE:

15 Q. So you mentioned paper complaints that are hand-delivered.  
16 Are complaints -- complaints are also filed in these  
17 jurisdictions by mail; is that correct?

18 A. Yes, that's -- I believe that's right.

19 Q. So when does CNS believe it's entitled to access for a  
20 mailed complaint?

21 A. After they're stamped -- I'm sorry, on the day they're  
22 filed.

23 Q. Well, what point in the so-called administrative process  
24 are they entitled, are you entitled to access to a mail  
25 complaint?

1 A. As I say, after they have been filed.

2 Q. What does that mean?

3 A. Well, they receive a stamp, I believe, on the day that the  
4 mail is received, and we should be able to see them at that  
5 point.

6 THE COURT: Well, if it comes in by mail, what  
7 happens? Do they mail a receipt? They still stamp it, I  
8 assume?

9 MR. PRINCE: They do.

10 THE COURT: And then what do they do, mail a receipt  
11 to the filer?

12 MR. PRINCE: The receipt goes into the case file, Your  
13 Honor?

14 THE COURT: The receipt goes into the case file?

15 MR. PRINCE: So the distinction is when a complaint is  
16 hand-delivered in person, they can hand a receipt to the filing  
17 party if the filing party wants one, but for a mail complaint  
18 obviously the filing party isn't there, so the receipt is  
19 generated and goes into the file.

20 THE COURT: Is there any record kept of what  
21 percentage of civil complaints are received by mail as opposed  
22 to hand-filed?

23 MR. PRINCE: I don't think that information was  
24 produced in this case. I think we could probably come up with  
25 that information if that's something the Court would be

1 interested in.

2 THE COURT: Well, again, I'm not interested in down to  
3 a tenth of a percent, but it would be helpful if we knew, had a  
4 rough idea of what the comparison was between the hand-filing  
5 and -- now, are the Norfolk and Prince William courts now  
6 accepting electronic filing?

7 MR. PRINCE: They are, Your Honor.

8 THE COURT: Well, again, what happens if they're  
9 electronically filed?

10 MR. PRINCE: If they're electronically filed they  
11 are -- they appear in the filing queue in the electronic filing  
12 system in Virginia, and that's called VJFES, and the clerk hits  
13 the Accept button and the complaint appears on the public access  
14 terminal. So there's never any paper with an e-filed complaint.

15 THE COURT: So that is immediate. Goes right to the  
16 docket?

17 MR. PRINCE: Once it's accepted by the clerk and the  
18 filing fee is processed, it should be immediate subject to --  
19 you know, there may be a *di minimus* amount of time for OES's  
20 system to get it from the VJEFS system to the terminal.

21 THE COURT: Okay.

22 THE WITNESS: Your Honor, this is something I know a  
23 fair amount about. Do you want me to comment on this or not?

24 THE COURT: Well, yes, if you can clarify.

25 THE WITNESS: Yeah. In a lot of state courts --



1 THE COURT: Well, let's focus on Virginia. I don't  
2 want to focus on what happens in other states on this issue.

3 THE WITNESS: In both these courts there is some  
4 e-filing. The e-filing comes in and the clerk processes that  
5 e-filing, meaning they look it over, they check it, and they  
6 have to then hit the Accept button. So there is often a delay.

7 The federal court is very different. In the federal  
8 court, that case comes in, it's automatically accepted by the  
9 software, and it's available right away on receipt. So on the  
10 federal courts there is no time gap. In the state courts, there  
11 is, just like with paper, there can be a substantial gap between  
12 when the case comes in and when it's accepted and made public.  
13 This is with e-filing.

14 THE COURT: Well, that may have to do with their  
15 computer program. I don't know what control they have over  
16 that. In other words, what you're saying is that in Norfolk and  
17 Prince William -- and correct me if I'm wrong, anybody can  
18 correct me if I'm wrong -- when they receive the e-filing,  
19 personally somebody reviews it before they hit the Accept  
20 button.

21 THE WITNESS: That's right.

22 THE COURT: Whereas -- excuse me -- whereas they don't  
23 in federal court. Well, what you're saying is they look it over  
24 before they hit the Accept button?

25 THE WITNESS: In the state courts, yes. We've got

1 to --

2 THE COURT: Well, why shouldn't they be entitled to do  
3 that?

4 THE WITNESS: Well, it's just like here: The cases  
5 are filed when they're received. That's when they get the  
6 stamp.

7 THE COURT: So you're saying that they treat  
8 electronic filing differently than hand-filing because nobody  
9 looks over the hand-filing, they just automatically accept it.

10 THE WITNESS: Well, the software filters what comes  
11 in. You have to have the right amount of money, be in the right  
12 jurisdiction, stuff like that. And in some, a number of state  
13 courts we see the cases --

14 THE COURT: Well, I'm only interested in the state  
15 courts that are before this court.

16 THE WITNESS: Okay.

17 THE COURT: Which is Prince William and Norfolk.

18 THE WITNESS: What I'm trying to get at, Your Honor,  
19 is that it is possible for a state court to give us the access  
20 right on receipt just like the federal courts.

21 THE COURT: It's possible?

22 THE WITNESS: And a number of them do it.

23 THE COURT: Okay. Do you have any idea how long that  
24 delay is between that receiving it and the pressing the Accept  
25 button?

1 THE WITNESS: It varies quite a bit. But for example,  
2 in New York when we filed the litigation in New York -- oh,  
3 okay.

4 It really varies. But generally I'd say cases that  
5 come in in the afternoon tend to be delayed. It depends on how  
6 fast the clerks are working. It's very analogous to the paper  
7 process, I find.

8 THE COURT: All right.

9 BY MR. PRINCE:

10 Q. Do you know if the clerks have control of the e-filing  
11 software in Virginia?

12 A. I think the software is run by OES.

13 Q. Do you know if the clerks have the ability to change how  
14 the e-filing software works?

15 A. I think they have a lot of power and they can influence how  
16 it's changed.

17 Q. So it's your position that the clerks should lobby OES to  
18 change the e-filing software?

19 A. No, that's not my position.

20 Q. Well, I'm, I'm a little confused.

21 THE COURT: Think we probably have to hear what they  
22 have to do between the receipt of the complaint and pushing the  
23 Accept button. That seems to be the period of time we're  
24 talking about. I don't know. It seems to me that that's a  
25 manual thing. You get it and you can either press the Accept

1 button or not.

2 MR. PRINCE: Well, Your Honor, he --

3 THE COURT: Isn't that what we're talking about? I  
4 don't see how he can answer that question. Seems to me that  
5 only the clerk can tell us what they do in that period of time  
6 and why.

7 MR. PRINCE: We'll get to that, Your Honor. Thank  
8 you.

9 BY MR. PRINCE:

10 Q. Let's move to Norfolk. The Norfolk clerk, Mr. Schaefer,  
11 lets your reporter come behind the counter to view new civil  
12 complaints; is that correct?

13 A. He does.

14 Q. And you and she -- and your reporter is able to see them  
15 before administrative processing; is that correct?

16 A. A small percentage at the end of the day, yes.

17 Q. Before they're scanned?

18 A. Yes.

19 Q. Before the clerk enters data into CCMS for that complaint?

20 A. And I just want to be clear here: I believe that the  
21 common process is she sees an initial notation that the case has  
22 been filed -- meaning it's been receipted in the language of the  
23 Norfolk court -- and then she can go back and ask for that case  
24 to see it. I think the normal procedure is to then quickly  
25 index it and scan it so that she can print it out on the

1 terminals. So I don't know if she actually looks at the paper  
2 complaint. One way or another she gets to see it, okay?

3 Q. So she can look at new complaints that are on the public  
4 access terminals, correct?

5 A. That's right.

6 Q. And if they're complaints that are not yet available on the  
7 public access terminals, she can go behind the counter and look  
8 at them, correct?

9 A. Yeah. As I'm saying, she asks for them. And I don't know  
10 if they -- I don't mean to quibble with the word "look at them".  
11 She asks for them, and then I believe what they do is they just  
12 scan them quickly so she can see them.

13 Q. But she can see them?

14 A. Yes.

15 Q. You testified that you're concerned that the alleged delays  
16 in access in Norfolk and Prince William will return after this  
17 lawsuit is over; is that correct?

18 A. I very much am.

19 Q. And this is based on your experience in other lawsuits  
20 across the country?

21 A. Yes. And the reports of the reporters on the amount of --  
22 yeah, the amount of trouble that the -- well, I'm sorry. Yes.  
23 That's right.

24 Q. And it's not, it's not based on anything that Mr. Schaefer  
25 or Ms. Smith have said or done; is that correct?

1 A. No. It's based on the reports from my own reporter which  
2 is that the clerks are running around a fair amount at the end  
3 to grab stuff for her, and I think that's a little frustrating  
4 for them. That's just my guess.

5 THE COURT: Who is running around?

6 THE WITNESS: The clerks are. To get the cases that  
7 they haven't indexed yet.

8 THE COURT: You mean at the end of the day --

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: -- in Prince William they have to run  
11 around and get cases that haven't been indexed to show to you?

12 THE WITNESS: That's right, Your Honor.

13 THE COURT: You think they're going to stop doing  
14 that?

15 THE WITNESS: I think they're going to relax. Find  
16 that to be a hassle. That's my suspicion.

17 BY MR. PRINCE:

18 Q. But that's your opinion; is that correct?

19 A. It is.

20 Q. You don't have any evidence that's going to happen?

21 A. I can't predict the future, sir.

22 Q. Well, how do you know that it is going to happen?

23 A. I think that's a natural human tendency to relax when the  
24 pressure is off.

25 THE COURT: I think we've heard enough about that.

1 BY MR. PRINCE:

2 Q. You're aware that after this lawsuit was filed, the Norfolk  
3 clerk offered to meet with Mr. Abbott and your Norfolk reporter  
4 to discuss the issues with access?

5 A. Certainly.

6 Q. And they met with Mr. Schaefer; is that correct?

7 A. That's right.

8 Q. And they met with his chief deputy clerk, Tom Larson?

9 A. That's right.

10 Q. And they met with Crystal Porter, the civil division  
11 supervisor?

12 A. As was described to me, yes.

13 Q. And this was in September of 2018?

14 A. Very end of September, I believe.

15 Q. And it was after this lawsuit was filed, correct?

16 A. About a month after.

17 Q. And they discussed Mr. Schaefer's policies for providing  
18 access?

19 A. I mean, that certainly sounds about -- the general topic  
20 was certainly access.

21 Q. He explained that he lets credentialed media behind the  
22 counter to look at whatever civil filings they want to see?

23 A. There was -- it was a little more complicated than that.  
24 There was some boxes they couldn't see, some boxes they could.  
25 That's what I recall. To your point, yes.

1 THE COURT: Of course you're asking for hearsay now.

2 BY MR. PRINCE:

3 Q. They were shown how the process works in Norfolk?

4 A. That's right.

5 Q. And they met with the deputy clerks that processed new  
6 civil filings?

7 A. Yeah. I mean, they met with one of them, I'm sure.

8 Q. CNS did not ask for a meeting with either of these clerks  
9 before filing this lawsuit; is that correct?

10 A. That's correct.

11 Q. You didn't send them a letter about access delays?

12 A. No.

13 Q. Did didn't ask to speak to them directly about these access  
14 delays?

15 A. I did not.

16 Q. You yourself never spoke directly to Mr. Schaefer; is that  
17 correct?

18 A. Not in the relevant time period. I've said hello to him  
19 here.

20 Q. You yourself never spoke directly to Ms. Smith?

21 A. No. I have never met Ms. Smith.

22 Q. CNS has filed several other lawsuits against clerks across  
23 the country; is that correct?

24 A. That's right.

25 Q. These lawsuits are more or less very similar to this one;



1 is that right?

2 A. The basic concept is the same.

3 Q. Basic concept is the same. You've sued clerks in  
4 California?

5 A. Yes.

6 Q. Illinois?

7 A. Yes.

8 Q. Texas?

9 A. Yes.

10 Q. New York?

11 A. Correct.

12 Q. And in all these lawsuits you allege that delays in access  
13 are being caused by clerks withholding access till after  
14 processing; is that correct?

15 THE COURT: Again, you use the word "processing". I  
16 think that makes the answer...

17 BY MR. PRINCE:

18 Q. Before scanning and data entry; is that correct?

19 A. It's before the second part of thing which I would compare  
20 to docketing. So for example, in Chicago, that was an e-filing  
21 court that Clerk Brown had instituted. She gave us fantastic  
22 access to paper. Top notch. Excellent. I know that court. As  
23 soon as she switched over to e-filing she started holding it  
24 back because she was processing the cases first. You know, the  
25 clerks are going through what I described. They're going

1 through checking if all the filing is correct and then  
2 processing the Accept button. And the result was we were pushed  
3 back. So that was an e-filing court. See what I'm saying? It  
4 wasn't all paper.

5 MR. PRINCE: I do -- just for the record, he used  
6 "processing". I didn't use the word that time.

7 BY MR. PRINCE:

8 Q. You've taken the position the clerks must provide  
9 contemporaneous access; is that correct?

10 A. That's right.

11 Q. Which means to CNS on the day it's received for filing?

12 A. Correct.

13 Q. You've taken this position across the country?

14 A. Yeah. I don't see a change in that, no. I believe that's  
15 consistent, yes.

16 Q. Do you anticipate filing additional lawsuits against clerks  
17 based on access delays?

18 A. No, not based on -- no.

19 Q. You don't anticipate suing clerks, other clerks in Virginia  
20 based on access delays?

21 A. No.

22 Q. How about in other states?

23 A. This litigation blasts a hole in our bottom line, okay?  
24 Litigation in general does. It's extraordinarily expensive. So  
25 those decisions will have to come.

1 Q. If CNS obtains declaratory or injunctive relief in this  
2 case against Mr. Schaefer or Ms. Smith, you would expect other  
3 clerks in Virginia to comply with that order; is that correct?

4 A. I certainly would.

5 Q. Your expectation is that circuit court clerks throughout  
6 Virginia would comply?

7 A. I would hope so.

8 Q. Are you aware that the complaint in this very lawsuit was  
9 not made available, publicly available until the day after it  
10 was filed; is that correct?

11 A. I'm aware of that.

12 Q. You're aware that the Fourth Circuit doesn't make notices  
13 of appeal publicly available the day that they're filed; is that  
14 correct?

15 A. I don't think that's right. I think they do make them  
16 available immediately.

17 Q. Your position is that the Fourth Circuit makes notices of  
18 appeal, when they're filed, publicly available?

19 A. I'm sorry, the notices of appeal?

20 Q. The date day they're filed.

21 A. I believe we can see -- hang on.

22 Yes, we can see them immediately, either in the district  
23 court or the Fourth Circuit. But this is real rough, okay?

24 This is not a specific area of knowledge for me.

25 And let me just -- I want to answer that question

1 correctly.

2 I believe, I believe we do see notices of appeal on the day  
3 they're made. That's my belief.

4 Q. You see them when they're filed with the district court,  
5 but the Fourth Circuit doesn't docket them the same day that  
6 they're filed; is that correct?

7 A. You know, I'm just not sure. One way or another we can see  
8 them on the day that it happens.

9 Q. You testified that CNS began daily monitoring of Prince  
10 William and Norfolk in fall, 2007. To be more precise --

11 A. 2017.

12 Q. Excuse me. I misspoke. Fall of 2017.

13 To be more precise, isn't it true that you began monitoring  
14 in September 2017?

15 A. I believe that is correct.

16 Q. And isn't it true that CNS started to track these  
17 jurisdictions on day one?

18 A. Also correct.

19 Q. And when CNS began tracking Prince William and Norfolk in  
20 September 2017, it had already decided that it was going to sue  
21 these clerks in Virginia; is that correct?

22 A. That is false.

23 MR. PRINCE: I have no further questions, Your Honor.  
24 Thank you.

25 THE COURT: Do you have any redirect?

1 MR. HIBSHER: A few, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. PRINCE:

4 Q. Mr. Girdner, Mr. Prince asked you on what basis you feared  
5 that the Prince William and Norfolk circuit court clerks would  
6 slide back to the kind of processing and access that prompted  
7 this lawsuit. What was the reaction of the defendants to the  
8 filing of this lawsuit?

9 A. They started ramping up processing -- I'm sorry, they  
10 started ramping up indexing and scanning of the cases. And they  
11 gradually ramped it up higher and higher until over the next  
12 four months.

13 Q. On cross-examination you mentioned that a five-percent  
14 delay is a minor delay; is that correct?

15 A. I didn't say it right. A minor number of cases are  
16 delayed.

17 Q. Is CNS seeking perfection in its efforts to obtain  
18 contemporaneous access?

19 A. This is something I've repeated over time and over years:  
20 We do not ask for perfection from a court. We never do.

21 Q. And when you described access as being 90 to 95 percent,  
22 what time frame were you talking about?

23 A. That's after the suit was filed. I would say about four  
24 months after this suit was filed they achieved a very high peak  
25 of access. There was some vacillation in Norfolk after that

1 when it dropped down a bit and then came back up.

2 Q. And that was not the access level for the time period that  
3 was focused on in the complaint in this case; is that correct?

4 A. It was radically different.

5 Q. You testified that the CNS reporter is now able to ask the  
6 Norfolk circuit clerk's office to see newly filed complaints  
7 that are not yet posted on the public access terminal. Was CNS  
8 allowed to do that when this case was filed?

9 A. No. There was a sign on the door that said Officers of the  
10 Court Only. We were not allowed to go back there.

11 Q. And in regard to what it is that CNS asserts a right to,  
12 does CNS insist that it has a right to see newly filed cases  
13 before the initial indexing, the receipting of the complaint,  
14 and the recordation of the parties?

15 A. All right. We think we have a right to see them after  
16 intake and before the indexing and scanning.

17 Q. So CNS's position is that it should be able to see newly  
18 filed litigations before the full panoply of administrative  
19 processing; is that correct?

20 A. That's correct.

21 Q. But you do not object to the clerks doing the initial  
22 intake; is that fair?

23 A. The tradition that I say was universal was after intake.  
24 Certainly not before.

25 MR. HIBSHER: Thank you.

1 That's it, Your Honor.

2 THE COURT: All right. May this witness be excused?

3 MR. MATHESON: Yes, Your Honor.

4 THE COURT: All right. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: You may not discuss the testimony you've  
7 given with any witness who has been excluded from the court,  
8 because the purpose of them being excluded is so they wouldn't  
9 hear what you said.

10 THE WITNESS: I will follow that order, Your Honor.

11 THE COURT: All right.

12 THE WITNESS: Thank you.

13 THE COURT: All right, Counsel. I instituted a new  
14 schedule this year. Instead of going from approximately 2:00 to  
15 5:00 with a break in between, on multi-day cases starting this  
16 year I have been adjourning at 4:00 and not taking a break in  
17 the afternoon. We just go from after lunch until 4:00 without a  
18 break.

19 We've got a jury deliberating. If the jury wishes to  
20 deliberate past 4:00, then we can go past 4:00. But if they  
21 return a verdict before then or if they request to leave, to  
22 adjourn at 4:00, which is what they did yesterday, we'll adjourn  
23 at 4:00. So that will be our schedule this afternoon, depending  
24 upon what the jury does. And I've told the jury and the  
25 attorneys in the jury case that we'll be unavailable to them

1 from 1:00 to 2:00. So unless you've got somebody you can put on  
2 that's going to take less than 10 minutes, I suggest we just go  
3 ahead and adjourn now until 2:00. Okay?

4 MR. HIBSHER: Yes, Your Honor. Thank you.

5 THE COURT: We'll be in recess until 2:00.

6 (Recess taken from 12:51 p.m. to 2:03 p.m.)

7 THE COURT: All right. Are you ready with your next  
8 witness?

9 MR. HIBSHER: Yes, Your Honor. I noticed that defense  
10 counsel is not here yet. Shall we give them a couple minutes?

11 THE COURT: Yes.

12 (Pause in the record.)

13 MR. MATHESON: Apologize for keeping the Court  
14 waiting, Your Honor.

15 THE COURT: Are you ready with your next witness?

16 MR. HIBSHER: Yes, Your Honor. I call Tom Larson, the  
17 deputy clerk of the Norfolk Circuit Court. And this will be an  
18 adverse witness, Your Honor.

19 THE COURT: All right.

20 MR. HIBSHER: We're bringing him in.

21 THOMAS A. LARSON, having been duly sworn, was examined  
22 and testified as follows:

23 THE COURT: All right. You may proceed.

24 MR. HIBSHER: Thank you, Your Honor.

25 DIRECT EXAMINATION



1 BY MR. HIBSHER:

2 Q. Good afternoon, Mr. Larson. Would you state your full  
3 name and business address for the record, please?

4 A. Full name is Thomas A. Larson. Business address is 150  
5 St. Paul's Boulevard, Seventh Floor, Norfolk, Virginia.

6 Q. And by whom are you employed?

7 A. The Norfolk Circuit Court Clerk.

8 Q. And what's your position?

9 A. Chief Deputy Clerk.

10 Q. And is it fair to say that you're George Schaefer's  
11 second-in-command?

12 A. Yes.

13 Q. How many employees at the clerk's office?

14 A. 34.

15 Q. And about seven are assigned to civil filings; is that  
16 correct?

17 A. That's correct.

18 Q. And do you supervise the deputy clerks who are assigned to  
19 civil filings?

20 A. I supervise all the deputy clerks in the office.

21 Q. Okay. And where is the clerk's office located in the  
22 courthouse?

23 A. On the seventh floor.

24 Q. And if one wanted to review a complaint that had been  
25 processed and scanned and posted on the public access terminal,

1 where would one go?

2 A. Would go to the seventh floor, just inside the door, the  
3 main entry door of the clerk's office, and there's 12 terminals  
4 set up there.

5 Q. And if one wanted to file a new complaint, where would one  
6 go?

7 A. They would go down the hallway to the front counter where  
8 the cashiers are.

9 Q. Okay. And is there also a back office where deputy clerks  
10 perform their duties?

11 A. Yes.

12 Q. And it's located behind the counter?

13 A. Yes, it is.

14 Q. And that's the door that has Officers of the Court Only?

15 A. Officer of the Court Remote -- or Access, yes.

16 THE COURT: It says what?

17 THE WITNESS: Officers of the Court Allowed.

18 THE COURT: Officers of the Court Allowed?

19 THE WITNESS: Officers of the Court --

20 MR. HIBSHER: Officers of the Court. So that's the  
21 door to the clerk's office, Your Honor.

22 THE COURT: Okay.

23 BY MR. HIBSHER:

24 Q. So who does the receipting process of a newly filed  
25 complaint?

1 A. The receipting process is done by our civil deputy clerks.

2 Q. And what role if any did the cashier who you mentioned a  
3 moment ago play in that process?

4 A. They will, they may take the complaint when it, if it's  
5 hand-delivered, they would take it and look at it and then hand  
6 it off to a civil deputy clerk.

7 Q. So who does the hand stamp on the complaint?

8 A. It's a machine stamp. It's stamped when they bring the  
9 complaint in.

10 Q. So would the cashier put the complaint in the machine --

11 A. Yes.

12 Q. -- and get that stamp?

13 A. Yes.

14 Q. So the first thing that happens is that it's stamped with  
15 the date of filing; is that correct?

16 A. That's correct.

17 Q. It also has the word "Filed" on it?

18 A. Yes.

19 Q. And then what happens to it?

20 A. It goes back to the civil division deputy clerks who then  
21 go through the case, make sure there's nothing confidential in  
22 it, make sure the dollar is correct, make sure jurisdiction is  
23 correct, and then they enter the information into the system.

24 Q. Okay. And the first part of that, the receipting of the  
25 complaint, what's involved in the receipting of the complaint?

1 A. The initial, the case type, the style of the case is  
2 entered into the Financial Accounting System. Once that's done  
3 and we get the total case filing fees correct, the system then  
4 assigns it a case number.

5 Q. And is a receipt issued by the system at that point?

6 A. Yes.

7 Q. And does the deputy clerk write the number of the case onto  
8 the face of the complaint?

9 A. Yes.

10 Q. And the number itself appears on the receipt; is that  
11 correct?

12 A. That's correct.

13 Q. And how long does that initial process, that intake, take?

14 A. Depends on how busy they are. Could be, you know, just  
15 minutes.

16 Q. Minutes?

17 A. If that long.

18 Q. And if they're busy does it take more time?

19 A. Well, it depends on what they're doing. If there's a stack  
20 of them they're going to process all of them or they're going to  
21 go through them all at the same time.

22 THE COURT: We're talking about paper complaints now,  
23 right?

24 MR. HIBSHER: We're talking only about the paper  
25 complaints that are delivered by hand to the clerk's office --

1 THE COURT: Right. Okay.

2 MR. HIBSHER: -- we're not talking about the mail  
3 filings or e filings. We will talk a bit about that.

4 BY MR. HIBSHER:

5 Q. And you mentioned the financial management system. Is that  
6 one of the OES systems that's provided to the Norfolk court?

7 A. Yes.

8 Q. And what does the second phase of processing include?

9 A. Second phase includes the civil division deputy clerks will  
10 look at the file, they will enter the attorney's names,  
11 plaintiff, defendant names, any other additional information  
12 that is required in the case, and then they will put the index  
13 entries into the system so that they can -- when they scan the  
14 documents in, they can scan them into the correct place in the  
15 index.

16 Q. And what system does the second phase data entry go into?

17 A. Circuit Case Management system.

18 Q. The case -- Circuit Court Case Management System; is that  
19 correct?

20 A. Circuit Case Management system.

21 Q. Sometimes known as CCMS?

22 A. CCMS.

23 Q. And that's different from the Financial Management System,  
24 when is known as FMS, correct?

25 A. It's FAS, and they work in conjunction with each other.

1 Q. So the accounting system is FAS?

2 A. Correct.

3 Q. And does FAS populate CCMS after the initial intake  
4 information is input into FAS?

5 A. Yes.

6 Q. So when the clerk goes into the CCMS system to enter the  
7 next round of information, is the initial data that has been  
8 captured on FAS in the course of the initial intake already  
9 there?

10 A. Yes.

11 Q. How long does the second phase of the docketing process  
12 take?

13 A. It depends on how, how big the case is or what all is  
14 involved. If it's a lot of -- if there's a lot of motions that  
15 have been filed with the initial filing, it's going to take a  
16 little bit longer, but it doesn't typically take longer than  
17 about 10 to 15 minutes if it's an average-size case.

18 Q. And does the clerk also prepare service packets during the  
19 second phase of the indexing and docketing?

20 A. If they're requested, yes.

21 Q. And what are service packets?

22 A. Service package is the summonses that are requested,  
23 service on the individuals.

24 Q. And if there's more than one defendant, the deputy clerk  
25 prepares several circuit -- service packets; is that correct?

1 A. That's correct.

2 Q. That adds some time to the second phase of the docketing?

3 A. It does.

4 Q. And is it correct that only after all of the docketing is  
5 completed, the first phase in FAS, the second phase in CCMS, the  
6 preparation of the service packets if they're requested, that  
7 the case is then scanned, is that accurate?

8 A. That is correct.

9 Q. And how long after the complaint is scanned does it become  
10 publicly available?

11 A. It's immediate.

12 Q. Immediate. Within seconds; is that fair to say?

13 A. Yes.

14 Q. So isn't it true that there are times when cases stack up?  
15 I think you mentioned a couple of minutes ago that there could  
16 be piles of cases that stack up in the afternoon and the clerk  
17 gets to it when they can get to it. Is that fair to say?

18 A. No, that's not fair to say. If a lot of filings come in,  
19 if somebody comes in with 10 or 15 cases, they're not going to  
20 stack up until they get to them. The clerks are going to  
21 process them, process them in the order that they were received.  
22 And if there's more cases than one clerk can handle, they are  
23 passed off to another clerk to process.

24 Q. What about in the second phase? Are there times when the  
25 phase two of docketing gets delayed because the clerks are busy

1 with all the other duties that Mr. Prince described this  
2 morning?

3 A. Not really, no. People do things -- our policy is to  
4 handle the cases as they come in, and that has been our policy.  
5 And they process the case. We don't stop processing a case in  
6 the middle of it once we've started.

7 Q. But do you delay starting to process a case because the  
8 office is busy? That's what I'm asking?

9 A. That possibility could exist, yes.

10 Q. And when you were deposed in this case, you were asked are  
11 there times when newly filed complaints would sort of stack up  
12 in the day box, and you said there might be if there's a lot of  
13 filings. Do you recall that testimony?

14 A. Yes, I do.

15 Q. Now, the day box is not used anymore; is that right?

16 A. No, it is not.

17 Q. What happened to it?

18 A. Nothing happened to it. We got rid of it because we're in  
19 2020, and the Office of the Executive Secretary has implemented  
20 an electronic payment system on their website so we don't, we no  
21 longer have to have any of those kind of delays. We're just  
22 moving into the 21st century into 2020.

23 Q. Glad to hear that.

24 Isn't it true that sometimes complaints are not processed  
25 at all until the day after filing?



1 A. That could be true. Depends. But there's a lot of factors  
2 that would make that happen.

3 Q. Would the busyness of the office be one of the factors that  
4 would contribute to delaying the initial input of case data?

5 A. No.

6 Q. And the complaint is stamped, you said, before upon  
7 receipt; is that correct?

8 A. Right.

9 Q. And that file stamp which has the word Filed on it, that is  
10 the official filing date for the complaint?

11 A. Correct.

12 Q. And that is what tolls the statute of limitations?

13 A. That's correct.

14 Q. We talked -- you were not here this morning, sorry.

15 THE COURT: What tolls the statute of limitations?  
16 The issuance of the receipt at the intake desk?

17 THE WITNESS: The date that it's stamped that it was  
18 filed tolls the statute of limitations, yes, Your Honor.

19 THE COURT: Okay. And you stamp that simultaneously  
20 with preparing the receipt for the check that accompanies the  
21 payment?

22 THE WITNESS: That's correct.

23 THE COURT: Okay.

24 BY MR. HIBSHER:

25 Q. But is that true for mail-in complaints?

1 A. Mailed-in complaints are taken back to the back as soon as  
2 we get the mail in and they're processed by a deputy clerk.  
3 Same as anything else.

4 Q. Okay. And who opens the mail?

5 A. The deputy clerk.

6 Q. And what does the deputy clerk do if there is a new  
7 complaint in the mail? First thing?

8 A. They open the envelope, look at it, stamp it and then go  
9 through the process.

10 Q. And if there are many mail-in complaints, how do they do  
11 that?

12 A. They open them, stamp them and go through the process.

13 Q. Do they do them one by one or do they open them all, stamp  
14 them all, then go through the process one by one? That's what  
15 I'm --

16 A. It depends on what's going on in the office at the time.  
17 There may be a lot of other things going on. But if there's  
18 envelopes to be opened, one of the other deputy clerks may open  
19 them all for whoever is doing the processing that day.

20 Q. What time does the mail typically arrive?

21 A. 2:00 in the afternoon.

22 Q. Getting back to the systems, when the clerk goes into the  
23 CCMS system to enter the additional data, this is after the  
24 indexing and after the accounting system information has been  
25 entered, when the clerk goes into the CCMS system, and I think

1 you said before -- one of the things the clerk does is she or he  
2 adds the names of any additional parties that haven't been  
3 captured in the first step?

4 A. You're going to have to back up and repeat your question,  
5 because you said that indexing was done during the FAS portion,  
6 and that's not true.

7 Q. I apologize. I know that. So let's back -- let me back  
8 up. I appreciate that correction.

9 A. Indexing is done during the processing in CCMS.

10 Q. Okay. So when the clerk goes into the CCMS system for the  
11 indexing part of what I'll call the overall docketing of the  
12 case -- are you with me?

13 A. Right. Yes.

14 Q. -- what information is auto-populated into the CCMS system  
15 at that moment?

16 A. It's whatever was put into the Financial Accounting System  
17 which is typically the style of the case, the plaintiff and the  
18 defendant.

19 Q. So one plaintiff, one defendant?

20 A. Correct.

21 Q. And if there are several defendants, when is that entered?

22 A. That's entered into the CCMS section when they're doing --  
23 when they're putting in all the other information. The  
24 plaintiff and the defendant, the defendant's attorneys, email  
25 addresses, et cetera, et cetera.

1 Q. Isn't it correct that the date filed is auto-populated by  
2 the CCMS system?

3 A. Yes, it is.

4 Q. And it's auto-populated with the date that the clerk is  
5 entering that information into the CCMS system?

6 A. Yes.

7 Q. So if a case comes in this morning and the initial data is  
8 entered into the FAS system, the accounting system, and then the  
9 clerk thereafter, whether it's minutes or hours, but the same  
10 day, goes into the CCMS system, what you will see or he will see  
11 on the screen is the plaintiff's name, the defendant's name, the  
12 style of the case and today's date? The date that the clerk is  
13 entering that information; is that correct?

14 A. Correct.

15 Q. So what if the case comes in yesterday? Let's say it's a  
16 4:45-in-the-afternoon filing, and all that has happened is the  
17 date stamp is placed on the face of the complaint and that date  
18 stamp is January 30th. Yesterday.

19 MR. HIBSHER: Am I right about that?

20 BY MR. HIBSHER:

21 Q. January 30th. But that case came in yesterday at 4:45.  
22 When is that case considered filed?

23 A. January 30th.

24 Q. Okay. So if the clerk goes into the CCMS system the next  
25 morning to enter the data, what will be the date filed that the

1 CCMS system will populate?

2 A. It will populate January 31st, but we will then go change  
3 that date to January 30th, whatever date was on the filing.

4 Q. So the deputy clerks are instructed that if they entered  
5 data on a date after the actual file date on the complaint, they  
6 are required to correct the auto-populated date; is that  
7 correct?

8 A. Yes. We have to.

9 Q. And do you know if that's done all the time?

10 A. Yes, it is.

11 Q. What if they forget to do that?

12 A. That could happen. We're human. And we process a lot of  
13 cases.

14 Q. But if they forgot to do that because you are human, then  
15 the date that OES would have listed as file date for this  
16 complaint that was date stamped yesterday, January 30th, would  
17 be today, January 31st; is that correct?

18 A. If we forgot, yes.

19 Q. You mentioned before that as part of the initial FAS  
20 review, there's a quick, cursory review to make sure that there  
21 are no confidential filings; is that correct?

22 A. Yes.

23 Q. Do the deputy clerks do their own scanning?

24 A. Yes, they do.

25 Q. Where are the scanning machines located?

1 A. Every deputy clerk has got a scanner on their desk.

2 Q. And can they see the documents that are being scanned on  
3 their screens?

4 A. Yes.

5 Q. As they're being scanned?

6 A. Yes.

7 Q. And do they check to see that the documents that they're  
8 scanning in are being scanned in correctly?

9 A. Yes.

10 Q. No upside down pages?

11 A. Yes.

12 Q. No pages stuck together?

13 A. Yes.

14 Q. No crooked pages?

15 A. (Nodded head.)

16 Q. And that's true for scanning in of a complaint in a  
17 lawsuit; is that fair to say?

18 A. Yes, it is.

19 Q. And one of your people does quality control throughout the  
20 day and checks to make sure that the clerks are scanning in  
21 properly and is looking to capture any errors in scanning like  
22 pages stuck together; is that accurate?

23 A. That's accurate.

24 Q. And isn't it true that rescanning of a complaint in your  
25 court happens infrequently?

1 A. Infrequently, yes.

2 THE COURT: What happens infrequently?

3 MR. HIBSHER: Rescanning.

4 THE COURT: In other words, that situation you talked  
5 about when it came in late in the day so you had to back-date  
6 it?

7 THE WITNESS: Well, I think he's mentioning if there  
8 was a mistake in scanning and they have to go back and rescan.

9 MR. HIBSHER: Correct.

10 BY MR. HIBSHER:

11 Q. So what is the time and date that the OES system captures  
12 as the date of scanning if a complaint is rescanned?

13 A. The date it was last scanned.

14 Q. What about the original date? Does the OES data system  
15 retain the original date?

16 A. Not to my knowledge.

17 Q. So if a complaint -- strike that.

18 When typically is a complaint rescanned if it has to be  
19 rescanned?

20 A. It would be rescanned when we realized that it has to be  
21 rescanned.

22 Q. And you're checking for it throughout the day; is that  
23 correct?

24 A. We check random samples throughout the day. There are  
25 several of us that do that.

1 Q. And do you recall giving testimony at deposition when asked  
2 when does rescanning typically occur, and your answer was right  
3 away?

4 A. If we find it, yes. As soon as we find it, it's rescanned.

5 Q. So if it's rescanned right away, let's say within minutes  
6 of the original scan, would that change the date that the OES  
7 system records as the scan date?

8 A. It would change the time but not the date.

9 Q. Exactly. It would change the time but not the date.

10 If rescanning occurred on the next day, would that change  
11 the date?

12 A. Yes.

13 Q. How often does that happen?

14 A. I can't remember the last time that happened.

15 Q. Okay. Is there any data on how often rescanning occurs?

16 A. The only data we have is what's in my head, because I have  
17 to go, I have to delete the images that have to be rescanned out  
18 of the system. And I have not done that in three years.

19 Four years.

20 Q. Not even once?

21 A. Not once.

22 Q. So is that to say that no single complaint has been  
23 rescanned in three years?

24 A. Well, that's what I would say, because I haven't deleted  
25 anything.



1 Q. So Mr. Larson, not all civil filings are general civil  
2 complaints; is that true?

3 A. Yes.

4 Q. Many of the filings that are filed in your court are  
5 routine filings like concealed weapon permits and name-change  
6 applications and driver's license reinstatements; is that  
7 correct?

8 A. Yes.

9 Q. And in regard to concealed carry permits, is it fair to say  
10 that a large percentage of filings in Norfolk civil court are  
11 concealed carry permit?

12 A. 2,340 of them last year, I believe.

13 Q. And that represents about 21 percent, does it not?

14 A. No. Because we had 23,200 filings last year and that  
15 represents 10 percent.

16 Q. So that's a substantial number?

17 A. Ten percent.

18 Q. Okay. Got it.

19 So are concealed carry permits ever made public?

20 A. No.

21 Q. They're confidential filings; is that fair to say?

22 A. That's correct.

23 Q. Any other confidential filings that are never made public?

24 A. The only thing other thing is if something is requested to  
25 be filed, or if it's a confidential addendum on a divorce filing

1 or something like that.

2 Q. But the entire category of concealed carry permits are  
3 confidential and never made public?

4 A. That's correct.

5 Q. So I'd like to talk a bit about the Norfolk press policy.  
6 Is it accurate to say that Norfolk Circuit Court presently  
7 allows CNS reporters to go behind the counter and into the  
8 clerk's separate room beside that door that says Officers of the  
9 Court to see newly filed complaints that might have been filed  
10 that day?

11 A. That policy's been in place since I've been there since  
12 2004, yes.

13 Q. And is that policy written down anywhere?

14 A. No.

15 Q. Is it posted in your office for anyone to see?

16 A. No.

17 Q. There was a meeting in your office in September of 2018,  
18 two months after this case was filed between Mr. Schaefer and a  
19 couple of the CNS representatives. Were you present for that  
20 meeting?

21 A. Yes.

22 Q. What was the purpose of that meeting?

23 A. To find out, let us know, I guess, what the problems were,  
24 what their problems were so that they could be addressed.

25 Q. And what were the problems that they articulated for you?

1 A. That they had no access or that that they had too difficult  
2 a time getting timely access.

3 Q. Was Mr. Abbott at that meeting?

4 A. Yes.

5 Q. Did he mention to you that he had come to the desk and had  
6 asked Sonya Turner, the deputy clerk, if he could see new  
7 filings before they were fully processed and posted on the  
8 Internet?

9 A. Yes.

10 Q. And had you heard about that conversation?

11 A. I have.

12 Q. And who was Ms. Turner? Sonya Turner?

13 A. Ms. Turner is a deputy clerk. She works -- right now she  
14 works in the criminal division, but she was a brand-new clerk  
15 when she started.

16 Q. How long had she been there when Mr. Abbott asked her?

17 A. I believe just a couple of months.

18 Q. How long did she work in the civil division?

19 A. Not long. She was there probably a year and a half,  
20 two years, maybe, and then got moved to civil -- or to criminal.

21 Q. Would you surprised to know that she had been there for a  
22 year at the time of that conversation?

23 A. I don't, I don't -- could be, yes.

24 Q. And how does your staff learn about this press access  
25 policy if there's nothing written, nothing posted?

1 A. It's, it's been a tradition in our court since before  
2 Mr. Schaefer was elected that the attorneys and the press all  
3 have open access. We believe very strongly in government open  
4 access.

5 Q. Now, the sign on the door says Officers of the Court Only,  
6 correct?

7 A. It says Officers of the Court, yes.

8 Q. And attorneys are officers of the court, are they not?

9 A. That's correct.

10 Q. And they are allowed to go behind the counter, are they  
11 not?

12 A. That's correct.

13 Q. Is there any sign that tells the press that it is allowed  
14 to go behind the counter?

15 A. No.

16 Q. Do you agree with Mr. Schaefer who characterized  
17 Ms. Turner's response at his deposition as "She got it wrong" in  
18 that conversation?

19 A. Absolutely.

20 Q. And how do your -- I'm not sure I got an answer to an  
21 earlier question, and that is, how do your deputy clerks know  
22 about this press policy? You've said it's a tradition of the  
23 office, but if it's not written down and it's not posted, how do  
24 they find out about it?

25 A. We talk about it. We let the press back all the time into

1 our offices. We have a, we have a media access work station set  
2 up right outside of our offices with a table, a desk, a computer  
3 and monitor with exterior access so that they can access their  
4 own systems if they need to.

5 Q. And the press you're referring to are reporters from the  
6 Virginian-Pilot; is that right?

7 A. Reporters from the Virginian-Pilot, the TV stations, radio  
8 stations.

9 Q. These are people who are familiar to you and your  
10 colleagues; is that correct?

11 A. Yes.

12 Q. Are your deputy clerks ever told if any individual comes to  
13 the desk and identifies himself or herself as a member of the  
14 press and wants access to newly filed complaints, they are  
15 allowed to get it?

16 A. I don't know that they're specifically told that, but the  
17 media have to identify themselves that they are credentialed  
18 media.

19 Q. Okay. And if they do that?

20 A. Absolutely they can come back.

21 Q. But Ms. Turner got it wrong; is that fair to say?

22 A. Apparently she did.

23 Q. Has the CNS reporter been coming behind the counter since  
24 that meeting in September, 2018?

25 A. Yes, because they, they introduced themselves as media,

1 members of the media, so we allowed them back.

2 Q. As Mr. Abbott did to Ms. Turner; isn't that correct?

3 A. That's not my understanding, but I don't know the exact  
4 context of that conversation.

5 Q. And have the CNS reporters been given access to newly filed  
6 complaints before they're posted on the Internet?

7 A. Have they -- repeat that question again, please?

8 Q. These days, now that CNS reporters come behind the counter,  
9 do you know what time of day they appear?

10 A. What time of the day the CNS reporters come there?

11 Q. Yes.

12 A. Jocelyn comes into the courthouse about 4:40 every  
13 afternoon.

14 Q. And do you know if she goes to the public access terminal  
15 first to see --

16 A. Yes, she does.

17 Q. You're aware of that?

18 A. Yes. I've seen her there several times.

19 Q. What prompts her to come behind the counter?

20 A. If there's something that she wants to see, typically  
21 she'll come back there and ask one question, "Has there been  
22 anything filed that the not posted online yet."

23 Q. And does she ever come back there with a request for a  
24 specific case that she has seen docket information about because  
25 it has been entered in the FAS system but not yet scanned and it

1 looks interesting to her, and approach one of your people and  
2 say may I see a copy of that case? Does she ever do that?

3 A. She certainly could have done that. I'm not aware of it.

4 Q. What time does she leave your office?

5 A. Typically at 4:45 when we close the doors.

6 Q. And what time does your staff leave?

7 A. 5:00.

8 Q. Is there any reason why she couldn't stay until 5:00 every  
9 day?

10 A. Yeah. Because we're processing -- we're trying to process  
11 end-of-day close-out and count the receipts of the day and get  
12 everything settled for the end of the day.

13 Q. Do you recall giving testimony at your deposition that you  
14 would allow the CNS reporter to stay until 5:00?

15 A. We would allow them -- we allow any of the media to stay if  
16 they were in the middle of looking at a particular case, but  
17 it's just not *carte blanche*.

18 Q. E-filing cases are completely voluntary in Norfolk; is that  
19 correct?

20 A. That's correct.

21 Q. And only lawyers can file cases electronically?

22 A. That's correct.

23 Q. And do you agree with Mr. Schaefer that the numbers of  
24 e-filed cases have not been increasing in recent years?

25 A. That would -- good estimation, yes.

1 Q. And do you agree with Mr. Schaefer that unless and until  
2 electronic filing is made mandatory, it probably won't increase?

3 A. Probably.

4 Q. With an electronically filed complaint, an attorney who is  
5 the filer, that individual does a majority of what the clerk  
6 would normally do for a paper-filed complaint in terms of  
7 entering the data into the electronic filing system; is that  
8 fair to say?

9 A. That's correct.

10 Q. So the clerk has a lot less to do with an e-filed  
11 complaint?

12 A. A lot less keystrokes, yes.

13 Q. And the attorney will enter case information, the parties'  
14 names, the attorneys' names, the sort of thing that the clerk  
15 would be busy doing keystrokes on if she or he had to do that;  
16 is that right?

17 A. That's correct.

18 Q. And once the filer submits the complaint, the complaint  
19 then arrives in the clerk's queue and is considered received by  
20 the court; is that right?

21 A. The file date, yes.

22 Q. So it's that moment that the clerk gets the complaint in  
23 his or her queue that it is considered filed?

24 A. Well, not exactly. The Officer of the Executive Secretary  
25 and the rules of the Supreme Court have stated that the time,



1 the date and time that the party uploads the system into -- or  
2 uploads the case into the system will be handled and locked in  
3 as the, to toll the statute of limitations.

4 Q. And the party you're referring to is the lawyer who is  
5 doing the filing --

6 A. The lawyer that's submitting that complaint.

7 Q. -- or a member of the lawyer's staff?

8 A. Right.

9 Q. And there's a date that appears on an electronically filed  
10 complaint that contains the moment when it is uploaded; is that  
11 correct?

12 A. That's correct.

13 Q. And does it become immediately available to be viewed on  
14 the public access terminal?

15 A. Not until we accept the filing.

16 Q. And what's involved in accepting electronic filing?

17 A. Because of all the information has been entered in, our  
18 clerks have to go through the system, we have to open up every  
19 single document, we cannot proceed in that system until we've  
20 reviewed every document, make sure everything is correct. Once  
21 all that is done, we get little green checkmarks next to every  
22 line item, and then we can hit Accept and that is when it  
23 becomes available.

24 Q. And you testified that the clerks look at the electronic  
25 queue a couple of times a day to see if there's anything new in

1 there; is that right?

2 A. That's correct.

3 Q. And how long does that review of an electronically filed  
4 complaint take for the clerk to perform?

5 A. Again, it varies depending on how large the filing is. It  
6 could be, you know, two or three, four or five minutes, it could  
7 be 15 or 20 minutes, depending on the size.

8 Q. And once that review occurs, the next step is that the  
9 clerk presses the Accept button; is that right?

10 A. Yes, that's correct.

11 Q. And then does it become available on the public access  
12 terminal?

13 A. Yes.

14 Q. And isn't it true that the press cannot review an  
15 electronically filed complaint until it is completely processed  
16 and posted on the electronic terminal?

17 A. Unless they come back and they know the case is there, then  
18 they can look over one of our deputy clerk's shoulder.

19 Q. How would they know that the case is there?

20 A. They might get an advance warning from somebody. I don't  
21 know.

22 Q. From a lawyer for a plaintiff?

23 A. From a lawyer, yes.

24 Q. But it's different from entering information into the  
25 accounting system which goes up onto the CCMS screen immediately

1 and it lets the public and the CNS reporter that a case has been  
2 filed, and it tells you the name of the case, the lawyer's name  
3 and the type of case?

4 A. Correct.

5 Q. So if our reporter sees that there's a contract case that  
6 has been filed against a major company and she says, wow, that's  
7 something I'm interested in, and she then goes your deputy clerk  
8 and says may I see a copy of that case that appears to have been  
9 filed today, and that clerk will either quickly process it and  
10 scan it so that the reporter can see it on the public access  
11 terminal, or sometimes even show the reporter a copy of a  
12 complaint; is that right?

13 A. That's correct.

14 Q. But none of that information appears on the public access  
15 terminal for electronically filed complaints until the complaint  
16 is accepted and the entire thing is posted on the public access  
17 terminal?

18 A. That's correct.

19 Q. So there's no way that the media can see an electronically  
20 filed complaint until it is seen on the public access terminal  
21 unless a lawyer tips them off and they come back and ask for it?

22 A. Right.

23 Q. And if they ask for it, what happens then?

24 A. If they ask for it, they'll be allowed to look at the  
25 screen over the deputy's shoulder.

1 Q. Are you aware there's been testimony in this case that  
2 outsiders are not allowed to look at the screen over the  
3 deputy's shoulder?

4 A. No, I'm not aware of that.

5 Q. Mr. Larson, isn't it true that when an important case is  
6 filed in your court you sometimes alert the public by tweeting  
7 about them?

8 A. That's correct.

9 Q. And I'd like to show you what has been previously marked,  
10 one exhibit, Plaintiff's Exhibit 25 for identification.

11 Give us a minute to get it up on the screen.

12 Do you have to that?

13 A. Yes, I do.

14 Q. Can you identify this document?

15 A. It was a tweet that we sent out about the lawsuit requiring  
16 City Council to act on its resolution to relocate the  
17 Confederate monument.

18 Q. And who authored that tweet?

19 A. I believe I did.

20 Q. And you sent it out the day the suit was filed?

21 A. I did.

22 Q. Right after it was filed?

23 A. That's correct.

24 MR. HIBSHER: Nothing further, Your Honor. Thank you,  
25 Mr. Larson.

1 MR. SHUMADINE: You need to move to admit it.

2 MR. HIBSHER: Your Honor, I neglected to offer the  
3 tweet, Plaintiff's 25, into evidence.

4 THE COURT: That's Exhibit 25?

5 MR. HIBSHER: Yes.

6 THE COURT: Exhibit 25 will be admitted.

7 (Plaintiff's Exhibit No. 25 received in  
8 evidence.)

9 MR. HIBSHER: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. PRINCE:

12 Q. Good afternoon, Mr. Larson.

13 A. Good afternoon.

14 Q. You are the chief deputy clerk of Norfolk; is that right?

15 A. That's correct.

16 Q. What are your responsibilities as the chief deputy  
17 clerk?

18 A. Manage the day-to-day operations of the clerk's office and  
19 carry out the policies set by the Clerk.

20 Q. And that includes overseeing the civil division?

21 A. That's correct.

22 Q. Do you oversee training for deputy clerks?

23 A. Do I --

24 Q. Training.

25 A. Yes.

1 Q. What sort of training programs do you have for your deputy  
2 clerks?

3 A. We have several. We have training that's provided by the  
4 Office of the Executive Secretary where we send deputy clerks to  
5 Richmond to go through training. But other than that, we assign  
6 individual seasoned deputy clerks with each new deputy clerk to  
7 walk through and to be a mentor for the process that they're  
8 going to do.

9 Q. I'm going to ask you some questions about the OES  
10 technology that your office uses. Now, what is OES?

11 A. Office of the Executive Secretary of the Supreme Court of  
12 Virginia.

13 Q. And that's the administrator of the Virginia Circuit  
14 system; is that right?

15 A. Yes.

16 Q. And you use several technology platforms provided by OES?

17 A. That's correct.

18 Q. And I'd like to go through them if I can just so we know  
19 what they are.

20 You use CCMS; is that correct?

21 A. That's correct.

22 Q. What is CCMS?

23 A. Circuit Case Management System.

24 Q. And what do you use CCMS for?

25 A. That's where we store all of the index data and all the

1 case data for both civil, criminal case files.

2 THE COURT: That's all cases that are filed in person,  
3 by mail and electronically and *pro se* all of those goes there?

4 THE WITNESS: Yes, Your Honor.

5 BY MR. PRINCE:

6 Q. That's the case management system?

7 A. Yes, that's the case management system.

8 Q. You use a system called FAS, is that right?

9 A. Yes.

10 Q. Can you explain to the Court what FAS is?

11 A. FAS is the Financial Accounting System, which makes sure  
12 that all the dollar amounts, all the fees are correct and that  
13 tracks all of the money.

14 Q. And Mr. Hibsher was asking you some questions about how FAS  
15 and CCMS work together. Isn't CCMS kind of the backbone of Case  
16 Management System and the other technology platforms kind of  
17 work into it? Is that right?

18 A. It's close, yes.

19 Q. So when you process a receipt in FAS, that kind of, that  
20 data flows into CCMS; is that right?

21 A. That's correct.

22 Q. You use a system called CIS; is that right?

23 A. Yes, we do.

24 Q. Can you explain to the court what CIS is?

25 A. CIS is the Case Imaging System. It's where all the

1 documents are stored that we scan.

2 Q. That's what you use for scanning right?

3 A. Correct.

4 Q. That's how you get a paper complaint into digital form?

5 A. That's correct.

6 Q. You also use the OES e-filing system, right?

7 A. Yes.

8 Q. And that's known as VJEFS?

9 A. VJEFS, yes.

10 Q. What does VJEFS stand for?

11 THE COURT: Let's back up a minute. What was that --  
12 first we had CCMS, then FAS. What was the next one?

13 MR. PRINCE: The next one is the Case Imaging System,  
14 CIS.

15 THE COURT: CIS. And that's the system whereby you  
16 scan all the cases?

17 THE WITNESS: We scan all the documents into that  
18 system. That's where we hold all the images for all the cases.

19 THE COURT: Do you scan all of the pleadings? I mean  
20 the complaint you put in there. Do all of the pleadings go into  
21 the case system?

22 THE WITNESS: We scan everything into the system,  
23 because that's the only way our judges will be able to view all  
24 the documents.

25 THE COURT: Well, would that be true of paper cases?



1 THE WITNESS: Yes. Everything -- we are a  
2 paper-on-demand court, so everything, everything that comes in  
3 the courthouse is scanned immediately into the system regardless  
4 of how we get it there.

5 THE COURT: All right. So if a judge wanted to see a  
6 motion in case that was filed via a paper complaint, he would  
7 still go into the CIS system and get the motion printed out if  
8 he wanted to see it?

9 THE WITNESS: No. Actually the judges have another  
10 system, it's the Judicial Imaging System, and they've got all of  
11 the documents show up on screen up there and they can write on  
12 them, they can make notations on them from there.

13 THE COURT: Well, they could probably also print it  
14 out, couldn't they?

15 THE WITNESS: They could print it out if they wanted  
16 to, yes.

17 THE COURT: But they can view the document on the  
18 screen?

19 THE WITNESS: Yes, sir.

20 THE COURT: Even if it's on paper, filed on paper by  
21 mail into your office, they can review it on the screen?

22 THE WITNESS: That's correct, sir.

23 THE COURT: And that would be true of all filings,  
24 whether electronic or paper?

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: Okay. Now after CIS you said something  
2 else?

3 Now after CIS, you said something else.

4 MR. PRINCE: After CIS, which is the imaging system, I  
5 asked him about VJEFS, which is OES's e-filing system.

6 THE COURT: Well, I mean, all of these initials mean  
7 nothing to me. What was that?

8 BY MR. PRINCE:

9 Q. What does VJEFS stand for?

10 A. VJEFS is the Virginia Judicial Electronic Filing System.

11 Q. What is that used for?

12 A. That is used --

13 THE COURT: Virginia Judicial Electronic Filing  
14 System. VJEF?

15 THE WITNESS: VJEFS, yes, sir.

16 MR. PROTOGYROU: It's a lot, I know. It's hard to  
17 keep them separate.

18 BY MR. PRINCE:

19 Q. So the e-filing system, VJEFS, that's optional in Norfolk  
20 Circuit Court; is that correct?

21 A. Yes.

22 Q. And these are all OES technology systems that your office  
23 uses?

24 A. Yes, they are.

25 Q. Do a lot of litigants in Norfolk use the e-filing system?

1 A. There's not a lot, because you have to be a attorney in  
2 good standing with the Virginia State Bar to use it.

3 Q. Do you know how many e-filed complaints there were in 2018?

4 A. Not off the top of my head, no.

5 THE COURT: Do you have any estimates that you can  
6 make in good faith as to what percentage of cases are filed by  
7 mail, by hand delivery and by electronic?

8 THE WITNESS: No, Your Honor, I cannot.

9 BY MR. PRINCE:

10 Q. If I told you that there were 680 e-filed cases in Norfolk  
11 during the 2018 calendar year, would that sound accurate?

12 A. I would have to believe you, because I have no idea.

13 Q. The Norfolk clerk's office does not control how the  
14 e-filing system operates; is that correct?

15 A. No, we do not.

16 Q. That's all OES?

17 A. That's correct.

18 Q. Do you just use the e-filing system in your court?

19 A. Yes.

20 Q. And OES operates and maintains these systems for you?

21 A. Yes.

22 Q. You don't design it?

23 A. No.

24 Q. Does the Norfolk clerk's office have a policy for making  
25 newly filed complaints publicly available?

1 A. It is the policy of the clerk to make every case publicly  
2 available that can be made publicly available as quickly as  
3 possible.

4 Q. How do you make newly filed complaints publicly available?

5 A. We put them into the system, we scan them, and they're  
6 available right away on the public access terminals.

7 Q. Are there circumstances that sometimes occur that make it  
8 hard to get newly filed complaints available the same day  
9 they're filed?

10 A. Absolutely there are.

11 Q. What are some of those circumstances?

12 A. It could be a bad filing fee or the wrong filing fee or no  
13 filing fee. Could be in the wrong jurisdiction. There could be  
14 a problem with one of the motions or a problem with the document  
15 itself. We could have a weather event. People calling in  
16 stick. There's multitude of reasons why that could happen.

17 THE COURT: Do they call the initial filing in state  
18 court now a complaint as opposed to a motion for judgment?

19 THE WITNESS: There could be a complaint. There's  
20 also a motion for judgment in state court.

21 THE COURT: So both of those are used?

22 THE WITNESS: Yes, sir.

23 THE COURT: The complaint's in equity, and motions for  
24 judgment in law, is that the distinction?

25 THE WITNESS: Yes. Yes, Your Honor.

1 THE COURT: I don't know how much has changed since  
2 I've been using that system.

3 Go ahead.

4 BY MR. PRINCE:

5 Q. You mentioned filing fee issues. Are there ever issues  
6 with filing fees --

7 A. Yes.

8 Q. -- associated with newly filed complaints?

9 Is it ever the case when a filing party submits an  
10 incorrect filing fee?

11 A. Yes.

12 Q. What do you do when there's an incorrect filing fee?

13 A. We immediately call the filing party and let them know that  
14 the filing fee is incorrect and we cannot file that case until  
15 we get the correct fee.

16 Q. Is there ever a instance where a filing party neglects to  
17 include a filing fee at all?

18 A. Yes. That happens regularly.

19 THE COURT: And if that happens the case wouldn't be  
20 considered filed, would it --

21 THE WITNESS: No, it would not.

22 THE COURT: -- for purposes of the statute of  
23 limitations.

24 THE WITNESS: Right. It would not be.

25 BY MR. PRINCE:

1 Q. Would you file-stamp that complaint if the filing fee was  
2 incorrect?

3 A. It -- we could, I guess, yes. Could happen.

4 Q. If the filing fee was incorrect that would delay it being  
5 displayed on the public access terminal; is that fair to say?

6 A. That's correct.

7 Q. There are three ways that a filing party can file a new  
8 complaint in Norfolk; is that correct?

9 A. That's correct.

10 Q. What are those three ways?

11 A. They can hand-deliver it by either themselves or a courier,  
12 they can mail it in, or they could e-file.

13 Q. Start with hand-delivery. When someone hand-delivers a  
14 paper complaint to the Norfolk clerk's office, where do they go?

15 A. They go to the front counter where the cashier sits.

16 Q. Who does the person -- who does the filing party hand the  
17 complaint to?

18 A. Depends on how busy the front counter is. We do a lot at  
19 the front counter from passports to marriage licenses and  
20 everything else, and we have a security person up there. But  
21 there's another desk that we usually post if it's busy, a civil  
22 deputy clerk that would take care of all of those.

23 Q. And what does the deputy clerk do when the filing party  
24 hands the new complaint to them?

25 A. They will look at the, they will do that initial review to

1 make sure that the filing, what the filing type is, the filing  
2 fee is correct and jurisdictional issues, and then we would  
3 issue the receipt if the payment is there.

4 Q. Do they check for confidential information?

5 A. Absolutely.

6 Q. After the initial review, what happens to the complaint?

7 A. Complaint goes to the deputy clerk that's processing all  
8 the complaints, and they will go through the process of indexing  
9 and entering in all the information to CCMS, then scanning that  
10 document.

11 Q. All right. What is indexing?

12 A. Indexing is taking documents that are filed in that initial  
13 complaint or in that initial filing, could be motions, requests  
14 for service, those are all put in as an index entry in CCMS so  
15 that when we scan them into CIS those documents are easily  
16 found.

17 Q. Why is indexing important?

18 A. Well, because if we don't index, you'd scan the entire case  
19 in and then you would have to fumble through it to try to find  
20 what you're looking for.

21 Q. Can you see a new complaint on the public access terminal  
22 before it's indexed?

23 A. Before it's indexed? No.

24 Q. How is the process different for complaints received by  
25 mail?

1 A. We get the mail in the afternoon. It's carried back to --  
2 the mail is separated by division and it's carried back and  
3 handed to the civil deputy clerks for the civil filings.

4 Q. So Mr. Hibsher referred to multiple phases involved with  
5 receiving and processing a new complaint. But when a  
6 complaint's filed, received by mail, isn't that all done in one  
7 singular process by the deputy clerk?

8 A. Yes.

9 Q. Deputy clerk receives it, she enters information to FAS,  
10 the Financial Accounting System, and then she moves into CCMS  
11 and the case is docketed; is that fair to say?

12 A. Correct.

13 Q. You mentioned earlier you're a paperless court, correct?

14 A. Yes.

15 Q. So you don't really have paper files?

16 A. We do not have paper files.

17 Q. Gone are the days of clerks offices with manila files all  
18 over on shelves everywhere?

19 A. That's correct. We do not have --

20 Q. You're completely digital?

21 A. We do not have any paper files.

22 Q. That's not just complaints, that's motions, that's orders,  
23 that's anything that's filed in a civil or criminal case, I  
24 guess?

25 A. Everything that's filed in our court is paperless.



1 THE COURT: Do you send a copy to the Cloud?

2 THE WITNESS: To where?

3 THE COURT: The Cloud.

4 THE WITNESS: No, actually we keep it in-house. We've  
5 got a big --

6 THE COURT: I was just wondering if everything is  
7 electronic, what backup system you have.

8 THE WITNESS: We have multiple backup systems. We  
9 have a local backup system, and a backup system that everything  
10 is backed up to Richmond to the Office of the Executive  
11 Secretary's server farm up there in Richmond.

12 BY MR. PRINCE:

13 Q. So once indexing occurs, the next step is that the  
14 complaint is scanned, right?

15 A. That's correct.

16 Q. And the scanning takes place at the deputy clerk's work  
17 station?

18 A. Yes, it does.

19 Q. They have a scanner sitting beside their computer terminal  
20 where they just feed the papers in; is that correct?

21 A. That's correct.

22 Q. And then once the complaint is scanned into digital form,  
23 the complaint is available on the public access terminal?

24 A. That is correct.

25 Q. What happens to the paper after you scan it in?

1 A. We keep it in a box for 30 days, and then it goes to, Shred  
2 It comes and picks it up.

3 THE COURT: Are pleadings handled the same way?  
4 Subsequent pleadings?

5 THE WITNESS: Yes.

6 BY MR. PRINCE:

7 Q. When a document is scanned into the Case Imaging System,  
8 the image records a scan date; is that right?

9 A. That's correct.

10 Q. Is that date always accurate?

11 A. It's always accurate for the date that a document is  
12 scanned.

13 Q. But if the image is replaced or modified later, the date  
14 changes, correct?

15 A. Yes.

16 THE COURT: Well, you said you hadn't done that in  
17 three years or something?

18 THE WITNESS: No, this is -- that's something  
19 different. If we -- if a judge makes a change on a document or  
20 a change comes in on the document, that date would be -- it's a  
21 change on the document in the system, not a rescan.

22 THE COURT: It's just a new document in the system?

23 THE WITNESS: Yes.

24 THE COURT: You know you have to keep up with when  
25 responses to pleadings are filed --

1 THE WITNESS: Correct.

2 THE COURT: -- right? Okay.

3 BY MR. PRINCE:

4 Q. And the process is much simpler for e-filed complaints; is  
5 that correct?

6 A. Yes.

7 Q. There's no actual data entry that the clerks have to do;  
8 the filing party does it?

9 A. Typically, yes.

10 Q. Does the clerk check the filing queue on the e-filing  
11 system every day?

12 A. They check it every day. And actually they open it up and  
13 the e-filing queue is minimized on their desktop. So it's  
14 always available.

15 Q. Once the e-filing is accepted it becomes publicly  
16 available?

17 A. Yes.

18 Q. You don't have any involvement with e-filed complaints  
19 until it appears in the queue and you accept it, correct?

20 A. That's correct.

21 Q. There's a process where you have to verify that the filing  
22 is what it's supposed to be; is that right?

23 A. That is correct.

24 Q. And the OES e-filing System requires you to go through and  
25 verify each page in the new file; is that correct?

1 A. That's correct, yes.

2 Q. We've heard a lot today about Mr. Schaefer's access  
3 policies for the media. How long has that, how long has the  
4 policy been in place to allow credentialed media behind the  
5 counter?

6 A. Since we took -- since he took office and we started on  
7 January 1st, 2004.

8 Q. How do you make reporters aware of the policy?

9 A. Typically a reporter or somebody in the media will come and  
10 say, hey, I'd like to look at -- or they would introduce  
11 themselves as part of the media. We've had several change-overs  
12 from the Virginian-Pilot as they change reporters or reporters  
13 move on, they will all come up and introduce themselves right  
14 away and let us know and show us their credentials.

15 Q. Do you have local members of the media that regularly come  
16 behind the counter?

17 A. Yes.

18 Q. And what entities do these reporters work for?

19 A. Virginian-Pilot, Channel 13, Channel 10, Channel 3., Fox  
20 Network. Virtually everybody that broadcasts here has been  
21 there at one time or another.

22 Q. Mr. Hibsher asked you some questions about a conversation  
23 that CNS's, one of CNS's employees, Mr. Abbott, had with a  
24 deputy clerk at the Norfolk clerk's office. Do you recall that?

25 A. Yes.

1 Q. And her name is Sonya Turner?

2 A. Correct.

3 Q. Is Ms. Turner a supervisor?

4 A. No, she is not.

5 Q. What is her position?

6 A. She's a deputy clerk.

7 Q. Does she recall this conversation?

8 A. Not to my --

9 MR. HIBSHER: Objection, Your Honor.

10 THE COURT: I think that's better answered by her.

11 Couldn't be answered without hearsay.

12 BY MR. PRINCE:

13 Q. During the initial review when a file is first received,  
14 does the clerk check for confidential information?

15 A. Yes.

16 Q. What types of confidential information are they looking  
17 for?

18 A. They're looking for a confidential addendum, it carries,  
19 you know, signatures, juvenile names or addresses, financial  
20 information, Social Security numbers. Any items like that.

21 Q. Tax ID numbers? Financial account numbers?

22 A. Yes.

23 Q. Do they also look for motions to seal or sealing requests  
24 that accompany new civil filings?

25 A. That's correct.

1 THE COURT: If they put this confidential information  
2 in the complaint what do you do?

3 THE WITNESS: If it's in the complaint itself? We  
4 send it back.

5 THE COURT: You don't file it?

6 THE WITNESS: No, sir.

7 THE COURT: Suppose it's in an attachment?

8 THE WITNESS: If it's in an attachment there's a  
9 confidential addendum that they could complete, and then we pull  
10 that out.

11 THE COURT: I mean physically what do you do with it  
12 when you get the complaint that has confidential information in  
13 an addendum or attachment to the complaint?

14 THE WITNESS: We hold it in a drawer until the party  
15 that filed it can come back and get it.

16 THE COURT: So you go ahead and file it, the motion  
17 for judgment or the complaint, you just detach the attachment  
18 and put it aside?

19 THE WITNESS: Correct.

20 THE COURT: Okay.

21 BY MR. PRINCE:

22 Q. When you encounter a complaint that contains confidential  
23 or personal identifying information, do you process it?

24 A. We do not process it.

25 Q. You wait for the filing party to correct the issue?

1 A. That's correct.

2 Q. What do you do if you encounter a sealing request or a  
3 motion to seal? How's that handled?

4 A. That information, that document and the motion is  
5 immediately sent upstairs to the duty judge who will make a  
6 determination on that request, on that motion.

7 Q. I think you mentioned a confidential addendum. There's  
8 actually an official Virginia form for that, isn't there?

9 A. Yes, there is.

10 Q. And it's a state form that can be included with new civil  
11 filings; is that right?

12 A. It's typically used in divorce proceedings, yes.

13 Q. And it allows a filing party to include confidential  
14 information with a new filing?

15 A. Yes.

16 Q. And that's one of the things you're looking for when you  
17 conduct this review, is to ascertain whether or not there's  
18 documents like that in there?

19 A. That's correct.

20 Q. Is confidential information something your office  
21 encounters on a regular basis?

22 A. Yes.

23 Q. What types of civil cases contain confidential information  
24 with regularity?

25 A. Divorces. There's some finance lawsuits that, you know,

1 carry, you know, bank account numbers or, you know, proprietary  
2 information that people want sealed.

3 Q. How about medical malpractice actions?

4 A. Med-mal actions.

5 THE COURT: What about med-mal actions is  
6 confidential?

7 THE WITNESS: Well, depends on what it's about. It  
8 could be about a, you know, there could be a juvenile involved.  
9 All juvenile files are sealed or protected.

10 THE COURT: Well, in other words, it's not protected  
11 just because it's a med-mal case?

12 THE WITNESS: No. The medical case is not necessarily  
13 protected itself, but there may be documents within it that  
14 could be.

15 BY MR. PRINCE:

16 Q. The point is you have to actually look and see --

17 A. You have to look and see what's in the case file.

18 Q. Do you ever encounter issues with *pro se* filers and  
19 confidential information?

20 A. Yes.

21 Q. Fair to say that *pro se* filers often include confidential  
22 information with their filings?

23 A. Yes.

24 Q. And you have to deal with that?

25 A. Yes, we do.



1 Q. The clerk's office is responsible for ensuring that  
2 confidential information does not get into the public domain  
3 through court records?

4 A. That's correct.

5 Q. Did you know who CNS was before this lawsuit was filed?

6 A. No.

7 Q. If you were required to provide CNS or the media with  
8 faster access than you do now, how would you go about doing  
9 that?

10 A. I absolutely don't have any idea how we would do that other  
11 than cherrypicking the cases that we think that they're  
12 interested in and setting them off to the side which would  
13 require hiring another person and blowing our budget.

14 Q. So you would have to hire additional staff?

15 A. Yes, we would.

16 Q. How is your office funded?

17 A. Office is funded by two methods: Compensation Board, the  
18 Virginia State Compensation Board, and the City of Norfolk  
19 provides funding.

20 Q. Do you have a budget?

21 A. Yes, we do.

22 Q. Fair to say that you need approval to hire new people?

23 A. Yes, we do.

24 THE COURT: Hold on just a second, Counsel. It  
25 appears that I've got something from the jury.

1 (Court and court security officer conferred.)

2 THE COURT: Okay. Tell them to fill in the verdict  
3 form. They have got a verdict form, don't they?

4 COURT SECURITY OFFICER: Yes, Your Honor.

5 THE COURT: Tell them to fill out the verdict form.

6 COURT SECURITY OFFICER: Yes, sir. They said that  
7 they have decided on all counts, but they didn't say what the  
8 decision was.

9 COURTROOM DEPUTY CLERK: Want me to start calling?

10 THE COURT: Yes, you had better call the attorneys.  
11 Go ahead.

12 MR. PRINCE: Okay. Thank you, Your Honor.

13 BY MR. PRINCE:

14 Q. What are some of the challenges that you would face if you  
15 were required to provide faster access?

16 A. We would have to figure out -- I don't know, just, there's  
17 you know, we would be treating one person different than  
18 another. We would have to try and figure out what cases are --  
19 would be newsworthy to different organizations. And it's a  
20 whole, we would change our whole process of bringing cases into  
21 the -- or you know, getting cases into the system, which would  
22 ultimately affect access for everybody.

23 Q. Do you have the ability to hire more people for something  
24 like this?

25 A. No.

1 Q. Can you extend your hours?

2 A. We don't have any budget for overtime. We're not allowed  
3 to pay overtime.

4 Q. Can you -- do you have the ability to require a filing  
5 party to include an extra copy with their complaint?

6 A. No, we don't.

7 (Court and court security officer conferred.)

8 COURT SECURITY OFFICER: They're filling it out now.  
9 It's all complete.

10 THE COURT: Lori, you can file that.

11 COURTROOM DEPUTY CLERK: Yes, sir.

12 I've contacted the parties.

13 THE COURT: File it in the other case. I don't think  
14 we've reached a decision in this one yet.

15 COURTROOM DEPUTY CLERK: Surprise.

16 MR. PRINCE: I'd be happy to write the decision for  
17 you if you'd like, Your Honor.

18 THE COURT: I'd be happy for you to do it as long as I  
19 could edit it.

20 MR. HIBSHER: I wouldn't be, Your Honor.

21 MR. PRINCE: I'm a really good writer.

22 BY MR. PRINCE:

23 Q. If you were to make changes to your current process to make  
24 new civil filings available faster, would that have any effect,  
25 in your view, of making them available to everyone? The public

1 at large?

2 A. I don't know how we could make our civil filings available  
3 any faster, because everything, you know, change in the policy,  
4 what are you going to exclude from that?

5 THE COURT: I think he's already answered that  
6 question, Counsel.

7 BY MR. PRINCE:

8 Q. Well, what about quality control?

9 A. Quality control, we would have to be pulling files out and  
10 trying to make a determination of what's newsworthy, and we may  
11 not catch a, you know, be able to catch something.

12 THE COURT: I really don't think that's relevant. I  
13 don't think that anybody's asking for the clerk's office to try  
14 to separate the files into what they think someone would find  
15 interesting. I don't think that's part of the case.

16 MR. PRINCE: Well, this lawsuit is about whether or  
17 not the clerks are providing timely access and whether they  
18 should provide faster access.

19 THE COURT: That's right.

20 MR. PRINCE: And that's essentially saying that they  
21 are not processing things fast enough. So his --

22 THE COURT: Well, actually they're not saying that.  
23 They're saying that they're satisfied with how they have been  
24 processed now. That's --

25 MR. PRINCE: Well, that's --

1 THE COURT: -- what the mystery is to me. But...

2 MR. PRINCE: That's not in dispute. They're getting  
3 great access now. What is in dispute is whether they were  
4 getting the same access before this lawsuit was filed. Just  
5 want to make sure that's clear.

6 THE COURT: Well, what difference does that make?

7 MR. PRINCE: I don't think it makes any difference. I  
8 think this case is moot, and I don't think --

9 THE COURT: I'm not sure that it makes any difference  
10 either. That's what I've been trying to say.

11 We might as well take a recess. I think the jury is  
12 about to return a verdict.

13 MR. PRINCE: Thank you, Your Honor.

14 THE COURT: You can leave your papers on the table. I  
15 don't think counsel needs the table space, they just need the  
16 seating space. But you guys can go ahead and take a recess if  
17 you want.

18 MR. MATHESON: Thank you, Your Honor.

19 THE COURT: You can stand down.

20 THE WITNESS: Thank you, Your Honor.

21 THE COURT: There is one caveat: You can't discuss  
22 your testimony with any other witness until the case is over.

23 THE WITNESS: Yes, sir.

24 (Recess in proceedings.)

25 \* \* \*

1 THE COURT: All right. Mr. Prince, you may resume,  
2 but we'll adjourn at 4:00.

3 MR. PRINCE: Thank you, Your Honor.

4 BY MR. PRINCE:

5 Q. Mr. Larson, do you believe that CNS's allegations regarding  
6 access delays in Norfolk are accurate?

7 A. No, I do not.

8 Q. Why do you think they're inaccurate?

9 A. We work hard every day to be one of the most efficient  
10 organizations in the Commonwealth, and we are constantly  
11 reviewing our procedures to make them more efficient, to be  
12 faster, and I don't believe that we are anywhere near where CNS  
13 has said we are.

14 Q. I asked you a question earlier about circumstances when a  
15 new complaint is filed and the filing fee is missing or  
16 incorrect. Do you remember that?

17 A. Yes.

18 Q. And I believe your testimony was that when a filing comes  
19 in with a missing or incorrect filing fee, the complaint is  
20 filed and is file-stamped, and then you call the filing party or  
21 attorney that filed the complaint and ask them to come fix the  
22 problem; is that correct?

23 A. That is correct.

24 Q. Once the process of receipting is complete, explain what  
25 steps the clerks take to complete docketing in CCMS.

1 A. Once the receipting is replaced [sic], like I stated  
2 earlier, all the additional data is entered into CCMS, the index  
3 entries are made in CCMS, the document is scanned into CIS and  
4 it's made available on public terminals.

5 Q. And is the data available on the public access terminal  
6 before or after the process is complete?

7 A. It's available as soon -- the images are there as soon as  
8 it's complete.

9 Q. After it's complete?

10 A. After it's complete.

11 MR. PRINCE: Thank you, Mr. Larson.

12 I have no further questions, Your Honor.

13 THE COURT: Do you have any follow-up, Counsel?

14 MR. HIBSHER: I do, Your Honor. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. HIBSHER:

17 Q. Mr. Larson, just in regard to Mr. Prince's last question  
18 about when the data is made available and you said yes, the  
19 image appears after it's scanned, but isn't it a fact that data  
20 is available on the public access terminal as soon as the  
21 initial intake occurs in the Financial Accounting System?

22 A. The date is available, the basic information is available,  
23 but the images are not until they're scanned.

24 Q. Okay. So the data is available after the first step of  
25 indexing, but the images become available after processing is

1 completed?

2 THE COURT: Well, let's try not to use the word  
3 processing.

4 BY MR. HIBSHER:

5 Q. Okay. After the second phase, which I think you called  
6 indexing, is completed; is that correct?

7 A. When all the information is entered into the CCMS it's all  
8 done at one time. We enter the data in CCMS, we index it, and  
9 then it's available on the public terminals.

10 Q. And the "it" in that sentence is the image of the scanned  
11 complaint; is that correct?

12 A. Once we get all that information in CCMS, then we scan the  
13 image.

14 Q. But isn't it correct that once the receipt kicks out, the  
15 initial basic intake information is available on the public  
16 access terminal?

17 A. Not to my knowledge. Not until we get it into CCMS.

18 Q. Okay. You testified --

19 THE COURT: So you can't actually read the complaint  
20 unless you have the complaint itself in your hands, until you've  
21 scanned it into the system?

22 THE WITNESS: Correct.

23 THE COURT: But when you scan it into the system, it  
24 apparently goes into all the systems at the same time?

25 THE WITNESS: Yes, sir.



1 BY MR. HIBSHER:

2 Q. You testified earlier, Mr. Larson, that if you were to  
3 improve access in the Norfolk Circuit Court, you would have to  
4 hire additional staff; is that correct?

5 A. Yes, I believe so.

6 Q. Okay. Are you aware that CNS does not allege any  
7 unconstitutional delays in the Norfolk court at the present  
8 time?

9 A. That's what I've heard.

10 Q. Okay. Assuming that is correct, has your office hired any  
11 additional personnel in order to achieve the current levels of  
12 access --

13 A. No.

14 Q. -- it is providing?

15 A. No.

16 Q. Mr. Larson, are deputy clerks authorized to speak to the  
17 public?

18 A. Yes.

19 Q. Do they ever answer questions at the desk out front?

20 A. They answer questions all the time all day long.

21 Q. Are they authorized to speak to the press?

22 A. Regarding what? Depends on what it's about.

23 Q. If a member of the press introduced himself or herself and  
24 said I would like to have access to newly filed complaints, is  
25 the deputy clerk authorized to respond to that person?

1 A. Yes.

2 Q. In regard to confidential information, I believe you  
3 testified earlier that the clerk's review of confidential  
4 information is a cursory review; is that correct?

5 A. That's correct.

6 Q. And at what stage of the entire process does that occur?

7 A. Simultaneously with them bringing the case, opening the  
8 case and putting it all into the system. We do it at the same  
9 time.

10 Q. Does it happen while the fee is being entered?

11 A. It could. It depends on if it's looked at by a deputy  
12 clerk and somebody else is entering in the fees.

13 Q. If there's confidential addendum, either in a divorce case  
14 or a medical malpractice case, how is that filing treated on the  
15 CCMS system?

16 A. That is treated as a confidential entry in CCMS, and when  
17 it's scanned, it's scanned into a confidential area of CCMS --  
18 or CIS.

19 Q. So there would be a separate area? Is it called  
20 Confidential Addenda in CCMS?

21 A. Yes. Sealed. Sealed area.

22 Q. Okay. And other documents besides the complaint, where do  
23 they go?

24 A. They go in -- they all go into the same system, it's just a  
25 different area of that system.

1 Q. And a different tab. And if one wanted to access that  
2 document --

3 A. It's not a different tab. It's the same tab, they're just  
4 marked as confidential.

5 Q. Okay.

6 A. It's a little flag that's switched.

7 Q. Let's say other documents, an answer comes into the  
8 complaint and is filed, where would that go?

9 A. It would go into CIS, it would be entered, we'd open up the  
10 case, make a index line entry in CCMS, and then scan that answer  
11 in.

12 MR. HIBSHER: Nothing further, Your Honor. Thank you.  
13 Thank you, Mr. Larson.

14 THE COURT: May he be excused, Counsel?

15 MR. PRINCE: Yes.

16 THE COURT: Do you have to recall him or may he be  
17 excused for good?

18 MR. PRINCE: We may recall him, and if so, I know  
19 where to find him.

20 THE COURT: All right. They may recall you. What  
21 that means, Mr. Larson, is that the same thing we discussed at  
22 the recess: That you cannot discuss your testimony with anyone  
23 else in the case, associated with the case --

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: -- until you're either released as a

1 witness or complete your further testimony should you give same.

2 THE WITNESS: Yes, sir.

3 THE COURT: And you also have to remain outside the  
4 courtroom.

5 THE WITNESS: Yes, sir. Thank you.

6 THE COURT: Thank you.

7 Do you have a 10-minute witness?

8 MR. HIBSHER: Well, Your Honor, we have a witness  
9 whose testimony we will read into the court record by agreement  
10 with counsel, but that will take about 25 minutes.

11 THE COURT: All right. Well, we're not going to do it  
12 then.

13 MR. HIBSHER: Okay.

14 THE COURT: We'll be adjourned until -- oh, by the  
15 way, I'm not accepting any additional authorities that were  
16 filed, when was it, last night?

17 MR. MATHESON: I'm the one who filed that, Your Honor,  
18 and I -- it wasn't meant to be a fast one. The only reason that  
19 it was filed is that it's the latest version of the Planet case,  
20 and I wanted to make sure that the Court knew that it existed,  
21 because it's --

22 THE COURT: Well, that's been out there for a couple  
23 week, hasn't it?

24 MR. MATHESON: No, it's been out since January 17th.

25 THE COURT: Did they change it?

1 MR. MATHESON: No. It's just a copy of the slip  
2 opinion. I wanted the Court to be aware of it. I apologize for  
3 the timing of it. I should have done it last week, but I  
4 neglected to do it till the last minute. So that's my fault.

5 THE COURT: Well, there's no need to respond. The  
6 Court's not going to consider that. That doesn't mean that I  
7 won't consider the arguments in it at a later time, but I'm just  
8 not going to consider it at this time.

9 So we'll be adjourned until 10:00 Monday morning.

10 (Whereupon, proceedings concluded at 3:50 p.m.)  
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CERTIFICATION

I certify that the foregoing is a true, complete and correct transcript of the proceedings held in the above-entitled matter.

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Paul L. McManus, RMR, FCRR

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Date