

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

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2
3
4 COURTHOUSE NEWS SERVICE,)
5)
6 Plaintiff,)
7)
8 v.) Civil Action No.:
9) 2:18cv391
10 GEORGE E. SCHAEFER, in his)
11 Official Capacity as Clerk of)
12 the Circuit Court for Norfolk,)
13 Virginia)
14)
15 JACQUELINE C. SMITH in her)
16 Official Capacity as Clerk of)
17 the Circuit Court for Prince)
18 William County, Virginia,)
19)
20 Defendants.)

TRANSCRIPT OF PROCEEDINGS

(Bench Trial)
Volume 2
Pages 167-370

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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Joint Exhibit 1

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Plaintiff's Exhibit No.

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P R O C E E D I N G S

(Proceedings commenced at 10:03 a.m. as follows:)

COURTROOM DEPUTY CLERK: Civil Action No. 2:18cv391, plaintiff Courthouse News Service v. George E. Schaefer, in his official capacity as Clerk for the Circuit Court of Norfolk Virginia, and Jacqueline C. Smith, in her official capacity as Clerk of the Circuit Court for the 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 defendants, Mr. Matheson and Mr. Prince are you ready to proceed?

MR. PRINCE: Good morning, Your Honor. We're ready.

THE COURT: All right. Is the plaintiff ready with their next witness?

MR. HIBSHER: We are, Your Honor. Plaintiff calls Amita Kancherla.

AMITA KANCHERLA, having been duly sworn, was examined and testified as follows:

MR. HIBSHER: Good morning, Your Honor. By agreement between the parties, both sides have agreed to accept each other's expert designee, and Ms. Kancherla is plaintiff's

1 expert.

2 THE COURT: Okay. How do you spell that last name?

3 MR. HIBSHER: K-a-n-c-h-e-r-l-a. First name
4 A-m-i-t-a.

5 THE COURT: C-a? A-m-i-c-a?

6 MR. HIBSHER: A-m-i-t-a.

7 THE COURT: T-a. Okay. All right, you may proceed.

8 DIRECT EXAMINATION

9 BY MR. HIBSHER:

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

12 A. Sure. Amita Kancherla. 655 15th Street N.W., Washington,
13 D.C.

14 Q. By whom are you employed?

15 A. Alvarez & Marsal.

16 Q. And what is Alvarez & Marsal?

17 A. Alvarez & Marsal is an international consulting firm which
18 primarily provides analytical and investigative services to
19 clients, corporations and law firms involved in complex
20 disputes.

21 Q. I'd like to ask about your educational background. Where
22 did you do your under-graduate work?

23 A. I did my Bachelor's in accounting from Maris Stella College
24 located in India.

25 Q. Did you grow up in India?

1 A. Yes, I did.

2 Q. Do you have any graduate degrees?

3 A. Yes, I do. I have an MBA from Boston College, I also have
4 an MS in finance from Boston College.

5 Q. Do you have any professional certifications?

6 A. Yes. I'm a chartered financial analyst.

7 Q. What's that?

8 A. It's a certification which is given to individuals who
9 complete three levels of rigorous exams in the field of finance
10 and investment.

11 Q. What is your position at Alvarez & Marsal?

12 A. I'm a director in the disputes and investigations practice.

13 Q. How long have you been with Alvarez & Marsal?

14 A. More than nine years.

15 Q. And what did you do before?

16 A. I worked for Price Waterhouse Cooper.

17 Q. Would you explain what you do as a director at
18 Alvarez & Marsal?

19 A. I primarily work on projects where we are assisting
20 clients, including law firms, in complex litigation. So I work
21 in analyzing data and drafting reports which are then produced
22 for the court.

23 Q. Have you ever worked on a matter where you've had to
24 analyze large sets of data relating to delays of any kind?

25 A. Yes, I did. The most recent one I worked on is with regard

1 to an auto manufacture, and in that particular case, I analyzed
2 the number of days it took for a vehicle to be delivered by the
3 manufacturer to the dealer, and then also I calculated the
4 number of days it took for a dealer to sell the vehicle to a
5 customer from the time they received it from the manufacturer.

6 Q. How many vehicles were involved in that project?

7 A. There's around 480,000 vehicles.

8 Q. Ms. Kancherla, have you ever testified at a trial before?

9 A. No, I did not.

10 Q. Approximately how many expert witness reports have you
11 prepared?

12 A. I've drafted more than 50 expert reports.

13 Q. So for this case what were you hired to do?

14 A. I was hired to analyze data and calculate the delays in
15 making complaints available to the public.

16 Q. And what kind of expertise was implicated in this
17 assignment?

18 A. The primary expertise is to understand the data provided
19 and to actually use the data to calculate the delays.

20 Q. And what data did you rely on to calculate the delays in
21 the Prince William and Norfolk circuit courts?

22 A. The data primary data used was OES data.

23 Q. And OES is the Office of the Executive Secretary of the
24 Commonwealth of Virginia; is that correct?

25 A. That's correct.

1 Q. So you relied on OES data?

2 A. Yes.

3 Q. Did you review any data compiled by Courthouse News Service
4 in connection with this project?

5 A. Yes. I also reviewed Courthouse reporters tracking data
6 which they're tracked on a continuous basis.

7 Q. And in addition to reviewing the OES data, what other
8 investigation did you do?

9 A. I also reviewed the deposition testimony of both OES
10 personnel as well as the personnel at the courthouses. And I
11 also reviewed the deposition testimony of the Courthouse News
12 reporters. I also interviewed the Courthouse News reporters,
13 and also finally I also visited these courthouses and looked at
14 the actual complaints, some specific complaints at these
15 courthouses.

16 Q. And did you draft any reports in connection with this
17 assignment?

18 A. Yes, I did. I drafted two reports, the first one was dated
19 March 19th and the second one is dated May 6th.

20 MR. HIBSHER: Your Honor, may I be permitted to
21 provide the witness with copies of her reports which I believe
22 will facilitate her testimony and identify specifics?

23 THE COURT: All right. Is there a copy in one of
24 these books here?

25 MR. HIBSHER: No, Your Honor. The reports have not

1 been introduced into evidence, though they're appended to one of
2 the declarations that was filed in connection with the summary
3 judgment motion. I do have copies for the Court if you wish.

4 THE COURT: I wish.

5 BY MR. HIBSHER:

6 Q. So Ms. Kancherla, before we get into the specifics of the
7 process that you utilized in your analysis, would you state what
8 your conclusions were regarding the delays in public access to
9 new civil complaints in these courts from January 1 to
10 June 30th, 2018?

11 A. Sure. At Norfolk Circuit Court, five percent of the
12 complaints were being made available to the public on the same
13 day.

14 At Prince William Circuit Court --

15 THE COURT: Now wait a minute. Your data is from
16 January 1st of '18 to June 30th of '18?

17 THE WITNESS: Yes.

18 BY MR. HIBSHER:

19 Q. And that is the period that is the focus of the complaint
20 in this matter; is that correct, Ms. Kancherla?

21 A. Yes, it is.

22 Q. I'd like to show you what has been admitted as Plaintiff's
23 Exhibit 6. What is this document, Ms. Kancherla?

24 A. This is a chart which is part of my report, and it depicts
25 the delays in Norfolk from January to June, 2018.

1 Q. And you mentioned five percent were made available same
2 day?

3 A. Yes. That's correct.

4 Q. What are the other highlights of your chart summary?

5 A. 25 percent of the complaints are being made available one
6 day after they were filed, and the remaining 70 percent are
7 being made available two or more days after they were filed.

8 Q. Okay. I'd like to show you what has been admitted as
9 Plaintiff's Exhibit 7. What were your conclusions at the end
10 your analysis in regard to Prince William for the January to
11 June, 2018 period?

12 A. At Prince William, 38 percent of the complaints were being
13 made available on the same day, 22 percent of the complaints are
14 being made available one day after they were filed, and the
15 remaining 40 percent of complaints were being made available two
16 or more days after they were filed.

17 Q. And this is based on OES data; is that correct?

18 A. That is correct.

19 Q. And the delays that you articulate --

20 THE COURT: What did you say? That is based on OES
21 data?

22 THE WITNESS: Yes.

23 THE COURT: The OES didn't compile data that said when
24 these were available, did they?

25 THE WITNESS: Yes.

1 THE COURT: You had to compare OES data with something
2 else to get this, didn't you?

3 THE WITNESS: The OES data included a column called
4 Date Time Documents Available to the Public, which I believe
5 captures when a document is made available to the public. And I
6 relied on that data to calculate these delays.

7 THE COURT: So the OES data was the basis for these
8 two exhibits?

9 THE WITNESS: Yes.

10 THE COURT: Was there any input from the plaintiff?

11 THE WITNESS: There is, there is CNS data called CNS
12 tracking data which I have used to verify the information in the
13 OES data and make some minor adjustments. But the primary data
14 itself is the OES data, Your Honor.

15 THE COURT: All right.

16 BY MR. HIBSHER:

17 Q. And are the delays articulated in Exhibit 6 and 7 based on
18 court days or calendar day delays?

19 A. They're based on court days.

20 Q. So you exclude weekends, holidays, et cetera; is that
21 correct?

22 A. That's correct.

23 Q. Ms. Kancherla, is it fair to say that in order to calculate
24 delays in making general civil litigations available to the
25 public, you must have a valid start date and a valid end date?

1 A. That's correct.

2 Q. And you mentioned that you relied on OES data.

3 MR. HIBSHER: Your Honor, we have Joint Exhibit 1,
4 which is the OES data. It's quite voluminous. And in as much
5 as it is a Joint Exhibit, I'd like to admit Exhibit 1, which is
6 divided into Sections A through E.

7 THE COURT: I'm looking at it.

8 MR. HIBSHER: We only provided a few pages of each tab
9 in Your Honor's exhibit binder. That is all we'll be
10 discussing. If we had provided all of it in the witness exhibit
11 binder it would be voluminous. But you have the entire OES data
12 in Joint Exhibit 1.

13 THE COURT: You're saying I do not have the entire
14 data, I just have the portions that you're going to --

15 MR. HIBSHER: The exhibit folder's just a portion, but
16 you do have the entire data in Exhibit 1. Joint Exhibit 1.

17 THE COURT: All right.

18 MR. HIBSHER: Thank you. And may we admit --

19 THE COURT: That will be admitted.

20 MR. HIBSHER: Thank Your Honor.

21 (Joint Exhibit No. 1 received in evidence.)

22 BY MR. HIBSHER:

23 Q. So is this the OES data that you relied on in doing your
24 analysis?

25 A. Sorry. I'm looking for the data.

1 MS. GOLDMAN: Is there not a binder at the table?
2 MR. HIBSHER: We're talking about Joint Exhibit 1.
3 COURTROOM DEPUTY CLERK: This is mine. You can borrow
4 it, but...
5 THE COURT: It's the one with -- that's it.
6 BY MR. HIBSHER:
7 Q. Ms. Kancherla, would you take a quick look at that and tell
8 me if Joint Exhibit 1 is the OES data that you relied on?
9 A. Yes, it is.
10 Q. And I notice that it has a number of sub-tabs. Turning to
11 1A in Joint Exhibit 1, what is that?
12 A. Joint Exhibit 1A is a cover sheet included in the OES data
13 which provides a brief description of each of the columns in the
14 subsequent tabs.
15 Q. And what is Exhibit 1B?
16 A. 1B is a listing of electronic filings at Prince William
17 Circuit Court.
18 Q. 1C?
19 A. Listing of electronic filings at Norfolk Circuit Court.
20 Q. 1D?
21 THE COURT: Just a second. B is Prince William?
22 THE WITNESS: Yes.
23 THE COURT: Do you see it's Norfolk?
24 MR. HIBSHER: This is the paper filing, Your Honor.
25 THE COURT: What?

1 MR. HIBSHER: Prince William paper filing. There are
2 separate exhibits for electronic filing and paper, and B is
3 Prince William electronic, D is Prince William paper.

4 THE COURT: I thought you said that was Norfolk
5 electric. It says here Norfolk electric on C.

6 MR. HIBSHER: That is correct, Your Honor. Norfolk
7 electric, electronic, is C; T is Prince William paper.

8 THE COURT: All right. So Prince William doesn't have
9 much electronic filing, does it?

10 THE WITNESS: No, they do not, Your Honor. Less than
11 .3 percent of the filings of Prince William are electronic
12 filings.

13 THE COURT: All right.

14 BY MR. HIBSHER:

15 Q. And what is Exhibit 1E?

16 A. It's a listing of paper filings at Norfolk Circuit Court.

17 Q. So Ms. Kancherla, I'd like you to look at the first page of
18 Exhibit 1D. And this document has a number of columns. I've
19 counted them. There are 14. They each have abbreviated column
20 headings. How did you determine what each of these columns
21 represented?

22 A. I primarily relied on the descriptions provided in the
23 cover sheets, and also in some instances I relied on deposition
24 testimony given by OES as well as the Circuit Court personnel.

25 MR. HIBSHER: Okay. I think it would be useful for

1 the Court to understand what these columns represent, and Your
2 Honor, with the Court's permission, I have numbered the columns
3 in an exhibit so that we have 1, 2, 3 through 14, and with the
4 Court's permission I'd like to show that to the witness right
5 now so as we talk about the columns we can do it by numbers.

6 THE COURT: All right. What you're showing her is
7 what's in the exhibit book; is that right?

8 MR. HIBSHER: I can give you a copy of the exhibit
9 with --

10 THE COURT: Well, I've got the exhibit book here. Is
11 what you're showing her what's in the exhibit book?

12 MR. HIBSHER: It is, but without numbers, Your Honor.
13 I have numbered them for the convenience of today's testimony
14 for us to be able to follow them. Just wrote numbers on top.

15 THE COURT: Okay.

16 MR. HIBSHER: Would you like a copy of that, Your
17 Honor.?

18 THE COURT: Yes, I would.

19 BY MR. HIBSHER:

20 Q. This is page two of Exhibit 1D; is that right

21 Ms. Kancherla?

22 A. Yes.

23 Q. Would you tell us what Column No. 1 stands for?

24 A. It's titled JURCD, which stands for the jurisdiction code.

25 Q. And what does the 153 and all of the entries in that column

1 represent?

2 A. It represents Prince William Circuit Court.

3 Q. And what about the second column, what's that?

4 A. It's titled CMS Case ID, and it provides the unique case
5 identification number given to each filing at this particular
6 circuit court.

7 Q. What's the third column?

8 A. It's titled Filing Type CD, and it gives an abbreviation of
9 type of filing.

10 Q. And the fourth column?

11 A. Filing Type Description, which provides a description of
12 the type of filing.

13 Q. What's the fifth column?

14 A. It's titled File Date, which provides the date recorded in
15 OES as the file date for that particular filing.

16 Q. File Date. Did you use the file date as your starting
17 point in determining when a case is filed?

18 A. Yes, I did.

19 Q. Okay. And what is the sixth column?

20 A. It's titled Date Time Filing Fee Processed, and it
21 represents the date when a, the date and time stamp when a
22 particular filing has been made at the Circuit Court and the
23 filing fee has been processed.

24 Q. And the seventh column?

25 A. Date Time Available in CCMS, and it represents the date and

1 time when a particular filing is being made available in CCMS.

2 Q. And what is CCMS, Ms. Kancherla?

3 A. It's stands for Circuit Case Management System.

4 Q. And the eighth column?

5 A. Date Time Available in FMS.

6 Q. What's FMS?

7 A. It stands for Financial Management System.

8 Q. Mr. Larson said is now called FAS I believe; is that
9 correct?

10 A. That's correct.

11 Q. What is the ninth column?

12 A. Date Time Accepted, which represented the date and time
13 when a complaint has been accepted at the Circuit Court.

14 Q. What is the tenth column?

15 A. Date Time Cashier Code Entered.

16 Q. Jumping now to the 13th column, what is that?

17 A. Date Time CCMS Data Available to Public.

18 Q. Is it correct, Ms. Kancherla, that Columns 6, 7, 8, 9, 10
19 and 13 all have the same date and time?

20 A. Yes, they do.

21 Q. What event in the intake process do these six columns
22 record?

23 A. These six columns represent the point in time the very
24 first step in the process when a person brings a complaint to
25 the Circuit Court, the filing fee is actually processed and a

1 case number is assigned to these cases. And this, all these six
2 columns represent the very first step in the process when a
3 complaint is entered into the system.

4 Q. And also the cashier code is entered at that moment; is
5 that right?

6 A. That is correct.

7 Q. Did you consider using any of these six columns as the end
8 date for when documents are made available to the public?

9 A. I considered using them as an end date; however, I
10 determined that that's not an accurate representation what the
11 end date would be.

12 Q. And do you know if the CCMS system and the FAS system speak
13 to each other?

14 A. Yes. Based on deposition testimony, yes, that's my
15 understanding.

16 Q. Now, the 11th and 14th column are different from the
17 others. What's the 11th column?

18 A. Date Time Available in CIS.

19 Q. And the fourth column?

20 A. Date Time Documents Available to Public.

21 Q. And 11 and 14 represent the same time? They capture the
22 same time, do they not?

23 A. Yes, they do.

24 Q. Do you know what triggers the recordation in Columns 11 and
25 14?

1 A. The scanning of the complaint itself triggers the
2 population of both these columns.

3 Q. And what triggers documents being made available to the
4 public?

5 A. As soon as a document is scanned it becomes available to
6 the public.

7 Q. And is it your understanding that scanning is the absolute
8 last step in the administrative processing?

9 A. Yes.

10 Q. So turning to the, to your end date calculation, which
11 column did you rely on for the end date calculation?

12 A. I relied on the very last column titled Date Time Documents
13 Available To Public.

14 Q. Did you have occasion to review the expert reports prepared
15 by Dr. David Harless, the defendant's expert?

16 A. Yes, I did.

17 Q. Do you know which column he relies on for his end date?

18 A. Yes. He relies on the column titled Date Time Available In
19 CCMS, which is Column No. 7.

20 Q. And do you agree with that column as a recordation when
21 documents are made available?

22 A. I disagree.

23 Q. Why?

24 A. Because this particular column, Date Time Available In
25 CCMS, represents the first step in the process when a case being

1 entered is being entered into the CCMS system or any of the OES
2 systems, and it represents the first step in the process, not
3 the last step in the process, when a document is made available
4 to the public.

5 Q. Do you know what steps follow this first intake phase of
6 the processing?

7 A. After the initial intake of the processing is done, there
8 is a second step called indexing, as Mr. Larson was testifying
9 on Friday, and it includes various steps, including entering the
10 names of all plaintiffs and defendants, the names of the
11 attorneys from both sides, and also preparing service packages
12 to the extent required, and the final step in that process would
13 be to scan the complaint itself into the system.

14 Q. And was Mr. Larson's testimony in court on Friday
15 consistent with the deposition testimony which you reviewed to
16 prepare your reports?

17 A. Yes, it was.

18 Q. And any witness in particular that you focused on for
19 understanding what phase two steps were?

20 A. Yes. I focused on the deposition testimony of Ms. Brenda
21 Elford from the Norfolk Circuit -- from the Prince William
22 Circuit Court.

23 Q. And what assumption --

24 THE COURT: You referred -- who was that now?

25 MR. HIBSHER: Brenda Elford, E-l-f-o-r-d. She is the

1 supervisory clerk in Prince William.

2 THE COURT: All right. So we're talking about Prince
3 William now?

4 MR. HIBSHER: Correct.

5 THE COURT: This exhibit relates to Prince William?

6 MR. HIBSHER: It does.

7 BY MR. HIBSHER:

8 Q. For all intents and purposes --

9 THE COURT: Well, now, why did you ask her about
10 Mr. Larson if we're talking about Prince William?

11 MR. HIBSHER: Well, if I may --

12 THE COURT: In other words, you said their expert
13 relied on column 7?

14 MR. HIBSHER: That is correct, Your Honor.

15 THE WITNESS: That's correct.

16 THE COURT: All right. And you relied on Column 7 for
17 Norfolk or Prince William or both?

18 THE WITNESS: For both.

19 THE COURT: Okay.

20 BY MR. HIBSHER:

21 Q. So Ms. Kancherla, is the data essentially identical aside
22 from the numbers recorded for both Prince William and Norfolk?

23 A. Yes, they're identical.

24 Q. And the columns are identical for both sets of data?

25 A. Yes.

1 Q. Okay. What assumption did Mr. Harless make about Date Time
2 Documents Available in CCMS in order to utilize that date for
3 his end date in the calculation when documents are made
4 available?

5 MR. MATHESON: I object to the foundation of the
6 question. She's speculating what --

7 THE COURT: I'm sorry, I can't hear you. You don't
8 have a microphone on your desk?

9 MR. MATHESON: Can you hear me now?

10 THE COURT: Yes.

11 MR. MATHESON: Your Honor, I object to the foundation
12 of the question. He's asking her to speculate about expert
13 witness testimony that has not even been educed in this case.
14 If he wants to call Ms. Kancherla as a rebuttal expert after
15 Mr. Harless ahs testified, that's fine, but...

16 THE COURT: Has he filed a report?

17 MR. MATHESON: He has filed a report.

18 THE COURT: Well, she can rely on his report.

19 BY MR. HIBSHER:

20 Q. So Ms. Kancherla, what assumption does Mr. Harless make in
21 order to rely on Column 7 Date Time Available In CCMS as his end
22 date, the time that documents are made available to the public?

23 A. Mr. Harless assumes that this very first step in the
24 process, when a complaint is actually -- any information about a
25 complaint is entered into the CCMS system, is also the very time

1 when the document is being scanned and being made available to
2 the public. So he's assuming the first and the last steps in
3 the process are happening at the same time.

4 Q. And you've already testified about all the components of
5 the second phase, the indexing phase of processing which follows
6 the first phase, which is the receipt of the fee; is that
7 correct?

8 A. That's correct.

9 Q. So which column did you rely on as your end date in this
10 OES spreadsheet?

11 A. I relied on the very last column, the 14th column, titled
12 Date Time Documents Available to Public.

13 Q. And did you make any modifications to the Date Time
14 Documents Available to the Public before you utilized this data
15 to perform your calculation?

16 A. Yes. In few instances I made some modifications to this
17 particular data.

18 Q. And what prompted you to make modifications to the OES Date
19 Time Documents Available to the Public data?

20 A. So there are some instances when the complaints are being
21 made available to the CNS reporters before they're actually
22 scanned into the system. And also there are some situations
23 when there is rescanning of these complaints. So to account for
24 those situations, I made some modifications.

25 Q. Did you review any of the tracking data for any purpose in

1 connection with your assignment? The CNS tracking data, that
2 is?

3 A. Yes. I did. And it is through the CNS tracking data that
4 identified these two situations and I made some modifications.

5 Q. And did you interview the CNS reporters about the process
6 that they utilized in compiling the tracking data?

7 A. Yes, I did.

8 MR. HIBSHER: Okay. I'd like to show the witness what
9 has been previously marked Plaintiff's Exhibit 10 for
10 identification.

11 BY MR. HIBSHER:

12 Q. Is this the tracking data that you utilized for the Norfolk
13 Circuit Court?

14 A. Yes.

15 Q. And in what way did you use this data?

16 A. So I used this data for two reasons. The first one is to
17 compare the file date as recorded in the OES data to the file
18 date in this particular tracking data, and I also used it to
19 compare the Date Time Documents Available to the Public in the
20 OES data to the Date Available as Recorded in the CNS tracking
21 data.

22 MR. HIBSHER: I'd like to show the witness what has
23 been marked Plaintiff's Exhibit 13 for identification.

24 THE COURT: Well, wait a minute now. Exhibit 10 has a
25 tracking data for what? Prince William?

1 THE WITNESS: For Norfolk Circuit Court.

2 THE COURT: From Norfolk?

3 THE WITNESS: Yes. Exhibit 10 is Norfolk.

4 THE COURT: Well, we've been looking at Prince
5 William, haven't we?

6 MR. HIBSHER: We've been looking at that exhibit, but
7 for all intents and purposes the Prince William page that we
8 have before us is identical to the Norfolk, and I'm producing
9 the tracking data to just point out which other documents
10 Ms. Kancherla consulted in connection with this project.
11 They're not being introduced for the accuracy, and I'm not even
12 asking the Court to admit these tracking data spreadsheets into
13 evidence at this time. That will come later in this trial, Your
14 Honor. But I wanted the Court to understand Ms. Kancherla's
15 process, and she looked at the CNS tracking data.

16 BY MR. HIBSHER:

17 Q. Did you also look at tracking data for Prince William?

18 THE COURT: Well, now, wait a minute.

19 MR. HIBSHER: Sorry.

20 THE COURT: How did the tracking data in Plaintiff's
21 Exhibit 10 differ from the OES reports, if at all?

22 THE WITNESS: Yes. I could talk to that, Your Honor?
23 So in terms of the Date Time Documents Available to Public,
24 which is the column I rely on in OES data for the end time, that
25 compares to, that correlates to the available date in Norfolk in

1 99 percent of the instances, and at Prince William it correlates
2 in 88 percent of the instance.

3 THE COURT: Is what?

4 THE WITNESS: It correlates to the tracking data in
5 99 percent of the instances.

6 THE COURT: In Norfolk?

7 THE WITNESS: Yes.

8 THE COURT: In other words, in 99 percent of the
9 cases, Exhibit 10, this tracking data would match what's in
10 Column 14 for Norfolk? Is that what you're saying?

11 THE WITNESS: With, with some explanation, Your Honor.
12 So it exactly matches in 91 percent of the instances, and
13 then --

14 THE COURT: What is 91 percent?

15 THE WITNESS: So the tracking data, Norfolk tracking
16 data, the date available matches with the date available in OES
17 in 91 percent of the instances.

18 THE COURT: 91 percent?

19 THE WITNESS: Yes. And there are then additional
20 percentages, seven percent or so, where the CNS tracking data is
21 one day after the OES data, but that's because the OES data
22 shows that the document was made available to the public after
23 4:00 p.m., and the reporters usually leave after 4:00 p.m. and
24 so they're not viewing it on that day but they're viewing it the
25 next day. So as part of the process, I had to account for that

1 process issue where the CNS reporter is viewing it the next day
2 because they have already left the courthouse.

3 THE COURT: So you're assuming they are leaving the
4 courthouse at 4:00?

5 THE WITNESS: Yes.

6 THE COURT: All right. Well, are you saying that
7 seven percent of the filings take place after 4:00?

8 THE WITNESS: Seven percent of filings are being made
9 available to the public on the public terminal after 4:00.

10 THE COURT: But on the same day?

11 THE WITNESS: But on the same day.

12 THE COURT: So if the reporters stayed around until
13 5:00, they could have seen 99 percent or 98 percent? I'm not
14 sure what you're saying.

15 THE WITNESS: What I'm saying is we are trying to
16 compare date available for the CNS reporters versus date
17 available for the OES data. So in terms of comparing both of
18 them, in 91 percent of the instances, they're exactly the same.
19 They're saying a particular document is made available the same
20 day. And then in seven percent of the situations, OES -- CNS
21 reporters are saying they're seeing it a day after, but that is
22 because the OES data is being made available after 4:00, at
23 which point the reporters could have left the courthouse and so
24 they're not viewing it on that day, but they're doing it on the
25 next day.

1 THE COURT: I understand what you said about their
2 leaving --

3 THE WITNESS: Yes.

4 THE COURT: -- at 4:00. What I'm asking you is if the
5 reporters had left at 5:00 instead of 4:00 would they have
6 gotten that additional seven percent?

7 THE WITNESS: There are some which are made -- I
8 haven't made a determination to see if how many were after 4:00,
9 how many were after 5:00. I know that there are seven percent
10 which are made available after 4:00. So to your question --

11 THE COURT: The ones -- what I'm trying to get at is,
12 is that seven percent made available on the date of filing but
13 between 4:00 and 5:00? Is that what you're saying?

14 THE WITNESS: I'm saying they're made available
15 between 4:00 and 5:00. They're made available after 4:00. It
16 doesn't mean that they're filed on the same day. So something
17 could be filed on a Monday and they're being made available on a
18 Tuesday after 4:00.

19 THE COURT: I don't understand what you're saying.

20 MR. HIBSHER: Your Honor, if I may?

21 THE COURT: You're going to have that explain that to
22 me. I don't understand what you're saying.

23 Is that seven percent made available -- if somebody
24 looked at the available data at 5:00 instead of 4:00 would they
25 be able to see 98 percent?

1 THE WITNESS: The person --

2 THE COURT: Answer the question directly. Would they
3 or would they not? Yes or no.

4 THE WITNESS: Not those -- no, not at those numbers,
5 no.

6 THE COURT: They would not be able to see it?

7 THE WITNESS: No.

8 MR. HIBSHER: Your Honor, if I could interject I think
9 the problem they're having in Prince William --

10 MR. MATHESON: I'm sorry, but Mr. Hibsher cannot
11 testify for Ms. Kancherla. I object.

12 MR. HIBSHER: But the witness is saying that some of
13 the recordations happen after 5:00, and her seven percent data
14 includes 4:00 on. So even if the reporter was there until 5:00
15 when the court closes, they may not get to see all of the
16 seven percent.

17 THE COURT: I would like to have the witness testify
18 rather than you.

19 MR. HIBSHER: I appreciate that, Your Honor. I
20 thought the witness said it and I was hoping I could clarify.

21 THE COURT: If she said it she didn't say it in a way
22 that I understood it, and I have to hear it from the witness,
23 not from you.

24 MR. HIBSHER: Can I ask the witness a question?

25 BY MR. HIBSHER:

1 Q. Do you know what percentage of the seven percent was made
2 available on the public access terminal after 5:00?

3 A. No, I do not.

4 Q. Were any made available after 5:00?

5 A. Yes, there were.

6 Q. So of the seven percent, it is your testimony, some were
7 made available between 4:00 and 5:00 and some available after
8 5:00; is that correct?

9 A. That's correct.

10 THE COURT: Well, by "after 5:00" do you mean the same
11 day or the next day?

12 THE WITNESS: It could be either, Your Honor. These
13 numbers I've just given you is a comparison of the OES data
14 available and CNS data available. So I'm just trying to say
15 that the OES data and the CNS data are actually the same. I'm
16 not at the point --

17 THE COURT: Are you talking about both Norfolk and
18 Prince William or just one of them?

19 THE WITNESS: Right now, because we started with
20 Norfolk I'm talking about Norfolk, Your Honor. I'm saying both
21 the data is showing the same date. I'm not yet talking about
22 the same day availability, I'm saying when OES is saying they
23 made it available, CNS reporters are also saying, yes, we saw it
24 on that day. That's the number I'm talking about right now.

25 BY MR. HIBSHER:

1 Q. So is it fair to say that in order to talk about same-day
2 availability we have to know when the case was filed?

3 A. Yes.

4 MR. HIBSHER: Okay. So we're going to talk about
5 that, Your Honor.

6 BY MR. HIBSHER:

7 Q. But just to finish these tracking spreadsheets, do you know
8 who compiled the data that went into those spreadsheets?

9 A. Yes. The CNS reporters.

10 Q. And did you interview them about their processes in
11 compiling --

12 THE COURT: There's no sense going forward until I
13 understand where we are.

14 MR. HIBSHER: Agreed, Your Honor.

15 THE COURT: Now, the reporters have said that they
16 usually go to the courthouse -- or the evidence has said that
17 they usually go there at 4:30. Why did you pick 4:00?

18 THE WITNESS: So, the reporters usually go around 4.
19 00, that's what most of the reporters said, at least.

20 THE COURT: In here they said 4:30.

21 THE WITNESS: Yes, Your Honor. There was a time
22 period when they were going at 4:00, then eventually they were
23 going at 4:30. But also the problem, they go in, they key in
24 the case number, and look for it at, say, 4:00. And say if it's
25 available at 4:10, though they're still at the courthouse,

1 they're not going back and checking at 4:10. So they're looking
2 for it sequentially. So once they're looking at it at 4:00, if
3 it becomes available later then they're not looking for it
4 again.

5 THE COURT: You're assuming that if the data wasn't
6 available at 4:00 that the reporters wouldn't be able to see it?
7 Is that what you're assuming?

8 THE WITNESS: I'm saying the reporters --

9 THE COURT: No. Is that what you're assuming?

10 THE WITNESS: Yes.

11 THE COURT: Answer the question directly. Don't --

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: -- get off on some tangent. Don't try to
14 explain your answer before you give it. Answer, then you
15 explain it.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Now, so there's another seven percent.

18 You're stating 91 percent of what had been filed on Monday, the
19 OES says that that's available to the public, Column 14 says
20 that's available to the public at 4:00 on the date it's filed.
21 Is that what you're saying?

22 THE WITNESS: I'm -- what I'm saying is, OES is saying
23 a certain number --

24 THE COURT: Yes or no?

25 THE WITNESS: No, Your Honor. That's not what I'm

1 saying.

2 THE COURT: Then what are you saying?

3 THE WITNESS: So I'm only talking about date when a
4 document is available to the public, I'm not yet talking about
5 file date. So I'm comparing --

6 THE COURT: Well, what we're talking about in the case
7 is whether it's made available on the filing date. That's what
8 we're trying to find out.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: You tell me that's not what you're talking
11 about.

12 THE WITNESS: I am talking -- I will talk about it
13 eventually. The line of questioning --

14 THE COURT: Let's take a recess, and you get your
15 witness so she can explain what's going on. I cannot follow
16 what she's saying.

17 MR. HIBSHER: Okay.

18 (Recess taken from 10:43 a.m. to 11:01 a.m.)

19 THE COURT: All right. Let's try again.

20 MR. HIBSHER: Thank Your Honor.

21 BY MR. HIBSHER:

22 Q. Ms. Kancherla, you were retained to calculate the delays in
23 the availability of newly filed complaints in these two courts;
24 is that correct?

25 A. That's correct.

1 Q. What data points do you need in order to calculate delay?

2 A. I need the file date, when I complaint has been filed with
3 the Circuit Court, and then I also need when the complaint has
4 been made available on the public access terminal.

5 Q. So the testimony until now has been about the availability
6 date; is that correct?

7 A. That's correct.

8 Q. You have not been talking about the delays themselves yet?

9 A. No, I haven't.

10 Q. So let's begin with the file date. Start with that
11 beginning point and then we'll turn to the date available.

12 For the date that complaints are filed, which OES column
13 did you use on the spreadsheet Joint Exhibit 1D?

14 A. I used --

15 THE COURT: Is that this one?

16 MR. HIBSHER: Yes, it is, Your Honor.

17 A. I used the column titled File Date.

18 BY MR. HIBSHER:

19 Q. Okay. And this is the OES data for file date; is that
20 correct?

21 A. That is correct.

22 Q. Did you make --

23 THE COURT: Which is Column 5?

24 MR. HIBSHER: Yes, Your Honor.

25 THE WITNESS: Yes, Your Honor.

1 BY MR. HIBSHER:

2 Q. Did you make any modifications to the OES file date before
3 performing using delay calculations?

4 A. Yes, I did.

5 Q. Why did you do that?

6 A. I actually pulled up the complaint for some of the filings,
7 and based on the hand stamp on the complaint itself I had to
8 make adjustments in 15 instances in Norfolk and 131 in Prince
9 William.

10 Q. So you said you looked at the complaints themselves. Did
11 you actually go to the courthouses to look at the complaints
12 that you were reviewing?

13 A. Yes, I did.

14 THE COURT: Why did you change them?

15 THE WITNESS: I did change them for the OES.

16 THE COURT: Why?

17 MR. HIBSHER: Why?

18 A. Because I relied on the deposition testimony that said that
19 the hand stamp on the complaint is the actual file date, and so
20 I used that as the date for when a complaint has been filed.

21 THE COURT: Was the hand stamped date different than
22 the date in Column five?

23 THE WITNESS: In some instances. In 15 instances in
24 Norfolk and 131 in Prince William. So that is around
25 two percent in Norfolk and around 20 percent in Prince William.

1 BY MR. HIBSHER:

2 Q. And do you know why the date in the OES data would be
3 different from the hand stamp on the complaint?

4 A. Yes. Again, based on deposition testimony, it's my
5 understanding that the file date in the OES data is
6 auto-populated. So say a complaint is received on a Monday, the
7 hand stamp would give you a Monday; however, if the clerks at
8 the courthouse are processing it only on a Tuesday, then
9 automatically the system would put the Tuesday as the file date,
10 and the clerks are supposed to go and change that date. If they
11 don't, then the file, the hand stamp on the complaint would not
12 match the file date.

13 Q. And how many discrepancies were there in Norfolk where the
14 hand stamp on the complaint that you looked at did not match the
15 OES date?

16 A. In 15 instances.

17 Q. And in Prince William?

18 A. 131.

19 Q. Do you have any -- do you have any idea as to why there
20 were so many in Prince William?

21 A. It would be reasonable for me to assume that the clerks at
22 Prince William are not changing the auto-populated field to
23 reflect the hand stamp on the complaint.

24 Q. And in using file date --

25 THE COURT: Wait a minute. Let's stop right there.

1 I mean, you've said they don't stamp it until the next
2 day. That's why they're different?

3 THE WITNESS: They stamp it on the day they receive
4 it; however, if they don't enter it into the system till the
5 next day, then the next date is what's being populated in OES
6 data and not the hand stamp. The hand stamp comes first.

7 THE COURT: The hand stamp comes first. Does the hand
8 stamp match Column 5?

9 THE WITNESS: At Norfolk it matches Column 5 in
10 98 percent of the instances, and at Prince William it matches in
11 80 percent of the instances.

12 THE COURT: Now wait a minute. So what you're saying
13 is that they hand stamped it on Monday, but they didn't enter it
14 into the computer until Tuesday?

15 THE WITNESS: Yes.

16 THE COURT: All right. If they stamped it on Monday
17 and entered it into the computer on Tuesday, they're supposed to
18 go back and change the filing date to Monday on the computer?

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: But you found that that was not done. Did
21 you look over -- what period of time did you look at?

22 THE WITNESS: From January to June, 2018.

23 THE COURT: And in that whole period of six months,
24 there were only 15 -- you looked at every complaint that was
25 filed in six months.

1 THE WITNESS: I looked at all general civil
2 complaints.

3 THE COURT: For six months?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And only 15 times in that six-month period
6 did the Norfolk clerk's office fail to go back and change the
7 computer to match the stamp?

8 THE WITNESS: Yes.

9 THE COURT: Do you know how many times they did change
10 the computer to match the stamp?

11 THE WITNESS: So the remaining 500 -- 573.

12 THE COURT: That can't be right.

13 MR. HIBSHER: No.

14 THE COURT: I asked you how many times, if you know,
15 did they have to go back and change the computer to the stamp
16 date.

17 THE WITNESS: Oh, sorry. No, Your Honor. I don't
18 know how many times they had to change it to the file date.

19 THE COURT: Okay. That's what I wanted to know.

20 Now, but you found that happened 115 times over --

21 THE WITNESS: 131 times in --

22 THE COURT: 131 times in Prince William. All right.

23 So what effect would that have on Column 14?

24 Column 14 would reflect the date it went into the computer, not
25 the date it was hand stamped, right?

1 THE WITNESS: Column 14 reflects when a document is
2 available to the public. This is when a complaint -- Column 14
3 reflects when a complaint is being made available to the public,
4 and the file date is actually when a complaint is received by
5 the court.

6 THE COURT: All right. So this back-dating didn't
7 have anything to do with Column 14?

8 THE WITNESS: No, Your Honor. It only had to do with
9 when they actually received the complaint.

10 THE COURT: All right.

11 MR. HIBSHER: And in order to clarity the delays in
12 this case, you have to identify what the accurate file date is
13 and then compare it to the accurate type and date that a
14 Complaint is made available to the public; is that correct?

15 A. That is correct.

16 BY MR. HIBSHER:

17 Q. So in your earlier testimony before the break you were
18 talking about date/time documents made available to the public,
19 Column 14; is that correct?

20 A. That's correct.

21 Q. What does that represent?

22 A. That represents when a complaint has been actually made
23 available to the public on a public access terminal.

24 Q. And you gave some testimony that compared that data to some
25 of the CNS tracking data. Where there was a discrepancy between

1 the OES data and the CNS data tracking data, what did you do?

2 What did you assume?

3 A. I assumed the earlier of the dates.

4 Q. The earlier of the dates; is that correct?

5 A. Yes.

6 THE COURT: Now what was this last thing? You
7 compared what with what? The CIS. What's the CIS?

8 MR. HIBSHER: CNS, Your Honor. Courthouse News did
9 tracking, so I've asked her about the Courthouse News tracking
10 data which the reporters compiled, and I asked her --

11 THE COURT: Okay.

12 MR. HIBSHER: -- if there are differences in date
13 available in the OES data and in the CNS tracking data, which
14 one do you use.

15 A. I used the earlier of the dates.

16 BY MR. HIBSHER:

17 Q. Okay. So the clerks got the benefit of the earlier of the
18 dates when there was a discrepancy?

19 A. Yes, that's correct.

20 THE COURT: When there was a discrepancy in the file,
21 date is that what you mean?

22 MR. HIBSHER: No, we're talking about the date
23 available. The file date is the date Ms. Kancherla went to the
24 courthouse to actually review the complaints on. So where there
25 was a discrepancy between OES and the reporter's data on the

1 file date, she went to the courthouse and looked at the
2 complaints and chose the date that was in, that was stamped on
3 the actual complaint. In regard to date available, OES captures
4 the date time documents become available --

5 THE COURT: You keep trying to answer the questions,
6 counsel.

7 MR. HIBSHER: I thought you put the question to me,
8 Your Honor.

9 THE COURT: How could the date that -- you've used
10 these abbreviations. CNS is Courthouse News Service, is that
11 what you said?

12 THE WITNESS: Yes.

13 THE COURT: Well, it's difficult for me to -- there's
14 a CNS and then there's a CIS which is some other thing.

15 MR. HIBSHER: The Case Image System.

16 THE COURT: All right. How could CNS, how could the
17 CNS date be earlier than the OES date?

18 THE WITNESS: There are some circumstances, Your
19 Honor. So for example --

20 THE COURT: How could that happen?

21 THE WITNESS: So a CNS reporter could go to the
22 courthouse and they see that -- they go to the clerk and say can
23 I see the new complaints. And so before the complaint has
24 actually been scanned into the system they get access to see the
25 complaint itself. So in that instance, then the date available

1 per CNS reporter is earlier than when it is according to OES.

2 THE COURT: All right. So if they show the complaint
3 to CNS after it's date stamped but before it's entered into the
4 computer system, then the CNS date could be earlier than the OES
5 date?

6 THE WITNESS: That's perfect, Your Honor. Yes.

7 THE COURT: Okay. And when would the OES date be
8 sooner than the CNS date?

9 THE WITNESS: So these could be circumstances where I
10 talk about earlier --

11 THE COURT: You're going to have to speak a little
12 louder.

13 THE WITNESS: Sure. This could be circumstance --

14 THE COURT: Or I'm going to have to turn my machine
15 up, one or the other.

16 All right. Go ahead.

17 THE WITNESS: There could be a circumstance when the
18 CNS reporter went to the courthouse at 4:00 and left the
19 courthouse by 4:15 and OES made the document available on the
20 terminal at 4:30. In that circumstance the reporter is only
21 seeing it the next day, not on the date it was made available.

22 THE COURT: All right.

23 BY MR. HIBSHER:

24 Q. And in both circumstances you give the court the benefit of
25 the earlier of the date; either the earlier time that the

1 Courthouse News reporter sees the complaint because the clerk
2 has allowed her to see a complaint before it is scanned, or the
3 earlier of the time when the OES data says scanned, but the
4 reporter has left the courthouse and didn't record it; is that
5 correct?

6 A. That's correct.

7 Q. So did you make modifications to both the file date and the
8 Date and Time Documents Become Available in the OES data before
9 you calculated delays?

10 A. Yes, I did.

11 Q. I'd like to talk a bit about electronic filings. Until
12 now, Ms. Kancherla, we've been talking about paper-filed
13 complaints; is that correct?

14 A. That's correct.

15 Q. What percentage of overall filings in Norfolk are
16 electronically filed?

17 A. In Norfolk it is 6.5 percent, and at Prince William is less
18 than .3 percent.

19 Q. Less than .3 percent in Prince William?

20 A. Yes.

21 Q. Okay. Did you make any modifications to the OES data for
22 electronic filings?

23 A. No, I did not.

24 Q. Why not?

25 A. Because none of those modifications were required. Like

1 the CPS data matched the OES data.

2 Q. Overall, how many general civil complaints did you analyze?

3 A. I analyzed 584 general civil complaints at Norfolk and 672
4 at Prince William Circuit Courts.

5 Q. So why did you only analyze this set of general civil
6 litigations?

7 A. This, this set of general civil complaints were the ones
8 which were tracked by CNS reporters.

9 Q. And did you --

10 THE COURT: Which ones did they track and which ones
11 did they not track?

12 THE WITNESS: It's my understanding that they
13 generally tracked general civil complaints, they did not track
14 concealed handgun permits, they didn't --

15 THE COURT: They didn't track handgun permits?

16 THE WITNESS: Yes. And other filings, including
17 name-change applications, pawn broker applications. So there
18 are other type of filings that they did not track, and they
19 generally tracked the general civil complaints.

20 THE COURT: So you're saying that you tracked all the
21 general civil complaints with the exceptions of handgun permits
22 and what else?

23 THE WITNESS: Name-change applications.

24 THE COURT: Name-change.

25 THE WITNESS: Pawn broker applications. Restoring

1 driver licenses. A listing of all of those is given in my
2 report, Your Honor.

3 THE COURT: All right.

4 BY MR. HIBSHER:

5 Q. Did you look at the universe of all civil filings at all
6 for the preparation of your reports?

7 A. Yes, I did.

8 Q. And I'd like again to return to Exhibit 1D, the document
9 with the numbers on it. Do you know what the highlighted cases
10 in Columns No. 3 and 4 highlighted in yellow represent?

11 A. I understand that these are the confidential or sealed
12 cases.

13 Q. And did you do a calculation of how many -- strike that.
14 Were they highlighted in the OES data that you received?

15 A. Yes, they are.

16 Q. Did you do a calculation of what percentage of filings in
17 Norfolk are confidential?

18 A. Yes, I did. At Norfolk 26 percent of the filings from
19 January to June 2018 are confidential.

20 Q. And how about in Prince William? What percentage of
21 overall civil filings are confidential in Prince William?

22 A. 58 percent.

23 THE COURT: 58 percent?

24 THE WITNESS: Yes.

25 BY MR. HIBSHER:

1 Q. So getting back to your analysis, once you made the
2 modifications that you talked about earlier in the OES data, how
3 did you calculate the delays?

4 A. I calculated the delays by looking at the number of days
5 between the file date and the date when documents are made
6 available to the public and adjusted for any weekends and court
7 holidays.

8 Q. Turning to Plaintiff's Exhibit 6 and 7, the summary of
9 delays in your reports. What do these summaries tell you about
10 delays in Norfolk?

11 A. In Norfolk, from January to June, 2018, five percent of the
12 complaints were being made available on the same day.

13 Q. And in Prince William?

14 A. In Prince William, 38 percent of the complaints were being
15 made available on the same day.

16 Q. Now Ms. Kancherla, when you say being made available on the
17 same day, what do you mean?

18 A. I mean if a complaint has been filed on a Monday, it is
19 being made available on a Monday itself on a public access
20 terminal.

21 Q. And if it's filed on a Monday and being made available to
22 the public on a Tuesday, how do you calculate that?

23 A. I considered that to be made available one day after
24 filing.

25 Q. You mentioned before that you looked at defendant's

1 experts' report. He calculates -- so he measures delay in
2 something called "within one court day." Did you note that?

3 A. Yes, I did.

4 Q. Does defendant's expert provide a definition for what
5 "within one court day" means?

6 A. He did not expressly provide a definition.

7 Q. Did you analyze the data that he provided in his report?

8 A. Yes, I did.

9 Q. So if a case was filed on, let's say, Monday at 9:00 a.m.
10 and made available on Monday at 4:30 p.m., would he consider
11 that to be within one court day?

12 A. Yes.

13 Q. What if the case was filed Monday at 9:00 a.m. and made
14 available Tuesday at 9:00 a.m., would he consider that to be
15 within one court day?

16 A. Yes.

17 Q. What would you consider that to be?

18 A. I would consider that to be made available one day after
19 filing.

20 Q. Returning to defendant's expert. If a case was filed on
21 9:00 a.m. on Monday, but not made available until 4:00 p.m. the
22 next day, what would he consider that case to be?

23 A. He consider it to be made available within one day.

24 Q. So all of that, 30 hours later, he considers to be within
25 one day; is that correct?

1 A. Yes.

2 Q. Does Mr. Harless provide any data on a same-day analysis,
3 the analysis that you did?

4 A. No, he did not.

5 Q. Ms. Kancherla, did there come a time when you expanded the
6 time frame that you looked at initially beyond June 30th?

7 A. Yes, I did.

8 Q. And why did you do that?

9 A. I was asked by counsel to look the what the delays were
10 after, from July, 2018 to December 2018.

11 Q. And was your analysis included in your rebuttal report?

12 A. Yes, it was.

13 Q. And what were the dates that you looked at for the expanded
14 period of time?

15 A. I looked, I looked for, in the time period from July 1st,
16 2018, through December 4th, 2018.

17 THE COURT: Now why did you -- December what?

18 THE WITNESS: December 4th, 2018.

19 THE COURT: December 4th?

20 THE WITNESS: Yes, Your Honor.

21 BY MR. HIBSHER:

22 Q. Why did you stop on December 4th?

23 A. Because that's how far the OES data goes. The data that
24 was produced to me in this case goes through December 4th.

25 Q. So you didn't have OES data beyond December 4th; is that

1 correct?

2 A. That's correct.

3 Q. In doing the expanded analysis from July 1 to December 4th,
4 did you perform the same investigation and do the same
5 modifications that you did for the January to June period?

6 A. Yes, I did.

7 Q. Did you go to the courthouse and look at file dates when
8 there was some, a difference between the CNS file date and the
9 OES file date?

10 A. Yes, I did.

11 Q. And did you use the corrected file date in your calculation
12 for this expanded period?

13 A. Yes, I did.

14 Q. Did you perform similar modifications for the date
15 available in the OES data?

16 A. Yes, I did.

17 Q. Because you had the CNS data available?

18 A. Yes.

19 Q. And where those dates were in disagreement, did you give
20 the clerks the benefit of the earlier of the two dates?

21 A. Yes, I took the earlier of the two dates.

22 Q. And did you calculate the delays during the July 1 to
23 December 4th period?

24 A. Yes, I did.

25 MR. HIBSHER: I'd like to show the witness what has

1 been previously marked Plaintiff's Exhibit 8 for identification.

2 BY MR. HIBSHER:

3 Q. What is this document, Ms. Kancherla?

4 A. This is a chart which is included in my...

5 Q. Exhibit 8.

6 THE COURT: Has this been admitted?

7 MR. HIBSHER: Your Honor?

8 THE COURT: Did you ask for this to be admitted?

9 MR. HIBSHER: Not yet, Your Honor. I'm asking the
10 witness about it but I will do that in a moment.

11 BY MR. HIBSHER:

12 Q. Would you identify Plaintiff's Exhibit 8?

13 A. Yes. This is a chart which is included in my rebuttal
14 report.

15 MR. HIBSHER: Yes, Your Honor, I'd like this document
16 to be admitted if I may.

17 THE COURT: Plaintiff's Exhibit 8 will be admitted.

18 (Plaintiff's Exhibit 8 received in
19 evidence.)

20 THE COURT: And let me say that the reason that the
21 Court has admitted Exhibit 6 and 7 when it did is on the
22 representation of counsel that they would be explained when
23 their expert testified, and there's no point in calling
24 witnesses back when we can depend upon counsel to verify
25 Exhibit 6 and 7, which has now been done.

1 MR. HIBSHER: Thank you, Your Honor.

2 BY MR. HIBSHER:

3 Q. So Ms. Kancherla, what does Exhibit 8 represent?

4 A. It represents the same-day availability at Norfolk Circuit
5 Court from January through November, 2018.

6 Q. Looking at the period from July to December 4th, what does
7 the graph tell you about same-day availability in Norfolk?

8 A. In Norfolk, same-day availability has increased from
9 10 percent in July, 2018 to approximately 90 percent by
10 November, 2018.

11 Q. And do you know when this lawsuit was filed?

12 A. In July, 2018.

13 Q. So after this lawsuit was filed, same-day availability
14 gradually improved until it hit 90 percent in Norfolk?

15 A. Yes.

16 Q. Would you take a look at what has been previously marked
17 Plaintiff's Exhibit 9 for identification?

18 What is this document, Ms. Kancherla?

19 A. This is also chart in my rebuttal report.

20 MR. HIBSHER: I'd like to offer this document into
21 evidence, Your Honor.

22 THE COURT: Plaintiff's Exhibit 9 will be admitted.

23 (Plaintiff's Exhibit No. 9 received in
24 evidence.)

25 BY MR. HIBSHER:

1 Q. What does Exhibit 9 show?

2 A. It shows same-day availability of general civil complaints
3 at Prince William Circuit Court from January to November 2018.

4 Q. Focusing on the July to December 4th period, what does the
5 line graph tell you?

6 A. It shows that same-day availability has increased from
7 about approximately 30 percent to about 65 percent by November,
8 2018.

9 Q. How do you compare the delays in these two courts in the
10 July to December period to the January to June period which you
11 originally studied?

12 A. Same-day availability has increased drastically in the July
13 to November time period compared to the January to June time
14 period.

15 Q. In both courts?

16 A. Yes.

17 MR. HIBSHER: Thank you, Ms. Kancherla.

18 Nothing further, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MATHESON:

21 Q. I guess I can still say good morning, Ms. Kancherla.

22 A. Good morning.

23 Q. I've read your report and your rebuttal report. Where do I
24 need to look in these documents to get a definition of general
25 civil complaints? You haven't defined it anywhere, have you?

1 A. I've given an exhibit in my rebuttal report which generally
2 provides you what general, the categories of general civil
3 complaints compared to general filings.

4 Q. So is it your testimony that you went through the OES data
5 and you pulled out all of the items that didn't meet the
6 definition of general civil complaint? Is that how we get your
7 data set?

8 A. I looked at the cover sheet for filing civil actions which
9 is provided in each of the circuit courts and attached to the
10 complaint which gave me the categories of general civil
11 complaints.

12 Q. Okay. That's what you looked at in order to get your
13 definition in your report; is that what you're saying?

14 A. Yes. That's what I --

15 Q. But the actual data that you used is not all general civil
16 complaints, right?

17 A. I used OES data to calculate delays.

18 Q. The data that you used for your data set does not include
19 all general civil complaints in Norfolk or Prince William; is
20 that right?

21 A. My data includes 81 percent of all general civil complaints
22 in Norfolk and 71 percent of all general civil complaints in
23 Prince William.

24 Q. So you've excluded 20, approximately 20 percent of all
25 general civil complaints in Norfolk and approximately 30 percent

1 of all general civil complaints in Prince William; is that
2 right?

3 A. I did not exclude them. The Courthouse reporters are the
4 ones tracking the general civil complaints, and those complaints
5 are represent 81 percent of all general civil complaints at
6 Norfolk and 71 percent at Prince William.

7 Q. This is what I'm trying to get at, because Judge Morgan
8 asked you when you were on the stand how, if at all, you relied
9 upon the CNS tracking data in forming your opinions in this
10 matter, and your answer I believe, and correct me if I'm wrong,
11 was you didn't rely on the CNS tracking data; is that right?

12 A. No, I didn't say that. I said I used CNS tracking data to
13 compare.

14 Q. You used it to compare, but isn't it also true that you
15 used the CNS tracking data to identify which civil filings you
16 would include in your data and which ones you would exclude from
17 your data?

18 A. CNS tracking data gave me the population of complaints that
19 I'm looking at to calculate delays.

20 Q. Okay. So isn't that a really fancy way of saying that you
21 only looked at new civil filings that were reported in the CNS
22 tracking data?

23 A. Yes.

24 Q. Okay. So when you say that there were 584 cases in your
25 data set from Norfolk, that's because there was 584 cases in the

1 CNS tracking data for the relevant time period, right?

2 A. That's correct.

3 Q. Okay. And do you recall approximately how many civil
4 filings there were in Norfolk for the period?

5 A. Of all civil filings, including handgun permits and all of
6 those --

7 Q. Everything.

8 A. Everything? There's around 5,600 in Norfolk.

9 Q. So if I said 5,658 would you believe me? Does that sound
10 about right?

11 A. Yes.

12 Q. And so in other words, your data set is approximately --
13 excludes approximately 90 percent of all civil filings in
14 Norfolk, right?

15 A. Yes. My data set is based on general civil complaints and
16 it represents 80 percent of general civil complaints in Norfolk
17 and 78 percent at Prince William.

18 THE COURT: Well, wait a minute. If there are 5,658
19 civil complaints and you looked at 500 and some, that doesn't
20 represent --

21 THE WITNESS: Yes, Your Honor. I can explain.

22 THE COURT: -- 80 percent of whatever.

23 THE WITNESS: Let me explain this.

24 What counsel is saying is 5,600 includes all filings,
25 including handgun permits, name-change applications, driver

1 privilege restorations, divorce filings, et cetera. There are a
2 lot of filings in --

3 THE COURT: All right. Do those filings comprise
4 90 percent of the civil filings?

5 THE WITNESS: Yes.

6 THE COURT: The ones you excluded?

7 THE WITNESS: Yes.

8 THE COURT: That you gave us your list of?

9 THE WITNESS: Yes.

10 THE COURT: Which were handgun permits and divorces
11 and...

12 THE WITNESS: Yes.

13 THE COURT: All right. So what they tracked was
14 general civil complaints, which is only 10 percent of the
15 filings in the clerk's office?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Okay. All right.

18 BY MR. MATHESON:

19 Q. Ms. Kancherla, did they track all general civil complaints?

20 A. Again, as I testified, they tracked 80 percent of all
21 general civil complaints at Norfolk and 70 percent at Prince
22 William.

23 Q. How did CNS pick which complaints they would include in
24 any -- in your analysis versus which ones they would exclude?

25 A. It's my understanding that they based it on the

1 newsworthiness of the information. The general guideline was to
2 look at any general civil complaints which was between two
3 organizations, companies, et cetera. And they had the criteria
4 that they worked in terms of including general civil complaints
5 in their tracking data.

6 Q. I think you say this in your expert report that if a
7 complaint has no news value, then it was excluded from your
8 analysis; is that right?

9 A. Again, I relied on CNS tracking data so I was not making
10 any determination of news values.

11 Q. Can I direct your attention to Page 4 of your rebuttal
12 report, specifically Paragraph 7?

13 So --

14 A. Sorry, Page 4?

15 Q. Page 4. Go ahead and read Paragraph 7 let me know when
16 you're done.

17 A. Yes. It says "Mr. Harless erroneously included all civil
18 files, many of which are not generally considered civil
19 complaint and which have no news value, such as concealed
20 handgun permits, garnishments, name changes, pawn broker license
21 applications and restoration of driving privileges."

22 Q. Okay. But in this paragraph aren't you making a
23 determination as to the news value of these different civil
24 filings?

25 A. It's not necessarily me making a determination, I was

1 relying on the CNS reporter's determination of news value.

2 Q. Wouldn't you agree with me that whether or not something
3 has news value is rather subjective?

4 A. It's not for me to determine.

5 Q. Well, I'm asking you what your opinion is. You don't have
6 an opinion --

7 A. I do not have an opinion.

8 Q. You don't know whether it's objective or subjective?

9 A. I'm a data analyst. I was asked to only analyze data, and
10 I'm not giving an opinion about news values or how news values
11 are determined.

12 Q. Let me ask you this: Tiger Woods files a petition for a
13 name change in the City of Norfolk saying he wants to change his
14 name to Tiger Metals, would you consider that to have news
15 value?

16 A. Again, I am not a news reporter --

17 THE COURT: Counsel, this isn't going nowhere. Let's
18 move on.

19 BY MR. MATHESON:

20 Q. And so when you say that you included all general civil
21 complaints that were newsworthy, at least according to CNS, you
22 excluded divorce complaints from your data?

23 A. Yes.

24 Q. You excluded motor vehicle accidents involving individuals
25 from your analysis; is that right?

1 A. I would need to look at my exhibit to make that
2 determination.

3 Q. Go ahead.

4 A. I know some of the motor vehicle accident are included in
5 civil complaints.

6 Q. Well, but it would be motor vehicle accidents that involved
7 businesses as opposed to individuals; isn't that right?

8 A. In general I think that's the case. But there could be
9 exceptions to it.

10 Q. Okay. Let me turn your attention to Page 8 of your
11 rebuttal report. I'm looking specifically at Footnote 13.

12 A. Yes.

13 Q. There's a bulleted list in the middle of that footnote.
14 Doesn't it say that you excluded two and 54 motor vehicle cases
15 for Norfolk and Prince William?

16 A. Yes, it does. And just to correct, I did not exclude them,
17 it's the CNS reporters who excluded them.

18 Q. Okay. And we're circling back to the point I'm trying to
19 make, is that your data set, your decision to include or exclude
20 specific civil filings in these jurisdictions was entirely
21 directed by the civil filings that the CNS reporters chose to
22 track on the tracking sheets; is that right?

23 A. Yes, it's based on what they tracked as tracking sheets,
24 but I also made the comparison to determine that that represents
25 80 percent of all general civil complaints at Norfolk and

1 71 percent of all general civil complaints at Prince William.

2 Q. Okay. So are you aware that in Virginia, that all civil
3 actions are commenced by filing a complaint or a petition in the
4 circuit court?

5 A. Yes.

6 Q. All right. So let's take an example of a petition for a
7 name change. Isn't it your understanding that when a petition
8 for a name change is filed, that it's stamped by the clerk?

9 A. Yes.

10 Q. And is there a filing fee associated with that?

11 A. Yes.

12 Q. Okay. And so there's a receipt process that has to happen
13 in the FAS system, right?

14 A. Yes.

15 Q. And then after a receipt has been issued, then it's got to
16 be indexed in CCMS?

17 A. It's my understanding that the process is the same for all
18 filings in the circuit courts, yes.

19 Q. Thank you. So the process is the same for all filings.

20 And is there any indication to you that the clerks in
21 either Norfolk or Prince William discriminate against new civil
22 filings on the basis of whether or not they have news value?

23 A. There is testimony from Mr. Larson and Ms. Jacqueline Smith
24 saying that they have a separate box, or general civil
25 complaints are processed in a different timeline.

1 Q. Let's look at that testimony that you're referring to.
2 This is also in your report, isn't it?

3 A. Yes.

4 Q. Okay. I think that we need to go to page -- excuse me, I
5 thought I had it right here.

6 I think it starts on Page 32.

7 THE COURT: The rebuttal report or the original
8 report?

9 MR. MATHESON: I'm in the rebuttal, but Your Honor I
10 thought I had this flagged and I don't, so we're going to have
11 to circle back to that.

12 THE COURT: Well, it's quoting Ms. Elford on Page 32.
13 Is she one of the people you're talking about?

14 MR. MATHESON: No. This isn't the right testimony,
15 Your Honor. That's okay. I'll circle back to that.

16 BY MR. MATHESON:

17 Q. How is it that you understand that they discriminate
18 against general civil filings versus new civil filings -- or
19 excuse me, versus any other case-initiating document?

20 A. It's my recollection from Mr. Larson's deposition testimony
21 that any general civil complaints which are, which need
22 immediate processing are not put into the box and they're
23 processed immediately.

24 Q. Okay. Which civil complaints don't require immediate
25 processing?

1 A. I think he testified that he has some testimony in his
2 deposition where he talks about marriage license applications,
3 passport applications, et cetera.

4 Q. Marriage license applications and passport applications.
5 But you haven't excluded just marriage license applications and
6 passport applications, you've excluded a whole host of
7 case-initiating documents like name changes and petitions for
8 restoration of firearm rights and things like that, right?

9 A. That's correct.

10 Q. Okay. And isn't it true that in that deposition testimony
11 that the distinction is being made between case initiating
12 documents as opposed to things that are not case-initiating
13 documents?

14 A. You would have to show me the deposition testimony.

15 Q. Okay. So and again, I've looked through here, and correct
16 me if I'm wrong, but nowhere in these reports have you provided
17 any analysis of the entire data set that's been provided by OES;
18 is that right?

19 A. Not in these reports.

20 Q. And in none -- nowhere in these reports have you provided
21 any analysis of all of what you claim to be general civil
22 filings; is that right?

23 A. I do give you the numbers in terms of what all my general
24 civil complaint -- the -- sorry, can you repeat your question?

25 Q. Nowhere in here have you included all what you have termed

1 general civil complaints for purposes of calculating delays; is
2 that right?

3 A. I did include a listing of all general civil complaints in
4 my exhibits for the rebuttal report, and they represent
5 81 percent and what I tracked and analyzed represent 81 and
6 71 percent.

7 Q. So a complaint comes into the clerk's office, and I think
8 we just established it gets a file stamp, right?

9 A. Yes.

10 Q. And that's the file date?

11 A. Yes.

12 Q. Okay. Now, isn't it true that if there's a problem with
13 the filing fee that the complaint doesn't get docketed?

14 A. I guess you need to define the word "docketed" for me.

15 Q. Well, I think that's the second half of the -- you've been
16 in court -- you were in court all day on Monday, right?

17 A. Yes.

18 Q. Or on Friday, excuse me.

19 So I think that refers to the second half of the
20 processing, meaning the indexing and scanning and data entry
21 into CCMS, right? So isn't it true that that process doesn't
22 happen until the filing fees is paid?

23 A. Yes, based on the deposition testimony.

24 MR. MATHESON: Can I trouble you to recall --

25 THE COURT: Is it stamped -- if the processing fee

1 isn't paid is it date-stamped?

2 THE WITNESS: It's my understanding that the date
3 stamp happens first in the process.

4 THE COURT: So the date stamp --

5 THE WITNESS: The hand stamp on the complaint, yes.

6 THE COURT: Does the hand stamp take place -- I don't
7 know what Mr. Larson said about that. Did he say that the hand
8 stamp takes place if the money's not right? I thought he didn't
9 stamp it if the money wasn't right.

10 MR. MATHESON: Your Honor, there's actually legal
11 authority on this and I'm happy to share it with the Court.
12 It's 8.01-331. This says that when a civil action is commenced,
13 that it's -- excuse me. That a civil action is commenced by
14 filing it and paying all required writ tax and fees. And
15 Mr. Hibsher testified in his opening and I believe that
16 Mr. Larson testified consistently with this, that for purposes
17 of the statute of limitations, something is filed on the day it
18 is received, but this statute doesn't allow the clerks to docket
19 anything until the fees have been paid. So you could have a
20 situation where you have something that's filed, but it, but
21 there's no further processing of it that occurs until the issue
22 with the filing fee is resolved. That's what I'm trying to get
23 at.

24 THE COURT: What I'm trying to get at is is it stamped
25 and marked as filed if the fee's not paid? This doesn't tell me

1 that.

2 MR. MATHESON: Yes, Your Honor.

3 THE COURT: Is that what his testimony was? Everybody
4 agree on that?

5 MR. MATHESON: Yes, Your Honor.

6 THE COURT: Would that mean that it showed up on OES
7 as being filed?

8 MR. MATHESON: No, Your Honor. It would not show up
9 because it's not --

10 THE COURT: It wouldn't show up on OES as being filed?

11 MR. MATHESON: That's right.

12 THE COURT: Okay.

13 MR. MATHESON: Because it's not receipt and there's no
14 further processing that's done until the fees are paid.

15 THE COURT: Okay. Well, what would that affect then?

16 MR. MATHESON: That's what I want to get at.

17 BY MR. MATHESON:

18 Q. So if an attorney or a *pro se* filer initiates a new civil
19 action in the Norfolk clerk's office, for instance, and the
20 filing fee is short ten dollars, then isn't it your
21 understanding based on the evidence that you've read that that
22 would delay the availability of that document to the public?

23 A. Yes. But I do not know in how many instances that happens.
24 It's only a possibility that has been theoretically presented,
25 but there was no quantification of how many of those instances

1 are happening.

2 Q. Well, don't, doesn't the OES data contain a field that
3 shows when the fee -- or let me get the...

4 THE COURT: Well, that's the question I just asked.
5 Does the OES data show a general civil action as being filed on
6 a particular date if the fee's not paid?

7 MR. MATHESON: The OES data would show it being filed
8 on a particular date if the fee's not paid. It wouldn't be
9 posted to the public access terminal, but the file date field
10 should reflect -- now we've heard testimony from Ms. Kancherla
11 about, you know, auto-population and how there can be
12 inaccuracies, but it's supposed to reflect the date that it was
13 physically received by the clerks.

14 THE COURT: Even if the fee's not paid?

15 MR. MATHESON: Yes, Your Honor.

16 THE COURT: All right. So that would show up in the
17 difference between Columns 5 and 6, would it not? Column 6 says
18 Date Time Filing Fee Processed.

19 MR. MATHESON: Yes, Your Honor.

20 THE COURT: So those instances of which you're
21 speaking would show up as discrepancies between Column 5 and
22 Column 6?

23 MR. MATHESON: Yes, Your Honor.

24 BY MR. MATHESON:

25 Q. And Ms. Kancherla, have you analyzed any discrepancies

1 between the file date and the date the filing fee was processed?

2 A. No, I did not. This is an issue that was raised by
3 Mr. Harless, and my point was that he did not quantify in how
4 many instances this was happening.

5 Q. Okay. But you would agree with me that if somebody walks
6 into the clerk's office and they file something and no filing
7 fee has been paid, that that's not the clerk's fault, right?

8 MR. HIBSHER: Objection, Your Honor.

9 BY MR. MATHESON:

10 Q. Are the clerks responsible for paying the filing fee?

11 THE COURT: I think the point's been made. Let's just
12 move on.

13 MR. MATHESON: Okay.

14 So would you mind recalling Exhibit 10?

15 THE COURT: Exhibit 10?

16 COURTROOM DEPUTY CLERK: It was not admitted.

17 THE COURT: What's that?

18 MR. MATHESON: It was admitted in the testimony of
19 Mr. Girdner, I believe.

20 COURTROOM DEPUTY CLERK: P10? P10 was not.

21 MS. GOLDMAN: It wasn't admitted.

22 COURTROOM DEPUTY CLERK: It was identified.

23 MR. MATHESON: You asked her about it during your
24 direct, am I right?

25 MR. HIBSHER: I did. It wasn't admitted, it was just

1 identified.

2 MR. MATHESON: That's fine. I'd like for the witness
3 to look at it if that's okay.

4 MR. HIBSHER: Ask her to look at it.

5 MR. MATHESON: Would you...

6 BY MR. MATHESON:

7 Q. I'm sorry. So I obviously wrote down the wrong exhibit
8 number. I'm looking for the one that shows the number of days
9 delay. The bar chart. That's 6 and --

10 MR. HIBSHER: That's 6 and 7.

11 MS. GOLDMAN: That has been admitted, yes.

12 MR. MATHESON: Thank you.

13 THE COURT: Exhibit 11?

14 MR. PRINCE: Exhibit 6.

15 COURTROOM DEPUTY CLERK: 6 and 7.

16 THE COURT: Oh. 6.

17 MR. MATHESON: I misspoke, Your Honor. I'm sorry.

18 There you go. Okay.

19 BY MR. MATHESON:

20 Q. So this bar chart for instance for Norfolk is showing that
21 there's a two-day delay 43 percent of the time with respect to
22 new civil filings in this jurisdiction, right?

23 A. Yes.

24 Q. Okay. Now, what portion of this 43 percent is attributable
25 to errors by the filers such as an incorrect filing fee as

1 opposed to something that the clerks have done wrong?

2 A. Oh, I haven't made a determination of what is based on
3 errors or otherwise. I've relied on OES data, which tells me
4 when something has been filed and something has been made
5 available, and that is the data I used to make that
6 determination.

7 Q. Okay. So for purposes of your analysis, you're assuming
8 that if there is a delay in processing a complaint that that is
9 attributable to a processing delay by the clerk as opposed to
10 some other cause beyond their control; is that right?

11 A. I did not assume anything, I simply stated that --

12 THE COURT: I understand, Counsel.

13 MR. MATHESON: Okay.

14 THE COURT: I mean, obviously somebody should look at
15 what percentage of cases involve a discrepancy between Column 5
16 and Column 6. Maybe the defense has done that already, I don't
17 know. But in a certain percentage of cases there may be such a
18 discrepancy which would not, which would adversely affect the
19 delay question. Let's move on to the next one.

20 BY MR. MATHESON:

21 Q. You've reviewed the 30(b)(6) deposition testimony of the
22 Office of the Executive Secretary?

23 A. Yes.

24 Q. And is it your understanding that the Office of the
25 Executive Secretary is the custodian of the OES data?

1 A. Yes.

2 Q. Is it your understanding that the Office of the Executive
3 Secretary designed these systems?

4 A. Yes.

5 Q. Okay. Isn't it true that the Office of the -- well, let me
6 back up.

7 You've testified that you rely on the Date Time Documents
8 are First Available to the Public for purposes of your analysis;
9 is that right?

10 A. Yes.

11 Q. And that number, I believe, and I'll paraphrase what I
12 think the testimony says -- and you tell me if you think this is
13 wrong -- there maybe some *di minimus* delay between the scanning
14 of an image and it becoming available to the public, but more or
15 less the scan date field for CIS and the Date Time Documents
16 Available to the Public are going to be the same, right?

17 A. Yes.

18 Q. Okay. Now, each physical document is a -- each physical
19 document is scanned into the system and it has certain
20 attributes, right? We call it metadata?

21 A. Yes.

22 Q. So like for instance a document may say who the author is
23 and that would be a field that is contained within the document
24 that we could look at; is that right?

25 A. Yes.

1 Q. Okay. And so is it your understanding that OES has created
2 a scan date attribute for documents that are scanned into CIS?

3 A. Yes.

4 Q. Okay. And so that exists in the metadata of the document,
5 right?

6 A. Yes.

7 Q. So when the document get scanned into the system, there's a
8 time stamp that is placed in the document that says this is the
9 time this document was created; is that right?

10 A. Yes.

11 Q. Okay. And now if you replace that document, then that
12 metadata is completely destroyed, right?

13 A. Yes. Based on the descriptions provided in the cover
14 sheet, if the document has been replaced, then the metadata is
15 replaced; if it's not, then the metadata is not replaced.

16 Q. So the scan data that you rely on as your endpoint for your
17 analysis does not reflect the date that a document was first
18 scanned, it reflects the date that a document was last scanned;
19 is that right?

20 A. It reflects the date document was first scanned; however,
21 in instances -- if there are any instances of rescanning -- then
22 it reflects the rescan date. However, we have heard Mr. Larson
23 on Friday testify that he has not rescanned in the last
24 three years. The same way he has given deposition testimony
25 saying that there's been not much rescanning. Similarly,

1 Ms. Brenda Elford from Prince William too has testified there's
2 not been much rescanning. So it's fair for me to say that that
3 particular column which we're talking about is where documents
4 were made available to the public.

5 Q. Let's look at the data dictionary that's been provided by
6 OES, which is Joint Exhibit 1A. I'm looking specifically at
7 Page 2 of 3.

8 THE COURT: Wait a minute. Is this in the big book
9 where it says Joint Trial Exhibits?

10 MR. MATHESON: Yeah. And it's 1A. It should be one
11 of the first tabs.

12 MR. HIBSHER: Your Honor, it's in the witness's
13 exhibit book as well. It's in the shorter book as well, Your
14 Honor.

15 THE COURT: All right.

16 MR. PRINCE: We've got a binder for him if he wants
17 it.

18 THE COURT: What are you looking at here?

19 MR. MATHESON: Yeah. So on Page 2 of 3 under the
20 definition for Date Time Available in CIS there is a note
21 underneath it.

22 BY MR. MATHESON:

23 Q. And tell me if I'm reading this correctly: "Note: The OES
24 cannot account for when the first scanned/imported images were
25 manipulated, which includes rotation, rescanning, et cetera, at

1 a later point in time as we update the metadata for that image
2 to show when it was last modified. In this scenario, the date
3 time available in CIS has a date time than is later than the
4 actual initial scan date/time."

5 Did I read that correctly?

6 A. Yes.

7 Q. Okay. And in the OES deposition, isn't it true that
8 Mr. Robert Smith testified repeatedly that OES cannot provide
9 any reliable information that indicates when a document was
10 scanned into the CIS system?

11 MR. HIBSHER: Objection. I think that unfairly
12 characterizes what Mr. Smith testified to.

13 MR. MATHESON: Okay. Let's go through the testimony
14 I've got a copy of his deposition right here.

15 THE COURT: Well, now --

16 COURT SECURITY OFFICER: Hold on.

17 THE COURT: -- you're asking this witness to read what
18 another witness said?

19 MR. MATHESON: Well, she's testified that this is part
20 of the foundation of her testimony, and Mr. Hibsher is saying
21 that I've mischaracterized the OES deposition testimony related
22 to the reliability of this field, and I think that it's quite
23 clear from the deposition that OES has conspicuously and
24 repeatedly disclaimed the reliability of this field, both in
25 their deposition and in the data dictionary. So I'm just trying

1 to get to the bottom of that.

2 Now Your Honor, I believe that Mr. Hibsher intends to
3 read this deposition testimony and so, you know, with that
4 caveat I can skip this whole process, provided that I suppose I
5 can circle back to it at argument.

6 THE COURT: Well, I'd rather hear the testimony than
7 hear somebody else's interpretation of what the testimony means.

8 MR. MATHESON: Okay. I'll withdraw this portion of my
9 cross then.

10 BY MR. MATHESON:

11 Q. But Ms. Kancherla, isn't it correct that there is --

12 MR. MATHESON: I'm sorry for approaching the witness
13 without asking for permission. That was --

14 THE COURT: That's all right. It's just a rule of
15 this Court, that's all.

16 MR. MATHESON: I understand.

17 BY MR. MATHESON:

18 Q. Isn't it correct that there's no data available from which
19 you can determine the frequency with which the scan date field
20 has been altered in the OES data?

21 THE COURT: Well, is that only when it's redone like
22 what was talked about by the clerks --

23 MR. MATHESON: Well, I mean --

24 THE COURT: -- which hasn't been done for the
25 three years? Is that the only time that happens?

1 MR. MATHESON: Well, rescanning is what hasn't been
2 done for three years. I believe if they're rotating pages -- I
3 don't know what the judges do. Mr. Larson testified that the
4 judges have access to the documents and that they can make
5 notations and stuff on the screen. I don't know, Your Honor.

6 THE COURT: Judges are going to rescan an originally
7 filed complaint?

8 MR. MATHESON: I don't -- Your Honor, I don't know
9 what replaces the document in the system. I don't know if
10 resaving the document --

11 THE COURT: Well, it sounds like to me this is much
12 ado about nothing. But go ahead.

13 BY MR. MATHESON:

14 Q. Ms. Kancherla, isn't it true that there is no reliable data
15 available from which you can accurately gauge when and how often
16 these complaints have been rescanned in the OES data?

17 A. We have plenty of deposition testimony from Mr. Larson and
18 Ms. Elford saying it rarely happens, and we've also heard
19 Mr. Larson on Friday testify that rescanning -- he hasn't done a
20 rescanning in three years. So these are the people who are
21 actually involved in this process testifying that the rescanning
22 is not happening.

23 Q. But my question for you is do you have any data?

24 A. Well, I also compared it to the --

25 Q. Ms. Kancherla, I'm sorry, but I want you to answer my

1 question.

2 Do you have any data that shows when something was
3 rescanned?

4 A. That's what I'm trying to enhance.

5 Q. Okay, please. I'm sorry.

6 A. So I compared it to CNS data. So CNS reporters too,
7 they're looking for complaints every day, and so if the document
8 was available the first time, they would record it as it's being
9 made available before the OES data itself. So based on that,
10 there is very minimum instances when something has been
11 rescanned.

12 Q. Okay. But --

13 THE COURT: Let's get rid of rescanning. Unless
14 you've got evidence to the contrary, it doesn't appear to me
15 that rescanning has anything to do with the case. Unless you've
16 got evidence contrary to what Mr. Larson said. This is an
17 exercise in futility. Or obfuscation, whatever you want to call
18 it.

19 BY MR. MATHESON:

20 Q. But again, that's only for the approximately 584 complaints
21 in Norfolk and 672 complaints in Prince William that the CNS
22 reporters chose to include in the analysis; is that right?

23 A. That's correct. That's the sample I have information
24 available on.

25 MR. MATHESON: Thank you, Your Honor.

1 THE COURT: All right. This witness, have you got
2 anything further for this witness?

3 MR. HIBSHER: Two or three questions, Your Honor.

4 THE COURT: All right.

5 REDIRECT EXAMINATION

6 BY MR. HIBSHER:

7 Q. Ms. Kancherla, Mr. Matheson asked you about situations in
8 which a filing party provides an inadequate filing fee
9 accompanying a filing. Did Mr. Harless, defendant's expert,
10 identify that possibility in his expert's report?

11 A. He theoretically mentions it.

12 Q. Did he provide any data whatsoever on the number of
13 instances in which a filing party provides an inadequate filing
14 fee?

15 A. No, he does not.

16 Q. Did he modify his date filed data at all to reflect the
17 possibility that there was an inadequate filing fee provided?

18 A. No, he did not.

19 Q. You also mentioned that the CNS tracking data cases which
20 you based on your initial analysis on represented the universe
21 of 80 percent of general civil filings in Norfolk and 71 percent
22 in Prince William; is that correct?

23 A. That's correct.

24 Q. Do you consider that sampling to be an adequate sampling on
25 which to draw conclusions?

1 A. Yes. It's a very robust sample.

2 Q. Robust sample?

3 A. Yes.

4 MR. HIBSHER: Nothing further, Your Honor. Thank you.

5 Oh, yes, Your Honor. Since Mr. Matheson referred to
6 the two reports that we distributed earlier, I think for
7 completeness of record I would ask that they be admitted,
8 Plaintiff's 83 for Ms. Kancherla's March 19th report, and 84 for
9 her rebuttal report, May --

10 THE WITNESS: May 6th, 2019.

11 MR. HIBSHER: 2019. Those reports have been discussed
12 today, so I think for completeness of the record it makes sense
13 to admit them into evidence, Your Honor.

14 MR. MATHESON: Your Honor, reports cannot be
15 considered as substantive evidence in the case. These documents
16 are hearsay. She's relied on her reports. I'm allowed to
17 cross-examine her regarding the contents of her reports and ask
18 her questions to try and understand her conclusions without
19 converting those documents into something that the judge can
20 consider wholesale in making its factual and legal conclusions
21 in this case. We've cited case law in our summary judgment
22 motion that shows that expert reports are completely
23 inappropriate to be determined during the summary judgment
24 phase, specifically because of their hearsay character, and I
25 don't think they have any basis for admitting these. They're

1 also not scheduled on their exhibit list.

2 THE COURT: The full reports are not going to be
3 admitted. The only purpose for which they -- she was
4 cross-examined on the basis of her reports, which means that the
5 content of the report are not admissible for the truth of what
6 she said, they're only admissible for purposes of contesting her
7 credibility. So there's no reason to admit the whole report on
8 that basis. There are other reasons why it could be that do not
9 exist at this point. So they will not be admitted.

10 MR. HIBSHER: Thank you, Your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Are you going to recall this witness or
14 can she be excused?

15 MR. HIBSHER: We might -- Your Honor, we might recall
16 her in our rebuttal case.

17 THE COURT: All right. Miss, since they might recall
18 you in their rebuttal case, you should not discuss your
19 testimony with any other -- with anybody else associated with
20 the case or review any other documents to prepare yourself for
21 rebuttal.

22 THE WITNESS: Yes, Your Honor.

23 THE COURT: You should come back to the stand for
24 rebuttal, if you indeed do, with the same storehouse of
25 knowledge as you have at the instant time.

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: All right.

3 MR. HIBSHER: Shall we proceed, Your Honor?

4 RYAN ABBOT, having been duly sworn, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. GOLDMAN:

8 Q. Could you state your name for the record, please?

9 A. Ryan Abbott.

10 Q. And where are you currently employed?

11 A. Courthouse News Service.

12 Q. Can you describe for us your educational background?

13 A. I went to Towson University. I majored in political
14 science, minored in journalism and creative writing.

15 Q. And what is your current position at Courthouse News
16 Service?

17 A. The southeastern regional bureau chief.

18 Q. And when did you start in that position?

19 A. 2013.

20 Q. And when did you start working for Courthouse News Service?

21 A. 2004.

22 Q. And what was your position at that period of time?

23 A. I was a part-time reporter.

24 Q. And did there come a time when you became a full-time
25 reporter?

1 A. Yes. A year later I became a full-time reporter.

2 Q. And during your time as a reporter, what courts did you
3 cover?

4 A. I covered Fairfax County, Prince William County Loudoun
5 County, Arlington, Alexandria, D.C. Superior, Prince George's
6 County, Maryland, Ann Arundale County, Maryland.

7 Q. How long did you personally cover those courts as a
8 reporter?

9 A. For the first three, Fairfax, Prince William and Loudoun, I
10 covered those courts for a decade until I became a bureau chief.
11 The other courts, eight, nine years.

12 Q. What do you do as a southeast bureau chief?

13 A. I oversee a bureau of 35 reporters. It stretches from
14 Florida up to Pennsylvania. I make sure they are publishing
15 their report on time, and make I make sure that their access to
16 the courthouses that they cover are good.

17 Q. How many courts are included in the southeast region?

18 A. Around 350 or so.

19 Q. And are the Norfolk and Prince William Circuit Courts
20 included in that region?

21 A. Yes.

22 Q. And how often do you visit the courts in your region?

23 A. Two or three times a year.

24 Q. And what are some of the reasons you would visit the
25 courts?

1 A. If access is changed for whatever reason, I want to go to
2 see how it's changed. If a reporter is having issues I'll go to
3 help. Variety of reasons.

4 Q. How many courts does CNS cover in Virginia?

5 A. All 120 state courts, and both divisions of the federal
6 courts, Eastern District and Western District, and all the
7 divisions.

8 Q. And of those 120 Circuit Courts and the federal courts, how
9 many does CNS cover with a live reporter on a daily basis?

10 A. Eleven.

11 Q. How many state courts?

12 A. Eleven state courts. We cover 18 total state courts, 11 of
13 them we cover live with a reporter that goes every day.

14 Q. And which Virginia courts are covered live with a reporter
15 every day?

16 A. Fairfax County, Prince William County, Arlington,
17 Alexandria, Richmond City, Norfolk and Virginia Beach.

18 Q. And then do you also cover the federal courts live with a
19 reporter that goes on a daily basis?

20 A. Yes. The Alexandria division of the Eastern District and
21 the Richmond Division of the Eastern District.

22 Q. How many reporters does CNS have covering the courts in
23 Virginia?

24 A. Four.

25 Q. And who are the reporters that cover the Norfolk and Prince

1 William circuit courts?

2 A. Jocelyn Rardin covers Norfolk, and Joan Hennessy covers
3 Prince William.

4 Q. Can you describe for us what a reporter does for Courthouse
5 News Service?

6 A. Sure. The reporter goes to their court and accesses the
7 new civil complaints. In Norfolk and Prince William, that means
8 going to a computer terminal and typing in case numbers. Every
9 time a case number comes up for a case that we cover, the
10 reporter takes the appropriate notes on that case, because we're
11 not allowed to bring laptops into those courthouses, and makes a
12 copy of the case if they need it. And at the end of the day
13 they use that information to compose our daily report.

14 Q. So the court -- we heard testimony previously about the
15 daily reports. How many new litigation reports are there for
16 Virginia?

17 A. There are two.

18 Q. And what are those reports?

19 A. The report for Virginia and the report for Southern
20 Virginia State.

21 Q. So we have the Virginia Report, and what courts, can you
22 give us a some of the courts that are covered by the Virginia
23 report?

24 A. Sure. It's the Eastern District, the Alexandria Division
25 only, Fairfax, Prince William, Loudoun, Fauquier, Stafford,

1 Arlington, Alexandria, and all of the other courts that are
2 geographically above Charlottesville.

3 Q. And then you mentioned the Southern Virginia Report. Can
4 you give us some of the courts that are in that report?

5 A. Sure. It's the Eastern District, the rest of the
6 divisions, Richmond, Norfolk and Newport News, and I should say
7 that the Western District is a part of the Virginia Report. The
8 state courts on the Southern Virginia State report are Norfolk,
9 Suffolk, Virginia Beach, Portsmouth, Newport News, Hampton,
10 Richmond City, Henrico County, Chesterfield, Hanover, and all of
11 the other counties that are essentially beneath the
12 Charlottesville line.

13 Q. And you mentioned that the reporters gather information to
14 include in the New Litigation Reports. What types of
15 information do they gather?

16 A. Well, aside from the date that the case is filed and the
17 case number, they're also looking for key details in the
18 complaint so that they can summarize the complaint so that our
19 subscribers know what each case is about. They also include the
20 attorneys representing the parties, and if there's a judge
21 available, the judge will be listed as well.

22 Q. Is this process, is that what you did when you were a
23 reporter?

24 A. Absolutely.

25 Q. And is this what the reporters for Norfolk and Prince

1 William do currently?

2 A. Yes.

3 Q. Do most CNS reporters have some journalism or writing
4 background?

5 A. Yes, they do.

6 Q. Does CNS cover all civil filings?

7 A. No.

8 Q. What are some categories of civil filings that CNS does not
9 cover?

10 A. We don't cover divorces, name changes, marriage celebrants,
11 civil petitions that don't involve companies.

12 Q. Handgun carry permits?

13 A. We do not cover those.

14 Q. Are handgun carry permits confidential filings?

15 A. They are.

16 Q. Can they be seen by the public?

17 A. No.

18 Q. So there are some filings that the public never sees?

19 A. Correct.

20 THE COURT: What does the public never see other than
21 handgun filings?

22 THE WITNESS: I believe handgun filings are the main
23 type of filings that we never see. We don't even -- if you
24 search for a handgun -- or if you search the system and a case
25 number has been assigned to a handgun permit application, it

1 will return a search, No Results Found. You don't even know
2 that that is assigned to the case number.

3 THE COURT: Any other categories like that that you
4 know of?

5 THE WITNESS: Not that I know of.

6 THE COURT: All right.

7 BY MS. GOLDMAN:

8 Q. Do CNS reporters get trained?

9 A. They do.

10 Q. And what does training entail?

11 A. I will take them to their courts for about a week. I show
12 them how to search for new complaints. I show them what
13 information they need to take notes on and how to summarize the
14 new complaints. And then I also train them on how to use our
15 technology. We have a program that helps them compose the
16 report. I show them how to upload the documents to our database
17 and ultimately publish the report at the end of the day.

18 Q. When the press or the public visits the Norfolk and Prince
19 William Circuit Court, how do they access the civil complaints?

20 A. Through the public access terminal. You type in your case
21 numbers, you hit search, and you get the dockets.

22 Q. And is that what the reporters for Courthouse News do at
23 Norfolk and Prince William?

24 A. Yes.

25 Q. And do they type in each and every single case number?

1 A. Sequentially, yes.

2 Q. Why?

3 A. Well, we want to make sure that we've seen everything. We
4 have a checklist that we use. Every case that we do not cover,
5 we cross off the checklist so that we know we don't need to
6 search for that case anymore. Every case that we cover, once
7 we've covered it, we also cross this number off the list. It's
8 a way that we can cover the courts exhaustively.

9 Q. So I'd like to turn to access in the Prince William and
10 Norfolk Circuit Court, and I'll start with access in Prince
11 William.

12 When did Courthouse News Service start covering the Prince
13 William Circuit Court on a daily basis?

14 A. September, 2017.

15 Q. And how was access in this court when you started to cover
16 it on a daily basis?

17 A. It was not good. I believe we saw 38, 40 percent of the
18 new civil complaints the same day that they were filed.

19 THE COURT: Why is that not good?

20 THE WITNESS: Because that means the majority of the
21 cases that were filed we could not see on the day that they were
22 filed.

23 THE COURT: What is good?

24 THE WITNESS: Well, I don't really have a good answer
25 for you other than that if we could see 85 or 90 percent of the

1 cases it wouldn't be as big of a problem as 38 percent. That
2 means we're seeing the bulk of cases a day, sometimes longer,
3 after they have been filed.

4 THE COURT: Well, do you have any ability to give me
5 an access percentage on your average throughout your region or
6 nationally?

7 THE WITNESS: In my region it varies wildly from
8 really bad to perfect or near-perfect.

9 THE COURT: What's perfect or near-perfect?

10 THE WITNESS: Near-perfect would be 95 percent of
11 cases filed we see them the day they're filed.

12 THE COURT: All right. And what is the average, if
13 you know?

14 THE WITNESS: I don't have an exact number, Your
15 Honor, but if you would allow me to speculate, I'd say the
16 average --

17 THE COURT: I don't want you to speculate.

18 THE WITNESS: Okay.

19 THE COURT: You can estimate, but I don't want you to
20 speculate.

21 THE WITNESS: I would estimate that the average in my
22 region would be about 80 to 85 percent.

23 THE COURT: Okay.

24 BY MS. GOLDMAN:

25 Q. So the Court just asked you about --

1 THE COURT: You don't know the figures nationally?

2 THE WITNESS: I do not.

3 THE COURT: Okay. Go ahead.

4 BY MS. GOLDMAN:

5 Q. So the Court was just asking you about other courts in your
6 region. Do you have an example of a court in Virginia that has
7 really good access?

8 A. Yes. Richmond City, where they allow our reporter to go
9 behind the counter. They also keep a handwritten intake log so
10 the reporter knows everything that's been filed. He also knows
11 which case numbers have been assigned to the handgun permit
12 applications so that he can cross those off his list. He also
13 can ask the clerks if they have any cases that have not been
14 scanned in and they'll provide them for him.

15 Q. So going back to Prince William, access in Prince William,
16 you testified a moment ago that when Courthouse News first
17 started covering the court in the fall of 2017 that access
18 wasn't good. If a complaint wasn't available on the public
19 access terminal could CNS get a copy of the complaint?

20 A. Yes. That part of 2017 our reporter was able to ask the
21 clerks for copies of complaints that had not been scanned in and
22 made available on the public access terminal.

23 Q. In your role as southeast bureau chief, do you have
24 constant communication with your reporters about access and
25 their coverage of the courts?

1 A. I do.

2 Q. And did there come a time when you learned that your
3 reporter was having trouble getting access in the Prince William
4 Circuit Court?

5 A. Yes. Our reporter at the time let me know that she was
6 having a really hard time --

7 MR. MATHESON: Your Honor, we object to the hearsay.

8 THE COURT: Well, can't say what your reporter said.
9 That would be hearsay.

10 THE WITNESS: Well, then by judging from reading the
11 reports every day I can tell you that there were many cases that
12 were a day late, maybe more, sometimes weeks without us having
13 access to them.

14 BY MS. GOLDMAN:

15 Q. And did you give your reporter any instructions in response
16 to that change this access?

17 A. I did. I told her that she needed to be persistent and to
18 ask the clerks to try to find the cases that are missing.

19 Q. Did you personally do anything in response to the change in
20 access?

21 A. I visited Prince William in November of 2017. I had a list
22 of cases that had been missing for days, a couple cases had been
23 missing for a week or more.

24 THE COURT: November of what year?

25 THE WITNESS: 2017, Your Honor.

1 A. I went to the public access terminal and I looked up new
2 cases as well, and I believe I had a list of 23 cases, new and
3 old, that had no images at the public access terminal. I asked
4 Joanna, who was a counter clerk at the time, if she could find
5 those cases for me. She asked Brenda Elford, the supervisor, if
6 she could. Ms. Elford told Joanna that yes, those cases were
7 public record. So it took a few minutes, but they were able to
8 find, I believe, 21 of the 23 cases that I had asked for.

9 Q. And while you were there in the office that day in November
10 of 2017, did you notice anything new in the office since you had
11 last been there?

12 A. Yes. There was a sign that said that the staff had 10 days
13 to scan in new documents.

14 Q. When did you next visit the Prince William Circuit Court?

15 A. Toward the end of January, 2018 to train Joan Hennessy, our
16 new reporter.

17 Q. How long did that training last?

18 A. I believe it lasted four days.

19 Q. And you were there all four days?

20 A. Yes.

21 Q. And what happened on the first day?

22 A. The first day went off without a hitch. We went to the
23 public access terminal and looked up the new complaints that we
24 needed. We had a list of complaints that had not been scanned
25 in, so we went to the counter and asked the clerk to find those

1 complaints, and she did. And we also asked if she had any new
2 filings that had just come in that we could see, and I think she
3 had a couple that we were able to look through. We made our
4 copies, we published the report at the end of day and everything
5 went as normal.

6 Q. And do you remember the date of that visit approximately?

7 A. I think it was January 23rd or 24th, 2018.

8 Q. And did you go back to the court the following day for
9 further training?

10 A. Yes.

11 Q. And what did you do on that day?

12 A. It was a little different. We went to the public access
13 terminal, there was another list that we created of cases that
14 had not been scanned in. So I went to the counter with our
15 list. I asked the clerk if we could see those cases. She, I --
16 she anticipated my question because she called out Brenda Elford
17 to talk to me. Brenda came out and said that they were no
18 longer going to be able to look for cases that had not been
19 scanned in; that she had spoken with a deputy clerk and was told
20 that we were not going to be able to ask for those new cases
21 anymore. So I, I asked her, I guess that means we're resigned
22 to covering the court by what's available on the public access
23 terminal, to which she said yes.

24 Q. Did you know Ms. Elford?

25 A. I did.

1 Q. And how do you know Ms. Elford?

2 A. Well, I was a reporter in Prince William County for nearly
3 10 years, and we had a very friendly relationship for most of
4 those 10 years.

5 Q. And is Ms. Elford a supervisor?

6 A. She is.

7 Q. Did you return to the court the following day for further
8 training?

9 A. I did.

10 Q. And how did you cover the court that day?

11 A. The way that Ms. Elford had laid out for us, we only
12 covered the cases that were available to view on the public
13 access terminal.

14 Q. Did you go up to the counter to ask to see cases?

15 A. No.

16 Q. And what did you instruct your reporter to do going
17 forward?

18 A. To respect Ms. Elford's rule.

19 Q. So you mentioned earlier that when were a reporter you
20 covered the Prince William Circuit Court, and I believe you
21 testified that you covered it for about a decade?

22 A. Yes.

23 Q. What was the availability of newly filed civil complaints
24 at that time when you were a reporter?

25 A. It was excellent. I was only going once a week because I

1 had a pretty big court beat, but I was able to see everything
2 filed on the day of my visit by looking through new complaints
3 that were kept in a wire basket just behind the counter. So in
4 addition to the cases that had been filed since my last visit, I
5 was also able to see cases that were in the midst of processing
6 case, pretty much brand-new causes that had just been filed
7 available in the wire basket.

8 Q. In the basket you looked in, were civil complaints
9 separated in this basket?

10 A. Yes. It was mostly new civil complaints.

11 Q. And when you reviewed the civil complaints that were in
12 that basket, did they have a --

13 THE COURT: Well, excuse me a minute. You say there
14 were new civil complaints. Did they have pawn broker licenses
15 and reinstatement of licenses, those kind of cases in there?

16 THE WITNESS: I don't remember those, Your Honor. I
17 just -- I don't remember any of the miscellaneous cases, just
18 contracts, car collisions, the cases that I was looking for. I
19 didn't take a whole lot of time to examine, you know, name
20 changes. I don't believe name changes were in there, but I do
21 believe divorces were. But those are cases that I would flip
22 through very quickly, Your Honor, to find the cases that we
23 cover.

24 THE COURT: Okay.

25 BY MS. GOLDMAN:

1 Q. When you reviewed the complaints that were in that basket,
2 did they have a file date stamp on them?

3 A. Yes.

4 Q. Do you know whether they had been fully processed or not?

5 A. They had not been.

6 Q. How do you know that?

7 A. Well, before they started scanning the new complaints, the
8 complaints would end up in blue jackets on a shelf. That was a
9 fully processed complaint. These complaints were just stapled
10 sheets of paper sometimes with cover sheets, sometimes without
11 cover sheets. After they started scanning, they were not fully
12 processed because they were not made available on the public
13 access terminal. I was still looking at them in their paper
14 form.

15 Q. So I want to step back for one second. You mentioned blue
16 case jackets. What were those blue case jackets?

17 A. Folders that had case numbers written on them. They were
18 placed in sequential order on a shelf. Essentially the paper
19 record of each file completed.

20 Q. And I think you just said there came a time that you
21 started accessing the complaints on the public access terminal?

22 A. Yes.

23 Q. You mentioned that wire basket was still being used?

24 A. It was.

25 Q. Do you know why the courts began to scan in new complaints?

1 A. They were moving to keeping a digital record. A lot of, a
2 lot of courts would call it their paperless project. They were
3 moving away from paper records towards digital.

4 Q. So I'd like to turn to access in Norfolk.

5 A. Okay.

6 Q. When did CNS begin covering the Norfolk Circuit Court on a
7 daily basis?

8 A. September, 2017.

9 Q. And how was access at the Norfolk Circuit Court at that
10 time?

11 A. It was pretty bad. We were only able to see three percent
12 of cases on the day that they were filed, the majority of cases
13 were two days, sometimes three days old.

14 Q. Did you visit the Norfolk Circuit Court at all?

15 A. Yes, I did. Immediately prior to shifting that court to a
16 daily live court for us, I visited that court and a lot of
17 courts in the state of Virginia in August of 2017.

18 Q. So the visit to that court was part of a larger trip?

19 A. It was.

20 Q. And what was the purpose of those visits?

21 A. I wanted to know if we were able to see cases that had not
22 been scanned into the system or if we were resigned to the fact
23 that we had to rely on the public access terminal to see new
24 complaints.

25 Q. And how many courts would you say you visited?

1 A. Oh, gosh. 50.

2 Q. And did you have a routine way of introducing yourself when
3 you went to each court?

4 A. Yes. I would go to the counter where you would file a
5 complaint or access a complaint, they were usually near the
6 public terminals, and I would talk to a clerk and say hi, I'm
7 Ryan, I'm a reporter with Courthouse News, I'm wondering if I
8 can see the complaints that have not been scanned in yet,
9 complaints that were filed today or...

10 Q. And so you would introduce yourself as a reporter?

11 A. Correct.

12 Q. But not a bureau chief?

13 A. Correct.

14 Q. Why didn't you introduce yourself as a bureau chief?

15 A. Well, I'd been a reporter ten years prior to becoming a
16 bureau chief, so I just find that talking to clerks, they
17 understand the concept of a reporter being from the press as
18 opposed to somewhat the vagueness of the title of a bureau
19 chief. The point was I was letting them know I was a member of
20 the media.

21 Q. So what happened when you visited the Norfolk Circuit Court
22 in August of 2017?

23 A. I went to the public access terminal and I looked for new
24 complaints that had been filed that day. I found several, but
25 they did not have images to view. So I had a list, and I went

1 to the counter, I introduced myself as Ryan, a reporter with
2 Courthouse News, I asked if I could see the complaints that had
3 not been scanned in. The clerk at the counter said --

4 MR. PRINCE: Your Honor, I'm going to object. We're
5 getting into hearsay here.

6 THE COURT: Well, I don't think what the employees of
7 the clerk's office said would be hearsay. I'll admit that.

8 A. The clerk at the counter couldn't answer my question. So
9 she said hang on, I'll be right back. A minute later, she
10 brings up Sonya Turner, who sits me down at the table next to
11 the counter. I asked Ms. Turner the same question. She said
12 that I have to wait for cases to be scanned in in order to
13 access them. I asked her why, and she said that they were
14 scattered on people's desk in the back and it will be too
15 laborious to find each one that I need. I asked her if I could
16 go in the back to look for the complaints, and she said no, that
17 the clerk's office that was directly behind her was employees
18 only. And I did notice there was a door directly next to where
19 we were seated that said Officers of the Court Only. I let her
20 know that, you know, access there is not good. It's two days
21 behind. And she said that's just the nature of a busy court
22 like Norfolk.

23 Q. And when Ms. Turner first came to you and sat down at the
24 front part of the counter, did you reintroduce yourself as a
25 reporter to her?

1 A. I did.

2 Q. Did there come a time when you instructed your Norfolk
3 reporter to request access to complaints prior to them being
4 available on the public access terminals?

5 A. Yes. I asked her to keep asking at the end of the day,
6 about a month after my visit, when she became a daily reporter.

7 A lot of times reporters develop rapport with clerk office
8 staff, and I thought that if she kept asking maybe they would
9 look for cases that had not been scanned in, but they did not.

10 Q. So access was not granted to your reporter?

11 A. Access was not granted.

12 Q. So how did your Norfolk reporter access new civil
13 complaints at the Norfolk Circuit Court between January 1st,
14 2018 and June 30th, 2018?

15 A. By what had been scanned and made available on the public
16 access terminal.

17 Q. Did there come a time after this lawsuit was filed in July
18 of 2018 when the Norfolk clerk reached out to Courthouse News to
19 set up a meeting?

20 A. Yes.

21 Q. And when did that meeting occur?

22 A. September, 2018.

23 Q. And what was the purpose of that meeting?

24 A. Mr. Schaefer wanted to -- and Mr. Larson wanted to show us
25 their process for accepting new civil filings and also invite

1 our reporter to work behind the counter and ask for cases that
2 had not been scanned in.

3 Q. And was this the first time you had heard about the press
4 having access behind the counter?

5 A. Yes.

6 Q. And was behind-the-counter access provided to Courthouse
7 News after that meeting?

8 A. It was.

9 Q. And is CNS now allowed to ask for access to complaints that
10 have not been scanned and posted to the public access terminal?

11 A. Yes, she is.

12 Q. Did CNS track the access delays at the Norfolk and Prince
13 William Circuit Courts?

14 A. We do.

15 Q. And when did tracking begin in the Norfolk and Prince
16 William Circuit Courts?

17 A. September, 2017.

18 Q. And who does the actual tracking?

19 A. The reporters.

20 Q. And what information do they track?

21 A. Well, they -- the essential information is when a case is
22 filed, the date and when they are able to see it. The date of
23 the -- they also include case numbers, the nature of the case,
24 which is just a short phrase like contract or car collision, and
25 they include whether a case was e-filed or filed in paper, when

1 they were there to check it, and the time stamp when it was
2 available so we could record what time of day the case was
3 filed.

4 Q. And I'd like to show you on the screen Exhibit P10.

5 And what is this document?

6 A. It's the Norfolk tracker.

7 Q. And who input the information into this tracker?

8 A. Our reporter, Jocelyn Rardin.

9 Q. And does this tracker include the information you were just
10 describing?

11 A. It does.

12 Q. And did you train Jocelyn Rardin on how to input the
13 information and what information should be input?

14 A. Yes, I did.

15 Q. And is this the kind record that CNS maintains when it
16 tracks courts around the country?

17 A. Yes.

18 MS. GOLDMAN: Your Honor, I'd like to offer this
19 exhibit into evidence.

20 MR. PRINCE: Your Honor, we have an objection to this
21 exhibit.

22 THE COURT: What?

23 MR. PRINCE: Your Honor, we have an objection. --

24 THE COURT: You've got the microphone there.

25 MR. PRINCE: Your Honor, we have an objection to this

1 exhibit.

2 The tracking data is hearsay, it's not a business
3 record, it was not maintained as part of a regularly conducted
4 business activity. There's no evidence of that. It was
5 actually kept for, expressly for a litigation purpose and for
6 use in this case. They're not reliable. It's not a business
7 record.

8 MS. GOLDMAN: Your Honor, it's our position --

9 THE COURT: Well, I mean, this is what they do in the
10 ordinary course of their business, is the tracking. I think it
11 is a record kept in the ordinary course of business and your
12 objection is overruled.

13 MR. PRINCE: Thank you, Your Honor.

14 MS. GOLDMAN: So I'd like to now show you exhibit P13.

15 THE COURT: Hold on just a second here. Exhibit P10
16 will be admitted.

17 (Plaintiff's Exhibit No. 10 received in
18 evidence.)

19 MS. GOLDMAN: Thank you, Your Honor.

20 BY MS. GOLDMAN:

21 Q. So Exhibit P13. Can you explain what this document is for
22 us?

23 A. This is the tracker for Prince William.

24 Q. And who input the information into this tracking
25 spreadsheet?

1 A. For the first three weeks I believe of January it was our
2 Prince William reporter at the time, Brandi Buchman. After that
3 moving forward it was Joan Hennessy.

4 Q. And did you train Ms. Buchman and Ms. Hennessy on how to
5 input the information into this document?

6 A. Yes, I did.

7 MS. GOLDMAN: And I'd like to offer Exhibit P13 into
8 evidence as well, Your Honor.

9 THE COURT: Exhibit P13 will be admitted.

10 MR. PRINCE: Same objection for the record, Your
11 Honor. Thank you.

12 (Plaintiff's Exhibit No. 13 received in
13 evidence.)

14 BY MS. GOLDMAN:

15 Q. Did you ever discuss the possibility of litigation with
16 your reporters?

17 A. Yes, I did.

18 Q. Why?

19 A. We knew that it was always a possibility when there are
20 problems in access that are this bad, the specter of litigation
21 is out there. But we work, we try to work really hard to
22 resolve those problems before it comes to that.

23 Q. Are you the person at CNS who makes the decision as to
24 whether or not to bring a lawsuit?

25 A. No.

1 Q. Who is?

2 A. Would be my boss, Bill Girdner.

3 Q. So I want to show you -- and I don't think you have the
4 binder up there.

5 MS. GOLDMAN: Can I have the Defendant's Exhibit
6 binder, please?

7 BY MS. GOLDMAN:

8 Q. I'd like to show you what's been marked as Defendant's
9 Exhibit D16, which I'm not offering into evidence I just want
10 you to take a look at it.

11 A. Oh, gosh.

12 Okay. Got it.

13 Q. Did you send this email?

14 A. Yes, I did.

15 Q. And this email is dated November 14th, 2017?

16 A. Correct.

17 Q. And in the email you say "We are likely going to sue the
18 Norfolk clerk and the Office of the Executive Secretary first
19 for access to OCRA."

20 What is OCRA?

21 A. It's remote access to civil files that only attorneys can
22 use.

23 Q. And at the time of this email, November 14th, 2017, had the
24 decision to sue been made?

25 A. No.

1 Q. Then what was the purpose of the email?

2 A. I wanted to rally the troops. My reporters needed to know
3 how serious their data collection was; that it could be used in
4 litigation down the road. I didn't want them to blow it off. I
5 wanted them to keep good numbers.

6 Q. Did Courthouse News Service ever sue the Office of the
7 Executive Secretary?

8 A. No.

9 Q. And at about this time, did you send other similar emails
10 regarding access and tracking and the importance of the
11 reporters to keep good data?

12 A. I did.

13 Q. So I'd like to turn to what access looks like today.

14 The complaint in this case focuses on access between
15 January of 2018 and June 2018. How would you characterize
16 access at that point?

17 A. Not good.

18 Q. And has access in those courts improved since then?

19 A. Dramatically.

20 Q. So when you testified at your deposition last year in
21 February, so about a year ago, you said that delays in Norfolk
22 and Prince William at that time were rare; is that correct?

23 A. Correct.

24 Q. And was CNS -- were the CNS reporters tracking access at
25 that time in February of 2019?

1 A. Yes.

2 Q. Was your comment regarding "rare" based on that Courthouse
3 News tracking?

4 A. It was.

5 Q. Do you recall what same-day access was like in the Prince
6 William and Norfolk Circuit Courts in February 2019?

7 A. We were seeing about 88 percent of the new cases on the day
8 that they were filed in Prince William and about 84 percent in
9 Norfolk.

10 Q. And have your reporters continued to track -- has
11 Courthouse News continued to track access since that time?

12 A. Yes, we have.

13 Q. And how has that continued tracking suggest that same-day
14 access looks like? Let's start with Prince William.

15 A. Prince William it's about the same. It's crested at about
16 97 percent cases that we're able to see on the day that they're
17 filed. I think currently we're able to see 88 percent of the
18 new cases on the day that they're filed.

19 Q. What time is the Prince William Circuit Court open until?

20 A. 5:00.

21 Q. And what time can your reporter, Ms. Hennessy, stay until?

22 A. She can actually stay a couple minute after 5:00 if she's
23 wrapping stuff up. If there were a couple late filings she can
24 stay a couple minutes after.

25 Q. And what about Norfolk, what has tracking shown in terms of

1 same-day access in Norfolk since February of 2019?

2 A. Again, a dramatic improvement that has gone through a
3 couple of peaks and valleys, but now we're able to see I believe
4 about 84 percent of the cases that are on the day that they're
5 filed.

6 Q. You mentioned peaks and valleys, can you provide a little
7 context?

8 A. Yes. In the autumn of 2019 access dipped to about
9 60 percent of cases that we were able to see on the day that
10 they were filed.

11 Q. And did you do anything in response to that dip in access?

12 A. I visited the court to see what was going on.

13 Q. And did you observe anything new in terms of the way cases
14 were being processed and made available when you were at the
15 court that time?

16 A. Yes. They had just completed a major, what seemed to me to
17 be a major renovation of their clerk's office.

18 Q. And since October -- and did you notice anything about how
19 the clerks were handling the paper, or what did you, what did
20 you see while you were --

21 A. Sure.

22 Q. -- at the counter?

23 A. There was also a staffing issue. I think there was a
24 clerk, I don't know if she was a processing clerk, but there was
25 a clerk that had taken an extended leave, so they were

1 shorthanded as well.

2 Q. And did one clerk have all the filings or all the
3 complaints or how did they -- did you ask the clerk to go search
4 for any complaint for you?

5 A. We did. We had one complaint that wasn't scanned in and
6 that our immediate point of contact behind the counter could not
7 find, so she asked another clerk that sat a couple of desks away
8 if he could find it, and he went to a couple places in the
9 office but ultimately found that complaint at the front counter.
10 I did notice that the complaints were sort of *ad hoc* spread
11 across desks, not in a central location.

12 Q. And since October how has access been in the Norfolk
13 Circuit Court?

14 A. Really good. Much better. Up to about 84 percent cases
15 that we can see on the day that they're filed.

16 Q. What time is the Norfolk Circuit Court open until?

17 A. 4:45.

18 Q. And do you know what time the staff is there until?

19 A. They're there until 5:00.

20 Q. And what time does your reporter have to leave the office?

21 A. She has to leave at 4:45.

22 Q. Has Courthouse News Service ever asked to be allowed to
23 stay until 5:00?

24 A. Yes, we have.

25 Q. And what was the response?

1 A. We were told that she would have to leave with everybody
2 else.

3 Q. So you just mentioned that access in both the Prince
4 William Circuit Court and the Norfolk Circuit Court has gotten
5 better?

6 A. Yes.

7 Q. What changed from the beginning of 2018 and the relevant
8 period in this complaint to now?

9 A. I think they started processing much more efficiently.
10 They -- the lag between when a case is filed and when it's been
11 scanned in shrunk dramatically, so we were able to see those
12 cases a lot of times on the public access terminal. Also in
13 Norfolk, obviously we can ask the clerks behind the counter to
14 track down cases that have not been scanned in for us, and on a
15 limited basis our reporter in Prince William has also asked to
16 see a few cases that have not been scanned in.

17 MS. GOLDMAN: Thank you.

18 No further questions, Your Honor.

19 THE COURT: All right.

20 MR. PRINCE: Your Honor, I'm just looking at the
21 clock. I'm happy to go ahead. I don't know how long I'm going
22 to be. I've got some exhibiting to through with him, so I just
23 wanted to let Your Honor know if you want me to plow on, I will,
24 but this might be a good stopping point. But it's totally up to
25 Your Honor.

1 THE COURT: Well, I think I told you that I had
2 changed my normal schedule a bit; that we adjourn at 4:00 and we
3 don't take a break in the afternoon. So I think rather than
4 recess early for lunch let's go ahead and we'll see how we'll
5 progress.

6 CROSS-EXAMINATION

7 BY MR. PRINCE:

8 Q. Good afternoon, Mr. Abbott. It's good to see you again.

9 A. You too.

10 Q. We've seen each other a few times in this case, haven't we?

11 A. Indeed.

12 Q. You are the southeast bureau chief; is that correct?

13 A. Correct.

14 Q. And you oversee the daily litigation reports for Virginia
15 courts?

16 A. I do.

17 Q. And those are the reports that are emailed to CNS's
18 subscribers at the end of every business day?

19 A. Correct.

20 Q. And you were CNS's corporate designee at the CNS 30(b)(6)
21 deposition; is that correct?

22 A. Yes.

23 Q. You've been deposed twice in this case; once in your
24 personal capacity and once as a 30(b)(6) designee?

25 A. Yes.

1 Q. This point has kind of been belabored in this case so I
2 won't spend a lot time on it, but I do want to ask: CNS does
3 not include -- does not report on every type of civil filing; is
4 that correct?

5 A. Correct.

6 Q. CNS has reporting criteria and it excludes certain types of
7 complaints?

8 A. Yes.

9 Q. You don't report on divorces?

10 A. Right.

11 Q. You don't report on motor vehicle accidents?

12 A. Only if they are against a person. We will report on a
13 motor vehicle accident if it's against, say, U-Haul or Uber.

14 Q. Maybe a better way to ask it is this: CNS is looking for
15 certain types of complaints, correct?

16 A. Sure.

17 Q. You're looking for complaints against businesses, you're
18 looking for complaints against public officials, and you're
19 looking for complaints against that are deemed newsworthy
20 because they involve somebody famous?

21 A. Yes. Or individuals being sued in their professional
22 capacity. Government agencies.

23 Q. Kind of like this lawsuit?

24 A. Kind of like this lawsuit.

25 Q. You testified at your personal deposition that it's rare

1 that you currently experience delays in Norfolk since this
2 lawsuit was filed; is that correct?

3 A. Correct.

4 Q. And it's rare that you currently experience delays in
5 Prince William after this lawsuit was filed; is that correct?

6 A. Correct.

7 Q. And you also testified at CNS's 30(b)(6) deposition, the
8 CNS 30(b)(6) deposition, that both the clerk -- both the clerks
9 in the Prince William and Norfolk clerk's offices are mostly
10 giving you what CNS is asking for in this lawsuit; is that
11 accurate?

12 A. Accurate, yes.

13 Q. You may recall at your 30(b)(6) deposition I asked you how
14 is it not giving CNS exactly what it's asking for, and your
15 answer was, well, it's improved greatly. We're able to access
16 cases before they have been scanned in or they are scanning them
17 in faster for us, but the percentages are not 100 percent
18 contemporaneous. Is that correct?

19 A. Correct.

20 Q. So what CNS is looking for here is 100 percent
21 contemporaneous; is that right?

22 A. Well -- that would be perfection, and I don't know that we
23 seek perfection. But we strive for it. I understand that we're
24 probably never going to get to 100 percent, but if we're able to
25 see nearly all, if not all, the cases on the day that they're

1 filed, that's good access.

2 Q. Well, where does CNS draw the line on what is reasonable
3 and what is not? What percentage is acceptable to you?

4 A. Acceptable to me? I would say that if a court is giving us
5 90 percent same-day access it's not a problem in my mind, or at
6 least it's low down on the list. Anything lower than
7 90 percent, I have to figure out what the problem is. How can
8 we solve it. When you have a court that is at three percent
9 availability or 38 percent, then that's a problem in access that
10 needed to be addressed.

11 Q. You testified at your deposition that the CNS is seeking
12 contemporaneous access; is that correct?

13 A. Correct.

14 Q. And your definition of contemporaneous was we see it on the
15 day that it's filed, correct?

16 A. Correct.

17 Q. So for example, if a complaint comes in at 4:45 in the
18 afternoon in Norfolk and it's available the next day at
19 9:00 a.m., you consider that not contemporaneous?

20 A. I do.

21 Q. Mr. Abbott, forgive me: How is a clerk's office supposed
22 to make the complaint publicly available if it comes in at the
23 end of the day? What are they supposed to do?

24 A. Well, in the hypothetical that you just laid out, if we
25 were able to stay until 5:00, all we need is a couple of minutes

1 to look through the complaint, pull out the information that's
2 relevant, and we're done.

3 Q. So you want the clerk's office to expand their operating
4 hours?

5 A. No, sir. I believe the employees stay until 5:00 p.m.

6 Q. But the business hours of the clerk's office are 8:45 to
7 4:45 in Norfolk; is that correct?

8 A. Correct.

9 Q. So you want permission to stay after the clerk's office
10 closes so that you can look at all of the complaints that came
11 in late in the day?

12 A. Well, we don't want to stay until 6:00 or put anybody out
13 or make people stay late, but the processing clerks are there
14 processing up until 5:00. We should be able to see the cases
15 that they're processing.

16 Q. Do you have any idea if Mr. Schaefer or Ms. Smith can pay
17 people to stay late?

18 A. I, I have -- I can't speak to that.

19 Q. Do you have -- have you ever encountered a clerk's office
20 that is willing to pay overtime so that you can have access
21 after hours?

22 A. I don't know the payment structure in place for clerk's
23 offices.

24 Q. Administrative processing. Your complaint identifies
25 delays in access, correct --

1 A. Correct.

2 Q. -- in both jurisdictions.

3 And the policy -- and you testified at both your personal
4 and your 30(b)(6) deposition that the policy or practice that is
5 causing the delays is the clerk's withholding access until after
6 administrative processing; is that right?

7 A. Right.

8 Q. This Court has asked questions a couples times about what
9 administrative processing means, so I want to ask you. What
10 does administrative processing mean to CNS?

11 A. It means the initial receipt of a case. It's processing of
12 payment, the initial review for confidential information, and
13 then ultimately scanning in the case for the public access
14 terminal.

15 Q. So you -- so Courthouse News' position is it's entitled to
16 access before any of that takes place?

17 A. Well, I believe access, we are entitled to access a case on
18 the day that it's filed.

19 Q. Well, and I understand that. I'm trying to drill down here
20 exactly when you think you're entitled to access. Because you
21 know, we have -- all right. Let's start with an example of a
22 mail complaint. A mail complaint comes in. They open the mail.
23 Are you entitled to access then?

24 A. If the court has officially received the case, then we
25 should have access to it.

1 Q. Are they allowed to take the check off of it before they
2 give it to you?

3 A. Sure.

4 Q. Can they check to see if it has confidential information
5 before they give it to you?

6 A. It's my understanding that that process doesn't take long,
7 it's...

8 Q. So you, you're fine with them taking the check off and
9 you're fine with them processing the payment, correct?

10 A. Correct.

11 Q. Or do you want it before they process the payment?

12 A. We just want it on the day that it's filed.

13 Q. Okay. So you want contemporaneous access, and the reason
14 why you're not getting it is because they're withholding access
15 until after processing occurs. But at what point in the
16 processing do you get it? I'm just trying to drill that down.
17 I don't understand.

18 A. Well, currently in both courts we're able to access the new
19 complaints before they have been scanned in, in many cases. And
20 that's proven to be pretty successful. Like I said, we're able
21 to see 88 percent of cases on the day that they're filed in
22 Prince William and 84 percent of cases on the day that they're
23 filed in Norfolk.

24 Q. And I appreciate that. You're getting the access that you
25 think is acceptable right now, that's correct?

1 A. Correct.

2 Q. Are you getting contemporaneous access now?

3 A. Yes, correct.

4 Q. In Prince William and Norfolk?

5 A. For the most part, yes.

6 Q. Okay. But it's not 100 percent?

7 A. It's not 100 percent.

8 Q. Got to get 100 percent, right?

9 A. Well, you don't have to get 100 percent, I mean...

10 Q. All right.

11 A. But you've got to work for it.

12 Q. You testified just now when Ms. Goldman was asking you

13 questions that -- you gave an example of a court that you think

14 provides great access, the Richmond Circuit Court; is that

15 correct?

16 A. In Virginia, yes.

17 Q. And I believe you testified -- correct me if I'm wrong --

18 that CNS is allowed to go behind the counter in Richmond and

19 look at new complaints; is that right?

20 A. That's right.

21 Q. Does Mr. Schaefer allow you to go behind the counter to

22 look at new complaints?

23 A. He does.

24 Q. So what's the difference between what Mr. Schaefer is doing

25 and what the clerk in Richmond is doing providing all this great

1 access?

2 A. Well, the difference is in Richmond that was always the
3 policy. Our reporter went behind the counter, looked at the new
4 civil filings. If there was something not scanned into the
5 public access terminal, the reporter was able to ask the clerk
6 for that case. In Norfolk, that is not the case. We did not
7 know of any behind-the-counter policy until months after the
8 lawsuit had been filed.

9 Q. Your testimony was you didn't know about the policy before
10 the meeting that you had with Mr. Schaefer and his staff,
11 correct?

12 A. I didn't know a policy existed.

13 Q. But you have no way of knowing whether or not it was his
14 policy, you just -- it's -- CNS didn't know?

15 A. I had asked two court employees and they didn't know
16 either.

17 Q. There's been some testimony -- there's been some questions
18 in this case regarding you asking supervisors. You didn't ask a
19 supervisor in Norfolk, did you?

20 A. No, I did not.

21 Q. Okay.

22 A. But I didn't know that until --

23 Q. You asked a security guard; is that correct?

24 A. No.

25 Q. You asked a -- you didn't ask the security guard named

1 Nate?

2 A. I didn't, but my reporter did.

3 Q. And then you asked someone named Sonya Turner?

4 A. Yes.

5 Q. Is Ms. Turner a supervisor?

6 A. At the time I thought she was because she had been summoned
7 from the back to answer my question. If the counter person knew
8 of a better person to answer my question, she did not find them.

9 Q. Did you ever try to go up the chain of command and ask
10 Mr. Schaefer?

11 A. No. I don't keep asking the same question until I get the
12 answer that I want. In my mind, I got a definitive answer from
13 a court employee.

14 Q. Isn't that kind of the point? You got the answer you were
15 looking for and then you stopped asking?

16 A. No, I got an answer and I...

17 Q. Right.

18 A. -- again --

19 THE COURT: I think we've spent enough time on this
20 issue, Counsel.

21 MR. PRINCE: Okay. Thank you, Your Honor.

22 BY MR. PRINCE:

23 Q. How does CNS access new complaints in Prince William?

24 A. We look for the new complaints on the public access
25 terminal.

1 Q. And at your personal deposition you had testified that if
2 new civil complaints are not yet available on the terminal for
3 whatever reason, you can go ask and to see if the clerks have
4 copies of recently filed complaints; is that correct?

5 A. Yes.

6 Q. And they will provide you access? Was that your testimony?

7 A. Sometimes they will provide us access.

8 Q. I believe you testified that "I had a list of cases that
9 were -- I could see the docket information on the computer
10 terminals, but I could not see the images of the complaints. I
11 handed that list to the clerk, asked whether I was able to see
12 the complaints, and they were able to track them down and give
13 them to me."

14 Do you remember that?

15 A. Yes, I do. That was November, 2017 prior to me being told
16 by Brenda Elford that we were only able to access what's been
17 scanned in.

18 Q. And when she told you that, she told you that the concern
19 was that they had not been able to review unprocessed and
20 unscanned complaints yet for confidential information, do you
21 remember that?

22 A. I do.

23 Q. So it's your position that CNS should be able to get those
24 before they have a chance to check for confidential information?

25 A. No. I don't think that the check for confidential

1 information takes more than a few minutes.

2 Q. I want to go through a timeline here of the lawsuit being
3 filed and the delays being tracked, and if you lose me, let me
4 know.

5 A. Okay.

6 Q. So this lawsuit was filed in July, 2018; is that correct?

7 A. Yes.

8 Q. And the complaint alleges delays in access that occurred
9 for a six-month period prior to the lawsuit being filed in July,
10 2018?

11 A. Yes.

12 Q. So CNS started tracking delays in January, 2018 through end
13 of June 2018. That's the six-month period that's at issue in
14 the complaint, fair to say? Are you with me?

15 A. We started tracking before.

16 Q. I'm going to get to that in a second.

17 A. Okay.

18 Q. So you were tracking delays for purposes of the complaint
19 in the six-month period January 1, 2018, through June 30, 2018?

20 A. Yes.

21 Q. And then you pulled the trigger on the complaint in July,
22 right?

23 A. Right.

24 Q. But Mr. Girdner testified and I believe you testified
25 earlier today that you actually started tracking delays in these

1 two jurisdictions in September; is that correct?

2 A. Yes. Correct.

3 MR. PRINCE: May I hand this to him?

4 COURT SECURITY OFFICER: I'll get it.

5 MR. PRINCE: That's our exhibit book.

6 And Your Honor, I actually have a binder for you if
7 that's okay.

8 THE COURT: Yes.

9 MS. GOLDMAN: Counsel, may I ask, do you have a copy
10 of what is on the board for us to see? Because we can't see it
11 from back here.

12 MR. PRINCE: Yes. It is -- I can tell you what is on
13 this board. It is Defense Exhibit 15. 8/7/2017.

14 MS. GOLDMAN: We gave ours to the witness.

15 BY MR. PRINCE:

16 Q. Are you with me on Exhibit 15?

17 A. I believe so, yes.

18 MR. PRINCE: Your Honor, Defense Exhibit 15.

19 BY MR. PRINCE:

20 Q. Do you recognize this email?

21 A. Dated Monday, 8/7/2017.

22 Q. That's correct.

23 A. Yes.

24 Q. And this is an email from you to CNS Norfolk; is that
25 right?

1 A. Correct.

2 Q. And who is CNS Norfolk?

3 A. Our reporter, Jocelyn Rardin.

4 Q. In this email you state, and I'm reading from the third
5 paragraph, "So we're going to challenge Virginia on two polices
6 that most courts have, OCRA and behind processing access. OCRA
7 is a remote access system that allows attorneys to access only
8 cases remotely."

9 THE COURT: Wait a minute. "That allows attorneys
10 only."

11 MR. PRINCE: "Only to access all cases remotely." I'm
12 sorry. I may have misspoken, Your Honor.

13 BY MR. PRINCE:

14 Q. "We've fought attorney preference systems in other states
15 and have won. The processing thing gets a bit more hairy. I
16 can explain further when I'm down there."

17 Did I read that correctly?

18 A. You did.

19 MR. PRINCE: I think Your Honor may have helped me out
20 a little bit.

21 BY MR. PRINCE:

22 Q. This is dated, and again I want to go back to the date,
23 this is dated August 7th, 2017; is that correct?

24 A. Correct.

25 Q. But you didn't start tracking these two jurisdictions until

1 September, 2017; is that right?

2 A. That's right.

3 Q. So Mr. Abbott, it looks like you're already contemplating a
4 lawsuit before you even started tracking delays in these two
5 jurisdictions?

6 A. We knew that delays were bad and that a lawsuit was a
7 possibility.

8 Q. Well, what's even more interesting is the email below it
9 that Ms. Rardin sent to you also dated August 7th, and it looks
10 like that she has -- excuse me. It's on the next page. It's
11 also an email also dated August 7th, 2019 from CNS Norfolk.
12 That's the reporter, Ms. Rardin, to you, where she lists all of
13 the jurisdictions she follows. And again I want to emphasize,
14 this is August, 2017. And she says "I use Spider Cases for
15 research, usually most cases, usually the most cases of all, all
16 other courts I go to the courts once a week, and besides the
17 computer systems going blank every now and again, access is
18 pretty good."

19 Did I read that correctly?

20 A. You did.

21 Q. She further says later on in the paragraph, "I can usually
22 find cases for this court within 24 hours of filing if they get
23 all filing fees paid, which can affect the speed of being able
24 to view documents."

25 Did I read that correctly?

1 A. Yes.

2 Q. So this is before you even started tracking the delays
3 she's saying that access is pretty good and that they're getting
4 everything within 24 hours of filing. So how do you explain
5 that?

6 A. Well, at the time Jocelyn Rardin was a part-time reporter
7 covering Norfolk once a week. We had been looking at expanding
8 in Virginia. We had already gone to daily live coverage in
9 Richmond, we wanted daily live coverage of Fairfax and Prince
10 William and Arlington and Alexandria as well. So this is my
11 communication with a reporter who is only covering a court once
12 a week. Her idea of good access is not the same as a reporter
13 who is covering a court daily, in person, live, at the end of
14 the day.

15 Q. Okay. So you're saying that Ms. Rardin didn't know, didn't
16 understand that access wasn't good, she just didn't understand?

17 A. Well, technically we didn't understand that access wasn't
18 good until we started going every day and then we could see how
19 access was actually like on a daily basis.

20 Q. Well, but in the email on the prior page it was sent the
21 following -- which was sent the same day, I guess a couple hours
22 later, you're talking about challenging Virginia on two
23 pollices, OCRA and suing regarding access delays. So you had
24 already decided to file the lawsuit?

25 A. No. And it's not my, it is not my job to decide to file a

1 lawsuit. But we knew that access was a problem. If you looked
2 at the reports from back then you could tell that the newest
3 cases that were available were two, three days old in Norfolk,
4 sometimes longer in Prince William. So we knew it was a
5 problem. We wanted to go to daily live coverage to expand our
6 service anyway. Once we go to daily live service or coverage we
7 can see that there's a problem in access.

8 Q. So if you could flip through to Defense Exhibit 16? It's
9 the next tab.

10 A. Sure.

11 Q. Now, this email is dated 11/14/2017. So this is
12 November 14th. And again in the timeline, this is before you
13 filed the complaint, before the six-month period relevant to the
14 complaint which didn't start until January, but it's after you
15 started tracking in September. So you're tracking, but not for
16 the purposes of the complaint yet, correct? Are you with me?

17 A. Yes, I am.

18 Q. So this email dated 11/14 you say "So I'm not going to make
19 a federal case about it, but we are making a federal case out of
20 access in Virginia (see what I did there?) and I am still unsure
21 if Prince William is going to be our friend or foe in the case.
22 In other words, are they letting us go through their desks every
23 day and look at unprocessed cases or are they keeping us away
24 from them?"

25 The next paragraph you talk about a meeting with the local

1 First Amendment lawyer in Norfolk. Maybe that was
2 Mr. Shumadine. Probably was, he's pretty well-known in the
3 First Amendment area. And you say, "We're likely going to sue
4 the Norfolk clerk and the Office of the Executive Secretary
5 first for access to OCRA, the Commonwealth's remote access
6 system. Once we get that and everyone is pretty sure we will
7 get that easily -- excuse me, we will win that easily, we're
8 going to go after several clerks on the delay issue. And what
9 Prince William does in the next few weeks will determine where
10 they fall. Norfolk is the obvious first target, though, so
11 we'll see how that goes."

12 Did I read that correctly?

13 A. Yes.

14 Q. So fair to say in November of 2017 you're pretty sure
15 you're going to sue these two clerks for access delays?

16 A. At the time I knew that access was bad, and I had an
17 inkling that it wasn't going to improve. But again, I was just
18 using hyperbole, yes, maybe poor choice of words, but I was
19 impressing upon my reporters that they needed to work really
20 hard to keep good data so that when it progressed to a certain
21 point we weren't, we -- we had the data to show that access was
22 as poor as it was.

23 Q. And I'm not going to keep belaboring it, but you're talking
24 about filing a federal lawsuit here, and I mean, are you telling
25 us that you were just trying to generate excitement among your

1 reporters; that you really weren't trying to file a lawsuit?

2 I'm not --

3 A. I wanted them to keep good data so that if it got to that
4 we would know that access was as poor as it was.

5 Q. You were talking about meeting with Mr. Shumadine in
6 Norfolk, but you had no -- your position is you had no intention
7 of filing the lawsuit in November of 2017. Is that your
8 testimony today?

9 A. My testimony is it's not my job to file a lawsuit.

10 Q. Okay. Well, let's flip over to Defense Exhibit 17. This
11 one was sent about two weeks later, still in November of 2017.

12 MS. GOLDMAN: Your Honor, I'm going to object to the
13 line of questioning. It's repetitive, it's duplicative, the
14 relevance of all these emails.

15 MR. PRINCE: They're very relevant. They're very
16 relevant to show why, when CNS decided that they were going to
17 sue my clients, and that they were, they had actually made the
18 decision to sue our clients before they even started tracking
19 delays in these two jurisdictions as alleged in the complaint.

20 THE COURT: You would prefer then that they sue you
21 without verifying the facts?

22 MR. PRINCE: I would prefer that they see what the
23 facts are before they sue us.

24 THE COURT: I think that's what they did.

25 MR. PRINCE: Well, these emails show that they had

1 already --

2 THE COURT: They don't show much of anything, Counsel.

3 MR. PRINCE: Okay. Thank you, Your Honor.

4 BY MR. PRINCE:

5 Q. CNS has filed several other lawsuits against clerks across
6 the country; is that right?

7 A. I don't know about several. I think it's six.

8 Q. You've sued, I think, California, Texas, Illinois, New
9 York; is that right?

10 A. None of those states are in my bureau, but I believe so.

11 Q. I think you filed a couple lawsuits in California, right?

12 A. I think so.

13 Q. Those lawsuits are very similar to this one?

14 A. I haven't looked at those as thoroughly as this one.

15 Q. Does CNS anticipate -- do you anticipate CNS will file
16 additional lawsuits against clerks in other states after this
17 one's over?

18 A. After this, gosh, I sure hope not. But if access is bad,
19 it's always a possibility.

20 Q. So I do want to show one more email?

21 MR. PRINCE: Last one, Your Honor, I promise, then
22 I'll stop.

23 BY MR. PRINCE:

24 Q. This is Defense Exhibit 18. And I won't read the whole
25 thing, but I just want to, before I read this, your testimony is

1 that you have no intention of suing any clerks after this
2 lawsuit is over?

3 A. It is not my job to determine who we sue.

4 Q. So in the -- this is an email from you to CNS Norfolk dated
5 January 2017; is that correct?

6 A. Yes.

7 Q. CNS Norfolk is the Norfolk reporter, Ms. Rardin?

8 A. Yes.

9 MS. GOLDMAN: Your Honor, I just want to put my
10 objection back on the record to this line of questioning
11 regarding all the emails.

12 MR. PRINCE: Well, he just testified that it wasn't
13 their intent to file lawsuits after this one, and he's saying I
14 want our domino to fall quickly so I can move on to the looming
15 battle --

16 THE COURT: I don't think that's exactly what he said,
17 Counsel. But if you want to use the email, go ahead.

18 MR. PRINCE: Okay. Thank you, Your Honor.

19 THE COURT: Let's get on with it.

20 MR. PRINCE: Okay.

21 BY MR. PRINCE:

22 Q. In this email you state, and this is in third paragraph
23 down, "I want our domino to fall quickly so I can move on to the
24 looming battle in Florida and the Carolinas."

25 Did I read that correctly?

1 A. You did.

2 Q. So fair to say that CNS intends to file additional lawsuits
3 against other clerks after this lawsuit is over?

4 A. No, but it is fair to say that we were going to keep
5 pushing for better access in those states.

6 Q. At your 30(b)(6) deposition you testified that
7 contemporaneous means the day a case is filed we see it that
8 day; is that right?

9 A. Right.

10 Q. So from CNS's perspective, contemporaneous means same-day
11 access?

12 A. Correct.

13 THE COURT: He's already said that in response to your
14 previous question.

15 BY MR. PRINCE:

16 Q. Does the Eastern District of Virginia make complaints
17 available in the same day they're filed?

18 A. Yes, it does.

19 Q. Did they at the time this lawsuit was filed?

20 A. No, they didn't.

21 Q. And you're aware that this lawsuit was made publicly
22 available the day after it was filed?

23 A. Right.

24 MR. PRINCE: Your Honor, I would move
25 Defense Exhibits 15, 16, 17 and 18 into evidence.

1 MS. GOLDMAN: Your Honor, we stand on our relevance
2 objections to those.

3 THE COURT: I don't think they're objectionable,
4 Counsel. The Court will admit those exhibits.

5 (Defendant's Exhibit No. 15, 16, 17 and 18
6 received in evidence.)

7 MS. GOLDMAN: Your Honor, I do have some redirect but
8 I know it's timing. Do you want to...

9 THE COURT: How much redirect do you have?

10 MS. GOLDMAN: Five or so questions.

11 THE COURT: All right. You've got five minutes.

12 REDIRECT EXAMINATION

13 BY MS. GOLDMAN:

14 Q. So I just want to clarify a few things for the record.

15 You testified that access improved in both courts after the
16 filing of this lawsuit, correct?

17 A. Correct.

18 Q. Was that improvement immediate?

19 A. No, it was gradual.

20 Q. Gradual over a number of months?

21 A. Over a number of months, yeah.

22 Q. What time does the Prince William Circuit Court's office
23 close?

24 A. 5:00.

25 Q. And what time is your reporter allowed to stay until?

1 THE COURT: Haven't we already had that?

2 MS. GOLDMAN: Just wanted to clarify for the record
3 because I thought it got a little confusing.

4 THE COURT: It doesn't need clarifying.

5 BY MS. GOLDMAN:

6 Q. Okay. In Norfolk -- if Your Honor will let me -- is CNS
7 asking the Norfolk clerk's office to extend its hours?

8 A. No.

9 Q. And your reporter has to leave at 4:45, correct?

10 A. Correct.

11 Q. Staff stays until 5:00, in your understanding?

12 A. Correct.

13 Q. You testified on direct that you saw signs in the clerk's
14 office but I don't think we talked about where those signs are
15 located. In the Norfolk clerk's office you saw a sign posted
16 about Officers of the Court Only?

17 A. On the door to the clerk's office.

18 Q. And is that the door that separates the public part of the
19 clerk's office from the clerk's back office?

20 A. Correct.

21 Q. And then you also testified about a sign you saw in the
22 Prince William clerk's office about 10 days for scanning?

23 A. Yes.

24 Q. And where was that sign?

25 A. Throughout the office, but I noticed it about eye level

1 right next to the public access terminal.

2 Q. On cross Mr. Prince asked or indicated that you had asked
3 for access and then you just stopped. In Norfolk, did you
4 instruct your reporter to ask for access after you had asked and
5 been denied?

6 A. Yes, I did.

7 Q. And was access granted?

8 A. Never.

9 Q. And one final question: Is CNS seeking perfection in the
10 access it receives?

11 A. No.

12 MS. GOLDMAN: No further questions.

13 THE COURT: All right. You're not going to recall
14 this witness, are you?

15 MS. GOLDMAN: We are not.

16 THE COURT: All right. Mr. Abbott, you can be excused
17 as a witness with the understanding you won't discuss your
18 testimony with any other witness in the case until the case is
19 concluded.

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: You can either stay in the courtroom or go
22 about your duty, whichever you prefer.

23 THE WITNESS: I would love to stay in the courtroom,
24 Your Honor. Thank you.

25 THE COURT: All right. We'll be recessed until 2:15.

1 (Recess taken from 1:19 p.m. to 2:17 p.m.)

2 THE COURT: All right. Is the plaintiff ready with
3 their next witness?

4 MR. HIBSHER: We will be reading in the deposition
5 testimony of the witness.

6 THE COURT: All right. Have you got a transcript of
7 that.

8 MR. HARRISON: We do, Your Honor. It's in the
9 pretrial order. We also have a copy of it.

10 COURTROOM DEPUTY CLERK: If you're going to read the
11 entire thing.

12 MR. HARRISON: Would the court reporter like a copy?

13 COURT REPORTER: Yes, sir.

14 MR. HARRISON: Your Honor, we're calling Brenda
15 Elford, the civil supervisor at the Prince William Circuit
16 Court.

17 THE COURT: All right.

18 MR. HARRISON: Your Honor, the parties agreed in the
19 pretrial order to read the counter-designations as well. So
20 we'll be reading both plaintiff's designations and the
21 defendant's counter-designations as part of the testimony.

22 Are they made on this copy of those designations?

23 MR. HARRISON: They are, Your Honor.

24 THE COURT: Okay. They also have unresolved
25 objections in the transcript, and so I'm happy to handle those

1 however Your Honor would please.

2 THE COURT: All right. We'll just handle them when
3 they come up.

4 MR. HARRISON: Understood. Thank you.

5 (Testimony of Brenda Elford read as follows:)

6 BY MR. HARRISON:

7 Q. What are your responsibilities as civil supervisor in the
8 Prince William Circuit Court clerk's office?

9 A. I review the daily duties of all the deputy clerks, 1, 2, 3
10 and 4 within the administration as far as policies, procedures
11 any types of issues that would come up. I handle customers that
12 would be difficult. Basically just day-to-day operations.

13 Q. Do your responsibilities include requests from the media
14 for certain filings, written requests for statements from the
15 media?

16 A. Very far and few between as far as anything we've gotten.

17 Q. Do your responsibilities include responding to press
18 requests for access to court records?

19 A. It's not been an issue since I've been in this office or in
20 this position.

21 Q. And that's been since October, 2017?

22 A. Yes.

23 Q. As part of your duties, are you responsible for the
24 overseeing the filing of new complaints?

25 A. Yes.

1 Q. You said you supervised Deputy Clerks 1, 2, 3 and 4. Could
2 you just give me an overview of what those positions are and how
3 many of each of them does the office have?

4 A. Deputy Clerk 1s are an entry-level position. The person,
5 it's basically a training position where they're in that
6 position at least a year. At that time they are given methods,
7 procedures, guidance as far as daily procedures and what's
8 expected of their position.

9 Deputy Clerk 2s is a position in which the deputy clerk
10 knows the basic type of cases that we file. Working at the
11 front counter, cashiering.

12 Deputy Clerk 3 would be a more-specialized. A lot of times
13 the Deputy Clerk 3s will be in the back of the office and are
14 handling more difficult cases, garnishment or *the habeas*
15 *corpuses*, *mandamuses*, things like that. Hearing dates. The
16 job, they also back up whenever is needed that they have a more
17 specified duty.

18 The Deputy Clerk 4 is a pre-management position where they
19 accept more responsibility, the backup to myself if I'm not
20 available or if I'm not in the office. And that's pretty much
21 it.

22 Q. So would you be the person in the clerk's office with the
23 best knowledge of how a civil complaint is filed and processed
24 by the clerk's office?

25 A. I think so.

1 Q. What was your initial reaction when you heard that the
2 clerk had been sued?

3 A. Surprised. We've always, you know, communicated well with
4 the press.

5 Q. Has the access to court documents changed in your time
6 since you started in 2006?

7 A. Yes.

8 Q. How has that changed?

9 A. When I first started in civil, everything was paper filed.
10 We had a file room and that is how we divided cases. I actually
11 was civil intake, the only person up there. I would receipt the
12 cases, put the information in the file. Behind me were baskets
13 for garnishments, adoptions, juvenile appeals. Everything was
14 separated. So when they would come in and want to see
15 something, I would hand them the civil basket and they would
16 take a look at it.

17 Q. I think you testified earlier that the civil filing basket
18 stopped being used sometime around 2014?

19 A. It was before then. Well, I think it was before then. I
20 know that the clerk was Ms. McQuigg, and at that point it was a
21 question of confidentiality. We started scanning in 2009. Once
22 we started scanning, things, procedures changed in the office as
23 to who had access and what case as far as --

24 Q. You said that procedures changed because of
25 confidentiality. Was there a specific instance that caused that

1 change or was it a general policy change at the clerk's office?

2 A. The fact that we went from paper files to scans, we no
3 longer -- everything was getting scanned when it comes in and we
4 know longer had the -- we couldn't afford the time to separate
5 out cases, and the people, the specific people that were
6 handling the confidential cases ended up just everyone scanning
7 the same things.

8 Q. So if a member of the media or the public wants to review a
9 newly filed paper civil complaint, where would that person go?

10 A. Well, if it's not already online, it would be one of our
11 counter clerks, normally. There is an instance where, if we're
12 very busy with foot traffic all day, the girls in the back will
13 help out.

14 Q. So what's the procedure for a member of the public or the
15 media to review a newly file civil complaint and also obtain a
16 copy of that in the clerk's office?

17 A. You mean once it's scanned or before it's scanned? I'm not
18 sure.

19 Q. I guess both. Let's do one.

20 A. Okay. The public has the ability when they can query a
21 couple different ways on the public terminal. They can do it by
22 name and they can do it by case number if they know what the
23 case number is. There's an option on there that can print a
24 page or a page range and it prints back behind our counter.

25 Q. If the case has not been scanned?

1 A. If someone knows a specific as far as the attorney comes in
2 at 4:30 and they just want a copy of it, we're able to do that.
3 That's not a normality for us, but we try to be as amenable to
4 people as we can.

5 Q. You testified earlier that prior to 2013 or '14 when the
6 filings were separated, the wire basket allowed for members of
7 the press and public to see newly filed civil complaints?

8 A. Right. That is what I meant by procedures. We're filling
9 a whole different -- excuse me. We're filing a whole different
10 way now.

11 Q. Do the civil deputy clerks at the counter, do they also
12 handle the cashier process for newly filed civil complaints?

13 A. Yes.

14 Q. Does your office have cashiers?

15 A. Yes.

16 Q. And what are the responsibilities of the cashier?

17 A. As far as taking in a new complaint or generalized?

18 Q. As for a new complaint.

19 A. Okay. New complaint. The complaint will come in. It gets
20 date stamped. Once it gets date stamped, the clerk will review
21 the documents to see what kind of case it is, enter information
22 in our FAS system, and the FAS system calculates the fees for
23 the case. We compare that with the check or we give the
24 customer the amount that they need to write a check for or issue
25 payment for. Once the payment is done, it's entered into a FAS

1 system. A civil case number is generated through the system and
2 it downloads into our CCMS system.

3 That system, we go in and we call it fine tuning. That's
4 when we put in any additional documents. We add data entry into
5 that, and then once that's saved, it generates to our CIS
6 system, and that's where the scanning occurs. And then once the
7 documents are scanned, depending on what the case is doing, if
8 there are services issued or whatever, services will go out or
9 it goes into a box for filing or goes to archives.

10 Q. When you're doing the fine tuning in CCMS after the receipt
11 has been generated, is there a date filed field?

12 A. Yes.

13 Q. And is that automatically populated from FAS?

14 A. Well, it comes up with the current date, so anything filed
15 today would have 1/7/19 on it.

16 Q. And so if a complaint was filed, say, Friday on 1/4, would
17 that date then need to be changed to 1/4?

18 A. It has to be changed.

19 Q. So is the physical date time stamp considered the date
20 filed?

21 A. Yes.

22 Q. Is the press or public able to see a complaint while the
23 CCMS info is being entered?

24 A. No. You mean physically see it?

25 Q. Or on the public terminals.

1 A. No. Not until it's actually completed.

2 Q. And by "actually completed", that would mean scanning?

3 A. Yes. Receipted and scanned, yes.

4 Q. As part of the procedure that when a clerk at the counter
5 receives a complaint, they review the complaint. What are they
6 looking for? What are they looking at the complaint for?

7 A. The complaints come in with a cover page or what is
8 supposed to be -- or that is what is supposed to be what
9 happens. I guess review would be more scan to make sure that
10 the fees and the type of complaint that they are saying it is or
11 actual.

12 MR. HARRISON: And I would note for the Court that
13 there is an objection to the following designation, and there
14 was also one to lines 50, 15 through 20 that I did not mention.

15 BY MR. HARRISON:

16 Q. And maybe because scanning is also an issue in this case,
17 would skim be another way that they would skim or look briefly
18 at the complaint?

19 A. Well, they have to look at it when they scan. We have to
20 make sure the pages are in straight, that they are not turned
21 upside down. Those are always reviewed when they are scanned.
22 And that's part of the process of putting a new complaint in,
23 so...

24 MR. HARRISON: And I would again note defendant's
25 objections.

1 THE COURT: Well, it says that the question beginning
2 on Page 3 was objected to.

3 MR. HARRISON: There was an objection to the
4 designation on Page 6. It's lines, Page -- Deposition Page 50,
5 Lines 15 through 20.

6 THE COURT: What? I'm looking at Page 9. That's
7 where you are?

8 MR. HARRISON: Yes, Your Honor. Yes. So there was an
9 objection from Lines -- well, I won't speak for defendant's
10 objection, I was just noting --

11 THE COURT: Well, it looks like the objection applies
12 to the question beginning on Line 3.

13 MR. HARRISON: That's correct, Your Honor.

14 THE COURT: Well, I overrule that objection. So read
15 the answer.

16 THE WITNESS: I'm sorry.

17 THE COURT: Start it on, starting on Page 9, Line 6 at
18 the bottom there.

19 A. Is that where -- well, they have to look at --

20 THE COURT: Right.

21 THE WITNESS: Would you like me to read that?

22 THE COURT: Yes.

23 A. Okay. Well, they have to look at it when they scan. We
24 have to make sure the pages are in straight and that they are
25 not turned upside down. Those are always reviewed when they are

1 scanned and that's part of the process of putting a new
2 complaint in, so...

3 Q. Are you aware of Virginia law that provides or places the
4 burden on the filing party to redact confidential information?

5 A. My experience has been -- sorry.

6 THE COURT: That objection is overruled too.

7 A. My experience has been that usually it's redacted. I think
8 a lot of times now when Social Security numbers are involved
9 it's all Xs to the last four digits, the burden is usually on
10 the attorney to do that.

11 Q. So during the review by the counter clerk, if they were to
12 come across a Social Security number, what would happen?

13 A. We would contact the attorney, or if the attorney is in
14 front of us we would ask them. We cannot go in and manually
15 redact something, it's got to be, got to file the original as
16 the original.

17 Q. And how often does that occur?

18 A. I have not seen it.

19 Q. What would happen if a complaint was later found to contain
20 a Social Security number or a personal identifiable information,
21 what is the process that the clerk's office would go through
22 then?

23 A. If it were information, I probably would go to my immediate
24 supervisor first to get her opinion on it, she has more years of
25 experience as far as that type of problem.

1 Q. Has that ever occurred in your tenure?

2 A. No, not that I've seen.

3 Q. Has there ever been an instance that you're aware where
4 confidential information has been released in a complaint that
5 has caused actual harm or injury?

6 THE COURT: You can answer that.

7 A. No.

8 Q. If I could direct you to Exhibit PWC5, Paragraph 23? This
9 is the declaration of Ryan Abbott. In 23 it says, quote, I
10 invited the Prince William Circuit Court Clerk's office on
11 January 24th, 2018, and was told by one of the supervisors,
12 Brenda Elford, that on January 22nd or 23rd, 2018, the deputy
13 clerk instructed intake clerks to restrict all public access to
14 any unprocessed and unscanned case files because of the chance
15 that confidential information might be released, end quote.

16 Do you recall that conversation with Mr. Abbott?

17 THE COURT: There's no objection to that on my paper.

18 MR. HARRISON: Your Honor, defendants made an
19 objection in the designations but not at the deposition.

20 THE COURT: You can answer the question.

21 A. I do, yes.

22 Q. Is Jillian Richards the deputy clerk?

23 A. She's our court manager.

24 Q. Do you recall being instructed with this directive?

25 A. No, I don't agree with what it says.

1 Q. What is your issue with what I just read?

2 A. Well, he was going back to when he was coming in and
3 getting access by the baskets -- I'm sorry -- access to the
4 baskets. The policy had changed long before January 22nd or
5 23rd and I had told him I would check to see if anything was
6 changed, and I was told no, not at this point. So that's what
7 was relayed to him. It wasn't that the policy was done on those
8 dates.

9 Q. And you were told that nothing had changed by Ms. Richards?

10 A. No, by Kristin Gleason.

11 Q. Right. What is Ms. Gleason's title?

12 A. Chief deputy clerk.

13 Q. Are you aware if the clerk's office has ever considered
14 offering the press access after the case number, after it's been
15 date stamped and the case number has been put on the complaint
16 but before scanning?

17 THE COURT: Overrule the objection. You can answer.

18 A. I mean, as far as procedure goes, it's supposed to be
19 scanned or it is scanned the same day. I mean, my experience
20 has been that if a question is asked by one of the CNS reporters
21 about the case, if we were able to provide it, it's not a
22 confidential case, there's never been an issue with us showing
23 it to them.

24 Q. So the process to this point that we've discussed, was it
25 any different prior to Jacqueline Smith being the Clerk of Court

1 in spring of 2017 or was this process similar to that prior to
2 that time?

3 A. It's similar. There have been a lot of changes made since
4 Jackie took office, and I'm sure there's going to be a lot more
5 things that will be looked at or addressed, but the process that
6 we have right now was implemented by Michelle McQuigg's
7 administration.

8 Q. Are you aware of what the process was prior to that?

9 A. To Michelle McQuigg?

10 Q. Yes.

11 A. With Dave Mabie's administration, Dave Mabie was actually,
12 that was my first exposure to having the separate baskets and
13 being able to hand over a basket to the reporters to look at,
14 because they would, they were separated. They stayed in play in
15 Michelle's administration until we started scanning, and then
16 once everything went to the scanning system we were told that
17 that wasn't procedure anymore.

18 Q. Has the clerk's office ever considered alternates that
19 would allow the press to review new civil complaints after they
20 have been initially received by the clerk's office?

21 A. My opinion is that the administration is in the younger
22 stages of still developing methods and procedures for certain
23 aspects of the office.

24 Q. Has the office ever considered making a copy of the
25 complaints to put in a media bin so that the media could access

1 them through looking through the media bin?

2 A. We are so tight with our volume anyway, that would be a
3 huge, huge, thing to take.

4 Q. So it's not been considered?

5 A. I don't think it's ever been on the table. Like I said, we
6 would need a whole other person to perform that it is.

7 Q. Has it ever been considered to require the filing party to
8 submit a second copy of the filing in addition to the original
9 so that it could be put in such a basket?

10 A. No. Copies that they give us are their copies or copies
11 for service.

12 Q. Can you walk us through -- at this point can you walk us
13 through the scanning process? So the paper complaint, whether
14 it's come in by mail or at the counter, has now been
15 file-stamped, the initial information has been put into FAS, a
16 receipt has been generated, a case number has been put on the
17 case, and there's been some information inserted into CCMS. So
18 could you walk me through from there?

19 A. Okay. Well, once we get the case number we go from the FAS
20 system to the CCMS system. We put in the case number and it
21 will pull up all of our customer information. We do a scan of
22 that to make sure that everything is good. And then the
23 first -- the initial pleading and order will be populated and
24 nit goes in as initial. And then there's a code that OES -- I
25 guess it goes through OES, generates the CNTR contract action

1 motor vehicle tort. All other times will go in and we'll modify
2 that to when the public does see it they're not going to go
3 What's a CNTR?

4 Then we had any additional documents, mandatory requests
5 for documents, submissions, requests for service. Once we know
6 that all of that is in there, we'll save that information. If
7 services are requested, we'll go to the service tab. We'll put
8 in who is being served, the attorney requesting the service, the
9 judge, the type of case, if there's a hearing date, what type of
10 documents are being served, which jurisdiction, if it's private
11 process, Commonwealth, DMV, sheriff's office.

12 Once that information is saved, it generates the two-page
13 summary or summons, then that's attached to the documents to be
14 served. That's scanned in under the services. The other
15 documents are scanned in under the types from the complaint to
16 the interrogatories to the production of documents that are all
17 separated out. Once service is ready to go, it's either put in
18 an envelope for the sheriff in a different jurisdiction. We
19 have a basket for our local sheriff or if it's private process,
20 it's handed to the customer.

21 Q. How long does it take for the clerk to scan the civil
22 complaint?

23 A. There are so many variables. We've had complaints from two
24 pages to 590 pages and 12 services requested for the 590-page
25 document. I would say that if I had to come up with something

1 in a nutshell, I would say probably a max of five minutes, a
2 general complaint with one service.

3 Q. Where are the scanners physically located in the clerk's
4 office?

5 A. They're on each -- each duty clerk has a scanner at their
6 desk, and they're free to set it where it's best accessible for
7 themselves.

8 Q. So for the four desks at the counter, there's a scanner at
9 each one of those four?

10 A. Yes.

11 Q. What percentage of civil complaints are rescanned?

12 THE COURT: You can answer.

13 A. Very little. I can't put a number on it.

14 Q. Are there other times when an attorney or a filer will come
15 up to the counter at the 4:30 cutoff time?

16 A. All the time.

17 Q. Do you allow that person to make the filing?

18 A. We can date stamp and we can accept a check, but we can't
19 actually process the check.

20 Q. In the process that we discussed, it would happen the next
21 day?

22 A. The next morning would be a priority to get that in first.

23 Q. But the physical date stamp on the complaint would say?

24 A. The date that he filed it, yes.

25 Q. Are there any other reasons or situations when this process

1 might be delayed?

2 A. Holidays, weekends, weather, extenuating circumstances with
3 the staff.

4 Q. Anything else?

5 A. No.

6 Q. So in those instances, when does the administrative process
7 intake take place?

8 A. Immediately. I mean, ASAP. The immediate day that we have
9 access to our systems and we're back at work.

10 Q. I think you said that when the complaint is scanned it
11 takes about five minutes on average for the scanning process
12 to...

13 A. It's hard to nail it down to an exact science. I mean, an
14 exact time, I'm just guesstimating.

15 Q. But it's fair to say it's not more than 30 minutes or an
16 hour?

17 A. No.

18 Q. So once that process is done and the complaint is scanned,
19 is it available for viewing on the public access terminals?

20 A. As far as I know. I mean, my understanding is that it's
21 pretty much instantaneous.

22 Q. Are there any steps that need to be taken by the clerks
23 before the complaint can be seen on the public access terminal?

24 A. Just the normal input process.

25 Q. Once the complaint is scanned, what happens next?

1 A. It depends on the type of case, but in most instances, it
2 will go to the day box to go down to archives.

3 Q. What is the day box?

4 A. The day box is a box that contains chronological dates, the
5 documents as they are date-stamped go in by their dates once
6 they're date-stamped and scanned once we're completely finished
7 with what we need today to the documents and they are
8 downstairs, down in archives in case we need to reference
9 anything at any point.

10 Q. Is the wire basket still used that we discussed at the
11 intake counter?

12 A. Well, each clerk has a wire basket that they put their
13 incoming mail in, but it -- be it complaint subsequent filings,
14 anything like that. Not the basket though. There is not a
15 specific basket.

16 Q. Sure. So the wire basket that was at the counter prior to
17 the 2013 -- or used prior to the 2013 to 2014, is that used
18 anymore?

19 A. No.

20 Q. Could you explain the process when that wire basket was
21 used to separate out the complaints or separate the filings so
22 that civil complaints were included in the basket?

23 A. Right. When we -- when I first started, I was a civil
24 intake person. Everything was still paper. We had files of
25 civil cases in blue file folders. When I would get, bring a

1 case in, ring it up, behind me we had baskets for complaints.
2 We had adoptions, we had garnishments, we had interrogatories.
3 We had a couple of, five or six different baskets for different
4 kind of cases. The civil cases containing the cases that could
5 be accessible by public, general public or press, and that was
6 the one that was handed to CNS. I don't know if --

7 Q. So is it fair to say that the baskets, those baskets at
8 that time were separated out by filing types?

9 A. Yes. Confidential cases versus -- well, not all of them
10 are confidential. Garnishments weren't confidential. But there
11 were different people that performed different tasks for
12 different styles of cases.

13 Q. Would it be possible today to use such a similar system
14 where there are different wire intake baskets separated by
15 filing types?

16 A. I would imagine it can be done, but it would be very
17 timely -- or it would cost a lot of time.

18 Q. Why would it cost a lot of time now versus how the
19 procedure was prior to scanning?

20 A. Because now each person sits at their desk, they intake
21 whatever comes across their desk. If we were to have to go back
22 to separating cases out, first off, we wouldn't accomplish our
23 goal of scanning the same day. Second, people would have to get
24 up from their desk in between customers to go distribute cases
25 to different files or different baskets. So it's three, if not

1 four people that are dealing with customers all day long. They
2 are going to have to take it, be it 30 seconds or minute to go
3 up and separate out everything. Again, this gets back to the
4 fact that they're scanning then at the same time anyway. It
5 should be a moot point of whether we need the baskets or not.

6 Q. What is the date considered filed for an electronically
7 filed complaint?

8 A. The date that VJEFS populates a date and time at the top,
9 the corner of the document, that's when it's considered filed.

10 Q. And if I recall your testimony from earlier, you said that
11 just a skim of the complaint and documents?

12 A. Yes. The only thing we do different with the e-file is if
13 they are to file a private addendum, we go in there and direct
14 which area it would go, which would be under case files, and
15 then private addendum or confidential. We direct that part of
16 it. But as far as content, content of documents, we can't do
17 anything.

18 Q. And how often does that occur where there's a private
19 addendum or something like that?

20 THE COURT: Go ahead and answer.

21 A. Out of the few cases that we have, not often at all.

22 Q. And so where would the data come for the file date in CCMS?

23 A. It would be the date stamped on the document.

24 Q. And that's the date I think you said was automatically
25 populated into CCMS?

1 A. Well, your current date is automatically populated in FAS
2 which feeds into CCMS. It always runs with the current date.
3 So if something were to be put in a day later, you would have to
4 manually change that date.

5 Q. Is it the policy of Prince William clerk's office for the
6 file date in CCMS to match the file stamp date on the face of
7 the civil complaint?

8 A. Yes, it is.

9 MR. HARRISON: Thank you.

10 THE COURT: All right.

11 MR. HIBSHER: Your Honor, while plaintiff's identified
12 a number of other witnesses in our witness list, we're going to
13 rest here. We believe that testimony has been covered by other
14 witnesses in the case so far.

15 THE COURT: All right.

16 MR. MATHESON: Good afternoon, Your Honor.

17 THE COURT: Good afternoon.

18 MR. MATHESON: May it please the Court. Your Honor,
19 we are going to at this time make a Rule 52 motion for a
20 judgment on partial findings on a number of grounds.

21 I want to talk -- I think the only place I could
22 logically start with is to talk about the injunctive relief
23 that's been requested in this lawsuit and whether or not
24 injunctive relief is warranted given that the parties find
25 themselves in the unusual position of agreeing that CNS comes to

1 court today having received everything that it's asking for in
2 terms of access to these newly filed civil complaints.

3 There's a couple of ways that we can look at the idea
4 of whether or not injunctive relief is warranted under those
5 circumstances. One that has come up a couple of times and Your
6 Honor has suggested that you're not receptive to at this point
7 based on the evidence is the idea of mootness. And the fact
8 that the alleged unconstitutional conduct that gave rise to the
9 litigation has completely abated and that there's no basis in
10 law for the Court exercising Article III subject matter
11 jurisdiction over this case anymore.

12 THE COURT: Well, I don't think that the fact that the
13 Court has heard that evidence, it doesn't seem contradicted --

14 MR. MATHESON: Well --

15 THE COURT: -- is the reason for the Court not to
16 exercise jurisdiction.

17 MR. MATHESON: Well --

18 THE COURT: Whether or not the Court will grant an
19 injunction is another matter. I've made clear the Court's
20 reluctance to enjoin a public official just as a matter of
21 principle, but that doesn't mean that there aren't circumstances
22 where the Court would do it. But as far as the case being moot
23 because there's no present ongoing constitutional violation does
24 not make the case moot in the view of the Court.

25 MR. MATHESON: Understand, Your Honor. And you know,

1 the elements of an injunctive include a strict element that
2 there be an ongoing violation of law, and that's not the same
3 thing as mootness. That's an element of injunctive relief. In
4 other words, the nature of injunctive relief is prospective, and
5 if there's not a prospective injury at the time that the case
6 is --

7 THE COURT: Well, this is not only an action for
8 injunctive relief, it's an action for declaratory judgment.

9 MR. MATHESON: Yes, Your Honor.

10 THE COURT: And what you're talking about is
11 injunctive relief only.

12 MR. MATHESON: What I'm talking about right now is
13 injunctive relief only. And Your Honor, if I may save my
14 comments on declaratory relief, because I want to talk about
15 that, but I want to make one other point on the injunction
16 issue. Well, really, it's not just about the injunction, it's
17 about both the injunction and the declaratory relief. And that
18 has to do with the balance of equities in this case.

19 And you know, there's been -- Mr. Prince did a good
20 job of walking through the relevant timeline about the relations
21 between those parties giving rise to the litigation. And I want
22 to be clear for the Court where we're coming from with that,
23 because I think it's really important. And it's important to my
24 clients that the Court hears the experience from their
25 perspective on this issue. And you know, we have testimony from

1 Mr. Abbott that he speaks with Sonya Turner in September of
2 2017. And I know there's been a lot of back-and-forth about
3 well, you know, whether she's a supervisory official, whether
4 that conversation actually happened. But regardless, the
5 testimony is that he talked to her in September of 2017. And we
6 have all these contemporaneous emails, some dating before CNS
7 ever engaging in daily tracking of the Norfolk jurisdiction,
8 ever having undertaken any action where they could possibly know
9 there's an issue.

10 THE COURT: That's not going to get you anywhere,
11 Counsel.

12 MR. MATHESON: Well, this is why --

13 THE COURT: Don't talk over me.

14 MR. MATHESON: I apologize, Your Honor.

15 THE COURT: The evidence at this point in the case is
16 that the access was bad, and what they did was they thought the
17 access was bad enough that they were contemplating filing suit.
18 Before they --

19 MR. MATHESON: Excuse me.

20 THE COURT: Before they filed suit, they ran a check
21 with their statistician that confirmed what they thought about
22 the case being bad in Norfolk and Prince William, so at that
23 point they filed a suit. It seems to me that the fact that they
24 did it in that order does not suggest any wrongdoing on their
25 part or any -- I don't know what your definition of what they

1 shouldn't have done is, but it seems to me that all they were
2 doing was confirming what they believed to be the case and
3 preparing themselves to go to court by doing this investigation.
4 I don't think that that justifies any motion at this time. So
5 if you've got another point, I'll be glad to hear it.

6 MR. MATHESON: Your Honor, with respect to the
7 declaratory relief that's being requested in this case, and
8 we've cited some case law in our proposed findings of fact and
9 conclusions of law, including this Court's recent decision in
10 the Bergano v. City of Virginia Beach case where Your Honor held
11 that declaratory relief, like injunctive relief, also has to be
12 prospective. In fact, the actual legal term of art that's used
13 under the elements for declaratory relief under the Declaratory
14 Judgments Act is that there has to be some kind of substantial
15 immediacy. And there's a case out of the Eleventh Circuit --

16 THE COURT: I think the declaratory relief will be
17 prospective if the Court grants relief and doesn't grant an
18 injunction. The relief it would grant was that as long as the
19 clerk's office are performing at whatever level is required by
20 the First Amendment, then there's no need for injunctive relief
21 and the Court can give declaratory relief and simply retain
22 jurisdiction of the case for purposes of imposing an injunction
23 in the future if, as the plaintiff argues, based on their
24 experience, which is in conformity with human nature, the
25 performance falls back to an unacceptable level.

1 MR. MATHESON: Well, Your Honor --

2 THE COURT: So it will be prospective relief.

3 MR. MATHESON: Well, my reading of the case law, Your
4 Honor, is that it has to be prospective in the sense that there
5 has to be some kind of ongoing violation of law. In other
6 words, the Declaratory Judgment Act isn't there to provide a
7 remedy for a litigant to come to court and say I don't have a
8 justiciable controversy or an ongoing violation of law right
9 now, but what I need from this court is an advisory opinion that
10 if they engage in this behavior in the future, then that is
11 going to violate our Constitutional rights. The substantial
12 immediacy element requires that the plaintiff show that there is
13 some threatened or contemplated --

14 THE COURT: Well, I think it is obviously threatened
15 based on the defendant's own evidence. The defendant's
16 evidence, as I've said -- or the whole case seems to be based on
17 the fact that we're not doing as well as they say we are. So
18 what you're saying is that you're not performing in a
19 Constitutional manner. That's your case. So you're saying
20 you're not, and they're saying you are.

21 MR. MATHESON: Well, I don't --

22 THE COURT: And I think the truth of the matter is
23 that it's somewhere in between. I think they've got every
24 reason to believe that Constitutional violations will continue.
25 And I think both clerks' offices could do better than what

1 they're doing. I think they have both shown that they could.
2 Without all of these things about extra staff and preferential
3 treatment and so forth. They accomplished all this without any
4 of those things. All they did was work a little harder.

5 MR. MATHESON: Well...

6 THE COURT: And that's what they're going to have to
7 do, is live up to their capability.

8 MR. MATHESON: Your Honor, there's a doctrine of law
9 known as the presumption of official regularity that presumes
10 that public officials will discharge their official duties --

11 THE COURT: They have proven a *prima facie* case that
12 they have not discharged their duties in a Constitutional
13 manner. There's a *prima facie* case of that. And if you want
14 to -- and as I say, they're saying that the work has improved.
15 That doesn't mean that it's reached a level required by the
16 Constitution.

17 As I say, the Court is reluctant as a matter of
18 principle to enjoin an elected official. But they have shown a
19 *prima facie* case that their Constitutional rights have been
20 violated. And you don't seem to agree that you're capable of
21 doing what the evidence thus far shows you're capable of doing.

22 Now, I'm not going to grant you summary judgment on
23 that theory. Have you got another theory?

24 MR. MATHESON: Yes, Your Honor. I want to talk about
25 the legal standard that governs this case. And I know that this

1 has already been briefed extensively in the summary judgment
2 papers, and so that I don't belabor the point, and I do want to
3 talk about it, but so that I don't go into excruciating detail,
4 I do want to renew the arguments that we've made in our summary
5 judgment motion for purposes of this motion.

6 THE COURT: Well, for purposes of your motion you can
7 assume that the Court finds that there's a *prima facie* case of a
8 Constitutional violation. As I said to you before we started.
9 It seemed to the Court that there was. That this is a First
10 Amendment case.

11 MR. MATHESON: I understand the Court's ruling on that
12 point. Would you indulge me to try and change your mind --

13 THE COURT: No.

14 MR. MATHESON: -- and allow me to make a record on the
15 issue?

16 THE COURT: You've made your record on the issue.

17 Now, I say there's a *prima facie* case of a
18 Constitutional violation. I didn't say that I was going to find
19 one. I said there was a *prima facie* case, which means I'm not
20 going to grant your motion.

21 MR. MATHESON: Yes, Your Honor.

22 THE COURT: If you can overcome the evidence that the
23 Court believes has established that *prima facie* case, then I'll
24 hear the evidence. But I'm not going to hear argument that they
25 haven't established the *prima facie* case of a Constitutional

1 violation. That's what I found on summary judgment, and the
2 evidence at this stage of the proceeding confirms what the Court
3 found on summary judgment. So you're at the same place you were
4 when you were moving for summary judgment on that issue. So
5 you're not going to get it.

6 MR. MATHESON: Yes we are, Your Honor. Okay.

7 THE COURT: What?

8 MR. MATHESON: I understand the Court's ruling.

9 THE COURT: Okay.

10 MR. MATHESON: Thank you, Your Honor.

11 THE COURT: Are you ready with our evidence?

12 MR. PRINCE: Good afternoon, Your Honor.

13 THE COURT: Good afternoon.

14 MR. PRINCE: We would like to call Mr. George Schaefer
15 of the Norfolk Circuit Court.

16 THE COURT: All right.

17 GEORGE E. SCHAEFER, having been duly sworn, was
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. PRINCE:

21 Q. Good afternoon, Mr. Schaefer. Would you please state your
22 name and your position?

23 A. My name is George E. Schaefer, and I am the clerk of
24 Norfolk Circuit Court.

25 Q. How long have you been the clerk?

1 A. 16 years.

2 Q. And you were just reelected a couple months ago; is that
3 correct?

4 A. Yes. Voters of Norfolk returned me to office.

5 Q. What are the responsibilities of the clerk of the Circuit
6 Court?

7 A. The clerk is the administrator for the circuit court,
8 handling the daily dockets and all the cases that come through
9 the court in both civil and criminal matters. We also do land
10 records. All the deeds that are recorded inside the City of
11 Norfolk come through our office. I also run the jury system in
12 the City of Norfolk. Not every clerk does, but I do the jury
13 system as well. Then there are all the other ancillary kind of
14 things that the court does, the clerk's office does: Marriage
15 licenses, concealed weapon permits, fictitious names, all those
16 other kind of ancillary things that happen in the clerk's
17 office.

18 Q. Do you know how many employees that you have?

19 A. I have 34, including myself.

20 Q. And your office is organized into different sections and
21 divisions, correct?

22 A. Yes. We are broken down into three divisions. The
23 Criminal Division, so named, the Civil Division, which also
24 handles probate and deeds, and then I have a catch-all division
25 called Licenses, Permits, Finance and Jury, which does exactly

1 the name implies. It handles things like marriage licenses,
2 concealed weapon permits, the financial work that comes through
3 the court, the moneys that we take in, and of course the jury
4 system.

5 THE COURT: Excuse me. I'm trying to get all this
6 down. Now it's the Civil Division also handles probate and I
7 think you said something else?

8 THE WITNESS: Also land records and deeds.

9 THE COURT: And the third division?

10 THE WITNESS: It's called Licenses, Permits, Finance
11 and Jury.

12 THE COURT: Licenses, permits --

13 THE WITNESS: Finance and jury.

14 THE COURT: -- finance and jury. Okay.

15 THE WITNESS: Right.

16 THE COURT: I've got it.

17 BY MR. PRINCE:

18 Q. You mentioned the civil division. What are the
19 responsibilities of the civil division?

20 A. Well, outside, one, they have -- we have a probate clerk
21 who handles those matters when people pass away. We also have
22 the deed division, which of course runs the land records and
23 deeds that come through the office. And then there's the civil
24 division that handles the administration and docketing and
25 intake and processing of civil cases that come before the court.

1 Q. Does the civil division handle newly filed civil complaints
2 when they come into the office?

3 A. Yes.

4 Q. How many people work in the civil division?

5 A. I have 10. Two supervisors, a main supervisor, an
6 administrative supervisor, an assistant supervisor, and then
7 eight deputy clerks.

8 Q. Who is the supervisor of the civil division?

9 A. Her name is Crystal Porter.

10 THE COURT: All right. The 10, two assistant
11 supervisors and eight you call them deputy clerks?

12 THE WITNESS: Yeah. There are eight deputy clerks, an
13 assistant supervisor, and then a supervisor for a total of 10.

14 THE COURT: Okay.

15 BY MR. PRINCE:

16 Q. I was going ask you, what is the job title for the people
17 that work in the civil division?

18 A. The job title? They're Deputy Clerk 1, Deputy Clerk 2s or
19 Deputy Clerk 3s. There are actually three different levels.

20 THE COURT: A 4 would be a supervisor or an assistant
21 supervisor?

22 THE WITNESS: We don't really have a designation as a
23 Deputy Clerk 4, but yes, it would be assistant supervisor.

24 BY MR. PRINCE:

25 Q. Where do the deputy clerks in the civil division work?

1 A. I'm sorry?

2 Q. Let's try it -- can you --

3 A. You mean location-wise?

4 Q. Yes. Can you describe for the Court of the layout of your
5 office generally?

6 A. Right. We are on the seventh floor of the new courthouse.
7 Behind the cashier station is the counter, is basically the area
8 where all the clerks work. As you look at it, it's divided into
9 the three sections, divided into three sections, and the civil
10 team is on, looking at the front counter, as if the front
11 counter is in that direction, we're behind it, the civil
12 division clerk would be on the right -- I'm sorry, on the
13 left-hand side.

14 THE COURT: How many of those employees would be
15 visible to someone who enters your office?

16 THE WITNESS: None. They're all shielded by, there's
17 a counter and there's a wall behind the counter. And then
18 there's just like an opening on the left, an opening on the
19 right. So directly behind the front counter is a wall. To the
20 left or right there's an opening, but they wouldn't see those
21 necessarily from the counter.

22 THE COURT: Well, how does somebody know to go to the
23 counter to deal with somebody who wants to file something?

24 THE WITNESS: Well, there's cashiers who take it in,
25 but also there is a, there is a designated area on the extreme

1 right and extreme left of the counter where there is a civil
2 division deputy clerk there on duty each day.

3 THE COURT: So they would be visible when?

4 THE WITNESS: To them. Not everybody behind, but
5 there's somebody up front, but they can't see behind.

6 THE COURT: But there are only two people out front?

7 THE WITNESS: Right now, yes. There's a cashier --
8 well, there's actually three. There's a security guard, a
9 cashier, sometimes two cashiers depending upon the volume, and
10 then there's a civil division on-duty clerk there. And they
11 rotate, usually doing it once every two weeks.

12 THE COURT: Okay.

13 BY MR. PRINCE:

14 Q. Do your deputy clerks receive training?

15 A. Yes, absolutely.

16 Q. What sort of training do they receive?

17 A. Well, each clerk, when they come in, is assigned a mentor.

18 Usually the administrative assistant, the assistant supervisor

19 helps them, and then they are given their duties and they're

20 assigned to a mentor clerk who helps them go through learning

21 the process. There are also manuals they have to read and go

22 through. There's also classes that are offered by the Office of

23 the Executive Secretary around the Commonwealth that we will

24 often send them to if they're timely.

25 Q. And the Executive Secretary is OES?

1 A. Yes, OES.

2 Q. Do your clerks ever rotate between different sections or
3 different divisions, say, from civil to criminal or vice versa?

4 A. Well, at any time depending on volume, it may be. Most of
5 the time they're assigned to one particular division, but if --
6 for example, I had a clerk that at one point worked in civil,
7 and we needed, and needed help in civil, but know she's in
8 criminal, I might move her back if it was necessary. But most
9 of the time they stay in their divisions.

10 Q. You have a chief deputy clerk?

11 A. I do. That's Tom Larson.

12 Q. That's Tom Larson?

13 THE COURT: He's one of the 34?

14 THE WITNESS: Yes. Tom would be one of the 34.

15 BY MR. PRINCE:

16 Q. And then you have the, you mentioned civil division
17 supervisor is under him; is that correct?

18 A. Correct. It's laid out, there's myself, Tom Larson, then
19 there are three supervisors, one for each team, and then there's
20 an assistant supervisor for each team.

21 Q. And the civil division supervisor is Crystal Porter?

22 A. Yes. She is the supervisor.

23 Q. How is your office funded?

24 A. Two sources of funding. One through the state, through the
25 Compensation Board, and then secondly through the City of

1 Norfolk.

2 Q. Does your office have a budget?

3 A. Yes. Yes, of course.

4 Q. What challenges to you face in terms of your budget?

5 A. Well, like any budget, it can get cut. We've been lucky in
6 the last few years, the State's been a little bit better. But
7 the city literally every year comes to ask me to cut seven to
8 12 percent.

9 Q. Has your budget gone up or down in the past couple years?

10 A. It's gone up slightly, mainly through raises. The vast
11 majority of our budget is personnel. So when the State, if the
12 State gives a raise -- and although we are not -- because we
13 are -- it's kind of confusing, but because we are under the city
14 pay plan we don't get State raises, we get raises through the
15 city. The city's been giving us two percent raises the last few
16 years, and that has, of course, increased our budget.

17 THE COURT: If the city gives you a two-percent raise,
18 does that raise affect the whole salary or just the portion of
19 it that the city pays?

20 THE WITNESS: The whole salary. The whole salary.
21 That's the deal. All the constitutional officers in Norfolk or
22 under the city pay plan. So we get our funding from -- that
23 helps, because for example when I started, when I started as
24 clerk, we were not under the city pay plan, and the starting
25 salary for a Deputy Clerk 1 was \$19,000. And so we went on to

1 the city pay plan, and they're able to supplement us slightly to
2 make these salaries a little bit better, give us a better chance
3 to recruit people.

4 BY MR. PRINCE:

5 Q. Do the salaries for your staff come from your budget?

6 A. Of course, yes.

7 Q. Do you need approval to hire additional staff?

8 A. I have a set number that the Compensation Board allows me.
9 How they do it, they have a, what they call a percentage of
10 need. They look at your overall caseload and workload and they
11 rank all of the clerks based on that level. And you may
12 actually qualify for more staff if and when funding ever becomes
13 available. I myself, I can't just go out and hire more people.

14 Q. Do you face challenges in terms of staffing your office?

15 A. The biggest change -- yes. When I ran for reelection this
16 past year I said the biggest problem facing all the clerks is
17 recruitment and retention. Our salaries are not as good as I
18 think we would like them to be. I say sometimes you can make
19 more money walking the floor at Dillard's than you can as a
20 deputy clerk in Norfolk. But there are challenges trying to
21 recruit people and retain them.

22 Q. So I want to ask some questions about your office, how you
23 operate it and your policies.

24 So as the elected clerk, what are your primary
25 responsibilities?

1 A. My elected --

2 Q. Yeah.

3 A. My primary responsibilities are, one, I have to serve the
4 judges I work for. I work with. There are eight judges in
5 Norfolk one floor above me, and I need to make sure they're
6 taken care of.

7 Then of course I have to work for the public. The 246,000
8 citizens of Norfolk. I have to make sure I have an office open
9 and responsive to their needs in all the divisions that I just
10 mentioned.

11 Q. Who is the policy maker for your office?

12 A. That would be me.

13 Q. Do you have a policy for making newly filed complaints
14 available to the public?

15 A. Well, yes. There would, they would be on, they would be on
16 the public access terminals. If there was a need for one before
17 that, they would come to the counter and make a request. And
18 then if it hasn't been put in the public access terminal, we'll
19 try to retrieve it from wherever it is in the back to make it
20 available.

21 Q. Is there a -- do you have a policy in terms of timing and
22 making newly filed civil complaints available in a particular
23 amount of time?

24 A. Well, our policy, our policy is to get all the cases into
25 the system and available to the public within one day. Our goal

1 always is to try to get the cases into the system before the end
2 of the business day. Things stack up terribly, and so we try
3 very hard to get them in before we leave that day. But
4 sometimes that's impossible. And so we always, our policy is to
5 get them in by the next day.

6 Q. Has this always been your policy?

7 A. Yes.

8 Q. And you're the decision-maker when it comes to policy?

9 A. Yes.

10 Q. Are there circumstances that may affect your office's
11 ability to make new filings publicly available the day they're
12 received?

13 A. Well, they are -- there are all the things that happen:
14 Inclement weather, that happens. Snow storms happen. I cannot
15 close my office on my own accord, the judges make that
16 determination. The judges of the Circuit Court will make the
17 determination whether we can close. So if a judge orders the
18 court closed, it's closed. And they have done that when there's
19 inclement weather, when there's hurricanes approaching.

20 We are susceptible to bomb threats. They're called in more
21 than I would like to say happens, at which point we have to
22 immediately vacate, go down seven flights of stairs, outside,
23 and we stand across the street on St. Paul's Boulevard and wait
24 until they bring all the drug dogs through or bomb dogs through
25 to go through and check the courthouse. It's almost invariably

1 two hours almost every time. That happens more than I'd like.
2 Usually it's when some particular criminal defendant is on the
3 docket.

4 And of course there's other things that might impact it.
5 My own staffing. Like I think actually Mr. Abbott referenced
6 it, I've had a Family Medical Leave -- I have one of my, one of
7 my eight deputy clerks in the civil division has been out since
8 September on Family Medical Leave. When those happen I'm sort
9 of hamstrung. I can't hire anybody. We have just to endure it
10 and keep going.

11 Q. How does your office handle complaints that come in at the
12 end of the day?

13 A. Well, complaints that come in at the end of day, we'll
14 start to try to get them in the system. Our goal always is to
15 try to get them in the system then and there. It depends.
16 Sometimes it's heavy volume and we can't do it. We just can't
17 get them done. But that's our effort. That's always our goal,
18 is to get them in.

19 Q. How does your office make new complaints available to the
20 public?

21 A. Well, the new complaints would end up on the public access
22 terminals.

23 Q. What can the public, members -- what can the the general
24 public see on the public access terminal screen?

25 A. They can see the case file. They will be able to see the

1 images. One, they'll have sort of the index, but then they will
2 also have the indexes of what's been scanned in the system.

3 Q. So they can see the image, for example, of an actual
4 complaint?

5 A. Yes. A Bill of Complaint.

6 THE COURT: They can flip through the complaint?

7 THE WITNESS: The pages will be on a screen for them
8 to go through.

9 THE COURT: All right. That's after they have been
10 checked for confidential material?

11 THE WITNESS: Yes. And then we would be index them at
12 the same time. It's like building a table of contents: You
13 want to scan in each chapter, and you go along.

14 THE COURT: Okay.

15 BY MR. PRINCE:

16 Q. Can anyone including the media access the public access
17 terminals?

18 A. Yes. They are available as you walk in off the seventh
19 floor, you turn into my office, and you walk into a sort of,
20 what's a rotunda area, which is an open area, and in there are
21 the public access terminals. Also the terminals for the land
22 record division. And then there's a, you'll immediately see a
23 deputy clerk there at what we call the copy center. So if
24 someone needs a copy of a particular document or file, someone
25 is there to assist them.

1 Q. What are your business hours? What are the business hours
2 of your office?

3 A. 8:45 to 4:45.

4 Q. Are the terminals available during your business hours?

5 A. Yes.

6 Q. Do you turn them off at 4:45?

7 A. I don't know if they actually go off. We lock the doors.

8 THE COURT: Are you under the Wage and Hour Act? Do
9 you have to give your employees overtime if they work more
10 than --

11 THE WITNESS: Yes. I have enough employees, and I'm
12 part of the city, so I do have to do that. And my employees
13 actually -- we, we punch in and out. They actually have to log
14 in and out. And the city has implemented that so if they go --
15 I mean, we have to leave at 5:00, because they actually have to
16 sign -- log-out. And then that goes to human resources and
17 payroll that then takes care of those things.

18 THE COURT: All right. So you open at 8:45 and close
19 at 5:00?

20 THE WITNESS: Well, I -- actually the employees arrive
21 at 8:00, and I give them 45 minutes to get their, get ready to
22 go and get set for the business day. Doors open at 8:45. We
23 close the doors as 4:45, and then they have 15 minutes to gather
24 up and close everything out, and then we leave at 5:00. So the
25 employees actually work from 8:00 until 5:00, the office is open

1 from 8:45 to 4:45.

2 THE COURT: And those hours comply with your
3 obligations under the --

4 THE WITNESS: Yes. They get one hour for lunch and
5 then they have a 40-hour work week. They can't go over that.

6 THE COURT: And you're not allowed to pay overtime?

7 THE WITNESS: I don't have a budget for it.

8 THE COURT: So you've got to let them go on time?

9 THE WITNESS: Yes. The only caveat to that is the
10 in-court clerks, the clerks who come into court like this, there
11 are times when the cases go beyond 5:00, obviously. A lot of
12 times the judges are trying to finish, especially if they have a
13 jury trial. And so what happens is if they go over that, then I
14 have to give them compensation time. I can -- if the clerk goes
15 over to, let's say, 5:30, then I owe that clerk time and a half
16 somewhere else.

17 THE COURT: You're allowed to give them compensation
18 time?

19 THE WITNESS: Correct.

20 THE COURT: Well, do the civil court clerks also, do a
21 number of them have to sit in the courtroom during trials or --

22 THE WITNESS: No, we don't put clerks in the civil
23 courtrooms, it's only for the criminal cases.

24 THE COURT: Only in criminal cases?

25 THE WITNESS: Right. We do not staff the civil

1 courts. The judges do that with their law clerks and with the
2 bailiffs.

3 THE COURT: Okay.

4 BY MR. PRINCE:

5 Q. Are there other ways the media can access new civil
6 complaints in your office?

7 A. I have always let the media back behind the counter to come
8 and interact with the clerks and find out what's been filed and
9 view anything that they want to look at.

10 Q. How do you know they're media?

11 A. Usually they tell us. A number of them I know. I know
12 over the years. But they would usually come in and let us know.

13 Q. Do any of the local media entities take you up on your
14 policy?

15 A. Yes. The television stations, 3, 10 and 13 come in
16 routinely all the time. They walk through. And in fact all the
17 regular media all have copy codes, so they're able to go to our
18 copiers in the back and punch in a code and then they can make
19 copies of whatever they need to, and then we just bill them at
20 the end of the month. So the TV stations do that as well as the
21 Virginian-Pilot. The Virginian-Pilot comes in literally every
22 day. The news reporter now is a young guy by the name of
23 Jonathan Edwards. He comes in and he has a desk right outside
24 my office with a terminal so that he can access back and check
25 his emails and stuff with the Pilot back over there. On

1 Brambleton.

2 BY MR. PRINCE:

3 Q. Where do the media reporters sit when they come behind that
4 counter?

5 A. Well, they're allowed -- Jonathan will come back and he
6 actually -- there's a terminal there where they can look up the
7 cases themselves if they want to see. It's like they have their
8 own public access terminal behind, right next to my office. But
9 if they find something that's not -- if they're looking for
10 something that's not on the public access terminal, then they'll
11 usually go and ask the clerks or the supervisors or any of the
12 clerks where the cases are and they can then retrieve them from
13 their desks, wherever they are. And if they need to make
14 copies, then we let them go to the copier and it's self-serve,
15 they can make their own copies.

16 Q. I believe you just testified that they can print off
17 documents?

18 A. Yes.

19 Q. And do they have their own copy codes?

20 A. Yes. We bill them at the end of the month and fortunately
21 they have all paid.

22 Q. Can the media see new civil filings before they are scanned
23 into the system?

24 A. Yes.

25 Q. So they can see the actual paper?

1 A. Yes.

2 Q. And how long has this been your policy?

3 A. I've done it ever since I've been clerk. And I really sort
4 of took that up from -- I worked for the -- my predecessor, Al
5 Teich in the late 1990s, and Mr. Teich would always allow the
6 media back. My understanding that might go back to Mr. Ryan as
7 well. I do not know about Mr. Stovall. He was the one before
8 Mr. Ryan. I'm not sure he did. But this dates back probably to
9 Mr. Ryan. Certainly Mr. Teich. And then I just followed up on
10 it.

11 Q. After this lawsuit was filed did you meet with anyone from
12 CNS at your office?

13 A. Yes. I met with Mr. Abbott. And also with their reporter,
14 Jocelyn.

15 Q. Was anyone else present for the meeting?

16 A. Tom Larson. And then we also eventually incorporated
17 Crystal Porter into that.

18 Q. And what was the purpose of the meeting?

19 A. Well, I wanted to meet him. Obviously they had filed a
20 lawsuit against me, and they wanted access to civil filings, and
21 I wanted to make sure that we could get them the filings that
22 they needed that they were saying they weren't able to get.

23 Q. Did you know who CNS was before this lawsuit was filed?

24 A. No. Actually I had never -- I had never heard of them. I
25 had to Google them. I didn't know who they were.

1 Q. Were the reporters from CNS and Mr. Abbott able to see --

2 THE COURT: For some reason I can't hear you.

3 MR. PRINCE: I think my microphone may have shut off.

4 THE COURT: Is that microphone -- it's like that
5 microphone went off or something.

6 MR. PRINCE: We're back. Do I need to repeat
7 anything?

8 THE COURT: No, that's all right. I can understand.

9 MR. PRINCE: I could tell it too. It kind of...

10 THE COURT: Well, sometimes I inadvertently turn mine
11 off too.

12 MR. PRINCE: Maybe it's a good thing. You may not
13 want to hear what I have to say.

14 Kidding.

15 BY MR. PRINCE:

16 Q. Did you introduce the CNS people to the deputy clerks in
17 your office?

18 A. Yeah. I wanted them to know who they could go to. They
19 need to know who they can go to get the information they need.
20 You know, there's 24 people back behind the counter, and so not
21 everybody is someone -- they wouldn't know all of them unless we
22 sort of introduced them.

23 Q. Is the CNS reporter for Norfolk, Ms. Rardin, is she coming
24 behind the counter now?

25 A. Oh, yeah. Every day. Every day. She comes in around

1 4:40 just before we close.

2 Q. To your knowledge, has she seen complaints before they're
3 scanned?

4 A. Yes. You know, we don't, we don't have that many that come
5 in at the very last minute, but -- so most of the time they're
6 in the, they're already in the public access terminals. But
7 she's always coming back to just double check to make sure.

8 Q. What time does she get to the clerk's office?

9 A. I don't know when she comes in to the public access
10 terminals. It's probably closer to 4:30. She gets to us about
11 4:40 or so.

12 Q. And you close at 4:45; is that correct?

13 A. Correct.

14 THE COURT: You mean she starts checking behind the
15 counter at 4:40?

16 THE WITNESS: Yes.

17 THE WITNESS: Yes. She's usually done all preliminary
18 work at the public access terminal, and then she comes back if
19 there is anything she hasn't seen or she's just double checking
20 to make sure something hasn't gotten in yet.

21 BY MR. PRINCE:

22 Q. To your knowledge have there been any complaints from Ms.
23 Rardin since the immediate meeting that occurred in September,
24 2018?

25 A. Not that I know of. I mean, if she had some, she's

1 probably directed those towards Crystal and hopefully since it
2 hasn't made my level, they have been rectified.

3 Q. You've heard the testimony in this case about a
4 conversation that allegedly took place between Mr. Abbott and an
5 individual that was working behind the counter at the time,
6 Sonya Turner?

7 A. Yes.

8 Q. Who is Sonya Turner?

9 A. Sonya Turner is one of my deputy clerks.

10 Q. And what is her specific role in your office?

11 A. Now she's been promoted. She is an in-court criminal
12 division clerk. At the time that they're talking about she was
13 a clerk in my civil division.

14 Q. Was she a supervisor then?

15 A. No. The way my office is structured is we have Deputy
16 Clerk 1s -- and this is in levels of responsibilities and also
17 in levels of pay, so -- entry-level position is Deputy Clerk 1.
18 The next level up is Deputy Clerk 2s and cashiers. Then there's
19 Deputy Clerk 3s, in-court clerks, assistant supervisors,
20 supervisors. So she was a Deputy Clerk 2 at that time in the
21 civil division.

22 Q. Does she make policy for your office?

23 A. No.

24 Q. Did she ever make policy for your office?

25 A. No.

1 Q. What is your reaction to the allegation that she told Ryan
2 Abbott that he couldn't see new complaints until after
3 processing and scanning?

4 A. I don't know about the conversation, but as I said in my
5 deposition, she got it wrong. It's not the policy, but that's
6 what she -- they indicate that that's what she told them.

7 Q. I want to talk about confidentiality a little bit. Does
8 your office conduct an initial review of new civil filings?

9 A. Yes, we do.

10 Q. And what does the initial review entail?

11 A. Well, we're really looking for -- and the same things,
12 you've heard it from a number of different sources -- we're
13 looking to see if it's in the proper jurisdiction. Believe it
14 or not, things often get filed in our court that belong in the
15 lower court, General District Court, or in another court in the
16 area. We're looking to see if there's the right monetary, you
17 know, amount in there; that the check is correct. And then
18 we're looking to see if there's anything that needs to be kept
19 confidential, like a confidential addendum in a divorce case.

20 Q. What types of confidential information are they checking
21 for?

22 A. Well, they're actually outlined in the Code. Things like
23 dates of birth, Social Security numbers, financial numbers,
24 names of minor children. That kind of stuff.

25 Q. Do they also check for sealing requests and motions to

1 seal?

2 A. Oh, of course. Somebody could submit that. Then if they
3 make a request for that, of course, we have to take that up to
4 the, we take that up to the duty judge to make a determination.

5 Q. And they also -- is there a confidential addendum that can
6 be filed with a new civil complaint?

7 A. Yeah. That usually will come in divorce cases.

8 Q. I'm going to show you what's been marked as -- and it's a
9 little bit unusual -- Plaintiff's Exhibit No. 74. It's their
10 exhibit, not mine.

11 THE COURT: Is it in one of those books?

12 MR. PRINCE: It is this one of those books, but I also
13 brought you a copy if that's okay.

14 And actually, I think I may have a binder for
15 Mr. Schaefer as well that would be helpful.

16 BY MR. PRINCE:

17 Q. So Mr. Schaefer, I've handed you what's been marked as
18 Plaintiff's Exhibit 74. Do you recognize this document?

19 A. Yes, I do.

20 Q. What is this?

21 A. It's the Circuit Court Form 1426 which is, this is the
22 request for confidentiality.

23 Q. Is this one of the things you're looking for when you do
24 your initial review?

25 A. Hmm-hmm, yes.

1 Q. And this is -- and what would a filing party use this form
2 to do?

3 A. They would use this to take out -- well, to put in the
4 information that's not in their pleadings; to get it into the
5 record but not have it viewable in the public, in the public
6 domain where the rest of the complaint is.

7 Q. Is it ever -- does it ever occur -- is there ever an
8 occurrence where a filing party may neglect to use this form?

9 A. Yes. We have an extraordinary number of *pro se* litigants
10 who do divorces. We are a military town where a lot of people
11 get married, and we're a military town where a lot of people get
12 divorced, and the *pro se* litigants are not always as adept at
13 things as we would like. So these kind come into play then.

14 Q. How does dealing with confidential information and *pro se*
15 litigants, how does that affect your processing and handling of
16 new civil filings?

17 A. Well, obviously it slows it down a little bit. You have
18 to -- you have to make sure you're complying with the law. And
19 you're dealing with, so often, people who are not lawyers and
20 they don't understand the process, and it demands a certain
21 amount of explaining to get it done.

22 Q. Do you believe it's your job to ensure that confidential
23 information like personal identifying information, Social
24 Security numbers, dates of birth, doesn't get out in the public
25 domain?

1 A. Yes. We are the gatekeepers. We have to, we have to take
2 care of that.

3 Q. What would the consequences be if you didn't at least check
4 for confidential information in new civil filings?

5 A. Well, we would be in violation of the law.

6 Q. I want to talk about indexing. What does the term indexing
7 mean?

8 A. Well, like I tried to explain just briefly, it's almost
9 like creating a table of contents, and each particular court
10 filing goes in that particular, in that particular table. And
11 so when I index things, it's indexing, okay, the complaint is
12 here, and then the image is next to it, and so we've created an
13 index, like a table of contents for each case from beginning to
14 end. From beginning of the complaint all the way down to the
15 final order.

16 THE COURT: And you put every pleading that's filed in
17 a particular case in that index?

18 THE WITNESS: Yes. They are all separated -- unlike
19 the days when we had one paper filing and everything was in
20 there, we actually create -- it's really necessary for
21 retrieval. It's much easier to go right to the court order and
22 to look it up.

23 BY MR. PRINCE:

24 Q. Why is indexing important?

25 A. As I said, it's important for cataloging and for retrieval

1 when we need to find things in the electronic world. In the
2 paper world you could thumb through a paper file and make it --
3 maybe it's a little bit easier in some respects because the
4 order is usually at the bottom. But in this case it's much
5 easier on the screen to know exactly where you're going and to
6 go right to that particular item.

7 Q. Do you index before or after scanning?

8 A. We index before, and then we scan the image into that
9 particular line in the index.

10 Q. Why do you do it in that sequence?

11 THE COURT: We're talking about -- we're not talking
12 about newly filed complaints now, we're talking about pleadings
13 or such that are filed in existing complaints?

14 MR. PRINCE: No, Your Honor. I think what we're
15 talking about newly filed civil complaints, but this is also how
16 civil filings after the complaint are handled. Does that make
17 sense?

18 THE COURT: Yes.

19 MR. PRINCE: So the process is the same whether it's a
20 newly filed complaint or a motion or, you know, motion for
21 summary judgment or...

22 THE COURT: I just don't understand understand. If
23 it's a newly filed complaint, what would show up on the index?

24 THE WITNESS: Well maybe just the complaint.

25 THE COURT: You just have to create --

1 THE WITNESS: We create it as we go along.

2 THE COURT: All right.

3 BY MR. PRINCE:

4 Q. Is there ever a circumstance where other documents will
5 accompany a new complaint?

6 A. Yeah. There may be other things that come along with it.
7 There may be exhibits or other forms that come in that have to
8 go along with it.

9 Q. Are there over motions filed with complaints?

10 A. Yes, there are motions filed with it. Like in any case,
11 there can be motions filed at the same time.

12 Q. Do new civil complaints require a cover sheet?

13 A. Yes. We have a cover sheet which helps us mainly to help
14 us try to determine what the filing fees are. There's a lot of
15 different styles of cases that can come in, and so we have a
16 cover sheet that the filer is supposed to check off exactly what
17 they have presented to us.

18 Q. And can there be -- is there ever a case where a filing
19 party or attorney will include a cover letter with a new
20 complaint?

21 A. They'll often do that as well. That's not the case with
22 the *pro ses*, but the lawyers will put a cover letter.

23 Q. If you change the sequence of indexing and processing and
24 reversed it and did scanning first and then -- did the scanning
25 first, then indexing, how would that affect your ability to

1 process new complaints?

2 A. Well, you can scan -- I guess could you scan everything in
3 all at one, at one time, but then you have to go in later on and
4 break it up. It would be like getting the book with all the
5 Pages 1 through 300 then having to come in and make each
6 chapter. It's just harder to do, and it takes time.

7 Q. It would take more time?

8 A. Yes. Oh, absolutely nit would take more time.

9 Q. I want to take you back in time to January, 2018. That's
10 the beginning of the six-month time period relevant to this
11 lawsuit.

12 A. Yes.

13 Q. Was it your policy to make newly filed complaints available
14 the day they were received for filing at that time?

15 A. Yes.

16 Q. To the best of your knowledge, was your office providing
17 access consistent with this policy?

18 A. In the beginning of January, 2018?

19 Q. Yes.

20 A. No. We were not able to. We were closed for almost five
21 straight days. For snow.

22 Q. I'm not talking about the month of January, I'm just saying
23 at that period of time. I realize that there was some days
24 where you were closed at the beginning of January.

25 A. Oh. The policy doesn't change, and that's our effort all

1 the time. But as I say, there are certain things that come up
2 that can prevent us from meeting our goals.

3 Q. Let's move forward to July, 2018. That's when the
4 complaint was filed. Was your office providing access
5 consistent with your policy then?

6 A. Yes.

7 Q. Did you change anything in response to the lawsuit?

8 A. No. Other than to make sure that they were allowed to come
9 back and see us. One of the things that can happen is, despite
10 our efforts to try to get everything into the system, sometimes
11 it's hard. That's why I have that ability for people to see the
12 paper before it's in there. So even -- let's say we could only
13 get 84 percent of the cases in the system. Hopefully the other
14 16 percent are viewable in paper behind the counter.

15 Q. Were you aware of any access delays when you received the
16 complaint?

17 A. No.

18 Q. Let's move forward to the present day. Is your office
19 currently providing access consistent with your policy?

20 A. Yes.

21 Q. Are you aware of any access delays now?

22 A. Not that I know of.

23 Q. Is it your understanding that CNS is not experiencing any
24 access delays right now?

25 A. Yes, that's my understanding.

1 Q. What was your reaction when you received CNS's lawsuit in
2 this case?

3 A. Well, I was -- well, I was disappointed. Our goal is to
4 try to make things available, and obviously, at least as far as
5 they were concerned, we weren't getting it done. So I wanted to
6 meet with them and asked to meet with Ryan and Jocelyn so that
7 we could at least articulate to them what our position is and
8 also to try to get them access.

9 Q. Did anyone from CNS reach out to you about delays before
10 the lawsuit was filed?

11 A. No. The only time I heard from them was when I got the
12 lawsuit papers.

13 Q. They didn't send you a letter?

14 A. No. I didn't receive any corresponds, no.

15 Q. Do you know the approximate number of civil filings in
16 Norfolk Circuit Court during the calendar year 2018?

17 A. I don't know that number. Tom would know that number
18 better than me. I would have to speculate it's going to be in
19 the neighborhood of about 12,000.

20 Q. So you're aware that OES has provided the filing data for
21 your court for the time period of January 1 through December 4,
22 2018?

23 A. Yes, I am.

24 Q. And if I told you that it indicates approximately 11,000
25 new civil filings were filed during that time, would you agree

1 with that?

2 A. That would sound correct.

3 Q. So if you had to provide CNS with faster access than you do
4 right now, how would you go about doing that?

5 A. Faster access?

6 Q. Yeah.

7 A. I'm not really sure how I would do that. We do make it
8 available for them, you know, behind the counter. Faster in the
9 public terminals, that's harder to do without -- with the staff
10 I have. I'm not sure I could do it much faster.

11 Q. Are you able to extend your operating hours?

12 A. No. As I said, we have to, we have to be out the door at
13 5:00.

14 Q. How about hiring more people?

15 A. I don't have that luxury. At least the State hasn't given
16 that to me yet. Hopefully if I get a lot more cases maybe they
17 will give me a few more employees.

18 Actually they have cut my staff, by the way. The State has
19 cut my staff. We have actually had a decline in our caseload in
20 the last, in the last two years, so I dropped two employees.

21 Q. Have you thought about requiring filing parties to include
22 an extra copy for the media?

23 A. That's come up. I've never really entertained it. It's,
24 it's just extra paper that I would then have to shred. For
25 every -- for all 11,000 filings, to have an extra copy, it would

1 be...

2 THE COURT: I don't think that's required.

3 THE WITNESS: No.

4 THE COURT: Or should be.

5 BY MR. PRINCE:

6 Q. Are you familiar with the delays that were alleged in the
7 complaint for Norfolk?

8 A. Yes.

9 Q. Do you believe that they are accurate?

10 A. Anecdotally, no, I don't believe they're accurate. I don't
11 think that we were at five percent, but they have an expert that
12 testified one way. I understand that.

13 MR. PRINCE: Please answer any questions that opposing
14 counsel may have.

15 THE WITNESS: Certainly.

16 CROSS-EXAMINATION

17 BY MS. GOLDMAN:

18 Q. Good afternoon, Mr. Schaefer. It's nice to see you again.

19 A. Good afternoon.

20 Q. So you were explaining what the layout of the clerk's
21 office is?

22 A. Right.

23 Q. And you were talking about the public access terminals and
24 then the counter. And there's a wall behind, correct?

25 A. Right.

1 Q. How do you -- how did the media -- how does anyone get from
2 the public part of the clerk's office into the back part of the
3 clerk's office where the clerks work?

4 A. There is a door to the immediate left of the counter, and
5 that's the door that anybody accessing us from the public side
6 would go through.

7 Q. And is there a sign on that door?

8 A. There is.

9 Q. And what does that sign say?

10 A. Officers of the Court.

11 Q. As the circuit court clerk, I believe you testified that
12 you're responsible for developing and implementing the policies
13 of the clerk's office?

14 A. I am.

15 Q. Are there any written policies for your office to respond
16 to newly filed civil complaints from the public or the press?

17 A. There are, there are written polices in terms of the
18 public. There isn't anything involving the press, no.

19 Q. Are there any signs are notices informing the press
20 informing the press that they're allowed behind that door?

21 A. There are none.

22 Q. Your employees, your deputy clerks, are they responsible
23 for responding to requests for court records including civil
24 complaints?

25 A. Yes. Well, certain ones would be. We have an area out in

1 the front with the copy center that, normally that would start
2 there.

3 Q. If someone went to the counter and asked one of your
4 cashiers or your clerks --

5 A. They would --

6 Q. -- a question, are those employees authorized to respond to
7 requests from the public and the press?

8 A. The cashiers could potentially get those. Normally they
9 would go back and get the assistant supervisor and handle it
10 because they don't want to leave their work station.

11 Q. But the deputy clerk that sits at the front could answer
12 questions as well?

13 A. There is one deputy clerk there for the civil division that
14 should be able to answer questions.

15 Q. So I believe you testified -- or we've heard from your
16 counsel that as the clerk, you're an independent Constitutional
17 officer, correct?

18 A. I am.

19 Q. And you have the authority to implement your policies and
20 the authority to change or modify your policies?

21 A. As long as they're within the law.

22 Q. And you can make exceptions to your policies?

23 A. Some. Normally I don't have a policy if I have a big list
24 of exceptions.

25 Q. And in fact you are now -- you allow the press behind the

1 counter and you have been allowing CNS's report Jocelyn Rardin
2 behind the counter, correct?

3 A. Yes.

4 Q. To your knowledge Ms. Rardin has been going behind the
5 counter?

6 A. Yes.

7 Q. Would you be surprised to learn that since the filing of
8 this lawsuit, most newly filed civil complaints are processed --
9 and I mean intake, indexing and scanning and posted to the
10 public access terminal -- by the time Ms. Rardin gets there at
11 4:30?

12 A. I think that's what happens most of the time she comes in,
13 they're already in the system.

14 Q. Do you know if other circuit court clerks provide the same
15 press access that you provide?

16 A. I didn't know of any until I heard that Ed Jewett does it
17 in the Richmond circuit.

18 Q. Do you know of any others that do it?

19 A. Not that I know of.

20 Q. Would your successor or someone who took this position
21 after you be required to provide the same access you do?

22 A. No. They would not. There's a --

23 THE COURT: What was that question?

24 MS. GOLDMAN: I asked if his successor, if someone
25 takes the clerk's position after him, if they would be required

1 to provide access to the press behind the counter.

2 MR. PRINCE: Your Honor, I'm going to object.

3 THE COURT: That sounds a little --

4 MR. PRINCE: I think that calls for a --

5 THE COURT: -- speculative.

6 MR. PRINCE: Yeah. Legal opinion.

7 THE WITNESS: I'm there for the next eight years, so
8 at least that's good.

9 BY MS. GOLDMAN:

10 Q. But there is no Code section or law requiring you to
11 provide the press with access behind the counter?

12 A. No. The only thing that's doing it for me is that I
13 strongly believe that they should have access.

14 Q. Mr. Schaefer, I think we've heard testimony on this: What
15 time is the clerk's office open until?

16 A. 4:45.

17 Q. And your staff stays until 5:00, I believe?

18 A. Right.

19 Q. But the public has to leave at 4:45?

20 A. Yes.

21 Q. And Ms. Rardin has to leave at 4:45?

22 A. Yes.

23 Q. Do you recall testifying during your deposition in this
24 case that CNS's reporter could stay until 5:00?

25 A. I may have said that, and it's something that we have

1 talked about.

2 Q. Are you aware that Ms. Rardin was recently told by your
3 employees when she asked if she could stay until 5:00 that she
4 had to leave at 4:45 and could not stay?

5 A. I am aware that we have indicated it's probably better for
6 her to leave at 4:45.

7 Q. Isn't it true that when a case -- that a case is considered
8 filed when it's handed to your cashier and it's stamped Filed?

9 A. Yes.

10 Q. With the date stamp?

11 A. Right.

12 Q. And when filed, the cashier or the clerk uses FAS to
13 calculate the filing fee?

14 A. Yes. That also generates the case number.

15 Q. And I think you testified to this on direct, but do you
16 agree with CNS's representation that access in Norfolk has
17 improved over the past few months? That access is good?

18 A. I thought we were pretty good before, but I'll certainly
19 give them -- they have the data that indicates we've gotten
20 better.

21 Q. And I want to confirm, Mr. Larson testified yesterday that
22 no additional staff was needed in order to provide the current
23 levels of access; is that accurate?

24 A. We haven't added anyone.

25 Q. I want to talk quickly about electronic filing. Would you

1 agree that e-filing, e-filed civil complaints make up a very
2 small percentage of complaints in your court?

3 A. Yeah, it's not much.

4 Q. And you believe that number will -- I believe you testified
5 to this in your deposition -- that you don't think that number
6 is going to increase appreciably?

7 A. The Supreme Court has not decided to mandate it like they
8 do in federal court. And part of the reason is because of the
9 volume of *pro se* litigants and others. So I don't -- without
10 mandating it, I don't think it's going to rise significantly.
11 It might change with a new generation of electronically savvy
12 attorneys, but for the most part I don't think so.

13 Q. I just want to talk about confidentiality quickly. So your
14 employees perform a quick, cursory review for confidential
15 information; is that correct?

16 A. That's correct.

17 Q. Do you know how long it takes?

18 A. Depends on the size of the file, but for the most part just
19 a matter of minutes.

20 Q. And isn't it true that Virginia law places the burden of
21 redacting confidential information on the filing party?

22 A. It does.

23 MS. GOLDMAN: No further questions.

24 THE COURT: Any redirect?

25 MR. PRINCE: Just a few questions, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. PRINCE:

3 Q. Do you ever deal with new complaints that contain
4 insufficient filing fees?

5 A. Yes.

6 Q. How do you handle those?

7 THE COURT: This didn't come on up on direct, did it?

8 MS. GOLDMAN: Objection, Your Honor.

9 THE COURT: This is supposed to be rebuttal.

10 MR. PRINCE: Is Your Honor --

11 THE COURT: I think we've had a lot of testimony on
12 that already.

13 MR. PRINCE: Okay. Thank you, Your Honor.

14 THE COURT: Mr. Schaefer, you should not discuss your
15 testimony with any other witness in the case until the case is
16 concluded.

17 THE WITNESS: I understand.

18 THE COURT: I assume you're going to remain in the
19 courtroom?

20 THE WITNESS: Yes, Your Honor.

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

22 I don't know if there's anything we can accomplish in
23 10 minutes or not, Mr. Prince.

24 MR. PRINCE: Your Honor, my next witness is probably
25 going to be up here for a similar amount of time. It's,

1 surprise-surprise, it's Ms. Smith. There's no way we can -- you
2 know, her direct will last longer than 10 minutes for sure. I
3 don't know that we have anything else. We have some deposition
4 transcripts we might able to read within 10 minutes, but it's
5 totally up to the Court.

6 THE COURT: All right. Can counsel give me any
7 guidance as to when you believe the evidence will be concluded
8 at this point?

9 MR. PRINCE: I think I can safely say we intend to
10 rest tomorrow, Your Honor. As to the Plaintiff's rebuttal case,
11 I can't speak to that. Unless they want me to. I'm happy to
12 speak for them. They have none.

13 MR. HIBSHER: Your Honor, our rebuttal case for the
14 most part will be to respond to the defendant's expert. Since
15 we have not heard his testimony, it's hard to assess it. Other
16 than that, I don't think we'll have a very long rebuttal case,
17 if at all.

18 THE COURT: All right. As you might expect, you know,
19 we started this case, what, three days late? Four days late?
20 So everything is backed up. But I mean, I'm not holding you to
21 a time schedule, but I want to -- I'll assume, since you say
22 you'll finish tomorrow, that we will finish all of the evidence
23 and the argument by Wednesday? Would that be a reasonable
24 assumption?

25 MR. PRINCE: Yes, Your Honor.

1 THE COURT: Well, I'm going to plan on that. As you
2 know from what happened last week, we didn't get that case to
3 the jury until late Thursday afternoon. But I assume we'll
4 finish, I'm going to assume we'll finish Wednesday for planning
5 purposes.

6 All right. Is there anything else counsel would like
7 to take up with the Court before we adjourn today?

8 MR. PRINCE: Not for defendant, Your Honor.

9 MR. HIBSHER: No, Your Honor.

10 THE COURT: All right. We'll be adjourned until 10:00
11 tomorrow morning.

12 (Whereupon, proceedings concluded at 3:53 p.m.)
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CERTIFICATION

I certify that the foregoing is a true, complete and correct transcript of Volume 2 of the proceedings held in the above-entitled matter.

Paul L. McManus, RMR, FCRR

Date