

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

COURTHOUSE NEWS SERVICE,)
)
Plaintiff,)

v.) Civil Action No.:
) 2:18cv391

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

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

Defendants.)

TRANSCRIPT OF PROCEEDINGS

(Bench Trial)
Volume 3
Pages 371-539

Norfolk, Virginia
February 4, 2020

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

1 Appearances:

2 BRIAN CAVE LEIGHTON PAISNER LLP

3 By: WILLIAM HIBSHER
 HEATHER GOLDMAN
 BRYAN HARRISON

4 -- and --

5 WILLCOX & SAVAGE

6 By: CONRAD M. SHUMADINE, ESQUIRE
 Counsel for Plaintiff

7 THOMPSON McMULLAN PC

8 By: WILLIAM DANIEL PRINCE, IV
 MICHAEL GORDON MATHESON
 Counsel for Defendants

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 11 OF THE DEFENDANT:

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P R O C E E D I N G S

(Proceedings commenced at 10:02 a.m. as follows:)

COURTROOM DEPUTY CLERK: Civil Action No. 2:18cv391,
Plaintiff Courthouse News Service v. George E. Schaefer, et al.

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. We're ready, Your Honor.

THE COURT: All right. Call your first witness.

MR. PRINCE: Your Honor, good morning. We're going to
call Ms. Jacqueline Smith to the stand.

JACQUELINE C. SMITH, having been duly sworn, was
examined and testified as follows:

DIRECT EXAMINATION

BY MR. PRINCE:

Q. Good morning, Ms. Smith. Could you please state your name
for the record?

A. Jacqueline C. Smith.

Q. And what is your current position?

A. I'm the Clerk of the Circuit Court for Prince William
County, Manassas and Manassas Park.

1 Q. And how long have you been the clerk in Prince William?

2 A. Nearly three years.

3 Q. You were elected in 2017?

4 A. Yes.

5 Q. And that was a special election?

6 A. Yes.

7 Q. What geographic area does your office serve?

8 A. We serve the County of Prince William, and then we serve
9 two cities, Manassas City and Manassas Park City. It's the 31st
10 Judicial Circuit.

11 Q. We heard some testimony from Mr. Schaefer yesterday
12 regarding the responsibility of a circuit court clerk. Do you
13 recall that?

14 A. Yes.

15 Q. And do you agree that the responsibilities he mentioned
16 yesterday are your responsibilities as you understand them?

17 A. Yes.

18 Q. How many employees do you have?

19 A. I have 49 full-time employees.

20 Q. Is your office organized into different sections or
21 divisions?

22 A. Yes, it is.

23 Q. And what are those divisions?

24 A. So our court -- or our clerk's office is divided into two
25 separate divisions. One division is the Records Division. They

1 handle everything related to land as well as probate matters.

2 Then the other side of our court is the court side. They handle
3 any criminal, civil cases as well as anything that happens in
4 the courtroom.

5 Q. Do you deal with juries at all?

6 A. Yes. We are the administrators of the jury system. We
7 send out jury questionnaires to the entire pool, we aggregate
8 that data, we identify a pool, and then I appoint a panel of
9 jury commissioners from the community who weed out the people
10 that they deem not qualified to serve in a jury. We then summon
11 the jury and impanel the jury.

12 Q. You mentioned the civil division. What are the
13 responsibilities of your civil division?

14 A. In our civil division, we handle all civil filings, all new
15 civil filings, all subsequent civil filings. Unlike in
16 Mr. Schaefer's court, we do staff the courtroom for civil cases.
17 We tend to find that things go smoother that way.

18 Q. Do the responsibilities of the civil division include
19 managing civil court records?

20 A. Yes.

21 Q. And they also handle the receiving of process for newly --
22 new civil filings?

23 A. Yes.

24 Q. And newly filed civil complaints?

25 A. Yes.

1 Q. How many people work in your civil division?

2 A. Ten.

3 Q. Of those, how many routinely handle new civil filings?

4 A. Five.

5 Q. And what is the job title of the people that work in the
6 civil division?

7 A. All of my employees are titled deputy clerks, and then
8 there are varying levels based on their level of responsibility
9 and experience. We have Deputy Clerks 1, 2, 3, 4, and then we
10 have deputy clerk supervisors and deputy clerk managers, and
11 then we have one chief deputy clerk.

12 Q. Have you ever or you yourself ever worked in the civil
13 division?

14 A. Yes, I have.

15 Q. Can you explain the circumstances in which you've worked
16 there?

17 A. On particularly heavy days I'll come in as a pinch hitter
18 and assist with whatever needs to be done. Most recently I went
19 in to process, I don't know, probably 50 petitions for concealed
20 handgun permits. That was a couple weeks ago. We're
21 all-hands-on-deck, because we have to work within the resources
22 we have.

23 Q. Can you describe for the Court the general layout of your
24 office?

25 A. Sure. We have two hallways. Down -- and they mirror our

1 structure within our office. Down the first hallway is the
2 records division. Down the second hallway is our criminal,
3 civil and probate divisions.

4 Q. And so I'm trying to help the Court here, he heard
5 yesterday how Mr. Schaefer's office is laid out. Your office is
6 laid out a little bit differently, correct?

7 A. Yes. I'm very envious of Mr. Schaefer's facilities.

8 Q. Must be nice to have a new courthouse.

9 So you have -- your different divisions are in separate
10 rooms; is that right?

11 A. Yes.

12 Q. Is there another way to describe that?

13 A. No, that's perfect.

14 Q. So you walk down a hallway and one room is civil, one room
15 is land records, one room is criminal; is that correct?

16 A. Yes, that's correct.

17 Q. And when you walk into, let's say, the civil division, what
18 do you see?

19 A. When you walk into the civil division you see a counter, we
20 have four deputy clerks stationed at that counter. Behind the
21 deputy clerks is the deputy clerk supervisor so that she can
22 physically watch over what's happening this the division.

23 Q. And it's literally just a room? One big room?

24 A. Yes, it is.

25 THE COURT: Does the 10 people in the civil division

1 include any supervisors?

2 THE WITNESS: Yes. We have one supervisor in the
3 civil division.

4 THE COURT: Okay.

5 BY MR. PRINCE:

6 Q. And who is that supervisor?

7 A. Brenda Elford.

8 Q. Do your duty clerks receive any sort of training?

9 A. Yes, they do.

10 Q. What sort of training do they receive?

11 A. They receive a lot of training. When they are first hired
12 we train them in the basics based on where you are seated; for
13 example, in the civil division. We train them on receipting,
14 what to look for in initial files, what to look for in
15 subsequent filings, we also educate them on professionalism, how
16 to interact with the public, particularly *pro se* litigants, and
17 attorneys.

18 Q. I want to talk about funding in your office. How is your
19 office funded?

20 A. We have two funding sources. One is from the state through
21 the Compensation Board, and the other is through a supplement
22 provided by Prince William County. We have a shared services
23 agreement through Prince William County, Manassas and Manassas
24 Park.

25 Q. Do you have a budget?

1 A. Yes.

2 THE COURT: So you get some from the state, the county
3 and both cities?

4 THE WITNESS: The county and the cities have their own
5 shared services agreement, so the check, quote unquote --

6 THE COURT: You get one check?

7 THE WITNESS: Yes.

8 BY MR. PRINCE:

9 Q. What sort of challenges do you face in terms of funding?

10 A. We face a lot of challenges. Our facilities are quite old
11 and we have some problems there. We frequently don't have air
12 conditioning. We frequently don't have heat. We have staffing
13 restrictions. Our staff has not grown since I've been elected,
14 but our bench has, and of course we have to provide additional
15 services to the bench to fulfill our role. It's difficult to
16 recruit and retain entry-level employees because the starting
17 pay is so low, even with our county supplement, we can't compete
18 with the private sector, and sometimes we can't compete within
19 our own county. We frequently lose people to the Adult
20 Detention Center because they're able to offer more to an
21 entry-level employee with less responsibility.

22 Q. What are your, what are the operating hours of your office?

23 A. Monday through Wednesday we're open 8:30 to 5:00, and then
24 Thursday -- I'm sorry. 9:30 to 5:00. Then Thursday and Friday
25 we're open 8:30 to 5:00.

1 Q. Is there a cutoff, is there a filing cutoff for new filings
2 that require a payment?

3 A. Yes. We are not able to receipt new filings after 4:30, so
4 we will accept the filing, but it cannot be processed until the
5 next day.

6 Q. And why is that?

7 A. Our systems provided through the Supreme Court don't allow
8 us to receipt after 4:30.

9 Q. When you say the Supreme Court, are you referring to OES?

10 A. Yes.

11 Q. Do you have public access terminals at your office?

12 A. Yes, we do.

13 Q. Where are they located?

14 A. We have some located in the criminal division and some
15 located in the civil division, and some located in the land
16 records office.

17 Q. And are they available to the public during normal business
18 hours?

19 A. Yes, they are.

20 Q. Are they available to the press during normal business
21 hours?

22 A. Yes, they are.

23 Q. I want to talk about how you make complaints available.

24 Have you made any policy changes since you took office in 2017?

25 A. I have created policy, yes.

1 Q. Can you describe to the Court what sort of policies you've
2 implemented since you took office in 2017?

3 A. Sure. As they pertain to civil filings or just in general.

4 Q. Just in general.

5 A. Well, we created a personnel policy that dictates
6 appropriate conduct for our employees. We created our business
7 hours. In -- within the civil division we created timelines for
8 when things need to be accomplished. We created a chain of
9 command, so to speak, for when employees have issues, how to get
10 them resolved. Basically we created policies and procedures for
11 the general running of the office and management of employees.

12 Q. And is one of those policy changes -- or policies you
13 implemented, rather, did one of those policies deal with the
14 handling of newly filed civil complaints?

15 A. One of the policies I implemented did affect --

16 Q. And what was the policy you put in place?

17 A. That all civil filings must be scanned at time of receipt.

18 Q. Did you make any changes regarding how the mail is handled
19 in the civil division?

20 A. I don't know if I made changes -- I'm not aware of what the
21 policy was before I was elected almost three years ago -- but we
22 do have a system for sorting and receiving mail.

23 Q. It's opened in the civil division now; is that right?

24 A. Yes, it is.

25 Q. And before it was opened somewhere else?

1 A. Yes. When I started I believe it was being opened in land
2 records.

3 Q. Have you put in any training programs specifically with
4 respect to handling new civil filings?

5 A. We do have a training program. I wouldn't say that I
6 implemented it, but it is run by our civil supervisor, Brenda
7 Elford, and the team works together to train new employees on
8 receipting.

9 Q. You mentioned that you have a policies of making new civil
10 filings available the same day that they are received. And
11 where do you make the complaints available to the public?

12 A. On our electronic system. They can be accessed through the
13 public access terminals. We have two located in our civil
14 division.

15 Q. Do you treat the press any differently than you do the
16 general public?

17 A. No.

18 Q. So the press gets the same access the public does?

19 A. Yes.

20 Q. Are there circumstances that would affect your office's
21 ability to make new filings available the day they're received?

22 A. Yes.

23 Q. What are some examples?

24 A. For example, in the wintertime we have more callouts, more
25 people out sick or unable to travel because of the snow. We

1 have weather closures. We have vacations. Sometimes we have
2 staff vacancies. We are a primarily female office. We have a
3 lot of people go out on maternity leave, and we're happy to do
4 that. Primarily it's staffing issues. Occasionally it's other
5 resources.

6 Q. What happens if a new complaint is received at the end of
7 the day, say like 4:30?

8 A. If a complaint is received at 4:30, the cashier at the
9 counter will receive that complaint, we time stamp it, and then
10 first thing the next morning, we will, if -- let me back up a
11 little.

12 We time stamp it if payment is included by check, and then
13 first thing the following morning we will complete the intake
14 process.

15 Q. And you mentioned the public access terminals. Where are
16 those physically located?

17 A. Directly in front of the counter.

18 Q. Does your office own those public access terminals?

19 A. Yes and no. It's more like a lease and a maintenance
20 contract through the Supreme Court of Virginia.

21 Q. That's OES?

22 A. Yes.

23 Q. You've heard some testimony about a sign that was put up in
24 the civil division. Do you recall hearing that testimony?

25 A. Yes.

1 Q. Is there a sign in the civil division?

2 A. Yes.

3 Q. And what does the sign say?

4 A. The sign you're referring to says something to the effect
5 of We're dedicated to getting your filings scanned within 10
6 days of receipt. If your filing is due in less than 10 days,
7 please notify the deputy clerk so she can get the documents to
8 the judge expeditiously.

9 Q. Why did you put that sign up?

10 A. We found that we had attorneys who were in the habit of
11 filing responsive motions and responsive pleadings late, and
12 when it came time for the hearing, our judges weren't able to
13 adequately prepare for the hearing because they were getting the
14 documents at the last minute. So the sign was intended to, if
15 an attorney was filing a late response, flag it for the deputy
16 clerk so we could be sure to dispatch it to the judge.

17 Q. What types of civil filings does the sign apply to?

18 A. Motions and responsive pleadings, generally.

19 Q. Does it apply to newly filed civil complaints?

20 A. Absolutely not.

21 Q. So we've heard some testimony from the Norfolk side about
22 how new complaints are handled and processed in their office,
23 and I'm going to go through it with you too, because there are
24 some differences.

25 So what are the three ways a new complaint can be filed in

1 the Prince William clerk's office?

2 A. A new complaint can be handed over the counter physically
3 to one of my deputy clerks, it can be mailed in, or it can be
4 e-filed.

5 Q. When someone files a complaint in person, where do they go?

6 A. They go to the civil division counter.

7 Q. And who does the filer give the complaint to at the
8 counter?

9 A. To one of my deputy clerks.

10 Q. And what does the deputy clerk behind the counter do with
11 the new civil filing?

12 A. She receives the new civil filing, she reviews the cover
13 sheet and the complaint, verifies that payment is included and
14 that it's appropriate for the type and amount of the file. She
15 reviews it for confidential information. She receipts the
16 payment, whether it be credit card or check through the FAS
17 system. The FAS system then communicates with CCMS where she
18 indexes the complaint and scans the complaint.

19 Our indexing process varies a little bit from what
20 Mr. Schaefer described in that we don't create a table of
21 contents, all we index is the party's names, the type of suit,
22 the amount of the suit, and the computer program does the rest
23 for us.

24 Q. And where is all this happening? Where are the deputy
25 clerks doing this?

1 A. So our counter is a seated counter, so the litigant walks
2 up to the counter and my duty clerk is sitting there on her
3 computer, and she performs all of that on her computer.

4 Q. So this is not happening in a back room somewhere?

5 A. No.

6 Q. Where does the paper complaint go after it's been scanned?

7 A. Once the paper complaint has been scanned, we put it in a
8 day box to preserve it for 30 days.

9 Q. What happens after 30 days?

10 A. It's destroyed.

11 Q. How is the process any different for complaints received by
12 mail?

13 A. Complaints received by mail come in an envelope, so you
14 have to open the envelope, and then we follow the same process
15 from there. It's the same.

16 Q. And I think you mentioned that the paper copies are
17 destroyed after 30 days?

18 A. Yes.

19 Q. You're an -- your records are electronic, correct?

20 A. Correct.

21 Q. You don't have paper case files anymore?

22 A. We do not. We don't have the space.

23 Q. When does a new complaint become viewable on public access
24 terminal?

25 A. After it's scanned.

1 Q. Let's talk about e-filed complaints.

2 Do you know how many e-filed complaints were filed in 2018
3 in Prince William?

4 A. Yes.

5 Q. How many?

6 A. 31.

7 Q. For the, almost the entire year?

8 A. Yes. Out of 11,000 new case filings we had 31 e-filings.

9 Q. Fair to say that e-filing has not caught on in Prince
10 William County?

11 A. No. We're a pretty traditional community. But there's
12 nowhere to go but up.

13 Q. Your office does accept e-filing complaints for the few
14 people who choose to use the system?

15 A. Correct. We accept e-filings up to 7:00 p.m. on business
16 days.

17 Q. And they file that through the Virginia Judiciary E-filing
18 System; is that correct?

19 A. Yes. VJEFS.

20 MR. PRINCE: And that's VJEFS, Your Honor. It's a lot
21 of terms and I'm trying my best to keep them straight. But
22 so...

23 THE COURT: I'm sure they've got initials for it,
24 right?

25 MR. PRINCE: Oh, yeah. OES has an initial for

1 everything. Even themselves: "OES". I mean...

2 BY MR. PRINCE:

3 Q. Is it voluntary?

4 A. It is.

5 THE COURT: Voluntary, you mean with the filer?

6 MR. PRINCE: Correct.

7 BY MR. PRINCE:

8 Q. You don't have to use the e-file system if you don't want
9 to?

10 A. Correct. And under Rule 117, if a case is e-filed and the
11 responsive party doesn't want to e-file, it's taken out of the
12 e-filing system.

13 Q. Does your office control the e-filing system?

14 A. No.

15 Q. You just use it; is that correct?

16 A. Yes.

17 Q. Who controls the e-filing system?

18 A. OES at the Supreme Court of the Virginia.

19 Q. What role do the clerks play in the e-filing process?

20 A. When a suit is e-filed, it comes to the deputy clerk's
21 computer, typically it's our supervisor. If she's out, we have
22 two designees as backup. The clerk does a visual scan of the
23 document, makes sure that it's been indexed correctly by the
24 user, that the payment has been made, and she clicks accept, and
25 the complaint is brought into our system.

1 Q. Does your staff check for new e-filed complaints every day?

2 A. Throughout the day, yes.

3 Q. Yesterday Mr. Schaefer testified that his office conducts
4 an initial review of all new civil filings. Does your office do
5 that too?

6 A. We do.

7 Q. Why do you do that?

8 A. For a number of reasons. We want to make sure that the
9 filing fee is correct and has been appropriately paid. We want
10 to make sure that the complaint has an original signature on it.
11 We want to make sure that they don't contain any personal
12 identifying information or any confidential, other confidential
13 information.

14 Q. What types of confidential information are they checking
15 for?

16 A. Children's names, victim's names. Recently the legislature
17 has instructed lawyers to civilly docket unpaid restitution
18 cases, so we've had quite a few of those recently and we're
19 still trying to figure out how to handle it. Social Security
20 numbers, dates of birth, reference to potentially protected
21 health information, bank account numbers. That's what I can
22 think of sitting here.

23 Q. Do they also check for motions to seal or sealing requests?

24 A. Yes.

25 Q. And how are those handled?

1 A. If there is a motion to seal we do not make the entire
2 document available online, we bring it to a judge and he or she
3 rules.

4 Q. Do they also check for a confidential addenda or
5 confidential addenda form?

6 A. Yes.

7 Q. And do you recall yesterday when he showed Mr. Schaefer the
8 confidential -- the Virginia Confidential Addenda Form?

9 A. Yes.

10 Q. It's an official circuit court form?

11 A. Yes. It's created by, I believe, the Supreme Court.

12 Q. And you see those in your court on occasion?

13 A. I have not personally seen them, but yes, we receive them.

14 Q. Do you believe it's your job to ensure confidential
15 information is not -- does not become publicly available?

16 A. It is.

17 Q. There was some testimony yesterday that approximately
18 58 percent of the civil complaints tracked by CNS were
19 confidential filings in your jurisdiction. Do you remember
20 that?

21 A. I do remember that.

22 Q. Can you explain this?

23 A. I think I can. 58 percent also represents the number of
24 civil case filings that are petitions for concealed weapons
25 permit. I believe that will be what they are referring to.

1 Because they are confidential in their entirety. We have
2 additional filings that are confidential partially.

3 Q. Are confidential case filings processed any differently
4 than non-confidential case filings?

5 A. Only in the -- the process is the same, except that the
6 file is protected from public view. So if you type in the case
7 number, you will see there was a filing but you can't see what
8 it is.

9 Q. So a confidential filing differs from a regular filing in
10 that it's not publicly available?

11 A. If it's a, if it's confidential in its entirety, yes. If
12 it's confidential partially, sometimes it's appropriate to
13 redact, sometimes it's appropriate to protect some of the pages
14 of the filing but not others. It depends on the type of
15 document.

16 Q. But it's processed the same way as a non-confidential
17 filing?

18 A. Correct.

19 Q. Is there a distinction between general civil complaints and
20 other civil filings?

21 A. I don't know what the term general civil complaint means.
22 We use initial civil filings, which would be any filing that
23 commences an action. And then subsequent civil filings are
24 everything else.

25 Q. Are all new civil filings handled the same way in terms of

1 processing?

2 A. Yes, they are.

3 Q. Yesterday you heard some testimony about the use of wire
4 baskets in Prince William. Do you recall that?

5 A. I remember the testimony, yes.

6 Q. And do you recall when the wire baskets were available in
7 your court?

8 A. No. I never personally saw the wire baskets. By the time
9 I came into office there were none, so it was prior to my
10 election.

11 Q. Is it your understanding that CNS is not experiencing
12 delays right now in your court?

13 A. Correct.

14 Q. Are you familiar with the delays alleged in the CNS's
15 complaint?

16 A. Yes, I am.

17 Q. What was your reaction to the alleged delays in Prince
18 William when you were served with the complaint?

19 A. Well, I was surprised that I was being sued, because I
20 didn't know who CNS was. I reviewed the allegations of delay in
21 the complaint and I disagreed with them.

22 Q. Was CNS experiencing delays at the time the lawsuit was
23 filed?

24 A. No.

25 Q. How do you know this?

1 A. I know this from my work in the office and our review of
2 our data.

3 Q. Has access been consistent since January 2018?

4 A. Yes.

5 Q. You haven't made any changes?

6 A. No.

7 Q. Did you know who CNS was before this lawsuit was filed?

8 A. No.

9 Q. Did anyone from CNS reach out to you before this lawsuit
10 was filed?

11 A. No.

12 Q. Did CNS ask to meet with you directly to your knowledge?

13 A. No, but my understanding is that that was offered by Brenda
14 Elford.

15 Q. Did they send you a letter?

16 A. No.

17 Q. Do you know the approximate number civil filings in Prince
18 William for the calendar year 2018?

19 A. It was approximately 11,000.

20 Q. If you wanted to provide faster access than you do right
21 now, how would you go about doing that?

22 A. I don't believe it's possible within the confines of the
23 law.

24 MR. PRINCE: Please answer any questions opposing
25 counsel may have. Thank you.

1 THE WITNESS: Thanks.

2 CROSS-EXAMINATION

3 BY MR. HARRISON:

4 Q. Good morning, Ms. Smith.

5 A. Good morning.

6 Q. I believe you testified that you've been the clerk of the
7 Prince William Circuit Court since 2017?

8 A. Since May, 2017, yes.

9 Q. And as the Clerk of Court you are the custodian of the
10 court records?

11 A. Yes, I am.

12 Q. And you oversee the filing of new civil complaints,
13 correct?

14 A. Yes, I do.

15 Q. And you delegate to your employees the responsibilities of
16 handling inquiries and questions from the press and public?

17 A. Not from press, but yes, from the public.

18 Q. Are those employees authorized to act on your behalf?

19 A. In some capacities, yes, not in all.

20 Q. I believe you testified today that your policy is that
21 complaints must be scanned at the time of the receipt; is that
22 correct?

23 A. Correct.

24 Q. Are you aware of your testimony during your deposition in
25 which you testified that the policy was that complaints should

1 be scanned and made available within one day?

2 A. My policy is that the document must be scanned at the time
3 of receipt. Sometimes that's not possible, such as when a
4 complaint is received after 4:30 on a business day. We are not
5 able to receipt, so we have to scan the following business day.

6 THE COURT: Where is that deposition?

7 MR. HARRISON: Your Honor, I can -- it's on Page 42.
8 I can provide a copy of her deposition.

9 THE COURT: We haven't had this come up specifically,
10 but whenever you are going to question somebody on a deposition,
11 the Court does not permit you to paraphrase their testimony.
12 You must read the question and the answer verbatim.

13 MR. HARRISON: Understood, Your Honor.

14 THE COURT: Well, now, where is the question that you
15 just asked? Page 42, you said?

16 MR. HARRISON: Yes, Your Honor.

17 THE WITNESS: Page 42?

18 THE COURT: Line what.

19 MR. HARRISON: Line 15 is the question, through 20.

20 THE COURT: Just a second. Let me look at it.

21 MR. HARRISON: Your Honor, would you like me to read
22 that into the record?

23 THE COURT: Yes. I believe it would be appropriate to
24 read the question and the answer into the record.

25 BY MR. HARRISON:

1 Q. Ms. Smith, are you aware that at your deposition, you
2 testified --

3 THE COURT: Well, just read the question.

4 MR. HARRISON: Yes, Your Honor.

5 BY MR. HARRISON:

6 Q. "Before the break we were discussing generally the policy
7 that you referenced regarding processing of newly filed civil
8 complaints. Could you just explain what that policy is again
9 for me?

10 "Answer: In a nutshell, it's to get the case opened and
11 scanned within a day of filing."

12 BY MR. HARRISON:

13 Q. So Ms. Smith, is the policy to provide it within a day of
14 filing as you testified in January of 2019, or is the policy as
15 you testified today to have it scanned at the time of receipt?

16 A. They're the same thing. We scan upon receipt. It's our
17 policy. But because of restrictions on the electronic systems
18 provided to us by the Supreme Court, we're not able to receipt
19 after 4:30; however, as a service to my constituents we remain
20 open till 5:00 to allow them to file. In those cases we are
21 unable to scan between 4:30 and 5:00, and must scan within one
22 business day.

23 Q. And is this policy in writing?

24 A. Yes, it is.

25 Q. It's not been introduced as an exhibit in this case; is

1 that correct?

2 A. I don't know.

3 Q. Is that policy available for members of the press or public
4 to see?

5 A. No. It's a policy within the training that our clerks
6 receive.

7 Q. I believe you testified earlier today that the initial
8 review includes a review for confidential information and
9 signature and to determine basic case information; is that
10 correct?

11 A. Yes, among a couple other things.

12 Q. And is it true that that process is pretty quick?

13 A. Yes, it is, generally, unless the complaint is voluminous.

14 Q. And would you agree with Ms. Elford's testimony that it
15 takes probably 60 seconds?

16 A. On a typical new case filing, yes. But if we get a
17 600-page complaint it takes a bit longer.

18 Q. I also believe you discussed the Financial Accounting
19 System. Isn't it true that the filing fee is automatically
20 calculated by the Financial Accounting System when the clerk
21 inputs the case information into the system?

22 A. When the clerk inputs the data about the case, generally
23 the type of case and how much is requested in the *ad damnum*
24 clause, the fee calculator tells us what the appropriate fee is.

25 Q. And for a paper complaint at the counter, that's done while

1 the filing party is still there?

2 A. Yes, it is.

3 Q. And at that point the filing is then accepted?

4 A. At that point the check or credit card is processed, and
5 once that happens the complaint is accepted.

6 Q. And at that point a case number is also generated?

7 A. The case number is generated, I believe, by the system
8 before we scan the check or process payment.

9 Q. Isn't it true that from January through June, 2018, which
10 is the relevant period for the complaint, members of the public
11 could see newly filed civil complaints on the public access
12 terminals once processing was fully completed?

13 A. How do you define processing?

14 Q. After scanning.

15 A. Yes. After scanning.

16 Q. Are there exceptions to this policy?

17 A. If there's confidential information as I detailed before,
18 it would not be available.

19 Q. Do you provide exceptions for someone to access complaints
20 that have not been scanned into the system?

21 A. No.

22 Q. If I could direct your attention -- do you recall
23 testifying at your deposition that if a -- I'll direct your
24 attention to Page 80, Line 12.

25 A. I don't have the deposition.

1 Q. Oh.

2 A. Page 80?

3 Q. Yes. Line 12.

4 "Question: Is it possible for a member of the press or
5 public to view a civil complaint prior to it being scanned?

6 "Answer: No. However, if a member of the public came to
7 the counter and said I want to see this document, it's not
8 scanned, we would immediately scan it and provide them with a
9 copy if appropriate, but that has never happened."

10 In your experience, has that, has CNS's reporters asked --

11 THE COURT: The question is, is that what she said.

12 BY MR. HARRISON:

13 Q. Is that what you said?

14 A. Yes.

15 Q. Are you aware of any situations since your deposition
16 testimony where an individual may ask for complaints prior to
17 them being fully scanned?

18 A. What do you mean, fully scanned?

19 Q. Being scanned into the system.

20 A. No, I'm not aware of any instances.

21 Q. I believe you testified earlier today that you provide
22 training -- or your office provides training to deputy clerks on
23 interacting with public, *pro se* and attorneys. Do you also
24 provide training for interacting with members of the press?

25 A. No, we don't, but the press is a member of the public.

1 Q. You also testified about the sign at the clerk's counter
2 that said "We are dedicated to scanning all new civil filings
3 into our digital system within 10 days of receipt in this
4 office." Is that correct?

5 A. It is.

6 Q. The sign was posted at or near the public access terminals?

7 A. It's posted in several places in civil. I don't
8 micromanage where they put the postings.

9 Q. And you authorized the posting of the sign?

10 A. I did.

11 Q. And you testified that the sign was put up, one of the
12 reasons was because attorneys were making late filings; is that
13 correct?

14 A. Correct. I've been guilty of it myself.

15 Q. Is another reason why the sign was put up before your
16 office was behind on processing newly filed -- or quite a bit --
17 strike that.

18 Was another reason the sign was put up was because your
19 office was behind scanning new civil filings?

20 A. No.

21 Q. Are you aware of testimony from Brenda Elford who said that
22 the office was quite a bit behind on scanning civil filings?

23 A. Civil filings is not new civil filings. They're different.

24 Q. Isn't it true though that the sign says We are dedicated to
25 scanning all new civil filings?

1 A. That is not true.

2 Q. Isn't it true that you also testified that your office was
3 behind on scanning civil filings during your deposition?

4 THE COURT: Where?

5 MR. HARRISON: Page 79, Lines 14 through 17.

6 A. Yes, the office was behind on scanning civil filings, and
7 again, that's different from new civil filings.

8 Q. But the sign does not distinguish between new civil filings
9 or subsequent filings?

10 A. It says civil filings, not new civil filings.

11 Q. Does it say motions or responsive pleadings?

12 A. No. The sign's not that big.

13 Q. How far behind was your office on scanning new civil
14 filings?

15 A. I couldn't say. I was still very new as clerk and had a
16 lot of departments and people to work with. I do not recall how
17 far behind they were. I do recall that the office was only
18 staffed at about 60 percent of what they were supposed to be, so
19 during that first year I was really focused on hiring and
20 training to keep things moving.

21 THE COURT: You didn't work in the clerk's office
22 before you were elected?

23 THE WITNESS: No. I practiced in the circuit court as
24 an attorney.

25 THE COURT: Okay.

1 BY MR. HARRISON:

2 Q. Ms. Smith, you testified earlier today that there are -- to
3 your knowledge, there are no delays in access to complaints.

4 What data did you review to make that determination?

5 A. The data that's been discussed over the last few days.

6 Q. So you reviewed the OES data to make that determination?

7 A. I reviewed OES data. I talked to my people on the desk. I
8 talk to Brenda, my supervisor. I talked to attorneys within our
9 community. I have even talked to some members of the press who
10 have come to my office.

11 Q. And so reviewing the OES data you saw that there are
12 several filings, initial filings for concealed handgun permits;
13 is that correct?

14 A. There are some, yes.

15 Q. In fact, more than some; the majority of the initial civil
16 filings in your court -- or from the period January through
17 June 2018 are concealed handgun permits; is that correct?

18 A. I believe it's correct.

19 Q. And concealed handgun permits are confidential?

20 A. They are.

21 Q. And never made available to the public?

22 A. They're only made available to law enforcement.

23 Q. And the confidential filings like concealed handgun permits
24 are included in the universe of initial civil filings in the OES
25 date that you reviewed?

1 A. Yes, they are.

2 Q. At present do you allow the CNS reporter to see complaints
3 before they are scanned if they ask?

4 A. I don't, no.

5 Q. Do members of your office?

6 A. I don't believe so.

7 Q. If members of your office did that, would that be a
8 violation of the policies that you've articulated?

9 A. No. Not necessarily. We try to be cooperative. When we
10 get a request, we do everything we can within the confines of
11 the law to satisfy that request.

12 Q. As an independent Constitutional officer you can change the
13 policies that you've instituted at any time, correct?

14 A. Within the confines of the law, yes. There are statutory
15 requirements placed on me for a lot of my duties. Seems when
16 the General Assembly doesn't know who should do something they
17 tell the clerks to do it, and we do.

18 THE COURT: What's the population of the county and
19 cities?

20 THE WITNESS: It's approximately 650,000.

21 MR. HARRISON: I have no further questions.

22 THE COURT: Most of them must have a gun, I guess.

23 THE WITNESS: You would think you'd run out of people,
24 but we don't.

25 MR. HARRISON: I have no further questions. Thank

1 you, Ms. Smith.

2 THE COURT: Okay.

3 MR. PRINCE: Your Honor, I had one question on
4 redirect. I was going to ask her why concealed weapons permits
5 are so popular in Prince William County, but Your Honor beat me
6 to it.

7 So thank you, Ms. Smith.

8 THE WITNESS: Thank you.

9 THE COURT: All right. May she be excused as a
10 witness?

11 All right. You may step down, Ms. Smith --

12 THE WITNESS: Thank you.

13 THE COURT: -- with the understanding that you won't
14 discuss your testimony with any other witness in the case until
15 the case is concluded.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: I don't know whose transcript I have, but
18 I don't need it anymore.

19 All right. Are you ready with your next witness?

20 MR. PRINCE: Your Honor, if it's okay with the Court,
21 we would like to read a deposition transcript into the record,
22 and then we'll -- we are going to call our expert to testify
23 after the deposition is read.

24 THE COURT: All right. I'd like a copy of the
25 deposition.

1 MR. PRINCE: Your Honor, we have, there's a copy of --
2 the deposition transcripts are attached to the Final Pretrial
3 Order.

4 THE COURT: Which tab is it?

5 MR. PRINCE: It's --

6 MR. MATHESON: I.

7 MR. PRINCE: Tab I.

8 MR. MATHESON: I.

9 MR. PRINCE: And by agreement, Your Honor, we're going
10 to read both the designated portions as well as the
11 counter-designations.

12 THE COURT: All right.

13 MR. PRINCE: I'll let opposing counsel get their copy.

14 Are you ready?

15 MR. MATHESON: I am.

16 MR. PRINCE: This is the deposition transcript of
17 Robert L. Smith. He was the 30(b)(6) designee of OES.

18 Q. Mr. Smith, where are you employed?

19 A. I work for the Office of the Executive Secretary of the
20 Supreme Court of Virginia.

21 Q. And what is your title?

22 A. I'm the director of the Department of Judicial Information
23 and Technology.

24 Q. And how long have you been the director?

25 A. 13 years.

1 Q. And you understand that you are appearing today as the
2 designee for the Office of the Executive Secretary?

3 A. Yes.

4 Q. And that your testimony will bind OES as to these issues?

5 A. Yes.

6 Q. CCMS is a Circuit Case Management system.

7 MR. PRINCE: Sorry, that's you.

8 MR. MATHESON: Oh, excuse me. There's no question.

9 A. CCMS is a Circuit Case Management system. That is the --
10 that is the repository, if you will, for all of the cases filed
11 in the circuit court. So if you think about the process, the
12 case has been in the clerk's queue. Once they enter their
13 cashier code and accepted the case, the data instantly populates
14 the Circuit Case Management System, and then the next column
15 would be Financial Management System. The Financial Management
16 System is a system that -- it's an accounting system for the
17 clerks, and they use it to track monies in and out of the
18 office.

19 CIS is the Case Imaging System. Think of that as the
20 repository for the images, the documents that have been
21 electronically filed. CCMS hold the data, CIS holds the
22 documents.

23 Q. And then the last two, Date/Time CCMS Data Available to
24 Public, and Date/Time Documents Available to the Public, what
25 are those two?

1 A. The Date/Time CCMS Data Available to the Public is when the
2 data would be publicly available on the public terminals in the
3 clerk's offices. And then the Date/Time Documents Available to
4 the Public is when the documents -- not the data, but the
5 documents, are available on public terminals in the clerk's
6 office.

7 Q. So the Date/Time Documents Available to the Public column
8 shows the date and time at which the complaint is first made
9 available to the public?

10 A. I'm sorry, which column did you ask about?

11 Q. The last one. Date/Time Documents Available to Public.

12 A. That would be the first time the documents themselves would
13 be electronically available to the public.

14 Q. Okay.

15 MR. PRINCE: And Your Honor, we have an objection to
16 this designation, so I'll just read the question.

17 BY MR. PRINCE:

18 Q. Okay. And so once pre-authorization occurs, the rest of
19 the approval process is in the control of the clerk's offices?

20 THE COURT: Well, I'm going to permit the question.

21 A. I would say once the attorneys hit the submit button which
22 kicks off the pre-authorization, that process, but that's when
23 it becomes available to the clerks. It goes into their queue to
24 accept or reject.

25 Q. And at the time the complaint will only become available

1 after the clerk accepts the filing and enters the cashier code?

2 A. Yes.

3 Q. So any suggestion that a clerk must wait on OES to process
4 after pre-authorization would be inaccurate?

5 MR. PRINCE: And there was a leading objection, Your
6 Honor?

7 A. Yes.

8 THE COURT: Okay.

9 BY MR. PRINCE:

10 Q. So if there are delays then from the time that a case has
11 been -- a complaint has been submitted and the complaint is
12 available to the public, that is the result of the clerk's
13 having not completed the acceptance process.

14 MR. PRINCE: And we have a leading objection to that
15 question.

16 THE COURT: I'll permit the question.

17 A. If everything works right. You know, we're talking about
18 systems here, so there are occasions when things take longer
19 than normal because network issues or a system is down or, you
20 know, sometimes we've had problem with the credit card
21 processor. But in the happy path, as we say, if everything
22 works correctly, then there should, then yes.

23 Q. Is any data like this available for paper-filed complaints?

24 A. Paper-filed complaints are -- we have some data, but it's
25 not a lot because we don't know when this piece of paper walked

1 in the door. So we don't know. We know the information was
2 entered into CCMS -- excuse me -- CMS. The CCMS, the Case
3 Management System, and that's about all we know. We can't
4 accurately talk about or identify when documents were scanned to
5 the case. Really all we can accurately report on is when in the
6 paper world when cases were entered into CCMS.

7 Q. What is the Date/Time Available In CCMS column?

8 A. That's when the data is available in, made available in
9 CCMS, the case management system. In most, in a lot of cases,
10 data is entered into the financial system first, and once it's
11 processed, it automatically populates these, this Circuit Case
12 Management System, CCMS. But it doesn't have to be that way.
13 The courts have a lot of different processes they use, and they
14 can choose to enter it into CCMS first and then FMS later. But
15 this column represents the time the data was entered into CCMS.

16 THE COURT: All right. Now, apparently we're looking
17 at that chart we saw before that had the number of columns?

18 MR. PRINCE: I believe that's correct, Your Honor.

19 THE COURT: Well, it would help me if -- I've got a
20 copy of the chart right here. Go ahead.

21 MR. PRINCE: That's your chart? The numbers. That's
22 yours, right?

23 (Counsel conferred.)

24 MR. HIBSHER: Your Honor, just for clarification,
25 Joint Exhibit 1, which has been introduced into evidence, is a

1 different chart than Mr. Smith was asked about during his
2 deposition. Joint Exhibit 1 was prepared after Mr. Smith's
3 deposition, but the fields that Mr. Smith was asked about during
4 his deposition also appear in Joint Exhibit 1. I hope I haven't
5 confused --

6 THE COURT: Well, 1D is what I'm looking at.

7 MR. HIBSHER: That's correct, Your Honor. And that
8 didn't exist at the time of Mr. Smith's deposition.

9 THE COURT: Well, okay. But the columns did?

10 MR. HIBSHER: The columns did in a different document.

11 THE COURT: Well, the only thing I'm looking at are
12 the columns which help me understand.

13 MR. PRINCE: Correct. The columns are the same.

14 THE COURT: Right.

15 MR. PRINCE: Okay. Could you read --

16 MR. MATHESON: You're on 35, Line 2.

17 BY MR. PRINCE:

18 Q. Okay. And then the last column, Date/Time CCMS Data
19 Available to the Public?

20 A. That is the date and time that the case information was
21 available to the public on the public terminals in the clerk's
22 office.

23 Q. So there are, in Exhibit 3 and 4, there was a column for
24 the Date/Time Available in CIS.

25 A. Yes.

1 Q. Why is there no Date/Time Available in CIS in Exhibit 6
2 and 7?

3 A. In the -- when a case is paper filed, the entry of
4 documents is when they are scanned in by the clerk's office. So
5 there's a lot of caveats into when those dates could change. As
6 an example, if there was a complaint that needs to have
7 signatures or something, the clerk's office may scan those
8 documents without signatures initially to get them into the case
9 file, but then down the path, judge's signatures, other things,
10 the clerk's office will typically want to rescan those to
11 capture the documents within the signatures. So they will
12 rescan, which is, which means lay over the original. The first
13 time a document was imaged with one that was imaged, say, three,
14 four, five days later, two weeks later, and because of things
15 like that, we could not accurately provide a date that would say
16 this is the first time these documents were available in CIS.

17 Q. But OES is able to identify a scan date within the CCMS
18 data?

19 A. No.

20 Q. Is it available or is it able to identify a Date/Time
21 Available In CIS within that data?

22 A. No. Not in the paper world.

23 Q. And so it's OES's position then that there's -- that that's
24 also the reason why there is no column for Date/Time Documents
25 Available to Public in Exhibit 6 and 7?

1 A. Yes.

2 Q. You testified earlier that there is -- that OES -- the OES
3 systems does not -- do not track the date and time paper
4 complaints are scanned; is that correct?

5 A. No, it -- we track when documents are scanned, but we can't
6 tie them accurately to the process of when they were initially
7 scanned to a case. As an example, the date and time stamps
8 provided in these other reports are date and time stamps within
9 the system that are in logs that we have for particular actions.
10 The date and time stamps for images for documents are tied to
11 the documents themselves. So once a document is replaced or
12 deleted or rescanned, we lose that metadata of when the document
13 was initially scanned. It doesn't carry forward. All we have
14 is the present date, date and type stamp the document was
15 scanned. So we lose that historical data for documents that
16 are -- when they are scanned into the paper world.

17 Q. Do you have a sense of how many complaints or how many
18 filings are overwritten by subsequent scans?

19 A. I do not.

20 Q. Who would have that information?

21 A. I'm not sure. I mean, if anyone had it, we would have it.
22 But I'm not sure we have it.

23 Q. So there's no information available in the CCMS database or
24 servers that would provide the date that a scan was originally
25 done?

1 A. Correct.

2 Q. And so there would be no data then that would show when --
3 if a scan was modified?

4 A. Correct.

5 Q. But OES does -- is able to provide a report even if the
6 dates have been modified showing when a particular filing has
7 been scanned.

8 A. No.

9 Q. So if I could direct your attention to the last page of
10 that Exhibit 8 next to No. 6?

11 A. Yes, sir.

12 Q. It says "This confirms that while we can provide a report
13 reflecting the date and time each paper civil cases/matters
14 includes reinstatements and subsequent actions was scanned, it
15 would show only the last time or most recent time that some
16 version served, amended, et cetera, but the paper file case was
17 scanned."

18 A. Okay.

19 Q. So is it still OES's position that they are not able to
20 provide a report reflecting those dates?

21 A. The -- what we can provide is a report of when images that
22 are currently in the systems were scanned. We cannot provide a
23 report of when the first image in the life of a case was
24 scanned. And I think that's what we're trying get here -- get
25 at here. So we can give you reports of when, of when every

1 image was scanned, but we cannot tell you when the first image
2 to a case was scanned.

3 Q. So when you say that the scans that -- when a scan is
4 overwritten, that the metadata is lost, what do you mean by
5 that?

6 A. Metadata is the information about the document. So the
7 document is scanned, and it has -- it's a case paper. It has
8 information about the case. But behind the scenes, we store
9 data of -- we give that document a unique identifier. We store
10 the date and the time that the document was scanned in; other
11 information that doesn't pertain to the contents of the document
12 itself, but pertains to the management of the image for the
13 systems.

14 Q. If I could, sticking with Exhibit 8, just below that, it
15 says "In certain cases, business rules dictate that images are
16 not to be replaced without retaining" --

17 THE COURT: Wait a minute.

18 MR. PRINCE: Sorry, Your Honor?

19 THE COURT: You said "are not to be replaced."

20 MR. PRINCE: Did I miss -- I should have said "are to
21 be replaced." Did I --

22 THE COURT: Yeah, you said "are not to be replaced."

23 MR. PRINCE: I'll start with that question again. I'm
24 sorry, Your Honor, I may have misspoken. Known to happen.

25 BY MR. PRINCE:

1 Q. If I could, sticking with Exhibit 8, just below that it
2 says "In certain cases, business rules dictate that images are
3 to be replaced without retaining the original image. Service of
4 process is one example." What are the business rules?

5 A. When this system -- and we're talking about CIS -- was
6 designed, the people helping us design it did not want us to
7 retain older versions of the documents. They wanted a true
8 replacement if a replacement of a particular document was
9 scanned. So as an example, if initially a document was scanned
10 without signatures, three weeks later we have that document with
11 signatures, they will want to scan that back in and it will
12 replace the no-signature document. And at that time, there's no
13 trace anywhere of any system of that original scanned document
14 existing.

15 Q. And so the metadata that you referred -- excuse me.

16 And so the metadata that you referenced earlier would then
17 be modified to reference the newer subsequent scan?

18 A. The metadata is associated with the document itself. So
19 once that document is removed, that metadata is also removed.
20 Lost. The document is replaced, and that new document has its
21 own metadata.

22 Q. But with -- but that would only occur if a subsequent scan
23 were to be done for that specific filing?

24 A. No. That is not the only time.

25 Q. What are other instances where that information could --

1 would change?

2 A. Could be that a document initially scanned was of poor
3 quality and the clerks wanted to rescan it, whether it's an hour
4 later or a few days later or whatever. Those are two reasons --
5 those are the two reasons I can think of.

6 Q. Sure. Is every complaint that gets filed and scanned into
7 the system, is that overwritten? Is that complaint subsequently
8 overwritten by another scan?

9 A. Typically only the documents that have a need to be
10 rescanned, whether it's the poor quality, additional signatures,
11 would be replaced.

12 Q. And so if the, if the scan was not replaced, then the scan
13 date that's available on CCMS would show the scan date and time
14 that would, that the scan was first made?

15 A. They're not scanned into CMS, they're scanned into CIS.
16 But if the documents were not replaced, then the date and time
17 stamp on that document would be the date that it was initially
18 scanned into the system.

19 Q. Do you have any sense of how many cases that is the case
20 for? Or how many complaints that is the case for?

21 A. I do not.

22 Q. So we've talked for a while about some of the systems that
23 OES provides, but I was just wondering if you could give a brief
24 description of what the role of OES is with respect to the
25 Circuit Court in Virginia?

1 A. In every aspect or in -- as related to IT?

2 Q. That's related to the software systems that they provide.

3 A. So as you know, circuit court clerks in Virginia are
4 elected officials. They can choose to use any of our
5 applications or choose to use none. Most use our applications.
6 So we're a vendor, if you will, in a lot of these application
7 space. Our role as to provide technology solutions for the
8 circuit court clerks, and if they choose to take advantage of
9 them, we hope and anticipate that those solutions will meet
10 their needs and make their offices run smoother. So we work
11 with the circuit court clerks to try and develop applications
12 that will do for them and make changes -- that will do that for
13 them, and make changes to those applications that will improve
14 office production.

15 Q. At the bottom of the page it says "OES indicated that it
16 could not provide defendants with documents or information
17 reflecting the date and time each new paper civil complaint was
18 scanned into additional form by defendant's staff."

19 Were you on that telephone conversation?

20 A. Yes.

21 Q. Do you recall what was said about not being able to provide
22 documents or information reflecting the date and time each new
23 paper civil complaint was scanned?

24 A. Yes.

25 Q. And what was that?

1 A. It's the same things we've discussed previously: That
2 because images get replaced, originals are replaced, we lose the
3 original scan date and time and we can't accurately reflect when
4 those documents were first scanned and available.

5 Q. And so the -- you said the file date is a separate field.
6 What do you mean by that?

7 A. The file date is an actual field in CCMS that can be,
8 clerks have the ability to enter.

9 Q. And so when a clerk is inputting case information, one of
10 the things that they would need to put in would be the file
11 date?

12 A. Yes.

13 Q. And is that date automatically populated as they go through
14 or is that something that they need to put in?

15 A. It's automatically populated with the current date.

16 Q. But the file date itself would be the date that would be
17 date-stamped on the paper complaint?

18 A. I don't know. The file date that is, is what displays on
19 the public terminals as to when the case was filed.

20 Q. And when the case was filed, it should be the date that was
21 hand -- that the hand-stamp on it would say whatever the
22 corresponding date was?

23 A. I don't know.

24 Q. So the Date/Time Entered into CCMS column, you testified
25 earlier that that is the same as the Date/Time Available in CCMS

1 column, right?

2 A. Yes.

3 Q. So that is not the date or time that the complaint was
4 scanned into the system?

5 A. Correct. It's not -- it is not.

6 Q. Could a complaint be scanned in the system at the exact
7 date and time that a case was entered into CCMS?

8 A. With electronically filing cases, yes. In the paper world,
9 it would be challenging, I think, to be the exact same time.

10 Q. And why is that?

11 A. Because we're talking about manual processes at this point.
12 So a person would have to enter the case into FMS or CCMS,
13 create the case, and then even immediately going over to scan,
14 there would be a delay of a few minutes, you know. But every
15 court has a different process. Some of them scan later in the
16 day, some of them -- you know, it's a mixed, it's a mix and
17 match. So it's really about the process of the court. But
18 because it's not automated there is some level of delay inherent
19 in it.

20 Q. How does a clerk's office use CCMS in its everyday
21 operations?

22 A. Well, it's the critical system that they use. Every case
23 comes into the clerk's office, civil, criminal, whatever, is
24 entered in this, into the system, and it provides them, provides
25 the public the ability to look up case information whether in

1 the court or online. For the clerks it gives them the ability
2 to -- if they're still paper -- sort of an index of where they
3 might find this paper. It ties the historical sort of
4 information for cases so that they can be looked up and referred
5 to later, you know, as years go by.

6 Q. So for the -- in the day-to-day, if a new filing comes in
7 or to track information, that's all done through CCMS?

8 A. Yes.

9 Q. Do you know if the database can be searched for scan dates
10 and times?

11 A. It can the search for the dates and times that are, again,
12 they're tied to those images. There is not a repository of scan
13 dates and times that it inherently keeps. It's the metadata we
14 talked about earlier for that image. Once that image is gone,
15 all the scan date and time information is gone as well.

16 Q. Generally speaking, can you just describe how CIS operates
17 with the other OES systems in the scanning of new, of a newly
18 filed civil complaints?

19 A. In a paper process, once the case is set up in CCMS, the
20 clerk's office will have to scan those documents into CIS. They
21 will scan the documents, they will then assign those documents
22 to a particular case, to a particular document type, and at that
23 moment the case -- the documents would then be available for
24 viewing in the clerk's office on the public terminals. And then
25 once that replication process is completed, available to

1 attorneys via OCRA.

2 MR. PRINCE: We have an objection to this one, Your
3 Honor.

4 Q. And the information on OCIS can be made available prior to
5 the complaint being available on the public terminal?

6 THE COURT: The question can be answered.

7 A. No. The information on OCIS is -- comes from CCMS. So a
8 complaint is entered into the CCMS. Once that's complete, the
9 public terminals and the clerk's office would display the same
10 CCMS information. Once that replication process completes, that
11 same CCMS information is made available on the web via OCIS. So
12 if you had to chronologically talk about who goes first, OCIS
13 would be last, but it could be seconds or it could be four to
14 five minutes.

15 Q. For the actual case image itself, though, that is not
16 available until it's been scanned in through CIS?

17 A. Correct.

18 Q. And so just because there's information on OCIS about a
19 filing or about a case, that does not mean that the complaint
20 image is available for viewing?

21 A. Correct.

22 Q. And so with respect to a scan date, do I understand your
23 testimony correctly that the scan date itself is not a field in
24 the database; it's actually an attribute of the document that's
25 stored within the document's metadata?

1 A. Correct.

2 Q. Is that right?

3 A. That's correct.

4 Q. And so if through the clerk's process if those documents
5 get replaced along the way, then the scan date would be changed?

6 A. Yes.

7 Q. And is there a way for you to go back and look at metadata
8 for documents that have been overwritten, removed from your
9 database?

10 A. No.

11 Q. Is there any way for you to tell if a complaint has been
12 rescanned?

13 A. No.

14 MR. PRINCE: Your Honor, I think we're ready for our
15 next witness.

16 THE COURT: Let's go ahead and take our morning recess
17 before we start on that witness.

18 (Recess taken from 11:09 a.m. to 11:28 a.m.)

19 MR. MATHESON: May it please the Court.

20 THE COURT: All right.

21 MR. MATHESON: Your Honor, our next witness is going
22 to be Dr. David Harless.

23 THE COURT: Okay.

24 MR. MATHESON: And while he's coming up to be sworn
25 Your Honor, I just wanted to remind the Court the parties have

1 agreed to forego the lengthy qualification process and cut to
2 the chase.

3 THE COURT: I remember that, yes.

4 DAVID HARLESS, having been duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MATHESON:

8 Q. Good morning, Dr. Harless.

9 A. Good morning.

10 Q. Please introduce yourself to the Court.

11 A. Well, my name is David Harless. I received my doctoral
12 degree in economics from Indiana University, 1988. I taught at
13 Drexler University for four years, and then for the last 23
14 years I've taught at Virginia Commonwealth University and was
15 promoted to full professor in 2005. I teach -- at both these
16 universities, I teach econometrics as my specialty, which is
17 essentially statistics and statistical concepts for applications
18 in economics and related areas. As a part of my teaching, I
19 think it's significant that five different programs, doctoral
20 programs at the university, have come to require my courses as
21 part of their curriculum because they found those concepts and
22 tools useful in, to prepare their doctoral students for
23 research. And I have served on over 30 doctoral
24 dissertations -- doctoral dissertation committees at the
25 university.

1 In terms of academic research, I've published 46 articles
2 in peer-reviewed refereed journals, and Google Scholar counts
3 citations to authors and articles, and Google Scholar lists over
4 3,000 citations to my -- citing my papers that I've written
5 during my lifetime -- or during my professional career.

6 Q. Do you have any prior experience either as a consulting or
7 testifying expert in civil litigation?

8 A. Yes. Over the past 20 years in about 20 to 25 instances I
9 have served as an expert witness in cases involving class-action
10 suits involving automobiles, typically diminished value kinds of
11 topics. And I've also served in, twice in areas where groups of
12 dealers, where the issue was groups of dealers suing the
13 manufacturer over issues related to warranty reimbursement.

14 Q. Okay. And have you testified in any civil proceedings in
15 the past?

16 A. At deposition about 25 times, and at one trial.

17 Q. Okay. Was that in federal or state court?

18 A. It was in federal court.

19 Q. What jurisdiction? If you remember.

20 A. It was in New Jersey.

21 Q. Okay. The clerks have engaged you to provide expert
22 analysis in this case; is that right?

23 A. Correct.

24 Q. And what was the purpose of your engagement?

25 A. Well, the main purpose was to review all available evidence

1 to determine what could be determined about the timing of the,
2 timing of the availability of processing, processing times to
3 make cases available to the public. Also, to evaluate Dr.
4 Kancherla's -- excuse me, Ms. Kancherla's report and rebuttal
5 report, as well as the CNS tracking data that she relied on in
6 part for her report.

7 Q. Okay. And you were present in the courtroom when Ms.
8 Kancherla testified yesterday, right?

9 A. Yes.

10 Q. Okay. And have you reviewed her reports?

11 A. Yes.

12 Q. Have you reviewed -- and if you were present yesterday, you
13 heard us talk about the two big sets of data in this case, the
14 CNS tracking data, the OES data. Have you reviewed this as part
15 of your analysis?

16 A. Yes.

17 Q. And have we given you a copy of the deposition transcripts
18 and the written discovery and the pleadings in this case?

19 A. Yes. I reviewed all the written discovery as well as
20 reviewing the data from CNS through June of 2018, and the OES
21 data that was made available to both parties in this litigation.

22 Q. Okay. Before we talk about the conclusions you've reached
23 in this case I want to talk about the data that you used. So
24 let's start with the tracking data. And you just testified
25 you've reviewed the tracking data; is that right?

1 A. Correct.

2 Q. And in forming your opinions in this case, did you rely on
3 the tracking data?

4 A. No.

5 Q. And why is that?

6 A. Well, for several reasons: The first one being that it
7 represents a small proportion of the total population of initial
8 civil filings in the two clerk's offices. So it represents
9 approximately 10 percent in each of the clerk's offices.

10 Teaching statistics, a 10 percent of the total population
11 could be a sufficient number to generate a reasonable estimate
12 of the processing times or assess the processing times within
13 the clerk's offices if there was a random sample or some sort of
14 systematic random sample. In this case, however, this was a
15 convenient sample. It was -- the scientific principle I would
16 point to here is the principle of blind review. So as a gold
17 standard, you would have -- for a drug trial you would have a
18 randomized clinical trial, and the individuals who are
19 evaluating whether the patient got better or not would be people
20 who did not know whether that patient was the -- had received
21 the placebo or received the drug in question.

22 In the circumstance we have here, it's a very different
23 situation in that the CNS reporters gathered data knowing, had
24 explicit knowledge, that the purpose of the data was to support
25 a lawsuit that they, that was planned to be filed. That's,

1 that's very different from a random sample. And it's also --
2 whether consciously or unconsciously, people often answer
3 questions, answer surveys or act in ways that they expect their
4 boss or even the person taking the survey to respond in a way
5 that the person expects them to respond.

6 I don't, I don't have explicit evidence, I'm just saying
7 that the procedure for the selection of the cases was not
8 consistent with that scientific principle.

9 Q. Is this -- is data that's collected in the manner that the
10 tracking data was collected something that you would consider to
11 be scientifically reliable?

12 A. No.

13 Q. Ms. Kancherla, in her testimony, described this as a robust
14 sample. Do you agree with that?

15 A. Again, it's -- I find it peculiar in the set of cases that
16 are selected. So OES, as a part of the data, they have a field
17 that indicates the description of the type of case. Whether
18 it's a petition, there's a category catch-all complaint,
19 divorce, garnishments. And when I look at those initial civil
20 filings between January and June, there are peculiarities in
21 that there's no category in which 100 percent of the cases in
22 that category are captured or included in the CNS tracking data
23 while, on the other hand, there are other categories where the
24 CNS -- various -- Ms. Kancherla's report in various statements
25 by CNS suggest we're not interested in certain kinds of topics

1 like, say, garnishments, yet a certain amount of garnishment
2 data nevertheless ends up being included in the CNS tracking
3 data and included in Ms. Kancherla's analysis.

4 Q. Ms. Kancherla has opined that newsworthiness plays some
5 role in the identification of the complaints that she thinks are
6 important versus the ones that she thinks are unimportant. Do
7 you agree or disagree with that?

8 A. Well, I have -- you know, I have no way of performing an
9 independent check, nor would that be possible using the OES
10 data, nor do I believe it would be possible for the clerks
11 themselves to determine what was newsworthy and what was not
12 newsworthy in processing the complaint. It's an inherently
13 subjective notion.

14 Q. And one criticism of the OES data set, of the total OES
15 data set that Ms. Kancherla has raised is that it includes both
16 confidential and non-confidential filings. Was there anything
17 in your review of the record that indicated to you that you
18 should have excluded filings that were entitled confidential or
19 that contained confidential attachments?

20 A. I -- so they're indicated to be -- these are initial civil
21 filings. As I reviewed the written discovery, I didn't see any
22 indication that the process or the requirements for processing
23 that civil complaint differed for the cases that were sealed in
24 one way or the other versus the other. And primarily the
25 overwhelming number of these are the concealed weapons permits.

1 Q. Okay. Let's shift gears. Talk about the OES data. Is
2 that the data set that you ultimately relied upon in forming
3 your opinions in this case?

4 A. Yes.

5 Q. And why is that?

6 A. Well, because it was collected as, in a sense, various
7 fields collected on an automatic basis and in the normal course
8 of business for the Office of the Executive Secretary in
9 supporting the function of the clerk's offices. And again,
10 being an independent state agency and having this data collected
11 not for the purpose of taking a side in a lawsuit.

12 Q. And did you ultimately rely on a sample of the OES data or
13 did you include the entire population in your analysis?

14 A. I included the entire population in my analysis with, you
15 know, a handful of exceptions. Just a, just a tiny number of
16 exceptions. One example was an instance where the OES file date
17 was months after the date that the fee was processed. I didn't
18 have, I didn't have any way of understanding how that could have
19 happened. And so, you know, in a very, very small number of
20 cases I excluded instances. Otherwise I used all of the data in
21 the OES data set.

22 Q. Can you define what you mean by very, very small number?

23 A. I believe I could count them on one hand.

24 Q. Okay. Did you make any other modifications or exclude any
25 other filings from the OES data set?

1 A. Well, I excluded filings that were not initial filings, all
2 right? So the OES data set included things that were subsequent
3 filings to a case, but excluded -- but I only -- my work only
4 reflected the initial civil filings.

5 Q. And I'm sorry to interrupt you, but how many of those do
6 you think were excluded from the total data set?

7 A. So things that were not initial civil filings?

8 Q. Yes.

9 A. Oh, that would have been in the hundreds.

10 Q. Okay. Now just to remind the Court --

11 THE COURT: Wait a minute. I don't understand. You
12 looked only at initial filings?

13 THE WITNESS: Yes.

14 THE COURT: But I thought that question asked him
15 about all filings. Did you look only at initial filings?

16 THE WITNESS: I understood that it was initial civil
17 filings that were at issue in this litigation. My understanding
18 is that the clerks have a different process -- or have -- place
19 a different priority on initial civil filings as opposed to
20 subsequent filings, such as a subpoena. And I believe that was
21 what Ms. Smith was speaking about or testifying to earlier
22 today.

23 THE COURT: Well, my question is simple: Did you look
24 only at initial filings or at all filings?

25 THE WITNESS: Only at initial civil filings.

1 THE COURT: And from the initial civil filings you
2 excluded approximately 100 cases which you thought were
3 outliers?

4 THE WITNESS: No. No, I'm not saying they're
5 outliers. There is a CMS case ID number. Last two digits -- or
6 the last two placeholders, digits in that CMS case ID are zero
7 when it's an initial civil filing, all right? And I understood
8 my task, my scope of work to analyze initial civil filings,
9 because that was what was at issue.

10 THE COURT: Perhaps my question was not clear.

11 THE WITNESS: I'm sorry.

12 THE COURT: Among the initial civil filings that you
13 analyzed, you excluded 100 initial filings which you thought
14 were outliers?

15 THE WITNESS: No, sir.

16 THE COURT: All right. Well, what were the 100 you
17 excluded?

18 THE WITNESS: Okay. It was not just 100, but there
19 were several hundred in each of the clerk's offices that were
20 other-than-initial, or new civil filings. These were filings on
21 top of or related to a case, say it might be -- an example might
22 be a subpoena.

23 THE COURT: Hundreds? There should have been
24 thousands.

25 THE WITNESS: All right. So could I clarify one

1 point?

2 MR. MATHESON: Please.

3 THE COURT: You're going to have to clarify that.

4 There would have been far more than a hundred filings
5 of things like motions, subpoenas and so forth.

6 THE WITNESS: Well, that may have been -- so I know
7 what was in the OES data set, and the OES data set reflected
8 hundreds of things that would -- were indicated by the last two
9 digits to not be an initial filing.

10 I'll also say in terms of the CNS tracking data, their
11 data only included those -- they only tracked data that had
12 those zero in the last two digits of the CMS case ID to
13 indicated that it was an initial civil filing.

14 THE COURT: Well, I don't know what these hundreds of
15 cases are that you're talking about. I have no idea. You're
16 going to have to explain those to me somehow. Were these like
17 responsive pleadings? Motions? You said subpoenas. What were
18 they?

19 THE WITNESS: So I'm, I'm not -- I'm not claiming to
20 be an expert in terms of the, of the filing system or in terms
21 of the mechanics of this. I was -- I knew that there was -- and
22 this was reported by the reporters in their depositions: The
23 way you could identify in CCMS an initial filing was that it had
24 a code, a zero at the end of the case ID.

25 THE COURT: Okay. Well, the hundreds that you

1 excluded, did they have something other than a zero?

2 THE WITNESS: Yes, sir.

3 THE COURT: Well, how were they... I don't know. If
4 they didn't have a zero, why did you look at them in the first
5 place?

6 THE WITNESS: Well, the reason I excluded them was
7 they were in the OES data set, but the code told me they were
8 not initial civil filings.

9 THE COURT: Go ahead.

10 BY MR. MATHESON:

11 Q. Mr. Harless, so you started with the entire set of data
12 that was provided by the Office of the Executive Secretary,
13 right?

14 A. Yes.

15 Q. And you reviewed that data in a multifaceted way, and one
16 of the things that you reviewed it for was to see that the data
17 contained exactly what it purported to contain, which was the --

18 THE COURT: You can't make your question but so
19 leading, Counsel.

20 BY MR. MATHESON:

21 Q. Part of your analysis was to see whether or not the data
22 was what it purported to be, right?

23 A. Yes.

24 Q. Okay. And that was the universe of all newly filed civil
25 complaints during the time period?

1 A. Yes.

2 Q. Okay. And in your analysis did you identify that there
3 were data included that was not newly filed civil complaints?

4 A. Yes.

5 Q. Okay. And are those ones that you identified as not
6 meeting the criteria for newly filed civil complaints, the ones
7 that you've excluded?

8 A. Yes. And there were -- out of, you know, on the order
9 of --

10 Q. Can I give you some hard numbers to help you?

11 A. Yes.

12 Q. So in Norfolk, Ms. Kancherla testified that the OES data
13 for the period of January to June of 2018 contained 5,658 cases.
14 Does that sound about right?

15 A. Yes.

16 Q. Okay. Now, your analysis included approximately 5,026 --

17 A. That's right.

18 Q. -- does that sound right?

19 So there is a difference of 5,658 and 5,026. What's the
20 discrepancy?

21 A. The ones that were excluded did -- given the information
22 that I had available to me about what was an initial civil
23 filing, these were not, these were not initial civil filings
24 because they didn't have the right code at the end, at the end
25 of CCMS's case ID. You know, I learned about that code from

1 learning, reading the depositions, including of the CNS
2 reporters.

3 Q. Do you have any idea why, in responding to the subpoenas in
4 this case, that the Office of the Executive Secretary would have
5 included some but not all documents that did not qualify as new
6 civil filings?

7 A. I don't know. But I felt it was my obligation to apply
8 every screen or every check to see if the data represented was
9 exactly as -- that corresponded to the particulars of this
10 lawsuit, which was for initial civil filings.

11 THE COURT: All right. Let's move on.

12 MR. MATHESON: Okay.

13 BY MR. MATHESON:

14 Q. Let's that about your end points.

15 A. Okay.

16 Q. So what is your starting point for your calculation of the
17 number of days before a complaint is made available?

18 A. The starting point that I used in the Office of the
19 Executive Secretary data was the file date as listed in the OES
20 data set.

21 Q. All right. And is that the same field that Ms. Kancherla
22 started with in her analysis?

23 A. That she started with, yes.

24 Q. Okay. And did you make any modifications to that field?

25 A. All right. So in a tiny number of cases there were --

1 Q. Define a tiny number of cases.

2 A. Again, five. On the order of five. And all these were
3 documented in the materials I produced along with my report.

4 You might have a circumstance where there was a file date
5 on a Saturday or perhaps on a Sunday, all right? So under that
6 circumstance, if you're going to count business days or count
7 court days and exclude Saturday and Sunday and exclude inclement
8 weather and court holidays, you have to have a system for
9 counting. So I made a reasonable assumption when I saw a
10 Saturday file date it really meant Friday. I made a
11 conservative assumption. There were just a handful of those
12 kinds of anomalies where some date appeared on a weekend or a
13 court holiday.

14 Q. Okay. But you did not go and audit all 5,000 complaints in
15 November at the public access terminal, right?

16 A. I didn't. I only used the OES data.

17 Q. Okay. And likewise, you didn't go and audit the
18 approximately 6,000 complaints at issue in Prince William?

19 A. No.

20 Q. Okay. In your opinion, does the file date field provide a
21 clear picture of the starting point for any analysis of the
22 number of days of delay?

23 A. No, sir. It's not absolutely clear. There can be problems
24 with it.

25 Q. Explain that to Judge Morgan.

1 A. So the beginning of the process for taking a complaint,
2 whether it's -- when it's a paper filing, is the complaint is
3 time stamped. Date and time stamped. That's the beginning.
4 And even though it's date and time stamped at a begin point, it
5 does not necessarily mean that the complaint is ready to be
6 filed. There can be problems with the filing. There can be
7 problems with the money, the fee associated with it, the method
8 of payment. There might be problems with the complaint itself,
9 a mistake in the complaint or some information in the complaint
10 that requires the clerk's offices to contact the filer or get
11 the filer to change something to make it appropriate for filing.
12 So the point is, is that the file date or the OES time stamp is
13 not necessarily when that complaint is ready to be filed.

14 Q. Okay. So just to make sure that this is clear, so
15 hypothetically if a complaint walks in the door on January 30th
16 of 2020, it gets a stamp, right? And we heard testimony and you
17 were here when Ms. Kancherla explained that that file same stamp
18 is applied to the complaint the moment it's received, right?

19 A. Yes, that's my understanding.

20 Q. If we take that complaint and there's no check or the
21 filing fee is incorrect, does the -- based on your review of the
22 record of this case, does the docketing process continue?

23 A. No.

24 Q. Okay. So in Ms. Kancherla's analysis, who bears
25 responsibility for whatever the delay is from when the document

1 is filed and received to when the issue with the filing fee is
2 finally cleared up?

3 A. So Ms. Kancherla assumes in her analysis -- and in the
4 calculation she makes -- she assumes that the civil filing is
5 ready to be filed at the date, on the date at which that
6 Date/Time stamp is administered. And all the evidence that I've
7 read based upon the deposition testimony and other information
8 indicates that there are many cases where that simply is not
9 true; that there is some problem with the payment or the filing
10 itself that necessitates further action on the filer. Some of
11 the delays might be due to the clerk's offices. Some of the
12 delays might be due to the filer. But there isn't information
13 available to either Ms. Kancherla or me to be able to determine
14 which was which. Which was attributable to the file versus
15 which attributable to the clerk's office.

16 Q. Okay. Is there any data available in the OES spreadsheet
17 related to filing fees?

18 A. No.

19 Q. Okay. Were you, did you --

20 A. Well --

21 Q. -- attempt to explicate the effect of filing fees on the
22 reported delays?

23 A. Let me just -- there was no information there explicitly on
24 number of cases in which there were instances of filing fees.
25 However, based upon what I read, what I understood about the

1 business process of the clerk's offices, I did one analysis
2 comparing all the available data meeting the criteria for
3 initial filing, and I also did an analysis that conditioned on
4 the fee being processed no more than two days after the file
5 date.

6 Q. Why did you pick two days?

7 A. Well, I mean, two days is a number that makes sense in
8 terms of it being proximate to the file date, but there were
9 many instances where the processing fee is -- there's no fee
10 processed until days, weeks, even months after the filing date.
11 Again, I don't think, given the description of the clerk's
12 offices and their business processes, that that can be
13 attributed to the clerk's offices. I think that those instances
14 would be attributable to a problem on the part of the filer.

15 Q. Okay. But, and you -- and we're going to get to it in a
16 minute, but you have formed some conclusions about what you
17 think the best approximation of the delays in these
18 jurisdictions is based on the OES data; is that right?

19 A. Yes.

20 Q. And the numbers that you have come up with, they don't --
21 they don't account for any delays that are associated solely to
22 problems with the filer; is that right?

23 A. I can't, I can't distinguish delays that are solely due to
24 the filer or solely due to the clerk's office.

25 Q. And that's because you don't have the data to be able to do

1 that?

2 A. Neither I nor Ms. Kancherla has the data to be able to make
3 that determination.

4 Q. Let's move onto the end point for your analysis. I want to
5 start with Ms. Kancherla's end point: The CIS field. Did you
6 rely on that as your end point?

7 A. I did not rely on the CIS Scanned Date field as my end
8 point for the analysis.

9 Q. Why not?

10 A. Well, many of the reasons for why I did not rely on that
11 are indicated based upon the reading of the testimony that we --
12 from Mr. Robert Smith that we just had, that was just done
13 before I began to testify. The first thing that I saw was a
14 data dictionary that specifically warned me that there was a
15 problem with that data element in that the date associated with
16 that element represented the last date at which a document was
17 scanned, not the first date.

18 In addition to that, there is Mr. Smith's testimony and the
19 testimony from other depositions, the clerks and the deputy
20 clerks, indicating there's a problem with this field. I've had
21 many other circumstances as part of my academic research and my
22 work as an expert witness where I'm working with a database, and
23 the custodian or the creator of that database says here's this
24 data, but there's a problem with it, and I've always heeded
25 those warnings, because I thought it was the appropriate thing

1 to do.

2 Q. Okay. And when the custodian and administrator of a
3 database like this disclaims the accuracy of a field, is it
4 something that you consider to be scientifically reliable?

5 A. Well, I'm told by the people who are the experts at the
6 database that it's not reliable, so I don't believe use of it is
7 scientifically reliable.

8 Q. Okay. So what did you use as the end point for your
9 analysis?

10 A. I used the -- if I can just make a comment generally?

11 So there are a bunch of different data elements that are
12 provided for the paper filings in that OES data. There are
13 really just three dates. There's the OES date filed, then
14 there's the CIS date filed, and then there's this middle point
15 which represents the date and time at which the data -- the fee
16 is processed and a case ID is created in the CCMS system.

17 It's a peculiar -- you know, I mean, the database as
18 provided was sort of peculiar in that there are four identical
19 dates indicating fee processing. There are -- and two identical
20 dates, two identical -- actually there are six fields which
21 essentially represent the same date for 99 percent of the
22 observations.

23 Okay. So I wanted to make that point, that I have this
24 choice: I have the OES date filed as the only possible
25 beginning point, the latest point would be the CIS scan date,

1 but I've already explained why there are, there's all this
2 evidence available to me that says that it is flawed. That
3 there's fundamental problems with it. And so the only date that
4 made sense to me to use as the end date is the date at which
5 that fee is processed and the CCMS data becomes accessible to
6 the public.

7 Q. So let me ask you a question about that before you
8 continue. So we've heard a lot of testimony in this case about
9 indexing and scanning, and those are two completely separate --
10 well, I shouldn't say separate processes, but --

11 THE COURT: Well, don't tell him what to say. Ask him
12 a question.

13 MR. MATHESON: Okay.

14 BY MR. MATHESON:

15 Q. So the end point that you used doesn't reflect --

16 THE COURT: Well, what end point did you use?

17 THE WITNESS: I used the date -- the end point was the
18 date at which the fee was processed and the date, the date --
19 which was equal to the date at which the record was available in
20 the CCMS system. So that's a case number is assigned.

21 BY MR. MATHESON:

22 Q. And why did you use that field?

23 A. I used that field based upon what I already told you about
24 the CIS data, and I relied on the information from the clerks,
25 all right? I read the deposition testimony, the declarations.

1 I tried to understand the business process of filing -- of the
2 process of filing that the clerks described. They described a
3 process that indicated that once a filing was -- the fee
4 was processed, that there was a continuous process that said
5 we're going to take this, we're going to enter the remaining
6 data, the indexing of the data in CCMS, and that same individual
7 would immediately scan the complaint. And they also said that
8 they do that within one day, on that day, or, or, in some
9 circumstances, the next day if there's a rush at the end of the
10 day or the mail comes late and they're unable to process those
11 complaints in the mail until the next day, and they would give
12 those complaints priority. The very next morning.

13 So I want to be absolutely clear: I relied on the clerk's
14 testimony concerning their business process and the continuity
15 in which they describe their processing of the initial civil
16 complaints.

17 Q. And in your review of the record of this case, did you see
18 any indication that scanning and indexing ever occurred at
19 different times?

20 A. No. They, the -- the deputy clerks say things like this
21 is, we only handle paper once. Another phrase was, It's a
22 soup-to-nuts operation. Another phrase used by another deputy
23 clerk was, It's one flow. So the same person who would index
24 that complaint in the CCMS system would immediately scan it
25 according to all the information from the clerk's office.

1 Q. Okay. Now, if we use that end point, does that provide us
2 with a perfect picture of precisely when documents were
3 available in the public access terminals?

4 A. No.

5 Q. Is there a superior set of data available from you from
6 which you could have derived a more accurate number?

7 A. No. And I'd like to explain that the most -- one of the
8 most important conclusions that I can come to and that I came to
9 in this case is that there is no way available to me or Ms.
10 Kancherla to be able to accurately count the processing time or
11 count the processing days given the data available to us. For a
12 beginning point we need to know -- we would need to know when
13 that complaint is not just at the clerk's office or Date/Time
14 stamped, but when it's actually ready to be filed with the
15 processing fees paid and the, everything about the filing being
16 correct. And then we need to know as the correct end point when
17 that data or when that document first was available on the
18 public access terminals. Neither one of us know either of those
19 two points.

20 Q. Okay. Let's get to your conclusions. And I'm going put
21 in --

22 MR. MATHESON: We have an exhibit binder, Your Honor.
23 I've also got a poster I'm going to put up.

24 THE COURT: All right.

25 MR. MATHESON: This has been marked as Defendant's

1 Exhibit 24.

2 BY MR. MATHESON:

3 Q. Mr. Harless, what is this chart?

4 A. Well, this is simply a summary chart of my finding with
5 respect to the clerk's office in Prince William about my
6 approximation to the percentage of initial filings that are
7 available within one court day. And as I define in my report
8 very clearly, "within one court day" means either on the day of
9 the file date or the subsequent day. In other words, if it was,
10 if the file date said a Monday, it was either on Monday or the
11 subsequent day, Tuesday.

12 Q. And the suggestion has been made from Mr. Hibsher and --

13 THE COURT: Is this Exhibit 24?

14 MR. MATHESON: Yes, Your Honor.

15 THE COURT: Okay.

16 BY MR. MATHESON:

17 Q. The suggestion has been made from Mr. Hibsher and Ms.
18 Kancherla that you have ill-defined "within one court day". Is
19 it true that your report does not contain a definition of
20 "within one court day"?

21 A. It contains a very clear definition, and if you gave me the
22 report I'd read it.

23 Q. I'd be happy to do that.

24 MR. MATHESON: Your Honor, there's a copy of the
25 report in the pockets to the exhibit binder.

1 May I approach the witness?

2 THE COURT: No.

3 MR. MATHESON: Oh. Thank you.

4 BY MR. MATHESON:

5 Q. Would you direct Judge Morgan to the correct page so that
6 he can read it with you?

7 A. Well, there are two reports, one for Norfolk and one for
8 Prince William. I'm looking at the report for the Norfolk
9 Division -- or excuse me, I'm looking at the report for -- oh,
10 gosh.

11 Yeah, for Norfolk, which is marked on my piece of paper
12 with an N. And I'm looking at Page 13, the last subparagraph
13 marked A.

14 BY MR. MATHESON:

15 Q. Would you read the definition to the Court?

16 A. "I focus on approximating the number and percentage of
17 newly filed civil complaints that are estimated to be processed
18 within one court day; that is, administratively processed and
19 entered on the OES case management system within one day of the
20 file date contained this the OES filing date -- filing data."

21 Q. Okay. And so Ms. Kancherla has provided some bar charts in
22 her report that show delays of zero, one, two, three, four,
23 five, six-plus days. Are you familiar with that.

24 A. Yes.

25 Q. And so when she refers to day zero, what is she referring

1 to?

2 A. It's, it's the file -- the day -- the date of the file
3 date.

4 Q. Okay. And when she refers to day one in her bar chart,
5 what is she referring to?

6 A. The day after the file date.

7 Q. Okay. What is the difference between your day one and Ms.
8 Kancherla's day one, if anything?

9 A. Well, the number here would reflect the equivalent number
10 to Ms. Kancherla's data of the zero or one category. So I tried
11 to provide a simple way to address Ms. Kancherla's report, and I
12 used this as my summary.

13 Q. Okay.

14 A. The percentage available within one court day.

15 Q. So the way that this is set up, if a complaint comes in at
16 10:00 a.m. on day zero and it's processed that day, then that
17 would be included in the population of complaints that were
18 available within one court day, right?

19 A. Yes.

20 Q. And by the same token, if the mail is picked up at 2:30 and
21 there are, there's a complaint that doesn't get processed until
22 the following morning at 9:00 a.m., that would also be included
23 in the population of --

24 A. That would also be within one court day.

25 Q. Okay. But one court day would be anything that is

1 processed before the close of the clerk's office on the first
2 day of a filing, right?

3 A. Correct.

4 Q. Okay. Let's talk about Norfolk -- actually, before I take
5 this exhibit down, does this include e-filing?

6 A. No.

7 Q. Why did you exclude the e-filing data from your analysis?

8 A. Well, I included it in my analysis, so I know the answer,
9 but I did not include it in the percentage indicated here on the
10 advice of counsel, because they told me that I should focus on
11 paper filings because they were at issue in this case.

12 Q. Is the process for e-filing the same as the process for
13 paper complaints?

14 A. No, there are differences.

15 Q. Okay. Did we ask you to run the numbers both ways?

16 A. Yes.

17 Q. Okay. And how, if at all, is this number affected if you
18 include the 31 complaints that were e-filed in Prince William?

19 A. Well, sir, it's fewer than 31. Because that reflected all
20 the data in OES, and this reflects the January through June
21 period.

22 Q. Oh, that's right.

23 A. And so there were only 15 such initial civil filings during
24 that period.

25 Q. And if you include those 15, how does that affect this

1 number?

2 A. Well, as you can imagine, it barely budes. It goes down
3 to 94.2 percent or 94.1 percent. But it barely changes.

4 Q. Okay. And when we get to Norfolk it's going to be the --
5 your conclusions are also going to exclude the e-filing, right?

6 A. That's correct.

7 Q. I'm going to ask you how the inclusion of those numbers
8 affected your conclusion.

9 MR. MATHESON: Your Honor, at this time I'd like to
10 move D24 into evidence.

11 THE COURT: D24 will be admitted.

12 (Defendant's Exhibit No. 24 received in
13 evidence.)

14 BY MR. MATHESON:

15 Q. Mr. Harless, did you also prepare this table?

16 A. Yes.

17 Q. And according to this table -- well, according to your
18 analysis, what percentage of complaints in Norfolk were
19 available within one court day?

20 A. Well, again, given the limitations and the method I've laid
21 out --

22 THE COURT: What exhibit number is this?

23 MR. MATHESON: Oh, excuse me, Your Honor. I'm sorry.
24 This is Exhibit D25.

25 THE COURT: All right.

1 BY MR. MATHESON:

2 Q. So what is your opinion regarding the availability of newly
3 filed civil complaints within one court day in Norfolk during
4 the time period?

5 A. Given the limitations that I've already laid out concerning
6 data available to me, I'm -- my analysis, again, as an
7 approximation, suggested or indicated that approximately
8 90 percent, 89.7 percent, of the newly filed civil complaints
9 were available within one court day in Norfolk City -- circuit
10 court during the period at issue.

11 Q. Okay. And again, that excludes e-filing?

12 A. That excludes e-filing.

13 Q. That number is more substantial for Norfolk than for Prince
14 William; is that right?

15 A. Yes, it is somewhat higher. You know, it's on the order of
16 five percent of the cases, if I recall correctly.

17 Q. And if you include those five percent of those cases in
18 your analysis, how is this result changed, if at all?

19 A. That number, the percentage declines a bit, but...

20 Q. Define "a bit".

21 A. Well, on the order of 89 percent.

22 Q. Okay. So with respect to the conclusions you've drawn
23 regarding the availability of complaints within one court day in
24 Norfolk and Prince William, do you hold these opinions to a
25 reasonable degree of professional certainty?

1 A. Subject to the limitations that I've already stated, that
2 there is no data to calculate the, to accurately count the
3 number of days, neither I nor Ms. Kancherla can do that because
4 there's simply not data available to do it, but given that
5 limitation, this is -- this is the best approximation to that
6 number of days for processing. And I do hold that to a
7 reasonable degree of scientific certainty within my field.

8 Q. Okay. In Ms. Kancherla's rebuttal report she included some
9 new data about the level of access that was provided after this
10 lawsuit has been -- had been filed. Are you familiar with that?

11 A. I read that report, yes.

12 Q. And you were here when she testified?

13 A. Yes.

14 Q. Okay. Have you looked at the OES data from July 1st to
15 December 14th of 2018?

16 A. Yes.

17 Q. Okay. And have I asked you, using the exact same analysis
18 and methodology that you have used here, to tell us how, if at
19 all, the percentage of complaints available within one court day
20 were changed during that time period?

21 A. So the -- in Prince William, the percentage processed -- my
22 approximation of the percentage processed within one court day
23 increased by two-tenths of one percent. For Norfolk, the
24 percentage processed within one court day increased by two
25 percentage points.

1 MR. MATHESON: Okay, Mr. Harless. Thank you for
2 testifying today. And I'd ask -- oh.

3 Your Honor, I'd like to admit D25 into evidence at
4 this time.

5 THE COURT: D25 will be admitted.

6 (Defendant's Exhibit No. 25 received in
7 evidence.)

8 MR. MATHESON: Thank you for testifying here today,
9 and I'd ask you to answer any questions that Mr. Hibsher has.

10 CROSS-EXAMINATION

11 BY MR. HIBSHER:

12 Q. Good afternoon, Dr. Harless.

13 So you use a different measure of delay than Ms. Kancherla
14 uses; is that correct?

15 A. Correct.

16 Q. You use within one court day, she uses same day, one day,
17 two days; is that fair to say?

18 A. Correct. I did a, I did -- I was trying to be as simple
19 and direct as possible, and so I, in reaction -- partly in
20 reaction to the way she presented the data, I used the summary
21 of within one court day.

22 Q. You were asked to evaluate Ms. Kancherla's conclusions as
23 part of your assignment in this case; is that true?

24 A. True.

25 Q. So just to understand what within one court day means, if a

1 complaint is filed at 9:00 a.m. on a Monday and it is made
2 available to the public at 4:30 on Monday, that's within one
3 court day; is that correct?

4 A. That is within one court day, yes.

5 Q. How about if it's made available at 9:00 a.m. the next
6 morning, is that one within court day?

7 A. That's within one court day.

8 Q. How about if it's made available at 4:30 in the afternoon
9 the next day?

10 A. It's one court day.

11 Q. So your "within one court day" really includes Ms.
12 Kancherla's same-day and one-day delay; is that fair to say?

13 A. Yes.

14 Q. So if you were retained to evaluate Ms. Kancherla's delay,
15 why didn't you use the same measure of delay? Don't you think
16 that would have been more useful to the Court to compare apples
17 to apples not apples to oranges?

18 A. Well, so in the materials that I provide that were, that
19 came -- the various materials that were submitted along with my
20 report, I included tables that reflected the number and
21 percentage, essentially on that first day and on, within the
22 same court day and within one court day. So I know what those
23 numbers are. I know and I'd be happy to report them here.

24 I also know they're also provided in part of the
25 information that was -- that the plaintiffs were provided as a

1 part of my report.

2 Again, I was trying to, I -- my belief is to try to convey
3 things in the simplest manner possible, and given what I
4 understood to be at issue in this case, I thought that a summary
5 that reflected within one court day was an appropriate summary
6 measure.

7 Q. And you understood to be what was at issue in this case the
8 delays in making all civil filings available to the public?

9 A. All initial -- well, I understand that CNS has interest in
10 a special set of initial civil filings, but I don't know an
11 objective -- or how a third party would determine what set of
12 filings that CNS deemed newsworthy.

13 Q. And the set that CNS is interested in is general civil
14 filings; is that correct?

15 A. Initial civil filings?

16 Q. Initial general civil complaints. Let me be clear. We're
17 talking about civil lawsuits, not hand-carry permits or
18 name-change petitions. We're talking about general civil
19 complaints. Isn't that what CNS focused on in its complaint
20 which you indicated you read as part of your assignment?

21 A. I did. Again, there are various categories of complaints
22 that are categorized by OES as to type of complaint. I took the
23 totality of the initial civil filings and included them in my
24 analysis because that represented the totality of the workload
25 in terms of initial civil filing for the clerk's offices.

1 Q. But the complaint in this case -- I don't want to belabor
2 this point beyond this question -- the complaint in this case
3 doesn't address general civil filings, it addresses initial
4 civil complaints --

5 MR. MATHESON: Your Honor?

6 Q. -- that begin lawsuits?

7 MR. MATHESON: Your Honor, can you hear me? I have an
8 objection to this question. He's mischaracterizing the
9 complaint. If he wants to --

10 THE COURT: Well, let's look and see what the
11 complaint says. Who's got the complaint? Let me see it.

12 MS. GOLDMAN: It's Plaintiff's Exhibit 26, Your Honor,
13 which you should have in your binder.

14 THE COURT: Which binder?

15 MS. GOLDMAN: In Plaintiff's Exhibit binder. I can
16 give you a copy if that would be easier.

17 THE COURT: Would that be joint trial exhibits? Is
18 that the binder?

19 MS. GOLDMAN: The plaintiff's exhibits.

20 MR. HIBSHER: Plaintiff's Exhibit 26.

21 THE COURT: This will be my workout. What number?
22 26?

23 MS. GOLDMAN: 26.

24 THE COURT: Where in 26 does it identify what you're
25 complaining about?

1 MR. HIBSHER: Beginning on Paragraph 21, Exhibit 26
2 states "A new complaint" --

3 THE COURT: Wait a minute. I can read it.

4 MR. HIBSHER: Okay. And 22.

5 THE COURT: All right. Doesn't say anything except
6 new civil complaints.

7 MR. HIBSHER: Correct, Your Honor. Paragraph 25 says
8 "The complaint is the foundational cornerstone of civil
9 litigation. It is the document by which the authority of a
10 branch of government is invoked to publicly resolve what had
11 previously been a private dispute."

12 THE COURT: All right. Well, I don't know what that
13 means to this witness.

14 MR. HIBSHER: Well, what that means, Your Honor --

15 THE COURT: Well, it's not up to you to say what it
16 means to him.

17 What does that mean to you?

18 THE WITNESS: Well, this is a bit of Inside Baseball
19 to me. I look at this information -- I included all initial
20 civil filings. One reason was because that was -- and -- that
21 represents the totality of the civil filings that the clerk's
22 offices have to process. I don't think -- I never got any
23 indication from any --

24 THE COURT: How do you define process?

25 THE WITNESS: Well, process is to enter it in the,

1 take the fee, check for the, whether there's sealed documents,
2 enter it into CCMS, and eventually -- and then scan it into the
3 Case Image System and make it available for the public.

4 But they have to, they have to process all of these
5 initial civil filings. They say that they give priority to
6 initial civil filings, but they don't say they give priority to
7 a particular set of initial civil filings. You know, if I
8 were -- if I were a member of the public and I had a civil
9 filing, I wouldn't want it to stand at the back of the line
10 compared to other civil filings.

11 THE COURT: All right.

12 BY MR. HIBSHER:

13 Q. Mr. Harless, you said before that the OES data doesn't
14 separate out all general civil filings as compared to general
15 civil complaints; is that correct?

16 THE COURT: Well, now, I don't think he necessarily
17 knows the difference between general civil filings and general
18 civil complaints based on what he just said.

19 MR. HIBSHER: Understood, Your Honor.

20 MR. MATHESON: Your Honor, you know, I'd object to
21 this whole line of questioning. In Virginia, like the federal
22 system, a civil action is commenced by the filing of a complaint
23 or a petition as provided by the statute. And I don't --
24 general civil complaints has not been defined in this case. I
25 understand that Ms. Kancherla's used that term, but this is not

1 a --

2 THE COURT: Everybody knows what we mean.

3 Particularly the lawyers.

4 MR. MATHESON: Well, I --

5 THE COURT: And the clerks, they understand exactly
6 what it means. But I don't know that this witness does.

7 MR. MATHESON: Thank you, Your Honor.

8 BY MR. HIBSHER:

9 Q. Dr. Harless, did you look at the civil cover sheet that
10 accompanies civil filings?

11 A. No.

12 Q. Did you look at the Exhibit A and B to Ms. Kancherla's
13 rebuttal report?

14 A. Yes.

15 Q. And Exhibit A to Ms. Kancherla's rebuttal report contains a
16 list of new civil complaints in the OES data based on her
17 analysis of the civil cover sheet, does it not?

18 A. I would have to look at it, but you know, I recall, I
19 recall her undertaking such an --

20 THE COURT: Well, I mean, if you're going to ask that,
21 it's like using a deposition. We should look at what's there.

22 MR. HIBSHER: Okay.

23 THE COURT: I've got a copy of the rebuttal report. I
24 think it includes Exhibit A. I see exhibit B, so I assume --

25 MR. HIBSHER: Your Honor, may I provide a copy to the

1 witness?

2 THE COURT: You may.

3 MR. HIBSHER: Thank you.

4 THE COURT: What page is it?

5 MR. HIBSHER: Well, it's in the -- it's an unnumbered
6 page, Your Honor. It's at the end, but it's Exhibit A and
7 Exhibit B. It follows Page 50. So it would be 51 if it was
8 numbered.

9 THE COURT: Exhibit A, yes, is unnumbered. Exhibit A
10 would be 51. If you look at the back of Page 50, that's
11 Exhibit A.

12 BY MR. HIBSHER:

13 Q. Do you have that, Dr. Harless?

14 A. Yes.

15 Q. And that says "Number of civil complaints in OES data," and
16 it provides a list of categories taken from the civil cover
17 sheet, does it not?

18 A. Okay. Yes.

19 Q. And Exhibit B, the very next page, that's called "Number of
20 Civil Filings in OES data," and that's civil filings, not civil
21 complaints, and it contains a long list of filings that are not
22 civil complaints.

23 MR. MATHESON: Your Honor, I'm going to object again
24 to the characterization of this false dichotomy between civil
25 files and civil complaints. There's absolutely no legal basis

1 for that.

2 THE COURT: That's absurd. Overruled.

3 MR. MATHESON: Rule 3 --

4 THE COURT: Overruled.

5 They are all listed. Did you look at these?

6 THE WITNESS: Oh, directed to me?

7 THE COURT: Did they mean anything to you when you
8 looked at them?

9 THE WITNESS: My, my understanding -- and you're
10 absolutely right, the distinction between civil filing and civil
11 complaint, this is not something I'm claiming to be an expert
12 at.

13 I will say with respect to these choices, however,
14 that there exists in the CNS data, there are examples of things
15 like garnishments or name changes.

16 THE COURT: Well, it says right on the CMS data, gun
17 permits. Where is the example of that? It says right on the
18 CMS data sheets, concealed gun permits, compromised settlement,
19 divorce, appointment of guardian, name change, reinstatement,
20 partition. It says all those different things. Do you know the
21 difference between a civil complaint and a name change or a
22 garnishment? Do you know what a garnishment is?

23 THE WITNESS: Yes.

24 THE COURT: All right.

25 THE WITNESS: But what I was trying to --

1 THE COURT: If you know the difference, okay.

2 MR. HIBSHER: Your Honor, may I show the witness what
3 has been marked as Plaintiff's Exhibit 23 for identification?

4 It will appear on your screen in a moment.

5 THE COURT: Yes, you can show it to him. Has it been
6 introduced? It hasn't been introduced? You said for
7 identification.

8 MR. HIBSHER: It has not been introduced yet, Your
9 Honor.

10 THE COURT: Well, you've got to introduce it before
11 you can show it -- well, actually you don't.

12 You can show it to him. Are you trying to introduce
13 this exhibit through the witness?

14 MR. HIBSHER: I'm not trying to introduce it through
15 the witness, I'm trying to establish that the witness has not
16 consulted this exhibit.

17 BY MR. HIBSHER:

18 Q. Dr. Harless, do you know what this document is?

19 A. I can read the title.

20 Q. Would you?

21 A. Cover Sheet for Filing Civil Actions.

22 Q. And is this the cover sheet that we heard testimony
23 accompanies civil complaints when they're filed? New civil
24 filings?

25 A. Yes.

1 Q. And did you consult this document when you decided to
2 analyze all civil filings as opposed to general civil
3 complaints?

4 A. I did not consult that particular document or that sheet.
5 I did incorporate the information from those descriptions in
6 some of the analysis that I did of Doctor -- of the CNS tracking
7 data, what was included and excluded from that tracking data.

8 Q. But unlike Ms. Kancherla, you did not calculate delays in
9 making general civil complaints available to the public; is that
10 correct?

11 A. But -- all right --

12 THE COURT: I don't know what a general civil
13 complaint is.

14 MR. HIBSHER: Well, Your Honor, a general civil -- I
15 don't want to give testimony, but this document --

16 THE COURT: I mean, it says general civil --

17 MR. HIBSHER: Correct.

18 THE COURT: -- okay? Doesn't say general civil
19 complaint.

20 MR. HIBSHER: It does not, Your Honor. But it lists
21 general civil complaints, and Ms. Kancherla's report breaks them
22 down into the categories that are general civil complaints and
23 general filings.

24 THE COURT: Okay. I think -- okay. Do you know what
25 a general civil complaint is as compared with like a tort

1 complaint?

2 MR. HIBSHER: Exactly, Your Honor.

3 THE COURT: Do you know what a tort complaint is as
4 compared to a garnishment?

5 THE WITNESS: I know what those categories mean. I
6 know the difference between a tort and a garnishment. I don't
7 understand the distinction between general civil complaint
8 versus civil filing.

9 THE COURT: Okay. I think we've spent enough time on
10 this point.

11 MR. HIBSHER: I'm moving on, Your Honor.

12 BY MR. HIBSHER:

13 Q. Dr. Harless, in addition to looking at a different universe
14 of filings, you also choose a different end date for your
15 calculation of delay, correct?

16 A. Correct.

17 Q. You focus on Date/Time Available in CCMS as your end date?

18 A. Yes.

19 Q. And I think you said earlier that that is the time that the
20 filing fee is processed; is that correct?

21 A. It is also the time that the filing fee is processed.

22 Q. And also the time that the cashier code is entered; is that
23 correct?

24 A. Those two things are identical.

25 Q. So that is essentially the first step in the data entry

1 process; is that fair to say?

2 A. That's the point at which the case management ID is
3 assigned and the fee is processed. So yes, it is the first
4 step.

5 Q. And a case does not become available to the public until it
6 is scanned; is that fair to say?

7 A. Yes.

8 Q. And after this first step in the administrative processing,
9 the intake portion of administrative processing, do you know
10 what the clerks have to do before they get to the scanning step?

11 A. Yes.

12 Q. What do they have to do?

13 A. They take the information and what's been described as
14 index. They enter all the plaintiffs and defendants, other
15 certain information about the complaint, they check for
16 information whether there's any confidential information in the
17 complaint, and then the complaint would be scanned.

18 Q. Don't they also prepare service packets if the filing party
19 requests service?

20 A. Yes.

21 Q. And they prepare summons to go with the service packets?

22 A. Yes.

23 Q. Do you know how long that takes?

24 A. No.

25 Q. You read the deposition testimony?

1 A. I read deposition testimony, and I'm sure it takes a
2 variable amount of time. It takes -- sometimes it takes a very
3 short amount of time, sometimes it takes longer. It's variable.

4 Q. And it's your testimony that once you chose that initial
5 filing date, you used that as your end date because you relied
6 on the representations of the clerks that they only touch paper
7 once; once they start, they finish, and therefore it must be
8 made available within a court day. Am I fairly characterizing
9 your testimony?

10 A. I said that in making that judgment I relied on the clerk's
11 description of their business process for, and practices for
12 processing these civil filings.

13 Q. Did you read Mr. Larson's testimony that things stack up?

14 MR. MATHESON: Your Honor, again, he can give
15 Mr. Harless a copy of Mr. Larson's testimony so that we can look
16 at it rather than having him characterize the deposition record.

17 THE COURT: Again, that's the same as using a
18 deposition to contradict the witness.

19 MR. HIBSHER: Yes, Your Honor.

20 THE COURT: So what do you have before you? A
21 transcript of his testimony?

22 MR. HIBSHER: Correct, Your Honor.

23 THE COURT: Okay. Well, if you want to read the
24 question and answer, if that's from his -- did he hear his
25 testimony?

1 Did you hear Mr. Larson's testimony?

2 THE WITNESS: Not in this court. I read his
3 deposition.

4 THE COURT: You read his deposition. What have you
5 got?

6 MR. HIBSHER: This is from his deposition, Your Honor.

7 THE COURT: Okay. Well, then, the thing to do is to
8 read the question and the answer.

9 MR. HIBSHER: Okay. Page 60, Line 19.

10 THE COURT: Where is it? I haven't got it. At least
11 I don't know where I have it, if I have it.

12 MR. HIBSHER: May I proceed, Your Honor?

13 THE COURT: After you give us the page and line.

14 MR. HIBSHER: Page 60, Line 19.

15 THE COURT: All right. You can read the question and
16 the answer.

17 BY MR. HIBSHER:

18 Q. "Question: Are there times when newly filed complaints
19 would sort of stack up in the day box?

20 "Answer: There might be if there's lots of filings."

21 Do you recall reading that testimony when you reviewed Mr.
22 Larson's 30(b)(6) deposition?

23 A. I recall statements of this kind.

24 Q. Were you in court when Mr. Schaefer testified yesterday?

25 A. I was not.

1 MR. PRINCE: Your Honor, may I read the witness part
2 of Mr. Schaefer's testimony beginning at Page 338?

3 THE COURT: Have you got just one copy of that?

4 MR. HIBSHER: Your Honor, we have one extra copy of
5 yesterday's, but we can put it up on the screen for the witness
6 to take a look at as I read it, if that's okay with the Court.

7 THE COURT: All right. Well, he's got to have that.
8 You can put it up on the screen.

9 MR. HIBSHER: Page 338, beginning at Line 21.

10 THE COURT: It's not on my screen.

11 COURTROOM DEPUTY CLERK: It's not up yet.

12 THE COURT: All right. Read the question and answer.

13 THE WITNESS: It's not on my screen.

14 THE COURT: You have something else sitting on top of
15 the ELMO, it couldn't be on my screen.

16 COURTROOM DEPUTY CLERK: It's not up yet.

17 MR. HIBSHER: I'm not using the ELMO, Your Honor.
18 We're using Trial Director.

19 THE COURT: Well, I don't know. It's not coming up on
20 my screen.

21 MR. HIBSHER: It's getting close, Your Honor.

22 THE COURT: Okay. It's up on my screen now.

23 MR. HIBSHER: Do you see it, Your Honor?

24 THE COURT: Yes.

25 BY MR. HIBSHER:

1 Q. Line 21. "Is there -- do you have a policy in terms of
2 timing and making new civil complaints available in a particular
3 amount of time?

4 "Answer: Well, our policy, our policy is to get all the
5 cases into the system and available to the public within one
6 day. Our goal is always to try to get the cases into the system
7 before the end of the business day."

8 THE COURT: Next page. Next page.

9 MR. HIBSHER: Next page, Your Honor, top of 339.

10 THE COURT: I know. I don't have it.

11 All right. You've got it now.

12 MR. HIBSHER: Here we go.

13 BY MR. HIBSHER:

14 Q. "Our goal always is to get the cases into the system before
15 the end of the business day. Things stack up terribly. And so
16 we try very hard to get them before we leave that day, but
17 sometimes that's impossible."

18 You were not in the courtroom yesterday, but that is
19 consistent with Mr. Larson's deposition testimony, is it not?

20 A. Yes. And that's one of the reasons that I chose the
21 criteria of within one court day. Both representatives from
22 both of the clerk's offices testified that, yes, that there were
23 circumstances where they weren't able to process all newly filed
24 civil complaints on the day that they were received even if they
25 were available, if they were correct and ready to be filed; that

1 there were circumstances where the mail, perhaps, came late or
2 there was a rush of filings at the end of the day, and those
3 filings would take priority the next morning. That's consistent
4 with that testimony. That's one of the reasons that I thought
5 it would be appropriate to talk about the percentage that were
6 processed within one court day of the file date.

7 Q. But that's not the same-day analysis that Ms. Kancherla
8 used?

9 A. It's not the same day.

10 Q. You're critical of Ms. Kancherla's use of the Date/Time
11 Documents Made Available to Public column in the OES data as her
12 end date; is that fair to say?

13 A. Yes.

14 Q. And you criticize that because you believe it is unreliable
15 because of the possibility of a complaint being rescanned; is
16 that fair to say?

17 A. Well, I think what I -- what I said was that I rely on the
18 information from Mr. Smith at the Office of the Executive
19 Secretary, the data dictionary that came with that data that all
20 warned against -- about the unreliability of that field.

21 Q. Let's look at the data dictionary. I'd like to call your
22 attention to Joint Exhibit 1A and to Page 3 and Footnote No. 2.

23 Is this the footnote that you were referring to a moment
24 ago when you talked about the data dictionary, warning you not
25 to use the scan date?

1 A. That's one of them. There are -- that note or essentially
2 the same wording also occurs underneath the description of the
3 data element for Date Scanned Into CIS. So that warning appears
4 twice in the data dictionary.

5 Q. Let me read it. "The OES cannot account for when First
6 Scanned/Imported images were manipulated at later point in time,
7 as we update the metadata for that image to show when it was
8 last modified."

9 Is that what you consider to be the warning?

10 A. Well, and the subsequent sentence.

11 Q. "In this scenario, the date available in CIS has a
12 Date/Time that is later than the actual initial scan date.

13 A. Yes.

14 Q. "In this scenario" refers to a situation in which a
15 complaint or another document is rescanned; is that correct?

16 A. Well, yes. It refers to when it's rescanned, and -- yeah.

17 Q. Does Mr. Smith identify the number of complaints that are
18 rescanned?

19 A. He does not.

20 Q. In fact, in the segment that we heard today he said he
21 could not quantify it; is that fair to say?

22 A. He says that he can't quantify it; that the OES cannot, is
23 not able to quantify it because that is something that is not
24 tracked.

25 Q. Were you in court for Mr. Larson's testimony on Friday?

1 A. I'm afraid I wasn't.

2 Q. You were not?

3 A. No.

4 MR. HIBSHER: Can we see transcript Page 120 of George
5 Larson for January 31?

6 THE COURT: I've got his deposition, I don't have his
7 trial transcript.

8 MR. HIBSHER: Do we have another copy of his trial
9 transcript?

10 Your Honor, we don't have another copy of the trial
11 transcript, but we're going to put it up on the screen.

12 THE COURT: Okay.

13 MR. HIBSHER: In a minute or two.

14 BY MR. HIBSHER:

15 Q. Dr. Harless, while we're waiting for the page to come up on
16 the screen, do you know who Mr. Larson is?

17 A. Yes.

18 Q. He's the deputy clerk in Norfolk; is that correct?

19 A. Yes.

20 Q. Mr. Schaefer's second-in-command?

21 A. Yes.

22 Q. In charge of the day-to-day operation?

23 A. Yes.

24 Q. You said that OES can't quantify the number of rescans, and
25 I think you said that you can quantify the number of rescans; is

1 that fair to say?

2 A. Correct.

3 Q. But Mr. Larson can quantify the number of scans, can he
4 not? Because he works right there, he sees it happening every
5 day?

6 A. Well, point me to the testimony. Because that's not my
7 understanding from the deposition testimony.

8 Q. Let me read Mr. Larson's trial testimony in this court.

9 "Question: And do you recall giving testimony at
10 deposition when asked when does rescanning typically occur, and
11 your answer was 'right away.'.

12 And the answer was "right away".

13 "Answer: If we find it, yes. As soon as we find it, it's
14 rescanned.

15 "So if it's rescanned right away, let's say within minutes
16 of the original scan, would that change the scan date that the
17 OES system records as the scan date?

18 "Answer: It would change the time, but not the date of the
19 question.

20 "Exactly. It would change the time but not the date.

21 "If rescanning occurred on the next day, would that change
22 the date?

23 "Answer: Yes.

24 "Question: How often does that happen?

25 "Answer: I can't remember the last time that happened.

1 "Okay. Is there any data on how often rescanning occurs?

2 "Answer: The only data we have is what's in my head,
3 because I have to go -- I have to delete the images that have to
4 be rescanned out of the system, and I have not done that in
5 three years. Four years.

6 "Question: Not even once?

7 "Answer: Not once."

8 BY MR. HIBSHER:

9 Q. So Mr. Harless, if the possibility of rescanning which OES
10 alerts you to in that footnote that we looked at a couple of
11 minutes ago turned out just to be a theoretical possibility, and
12 in fact Mr. Larson says he can't recall a single complaint in
13 four years that had been rescanned on a date after the original
14 scanning, would you then consider Date/Time Documents Made
15 Available to the Public in the OES data to be an accurate
16 representation of when documents are made available to the
17 public?

18 A. Well, let me say it this way: So having read the entire
19 transcript of both Mr. Larson and Brenda Elford, they talk about
20 this situation of finding errors, say, two pages that get suck
21 together or something, and they say that's rare, but they also
22 say that it's a routine situation where a complaint gets scanned
23 and it's scanned again later with signatures added. So as I
24 understand what's described here, this sounds to me like a
25 situation where this individual -- that -- when we're talking

1 about mistakes in the immediate -- mistakes in the scanning
2 process with, say, two pages get stuck together, they're saying
3 that's rare, but my understanding is that there are other
4 circumstances in which that scan date field would change such as
5 the circumstance where there's an initial scan and a later scan
6 after signatures are added.

7 BY MR. HIBSHER:

8 Q. How often does that happen?

9 A. I don't know.

10 Q. Do you think Mr. Larson would be aware of it?

11 A. I don't know.

12 Q. But his testimony is that he hasn't made that manipulation
13 for four years.

14 THE COURT: You've already asked him that.

15 BY MR. HIBSHER:

16 Q. Let's move on.

17 Dr. Harless, I'd like to talk about the data sets again.

18 You conceded before, I believe, that a substantial number of
19 general civil filings are confidential filings; is that correct?

20 A. Yes.

21 Q. And you heard Dr. Kancherla testify that in Norfolk,
22 26 percent of the general civil filings were confidential or
23 concealed hand carry; is that fair to say?

24 A. Understand that the overwhelming majority of those are
25 concealed weapons permits.

1 Q. And in Prince William, the number is 58 percent, correct?

2 A. On the order of 55 or 58 percent during that January
3 through June period.

4 Q. And these filings are never made public; is that correct?

5 A. Correct.

6 Q. But in your figures, 90 percent available to the public,
7 you include all civil filing, including in Prince William,
8 58 percent that are never made available to the public, and in
9 Norfolk, 26 percent which are never made available to the
10 public; is that fair to say?

11 A. I do. I do.

12 Q. And you said earlier that you would not consider 10 percent
13 to be -- I don't know if you said robust sample, but you
14 criticized a sample of 10 percent; is that accurate?

15 A. Well, I said it was a, it was a convenient sample. I
16 said -- what I was trying to say was that it was not a
17 systematic, random sample that would be representative of the
18 population of complaints.

19 Q. Would 20 percent be a better sample?

20 A. No. Not, not -- it depends upon -- if you double the
21 sample size, you're going to obtain more precise estimates if
22 you have a random sample. When you don't have a random sample,
23 increasing the size does not necessarily increase the accuracy
24 of the estimates that result.

25 Q. Okay. We've already disagreed on what the focus of this

1 case is, and our focus we say is general civil complaints, and
2 you're looking at general filings. So let's move on to your
3 start point.

4 Both you and Ms. Kancherla the OES file date as your start
5 point for the calculation; is that accurate?

6 A. Yes.

7 Q. And you measure the delay by calculating the difference
8 between the OES file date and the date that data is first
9 entered into the CCMS system; is that correct?

10 A. Yes.

11 Q. And in your review of the deposition testimony of the
12 clerks, did you come across testimony that said that complaints
13 are considered filed once they are date-stamped?

14 A. This is -- so you know, this is legal stuff here that I'm
15 not purporting to be an expert in the fine, you know,
16 distinguishing these dates. So I understand that the clerks put
17 a file stamp date, a date stamp, and that that can, that
18 determines -- what is the name for the period? The statute of
19 limitations? Is that the right term? You know, the period for
20 which, from which you're counting the -- and all I can think of
21 is statute of limitations.

22 Q. That's correct. That's correct, Dr. Harless. That was
23 used in this court.

24 A. Okay. So I'm not interested -- I see problems with the
25 Date/Time stamp because immediately upon receipt, even before

1 the processing fee is paid or it's found out whether the
2 petition is in the right place or has the right characteristics,
3 is proper, it gets Date/Time stamped. So that Date/Time stamp
4 does not necessarily indicate that the filing is ready to be
5 filed, ready to be docketed in the sense that the fees are right
6 and the filing is right.

7 Q. Where do you get the concept of ready to be filed? Is that
8 written down somewhere?

9 A. Well, I believe it is.

10 Q. Where?

11 A. Well, one place that I think it's written down is in a
12 declaration from Mr. Schaefer.

13 Q. Do you have -- can you quantify the number of instances in
14 which complaints received file stamps but were not ready to be
15 filed?

16 A. No. I've already testified that no such data exists to
17 distinguish that. But reading the record from the depositions
18 indicates a number of different ways where there can be problems
19 with the money or the filer that lead to delays in processing.

20 Q. A number of different ways that could be problematic, but
21 you don't have any evidence of actual delayed filings, that
22 actual evidence of payment or other problems with filings that
23 you would say delayed the proper filing of the complaint; is
24 that fair to say?

25 A. I have the record of reading all the depositions, all the

1 written discovery, and I have common sense. In Dr. -- or Ms.
2 Kancherla's report they go off the chart she provides. In
3 Prince William, according to her calculation, there are delays
4 of up to 15 court days. Delays of up to seven court days in the
5 Norfolk court, in the Norfolk clerk's office. I'm saying common
6 sense and my understanding of the clerk's office and their
7 business process would not -- is not consistent with these
8 extraordinary delays. There is -- those lengthy delays are
9 indicative of a problem with the filer.

10 You're right, I don't have hard evidence against -- on that
11 point. Neither Ms. Kancherla or I have hard data on that point.
12 But I have common sense and the knowledge of the clerk's
13 description of their process and procedures.

14 THE COURT: How much longer are you going to be,
15 Counsel?

16 MR. HIBSHER: Oh, about a half hour, Your Honor.

17 THE COURT: Really?

18 MR. HIBSHER: I think so, Your Honor.

19 THE COURT: Well, we're going to go to lunch then.
20 We'll be in recess until 2:05.

21 MR. HIBSHER: Thank you, Your Honor.

22 (Recess taken from 1:04 p.m. to 2:03 p.m.)

23 THE COURT: All right. You may resume your
24 cross-examination.

25 MR. HIBSHER: Thank you, Your Honor. And during the

1 lunch break, I looked through my many pages of questions and
2 realized that a good number of them have been covered in some of
3 the colloquy, so I think I'll be able to wrap it up sooner than
4 I had predicted.

5 BY MR. HIBSHER:

6 Q. Dr. Harless, before the break you testified about civil
7 filings that include errors in filing fees and were not deemed
8 filed at the moment that they were hand-stamped; is that
9 correct?

10 A. That they were not suitable for, to be docketed or entered
11 into the Circuit Case Management System because of processing
12 fees that might be incorrect; that that was one of the possible
13 problems that were attributable to the filer rather than the
14 clerk.

15 Q. Did you modify the OES file date because of the problem of
16 inadequate filing fee not corresponding to the file date?

17 A. No, I did not, because we have no data to indicate the
18 particular cases when that occurs. There's no hard data on that
19 topic.

20 Q. You were in court when Ms. Kancherla testified, correct?

21 A. Yes.

22 Q. Yes. And you heard her talk about examining the
23 complaints, the source data at the courthouse to ascertain the
24 file stamp date; is that correct?

25 A. Yes.

1 Q. And she made 25 adjustments to the OES file date for
2 Norfolk and 131 for Prince William? Do you recall that?

3 A. Yes, I do.

4 Q. Did you examine any of the original complaints to ascertain
5 whether the OES file date was incorrect as to those?

6 A. No.

7 Q. You also heard from Ms. Kancherla about her extended
8 analysis five months beyond the relevant period of January to
9 June 2018, correct?

10 A. Yes.

11 Q. And in that extended analysis she used the exact same
12 methodology that she used in her original report, did she not?

13 A. I understand her to have described it that way. I did not,
14 I did not get the data in order to audit that calculation.

15 Q. Any reason to think she did not, based on what you did look
16 at?

17 A. No.

18 Q. So she followed her process, which was to compare the file
19 date to the Courthouse News tracking date and to go to the
20 courthouse and review actual complaints when there were
21 discrepancies, correct?

22 A. When there were discrepancies in the file date between,
23 yes, between the OES file date and the CNS reported time stamp
24 file date.

25 Q. And when there were differences between the OES Date/Time

1 documents available to the public on the OES data and the CNS
2 availability date, she gave the clerks the benefit of the
3 earlier date, so if one was earlier than the other, she just
4 gave the clerk the benefit of that earlier date, did she not?

5 A. Yes.

6 Q. So do you disagree with Ms. Kancherla's conclusions about
7 the dramatic improvements that have occurred in both Prince
8 William and Norfolk circuit courts during the July to December
9 period that she examined in her extended analysis?

10 A. I don't have a basis for agreeing with it or disagreeing
11 with it because I did not have the same data and I didn't
12 undertake that an audit of her analysis.

13 Q. Do you disagree with Ms. Kancherla's conclusions that both
14 courts were making civil litigations available as much as
15 90 percent of the time during the extended period?

16 A. I have no basis for evaluating that conclusion.

17 MR. HIBSHER: Thank you Dr. Harless.

18 REDIRECT EXAMINATION

19 BY MR. MATHESON:

20 Q. Dr. Harless, on that last point, you did look at the OES
21 data that he, Mr. Hibsher, has referred to as the extended
22 period from July to December of 2018; is that right?

23 A. Yes.

24 Q. And would you just remind the Court of what the rates of
25 availability of new civil complaints within one court day were

1 for that period?

2 A. Based upon the calculation and the methodology that I used,
3 there was a slight improvement. A couple of tenths of
4 percentage points for Prince William, and approximately two
5 percentage points for the Norfolk clerk's office.

6 Q. And would you describe that as consistent or inconsistent
7 with Ms. Kancherla's conclusion that approximately 90 percent
8 are being made available at this time?

9 A. Well, the calculations are -- and the assumptions behind
10 the calculations are very different, in addition to the relevant
11 set of cases to be included are very different as well.

12 Is it consistent? I mean, it's a different calculation.
13 But you know, it's not inconsistent.

14 Q. The numbers are about the same?

15 A. The numbers are calculated differently, though. I have to,
16 I have to acknowledge.

17 Q. Okay. In your review of the record in this case, did you
18 see any evidence or in the testimony that you've heard in this
19 case have you heard any testimony that indicates to you that the
20 clerk's process for handling intake of case-initiating documents
21 is any different for confidential filings as opposed to
22 non-confidential filings?

23 A. No.

24 Q. Okay. And have you heard any testimony or reviewed any
25 evidence in the record that indicates to you that the clerk's

1 process for handling newsworthy complaints versus non-newsworthy
2 complaints is any different?

3 A. Again, that, that's a highly subjective classification, and
4 I don't know that any third party could determine that, nor
5 would it be appropriate for the -- in my view as a citizen,
6 wouldn't be appropriate for the clerks to come to some, come to
7 some conclusion on that issue. Even -- as I've mentioned
8 before, even among the cases included in CNS tracking data,
9 there are inconsistencies. There is no category that's included
10 among the set of categories, you know, the type of case
11 descriptions in which they get 100 percent of the complaints.
12 And there are other instances like garnishments where they have
13 said no, those aren't newsworthy, we don't track those, but they
14 nevertheless show up in the CNS tracking data, and Ms. Kancherla
15 makes use of those cases in her analysis.

16 Q. Okay. So I just covered newsworthiness, confidentiality.
17 Is there any other indication from the evidence that you've
18 reviewed or the testimony that you've heard that confidential or
19 non-newsworthy complaints, that those, the processing time
20 associated with those filings would not be a reliable indicator
21 of the efficiency with which the clerks are processing new civil
22 filings?

23 A. Absolutely not. And this was part of the, this is the part
24 of my logic in undertaking the analysis that I did, was to look
25 at the totality of initial civil filings, because that

1 represents the workload.

2 Q. Mr. Hibsher talked a lot about what he has referred to as
3 general civil complaints and he showed you those tables from Ms.
4 Kancherla's report where she tries to break apart what she
5 thinks are the general civil complaints versus the not-general
6 civil complaints. Do you recall that colloquy?

7 A. Yes.

8 Q. But Ms. Kancherla didn't include all of the, what she coins
9 general civil complaints in her data set, did she?

10 A. So I think it's important to distinguish that Ms. Kancherla
11 did not determine the set of cases that she analyzed, it's the
12 CNS court reporters that determine the set of cases that she
13 eventually analyzes. I think that's an important distinction,
14 and now I've forgotten your question.

15 Q. Well, so her tables indicate that there was approximately
16 700, what she would term general civil complaints filed in each
17 of these jurisdictions during the relevant time period. Did her
18 data set include all of those, what she terms general civil
19 complaints?

20 A. No.

21 Q. Okay. Did it include -- did it exclude filings that she
22 would refer to as general civil complaints?

23 A. That was the point I was trying to make before, is that
24 even among the types of complaints that were included, it's
25 never the case that the -- among -- within a description, that

1 100 percent of the cases are taken -- or included in the CNS
2 tracking data.

3 Q. Isn't it also the case that Ms. Kancherla's data includes
4 things that she has described as not qualifying as general civil
5 complaints?

6 A. Yes. Including garnishments, petitions for license renewal
7 and even a name change petition.

8 Q. Okay. And it's your understanding -- well, what is your
9 understanding of the criteria that she used then to select which
10 complaints to include and which ones to exclude?

11 A. The criteria was not of her making, it was of the making of
12 the CNS court reporters.

13 Q. So, and the CNS court reporters picked which cases they
14 wanted to include in the sample?

15 A. Exactly. That was the point I was making earlier on about
16 the whole idea of selecting a sample with explicit knowledge of
17 the purpose of the -- selecting a set of cases to analyze with
18 explicit knowledge of the purpose to which this data would be
19 put.

20 Q. Did you review evidence in this case of the data collectors
21 being informed of the purpose of the data collection?

22 A. Yes, I did review such information, and it was also -- I
23 was in court yesterday when various emails were, were noted.

24 Q. What troubled you about those emails?

25 MR. HIBSHER: Objection, Your Honor. This is beyond

1 the scope of the direct and the redirect.

2 MR. MATHESON: He's been testifying in his report
3 and --

4 THE COURT: There was no mention of the email.

5 MR. MATHESON: Okay. I'll conclude. Thank you, Your
6 Honor.

7 This witness can be excused from our part.

8 THE COURT: All right. You're excused, Dr. Harless,
9 with the understanding that you won't discuss your testimony
10 with any other witnesses in the case until the case is
11 concluded. You can either remain in court or go about your
12 business, whichever you prefer.

13 THE WITNESS: Okay. I appreciate it. Thank you.

14 MR. PRINCE: Good afternoon, Your Honor.

15 Your Honor, the defendants have two deposition
16 transcripts we'd like to read into the record. These are the
17 designated portions and the counter-designations, and they are
18 Tabs J and M in Your Honor's binder. The first one that we are
19 going to read is Ryan Abbott, the CNS southeast bureau chief.

20 MR. HIBSHER: Objection, Your Honor. Mr. Abbott
21 testified yesterday and he's in the court today, so I see no
22 basis to read in deposition testimony. Mr. Prince could have
23 asked Mr. Abbott any of these questions during his testimony
24 yesterday.

25 MR. PRINCE: They could have objected to the

1 designation at the time we made it and they didn't.

2 THE COURT: I don't think that's the issue.

3 MR. MATHESON: These are party admissions.

4 Excuse me. I'm sorry, Your Honor.

5 THE COURT: You can only have one attorney at a time.

6 MR. MATHESON: I apologize.

7 THE COURT: -- on one issue.

8 MR. MATHESON: I apologize.

9 THE COURT: I can't recall the situation where a
10 witness who has testified in court and we also read his
11 deposition. But maybe I can. I think we did that in that
12 patent case, didn't we, Josh? That doctor from England? Didn't
13 we read his deposition.

14 LAW CLERK: Yes, Your Honor, but that witness was due
15 back in England when we read his deposition.

16 THE COURT: But he had testified in court live.

17 LAW CLERK: Yes, Judge.

18 THE COURT: And he was testifying in rebuttal. I
19 don't know. That's a new issue for me, frankly.

20 He's testified here in court and you had the
21 opportunity to cross-examine him. Why should you be able to
22 read his deposition then?

23 MR. PRINCE: It's a permissible use of the designated
24 deposition transcript under Rule --

25 THE COURT: Well, it's a permissible use if he didn't

1 testify. Show me in the Rules where you can do that.

2 MR. PRINCE: I don't think that it precludes me from
3 doing it, Your Honor.

4 THE COURT: Have you got any authority on that,
5 Counsel?

6 MR. PRINCE: I do not.

7 THE COURT: I'm asking your opposing counsel.

8 MR. HIBSHER: I'm aware of authority, Your Honor, but
9 I've never seen it done where a witness has testified live and
10 counsel has had an opportunity to cross-examine that witness at
11 length, to come in the next day and say I now want to read his
12 deposition testimony. It's just not something that I've ever
13 seen.

14 THE COURT: I've not experienced that either.

15 Look at the Rule. Tell me what the Rule says.

16 MR. PRINCE: So Your Honor, Rule 32 "At a hearing or
17 trial, all or part of a deposition may be used against a party
18 on these conditions: A party was present or represented at the
19 time deposition was taken, and it's used to the extent it would
20 be admissible under the Federal Rules of Evidence if the
21 deponent were present and testifying."

22 THE COURT: "If he were present."

23 MR. PRINCE: "If we were present."

24 THE COURT: Wait a minute. Where are you in Rule 32?

25 MR. PRINCE: 32(a).

1 (Pause in the record.)

2 THE COURT: Was he a 30(b)(6) witness?

3 MR. HIBSHER: He was both a fact witness and a
4 30(b)(6) witness, Your Honor.

5 THE COURT: Well, I see where he can use it if he's a
6 30(b)(6).

7 MR. PRINCE: Your Honor, just so Your Honor is aware,
8 we also intend to read his 30(b)(6) designated transcript as
9 well.

10 MR. HIBSHER: Clearly the fact witness testimony has
11 no basis in 32(a). It talks about the unavailability of a
12 witness. And to the extent that --

13 THE COURT: Well, I hope you know what you're doing,
14 Counsel. If you're going to just -- if he's just going to say
15 the same thing he said in here this whole thing makes no sense.

16 MR. PRINCE: Your Honor, I don't think --

17 THE COURT: You can read portions of it that you think
18 contradict him if you want to, but to read the whole thing just
19 seems to me to be inappropriate.

20 MR. PRINCE: We are -- Your Honor --

21 THE COURT: So you can't don it.

22 MR. PRINCE: -- we are not going to read the whole
23 transcript.

24 THE COURT: What?

25 MR. PRINCE: We're not, we were only going to read

1 designated portions, we were not going to read the whole
2 transcript. But I will --

3 THE COURT: Have you exchanged designations?

4 MR. PRINCE: Yes, Your Honor.

5 THE COURT: So what you would read in the event he
6 wasn't hear?

7 MR. PRINCE: Well, we were --

8 THE COURT: That was the purpose of that, wasn't it?

9 MR. PRINCE: The purpose was to read it into the
10 record because he is, you know, under (a)(3), a party, agent or
11 designee. But I understand the Court's reluctance, and we
12 intend to read his 30(b)(6) designated transcript into the
13 record as well. So if the Court is not going to allow me to
14 read his personal deposition, we would like to read his
15 30(b)(6). And that's clearly permitted under the Rule.

16 MR. HIBSHER: Your Honor, the witness is in the
17 courtroom.

18 THE COURT: How long is it?

19 MR. PRINCE: It will probably take 10 minutes.

20 THE COURT: How long is it? How many pages?

21 MR. PRINCE: 13.

22 THE COURT: All right. Let me see a copy of it.

23 (Court and courtroom deputy conferred.)

24 THE COURT: Is it an exhibit to the pretrial order?

25 MR. PRINCE: Yes, Your Honor. It's Tab M.

1 THE COURT: All right. I'll permit you to read Tab M.
2 But it had better be something significant in there.

3 (Testimony of Ryan Abbott read as follows:)

4 Q. Can you state and spell your full name for the record?

5 A. It's Ryan Abbott. R-y-a-n, A-b-b-o-t-t.

6 Q. And where are you currently employed?

7 MR. MATHESON: I'm sorry, Will, are you --

8 THE COURT: You're skipping.

9 MR. MATHESON: Are you in the 30(b)(6) testimony?
10 Tab M.

11 MR. PRINCE: Pardon me.

12 Q. My understanding is that you are the primary person
13 identified by CNS with respect to all matters listed in this
14 30(b)(6) notice; is that correct?

15 A. I assume so, yes.

16 Q. In other words, you are the individual designee for CNS
17 here to testify as to all these topics?

18 A. Yes.

19 Q. Do you understand that you're here in the capacity as a
20 representative of CNS to testify in this case with regard to all
21 subject matters listed in this deposition notice?

22 A. Yes.

23 Q. What is the cause -- what is causing CNS to experience
24 delays in access to new civil files?

25 A. They're withholding the complaints until after they're

1 administratively processed and put on the public terminal for
2 our inspection.

3 Q. Is there anything else that they are doing besides
4 withholding access until after processing?

5 A. Not that I'm aware of.

6 Q. Okay. What does CNS mean by denial of contemporaneous
7 access to newly filed civil complaints?

8 A. We are seeing complaints that in some cases one day and in
9 some cases two days and in some cases longer after they're
10 filed.

11 Q. What does contemporaneous mean to CNS?

12 A. It means the case is filed on one day, we see it that day.

13 Q. So contemporaneous means same-day access?

14 A. Correct.

15 Q. What about next business day, could that be
16 contemporaneous?

17 A. No.

18 Q. Two business days after receipt?

19 A. No.

20 Q. If a complaint is received just before the clerk's office
21 closes in the afternoon, is next business day contemporaneous?

22 A. No.

23 Q. So if a complaint comes in at 4:45 p.m. and it's publicly
24 available at 9:00 the following morning, that's not
25 contemporaneous?

1 A. Correct.

2 MR. HIBSHER: Objection, Your Honor. This is exactly
3 the --

4 THE COURT: This is just what he said in court.

5 MR. HIBSHER: Exactly, Your Honor.

6 MR. PRINCE: So does Your Honor does not want me to --
7 I'm not going to be permitted to read this in the record?

8 THE COURT: Go ahead and read it, but I mean, as I
9 said, you're wasting the Court's time up until now.

10 MR. PRINCE: Thank you, Your Honor. I'm not going to
11 push the issue. I'm just trying to make my record.

12 We're getting our witness, Your Honor.

13 THE COURT: What's that?

14 MR. PRINCE: I said we are getting our witness. I
15 believe she will be our last fact witness.

16 THE COURT: Crystal Porter?

17 MR. PRINCE: Yes, ma'am -- or yes, sir.

18 CRYSTAL G. PORTER, having been duly sworn, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PRINCE:

22 Q. Good afternoon, Ms. Porter.

23 A. Good afternoon.

24 Q. Could you state your full name for the record?

25 A. Crystal G. Porter.

1 Q. And what is your current position?

2 A. I'm the supervising deputy of the civil division at Norfolk
3 Circuit Court.

4 Q. And how long have you been employed with the Norfolk
5 Circuit Court?

6 A. This July will make 21 years.

7 Q. Can you describe for the Court the various positions you've
8 held with the Norfolk Circuit Court?

9 A. I've been a Deputy Clerk 1, Deputy Clerk 2, Deputy Clerk 3,
10 administrative assistant, and now supervising deputy.

11 Q. Kind of worked your way up?

12 A. Yes.

13 Q. How long have you been the civil division supervisor?

14 A. This month made two years.

15 Q. What are your responsibilities as a civil division
16 supervisor?

17 A. To oversee the day-to-day processes of anything civil,
18 deeds, or estates.

19 Q. How many deputy clerks are in the criminal division?

20 A. Ten.

21 Q. Are you their direct supervisor?

22 A. Yes.

23 Q. And you report to Tom Larson; is that correct?

24 A. That is correct.

25 Q. He's the chief deputy clerk?

1 A. Yes, sir.

2 Q. Do you oversee training for the civil division deputy
3 clerks?

4 A. Yes.

5 Q. What types of tasks do the clerks perform in the civil
6 division?

7 A. Any reviewing of any paperwork documents, indexing,
8 scanning, services.

9 Q. And this includes receiving and processing newly filed
10 civil complaints?

11 A. Yes.

12 Q. We've -- Mr. Schaefer described the layout of the office
13 generally. Can you describe where the civil division clerks
14 work?

15 A. They have a desk. They are directly outside of my office.

16 Q. Do they have their own computers?

17 A. They have their own computers, scanners, phone.

18 Q. How does --

19 THE COURT: Is a scanner a separate device from a
20 computer?

21 THE WITNESS: Yes, sir.

22 THE COURT: Does it perform any other function other
23 than scanning?

24 THE WITNESS: No, it just scans.

25 THE COURT: So how does it work? You just feed it in

1 like a copier?

2 THE WITNESS: That is correct. You turn it upside
3 down, upside down backwards into the scanner, and it scans it
4 in, and then it connects with another system that brings it up
5 on your computer.

6 THE COURT: All right. So it's really more like a
7 copy machine than a computer?

8 THE WITNESS: I guess you could say that.

9 THE COURT: Except instead of a copy coming out it
10 just goes into a --

11 THE WITNESS: The computer.

12 THE COURT: -- the main whatever you call it, CIS or
13 wherever?

14 THE WITNESS: It goes into CIS, yes, sir.

15 THE COURT: Okay. And each of those eight people has
16 one of those on their desk?

17 THE WITNESS: All 10 of us, yes.

18 THE COURT: All 10 of you do?

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay.

21 BY MR. PRINCE:

22 Q. I want to ask you some questions about how you make new
23 civil filings available to the public. How does your office
24 make new civil complaints available to the public?

25 A. Once it's scanned in it goes into the CIS system, it's

1 available on the public terminal.

2 Q. And it's available to the general public on those
3 terminals?

4 A. Yes.

5 Q. Is it available to the media on those terminals?

6 A. Yes.

7 Q. Can the media, media, access newly filed complaints in your
8 office in any other ways?

9 A. The media is allowed to come in the back where our deputy
10 clerks are, and they can receive them that way as well if it's
11 not already scanned into the system.

12 Q. To your knowledge has this always been the policy?

13 A. Yes, sir.

14 Q. Which media entities and reporters frequently come behind
15 the counter?

16 A. Virginian-Pilot, WAVY TV 10.

17 Q. I'm going to ask you some questions about processing. Does
18 the civil division have a time frame or a goal as far as
19 processing newly filed complaints and making them available on
20 the terminals?

21 A. We try to make sure that they're scanned in the same day.

22 Q. Are there circumstances that might slow down processing or
23 make it hard for you to get, make them available the same day?

24 A. Yes.

25 Q. What are some examples of those circumstances?

1 A. The building closing early because of inclement weather,
2 people calling in sick, things like that. Fire alarms.

3 Q. How do you handle filings that come in at the end of the
4 day?

5 A. We receive them when we make sure that they're
6 date-stamped, but if they're coming in between 4:30 and
7 4:45 there's no guarantee they'll get in before that time. But
8 we do try to make sure that we do. We review them and we make
9 sure that they're date-stamped, but we do try to get them in.

10 Q. Is it a frequent occurrence that attorneys and filing
11 parties file complaints at the end of the day?

12 A. Absolutely.

13 Q. I'm shocked to hear it.

14 THE COURT: If it comes in after 4:30 can you scan it
15 in?

16 THE WITNESS: Maybe if it's just possibly just one,
17 that's possible. But if it's a few of them, it's a possibility
18 that they may not get in before 4:45.

19 THE COURT: So you can scan them in theoretically
20 until 4:45?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Thank you.

23 BY MR. PRINCE:

24 Q. Who is the CNS reporter that comes to your office?

25 A. Jocelyn.

1 Q. That's Ms. Rardin?

2 A. Yes, sir.

3 Q. What time does she normally arrive?

4 A. She used to arrive about 4:37, now she arrives exactly at
5 4:45 or 4:44.

6 Q. That's a very precise time.

7 A. Yes.

8 Q. Do you have personal interaction with her when she comes
9 by?

10 A. Just by speaking. Just passing my office. She has to pass
11 my office to get to the other deputy clerks.

12 Q. If she comes between 4:37, I think you said, and 4:45, when
13 does she usually leave?

14 A. As soon as we give her any answers she may ask. Like she
15 wants to know if there's any late filings that's not scanned in.

16 Q. How long does she usually stay?

17 A. Maybe a minute or two.

18 Q. Did you know her before this lawsuit was filed?

19 A. No, sir.

20 Q. Do you recall a meeting in September, 2018 between you,
21 Mr. Schaefer, Mr. Larson and people from CNS?

22 A. Yes, sir.

23 Q. What do you remember about that meeting?

24 A. I remember them coming in and explaining that they spoke
25 with someone and they told them that they couldn't come back,

1 and I told them what our procedure was, and I asked them why
2 didn't they ask for a supervisor or assistant supervisor to
3 maybe explain further. I'm not sure if he told her, the deputy
4 clerk, who he was exactly, did he show any ID, I said, but any
5 time that they needed anything, they're allowed to come back and
6 speak to any of us.

7 Q. Have you had interactions with her, Ms. Rardin, since that
8 meeting took place?

9 A. Yes.

10 Q. Can you describe those interactions?

11 A. It's only one other interaction when she came in and asked
12 about can she come in later than 4:45, and one other time I
13 think she had a problem with one of the deputy clerks that works
14 under me.

15 Q. I want to ask you some questions about processing and
16 receiving newly filed civil complaints.

17 When someone files a complaint in person, where do they go
18 in your office?

19 A. The public? Or anyone, they would come in the front and
20 get in line, and they would, the cashier would receive their
21 complaint.

22 Q. Who did the in-person filer give a complaint to in the
23 civil division?

24 A. In person, that would have to be an attorney that would
25 come back to the back and they would hand it to Tracy.

1 Q. Who would -- if a member of the public came in with a new
2 civil complaint, who would they give that to at the front
3 counter?

4 A. The cashier.

5 Q. And what happens to the new complaint when it's received by
6 the cashier at the front counter?

7 A. She receipts for it and then she places it in a civil box
8 that's located right directly behind her.

9 Q. What happens to complaints that are put in the civil box?

10 A. Our deputy clerks go to the front and grab all of the
11 complaints that come in.

12 Q. How often do they check the civil box?

13 A. All day long.

14 Q. Once the complaints are -- once a deputy clerk obtains --

15 THE COURT: Well, excuse me a minute. Now, these
16 complaints, they go into the civil box?

17 THE WITNESS: Yes.

18 THE COURT: Do you put gun permit requests into the
19 civil box?

20 THE WITNESS: No, sir.

21 THE COURT: Well, what do you put in the civil box?

22 THE WITNESS: Any complaints. It could be a divorce,
23 any civil complaint that comes in, and that goes to the civil
24 division. It would go in that box.

25 THE COURT: Name changes?

1 THE WITNESS: Name changes.

2 THE COURT: Is there anything other than requests for
3 gun permits that don't go into that civil box?

4 THE WITNESS: Anything that would go into like our
5 license permit and finance department, it wouldn't go in that
6 box. It wouldn't go in civil.

7 THE COURT: Like somebody's applying for a liquor
8 license or something like that, or do you do that?

9 THE WITNESS: No.

10 THE COURT: Well, there's some kind of license you do,
11 I can't remember what it is.

12 THE WITNESS: Concealed weapon permits are done
13 actually in our criminal department. We don't actually handle
14 them.

15 THE COURT: Okay.

16 THE WITNESS: But licenses are actually handled, like
17 if you're looking for other type of licenses and permits, like
18 for your business license, your fictitious names, they're done
19 in another department called License, Permit and Finance.

20 THE COURT: Okay. Well, you say you don't handle the
21 gun permits?

22 THE WITNESS: That is correct.

23 THE COURT: But do you -- but they do file them with
24 you?

25 THE WITNESS: With the court, period? Yes.

1 THE COURT: No, I mean with you. In the civil
2 department.

3 THE WITNESS: Not at our court, no.

4 THE COURT: They don't?

5 THE WITNESS: No.

6 THE COURT: So permits, requests for gun permits are
7 not filed with your clerks?

8 THE WITNESS: That is correct.

9 THE COURT: But name change petitions are?

10 THE WITNESS: Yes.

11 THE COURT: Divorce petitions?

12 THE WITNESS: Habitual offender petitions are done.
13 Gun rights.

14 THE COURT: Gun rights? What's that mean.

15 THE WITNESS: When they're convicted felons and they
16 want their rights restored.

17 THE COURT: Okay. Anything else?

18 THE WITNESS: Guardianship. Adoptions. Expungements,
19 civil and government appeals.

20 THE COURT: Okay.

21 THE WITNESS: General District Court appeals.
22 Juvenile Court appeals.

23 THE COURT: Okay. Thank you.

24 BY MR. PRINCE:

25 Q. So the complaint goes into the day box and it's picked up

1 by a civil division deputy clerk and taken in for processing?

2 A. That's correct.

3 Q. And I want to go through with you if I can the steps you
4 take in the financial accounting and CCMS systems so we can show
5 the Court what we do -- what you do.

6 If you will turn Defendant's Exhibit 26?

7 THE WITNESS: 26 is in this -- it is. I apologize.

8 BY MR. PRINCE:

9 Q. Let me know when you're there.

10 A. Okay.

11 Q. And do you recognize this screenshot?

12 A. Yes, sir.

13 Q. And what is it?

14 A. It's an FAS screenshot where we receipt.

15 Q. And can you walk us through what you would do when you fill
16 in case information into FAS and receipt a newly filed civil
17 complaint?

18 A. Yes. So we don't have to fill in the case number because
19 the case number is automated after we finish putting in all of
20 the information. So we put in the filing type, whatever kind of
21 case it is, and if someone is suing we put in the suit amount.

22 THE COURT: Does this, does this piece of paper, you
23 scan this in or what?

24 THE WITNESS: No, sir. This is how our screen looks.
25 This is what the computer screen looks like in FAS, in our

1 financial system.

2 THE COURT: Well, does this document appear before or
3 after a paper complaint is date-stamped?

4 THE WITNESS: After we date stamp it we put this
5 information into the system.

6 THE COURT: Is this the next thing do you after you
7 date-stamp it?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. So if they give you the right
10 amount of money, for purposes of statute of limitations it's
11 considered filed at this point?

12 THE WITNESS: Yes, sir.

13 THE COURT: But it's subsequent to this that you scan
14 the whole thing?

15 THE WITNESS: After we do this part, yes.

16 THE COURT: It's the next step after you do this?

17 THE WITNESS: Well, yes, basically.

18 THE COURT: Okay.

19 BY MR. PRINCE:

20 Q. So can you walk us through what data you enter into FAS as
21 part of the receipting process?

22 A. The date that it's filed is -- automatically this date
23 comes up. Whatever date we're pulling up FAS. So that date is
24 already there.

25 Q. And does, do you enter the name of the plaintiff here under

1 the Plaintiff Info?

2 A. Yes.

3 Q. And do you enter the name of the defendant under Defendant
4 Info?

5 A. Yes, sir.

6 Q. What do you do if there's, if there are 10 defendants?

7 A. Our cashiers actually only put in the first plaintiff, and
8 the second -- I mean, the first plaintiff and first defendant.
9 When it goes back to the civil division we put any additional
10 information in the system, because the cashiers have a line of
11 people that's waiting to be receipted.

12 Q. And then underneath it says Account Codes, and it looks
13 like there's some descriptions. Is this what you use to
14 calculate the filing fee?

15 A. That is correct. It's automatically calculated depending
16 on what type you put in, filing type you put in.

17 Q. And then it says at the bottom, I see it says Total, \$24.
18 Is that the filing fee?

19 A. That would be for this particular thing, yes.

20 Q. And each -- and different types of civil filings have
21 different filing fee amounts?

22 A. That is correct.

23 THE COURT: What is this particular item?

24 THE WITNESS: This is what automatically --

25 THE COURT: What kind of case is this?

1 THE WITNESS: Actually this not showing any particular
2 type of case. But the only thing that I can think of that is
3 \$24 would be to appoint a guardian. That's \$24, I believe.

4 THE COURT: All right.

5 BY MR. PRINCE:

6 Q. Once you've filed in the field for plaintiff and defendant
7 and you've calculated the filing fee, do you hit one of the
8 buttons at the bottom there?

9 A. Yes. We do add to our cart and then hit Finish.

10 Q. All right. And then I'm going to, if you could turn to the
11 next tab which is going to be Defendant's Exhibit 27?

12 THE COURT: Do you want to admit 26?

13 MR. PRINCE: Yes, please, Your Honor. I was going to
14 admit them all at once, but we can do it as we go.

15 (Defendant's Exhibit No. 26 received in
16 evidence.)

17 BY MR. PRINCE:

18 Q. So Defendant's Exhibit 27, which is the next tab, are you
19 there?

20 A. Yes, sir.

21 Q. Now, is this from the Financial Accounting System?

22 A. It's a part of it. It's another screen. This is the CCMS.

23 Q. And how --

24 A. Our case management.

25 Q. What is the relationship between the FAS, Financial

1 Accounting System, and the Circuit Case Management System, CCMS?

2 A. Once it's receipted it transfers over to CCMS.

3 Q. What specifically transfers over?

4 A. The information that we first put in in the financial
5 system comes over. So if they put in the, what type of case it
6 is, the plaintiff and defendant and the suit amount.

7 Q. So if we're looking at -- so this is the first thing you
8 see after the receipt is generated and you go -- up pops CCMS?

9 A. Correct.

10 Q. This is on the clerk's screen at his or her work station?

11 A. That is correct.

12 Q. And if you look under Case Information there is a field
13 called File Date; is that right?

14 A. Yes.

15 Q. And is this the file date in CCMS for whatever civil filing
16 this is?

17 A. Yes.

18 Q. And you've heard testimony that this date is auto-populated
19 by the CCMS system. What date is -- what date appears in this
20 field?

21 A. It's auto-populated by whenever it was receipted for.

22 Q. So if it's receipted for on a Tuesday, the Tuesday date
23 pops up in CCMS?

24 A. That is correct.

25 Q. What happens hypothetically if it's receipted for on

1 Tuesday at 4:45 in the afternoon and then it's the date -- and
2 then the clerk comes back to work the following morning and
3 pulls up CCMS, what date appears in there?

4 A. Tuesday. Date it was receipted.

5 Q. Is it, is it the -- I may have asked the question poorly.
6 Is the date that fills into the field, is that the date
7 that you're entering -- that you're actually entering in data
8 into the CCMS?

9 A. That date doesn't have anything to do with the date that
10 we're entering data.

11 Q. Okay.

12 THE COURT: When you complete the financial form and
13 put that in the system, what do you, what kind of machine do you
14 put the financial form in?

15 THE WITNESS: It's not a form that we're putting it
16 in, but it's automatically -- it automatically transfers to the
17 CCMS.

18 THE COURT: So that date's going to be the same date
19 that's on the financial form.

20 THE WITNESS: That is correct.

21 THE COURT: The financial form -- so the only way it
22 would carry over from Monday to Tuesday is if it wasn't
23 receipted on the date it was handed to the clerk, right?

24 THE WITNESS: Right. That date that it's receipted,
25 it usually carries over to the CCMS.

1 THE COURT: All right. So it's not considered filed
2 until it's receipted, right?

3 THE WITNESS: Correct.

4 THE COURT: So --

5 THE WITNESS: Well, it's filed --

6 THE COURT: So how could the dates be different?
7 Under what circumstances could you have one date on the date
8 stamp and another date on the CCMS?

9 THE WITNESS: I didn't say that it was a different
10 date, but --

11 THE COURT: No, I'm not saying you did.

12 THE WITNESS: Okay.

13 THE COURT: I'm asking you could it be?

14 THE WITNESS: Yes.

15 THE COURT: How?

16 THE WITNESS: If they dropped it off at the last
17 minute and we were closing and it wasn't able to get receipted
18 for that day, then yes, it could be different. But we still
19 date-stamp it for the day that we receive it.

20 THE COURT: Okay. Once it's date-stamped, the
21 financial form's going to be filed because you're not going to
22 date-stamp it until the financial form is right, correct?

23 THE WITNESS: We date stamp it then we put it into the
24 FAS system. But if they couldn't receipt for it -- so say we
25 get it at 4:45 on Friday afternoon --

1 THE COURT: Right.

2 THE WITNESS: -- and because they got it in so late it
3 wasn't able to be receipted or checked over or anything, then we
4 can't process that until Monday. So then the date would change,
5 but we would put the date that we date-stamped it, but they may
6 be receipting for it on Monday.

7 THE COURT: So the date stamp, it could be
8 date-stamped on Friday but not receipted for until Monday, is
9 that what you're saying?

10 THE WITNESS: That's possible, if it came in the last
11 minute.

12 THE COURT: That's possible?

13 THE WITNESS: Yes, sir.

14 THE COURT: Okay. Well, so you date-stamp it before
15 you do the receipt?

16 THE WITNESS: That is correct.

17 THE COURT: Okay.

18 MR. PRINCE: Thank you, Your Honor.

19 BY MR. PRINCE:

20 Q. So you have the file date here. Do you enter in any other
21 fields on this particular page?

22 A. Only if something was incorrect. We usually, everything
23 that came from FAS should be here already.

24 Q. Okay. So do you hit a button at the bottom again to go to
25 the next screen?

1 A. We would hit the Next tab, like you see it shows this is
2 the Case and Party entry. So Case, we could go to Plaintiff, we
3 can go to Defendant, Hearing, Disposition. We would just click
4 it to go to the next one.

5 MR. PRINCE: And just so Your Honor is following
6 along, there's a tab that says Case/Party Entry, underneath it
7 it says Case, Plaintiff, Defendant, Hearing, Disposition,
8 Remark, Summary, right?

9 THE COURT: Wait.

10 MR. PRINCE: Okay.

11 THE COURT: I see down at the bottom it says Save,
12 Cancel, New Case, New Case Plaintiff. Where are you talking
13 about?

14 MR. PRINCE: I'm above Case Information. You can see
15 it says Case.

16 THE COURT: Case, Plaintiff, Defendant?

17 MR. PRINCE: That's correct, Your Honor.

18 THE COURT: So is that where you punch a button up
19 there?

20 THE WITNESS: Yes. We click on those tabs.

21 THE COURT: So you push Plaintiff?

22 THE WITNESS: We could, yes.

23 THE COURT: I mean if it's a new filing, wouldn't you?

24 THE WITNESS: Yes, sir. We would check the Plaintiff
25 and Information and see if we needed to add anyone, or we would

1 click the next one, Defendant, and if it's more than one
2 defendant we would need to add defendants.

3 THE COURT: Okay.

4 BY MR. PRINCE: And we would move Defendant's
5 Exhibit 27 into evidence, Your Honor.

6 THE COURT: That will be admitted.

7 (Defendant's Exhibit No. 27 received in
8 evidence.)

9 BY MR. PRINCE:

10 Q. Let's flip through to the next one which is Defendant's
11 Exhibit 28. And this is a similar screen except for instead of
12 being on the Case tab, it's actually on the Defendant tab; is
13 that correct?

14 A. Yes.

15 Q. So is this the next step?

16 A. Yes, sir.

17 Q. And what type of information would you enter into the
18 Defendant tab?

19 A. As we check the paper that we have in hand and we are
20 looking at the case information, we're making sure that the
21 plaintiff's name and everything is correct in there. And -- I
22 mean the defendant, because we're on the Defendant tab. I
23 apologize.

24 Q. Right.

25 A. With the defendant. And if we need to add a defendant we

1 would is add a defendant here.

2 Q. And then once you did that, would you -- what would be the
3 next step?

4 A. We could go to another tab. We would -- we try to go
5 through each tab, and then we hit Save unless we need to -- so
6 if the phone rings and we need to stop, we will go ahead and
7 save because we don't want to lose any information.

8 Q. So we've got the filing fee, we've got -- we've entered in
9 the defendant's name.

10 MR. PRINCE: And Your Honor, we would move for the
11 admission of Defendant's Exhibit 28.

12 THE COURT: 28 will be admitted.

13 (Defendant's Exhibit No. 28 received in
14 evidence.)

15 BY MR. PRINCE:

16 Q. So if you flip over to Defendant's 29, now we've got
17 Hearing/Disposition. And what's the significance of this page?

18 A. If we already have a notice, we will put in the hearing for
19 when it would be coming before the court. If not, we may put
20 like a tickle date there.

21 Q. And do any of these, do any of these fields have
22 significance for newly filed civil complaints?

23 A. Only the fourth -- first part, which is the Hearing
24 Information. If we need to put in any hearing dates we would
25 put the date, the time and the hearing type, and that's it. And

1 we would add it. And that's the only tab we would hit up here,
2 is Add. The Disposition, we wouldn't have that yet.

3 MR. PRINCE: Your Honor, we'd move for the admission
4 of Defendant's Exhibit 29.

5 THE COURT: 29 will be admitted.

6 (Defendant's Exhibit No. 29 received in
7 evidence.)

8 BY MR. PRINCE:

9 Q. Flipping over to Defendant's Exhibit 30, and this tab is
10 the Plaintiff tab. And I would assume that this is where you
11 enter the information for the plaintiff in the case?

12 A. That is correct.

13 Q. Do you enter any other information on this page?

14 A. If they have an attorney then we would put the attorney
15 information in as well.

16 Q. Then what would be the next button you push on this page?

17 THE COURT: Now, this is for plaintiff again. Why --
18 this seems like it's a duplication.

19 MR. PRINCE: It actually is not, Your Honor. We went
20 from case --

21 THE COURT: Let the witness --

22 MR. PRINCE: Okay. Sorry, Your Honor.

23 THE COURT: -- testify.

24 THE WITNESS: The first one we went over was for the
25 defendant. It's actually a little out of order. It should have

1 been plaintiff first.

2 THE COURT: Well, there was -- No. 3 was -- or No. 1
3 put the plaintiff in. Or No. 2, didn't it? Didn't you put the
4 plaintiff in under --

5 THE WITNESS: It was Exhibit No. 28 it showed
6 defendant, not plaintiff. Even though the tab is up there.

7 THE COURT: 28 is Defendant, I know. The one
8 before 28. 27 is your fee. That's the fee page, right?

9 THE WITNESS: 27 shows Case. The case entry. It just
10 shows the tab.

11 THE COURT: So after you show the defendant you show
12 the plaintiff; is that right?

13 THE WITNESS: In these exhibits, yes, sir.

14 THE COURT: Okay.

15 BY MR. PRINCE:

16 Q. Is there any other information you need to enter on this
17 page?

18 A. Only the Attorney Information and any additional plaintiffs
19 if there are.

20 Q. And then --

21 MR. PRINCE: Your Honor, we move for the admission of
22 Defendant's Exhibit 30.

23 THE COURT: That will be admitted.

24 (Defendant's Exhibit No. 30 received in
25 evidence.)

1 BY MR. PRINCE:

2 Q. Defendant's Exhibit 31 says Services. And can you tell the
3 Court the significance of this part of the indexing process?

4 A. If service is requested on a complaint, we would enter the
5 information here who is being served on their address, the
6 attorney's name, and if there's a hearing and what time. And
7 how it's being served.

8 Q. Any other information that you enter?

9 A. That would be all on this screen.

10 Q. And then you --

11 MR. PRINCE: Your Honor, we would move for the
12 admission of Defendant's Exhibit 31.

13 THE COURT: 31 will be admitted.

14 (Defendant's Exhibit No. 31 received in
15 evidence.)

16 BY MR. PRINCE:

17 Q. Now we're at the last screen. Defendant's Exhibit 32.
18 This says Pleadings/Orders. And what is the significance of
19 this page?

20 A. This is where we index the complaints and any other
21 pleadings that may come in with the complaint. We would put
22 everything in here. The file date, what type of pleading it is,
23 who filed it.

24 Q. And once you get to this screen, what is -- after all that
25 information is entered in, what is -- what would you do?

1 A. First we would click on Add, and then we would hit Save at
2 the bottom.

3 Q. And when you hit Save, what does, what is the significance
4 of that?

5 A. Once we hit Save, that information is automatically
6 uploaded to the public terminal.

7 Q. And when you say "the information", what type of
8 information?

9 A. All of the information we just placed in for this file. If
10 we added any other information, any attorneys or any additional
11 defendants, all of that would show up on the public terminal.

12 Q. So that's the names of the parties in the lawsuit?

13 A. Parties. The lawsuit.

14 Q. The amount in question?

15 A. The attorney. Yes.

16 THE COURT: All right. What is the purpose of this?
17 It says Services. What does it mean by "Services"?

18 THE WITNESS: When we issue summons.

19 THE COURT: I thought you did that on 31. Service of
20 Process. What is 31?

21 THE WITNESS: I'm sorry. 31. Yes. This is the
22 Service screen where we're putting in who's being served.

23 THE COURT: All right. And how does that distinguish
24 from 32?

25 THE WITNESS: 31 is actually a service, whatever

1 summons we're going to issue on someone, and 32 is actually our
2 pleading when we index the pleading. So that could have been
3 the service request, the complaint, any exhibits that's attached
4 to the complaint, a notice of hearing, we would index it and
5 place it in this screen.

6 THE COURT: Okay.

7 BY MR. PRINCE:

8 Q. What is the significance of this step?

9 A. This is basically where we're showing exactly what's in the
10 file, it's kind of giving them, like what will I say, a table of
11 contents of what exactly is filed in this indicates.

12 MR. PRINCE: Your Honor, we'd move for the admission
13 of Defendant's Exhibit 32.

14 (Defendant's Exhibit No. 32 received in
15 evidence.)

16 THE COURT: Okay. When does the case go into the
17 public -- for the public viewing? At which step?

18 THE WITNESS: Actually it's uploaded to the public as
19 soon as it's receipted for. Someone will know that it's filed.
20 If you do a search for any case or any searches for what was
21 filed today, that will show up. You just may not have any extra
22 information and you will not be able to see any documents until
23 we get to that screen.

24 THE COURT: You wouldn't be able to -- if it was a
25 complaint, civil complaint, an automobile accident let's say --

1 THE WITNESS: Correct.

2 THE COURT: -- when it's receipted there will be
3 information that a suit has been filed and the case number?

4 THE WITNESS: Yes, sir.

5 THE COURT: Will it have the name of the parties to
6 the case?

7 THE WITNESS: Yes, sir.

8 THE COURT: But it won't have the body of the
9 complaint until you do the step under 32?

10 THE WITNESS: That is correct.

11 THE COURT: Okay.

12 BY MR. PRINCE:

13 Q. So we've just gone through in these exhibits the indexing
14 process. Is the process any different for complaints that are
15 received by mail?

16 A. The only difference is, is that it comes in the back and we
17 distribute the mail so that it won't take us as long to open it
18 up. We open it up, all 10 of us open up the mail and distribute
19 it that way.

20 Q. But you go through the steps we just walked His Honor
21 through with those screens?

22 A. That is correct. Date stamp, everything. And then
23 receipt.

24 Q. How long on average does it generally take to go through
25 the process we just went through with those screenshots?

1 A. I don't -- I've never timed it to say how long it takes.
2 I'm not sure. But I mean, I guess it would only take a few
3 minutes depending on how large the document is for us to look
4 over.

5 Q. Once you complete the indexing process what is the next
6 step?

7 A. We scan it. We go into CIS and scan the documents in.

8 Q. And does that happen contemporaneously with the indexing
9 process?

10 A. Normally.

11 Q. Is there ever an occasion where you would index a document
12 on a Tuesday and scan it the following day or two days down the
13 later?

14 A. The only thing is if an emergency comes up and we got to
15 close the court, or we get a fire alarm, that we just index then
16 we have to put it to the side until we come back. And if we
17 don't get back in the building until 4:45...

18 Q. And when is a complaint, the image of the complaint
19 actually viewable on the public access terminal?

20 A. Once we scan it in.

21 Q. If a complaint has not been indexed or scanned, will it
22 appear on the public access terminal?

23 A. The actual paper?

24 Q. Or the data.

25 A. The data might. If it's been receipted for you will be

1 able to find the information that a case has been filed.

2 Q. How is the process different for e-filed complaints?

3 A. E-filing, it's automatic. So whatever the attorney puts in
4 the system, that's what we see. We just look over the
5 information, we check the document, and then we accept the
6 e-file.

7 Q. Is e-filing popular in the Norfolk Circuit Court?

8 A. Absolutely.

9 Q. Do you know how many e-filed complaints there were in 2018?

10 A. I don't, I'm sorry.

11 Q. That's okay. If I told you it was approximately 650, does
12 that sound about right?

13 A. Probably so.

14 THE COURT: Now, if a complaint's e-filed it would be
15 up to the person doing the e-filing, who is generally going to
16 be an attorney --

17 THE WITNESS: Correct.

18 THE COURT: -- to do all those steps that you just
19 described?

20 THE WITNESS: Yes.

21 THE COURT: Okay.

22 BY MR. PRINCE:

23 Q. Does your office control the e-filing system?

24 A. No.

25 Q. Who controls the e-filing system?

1 A. The Supreme Court. OES.

2 Q. You just use it?

3 A. Yes.

4 Q. Do you have the ability to change how the e-file system
5 operates?

6 A. No, sir.

7 Q. What role do the clerks play in handling an e-file
8 complaint?

9 A. Basically we just review the case, the information that's
10 placed in there, and accept it.

11 Q. And once you accept it what's the significance of that?

12 A. It's automatically in the public.

13 Q. And is it displayed on the terminal?

14 A. That is correct.

15 Q. I want to ask you some questions about the treatment of
16 confidential filings.

17 Do you treat confidential filings the same way as
18 non-confidential filings for purposes of processing?

19 A. Yes.

20 Q. Any difference at all?

21 A. Only that we have to hit a confidential button.

22 Q. But you process it the same way?

23 A. Yes.

24 Q. Do you distinguish between civil complaints like motor
25 vehicle accidents and lawsuits versus divorce?

1 A. I'm sorry, ask the question again?

2 Q. Do you process divorces any differently than motor vehicle
3 accidents?

4 A. No.

5 Q. Do you process asbestos complaints any differently than a
6 garnishment?

7 A. No.

8 Q. So for purposes of processing, all civil filings are
9 treated the same way?

10 A. That is correct.

11 Q. Are filers required to submit a filing fee with new civil
12 filings?

13 A. Yes.

14 Q. Do filers ever submit an incorrect filing fee with their
15 filing?

16 A. Absolutely.

17 Q. You actually -- that's something that actually happens?

18 A. Every day.

19 Q. Does it, is there, does it ever -- is it ever the case
20 where a filing party completely neglected to include a filing
21 fee?

22 A. Absolutely.

23 Q. And how does your process handle missing or incomplete
24 filing fees?

25 A. We still stamp it in, we still file date-stamp it, but we

1 give them a call or we email them if we have their email and let
2 them know that we need the check as soon as possible.

3 Q. Is the complaint still date-stamped?

4 A. Yes.

5 Q. Date-stamped as filed?

6 A. As filed.

7 Q. And then it just sits in the deputy clerk's office until
8 the filing party cures the issue?

9 A. Not on their desk, but on my desk, yes.

10 Q. So you're responsible for missing and incomplete filing
11 fees?

12 A. That is correct.

13 Q. You didn't mention that as part of your job duties.

14 A. I know, right?

15 Q. Mr. Schaefer testified yesterday that your office conducts
16 an initial review of all civil filings?

17 A. That is correct.

18 Q. What is your office looking for?

19 A. Anything that should be confidential, like date of birth,
20 Social Security numbers, financial records. I'm sorry, I just
21 went blank.

22 Anything that shouldn't go out to the public. It could be
23 children's names. It's -- any type of financial records or
24 medical records, things like that.

25 Q. Why do you check for confidential information?

1 A. Because we have a responsibility to make sure that all
2 things that should be confidential stay confidential.

3 THE COURT: Well, the attorneys are supposed to do
4 that, but you have to check behind them?

5 THE WITNESS: That is correct.

6 THE COURT: That's the way it works, right?

7 THE WITNESS: That's correct. Yes, sir.

8 BY MR. PRINCE:

9 Q. Do you ever have to -- do you ever have to examine
10 complaints filed by *pro se* parties?

11 A. Yes.

12 Q. And is it ever the case that they may include confidential
13 or personal identifying information in their filings?

14 A. Every day.

15 Q. And how does that -- how do you handle that?

16 A. It's just the process that slows us down a little, because
17 they don't understand, but we try to make sure that we let them
18 know this information should be on a confidential addendum and
19 should not be in your complaint.

20 Q. When a document is scanned in by a deputy clerk is there a
21 scan date associated with that document?

22 A. Yes.

23 Q. And where is that scan date?

24 A. In our CIS system.

25 Q. That's the Case Image System?

1 A. That is correct.

2 Q. That's what you use to scan the complaint in?

3 A. Yes, sir.

4 Q. Is there anything that would cause that date to change?

5 A. If we have to change anything: We have to rescan or scan
6 another document behind what we've already scanned. If we have
7 to change anything with the image, we have to hit Apply, so if
8 it was scanned in for some reason, if the scanner takes it in
9 and it's upside down, we may have to change it. And if we have
10 to, you know, flip it, turn it or anything like that, we have to
11 hit Apply, so the date at the top is going to change.

12 Q. Does that ever happen?

13 A. Happens quite often.

14 Q. In your experience?

15 A. I would say it happens at -- I'm not going to say every
16 day, but let's say every other day.

17 Q. Mr. Schaefer discussed yesterday indexing, and he described
18 it as -- or he compared it to making a table of contents. Do
19 you agree with that --

20 A. Indexing.

21 Q. -- analogy?

22 A. Yes.

23 Q. If you provided public access before indexing, before the
24 steps we just walked through with those screenshots, how would
25 that affect your process?

1 A. We would have to wait. It would slow us down, I would say.
2 Because we have to wait now until you give us the complaint back
3 before we can scan it in.

4 Q. Are you familiar with the access delays alleged in the
5 complaint?

6 A. Yes.

7 Q. What was your reaction to the allegations in the complaint
8 that access was being delayed in newly filed civil complaints?

9 A. I was upset. Because I know that that information is not
10 true.

11 Q. How do you know it's not true?

12 A. Because we process paperwork daily. And just like the
13 numbers that you just gave, 11,000 and some change? How are we
14 not putting these in the system? Today's February. That would
15 mean that we would still be on last year's paperwork if we're
16 not putting them in the system on a regular basis.

17 Q. Did you -- is it fair to say you took this a little
18 personally?

19 A. Absolutely. I think it's ridiculous.

20 Q. Do you believe that CNS was experiencing the delays they
21 alleged in July, 2018?

22 A. I do not believe that.

23 Q. To your knowledge are they experiencing delays right now?

24 A. No.

25 Q. Did you know who CNS was before this lawsuit was filed?

1 A. No.

2 Q. Anyone reach out to you about delays before the lawsuit was
3 filed?

4 A. Absolutely not.

5 Q. Ms. Porter, you're the civil division supervisor, correct?

6 A. Yes, sir.

7 Q. You're in charge of the people that are processing
8 complaints; is that right?

9 A. Absolutely.

10 Q. So you may have to take my word for this, but the expert
11 hired by CNS has testified that the Norfolk clerk's office was
12 making complaints available the same day they were received
13 five percent of the time. Five percent of newly filed civil
14 complaints were being made available the same day they were
15 received.

16 A. That's ridiculous. That would mean we're only scanning in
17 two complaints a day. That can't be possible.

18 Q. How many complaints do you receive on average a day, give
19 or take?

20 A. We could receive anywhere from 20 to 40 to 60 complaints in
21 one day.

22 Q. So if you received 40 complaints, give or take, in a given
23 day, and you're only making five percent available the same day,
24 that's two complaints, right?

25 A. That's what they're saying.

1 Q. About two complaints? And you have 10 people under you?

2 A. That means we're in the back twiddling our thumbs and we
3 would get fired.

4 Q. Would Mr. Schaefer put up with that?

5 A. No, he would not. And I definitely wouldn't still be there
6 for 20-something years just sitting in the back twiddling my
7 thumbs.

8 MR. PRINCE: Please answer any questions opposing
9 counsel has. Thank you.

10 CROSS-EXAMINATION

11 BY MR. HARRISON:

12 Q. Good afternoon, Ms. Porter.

13 A. Good afternoon.

14 Q. Concealed handgun permits are given a civil case number,
15 correct?

16 A. That is correct.

17 Q. You testified that they're processed by the criminal
18 division?

19 A. That is correct.

20 Q. As to the rescanning when pages are stuck together or
21 upside down, would your rescanning occur on the same day?

22 A. It's possible, yes.

23 Q. And that would change the time that the complaint was
24 scanned, not the date?

25 A. If it's processed the same day, yes. Or should I say if

1 it's scanned the same day, yes.

2 Q. The filing fee is automatically calculated in the FAS
3 system; is that correct?

4 A. That is correct.

5 Q. So if there's a filer at the counter and there's a filing
6 fee issue, it's raised at that time, correct?

7 A. If it's filed up front, yes, sir.

8 Q. And then following the payment of the filing fee, there's a
9 case number and receipt that's generated?

10 A. That is correct.

11 Q. All of the steps that you described in Defendant's Exhibits
12 27 through 32, I think you called that the indexing process, all
13 of those occur after receipting, correct?

14 A. This was CMS, I believe? Yes, sir.

15 Q. And that is after the filing fee has been processed?

16 A. That is correct.

17 Q. At a later point in time?

18 A. Yes.

19 MR. HARRISON: No further questions. Thank you.

20 THE COURT: I have a question.

21 EXAMINATION

22 BY THE COURT:

23 Q. The scanning, when it's mis-scanned because paper's upside
24 down or it leaves the paper out, something like that, is that
25 immediately noticeable to the clerk who's done the scanning?

1 A. It can be. Some things that wouldn't be noticeable is
2 sometimes, depending on the ink, it bleeds through, so it makes
3 it extra pages sometimes that we may have to go back and fix
4 that. But some mistakes aren't found until days later. It
5 could be a time later when somebody is looking at the public
6 image and then they let us know. But we do try to make sure
7 that it's done within the same day if we catch it.

8 Q. Well, how often does it happen that you don't catch it the
9 same day?

10 A. I'm not sure how often it happens.

11 Q. Well, Mr. Larson said he didn't remember it happening -- I
12 don't know if he said the same day -- but in three years or
13 something, that he didn't remember it happening in three or four
14 years when it wasn't corrected. I don't know if he said the
15 same day or maybe the next day or something. Can you comment on
16 that?

17 A. I'm really not sure how often that it happens. I'm not
18 saying that it happens every day or every week, but we try our
19 hardest to make sure that we check over things every day at the
20 time of scanning. We try to make sure that they're scanned in
21 properly.

22 THE COURT: Okay.

23 MR. PRINCE: Your Honor, may I just ask one or two
24 questions to clarify as to Your Honor's point?

25 REDIRECT EXAMINATION

1 BY MR. PRINCE:

2 Q. So His Honor asked you about rescanning and that that may
3 potentially change the date in CIS. But are there other things
4 that could change the date in CIS? Are there other things you
5 do beside rescan the image?

6 A. I mean, we may have to add a document to it. If it needs
7 to be turned upside down, we may have to change that. We may
8 have to delete a page because CIS is saying that we did
9 something to it that day. So something could be filed
10 yesterday, but we don't go -- maybe we didn't catch the mistake
11 until next week. If we change something in it next week, we
12 have to hit Apply, and that date at the top will change.

13 Q. And that's different from rescanning, correct?

14 A. Correct.

15 Q. And this does --

16 A. It's not necessarily rescanning. We could do something
17 else to it. Like we might have to remove a page, like I said,
18 if the ink bleeds through it, it puts a extra page in there that
19 we didn't realize that it did, and we have to delete that out.

20 Q. And this does occur?

21 A. Yes.

22 MR. PRINCE: Thank you, Your Honor. No further
23 questions.

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

25 MR. PRINCE: Yes, sir.

1 THE COURT: All right. You may be excused Ms. Porter
2 with the understanding you won't discuss your testimony with any
3 other witness in the case until the case is concluded.

4 THE WITNESS: Yes, sir.

5 THE COURT: You can either stay in the courtroom or go
6 about your business, whichever you would prefer.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: All right.

9 MR. MATHESON: Your Honor, so at this time the defense
10 is resting, and I -- I forgive me if I don't need to do this,
11 but belt and suspenders, just to make sure I'm preserving all of
12 our rights to judicial review in this case, I just want to renew
13 our motion for summary judgment and the Rule 52 motion for
14 judgment on partial findings that I made earlier. Specifically
15 on the grounds that there's no ongoing violation of law, that
16 the action is moot, that injunctive relief is not appropriate
17 under Rule 65, that the balance of equities in this case does
18 not show that CNS is entitled relief, that they're not entitled
19 to declaratory relief because they failed to satisfy the element
20 of substantial immediacy, that they haven't proven --

21 THE COURT: The element of what?

22 MR. MATHESON: Substantial immediacy.

23 That the facts that have given rise to this litigation
24 do not, do not give rise to a First Amendment claim, that this
25 lawsuit arises under the common law, and --

1 THE COURT: Well, you're going back to your summary
2 judgment.

3 MR. MATHESON: I am going back to the summary
4 judgment. And again, I'm just trying to preserve the record. I
5 understand the Court's comments, and I'm not trying to patronize
6 the Court. Thank Your Honor.

7 THE COURT: There hasn't been any evidence that would
8 change the Court's rulings that were made at the conclusion of
9 the plaintiff's evidence.

10 Is there any rebuttal evidence?

11 MR. HIBSHER: No, Your Honor.

12 THE COURT: All right. There's one bit of evidence I
13 don't think is in the record, which is that the gun permit
14 records which comprise a large percentage of the records are
15 processed by the civil division in Norfolk, but I don't know how
16 they're processed in Prince William. I don't know whether --

17 MR. MATHESON: Your Honor, if you feel that's a
18 legally operative fact and you want to recall -- you want us to
19 recall Mrs. Smith, I'm sure we'd be happy to indulge the Court.

20 THE COURT: I don't know which way it would cut, but
21 we have it in for one, we don't for the other. So I think it
22 would be better if it was in the record.

23 MR. MATHESON: Okay. Very well.

24 MR. PRINCE: We will recall Ms. Smith.

25 THE COURT: You don't have to --

1 COURTROOM DEPUTY CLERK: She's already sworn.

2 THE COURT: You're already under oath, Ms. Smith.

3 THE WITNESS: Thank you.

4 JACQUELINE C. SMITH, having been previously duly
5 sworn, was examined and testified as follows:

6 FURTHER REDIRECT EXAMINATION

7 BY MR. PRINCE:

8 Q. Good afternoon, Ms. Smith.

9 Which division processes concealed carry permits in the
10 Prince William Circuit Court?

11 A. The civil division.

12 THE COURT: All right. So you do it differently than
13 they do it in Norfolk?

14 THE WITNESS: My understanding is that in Norfolk the
15 criminal division processes theirs, yes.

16 THE COURT: Okay. Thank you.

17 MR. PRINCE: Thank you, Your Honor.

18 THE COURT: How long do you think that you need to
19 argue the case, Counsel?

20 MS. GOLDMAN: Approximately 20 minutes, Your Honor.

21 THE COURT: That's a modest request compared to what I
22 usually hear.

23 MS. GOLDMAN: I haven't timed it, but that's my best
24 guess.

25 THE COURT: How about the defendants?

1 MR. PRINCE: 20 to 30 minutes, Your Honor.

2 THE COURT: Well, let's say we'll give both sides 30
3 minutes, and the plaintiffs can reserve whatever time they want
4 for rebuttal. Would you like for the law clerk to time you or
5 do you want to just handle that yourself?

6 MS. GOLDMAN: You can time me.

7 THE COURT: All right. Well, he'll give you, if you
8 tell him how much time you want to reserve for rebuttal, he'll
9 tell you, otherwise, he'll tell you when you've got five minutes
10 left.

11 MS. GOLDMAN: If you can let me know when I have 10
12 minutes left, that would be great.

13 THE COURT: All right. Do you want a five-minute
14 notice too?

15 MR. PRINCE: Yes, please, Your Honor. Thank you.

16 THE COURT: All right. Is there anything else that we
17 can take up today?

18 All right. Well, I expect that if we take an hour to
19 argue the case, we would begin at 10:00 and take an hour to
20 argue the case, that the Court can probably give you its ruling,
21 let's say at 1:00. And you can take your lunch hour prior to
22 1:00. So we'll plan on recessing at the conclusion of the
23 argument, and I'll convene court at 1:00 and hopefully have a
24 ruling. I don't promise I will, but I'll try to do that. I
25 usually rule from the bench, but not always. So that's the way

1 we'll handle it.

2 MS. GOLDMAN: Thank you, Your Honor.

3 THE COURT: Okay. If there's nothing further, we'll
4 be adjourned until 10:00 tomorrow.

5 (Whereupon, proceedings concluded at 3:34 p.m.)

6

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7

CERTIFICATION

8

9 *I certify that the foregoing is a true, complete and*
10 *correct transcript of Volume 3 of the proceedings held in the*
11 *above-entitled matter.*

12

13

14

Paul L. McManus, RMR, FCRR

15

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Date

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