1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3
4 COURTHOUSE NEWS SERVICE,
5 Plaintiff,
6 VS. NO. CV 21-0710 JB/LF
7 NEW MEXICO ADMINISTRATIVE
OFFICE OF THE COURTS, et al.,
8
Defendants.
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Transcript of Preliminary Injunction
12 Proceedings before The Honorable James O. Browning,
United States District Judge, Albuquerque,
13 Bernalillo County, New Mexico, commencing on
September 28, 2021.
14
15 For the Plaintiff: Mr. Greg Williams; Mr. John
Edwards; Mr. Patrick Rogers
16
For the Defendants: Ms. Erin Lecocq; Mr. Nicholas
17 McDonald
18
19
20
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1 THE COURT: Good morning everyone. I
2 appreciate everybody making themselves available to
3 me this morning.
4 The Court will call Courthouse News Service
5 versus New Mexico Administrative Office of the
6 Courts, et al., Civil Matter No. 21-CV-0710 JB/LF.
7 If counsel will enter their appearances for
8 the plaintiff.
9 MR. WILLIAMS: Good morning, Your Honor.
10 Greg Williams from Peifer, Hanson, Mullins & Baker
11 for the plaintiff. Two counsel with me today: John
12 Edwards from Jackson Walker. Mr. Edwards will be
13 handling the proceedings on behalf of the plaintiffs
14 today. Also here, just behind the bar, is Pat
15 Rogers, who is also counsel for Courthouse News. And
16 here next to me is Bill Girdner, he's the publisher
17 of Courthouse News.
18 THE COURT: All right. Mr. Williams, Mr.
19 Edwards, Mr. Rogers, Mr. Girdner, good morning to
20 you.
21 And for the defendants.
22 MS. LECOCQ: Good morning, Your Honor.
23 Erin Lecocq, Assistant Attorney General from the
24 Attorney General's Office on behalf of all of the
25 defendants. And with me is Celina Jones and

1 Mr. Arthur Pepin. And I have co-counsel, Nicholas
2 McDonald. I believe he's still downstairs going
3 through security, and he'll be here shortly.
4 THE COURT: All right. Ms. Lecocq, Ms.
5 Jones, Mr. Pepin, good morning to you.
6 All right. We're here on the plaintiffs'
7 motion for preliminary injunction. So Mr. Edwards,
8 if you wish to speak in support of your motion.
9 MR. EDWARDS: Yes, Your Honor. And some
10 preliminary matters. I've prepared a few binders
11 that will assist the Court and the witness. If I may
12 approach and present that to you.
13 THE COURT: You may.
14 MR. EDWARDS: This contains our original
15 pleadings as well as the defendants' pleadings and
16 our supporting declarations.
17 THE COURT: And you've given a copy of
18 these to the defendants?
19 MR. EDWARDS: Yes, Your Honor. And also,
20 Your Honor, we've reached an agreement to stipulate
21 to the admissibility of the exhibits we'll be using
22 today.
23 THE COURT: All right.
24 MR. EDWARDS: If I may move for admission
25 of the exhibits to the declarations we filed with our

1 motion for preliminary injunction, Exhibits 1 and 2.
2 THE COURT: All right. And no objection,
3 Ms. Lecocq?
4 MS. LECOCQ: No objection.
5 THE COURT: All right. Plaintiff's
6 Exhibits 1 and 2 will be admitted into evidence.
7 MR. EDWARDS: And Your Honor, we would
8 invoke the rule.
9 THE COURT: All right. The rule has been
10 invoked. All witnesses to whom it applies will be
11 required to remain outside of the courtroom until
12 they are called to testify. Of course, parties and
13 the experts can stay in the courtroom. People that
14 are outside of the courtroom need to not discuss
15 their testimony with anyone, but they may discuss it
16 with other -- with the attorney.
17 All right. Mr. Edwards.
18 MR. EDWARDS: Your Honor, I'm prepared to
19 call my first witness. In terms of wearing masks
20 during questioning and answering, is that required?
21 THE COURT: It's up to you. You're free to
22 take it off or free to wear it. It's up to you.
23 MR. EDWARDS: Thank you, Your Honor.
24 Plaintiff would call William Girdner.
25 THE COURT: Mr. Girdner, if you'll come up

1 and stand next to the witness box on my left, your
2 right, before you're seated, Ms. Rotonda, my
3 courtroom deputy, will swear you in.
4 WILLIAM GIRDNER,
5 after having been first duly sworn under oath,
6 was questioned and testified as follows:
7 DIRECT EXAMINATION
8 THE CLERK: Please be seated, and please
9 state your name for the record.
10 THE WITNESS: William Girdner.
11 THE COURT: Mr. Girdner. Mr. Edwards.
12 BY MR. EDWARDS:
13 Q. Good morning, Mr. Girdner. Would you
14 please state what your position and role is at
15 Courthouse News Service?
16 A. I'm the publisher of Courthouse News. I
17 started the business.
18 Q. All right. And please give the Court just
19 a very brief summary of what Courthouse News is and
20 what it does?
21 A. We're a publishing company. We have a
22 constellation of publications, but three principal
23 ones would be: Our Daily New Litigation Reports; The
24 Daily Brief, which is a report on appellate rulings
25 throughout the U.S., from the Supreme Court on down,

1 and it includes state court appellate rules; then we
2 have our website, which is a public website open to
3 all for free. And it gets about 30,000 readers per
4 day. And it's focused on politics and law, but we
5 have science stories, weather stories, general news,
6 that type of thing.
7 Q. All right. When was Courthouse News
8 Service formed?
9 A. It was around 1990.
10 Q. And approximately how many employees does
11 the company have right now?
12 A. There are about 240 people, mostly
13 reporters and editors.
14 Q. And approximately how many states and
15 federal courts across the country does Courthouse
16 News cover?
17 A. We cover roughly 3,000 courts.
18 Q. What -- just generally describe what types
19 of cases are covered.
20 A. We cover new civil cases, general
21 jurisdiction cases against any business or public
22 entities primarily.
23 Q. Are there any cases that are excluded from
24 your coverage?
25 A. We do not cover domestic or criminal or

1 probate. We generally don't cover cases against only
2 individuals.
3 Q. All right. And can you explain briefly, on
4 the ground, how CNS reporters cover the state and
5 federal courts throughout the country?
6 A. We have to see the new complaints to
7 generate the new litigation report. So we go to the
8 courthouse, where courts are still paper, and we also
9 cover online. We have to get to the courthouse
10 either through the internet or physically.
11 Q. All right. And before the advent of
12 e-filing or electronic filing, how would Courthouse
13 News reporters cover the courts?
14 A. They went to the courthouse.
15 Q. Can you briefly describe the process of
16 reviewing the paper filings?
17 A. Traditionally, the intake clerk, when he or
18 she pulled in a civil complaint, put it in a box next
19 to him or her. That was true in federal court and
20 state court. And Judge Noel's declaration quite
21 accurately describes that box. We have access to
22 that box and so the cases had just been filed.
23 Q. All right. And was that the same process
24 you followed in the state district courts of New
25 Mexico?

1 A. Yes, it was.
2 Q. And when did coverage of the New Mexico
3 district courts begin?
4 A. Around 2005; so 15, 16 years ago.
5 Q. All right. Now, getting to the specific
6 issue in this case, is Courthouse News seeking
7 immediate, instantaneous access to new civil
8 complaints?
9 A. No, we're not. There is usually a short
10 delay between the time a case comes in and when we
11 see it.
12 Q. So what is the access you're requesting?
13 A. On-receipt access, also described as
14 contemporaneous access.
15 Q. And is this before or after the
16 administrative clerical process?
17 A. It's after the case is received and before
18 it's docketed; what's now called processing.
19 Q. Is this the same level of access that was
20 provided before electronic filing?
21 A. That's traditional access.
22 Q. And can you explain to the Court why that
23 access is important to Courthouse News?
24 A. We want -- there is news in that wood box,
25 news in the equivalent review queue online. We want

1 to report that right away. The news runs on a daily
2 cycle, just like the daily cycle of life. Events
3 happen; we report them; the public consumes them in
4 the evening. Evening falls, and the next morning the
5 whole routine starts again. So, if you try to push
6 an event from the previous news cycle into the
7 current news cycle, it's old, it's stale. I refer to
8 the cycle -- I compare it to bread, like fresh bread
9 on the day it's baked, and stale on the next day.
10 Q. And why isn't next day, within 24 hours or
11 48 hours, why isn't that level of access sufficient?
12 A. For the reasons I've just said: It's old
13 news, it's stale, and it's -- yeah, current news is
14 what's vibrant and strong and resonates.
15 Q. And access you're seeking, is it just for
16 newly filed civil complaints, or is it also with
17 respect to subsequent filings in existing cases?
18 A. No, it's the new civil complaints. That's
19 what that old box, that wood box was, new civil
20 complaints.
21 Q. And are there courts that currently provide
22 that level of access in the United States?
23 A. This court we're in right now does. Almost
24 all the federal courts, and a number of state courts,
25 including two neighbors of New Mexico. Those courts

1 are Utah and Arizona; they provide on-receipt access.
2 Q. And do you have an understanding of how
3 they provide that level of access?
4 A. They provide it through -- well, there are
5 two different ways. The federal courts provide
6 access -- most of them, sorry -- and some state
7 courts provide what's called "Auto Accept," meaning
8 that the case is -- let me just quickly explain, if I
9 can: A filer submits an e-filing; it's caught by an
10 e-file manager. That's the electronic brain of the
11 e-filing system. The e-file manager can either send
12 the new complaint into a review queue for clerks to
13 look it over and then accept, as they say, or it can
14 process the case on its own right away, and put it
15 into the public queue -- I'm sorry, the public
16 docket.
17 So that this court, for example, does that
18 second process, what's called Auto Accept. The
19 e-file manager generates the processing right away,
20 and that case is available on the docket.
21 The second system is what's called a press
22 queue system.
23 Q. And could you just briefly describe the
24 preprocessing or the press review filter?
25 A. The press queue in its generic form is the

1 equivalent of the wood box. It's a filter queue,
2 meaning that the e-file manager sends public, civil
3 complaints into the queue. And the second aspect of
4 it, the basic aspect is that it's permissions based.
5 So somebody has to get a username and password to
6 have access to the queue.
7 Q. Okay. And are you aware of how these
8 courts prevent confidential information from being
9 sent to the queues?
10 A. Yes. The e-file manager sorts the new
11 cases going into the review queue by case type. I
12 don't believe you can file a case without identifying
13 a case type. So the e-file manager -- essentially,
14 it's a filter -- filters into the queue the public
15 case types when they're filed.
16 Q. All right. And to your knowledge have any
17 of the courts that utilize preprocessing queues, have
18 they been sued for providing confidential information
19 in those queues?
20 A. No, they have not. That's our forte, so we
21 would know. They have not.
22 Q. Are you familiar with a company called
23 Tyler Technologies?
24 A. I'm quite familiar.
25 Q. Can you just describe who they are?

1 A. They're one of a number of vendors, e-file
2 vendors, in the U.S. They provide what they call the
3 Press Review Queue. Other vendors provide the
4 equivalent service, calling it in New Mexico, The
5 News Media Portal; in Los Angeles, The Media Access
6 Portal. But Tyler is the largest, I would say,
7 private e-file vendor in the U.S.
8 Q. Is that the vendor for the state courts in
9 New Mexico?
10 A. Yes, it is.
11 Q. And have you had experience with
12 implementation of their software tool that's called
13 the Press Review Queue?
14 A. I've had very direct experience. I've
15 asked clerks to put the queue in place. I've seen
16 what they call configuration requests, which is a
17 filter request. And I've seen the queue operate
18 itself, and in a number of states.
19 Q. Can you just briefly describe what the
20 Press Review Queue is?
21 A. Well, Tyler's Press Review Queue fits the
22 generic pattern, meaning that the e-file manager
23 filters the public case types into the queue, and
24 that's the Press Review Queue. And it's prior to
25 processing. So it's kind of like parallel to the

1 clerk review queues. The e-file manager can be
2 configured or conformed to a number of queues. So
3 this is for the press.
4 Q. And are you familiar with the cost that has
5 been typically charged for implementation of that
6 queue in other jurisdictions?
7 A. Yes, it's normally implemented for free,
8 for no cost.
9 Q. And do you know how recently that was done
10 without charge?
11 A. In San Mateo, California, they set up --
12 the court set up a queue through Tyler, a Press
13 Review Queue, I believe it was in late July or
14 August.
15 Q. How long did it take to implement that
16 queue?
17 A. Actually, we settled that case -- it came
18 out of litigation -- and my rough estimate is that
19 within two months after we settled, they had
20 implemented a queue. But that's rough. It could be
21 three months.
22 Q. Was there a charge?
23 A. No -- we would know. This was very intense
24 negotiation with Jones Day, who was representing the
25 courts. And if there had been a charge, I believe

1 that would be an obstacle that we would know about.
2 Q. You mentioned there are other press queues
3 that are not Tyler press queues. Can you explain
4 where you've seen those implemented?
5 A. In Arizona is the best example. Arizona
6 opened up a statewide press queue based on our
7 request earlier this month.
8 Q. All right. And was there a charge for that
9 queue?
10 A. The estimated charge that I've seen is
11 12,500 to set up a queue from scratch. There is no
12 ongoing maintenance or additional charges on a
13 year-to-year basis in connection with setting up the
14 queue. So 12,500.
15 Q. And to be clear, that was the cost to
16 actually create software that did not exist?
17 A. That's correct, from scratch.
18 Q. Which is different than the Tyler Press
19 Review Queue that already exists?
20 A. Press Review Queue that Tyler has developed
21 simply requires adjustment, what they call
22 configuration of the filter, so it corresponds to the
23 case designations, the case types in that court.
24 Every court has a different list of case types.
25 Q. Now, prior to filing this lawsuit, did you

1 request a press queue from the New Mexico State
2 Administrative Office of the Courts?
3 A. Well, I started with Judge Noel, when he
4 was clerk -- I'm sorry, I started with presiding
5 Judge Nash, in Albuquerque, back in 2014. And I
6 subsequently continued to make those requests through
7 the Administrative Office, the Supreme Court.
8 Q. And what was the ultimate result or
9 decision in that case?
10 A. Our request was rejected.
11 Q. Were you provided a reason?
12 A. No, there was no reason given. I will say,
13 the letter said simply that we were sent to the
14 Online Access Subcommittee in error. But there was
15 no further reason given.
16 Q. All right. And did you ultimately receive
17 documents under a Freedom of Information Request?
18 A. We made a document request of New Mexico.
19 And it wasn't Freedom of Information, but simply a
20 document request under the New Mexico rules. And we
21 received a number of documents.
22 MR. EDWARDS: May I approach the witness,
23 Your Honor?
24 THE COURT: You may.
25 Q. Mr. Girdner, I'm going to hand you a binder

1 of exhibits that we've admitted. I'm going to ask
2 you about a few of those.
3 A. I have it. I apologize, can I grab my
4 glasses?
5 Q. I have a pair, if you'd like to borrow
6 mine.
7 A. No, they're in my backpack.
8 THE COURT: You can just grab his backpack
9 for him and hand it to him.
10 THE WITNESS: Thank you. I'm set now.
11 Q. All right. Mr. Girdner, if you'll look at
12 what's attached as Exhibit A-1 in your binder. It's
13 an exhibit to your declaration in this case.
14 A. I've got some tabs here. And I've got A.
15 Is that where you want me to be at?
16 Q. It's the documents you received from AOC,
17 including Mr. Pepin's memo.
18 A. Under what tab? Can you tell me?
19 Q. It should be under A-1, which should be
20 Exhibit 1 to your declaration.
21 A. Okay. I've got it.
22 Q. All right. Is Exhibit A-1 to your
23 declaration, is that a set of documents you received
24 from your FOIA request?
25 A. Yes, from my public information request.

1 Q. And it also includes a memorandum from
2 Arthur Pepin to the Justices of the New Mexico
3 Supreme Court?
4 A. That's correct.
5 Q. All right. I wanted to draw your attention
6 to page 3 of the exhibit, at the bottom of the page
7 where it says, "Response to CNS letter." Do you see
8 that?
9 A. Yes.
10 Q. Can you read the third sentence that begins
11 "I confirmed" -- and this is Mr. Pepin speaking to
12 the Supreme Court; correct?
13 A. Correct. He says, he writes, "I confirmed
14 that Nevada, Georgia, and California have had Tyler
15 install at no cost to the courts a press queue as Mr.
16 Girdner requests of New Mexico."
17 Q. And can you read the last sentence?
18 A. "Two options for responding to the CNS
19 letter are to have Tyler install the press queue or
20 deny the request and await litigation in federal
21 court."
22 Q. All right. So Mr. Pepin is telling the
23 State Supreme Court that the two options are to
24 install the queue or await litigation?
25 A. That's correct.

Q. And they did not install the queue?
A. They did not.
Q. And you were required to file the suit?
A. Yes, I did.
Q. Did you also confirm from these documents -- and I'll refer you to the last two pages of Exhibit A-1, if you'll refer to Ms. Reilly's email?
A. Yes, I have it, Exhibit F.
Q. It's the last page of this exhibit, same Exhibit A-1?
A. Um-hum.
Q. And you know from Colleen Reilly, Judge Noel. Do you see that?
A. I do.
Q. And who is Colleen Reilly?
A. She's the client executive for -- she's employed by Tyler Technologies. She's the client executive for New Mexico.
Q. All right. So she's the vendor representative?
A. Yes.
Q. All right. And she's emailing Judge Noel; do you see that?
A. I do see that.

1 Q. And this is dated October 26, 2016?
2 A. Yes.
3 Q. And can you read the first sentence of her
4 email to Judge Noel?
5 A. "We did build a configuration for Clark
6 County, Nevada to see filings before they are
7 accepted by the court." Is that what you're
8 referring to?
9 Q. Yes. Can you read the last sentence of
10 that paragraph?
11 A. "There is no cost associated with this
12 work."
13 Q. I'm sorry, read the sentence prior to it,
14 and then that sentence.
15 A. "The configuration is in our database, so
16 it is something Tyler would need to do. There is no
17 cost associated with this work."
18 Q. All right. So you learned that Tyler had
19 confirmed to Judge Noel that the Press Review Queue
20 is a configuration already existing in their
21 database?
22 A. That's correct. There is one what I would
23 consider inaccuracy in this statement, which is that
24 they didn't actually build the original configuration
25 in Clark County; they inherited it from a company

1 that they took over called WIZnet.
2 Q. All right. And the statement that there is
3 no cost associated with this work, is that consistent
4 with your experience in other jurisdictions?
5 A. I've not seen a Tyler Press Review Queue
6 installed without being free, with a charge. And
7 I've seen quite a few of them installed.
8 Q. Okay. In your declaration, at paragraph
9 18, you state that, "Tyler has set up press queues in
10 six courts in Georgia; five in California, in the
11 superior courts in the counties of Fresno, Kern,
12 Santa Clara, Monterey, and Santa Barbara,
13 California." Is that an accurate statement?
14 A. It is. And now San Mateo, so it would be
15 is six in California.
16 Q. All right. And are there other courts that
17 have agreed to do so?
18 A. Yes. Two other courts in California:
19 Santa Cruz and Sonoma, I believe, have agreed.
20 Q. At a charge, or no?
21 A. No, no charge that we've heard about.
22 MR. EDWARDS: If you'd give me just a
23 moment, Your Honor.
24 THE COURT: Certainly.
25 MR. EDWARDS: If I may approach the

1 witness?
2 THE COURT: You may.
3 Q. All right. Mr. Girdner, I've handed you
4 what I'm going to mark as Exhibit 3. Can you tell
5 the Court what it is?
6 A. The contract between Tyler and the
7 Administrative Office of the Courts in New Mexico.
8 Q. All right. Let me find my copy, which I've
9 misplaced.
10 And Mr. Girdner, how did you get a copy of
11 this agreement?
12 A. Through the same public records request
13 that we received Mr. Pepin's memo, I believe.
14 Q. Okay. And this is an agreement between
15 Tyler Technologies and the New Mexico Administrative
16 Office of the Courts?
17 A. It is.
18 Q. All right. And you see it's stamped 2019?
19 A. Yes. It was being -- yes.
20 Q. If you look on page 2, section C, what is
21 the term of the agreement?
22 A. For three years was the initial period, and
23 it automatically renews after that for one-year
24 periods.
25 Q. All right. And on page 3 there is a

1 section regarding revenue sharing. Do you see that?
2 A. I do.
3 Q. Can you explain to the Court what is the
4 structure, under this agreement, for revenue sharing
5 between Tyler and the Administrative Office of the
6 Courts?
7 A. This agreement has the characteristics of a
8 joint venture.
9 Q. And why do you say that?
10 A. Because they share income, after 1.5
11 million, 50/50. The initial setup, if you want me to
12 describe that, is that the AOC pays Tyler 250,000 to
13 set up online access to court records. And then,
14 after the first million dollars, Tyler pays the
15 courts 250,000. So the courts are back even after
16 the first million.
17 And then the next 500,000, the courts get
18 35 percent. And then after 1.5 million, the
19 Administrative Office of the Courts and Tyler split
20 the income from online searches and records requests
21 50/50.
22 Q. Now, is this related to the re:Search
23 website that is set up by Tyler?
24 A. It is; that's what this authorizes.
25 Q. And this is basically Tyler and the

1 Administrative Office of the Courts agreeing that
2 they will charge for access to the public records?
3 A. They're agreeing to -- they're allowing
4 Tyler to sell subscriptions to law firms for $900 a
5 year, and those subscriptions allow unlimited
6 searches and a number of services, such as alerts.
7 It also contemplates the future possibility of
8 selling records online to the public.
9 Q. All right.
10 MR. EDWARDS: May I approach, Your Honor?
11 THE COURT: You may.
12 Q. I'm going to show you what I've marked as
13 Exhibit 4.
14 A. Okay.
15 MR. EDWARDS: Your Honor, I'd offer for
16 admission Exhibit 3.
17 THE COURT: Any objection, Ms. Lecocq?
18 MS. LECOCQ: No objection, Your Honor.
19 THE COURT: Plaintiff's Exhibits 3 and 4
20 will be admitted into evidence.
21 Q. Mr. Girdner, what is Exhibit 4?
22 A. It a screenshot of the Tyler re:Search site
23 where they're selling the subscriptions.
24 Q. These subscriptions, is the Administrative
25 Office of the Courts receiving revenue from these

1 subscriptions?
2 A. After -- yes, from the start actually, yes.
3 Q. And the public -- the records -- well, let
4 me ask you this: What features are being provided?
5 Are they able to search? Are they able to print? Do
6 you understand what access is being provided?
7 A. Well, on this website they say they allow
8 people to -- subscribers -- to search and track for
9 existing and potential clients, for opposing counsel,
10 for expert witnesses, and to track new cases in a
11 practice area. I would consider this directly
12 competitive with what Courthouse News does.
13 Q. And why do you say that?
14 A. Well, our New Litigation Reports allow
15 subscribers to set up exactly these kind of alerts.
16 But they have an inside track; they get the
17 information on a platter before we can even report on
18 it.
19 Q. All right.
20 A. This one other thing that's important here,
21 if I can add, is that it allows in-text searching.
22 That's very powerful. We have no way of competing
23 with that. And that's searching within documents,
24 the full set of public records. We can't compete
25 with that.

1 Q. All right. So Tyler has been selected by
2 the Administrative Office of the Courts to be the
3 provider of these services in which they share
4 revenues?
5 A. That's right.
6 Q. To the exclusion of any other entity,
7 including Courthouse News?
8 A. Well, that's right. This contract is with
9 Tyler.
10 Q. All right. Now, in your declaration you
11 discuss several federal lawsuits that your company
12 has filed to obtain access on receipt?
13 A. Yes, sir.
14 Q. Can you explain why you filed those
15 lawsuits?
16 A. It's hard for me to explain without getting
17 emotional. I believe in the democratic ideal. I
18 believe in open courts. When public officials
19 undercut that openness by undercutting the traditions
20 of openness, I think that's worth fighting for.
21 Q. All right. And have some courts simply
22 provided the access upon request without necessity of
23 litigation?
24 A. Plenty of courts have provided the access
25 with no requests at all, such as the federal courts,

1 such as Hawaii. And then other courts have provided
2 their requests -- I mean, they are accessed simply on
3 request, such as Arizona and Utah.
4 Q. Okay. Now, when you had to file
5 lawsuits -- let me bring to your attention a few, and
6 ask you about what happened.
7 A. Okay.
8 Q. In the Jackson lawsuit that you filed in
9 Harris County, Texas, in 2009, you requested
10 injunctive relief?
11 A. We did.
12 Q. And what was the result of that case?
13 A. Judge Harmon granted us an injunction
14 stopping Mr. Loren Jackson, the clerk, from
15 withholding the new cases until they were docketed or
16 processed.
17 Q. Was that the first lawsuit your company
18 filed?
19 A. It was. It was in 2009, I believe.
20 Q. And Judge Harmon is a federal district
21 court judge in Houston, Texas?
22 A. That's correct.
23 Q. And ultimately, was there an agreement
24 reached in that case whereby access would be provided
25 the same day?

A. That's correct. It was still -- most of the filings were still on paper in those days -- so there was an agreement reached with the clerk afterwards.

Q. All right. And also the case that you had to file against Clerk Michael Planet in California, can you just briefly describe the results of that case?

A. It's a 10-year saga of litigation. But the result, the ultimate result, is an injunction by Judge Dolly Gee in Los Angeles that said we have -- the right of access attaches on the receipt of the new civil complaints, and that enjoined Clerk Planet from withholding the complaints for processing.

Q. And there was a discussion in that case of whether access should be instant or immediate, instantaneous. Do you recall that?

A. That's the appellate opinion that preceded Judge Gee's injunction. There was what's called a Planet 3, oftentimes. Yes, there was a discussion about that topic.

Q. But ultimately, the injunction was that there could be no delay past receipt?

A. She enjoined the clerk from withholding access until processing.

1 Q. And then, just briefly describe your action
2 against Clerk Tingling in Manhattan, New York.
3 A. Very similar. In the switch to e-filing --
4 I set up the court initially, so I went behind the
5 counter; I saw the cases on the day they were filed.
6 It was fantastic access. It was everything right up
7 to the filing window closed, in paper form.
8 When Clerk Tingling switched to e-filing,
9 he pushed process behind -- he pushed access behind
10 processing. We missed a major case brought by
11 president -- then candidate Trump -- against
12 (inaudible) as a result. So we challenged his policy
13 in federal court in front of Judge Ramos in Southern
14 District of New York.
15 Q. What was the result?
16 A. Judge Ramos enjoined Clerk Tingling from
17 withholding the case.
18 Q. So did he require on-receipt access?
19 A. He did. I mean, he did not mandate on
20 receipt. He just said: You can't withhold it past
21 the time of filing or past the time of receipt or
22 filing -- I'm not sure which word he used.
23 Q. Okay. That raises an interesting question.
24 Did any of the courts that we just discussed, those
25 cases, did the court enter an injunction that

1 required the state court clerk to provide
2 preprocessing access in any specific way? Did they
3 dictate the manner in which that access would be
4 provided?
5 A. Judge Ramos ruled from the bench. He was
6 very specific about that. He said -- he did not tell
7 them how to do it; he just said: You can't withhold
8 them.
9 Q. And in the jurisdictions where you've
10 successfully obtained relief and obtained
11 preprocessing access, have any of the state court
12 clerks, in your view, have they had any difficulty
13 complying with those injunctions?
14 A. Those orders are like a magic wand. Access
15 is smooth as silk afterwards. There is no problems.
16 We get the access right away, year after year.
17 Q. And in those jurisdictions, are there also
18 provisions for filing documents confidentially or
19 under seal?
20 A. Oh, yes, indeed. Every court has
21 provisions to file documents under seal or some
22 categories that are not public.
23 Q. And were all these district courts able to
24 configure access such that those documents would not
25 be provided in the Press Review Queue?

1 A. Yes, certainly.
2 Q. And in fact, let me ask you -- has
3 Courthouse News obtained confidential or sealed
4 documents in any of the press review queues that you
5 access?
6 A. We've never seen a sealed document in a
7 Press Review Queue. In the 10 years since the first
8 one in Las Vegas, we've never seen a sealed case.
9 Q. All right. Are you familiar with what's
10 called SOPA?
11 A. I am.
12 Q. And what does that stand for?
13 A. Secured -- sorry -- Secured Odyssey Public
14 Access.
15 Q. All right. And is that a system currently
16 being provided by the Administrative Office of the
17 Courts?
18 A. It is.
19 Q. And tell the Judge just briefly what access
20 that provides?
21 A. It's a lot like a press queue. It provides
22 filtered access based on case type. So only public
23 case types go into the SOPA queue. It's also just
24 like a press queue, based on permission. So our
25 reporter had to sign, essentially, a nondisclosure

1 agreement to have access to SOPA.
2 Q. So what's the distinction between SOPA and
3 what you're asking for, the Press Review Queue?
4 A. The documents flowing into SOPA are delayed
5 past processing. If they were not delayed, if they
6 were upon submission, it would be a fantastic press
7 queue.
8 Q. All right. Let me refer you to what should
9 be in your binder. It's behind the defendants'
10 response to the injunction motion. It's their
11 exhibits. I wanted to ask you about a few of those.
12 A. Can you get me to a tab?
13 MR. EDWARDS: If I may approach, Your
14 Honor, and assist him?
15 THE COURT: You may.
16 Q. Mr. Girdner, let me ask you about what
17 should be -- let me first start with Exhibit 4. I
18 believe it should be behind tab C. It's the tier 1
19 case types available to the press in SOPA?
20 A. Yes, I see it.
21 Q. So Exhibit 4 to the defendants' response,
22 can you explain what you understand this document to
23 represent?
24 A. As I've described, it's a filter. At the
25 top it says, "Case types available to the press SOPA

1 profile." And on the left-hand side at the top it
2 says, "Case category and case type," meaning the
3 cases -- all these -- this list of case types defines
4 what enters into SOPA.
5 Q. And this would be Tier 1. And my
6 understanding -- correct me if I'm wrong -- but there
7 are other tiers within SOPA?
8 A. I believe that's right, but I'm not very
9 familiar. I think they're more secure or fewer
10 people have access to them.
11 Q. All right. And is this similar to how a
12 press review queue would be populated?
13 A. Exactly like this, based on case type.
14 This is more expansive than most press review queues,
15 which are limited to civil cases. This includes some
16 criminal categories; some, I believe, domestic
17 categories. So it's kind of -- it's a press queue on
18 steroids. It's a very generous press queue, if it
19 were on time, if it were timely.
20 Q. So the fundamental difference is that the
21 cases populated to SOPA are only after clerical and
22 administrative processing occurs?
23 A. That's correct.
24 Q. And your request is: You want to see them
25 before that process is completed?

A. Yes. Tyler gives every new case a flag on the way in: Submitted. Then it changes the flag to "Accepted," when the cases are accepted. So a press queue normally operates, in a Tyler system, with a "submitted" flag meaning that the filter would be the same as here, or more limited. The flag for the cases would be "submitted."

Q. All right. Now, let's talk a little bit about the defendants -- one of the defendants' arguments in this case is that there may be confidential documents or sealed documents, and they have to be careful that those don't appear in SOPA or potentially a press review queue.

The case type filters that we're discussing now, is that a vehicle to help provide a safeguard for that happening?

A. It's the primary safeguard, but there is at least three others.

Q. All right. Let's talk about that. Can you just, one by one, identify what would be the safeguards to ensure that confidential or sealed documents are not made available to the press or public?

A. The press queues are based on permissions, which means you have to be allowed access into them

1 by the judicial system. So our reporter has to sign
2 an agreement to not disclose any information she
3 comes upon that should not be disclosed by law. She
4 also signs a "best efforts agreement" -- there is a
5 best efforts clause with regard to PPI, with regard
6 to personal identifiers. And those promises are made
7 upon pain of losing your access. She has signed
8 that. There are two others.
9 Q. Well, let me address each as you go, if you
10 don't mind.
11 A. Okay.
12 Q. So if you could turn to Exhibit A to Judge
13 Noel's declaration.
14 A. Yes.
15 Q. And this is the press application for
16 online access to SOPA; is that your understanding?
17 A. Yes, that's right.
18 Q. All right. And is this document and the
19 attachment what you're referring to as the
20 restriction on users that sign up for SOPA?
21 A. Yes, it is.
22 Q. And if you'll look at the final page of
23 this exhibit --
24 A. I'm there.
25 Q. -- in paragraph 28, it states, "The court

1 case files in SOPA may contain protected personal
2 identifiers and other confidential information that
3 must be protected by law." Do you see that?
4 A. I'm sorry? Are you at the bullet points
5 here?
6 Q. No, I'm in the first paragraph, second
7 sentence.
8 A. Yes, I see that. Thank you. All right.
9 Q. In your view, is it a safeguard that users
10 for SOPA have to sign this agreement to ensure the
11 protection of personal identification information and
12 confidential information?
13 A. Certainly. I'd say it's a failsafe,
14 meaning confidential cases should not be flowing into
15 SOPA -- we've not seen that -- but this is the
16 failsafe. If they did, the reporter is not permitted
17 to report on them.
18 Q. In fact, if you look at the bullets below,
19 as you were mentioning a minute ago, the first is:
20 The user -- they can't share their log-in
21 credentials. Do you see that?
22 A. Yes, that's correct.
23 Q. The second bullet is they cannot disclose
24 any information protected by law from public
25 disclosure that you gain through accessing SOPA Court

case files. Do you see that?

A. I see that.

Q. And did your court reporter for New Mexico, Ms. Prieskop, did she sign this type of agreement?

A. She did.

Q. And you see at the bottom, right before the applicant's signature there is a statement, "The agreement may be terminated by AOC for any violation of its terms or upon termination of the applicant's press affiliation." Do you see that?

A. I do.

Q. Has Courthouse News ever been terminated for violating this agreement?

A. No. And we've signed a number of these agreements for access to press queues.

Q. Let me ask you this: Do some court administrators require similar nondisclosure agreements for use of the Tyler Press Review Queue?

A. It's very frequent. I believe we had to sign one like this for Arizona; in Los Angeles, which also has a press queue, Los Angeles Superior, we had to sign one; and most of the Tyler courts in California that have set up press queues have required that we sign a similar agreement.

Q. Okay. So so far you've discussed two

1 safeguards that would help protect confidential
2 information. The first being a case type filter; is
3 that correct?
4 A. That's correct.
5 Q. The second being the nondisclosure
6 agreement?
7 A. That's correct.
8 Q. All right. Is there also a front-end
9 e-filing interface protection safeguard?
10 A. Yes. The way -- from my looking over the
11 shoulder of paralegals who are looking at the filing
12 system, there is no way to file a sealed -- e-file a
13 sealed case. The interface does not allow it in New
14 Mexico. In other courts it does. This is with Tyler
15 interface. But New Mexico specifically does not have
16 a button that allows you, any e-filer, to file
17 something -- to e-file a nonpublic case or a sealed
18 case online. The rules -- I believe they have to be
19 filed by hand.
20 Q. Now, in those jurisdictions -- let me ask
21 you this: Are there jurisdictions where somebody can
22 e-file a sealed document by marking or flagging it as
23 "sealed"?
24 A. Yes, it's what's called a radio button,
25 just a button where you click and say: I'm filing a

1 sealed document. And then for example in San Jose,
2 that's Santa Clara County Superior Court, we have a
3 press queue, based on a settlement shortly after we
4 filed a complaint. A filer can e-file a sealed
5 document. The most common Tyler interface says
6 public or nonpublic. It allows the e-file to choose
7 public or nonpublic. Those buttons are absent from
8 the interface in New Mexico.
9 Q. But in those jurisdictions that do allow,
10 or have a radio button that indicates "sealed
11 filing," do you have an understanding how those are
12 screened and not filtered so they don't appear in a
13 press queue?
14 A. As I was saying, the e-file manager is the
15 electronic brain. So it sends -- it diverts, I guess
16 you would say, the nonpublic cases away from the
17 press queue. They are nonpublic case types.
18 Therefore, the e-file manager does not push them into
19 the press queue.
20 Q. All right. And in your experience with
21 sealed filings, confidential filings, are they
22 predominantly in subsequent filings after a case is
23 initiated, or on the front end when a complaint is
24 filed?
25 A. They seem to me to be uniquely for

1 subsequent filings.
2 Q. There may be the possibility of a complaint
3 being filed subsequently?
4 A. Sure. Absolutely.
5 Q. And is it your understanding that in New
6 Mexico there are rules that establish -- permit
7 lodging the record with the clerk in a sealed
8 envelope?
9 A. The rules call for hand filing of nonpublic
10 documents, including sealed documents, in an envelope
11 marked "Tentatively filed under seal," I believe.
12 Q. But if New Mexico, in fact, did what some
13 other jurisdictions do, and allowed you to file a
14 sealed or confidential document online, are there
15 protections to ensure that doesn't end up in a press
16 review queue?
17 A. Well, there are the ones I mentioned,
18 right? There is the filter, which is the e-file
19 manager would not send that into the queue; there is
20 also what I'm calling the NDA, nondisclosure
21 agreement, the agreement between -- for permission to
22 access, which says the reporter will not reveal it.
23 Q. In your experience, have any sealed
24 documents appeared in SOPA, and that your company has
25 had access to?

A. No, we have not seen a sealed document in SOPA.

Q. Now, to wrap up, Mr. Girdner, your company has tracked access delays in the state district courts since February of this year; is that right?

A. That's correct.

Q. Can you just briefly explain what those tracking results show?

A. It shows that, overall, New Mexico state courts are providing about 69, 70 percent same-day access, holding back the other half; 30 percent or so, some the next day, some the day after. Santa Fe, in particular, is giving same-day access to roughly 44 percent, I believe was our statistics, and withholding -- I'm sorry, 56 percent or so.

Q. For at least a day or more?

A. That's correct. Some are for two days or more.

Q. And is Courthouse News currently involved in any pending state court judicial proceedings to obtain access similar to what you're asking for here?

A. Yes, we are. I'm sorry, sorry, sorry. I thought you were --

Q. Let me rephrase.

A. Yes, please. Thank you. I apologize.

1 Q. Is Courthouse News currently involved in
2 any state court judicial proceeding in the State of
3 New Mexico currently to obtain the same access
4 requested here?
5 A. We're involved in federal court litigation,
6 not state court. No, we are not.
7 Q. Why didn't Courthouse News simply file in
8 state court in New Mexico?
9 A. Two simple reasons: One is I believe it
10 would be futile; it would be asking the same court
11 system that is denying the access to turn around and
12 say that that denial is unconstitutional. The most
13 important reason is because I'm asking for
14 enforcement of the first right in the Bill of Rights.
15 And I think the U.S. courts are uniquely capable of
16 making those decisions.
17 MR. EDWARDS: Thank you, Mr. Girdner. I'll
18 pass the witness.
19 THE COURT: Thank you, Mr. Edwards.
20 Ms. Lecocq, do you have cross-examination
21 of Mr. Girdner?
22 MS. LECOCQ: Thank you, Your Honor.
23 THE COURT: Ms. Lecocq.
24
25

CROSS-EXAMINATION

BY MS. LECOCQ:

Q. Good morning, Mr. Girdner.

A. Good morning.

Q. I want to start by clarifying a statement that I thought you said earlier that Judge Noel's declaration was accurate. Is that what you said?

A. I said one part of it was accurate, about the wood box that would represent traditional access.

Q. Okay. So let's talk about your understanding of the filing system here in New Mexico as it currently stands. You went through this, but I just want to clarify.

A. That's fine.

Q. So say you are a filer, how would you file a document here in New Mexico to your understanding?

A. E-file a document?

Q. Yes.

A. You would go to the Tyler e-filing interface and fill out quite a large number of slots where you type in information.

Q. Okay. And then what?

A. Well, you would select a case type and a case category.

Q. Okay. When you finished filling out the

case type, case category, things like that, what is your understanding of what happens next?

A. The filer would hit "Submit."

Q. Okay. And what is your understanding of where that document goes once the filer hits submit?

A. Oh, the e-file manager, sometimes called the catcher's mitt, receives it; automatically sends it on to various review queues for the clerks to work on.

Q. Okay. Do you know what happens next? When you said for the clerks to work on, do you know what the next step is?

A. I believe they look over, they'll look over the work of the e-file letter. But beyond that, I don't really know. I haven't looked over their shoulders.

Q. Okay. And at what point in that process does Courthouse News currently have access to this document?

A. After the clerks have looked it over and pressed the "Accept" button.

Q. Okay, great. When exactly are you asking during that process, when are you asking for receipt -- or let me rephrase that. At what point during that process is Courthouse News asking for the

1 ability to view that document?
2 A. After the e-file manager receives it and
3 sends it into the work queues, at the same time in a
4 press review system the e-file manager sends the new
5 civil actions that are public into a press review
6 queue.
7 Q. So it would be at the same time as the
8 clerks receive it in their review queue; is that
9 right?
10 A. I believe that's right.
11 Q. Okay, great. I want to talk a little bit
12 more about pre e-filing. You mentioned in your
13 declaration the system that used to occur in New
14 Mexico. Can you do the same thing we just did, but
15 pre e-filing, manually filing? What is your
16 understanding of when a filer wants to file a
17 document, what do they do first?
18 A. They hand it to the intake clerk.
19 Q. Okay. And what happens when they hand it
20 to the intake clerk?
21 A. The intake clerk looks it over, and sees to
22 make sure the amount of money is correct. And
23 generally there is a flurry of stamping after that.
24 Q. Do you know what happens if the amount of
25 money is not correct, or if there was another mistake

on that document?

A. You know, normally the clerk would say: Well, the money is not right. But I have heard also of clerks who will take them, take the submissions, say: Come back with a check in the right amount. So --

Q. Okay, great. At what point during that process did Courthouse News Services used to be able to obtain the document?

A. Right after it came across the counter.

Q. Before or after the clerk stamped it?

A. After. We would not take it out of the clerk's hand.

Q. Great, thank you. I want to go back to the e-filing system that we have. You mentioned earlier that the filer has to choose what kind of pleading it is; is that right?

A. It's a number of choices, but one of them is pleading. I think time code. There is also the case category, which is civil. And then there is a drop-down menu for all the case types.

Q. Okay. Give me an example of some case types as far as you're aware.

A. Civil category, I believe one of the case types is tort; that would be a common category, and I

1 think the filing code for open complaint or
2 complaint.
3 Q. Okay, great. That system that we have
4 relies on the filer to choose the correct case type;
5 is that right?
6 A. Yes.
7 Q. Let's move on and talk about Tyler
8 Technologies and Odyssey. You stated earlier that
9 this press queue that you have in other states, that
10 it requires a username and a password; is that right?
11 A. That's right. May I amend that?
12 Q. Yes.
13 A. In New York, after the Tingling decision,
14 the New York state courts, within six weeks, set up a
15 public queue. So the cases going into the queue in
16 New York are not limited to the press, they don't
17 have a permission system. It's a bit unusual. But
18 those cases are public and they're not processed yet.
19 Q. Okay. Are you aware of any statute or
20 court rules in New York that would dictate how that
21 system works that you just described?
22 A. I'm not trying to be flip, but we file
23 under the First Amendment. I'm not aware of local
24 statutes that would overcome that.
25 Q. Okay. So let's go back to this idea

1 that -- and I know it's a little bit hypothetical,
2 but if you were to have a press queue here in New
3 Mexico, you said something about a username and a
4 password. Can you just expand on that?
5 A. The typical press queue requires a
6 permission system. So, for example, in Arizona, next
7 door, we have to get a username and password to go
8 into the system. Is that answering your question?
9 Q. Yes, thank you, yes. Are you aware of
10 something called a data breach?
11 A. I'm aware -- I've read the news, I'm
12 aware -- there are plenty of data breaches.
13 Q. What is your understanding of what a data
14 breach is?
15 A. That's very broad. It's simply when
16 information that's not supposed to get out does get
17 out.
18 Q. So if we had a username/password situation
19 for a press queue, is it possible that there could be
20 a data breach of that information?
21 A. As a broad general concept, you could have
22 a data breach at any point. You could have it after
23 the cases are processed, before. It's very
24 hypothetical, of course.
25 Q. Okay. So it's possible that the

information that requires the username and password then could be subject to a data breach and then made public; right?

A. I'm trying to answer your question, okay? But the cases in the press queue are public cases, they're public case types.

Q. Right.

A. So if the hypothetical data breach you're talking about was to the press queue, it would be like New York, meaning it would be public, or -- not to push the point too far, but like federal court, which simply processes the cases right away and makes them public.

Q. Sure. My question, though, is if something is protected by a username and password, anything, not just a press queue, but anything, and it's subject to a data breach, that information that's password protected could be made public to anyone; is that right?

A. Yes.

MS. LECOCQ: Okay. Those are all the questions I have. Thank you.

THE COURT: Thank you, Ms. Lecocq.

Mr. Edwards, do you have redirect of Mr. Girdner?

1 MR. EDWARDS: Very brief.
2 THE COURT: Mr. Edwards.
3 REDIRECT EXAMINATION
4 BY MR. EDWARDS:
5 Q. Mr. Girdner, you were just asked whether
6 some hypothetical data breach could impact
7 information in a press review queue.
8 A. Yes.
9 Q. That risk exists currently with SOPA;
10 correct?
11 A. Of course. It exists with any online
12 business.
13 Q. Is there any computer system
14 user-name-password-based that is not subject to a
15 data breach?
16 A. I think my own personal computer is
17 subject. Everybody is.
18 Q. In your view is that a reason to deny
19 access to the press to new filings, civil complaints
20 in state court?
21 A. Certainly not. They wouldn't have any
22 access to anything in the queue at the court.
23 MR. EDWARDS: Pass the witness.
24 THE COURT: All right. Thank you, Mr.
25 Edwards.

1 Anything else, Ms. Lecocq?
2 MS. LECOCQ: No, Your Honor. Thank you.
3 THE COURT: All right. Mr. Girdner, you
4 may step down. Thank you for your testimony.
5 THE WITNESS: Thank you, sir.
6 THE COURT: All right. Mr. Edwards, does
7 the plaintiff have its next witness or evidence?
8 MR. EDWARDS: We have one additional
9 witness, Your Honor. I think she may be outside
10 because she's subject to the rule. If I may step
11 out.
12 THE COURT: All right. You may.
13 If you'll come up and stand next to the
14 witness box on my left, your right, before you're
15 seated, my courtroom deputy, Ms. Rotonda, will swear
16 you in.
17 MR. EDWARDS: For the record, Your Honor,
18 plaintiff calls Victoria Prieskop.
19 VICTORIA PRIESKOP,
20 after having been first duly sworn under oath,
21 was questioned and testified as follows:
22 DIRECT EXAMINATION
23 THE CLERK: Please be seated, and please
24 state your name for the record.
25 THE WITNESS: My name is Victoria Prieskop.

1 THE COURT: Ms. Prieskop, Mr. Edwards.
2 BY MR. EDWARDS:
3 Q. Good morning, Ms. Prieskop. Could you
4 please state your position and role with plaintiff
5 Courthouse News?
6 A. I'm the New Mexico reporter for Courthouse
7 News.
8 Q. And how long have you been at Courthouse
9 News?
10 A. I started working for Courthouse News in
11 2008, as the substitute reporter, and became the
12 primary reporter in 2014.
13 Q. When you say "reporter" in New Mexico, what
14 is it you do?
15 A. I go through new cases filed in civil law,
16 and report them for Daily Report, and also looking
17 for newsworthy items that can be published in
18 Courthouse News.
19 Q. And is it your understanding that
20 Courthouse News has reporters in a similar role as
21 yourself in other states?
22 A. That's my understanding, yes.
23 Q. So what type of cases are you looking for
24 to report on?
25 A. We're looking for general civil cases,

1 usually those against either businesses or public
2 entities, and cases that are interesting to other
3 lawyers or to the general public.
4 Q. All right. And in your work for Courthouse
5 News, are you a subscriber to what's known as SOPA?
6 A. I am.
7 Q. And do you use SOPA to do your job?
8 A. Yes.
9 Q. And have you seen confidential documents or
10 sealed documents in SOPA?
11 A. No.
12 Q. If you did, would you report on them?
13 A. No.
14 Q. When did mandatory e-filing occur in the
15 State of New Mexico?
16 A. I believe that e-filing began in 2012, and
17 became mandatory sometime in 2014.
18 Q. All right. And before that time, when new
19 civil complaints were filed in paper form, can you
20 describe briefly your process in seeing them and
21 reviewing them and reporting on them?
22 A. Yes. Every courthouse would be a little
23 different, but I would approach the clerk's desk. I
24 would get the attention of the clerk, and they would
25 let me in behind the desk to the work area behind the

desk. And then there would be either a stack or a rack or some other holding receptacle of cases that had been received but not yet docketed, and then also of cases had been docketed but not yet filed into the record. I would go through both the docketed cases and the cases that had been received but not yet fully processed. I'd record them into our system. I'd return them to where I got them from. And I would move on.

Q. And that's the general process you followed in the various counties of New Mexico?

A. Yes.

Q. All right. So is it fair to say that you had instances where, when you arrived at the courthouse, there would be a stack of documents, of complaints, that had already been docketed?

A. Yes.

Q. And there would also be a stack of complaints that had not yet been processed and docketed?

A. Yes.

Q. And were you able to look at the documents that had not yet been processed and docketed?

A. Yes.

Q. Were they file stamped?

A. They had been given dates of receipt and case numbers, but not further file stamped, that I recall.

Q. And was it your understanding that when the complaint went across the counter to the clerk, did you actually observe the clerk flipping through it to see if it has the right number of pages, a signature, that kind of thing?

A. Sometimes, yes.

Q. All right. And how long would it take the clerk to perform that very first initial review of the complaint?

A. It wasn't something I spent a great deal of time observing, but I would say a minute to two minutes at most.

Q. And then you'd be able to review it?

A. And then I'd be able to review it.

Q. And just generally how has that process changed now that we have e-filing in New Mexico?

A. Now that I have e-filing, once the document, the case file has been submitted and received, it then goes through a docketing process. And when the docketing process is done, it becomes available on SOPA for me to review.

Q. So you are no longer able to review

1 incoming public civil complaints within minutes of
2 receipt, but instead it's delayed?
3 A. Correct.
4 Q. And for how long is it delayed?
5 A. It depends on the case and the court. But
6 sometimes as long as three days or more. More often
7 I would say either later that same day or the next
8 day.
9 Q. All right. So in fact, your access is
10 worse now with the technology of e-filing than it was
11 in the paper world of having to manually file paper
12 complaints?
13 A. Yes.
14 MS. LECOCQ: Objection, leading.
15 THE COURT: Overruled.
16 Q. Is your access worse now with e-filing than
17 it was in the paper world?
18 A. It is.
19 Q. Now, at paragraph 14 of your declaration,
20 you state that you routinely see cases on a delayed
21 basis a day or two after they are filed; is that
22 accurate?
23 A. That is accurate.
24 Q. When you say "a day or two," are you saying
25 calendar days? Court days?

A. We track in court days.
Q. And did you experience routine delays of that nature in the paper world?
A. Not to the frequency that I see now.
Q. Now, you cover this court; right?
A. Yes.
Q. How is the access different between this court and the state court counties that you cover?
A. I very rarely see a delay of even 24 hours in the federal court. And in fact, I can see cases that are filed outside of business hours; they seem to turn up in PACER right away.
Q. Including nights and weekends?
A. Including nights and weekends.
Q. Now, I understand you've been tracking access delays in the New Mexico state courts that you cover?
A. Yes.
Q. And those are Exhibits B-1 and B-2 to your declaration?
A. Yes.
Q. And they're admitted here as Plaintiff's Exhibits 2. Is the binder still in front of you?
A. It is not.
MR. EDWARDS: Mr. Girdner absconded with

1 the binder. May I approach, Your Honor?
2 THE COURT: You may.
3 MR. EDWARDS: This is for your reference
4 for the questions I have for you.
5 Now, may I approach again? I'm going to
6 help her get to the tab.
7 THE COURT: You may.
8 Q. Ms. Prieskop, I'm going to direct your
9 attention to the declaration and the attachments to
10 it. Now, if you could turn to what's tab B-1 to your
11 declaration.
12 A. Yes.
13 Q. It appears to be a spreadsheet. Can you
14 just describe for the Court what it is?
15 A. This is a spreadsheet that is generated
16 from the records that I keep logging daily filings in
17 the district civil courts.
18 Q. All right. And the columns that are
19 represented in the spreadsheet, can you briefly
20 describe what those columns represent?
21 A. Yes, the first column is date filed, that
22 is the date that appears in the time stamp on the
23 upper right-hand corner of the complaint, when I view
24 the complaint. The case number is the full case
25 number. The time stamp again is the time stamp that

appears on the upper right corner of the complaint file. The nature of case, which is based off the case type that it is. The date available is the first day that I was able to see the complaint file. Sometimes I can see the docket information before I can see the complaint file. So I base the date available on the complaint file. And then which court is -- which district court the case is in.

Q. And how do you know what complaints to search for?

A. I search for every complaint. The cases are filed with sequential case numbers. I use a paper checklist that has every possible case number on it. And I go through them sequentially. If one is missing or incomplete, I mark it as such on my paper sheet so that I can go back on subsequent days and check until I do get access to the right file.

Q. When you say "access," you're looking at the SOPA website?

A. Yes.

Q. And how do you know you're seeing all the complaints?

A. Well, I know that if a complaint is missing, the case number won't be there, and that will be caught by my checklist. And so I'll mark it

1 aside, and go back and check until I find it. Or
2 sometimes they never appear because either it's a
3 sealed case of some kind or it's just a misfile.
4 Q. All right. And how are you sure that the
5 dates of when you first see them are accurate?
6 A. Well, I check every day through -- if I end
7 on a specific case number at the end of one day, the
8 next day I begin at the case number. I check
9 multiple times over the course of the day. I do a
10 final pass after 5:00 p.m. so I catch anything that
11 was filed at the end of the workday. And I update
12 the log in real-time as I check each case file.
13 Q. And again, are these court or calendar
14 dates that you're representing here?
15 A. I use court dates for when I can access.
16 Q. Okay. And looking at the exhibit, there is
17 a chart at the very top left-hand corner. Can you
18 explain what that represents?
19 A. Yes, the chart is delay in court days, and
20 it breaks down the number of cases in the log file
21 for the number of cases that I was able to view the
22 complaint file on the same day that the case was
23 filed. Those were the one-day delay, a two-day delay
24 or a three-or-more-day delay.
25 Q. All right. And for what period of time is

1 this?
2 A. This is between February 23rd of this year
3 and June 30th of this year.
4 Q. All right. So approximately 30 percent of
5 the state district courts that you cover, 30 percent
6 were delayed at least one day or more?
7 A. Approximately 30, yes.
8 Q. So is Exhibit B-1 a true and accurate copy
9 of the data that you compiled?
10 A. Yes.
11 Q. And Exhibit B-2, if you could turn to that,
12 is that a similar spreadsheet of data for the Santa
13 Fe District Court?
14 A. Yes, this is the Santa Fe.
15 Q. Same columns?
16 A. Same columns.
17 Q. All right. The same chart at the top left?
18 A. Yes.
19 Q. And did you compile this exhibit in the
20 same manner you did Exhibit B-1?
21 A. I did.
22 Q. And so what does that chart represent in
23 terms of delay?
24 A. In this chart it shows that almost 60
25 percent were not available on the same day; 40.82

1 percent available same day; 40.47 available the next
2 day; and 8.19 percent on two-day delay; 10.53 percent
3 on three-or-more-court-day delay, before I could see
4 the complaint file.
5 Q. So by my math, approximately 58 percent are
6 delayed one or more days; is that correct?
7 A. Yes.
8 Q. And 10 percent for three days or more?
9 A. Yes.
10 Q. All right. Did you also do additional
11 logging for the period of July 1st through September
12 17th of this year?
13 A. I did.
14 MR. EDWARDS: If I may approach, Your
15 Honor?
16 THE COURT: You may.
17 Q. Is this the copy of the log for the entire
18 state district courts?
19 A. Yes.
20 MR. EDWARDS: I'll mark it as Exhibit 5,
21 Your Honor, and offer it for admission.
22 THE COURT: Any objection, Ms. Lecocq?
23 MS. LECOCQ: No objection, Your Honor.
24 THE COURT: Plaintiff's Exhibit 5 will be
25 admitted into evidence.

Q. And I'll hand you what's been marked as Exhibit 6. Is this a similar data log you created for the same time period for the Santa Fe District Court?

A. Yes, it is.

MR. EDWARDS: I'll offer Exhibit 6.

THE COURT: Any objection?

MS. LECOCQ: No objection, Your Honor.

THE COURT: Plaintiff's Exhibit 6 will be admitted into evidence.

Q. So Exhibits 5 and 6 are the same type of data that we just discussed; correct?

A. Yes.

Q. And what do the delays show with respect to those two exhibits?

A. In the log for all of New Mexico courts, I show 70.46 percent that were available the same day; 27.22 percent available next day; 2.06 percent available on a two-day delay; and 0.26 percent on a three- or more day delay.

Q. So on the aggregate, about how many are delayed a day or more?

A. About 30 percent are delayed a day or more.

Q. Consistent with the prior exhibit?

A. More or less, yes.

Q. And for Exhibit 6 with respect to Santa Fe, can you summarize the delay there?

A. For Santa Fe during that time period, 43.25 percent were available the same day; 47.11 percent available the next day; 9.09 percent on a two-day delay; and 0.55 percent on three- or more day delay.

Q. So what's the percentage that is one or more days?

A. About 57 percent on one-or-more-day delays.

MR. EDWARDS: All right. If I may have this back. You keep the binder. We're going to talk about that in just a moment.

Q. All right. In your binder I just want to briefly call your attention to what's an attachment A to our motion for preliminary injunction. You'll see it's attached to Mr. Girdner's declaration. Actually, I misspoke, it's attached to the response, the defendants' response.

A. Is it the press application for online access?

Q. Correct. Thank you for getting that.

All right. So this is attached to the defendants' response as attachment A. Do you see that?

A. I do.

1 Q. All right. Does this document look
2 familiar to you?
3 A. Yes, this is the application I signed for
4 SOPA access.
5 Q. All right. And in signing this document,
6 did you agree not to disclose anything that might
7 appear in SOPA that constituted personal protected
8 identifiers or confidential information?
9 A. I did.
10 Q. Have you ever seen that type of information
11 in SOPA?
12 A. I never have.
13 Q. All right. So I take it you've never
14 breached that agreement?
15 A. I've never breached that agreement.
16 Q. Has the Administrative Office of the Courts
17 ever accused you of breaching the agreement?
18 A. No.
19 Q. Are you aware of anyone ever breaching any
20 of these agreements?
21 A. No.
22 Q. And you understand that your rights to
23 access SOPA can be terminated if you do, in fact,
24 breach the agreement?
25 A. I do.

1 Q. Is it your understanding that only public
2 case types are populated to the tier 1 of SOPA?
3 A. That is my understanding.
4 Q. And that's the only tier you have access
5 to?
6 A. It is.
7 Q. And in your declaration you mention a
8 newsworthy case filed by the Department of
9 Environmental Affairs against the Los Alamos National
10 Laboratory regarding cleanup of toxic materials. Do
11 you recall that?
12 A. Yes.
13 Q. Can you just briefly describe the delay you
14 experienced in accessing that pleading?
15 A. Yes. I was going through the Santa Fe
16 district cases. I saw the case. And because of the
17 parties involved, I thought it might be a newsworthy
18 case that Courthouse News would want to write on. I
19 couldn't access the complaint at that time, but I
20 flagged the case number. I went back and checked
21 multiple times over the course of that day and the
22 morning of the next day. However, it was about 24
23 hours between when the case was filed and when the
24 complaint appeared on SOPA so I could access it. By
25 that time, the story had been picked up by the AP,

1 and therefore, was no longer appropriate to be
2 written about for our website.
3 Q. All right. So in that case, the
4 hypothetical of some confidential document being
5 present there precluded you from seeing that
6 pleading, that public pleading, in a timely fashion?
7 A. In that case I was not able to see the
8 public pleading in a timely fashion.
9 Q. And why does that matter to you in
10 Courthouse News?
11 A. Well, like any news organization, we want
12 to get newsworthy items out there to our reading
13 public, and to be distributed to our subscribers.
14 And if we don't have access to the information to
15 write a story, we can't write the story.
16 MR. EDWARDS: Your Honor, I'll pass the
17 witness.
18 THE COURT: Thank you, Mr. Edwards.
19 Ms. Lecocq, you have cross-examination of
20 Ms. Prieskop?
21 CROSS-EXAMINATION
22 BY MS. LECOCQ:
23 Q. Ms. Prieskop, good morning.
24 I want to go back to how you talked about
25 pre e-filing access, and the way that you were able

1 to access documents. Can you just walk me through
2 that one more time?
3 A. Yes. I would go to the clerk's office. I
4 would talk to the clerks behind the counter, let them
5 know that I was press, if they weren't already
6 familiar with me. They'd let me behind the counter
7 into the clerks' work area. And depending on which
8 court it was, there would be generally either a box
9 or a rack of cases that had been received and
10 docketed, but not yet filed into the file room. And
11 then there would be a secondary stack or group of
12 stacks of cases that had been received but not yet
13 fully processed and docketed. I would go through
14 both of those stacks, write up my report. And that
15 was the process.
16 Q. Okay. So I want to go back just a little
17 bit more. What is your understanding of how the
18 filing process works pre e-filing? So, for example,
19 if you were a filer and you walked into the clerk's
20 office, what is your understanding of what would
21 happen?
22 A. My understanding is that if someone would
23 come up to the desk, they would meet with the clerk.
24 They would submit the documents. Those documents
25 would be received. They would be, I believe, date

1 stamped and given a case number. And then, at that
2 point, they would be set aside and then would be
3 processed. I'm not sure what the correct term is,
4 but processed or docketed a second time, so that they
5 would be put into the folder that's got the tabs of
6 the case number alongside, so it could be moved to
7 the record room and accessed again.
8 Q. So by the time you are able to look at
9 these documents, the clerks have already looked at
10 them; is that right?
11 A. Yes, the clerks have received them.
12 Q. Okay. Let's talk about the tracking that
13 you did. You said that you keep record of daily
14 filings of civil cases; is that right?
15 A. Yes.
16 Q. And you went off the date that appeared in
17 the time stamp; is that right?
18 A. Yes.
19 Q. And then you said that the date available
20 on your spreadsheet was the first day that you were
21 able to see the complaint. Can you clarify that for
22 me?
23 A. Well, in SOPA, when I open up -- I'll do a
24 search and I'll get a range of case files -- of case
25 numbers. I'll click through the record to see each

1 case. Sometimes I will be able to see a docket or a
2 partial docket information that will have the case
3 number, the date that it was submitted, the parties,
4 but maybe not all the parties. But I will not be
5 able to access the case file -- the complaint. If I
6 can't access the complaint, I can't report on it. So
7 if the docket file is there, but the case -- the
8 complaint is not, I don't count that as having access
9 because I can't see the complaint file.
10 Q. All right. Okay. So come with me on a
11 little hypothetical. So if the date stamp says
12 Friday, and you're able to see that case on Monday,
13 how many days do you count that in your spreadsheet?
14 A. That's one day, because we go by court
15 days.
16 Q. Okay, great. And you're able to look at
17 this through the SOPA website; is that right?
18 A. Yes.
19 Q. Okay. Your information, it all came from
20 you looking at SOPA and looking at the stamp in the
21 corner; is that right?
22 A. You mean the log files?
23 Q. Yes.
24 A. Yes, those are all done by me, or
25 occasionally by my substitute reporter who uses the

1 same process, if I have the day off.
2 Q. Okay. Did you at any point submit what we
3 call an IPRA request, Inspection of Public Records
4 request to the Administrative Office of the Courts
5 for this information?
6 A. I believe that Courthouse News submitted an
7 IPRA request. I was not involved in that process.
8 Q. Okay. So you didn't actually seek this
9 specific information from AOC; is that right?
10 A. No. All this information came from what I
11 could access using the SOPA website with my tier 1
12 access.
13 MS. LECOCQ: Okay, great. Thank you very
14 much. I have no further questions.
15 THE COURT: Thank you, Ms. Lecocq.
16 Mr. Edwards, do you have redirect of Ms.
17 Prieskop?
18 MR. EDWARDS: Yes, Your Honor.
19 REDIRECT EXAMINATION
20 BY MR. EDWARDS:
21 Q. Ms. Prieskop, counsel just posed a
22 hypothetical to you that said: Assume a Friday
23 filing that you see on Monday. And you said you
24 count that as one day?
25 A. Yes.

1 Q. But it's actually three days; right?
2 A. Yes.
3 Q. So, in fact, your delay statistics in fact
4 understate the amount of delay?
5 A. Yes.
6 MR. EDWARDS: All right. Pass the witness.
7 THE COURT: Anything further, Ms. Lecocq?
8 MS. LECOCQ: Actually, yes.
9 RECROSS-EXAMINATION
10 BY MS. LECOCQ:
11 Q. The question is probably shorter than the
12 time it takes me to walk here. I want to clarify one
13 more time what your definition of same day is. Can
14 you tell me exactly what that means?
15 A. Same day would mean that the date stamp
16 that is on the upper right corner of the complaint
17 file is the same date that I was able to view that
18 complaint file.
19 MS. LECOCQ: Okay. That's all I have.
20 Thank you very much.
21 THE COURT: Thank you, Ms. Lecocq.
22 Mr. Edwards, anything further?
23 MR. EDWARDS: No, Your Honor.
24 THE COURT: All right. Ms. Prieskop, you
25 may step down. Is there any reason that Ms. Prieskop

1 cannot be excused from the proceedings?
2 MR. EDWARDS: I believe she may be excused,
3 Your Honor.
4 THE COURT: She may be excused, Ms. Lecocq?
5 MS. LECOCQ: I believe she can be excused.
6 Thank you.
7 THE COURT: All right. You're excused from
8 the proceedings. Thank your for testimony.
9 Mr. Edwards, do you have further witnesses
10 or evidence you wish to present?
11 MR. EDWARDS: I have no further witnesses,
12 Your Honor.
13 THE COURT: Ms. Lecocq, do you have
14 witnesses or evidence you wish to present on behalf
15 of the defendants?
16 MS. LECOCQ: We do, Your Honor. Could we
17 take a five-minute recess?
18 THE COURT: Sure. Let's take a 15. We're
19 getting close to morning break, and I need to give
20 Ms. Bean a break to rest her fingers. So we'll be in
21 recess about 15 minutes.
22 (The Court stood in recess.)
23 THE COURT: All right. We'll go back on
24 the record. Ms. Lecocq, do you have your first
25 witness or evidence?

1 MR. McDONALD: Yes, Your Honor, we do.
2 We'd like to call Laura Orchard.
3 THE COURT: Come on up and stand next to
4 the witness box on my right, your left, before you're
5 seated, Ms. Rotonda will swear you in.
6 LAURA ORCHARD,
7 after having been first duly sworn under oath,
8 was questioned and testified as follows:
9 DIRECT EXAMINATION
10 THE CLERK: Please be seated, and please
11 state your name for the record.
12 THE WITNESS: My name is Laura Orchard.
13 THE COURT: All right. Ms. Orchard. Mr.
14 McDonald.
15 MR. McDONALD: Thank you, Your Honor.
16 BY MR. McDONALD:
17 Q. So good morning, Ms. Orchard. Thank you
18 for being here today. And you've already introduced
19 yourself for the record so that's taken care of my
20 first question.
21 Would you please let the Court know your
22 occupation?
23 A. I'm a senior IT project manager for the
24 Administrative Office of the Courts, Judicial
25 Information Division.

Q. And how long have you been in this position?

A. A little over five-and-a-half years.

Q. How long have you been in the IT field?

A. 22 years.

Q. And how about the judiciary field?

A. A little over five-and-a-half years.

Q. So could you describe your experience in IT before entering this position?

A. I was working for the New Mexico Environment Department's IT Bureau, and they trained me to be an IT project manager. That would be 1999. So I ended up being their first IT project manager.

Then I was trained in facilitation and business process mapping and coding and HTML, all kinds of things like that, and I've been project manager ever since then for different organizations.

I did a statewide enterprise level consolidation of all of the environment databases for the Environment Department, and that was an American Management Systems Application called Tempo.

Then, in another role, in another job I designed and implemented a donation database that interfaced with a Blackbaud product called Raiser's Edge.

1 More recently, in this position, I've been
2 handling all of the clouds, upgrades, implementations
3 to the Supreme Court, the Court of Appeals, metro
4 courts, magistrate courts, and implementing and
5 helping to develop the re:Search application, and
6 managing the application process for those who want
7 to register for the Secured Odyssey Public Access
8 site.
9 Q. Thank you, Ms. Orchard. So do you -- in
10 your current position, do you work with the New
11 Mexico State Court e-filing system?
12 A. I do.
13 Q. How often would you say you interact with
14 that system on a weekly basis?
15 A. Every day, pretty much every hour. And
16 when there is a rollout or an implementation for
17 another court, there is evening and weekend work
18 involved as well. So pretty constantly.
19 Q. To the best of your knowledge, does anybody
20 consider you a subject matter expert in the e-filing
21 system?
22 A. Yes. My manager, Suzanne Winsor, my
23 coworkers on the Odyssey business support team, my
24 counterparts at Tyler Technologies, the Online Access
25 Subcommittee, and the Judicial Technology Council all

1 consider me, and rely on me, as being the filing
2 system subject matter expert.
3 Q. Let's talk about the system a little more
4 generally at first. Can you briefly describe the
5 components of the overall e-filing system that New
6 Mexico uses?
7 A. So all of the pieces that are involved in
8 e-filing start with what's called the filer's
9 application, which is referred to as HTML 5. The
10 reviewer's File & Serve application, which is
11 currently called Silverlight; the Odyssey database,
12 which is the repository for all of the case
13 information; and then the final pieces are the
14 outward-facing applications that allow registered
15 users to see case information and documents or just
16 case information. And that would be the Secured
17 Odyssey Public Access site, re:SearchNM, and Case
18 Lookup.
19 MS. LECOCQ: Okay. And before we talk
20 about the system, Your Honor, we have drawn up a
21 poster showing the general steps a document will take
22 going through the system that I was hoping Ms.
23 Orchard could use to describe it. Would you mind if
24 I were to bring that up?
25 THE COURT: Not at all.

1 MR. McDONALD: And, Your Honor, I also have
2 a set of documents that describe what's on that
3 poster, if anyone would like to look at them.
4 THE COURT: Okay.
5 Q. Okay. So Ms. Orchard, now that I've
6 distributed everything finally, could you walk us
7 through what happens to a document from the moment an
8 attorney pushes the button to submit it up to the
9 moment that an attorney or journalist can then view
10 that document?
11 A. Sure. So there are five phases. First is
12 the draft phase during this -- and let's restate
13 that. There is the submission phase. And that is
14 when the attorney filer is using an HTML 5 File &
15 Serve application to enter case -- the case type, the
16 parties involved in the case, and they pick the
17 location for where the case is going to be filed.
18 Then they upload their pleading documents into what
19 File & Serve refers to as an electronic envelope.
20 And all of that is compiled into that single
21 envelope, and then the filer presses the submit
22 button. So that's the -- and during that process the
23 status of that envelope is called "draft."
24 Q. Okay. And you mentioned, I believe, the
25 review process came after that. Could you describe

1 that process?
2 A. Yes. So once the filer hits the submit
3 button, that envelope lands in a Tyler Technologies
4 server. And it is sorted into queues based on the
5 location that the filer selected when they were
6 creating their envelope. So that envelope sits there
7 in that queue until the court clerk goes into the
8 File & Serve review queue and opens the envelope.
9 So once the clerk opens the envelope, the
10 status of that envelope now becomes under review. So
11 it went from draft to submitting to submitted to
12 under review.
13 So as the clerk reviews the contents of the
14 envelope, they look at all of the data that was
15 entered by the filer, including the party information
16 and the case type that they chose. And they review
17 each of the documents for completeness, for
18 signatures, for the quality of the scan, that sort of
19 thing. They add some annotations in some cases.
20 They add their signatures in some cases. And they
21 basically look through however many documents have
22 been included in that envelope. They look through
23 each one.
24 And for each one of those documents there
25 is a filing code attached. So if there is a filing

1 code and a document attached, the reviewer has to
2 click the accept button for each one.
3 So again, this is all in the status of
4 under review, as they're clicking each one of these
5 accept buttons, until the last filing and the last
6 document in that envelope has the accept button
7 clicked. Once that happens, the status becomes under
8 process -- I'm sorry, "processing," which is the
9 fourth category.
10 Q. If you're going to continue into
11 processing, please go ahead.
12 A. So while it's in the processing status, a
13 number of things happen. And it appears, because it
14 happens so quickly. In the electronic world, it
15 appears that it happens simultaneously, but there is
16 actually a sequence to it. The first step in that is
17 that the credit card payment is processed to the
18 bank.
19 Now, if that fails, the envelope still in
20 the processing status gets thrown into an error
21 filings queue. And there is nothing the court can do
22 if a credit card fails, so they have to return that
23 envelope back to the filer, and nothing happens with
24 that envelope until the filer fixes whatever was
25 wrong.

1 If the payment processes correctly, then
2 the next thing that happens is that data is sent to
3 Odyssey from File & Serve. Odyssey generates a new
4 case and applies a new case number to it, assigns a
5 judge to it, and gives it a case style, so the title
6 of the case.
7 That information, once it's generated in
8 Odyssey goes back to File & Serve, and it populates
9 all of the pleading documents where there were token
10 fields waiting for that case number or the judge
11 assignment, waiting for that judge's name, and all of
12 that information populates the documents and it
13 populates an e-notification.
14 So once all of that information is burned
15 into the documents, those documents get
16 transmitted -- and I'm using the word "transmitted"
17 because that's a File & Serve term. It gets
18 transmitted to Odyssey, and now the status is called
19 "Accepted." And once the status changes to accepted,
20 the case is complete in Odyssey. And the
21 e-notification is sent back to the filer, any service
22 contacts and any courtesy copy folks who were added
23 by that filer in that envelope.
24 So I believe that is -- oh, and then once
25 the case is complete in Odyssey and it's in the

1 accepted status, it immediately is mirrored out to
2 the public through the Secured Odyssey Public Access
3 site. And then a publisher job is run momentarily
4 after the case is completed. And that gets the
5 information updated to the re:SearchNM site. So the
6 first site where it's available is what we called
7 SOPA, the Secured Odyssey Public Access site. The
8 second site where it's available is re:SearchNM. And
9 then there is an overnight job run for the Case
10 Lookup site. And the Case Lookup site doesn't have
11 any documents. That's neither here nor there, but
12 that's --
13 Q. Thank you. At what point in this whole
14 process would a document be considered filed?
15 A. We don't use the term "file," because it's
16 a little vague and it could mean a lot of things.
17 That's why I use the word "transmitted." So once
18 it's considered transmitted to Odyssey, and it has
19 the accepted status, that's when it's considered in
20 the possession of the court. So I'm having a hard
21 time answering that.
22 Q. That was a fine answer. Thank you. That's
23 what I was going for.
24 So Ms. Orchard, is it possible to track how
25 long this process takes from start to finish?

1 A. Yes. Tyler Technologies has a
2 system-generated report out of File & Serve that
3 tracks from the moment the filer clicks the submit
4 button. So that's called the submitted date and time
5 that ends up being indicated on the file stamp on the
6 document. So it tracks from the submitted time to
7 the transmitted time into Odyssey.
8 MR. McDONALD: Okay. And Your Honor, may I
9 approach the stand to hand the witness something?
10 THE COURT: You may.
11 MR. McDONALD: Your Honor, I believe we've
12 already stipulated to the entrance of this exhibit.
13 Q. Ms. Orchard, do you recognize this chart?
14 A. Yes.
15 Q. Did you put this together?
16 A. I did.
17 Q. And how did you do that?
18 A. I took the Tyler-generated report that
19 shows all of the casewide -- sorry, statewide
20 information for all courts. And I filtered it so
21 that it would show us civil cases that were initiated
22 at the district court. And then, yes, that's how I
23 compiled it.
24 Q. Thank you. So would you say it's an
25 accurate depiction of where the court stands today

1 regarding these new civil pleadings?
2 A. It is an accurate depiction based on the
3 report that Tyler provides. But I'd like to note
4 that filers can use the File & Serve system 24/7, and
5 court staff can only review five days a week during
6 business hours, so Monday through Friday, 8:00 to
7 5:00. So although it's an accurate representation of
8 all the activities that took place, it's not quite an
9 accurate representation of the discrepancy between a
10 filer being able to file Friday night at 10:30, and
11 then the court staff not being able to see it until
12 Monday morning at 8:00 a.m.
13 Q. So Ms. Orchard --
14 A. May I say one more thing?
15 Q. Yes, please.
16 A. It's also -- this description of the
17 process is based on the idea that the PC, the
18 internet, the network, the servers, all of these
19 myriad systems are working properly. And so that
20 time sequence from submit to being in Odyssey depends
21 on a lot of electronic systems.
22 Q. Okay. And does this chart show how quickly
23 the court staff addresses -- I think you called it an
24 envelope before?
25 A. Um-hum.

1 Q. Is it an accurate depiction of how quickly
2 a court staff would address the envelope?
3 A. Yes, based on the data from that report,
4 yes.
5 Q. Okay. And so I guess now we can arrive at
6 the substance of the chart. Can you describe
7 generally what this chart shows regarding the timing
8 of complaint filings?
9 A. Right. If we're just looking at civil
10 filings initiated at district courts for that 30-day
11 period of July 26 to August 25, 2021, it shows there
12 are about 2,259 envelopes that were filed. It took
13 the court an average 8.82 hours to process those,
14 which comes to a median time of 2.75 hours. And
15 those envelopes that were processed and accepted on
16 the same day that they were submitted ended up being
17 about 79 percent. And those accepted within 24 hours
18 of submission ended up being 93 percent. And that's
19 without any adjustments for weekend and evening
20 submissions.
21 Q. Okay. And just to reiterate really quick
22 for my own benefit, are you saying that 92 percent is
23 at the point they're accepted that they'd be
24 considered to be filed documents then?
25 A. Yes.

1 Q. And you mentioned it didn't account for a
2 midnight filing deadline. Can you describe what you
3 meant by that?
4 A. So once we -- once File & Serve was
5 implemented as a method for attorneys to file their
6 pleadings, they realized that they had to extend the
7 filing deadline from 5:00 p.m. on a date to midnight
8 on that same date. But then the court staff can only
9 see it the following morning. So they would never be
10 able to see that filing within -- on the same date.
11 But they would within 24 hours if they happened to be
12 able to open that envelope within 24 hours.
13 Q. Okay. So just to expand on that a bit,
14 this is a bit of a hypothetical. But suppose an
15 attorney submits a document at 10:30 p.m. on a
16 Wednesday. The clerk gets in at 8:00, start the day,
17 and an hour later the document gets filed. On your
18 snapshot there would that document appear to have
19 been filed on the same day it was submitted or is
20 that the next today?
21 A. It's next day, but it is within 24 hours.
22 Q. Okay. So is there a way that you know of,
23 besides the process you just described, for someone
24 to compile an accurate picture of this data?
25 A. No, not that I know of.

1 Q. So just to back up really quick to -- I
2 think this may be a little redundant once again, but
3 I'm looking at the spreadsheet. Before we let you
4 go, can you tell me once again how long it took on
5 average for AOC to bring a nonconfidential civil
6 complaint from submission to accepted during the time
7 period in question?
8 A. 8.82 hours.
9 Q. And can you tell me then what percentage of
10 nonconfidential civil complaints were accepted within
11 24 hours of submission?
12 A. 93 percent.
13 MR. McDONALD: Thank you, Your Honor.
14 That's all I have on direct.
15 THE COURT: All right. Thank you, Mr.
16 McDonald.
17 Mr. Edwards, do you have cross-examination
18 of Ms. Orchard?
19 MR. EDWARDS: Thank you, Your Honor.
20 THE COURT: Mr. Edwards.
21 CROSS-EXAMINATION
22 BY MR. EDWARDS:
23 Q. Good morning, Ms. Orchard -- I think it's
24 still morning. I just have a few questions for you.
25 And I want to first talk about this document you have

1 in front of you; the -- I'm not sure what exhibit
2 number we have. Do you know what exhibit number?
3 MS. LECOCQ: That's Exhibit A, I apologize.
4 THE COURT: Would you hold it up for me so
5 I can see which one?
6 MR. EDWARDS: Yes, Your Honor. It looks
7 like this. Without my handwriting it looks like
8 that. I can bring you a copy.
9 THE COURT: All right. And are you moving
10 its admission, Ms. Lecocq or Mr. McDonald?
11 MR. McDONALD: Yes, Your Honor.
12 THE COURT: All right. Any objection?
13 MR. EDWARDS: No objection.
14 THE COURT: All right. So Defendant's
15 Exhibit A will be admitted into evidence.
16 Q. Okay. Ms. Orchard, with respect to
17 Defendant's Exhibit A, I wanted to ask you a little
18 bit about this document. So the status row, where it
19 says: Draft, submitting, submitted, under review,
20 and so forth, do you see that row?
21 A. Um-hum.
22 Q. You have to say yes or no.
23 A. Yes.
24 Q. Those words are -- is it fair to say that
25 those words are the way AOC describes each step?

1 A. We have taken those terms from Tyler's File
2 & Serve application. That's where those terms are
3 derived.
4 Q. So Tyler made those words up; correct?
5 A. I suppose.
6 Q. Okay. For instance, the word "draft," to
7 call it draft before the submit button is hit, Tyler
8 just came up with that term; right?
9 A. I don't know.
10 MR. McDONALD: Beyond the scope of direct.
11 THE COURT: I'm sorry?
12 MR. McDONALD: It's outside the scope. Ms.
13 Orchard wasn't asked about how Tyler came up with
14 their terminology.
15 THE COURT: I think it's close enough to
16 the scope. I'll allow it. Overruled.
17 Q. All right. So AOC didn't come up with
18 those terms; is that fair?
19 A. Not that I know of.
20 Q. Okay. And you understand that, essentially
21 Courthouse News in this case -- you tell me if you
22 have this understanding -- is essentially requesting
23 access after the fourth box where it says, "Submitted
24 envelope lands in selected court's review queue," do
25 you see that?

1 A. Yes.
2 Q. And that's your understanding?
3 A. That's my understanding.
4 MR. McDONALD: Your Honor, once again, I'd
5 have to object. Ms. Orchard wasn't asked about what
6 Courthouse News Service --
7 THE COURT: I think it's close enough to
8 scope. Overruled.
9 MR. EDWARDS: It is in evidence.
10 Q. Also, Ms. Orchard, in the column
11 immediately after that submitted column, there is a
12 column, "Under review." Do you see that?
13 A. Yes.
14 Q. And at the top it describes -- it says,
15 "The auto file stamp is present." Do you see that?
16 A. Yes, I do.
17 Q. And when is the auto stamp affixed?
18 A. Once -- in the spot where it says -- so I
19 can tell you only that once the clerk clicks the
20 accept button, the process to burn that into the
21 document begins. So I don't know exactly. But it's
22 after the accept button is pressed by the clerk.
23 Q. All right. But according to this exhibit,
24 the clerk at the under review stage confirms whether
25 the auto file stamp is present; correct?

A. Yes. It's a token stamp. It can disappear if the filing is -- if the envelope is returned.

Q. But that token, as you call token stamp, is based on the date represented by column 3, "Submitted"; correct?

A. Yes.

Q. I'm sorry, no, it's actually the one before that. Filer presses submit button; correct?

A. Yes.

Q. So when the filer presses the submit button is when the auto file stamp is created?

A. I don't know when the auto file stamp is created.

Q. Okay. And the auto file stamp is intended to establish when the pleading was filed; correct?

A. That's right.

Q. Do you understand how the federal system of PACER works?

A. No.

Q. Do you have an understanding that PACER is able to provide access at the time that CNS is requesting it here?

A. No.

Q. And you gave -- you were presented with a hypothetical that if a filing is filed on Friday,

1 it's not processed until Monday, but it shows a file
2 date of Friday. Is that accurate?
3 A. Yes.
4 Q. And if a filing is made before
5 Thanksgiving, on Wednesday, it's not reviewed until
6 Monday; correct?
7 A. Correct.
8 Q. So we're talking about a five-day delay?
9 A. Right.
10 Q. So whenever there is a holiday, there is
11 going to be even more delay?
12 A. Certainly.
13 Q. And we know there is no processing on the
14 weekends or at night; right?
15 A. That's right.
16 Q. Have you talked to Tyler Technologies about
17 the Press Review Queue?
18 A. Personally?
19 Q. Yes.
20 A. No.
21 Q. Do you understand how the Press Review
22 Queue operates?
23 A. No.
24 Q. Do you know -- okay, you don't know.
25 All right. Now, let me refer you to the

1 other exhibit, this statistics exhibit. Is this
2 Exhibit B or 2 or --
3 MS. LECOCQ: B, yes.
4 MR. EDWARDS: And Your Honor, do you have a
5 copy of B?
6 THE COURT: Yes. And are you moving its
7 admission, Mr. McDonald?
8 MR. McDONALD: Yes, Your Honor. I was
9 going to on redirect. But I will move to admit A, B,
10 and C.
11 THE COURT: Any objection, Mr. Edwards?
12 MR. EDWARDS: No objection.
13 THE COURT: Defendant's Exhibit B and C
14 will be admitted into evidence. Let me know what C
15 is. What is C?
16 MR. McDONALD: Yes, Your Honor. This is
17 the raw data underlying the snapshot that Ms. Orchard
18 was reading off of earlier.
19 THE COURT: Is that this?
20 MR. McDONALD: I have not actually brought
21 it up yet, I believe.
22 THE COURT: You what?
23 MR. EDWARDS: I have a copy of it, if you
24 want it.
25 MR. McDONALD: Yeah, I will bring it up on

redirect, Your Honor.

THE COURT: Well, is that Exhibit C?

MR. EDWARDS: I believe it is.

THE COURT: Do you want to move its admission?

MR. McDONALD: I would, Your Honor. Give me a minute.

THE COURT: All right. Any objection, Mr. Edwards?

MR. EDWARDS: I have no objection.

THE COURT: All right. Defendant's Exhibit C will be admitted into evidence. Ms. Rotonda is going to show you what I've marked Exhibit B. Is that what we're actually showing as B?

MR. EDWARDS: It is, Your Honor.

May I proceed, Your Honor?

THE COURT: You may.

Q. With Exhibit B in front of you, Ms. Orchard, can you tell me who compiled this document?

A. I did.

Q. And the numbers in the count column and all the columns are numbers that you compiled?

A. From the Tyler report, yes.

Q. Okay. And do you believe them to be true and accurate?

1 A. I do.
2 Q. All right. Who calculated the statistics
3 at the top of the last two columns?
4 A. I did.
5 MR. EDWARDS: May I approach, Your Honor?
6 THE COURT: You may.
7 Q. Ms. Orchard, I'm going to hand you a
8 calculator, and I want to step you through a little
9 bit of math. On Exhibit B, the second to the last
10 column "accepted on same date of submission," do you
11 see that?
12 A. Which section?
13 Q. The second column from the end. We're
14 talking about statewide civil filings accepted by the
15 court. Do you see that?
16 A. Yes.
17 Q. You have 79 percent; correct?
18 A. Yes.
19 Q. Can you please divide the two numbers in
20 that box and tell me what percentage you arrive at?
21 A. 67 percent.
22 Q. 67.47; is that fair?
23 A. Yes.
24 Q. All right. And you have listed 79 percent;
25 right?

A. I did.
Q. Can you explain the difference?
A. I relied on formulas that I put into the Excel spreadsheet.
Q. Well, we looked at the spreadsheet that was provided to us, and there is no formula for calculation of that percentage. Does that refresh your memory?
A. I still used an Excel spreadsheet to calculate the formula. It might not be on that raw data spreadsheet.
Q. But you agree that percentage is wrong on this exhibit?
A. It looks like it might be wrong, yes.
Q. And for the record, that means the 79 percent statistics for accepted on same date of submission should be actually 67.47 percent; correct?
A. That's what it looks like, yes.
Q. Let's do the same thing at the bottom of that same column. Accepted on same date of submission, you have 79 percent. Do you see that?
A. Yes.
Q. Civil district filings. And you actually have the numbers here saying 2,481 of 2,259 submissions. Is that even possible?

A. No, it's not.
Q. So that's wrong; right?
A. Typo, yes.
Q. Typo you made?
A. Yes.
Q. Do you know what the appropriate numbers are?
A. Not off the top of my head. I would have to go look.
Q. Our calculations show it's actually 1,481 of 2,259. Could you please do the math for those numbers?
A. The numbers you gave me come out to 65.55.
Q. So if that's correct, then, instead of 79 percent, it's actually 65.5; correct?
A. That's what it looks like, yes.
Q. All right. Let's do it again. Let's do the second box. You say it's 79 percent; correct, for the 21,932 of 31,473. Do you see that?
A. Yes.
Q. What's the percentage, do you arrive at by the calculator?
A. 69.68.
Q. All right. So the correct number should be 69.68 percent; correct?

1 A. That's what it looks like, yes.
2 Q. So these numbers are approximately 10 or
3 more percentages off; is that fair?
4 A. Yes.
5 MR. EDWARDS: I'll pass the witness, Your
6 Honor.
7 THE COURT: Thank you, Mr. Edwards.
8 Mr. McDonald, do you have redirect of Ms.
9 Orchard?
10 MR. McDONALD: Thank you, Your Honor.
11 REDIRECT EXAMINATION
12 BY MR. McDONALD:
13 Q. So Ms. Orchard, I'd like you to keep the
14 same exhibit in front of you, please.
15 So first, can you please look at the lower
16 right-hand box, where it says 2,100 of 2,200, more or
17 less; right?
18 A. Yes.
19 Q. So in those boxes where you wrote numbers
20 in addition to letters, that was you typing that out;
21 right?
22 A. It is.
23 Q. The two boxes above that, the thin ones
24 with the percentages, those came from the Excel
25 spreadsheets; right?

A. I typed them in from calculations from the Excel spreadsheet. So all of this data that you're looking at here was manually typed in.

Q. Oh, okay. So, hypothetically, would there have been an opportunity for you to have included a typo in those larger boxes, including the text?

A. Yes.

Q. But is it your contention still, given your expertise, given the amount of experience you have with the system, that the numbers in the thin boxes, the percentages, those are accurate depictions of the raw data?

MR. EDWARDS: Objection, form. Misstates the record.

THE COURT: Well, let's see what she says.

A. Can you repeat the question?

Q. Sure. Is it your intention that despite the typos in the lower boxes, including text, those thin boxes on top that describe the percentages, is it your contention that those boxes are an accurate depiction of the Excel data, the raw data?

MR. EDWARDS: Same objection, Your Honor.

THE COURT: You know, you just have to work with her on recross.

MR. McDONALD: I'll rephrase, but I'm not

1 sure I understand the objection.
2 THE COURT: Well, she just said the data is
3 wrong, and now you're asking is it accurate? And I
4 guess I'm not sure where you're going with this.
5 MR. McDONALD: Fair point, Your Honor. And
6 I will rephrase.
7 Q. Ms. Orchard, so you mentioned on cross-exam
8 that the data in those thin boxes does not match the
9 description of the data in the bigger boxes below it,
10 including text?
11 MR. EDWARDS: Objection, form. There is no
12 data in the thin boxes.
13 THE COURT: Well, I'll let you work with it
14 on recross.
15 MR. McDONALD: The figures, I apologize,
16 the numbers.
17 THE COURT: Overruled.
18 Q. So the percentage points in those thin
19 boxes -- and please correct me if I'm wrong -- on
20 cross-exam it was established those did not match the
21 figures in the thick boxes including text; is that
22 correct?
23 A. Yes.
24 Q. But would you say that those percentages in
25 the thin boxes -- and I'm talking about the second

1 from bottom thinner row there -- would you say that
2 those percentages do reflect the raw data on the
3 Excel sheet?
4 MR. EDWARDS: Objection, form; lacks
5 foundation.
6 THE COURT: Well, let's see what she says,
7 and you can work with it on recross.
8 A. I can't be sure at this point, because all
9 of this was manually typed in.
10 MR. McDONALD: Okay. Thank you, Your
11 Honor. No further questions.
12 THE COURT: Thank you, Mr. McDonald. Mr.
13 Edwards?
14 MR. EDWARDS: Nothing further.
15 THE COURT: All right. You may step down.
16 Is there any reason that Ms. Orchard cannot be
17 excused from the proceedings, Mr. McDonald?
18 MR. McDONALD: No, Your Honor.
19 THE COURT: Can she be excused?
20 MR. EDWARDS: Yes, Your Honor.
21 THE COURT: All right. You're excused from
22 the proceedings. Thank you for your testimony.
23 THE WITNESS: Thank you.
24 THE COURT: All right. Ms. Lecocq, Mr.
25 McDonald, do you have further witnesses or evidence

1 you wish to present?
2 MR. McDONALD: We do, Your Honor. We'd
3 like to call Ms. Monica Baca, but we will have to
4 call her.
5 THE COURT: Is she the one that's on the
6 video? Is she here or is she on the video?
7 MR. McDONALD: I'm going to go check to see
8 if she's here.
9 THE COURT: Ms. Lecocq, there was one that
10 you filed a motion for somebody to appear by video.
11 MS. LECOCQ: Yes.
12 THE COURT: I understand it's unopposed.
13 So would you submit a form of order for that so I
14 can --
15 THE CLERK: I did get one this morning.
16 THE COURT: Oh, you did get one this
17 morning. Okay.
18 MR. McDONALD: Your Honor, our next witness
19 is across the street. Would you mind if I gave her a
20 phone call real quick?
21 THE COURT: All right. Do you have another
22 witness you could call while she's making her way
23 over here?
24 MR. McDONALD: I believe we do.
25 (A discussion was held off the record.)

1 MS. LECOCQ: I apologize, Your Honor. We
2 have a witness who is out of town and a witness who
3 is across the street and is coming over. If you'd
4 like, we can go a little bit out of order. I do have
5 Mr. Pepin here.
6 THE COURT: All right. Mr. Pepin, if
7 you'll come up and stand next to the witness box.
8 Before you're seated, Ms. Rotonda will swear you in.
9 ARTHUR PEPIN,
10 after having been first duly sworn under oath,
11 was questioned and testified as follows:
12 DIRECT EXAMINATION
13 THE CLERK: Please be seated, and please
14 state your name for the record.
15 THE WITNESS: My name is Arthur Pepin.
16 THE COURT: Mr. Pepin, Ms. Lecocq.
17 MS. LECOCQ: Thank you, Your Honor.
18 THE COURT: Ms. Lecocq.
19 BY MS. LECOCQ:
20 Q. Mr. Pepin, could you state your name for
21 the record, please?
22 A. Arthur Pepin.
23 Q. And what is your current position?
24 A. I'm the Director of the Administrative
25 Office of the Courts for the State of New Mexico. I

1 work for the Supreme Court.
2 Q. And when you say you "work for the Supreme
3 Court," what does that mean?
4 A. The Supreme Court has one administrative
5 agency for administration of all the courts. It has
6 the usual tiered system you'd expect throughout the
7 state. And the director is the person responsible
8 for directing that administrative agency. By statute
9 I am directed to work at the direction of the Supreme
10 Court.
11 Q. Okay. I'm going to give you what is going
12 to be marked as state's Exhibit D.
13 MS. LECOCQ: Your Honor, may I approach the
14 witness?
15 THE COURT: You may.
16 Q. Mr. Pepin, do you know what this is?
17 A. Yes, this is an organizational chart for
18 the Administrative Office of the Courts. There are
19 roughly 150, 160 employees represented there.
20 Q. Okay. And can you look, please, at the
21 colored boxes that say, "Legal Services; Physical
22 Services," what are those?
23 A. Those are divisions within the
24 Administrative Office of the Court. So we're
25 organized by task, essentially, of work,

1 responsibility.
2 Q. Okay. Which one of those divisions is
3 responsible for the basis of why we're here today,
4 Odyssey File & Serve and --
5 A. Sorry. That would be the Judicial
6 Information Division on the far right, directed by
7 the Chief Information Officer or Chief Technology
8 Officer Cassandra Hayne. And the other folks running
9 the divisions within the Judicial Information
10 Division. If I say JID, I apologize; that's the
11 acronym we use for the Judicial Information Division.
12 Q. So let's talk more about some other terms
13 that I think we're going to hear in this testimony.
14 You've already said JID, which is the Judicial
15 Information Division.
16 What is the term JIFFY?
17 A. JIFFY was the term we used for the
18 statewide technology council. So there is an
19 advisory body; that's the statewide advisory body for
20 technology, chaired by a judge -- I believe in all my
21 experience it's been a judge at some level, but it's
22 got judges from all levels of court, and other folks,
23 a representative of the State Bar; court executive
24 officers, which are managers of the districts within
25 the court system. We changed the name a year or so

1 ago, sometime during COVID to JTECH, the Judicial
2 Technology Council. So I may refer to JTECH, or to
3 JIFFY, but that's the body that recommends to the
4 Supreme Court policy. So if we want to take on a new
5 technology project, seems like a good idea, it's
6 vetted by staff; comes before JIFFY or JTECH, and
7 they ask a lot of questions, and get a bunch of
8 information. And if it's forwarded by recommendation
9 of the Supreme Court, then we present it to the
10 Supreme Court for adoption and implementation, which
11 is the really fun part. But it's an advisory body
12 for technology.
13 Q. Okay. And are they under Administrative
14 Office of the Courts? Are they on this chart?
15 A. No. JIFFY -- JTECH is an independent body;
16 the members are appointed by the Supreme Court. I'm
17 not a member. I'm required to staff it. Director of
18 the Judicial Information Division is also not a
19 member, but is directed to staff. Nobody from JID,
20 the Judicial Information Division, is a member of the
21 advisory body.
22 Q. Okay.
23 A. But it does include judges. They're all
24 appointed by the Supreme Court.
25 Q. Are you familiar with the term Online

1 Access Subcommittee?
2 A. I am.
3 Q. What is that?
4 A. So that's a subcommittee of JIFFY, or
5 JTECH, tasked with trying to provide as broad access
6 as possible -- electronic access -- to documents
7 within the statewide system, known as Odyssey.
8 Odyssey is the title of the product we've been
9 discussing that is our case management system; our
10 CMS is Odyssey. And within Odyssey there is lots of
11 information that we need to give access to.
12 Obviously, primarily, to litigants obviously, first
13 and foremost; and internally to the courts, judges,
14 court staff, for all the reasons cases get processed
15 and go through the system.
16 Q. Okay. And is the Online Access
17 Subcommittee part of the Administrative Office of the
18 Courts?
19 A. No. I am a voting member of OAS, as are a
20 few members of my staff. It's chaired by the chair
21 of JTECH. It's not administratively -- well, I
22 couldn't be sure. It's an advisory body to JIFFY, so
23 I suppose the correct answer would be yes.
24 Q. And it's an advisory body to JIFFY, and
25 JIFFY reports to the Supreme Court, the New Mexico

1 Supreme Court; is that right?
2 A. Yes, JTECH is appointed by and exists to
3 advise the Supreme Court.
4 Q. I apologize, JTECH. I'm going to have to
5 get used to changing that in my brain.
6 Okay. So this is Administrative Office of
7 the Courts. You are the director. What are your
8 duties as the director?
9 A. Statutory duties set out in a statute,
10 which is: Oversee all the budgets submitted by the
11 district courts and the human resources department,
12 and all kinds of things. But it's sort of one of
13 those catch phrases, "and other duties as directed by
14 the Supreme Court." So the Court gives me
15 responsibility for many things. One area, of course,
16 is oversight of technology and implementation of
17 technology. And one of my responsibilities is to go
18 before the members of the Supreme Court and explain
19 to them things that are happening, whatever programs
20 or issues that arise, and get their determination of
21 things that require the Supreme Court. Because
22 ultimately every single thing that happens in the
23 judiciary has to be consistent with policies adopted
24 by the Court or the systems made by the Court.
25 Q. Okay. Their policies and decisions. Are

1 you aware of any statutes in New Mexico that dictate
2 processes like what we're talking about here?
3 A. Yes. For example, there is a portion of
4 the Inspection of Public Records Act, the IPRA, which
5 is our form of a FOIA, that directs that no public
6 body, no entity, no agency, us, shall make publicly
7 available personal identifying information, which is
8 defined, but it's got the common definition that I'm
9 sure you're all familiar with, on a publicly
10 accessible website.
11 So part of the job of OAS, for example,
12 considering that statute and other direction from the
13 Supreme Court, is to provide access to documents, but
14 obviously not provide public access because we can't
15 yet assure -- I can't yet assure -- that we are able
16 to make sure none of those documents have PPII,
17 publicly personal identifying information in it. So
18 it's been a challenge over time, because we have to
19 provide access in a way that doesn't provide general
20 public access to PII.
21 And you've heard descriptions of certain
22 folks sign nondisclosure agreements to protect PII,
23 because, so far, it's clear that PI will filter its
24 way through many of the documents that get filed in
25 the electronic system.

1 Q. Okay. And we'll come back to that in a
2 little bit.
3 First, I want to talk about the New Mexico
4 court system as a whole.
5 A. Sure.
6 Q. Are you aware of the term "a unified
7 judiciary"?
8 A. Yes, I am.
9 Q. What does that mean?
10 A. So, all the states and territories of the
11 United States are organized in some way or other --
12 the courts are -- and there are more or less unified.
13 Some are quite nonunified, disbursed. Great example
14 is Texas; they have 264 counties and they're
15 essentially county-based judicial system. They're
16 funded and administered on a county level. And the
17 person who has my job in Texas has direct
18 responsibility for only those courts in Austin, the
19 Supreme Court and the Appellate Court. And they
20 suggest policy to the courts, but they can't --
21 anyway, there is much more authority disbursed
22 throughout the system.
23 A unified system, such as we have, is
24 really overseen by the Supreme Court very directly.
25 So I would say, in my experience -- I've been at it

1 15 years -- we are one of the most unified states.
2 That is, the Supreme Court is directly involved in a
3 great many policy and directives of how we operate.
4 Much more so than Texas. Florida is probably the
5 most disbursed state, really county authority is very
6 great there; they elect their clerks of court, things
7 like that. We don't do any of that.
8 So, if I want to change, for example, a
9 personnel rule and make it so that -- whatever it is
10 I wanted to do -- I would propose to the Supreme
11 Court that they agree to change a personnel rule.
12 And if they do, great; personnel rule is changed. If
13 they don't, it stays the same. That's a lot more
14 involved than it would be otherwise.
15 We talk about a unified budget. Every
16 entity in the court system has to get the Supreme
17 Court's approval for any budgetary request they want
18 to make. Any legislation that is supported by the
19 judiciary comes up through the courts and through
20 this system to be adopted by the Supreme Court. And
21 if it's not, we cannot support the legislation.
22 So it's more of a top down, I suppose.
23 Although, there is an awful lot of input from the
24 bottom up. But the directives for the Supreme Court
25 are much more encompassing here than they are in more

1 disbursed administrative structures in other states.
2 Q. Okay. And let's just, for the record, talk
3 about the New Mexico court system itself. What are
4 judicial districts?
5 A. So we have 13 judicial districts in New
6 Mexico; there is 33 counties. Two of those districts
7 are single counties. You're in one now, Bernalillo
8 County. The other one is Dona Ana County, which is
9 Las Cruces. Otherwise, there is two, three, or four
10 counties in each district. So that district will
11 have a district court in every county; will have a
12 chief judge of the district court, who is elected by
13 the judges of the court. And that's -- we call them
14 the administrative authority. That's a person who
15 has responsibility to run the court system within
16 those one to four counties; would sign off on hiring
17 people. Employee discipline comes to the chief
18 judge. Local rules, the chief judge would submit to
19 the Supreme Court for approval. Things like that.
20 The chief judges make up a council that
21 meets every month, and is a policy advisory body to
22 the Supreme Court, sometimes a decision making body.
23 But the districts are the local entities that run the
24 general jurisdiction trial courts. And also outside
25 of Bernalillo County, where we have magistrate

1 courts, they also run the magistrate courts.
2 In Bernalillo County the metropolitan
3 courts are a unique kind of magistrate court, and
4 it's more independently operated than the magistrates
5 are in other districts. But that's because of
6 history and various things.
7 But the district court chief judge is the
8 administrative authority for that district, which is,
9 you know, as I said, one to four counties.
10 Q. Okay. Is there a reason that we have
11 judicial districts here in New Mexico instead of a
12 court in each county?
13 A. I'm sure there is. Some of that is an
14 accident of history. I mean, the county lines are an
15 accident of history. We have tried without success
16 on occasion to realign counties within districts.
17 Because we have a district with three counties that
18 has one judge; we have districts with one county that
19 have 32 judges. And it's an imbalance.
20 But the districts are, I suppose, the
21 legislature's judgment that that's a more efficient
22 way to administer groupings of counties than county
23 by county.
24 Q. And within each of those judicial
25 districts, where is the courthouse?

1 A. So by statute, the courthouse has to be in
2 a particular town in the county defined by the
3 legislature. So that's where they go in the
4 counties.
5 Magistrate courts are the same way, except
6 there are satellite courts in some places that are
7 outside of the county seat. But the county seat, for
8 example, in Lincoln County, is in Carrizozo.
9 Everybody lives in Ruidoso. So there is a 25, 30
10 minute travel distance down the mountain to get to
11 the county courthouse, because the county seat is in
12 Carrizozo, for accidents of history, where the
13 railroad went and other things. That's all
14 constitutional and/or statutory.
15 Q. Okay. All right. So let's -- so we have
16 kind of a picture of what the New Mexico court system
17 looks like at the state court level. You mentioned
18 earlier that each judicial district had -- I think
19 you called it a chief judge; is that right?
20 A. Correct.
21 Q. And what does the chief judge do?
22 A. So the chief judge generally carries the
23 caseload. Sometimes it's less than a general
24 caseload of all the other judges; sometimes it's not.
25 And they have all the administrative duties, echo the

1 things that I do statewide. They don't get to change
2 the rules.
3 But they have to apply the rules and
4 administer them for personnel. They have to submit a
5 budget to our budget committee. And that works its
6 way up to the Supreme Court for approval. The chief
7 judge is the top court official for that district,
8 for all the counties of that district. And as I
9 said, he or she is elected by the judges of the
10 district court.
11 Q. Okay. Let's take an example of a very
12 populated judicial district. What would you say is
13 the most populous judicial district in New Mexico?
14 A. It's Bernalillo County, Albuquerque; the
15 Second Judicial District, right here.
16 Q. And what do you believe might be the least
17 populated judicial district in New Mexico?
18 A. The Tenth Judicial District, which is -- oh
19 gosh -- it's Harding County and Quay County, and De
20 Baca County? And it has one judge. And we have a
21 statistical analysis of where judge needs are. They
22 need just about one judge for all three districts.
23 So he, the chief judge, the only judge, he travels
24 around all over those districts.
25 Whereas, here in Albuquerque, you've got --

1 I think we're up to 32 district court judges, and
2 they all sit in -- well, most of them sit across the
3 street in the Bernalillo County Courthouse. There is
4 also a family court up the road, 4th Avenue.
5 Q. I'm going to go back to the chief judges.
6 You said the chief judges write policies for that
7 particular judicial district; is that right?
8 A. Yes, local rules can be adopted by the
9 districts. The local rules have to be submitted for
10 approval to the Supreme Court. But there are
11 places -- there is room in the system for the
12 district judges to have administrative control and
13 authority.
14 They also, in managing the courts, they
15 have to allocate resources, you know, among the
16 courts. If we're having -- I don't know how familiar
17 you are with the magistrate court system, but many of
18 our magistrate courts are very small. If a person is
19 out, you might have to move somebody from one place
20 to another to cover for that court to be able to
21 operate. Things like that.
22 Q. Can the local rules be different in each
23 judicial district?
24 A. Yes.
25 Q. Okay. But do they still need to be

1 approved by the Supreme Court?
2 A. Yes.
3 Q. And do the local rules ever talk about
4 e-filing?
5 A. They can, and they do address different
6 things about electronic filing. I can't tell you
7 that I made a close study of all of the local rules
8 related to e-filing. But yes, they're permitted to,
9 and I'm sure they do, differ from district to
10 district in the way they operate. And some of that
11 has to do with the geographic scope of the district,
12 the size of it or its resources that it has
13 available, because they have more or less resources.
14 They're not all exactly the same.
15 Q. Can they be substantially different, like
16 could one say we're not going to have any e-filing,
17 and one say we're mandatory e-filing?
18 A. No, e-filing -- when the Supreme Court
19 adopts e-filing statewide and adopts a schedule
20 proposed by JTECH for how we're going to implement
21 and they approve that schedule, that's it; we're
22 going to have e-filing whether you like it, don't
23 like it, or have no opinion about it.
24 Q. Okay. So let's go back to the
25 Administrative Office of the Courts, and its kind of

1 the reason it's there, the purpose. Does the
2 Administrative Office of the Courts have a particular
3 mission or a goal?
4 A. Yes, our mission is to achieve the
5 efficient and effective administration of justice.
6 And there are a lot of subparts along that, including
7 obtaining resources, and all those kinds of things.
8 But it's easiest to understand, executing the
9 directives of the Supreme Court in the Supreme
10 Court's view of how we can most efficiently and
11 effectively manage the court system now. The judges
12 have a lot of work to do as justices, so they're not
13 studying all kind of things about the system. They
14 rely on me and the many people that work with me to
15 recommend to them things about everything, including,
16 of course, about technology.
17 Q. Okay. So let's go into -- you said the
18 efficient operation of the judicial system; right?
19 A. Yes.
20 Q. That's a goal of AOC. Let's talk about
21 that. What exactly does that mean? Efficient
22 administration of the judicial system?
23 A. So courts, of course, are tasked with
24 delivering justice. It's a vague term, but it means a
25 lot to us in different contexts. Obviously, it can

1 mean different things. But we only have so many
2 resources and we have various obligations. Some are
3 constitutional, some are statutory, some are directed
4 by rule from the Supreme Court. But they all apply
5 and have effect as far as the administration of the
6 courts is concerned.
7 So we're entrusted with public funds. We
8 have to use those funds as wisely as possible, as
9 effectively and efficiently as possible. I spend a
10 lot of time talking with the legislature about funds
11 that we would like to use for things, how we use the
12 funds they already gave us, those kind of things.
13 There are many ways in which efficiency and
14 effectiveness work together to try to deliver justice
15 to people as quickly, fairly, and soundly as
16 possible.
17 And a lot of that is, from my perspective,
18 I have to make sure we give the courts the resources
19 they need and that we deliver to them the tools they
20 need to do things well.
21 I don't decide all this, by the way. You
22 know, the Court will say: We would like to do this;
23 this is how -- for example, drug courts -- which are
24 now therapeutic courts -- became widespread in New
25 Mexico. The Court said: We'd like to try this.

1 They gave it a try, it worked, data showed it worked,
2 and it spread from court to court. And the AOC had
3 to secure resources, funding, for the courts to do
4 that, establish rules so that we have an
5 understanding of what have a therapeutic or drug
6 court is.
7 So that's how you see the Supreme Court is
8 in charge. You can't have something you call a drug
9 court that operates outside the rules that have been
10 adopted in one district in another district. They'll
11 all look pretty much the same.
12 Q. So this kind of leads right into my next
13 questions about Odyssey. Can you talk a little bit
14 about the history of the Odyssey case management
15 system and Odyssey File & Serve in New Mexico? How
16 did that get started?
17 A. So when I came on board at the AOC, which
18 was late 2006, they were exploring replacing the
19 system, which was called FACTS. I have no idea what
20 that stands for, that had been implemented in the
21 '90s, that was our first electronic system. And
22 FACTS ran electronically parallel to paper filing.
23 Everything was filed on paper. FACTS was a way to
24 keep track of all that paper.
25 And so we spent time exploring, after I

1 came on, exploring what was out there, and eventually
2 issued an RFP for a case management system to replace
3 FACTS.
4 And after a whole lot of work and
5 everything, Tyler won the bid, and Tyler got the
6 contract.
7 We did a contract with Tyler, and we
8 implemented a few courts, a few districts. Then we
9 took a pause so we could analyze how the
10 implementation had gone, how it was working. And
11 then we took what we thought were best practices for
12 the implementation and we went and eventually did all
13 of the other courts.
14 In the beginning, Tyler would basically do
15 the implementation. And we, including people at JID,
16 would learn, you know, what they did and what we
17 thought worked and didn't work for our folks. And by
18 the end, we were basically doing the implementation.
19 The last court to implement Odyssey was the
20 metropolitan, across the street here, which had been
21 running its own system -- not FACTS, a whole
22 different system. And that was quite a challenge.
23 It took quite a while to implement it there.
24 But in the end, everybody was on Odyssey
25 by -- I don't even know at this point -- maybe 2014,

1 something like that.
2 So along with implementation of Odyssey, we
3 were keenly interested, as were courts all over the
4 country, in electronic filing for a whole lot of
5 reasons. And we did a contract to pilot electronic
6 filing for the 13th Judicial District, which are
7 basically counties that surround Albuquerque, with
8 WIZnet, like I mentioned before. That worked great
9 for many reasons. And at that point Tyler actually
10 purchased for WIZnet for -- I don't know why --
11 reasons that made sense to them, which worked well
12 for us because now we had an integration with WIZnet
13 directly into the case management system. And
14 eventually, we implemented File & Serve -- they
15 changed the name. Odyssey File & Serve, Electronic
16 File & Serve in all of the courts of the State of New
17 Mexico, which was, next to Odyssey, probably the
18 second biggest project I've been involved with,
19 technologywise.
20 Q. Why, if you know, why did New Mexico switch
21 to e-filing?
22 A. There are many reasons why e-filing is
23 better than paper filing. Of course, it makes it --
24 it's faster; it's easier to keep track of documents;
25 it's easier to retrieve documents; access to

1 documents can happen by multiple people at the same
2 time, right? A judge can look at a file the same
3 time the clerk is putting a document in the file,
4 instead of having to go downstairs to the vault and
5 get out a paper file and carry it around so these
6 things could be done; those big carts they would
7 wheel into the courtroom.
8 It's also less expensive, that way. It's
9 more efficient than all that paper and all that
10 storage we used to have to do. There are lots of
11 reasons. It's more convenient to the parties and
12 public. Electronic records -- well, maybe not the
13 records as much as access certainly. Electronic
14 filing is a much better way for most of the folks who
15 are allowed to electronic file to interact with the
16 courts.
17 You know, our experience over the last year
18 and a half, with COVID, I just can't imagine how we
19 would have done everything we did in a paper file
20 day. But everybody in this room I'm sure is familiar
21 with why electronic management of documents and
22 electronic filing is an advantage over the old way.
23 Q. I just want to clarify that the decision to
24 adopt the Odyssey, then, in the same way that you had
25 described everything needs to be approved by the

1 Supreme Court, did the Supreme Court have to approve
2 this decision to adopt Odyssey?
3 A. To adopt Odyssey, to adopt File & Serve.
4 And then they direct me: Go get funding. How much
5 are we going to need? Let's go to the legislature.
6 And they support our legislative efforts in that
7 regard.
8 But, yes, there is no Odyssey, there is no
9 File & Serve without the Supreme Court. And the
10 rules under which those systems operate are approved
11 by the Supreme Court.
12 Q. Okay. What is the filing deadline here in
13 New Mexico?
14 A. What is the filing deadline?
15 Q. Yes.
16 A. Well, any day that you have a deadline, so
17 you could have -- the most severe, of course, is a
18 statute of limitations; your statute runs today.
19 Today, now, you can file up until 11:59 p.m. tonight,
20 and you have met your statute of limitations.
21 There are lots of other deadlines that
22 apply. I used to do appellate work. You have --
23 somebody takes a file, your appellate brief; you have
24 to file it by the day the 45 days runs out.
25 Q. Okay. So just the actual time deadlines,

1 you said 11:59 p.m., why do we have a midnight filing
2 deadline here in New Mexico?
3 A. For the convenience of the parties. You
4 know, I suppose it's possible -- I'm not a technology
5 person -- but I suppose it's possible to make the
6 system so that it shuts off acceptance at 5:00 p.m.
7 It didn't seem like a good idea to do that when we
8 have now a system that can let people file at 5:15,
9 10:00, whatever time is convenient for them.
10 And we had discussions. We had to submit
11 that, obviously, to the Supreme Court because it's a
12 rule change. And we had many, many discussions about
13 many issues relating to the changes the electronic
14 system made to how we process cases. That's a pretty
15 easy one: Because it's more convenient for people
16 and it doesn't cause us any extra harm in the system,
17 except that now people can file things all weekend,
18 and they're there on Monday morning when the clerks
19 come in.
20 Q. And we're going to come back to that. Are
21 you familiar with Courthouse News Services?
22 A. A little bit. I'm no expert, but I'm
23 familiar with them.
24 Q. How are you familiar?
25 A. At first, it must have come up in 2015, or

1 '16, when they first began asking for the kind of
2 access we're talking about here. Before that, I had
3 never -- I hadn't consumed any product of CNS,
4 Courthouse News.
5 Then I became aware of litigation CNS was
6 engaged in around the country. And it was a matter
7 of discussion among courts, you know, because CNS is
8 nationwide, and courts talk to each other about these
9 kinds of things. And Mr. Girdner has come before the
10 Odyssey Access Subcommittee that you mentioned. And
11 that's basically what I know about CNS.
12 Q. Okay. So you said Mr. Girdner has come to
13 the Odyssey Access Subcommittee. And why? Did they
14 make a request, or why did he do that?
15 A. Well, it was Mr. Girdner or their attorney,
16 I forget, I'm sorry -- but anyway, CNS came before
17 the Odyssey Access Subcommittee. Yes, Odyssey Access
18 Subcommittee is a place people generally get directed
19 toward when they want to get access to a part of the
20 system and they're not a party. Parties have access,
21 of course we have rules from OAS on parties, too.
22 But parties have access to their own documents.
23 Actually, it used to be hard for us to give
24 self-represented litigants, nonattorney litigants
25 access to their own documents and cases. We solved

1 that problem a while back.
2 But that's where you go, and that's where
3 the first discussions occur about: How are we going
4 to provide access to people who we want to give
5 access to within the context of the statutory
6 restrictions like on PII, for example, and the
7 Court's direction that we protect private
8 information. They're not bound simply to the
9 statutory. Now, they have concerns that we protect
10 the public.
11 In New Mexico, a great many people are
12 involved in litigation that are not represented by
13 attorneys; they're less familiar with the way things
14 work. There is serious concern about -- that we be
15 fair to litigants within the system, whether they're
16 plaintiffs or defendants and represented and
17 unrepresented.
18 So we created the Odyssey Access
19 Subcommittee of JTECH -- at that point it was
20 JIFFY -- to examine these issues. And that's where
21 Courthouse News Service first came. And that's
22 why -- you got my memo from 2018 -- eventually, we
23 asked Tyler at least, if the Court -- Supreme Court,
24 when I say the Court, that's what I mean -- if the
25 Supreme Court wanted to give them what they're asking

1 for, is it even possible? Because we did not know.
2 And you can see the documents. OAS created tiered
3 access for different levels of access that have
4 different restrictions on them. For all the reasons,
5 that is a concern about information that should not
6 be made publicly available.
7 Q. Okay. So we're going to pull this apart a
8 little bit. So let's go back a little bit. What is
9 your understanding of what Courthouse News Service is
10 requesting right now?
11 A. What is my understanding of their request?
12 Q. Yes.
13 A. They want access to -- I had understood it
14 to be all filings, but I suppose I've heard today
15 it's really the new civil filings -- as soon -- my
16 understanding was when the individual presses the
17 send button to send an electronic filing to the
18 courts. Of course, we also get a lot of paper
19 filings, too. Attorneys are -- but on the electronic
20 side they want that access as soon as the person
21 presses send. Seemed to me sort of analogous to the
22 days of paper filing, when the attorney puts some
23 stamps on the envelope and puts it in the mail,
24 they're going to get something out of the envelope,
25 is the best analogy I, as a nontechnical person, can

1 have.
2 Q. I want you to look at this chart behind you
3 that we talked about earlier.
4 A. Yes.
5 Q. So we have the submitted file, which is
6 when the attorney presses submit, or the filer on
7 e-filing presses submit; right?
8 A. And it lands at the court, yes.
9 Q. Right. And it goes into the review field.
10 What is your understanding of, at what point in that
11 timeline is CNS requesting access to these documents?
12 A. I understand the submitted, when it's
13 submitted, when it's -- when the magic of the
14 electronics brings that document, the electronic
15 document, to the court, the purpose of which
16 apparently is to file a new case.
17 Q. And is this, essentially, before or after a
18 clerk has the ability to look at that document?
19 A. Before. That's the moment when they could
20 begin to look at it. But the things they have to do,
21 obviously don't occur in a nanosecond. So there is
22 sometimes they have to do those things before we get
23 to accepted.
24 Q. So you mentioned just a second ago about
25 putting something in the mail. Can you explain that

1 a little bit more with regard to this -- the system
2 that we have now?
3 A. Well, you know, court documents are public
4 records. And I suppose the contest is when this
5 becomes a public record. There is no disagreement of
6 any kind that CNS -- well, everybody in the public,
7 except for those narrow categories of protected
8 documents -- is entitled to access to public
9 documents, of which the court has many, many public
10 documents. So we believe, I believe, and we
11 administer the system with the belief that those
12 public documents are over here in the green part when
13 they're accepted. And they go, as Ms. Orchard was
14 describing, they go from the File & Serve review
15 queue to Odyssey, get a case number, they become a
16 case. And then they go to -- people have access
17 under OAS. And then they go to Case Lookup, which is
18 the general public look. But the only thing that
19 goes there is the case information, plaintiff,
20 defendant, those kinds of things. And a line that
21 says what got filed, a complaint. But you can't
22 access the complaint in Case Lookup.
23 So for many reasons we provide access very
24 broadly, and including to CNS as a registered user in
25 Odyssey, in SOPA, at that point, right; not before.

1 Q. Okay. And so I'm going to take you back
2 just a little bit. So your understanding -- and
3 correct me if I'm wrong -- is that CNS is requesting
4 access in the submitted status, I guess, potentially
5 before a clerk has the ability to review that
6 document; is that right?
7 A. That is correct.
8 Q. Okay. And do you see a problem with that?
9 A. Yes, a number of them.
10 Q. Okay. What are the problems that you see
11 with that?
12 A. Well, you know, folks like Ms. Orchard and
13 others -- you'll be hearing from Ms. Winsor -- are
14 much more expert on the mechanics of how this works,
15 but there is a process that requires the clerk to
16 review it for good reason. The reason is it may not
17 be a document, a complaint that we can accept in
18 Odyssey; that is, it may not ever get from the File &
19 Serve, trying to get this into the court, to actually
20 being a court document that we have accepted. It
21 could be rejected for nonpayment, for nonsignature.
22 The File & Serve system has a limitation of 100
23 pages. If you attach a document that's over 100
24 pages, it has to be rejected. There could be
25 corrupted files, you know. I'm not a great

1 technology person, but I use email and those things,
2 and you get a corrupted document, that document
3 probably shouldn't be entered into the system.
4 But anyway, there are relatively simple,
5 but they have to be done by a human being, reviews
6 that have to be done, some of which Ms. Orchard
7 described, so that we can make that a public
8 document. And if it goes into a rejected -- the
9 easiest one, of course, is nonpayment; that's the
10 easiest one, it goes into reject. It never hits our
11 system and it never becomes that public document that
12 we create a case file on, that Odyssey, you know, it
13 goes out of File & Serve to Odyssey, it gets a case
14 number and all of that, automatically generated, and
15 the notice goes to the parties. New case, if they
16 chose to do service, that service notice goes out to
17 the other party and all of that.
18 So in between, you know, it's concerning
19 enough with attorney filers. And the reason why only
20 attorneys are allowed to electronically file -- there
21 are probably many reasons -- but an important reason
22 is that the Supreme Court has control over the
23 licenses of the attorneys; there is an awful lot of
24 incentive for attorneys to obey the rules about
25 access to PII, that we would prefer not be in the

1 file, but it ends up there way too often, or other
2 pieces of information that should not be distributed
3 to the public. Could be addresses of people,
4 different things.
5 Q. So are you saying that if an attorney
6 selects in the e-filing system an incorrect case
7 type, that an attorney could potentially file as a
8 sealed case in Odyssey?
9 A. Gosh, I would hope they would never do
10 that. But they could try. More than a sealed
11 document, because I would hope any attorney in
12 practice knows how to file sealed documents, not
13 exposed to the public. More commonly it's the kind
14 of information, like PII, that we're required to
15 protect, that gets in documents mostly. Maybe not
16 directly in the complaint, but in attached documents
17 to the complaint, that kind of thing.
18 And I have to tell you that, I know it's
19 theoretical at this point, we are going to give
20 self-represented litigants the ability to
21 electronically file. And at that point the challenge
22 grows a great deal in terms of what could be in those
23 documents that should not be there. And some of
24 those will be civil complaints, and they may involve
25 the kind of folks that CNS is interested in. But

1 we're not doing that now.
2 But I will tell that you during COVID we
3 created a kind of electronic filing for
4 self-represented, non-lawyer represented folks,
5 because we didn't want them coming to the courthouse,
6 obviously, right, we wanted to minimize the number of
7 people coming to the court. So we let them email
8 file, which is basically like if they brought paper
9 to the court, except it's by email. And our concerns
10 about the things that people might file were not
11 exaggerated based on our experience over the last
12 year, year and a half.
13 Anyway, that's not the case right now.
14 Right now it has to be attorneys filing. There is
15 still concern -- experience tells us there is a lot
16 of information we should protect in there. And even
17 if a clerk is not required to reject a document
18 because that's in there, a chief judge, we were
19 talking about before, could adopt a local rule that
20 says: When you see PII in a document, notify the
21 filer that they have put that in there. Because they
22 shouldn't, but they do. I mean, it's epidemic. And
23 that's one of the reasons why we're working very hard
24 to try to figure out how to redact Social Security
25 numbers, addresses, things like that, from documents,

1 so we could make them generally available to the
2 public, and we could figure out how to extract those
3 pieces of information.
4 But anyway, there are -- yes, attorneys can
5 make the kinds of mistakes that might be more
6 concerning with self-represented litigants. Things
7 can get in there that don't belong in there, sure.
8 Q. That leads me into a couple other
9 questions. So you said -- let's talk about PPII,
10 personal protected identifier information. All
11 right. What is that specifically, do you know?
12 A. Oh, gosh, I haven't read the statute
13 recently. But it's name, Social Security numbers --
14 I don't have the whole statute in front of me, but
15 it's the kinds of things that reveal where you live,
16 might give access to people who want to get into your
17 accounts and things like that.
18 Q. And you said earlier the clerk is not
19 required to review documents for compliance with --
20 A. It's my understanding. I'm no expert on
21 the process the clerks use.
22 Q. But you also said that there could be a
23 local rule that -- can you say that again?
24 A. Sure. You could have a local rule, if the
25 Supreme Court approved it, and I -- well, I shouldn't

1 speculate on what they would do -- but you could have
2 a local rule that said: If you find PII on a
3 document that shouldn't be there under our rules when
4 it gets accepted, notify the filer that they've put
5 this information in. I suppose that gives the filer
6 an opportunity to correct that problem. But we --
7 Q. And PPII is different than confidential
8 information; is that right?
9 A. Yes.
10 Q. How?
11 A. Well, confidential information is something
12 identified by a party, I would suppose, a plaintiff,
13 business secrets, or different things, that while
14 essential to their case, are things that they are
15 arguing to the court shouldn't be made publicly
16 available. And you can file a motion to seal them,
17 to keep them confidential, things like that.
18 Q. Okay. So let me stop you for a second. If
19 you know -- you just said you could file a motion to
20 seal. At what point would an attorney file a motion
21 to seal that document?
22 A. Well, if you're initiating a case, I
23 believe you can ask that the case or a piece of
24 information within the case be sealed at the time of
25 case initiation. And of course, that's logical

because if it's in there, it's going to be a public record unless you get it sealed.

Q. So I want you to stay on that just for a second. And I'm going to go back to pre e-filing time, manual e-filing. If an attorney -- if you know; and if you don't know, that's fine -- if you know, if an attorney were to go into the clerk's office pre e-filing with a complaint and a motion to seal, what would they do with that?

A. "They" being the clerks?

Q. No, the attorney, or the filer.

A. Honestly, I don't know. I'd be making assumptions. But I didn't file things back then. I filed things in the Supreme Court and the Court of Appeals, but that was my sole practice.

Q. So that's fine. I want to bring you back, though, to the second piece, which is we're talking about personal identifier information. And you mentioned that there was a statute in IPRA, the Inspection of Public Records Act, that talks about that. Are you referring to the statute, New Mexico Statute 14-2-1.1? And I can show it to you.

A. That's the one.

Q. So I don't have enough copies of this for everyone, because it's a statute, but I'll show it to

1 opposing counsel briefly and I'll show you.
2 A. Sure.
3 Q. So would you just read that statute for me?
4 A. Just the highlighted part?
5 Q. Just the highlighted part, yeah.
6 A. "Unredacted records that contain protected
7 personal identifier information shall not be made
8 available on publicly accessible websites operated by
9 or managed on behalf of a public body." That's
10 14-2-1.1.
11 Q. Okay. So let's talk about that. "Shall
12 not be made available on a publicly accessible
13 website." What does that mean? To the best of your
14 understanding, what does that mean?
15 MR. EDWARDS: Objection, Your Honor. Calls
16 for a legal conclusion. Reading the statute.
17 THE COURT: Well, he's in charge of
18 applying a lot of law in his job, so I'm going to
19 allow the question. And I understand that I'll have
20 to make the final determination as to what the law
21 is. But I'll allow him to state his understanding.
22 Overruled.
23 MS. LECOCQ: Thank you, Your Honor.
24 THE WITNESS: Thank you, Your Honor.
25 A. So it would mean that, for example, on Case

1 Lookup, a publicly accessible website, if we put
2 information that is PII, as defined by the statute,
3 we'd be in violation of the law, violation of the
4 statutory directive to protect that information from
5 general public electronic access.
6 Q. Okay. So we're going to stay with this a
7 little bit, but I'm going to lead off in a different
8 direction just really quickly. I have here -- and
9 this is State's Exhibit E that I will pass out to
10 everyone. Are you familiar with this document?
11 A. I am, yes.
12 Q. Okay. What is it?
13 A. These are minutes from a meeting that the
14 Online Access Subcommittee, then JIFFY, now JTECH,
15 had back in November of 2016. And it summarizes the
16 matters discussed and the votes taken by OAS on that
17 date.
18 Q. Okay. Could you look at page 4 of 8,
19 please?
20 A. I'm there.
21 Q. And at the top there is a discussion about
22 a definition of news media. Can you talk a little
23 bit -- first of all, do you remember this meeting?
24 A. I do. I think I'm listed as being present,
25 yes.

1 Q. So actually, I want you to go back a minute
2 to page 3 of 8.
3 A. Okay.
4 Q. At the very bottom, we have "Jim." Who is
5 Jim?
6 A. That was then Court Executive Officer Noel,
7 now Judge Jim Noel. He was running, administering
8 the Second Judicial District Court here in
9 Albuquerque. He was a member of the committee.
10 Q. So he moved to adopt the recommendation
11 that the press and public have the same access, and
12 that ultimately was -- that motion failed; right?
13 A. Yes.
14 Q. Do you know why that motion failed? Do you
15 remember?
16 A. There was a lot of discussion at this
17 meeting and other meetings about this issue, and how
18 to provide access to the press. Because we were
19 grappling with -- to give news media access, maybe
20 that's not generally publicly available, so maybe
21 within the statute we can do that, and should it be
22 the same as the public, or should the public access
23 be more restricted actually than the news media for
24 various reasons? Why people voted against it, you'd
25 have to ask them. But my sense was that it was an

1 unworkable kind of thing; that is, we will be
2 disclosing information we're not allowed to disclose
3 if we adopt that kind of a definition.
4 Q. So you moved, again, for a definition of
5 news media specifically on page 4 of 8; right? And
6 that definition ultimately was approved; is that
7 right?
8 A. Yes, it was.
9 Q. Is that what -- this determination and this
10 meeting, is that what allows the news or the media to
11 have access to SOPA, to tier one cases in SOPA?
12 A. Yes, this was a definition OAS intended to
13 try to make it so we could give access to news media
14 without giving access to the general public. And at
15 that time -- and it's only more challenging now --
16 it's -- in the age of the internet it's very hard to
17 define the news media in a way that's not the general
18 public, really. For good or ill, I don't have an
19 opinion about that. But you have individual bloggers
20 who have a network of five people, who might qualify
21 as media people. It's a very hard thing to do.
22 Q. So I'm going to circle back to this, then.
23 At what point on that chart up there does the media
24 currently, under our e-filing system, have access to
25 these court documents?

1 A. I believe that would be accepted when it
2 hits SOPA.
3 Q. And is that before the public has access to
4 these documents?
5 A. Well, as a practical matter, it often is,
6 because Case Lookup -- well, access of documents the
7 public doesn't have electronically on the web. They
8 can see a case, a new case, for example, when it hits
9 the system. But Case Lookup, I think Ms. Orchard
10 said it's run overnight, an automatic thing, uploads
11 all that stuff overnight. It's less information, and
12 it's also, I guess, a little behind SOPA.
13 Q. Okay. And go back to pre e-filing --
14 A. Yes.
15 Q. -- manual filing. At what point in that
16 general kind of -- let me back up. Pre e-filing, how
17 would that change this timeline here?
18 A. Well, it would take longer. But in terms
19 of who gets access when, I think the description
20 about reporters, trusted reporters that the courts
21 were familiar with, going behind -- going into the
22 clerk's office to look at documents, which might have
23 been filed today or they might have been filed
24 yesterday, you know, they had to get processed
25 manually, is accurate. We don't allow that anymore.

1 We don't allow people to go into the clerk's area for
2 very many reasons, you can imagine. We don't do that
3 anymore. You can go to the courthouse and use a
4 kiosk to get access to filings and see information,
5 even the public can do that. Because the public
6 could always come to the courthouse and say: I would
7 like a copy of a complaint filed in Smith versus
8 Jones, and we would give it to them, unless it was
9 ordered sealed or something like that. And that's
10 true now. So you can go across the street to the
11 Second District, go to a computer in the lobby, and
12 see what complaints have been filed today. And you
13 could get a copy of that complaint after acceptance
14 here, after it's been entered into the system.
15 Nobody can go into the clerk's office and sit down at
16 one of the computers and see what's in process except
17 internal employees.
18 Q. Okay. So the under review stage there,
19 where the clerk opens the envelope, reviews the data
20 and the documents, pre e-filing, at what stage was
21 that done?
22 A. Well, I mean, the same stage. Someone
23 would walk in and hand the clerk a document; I hope
24 pay for it, right? Didn't have credit cards then,
25 they would give them a check. The clerk would record

1 the time they had physically received the document.
2 And then it would go in a queue, a box, that I
3 hope -- but not always so -- the clerks would be able
4 to view and confirm that it was a legitimate filing,
5 and then create a new file, not automatically,
6 electronically, but whatever the next number that was
7 up in the book, and then create a paper file. And
8 that file would be added to, as more papers got filed
9 in the case.
10 Q. So would you be able to characterize that
11 as, like a counter discussion, where the filer and
12 the clerk are at the clerk's counter?
13 A. Sure. Again, I have talked with people
14 about how this worked and how it works now, but I
15 didn't have direct experience with that. But, of
16 course, it was paper being handed across. And a
17 clerk had the opportunity, if they noticed something,
18 to say: Oh, Mr. Smith, you didn't sign this; you
19 didn't endorse it; this has to be notarized, or
20 whatever it was. You better get that fixed if you
21 want to file this thing. Or that might happen later.
22 And then the parties got notice of whatever occurred
23 during processing, if anything, other than it got
24 accepted and became a court document.
25 Q. Okay, great. So are you familiar with --

1 so we have the request from Courthouse News Services
2 to access these documents during that submitted --
3 A. That's my understanding, yes.
4 Q. Okay. And one of the ways that we've heard
5 that they're asking to do that is with this idea of a
6 press queue. Are you familiar with that?
7 A. A little bit, yes.
8 Q. How are you familiar with that?
9 A. Because at the time the requests were being
10 made -- and as can you see from my 2018 memo -- that
11 was the answer we got from Tyler about, yes, this can
12 be done; it can be done through a press queue. Some
13 courts are using a press queue. I didn't delve very
14 deeply into the mechanics of how that would work or
15 any of that, because my intention and our intention
16 at that time -- I guess, the response was actually to
17 Mr. Noel at the time, Judge Noel now -- was, yes,
18 that can be done. So before I ask the Supreme Court
19 if they want to do something, it's a good idea to
20 know if they say yes; they can say, well, never mind
21 you can't do it that way.
22 Q. Okay. I'm going to stop you there. Based
23 on your understanding of what this is, at what point
24 in that timeline would the press queue be made
25 available?

1 A. Well, so much has happened since then. I
2 think at the time my understanding was it would be
3 when they came through the electronic door into the
4 courthouse. Somewhere in submitted, I suppose. And
5 I think that's what CNS understands, too.
6 Q. So potentially before a clerk has an
7 opportunity to look at the document?
8 A. Yes.
9 Q. Before that counter discussion that we were
10 talking about?
11 A. Well, yes, or the electronic review now,
12 and there could be communications back that it was
13 rejected for some reason.
14 Q. Okay. All right. Let's talk about your
15 memo from 2018, which has been -- let's find it. It
16 is Exhibit A-1 of the plaintiff's exhibits, and give
17 me just a minute. Actually, you have a binder up
18 there. If you need me to help you find it, I can.
19 THE COURT: Ms. Lecocq, let's talk a little
20 bit about scheduling. Do y'all want to take a
21 15-minute break and work through the lunch hour, take
22 a late lunch? Do you want to take lunch now and come
23 back in about an hour, Mr. Edwards?
24 MR. EDWARDS: I was hoping we could finish
25 direct before we break.

1 THE COURT: Well, we need to take a break
2 now, period. So you can take a 15-minute break and
3 come back and work through the lunch hour and take a
4 late lunch or we can take our lunch break now. Do
5 you have a preference?
6 MR. EDWARDS: Whatever Your Honor wants to
7 do is fine with me.
8 MS. LECOCQ: Whatever your preference.
9 THE COURT: Let's just go ahead and take
10 our lunch break now.
11 (The Court stood in lunch recess.)
12 THE COURT: All right. We'll go back on
13 the record. Mr. Pepin, I'll remind you that you're
14 still under oath.
15 Ms. Lecocq, if you wish to continue your
16 direct examination, you may do so at this time.
17 MS. LECOCQ: Thank you, Your Honor.
18 THE COURT: Ms. Lecocq.
19 Q. Mr. Pepin, before we left, we were talking
20 about your memo that you wrote in 2018. And I asked
21 you to see if you can locate it. Did you find it?
22 A. Yes.
23 Q. Did you write this memo?
24 A. I did.
25 Q. And did you write it in response to

1 something?
2 A. Yes. It was -- you know, the issue had
3 come before the Odyssey Access Subcommittee, and
4 reached a point where a decision was made, and that
5 decision required at least a referral to and
6 consideration by the Supreme Court. So, as is often
7 the case, I wrote them a memo about where we were at,
8 and what they were being asked to consider.
9 Q. Okay. And what was your ultimate
10 recommendation, or I guess -- was it a recommendation
11 to the Supreme Court or was it information to the
12 Supreme Court?
13 A. In the memo I didn't make a recommendation
14 to the Court. I told them, obviously, the choices
15 are you can do what they want or you can say no. And
16 we've been promised that if you say no, they'll
17 litigate it at some point. And it has been litigated
18 elsewhere. I didn't intend to give them a large
19 article on the status of this issue in the state and
20 federal courts, but just to apprise them of the
21 different sides of the issue. They have staff, they
22 have lawyers, they are lawyers, so they can take that
23 and think about it and direct me and us which way we
24 should go.
25 Q. So you state in here, which has been

1 brought out already, that you had confirmed that
2 Tyler was able to install, at no cost to the courts,
3 a press queue, in other states like Nevada, Georgia,
4 and California. This is on page 3 of your memo; is
5 that right?
6 A. Yes.
7 Q. And did the Supreme Court ultimately decide
8 to adopt this press queue?
9 A. No, they did not. And I think there was
10 reference in one of the witnesses for the plaintiff
11 testifying about a letter received from the court,
12 that would have come from the Court Clerk, Joey Moya,
13 telling them their request had been rejected. I
14 think that was also communicated by OAS, by the
15 Online Access Subcommittee, subsequent to this
16 memorandum, and obviously discussions by the court.
17 Q. So even believing that this press queue
18 would be free, the Supreme Court still denied it; is
19 that right?
20 A. Yes. It wasn't a cost base -- obviously,
21 it was free, it wouldn't be cost base today.
22 Q. Okay. So the cost -- let's talk about the
23 cost. Is it free?
24 A. The latest communication I have from Tyler,
25 which is from Ms. Reilly, the same person here, is

that it would cost us $108,000. I have a long history with Tyler, and I would negotiate with them if I were paying for something from somewhere between 108 to zero. But that's the number that we were given most recently. I'm not implementing the press queue. I didn't ask why, how, what's it going to involve. The costs to us are much more significant than the $108,000.

Q. So let's talk about that. Aside from the $108,000 potentially could go to Tyler, what other costs do you see may be incurred by AOC?

A. I don't know 100% because I haven't asked staff to run it down. That's what I would do, if we consider implementing a new method of access. Certainly, it would take staff time, staff who are already assigned duties, they would have to stop them from doing. The same thing with money. I'd have to take money from somewhere to pay for this if there is a financial cost to it. And then it seems to me that we would have to figure out how to comply with whatever order had directed us to adopt the press queue in a way that also complied with our other statutory obligations, our obligations to protect information and make sure things that get filed are filed appropriately and all that. It also seems that

1 when a proposed filing -- not a proposed filing,
2 that's a different technical term -- when a complaint
3 is submitted for filing, if it gets rejected, we'd
4 somehow have to try to pull that back, or I don't
5 know exactly. We'd have to do some kind of
6 monitoring so that documents that had gone through
7 this queue came out of it, or we notified the parties
8 that, in fact, this is not a document the court
9 accepted.
10 Q. Okay.
11 A. But there would be costs in terms of time
12 and interactions with Tyler. I don't know much about
13 technology. But what I've learned in 15 years is it
14 always takes more time and costs more money than you
15 expect. Not necessarily the check I have to write to
16 Tyler, but in terms of spending limited resources we
17 have at JID and elsewhere. We have to train our
18 clerks, we have to retrain them in how we're going to
19 run the system, what this queue does. I can't just
20 have a new queue out there, and they would see it,
21 and they would say -- I have to train them about it,
22 notify them, all that kind of thing. There would be
23 costs there in time and talent.
24 Q. Okay. Are you aware of -- anywhere in New
25 Mexico -- of a fraudulent filing ever -- a fraudulent

1 document ever being filed?
2 A. Well, depends on what you want to call
3 fraud. There are people who try to file things that
4 are not allowed to be filed, and we have had
5 instances where in File & Serve, for example,
6 attorneys have transmitted their access information
7 for people who are not people granted permission to
8 be in the system. And we have had cases where
9 that -- hum, fraud, I don't know about fraud -- but
10 they were trying to file things that were not
11 authorized by the person on whose behalf they claimed
12 to be filing them. It has happened, sure.
13 Q. Okay. So let's go to, if Courthouse News
14 wins today and we do have some sort of injunction
15 that requires this press queue, do you know what
16 specifically would be required of you and the
17 Administrative Office of the Courts in order to
18 comply with that?
19 A. No. Obviously, I think -- obviously, it
20 depends on the nature of the Court's order, as to
21 exactly what we're required to do and the timing of
22 it. Given what I think is a pretty clear set of how
23 these things flow through the system and when we
24 currently get access. And to order that would be a
25 win for CNS, I would think, back that up, because

1 they're not happy with where it is now. And it
2 depends where we're required to give the access.
3 Obviously, we'd have to work with Tyler to modify the
4 system or create a queue in whatever way satisfied
5 the order. And we'd have to figure out, as I said,
6 how to make sure that compliance was also compliant
7 with the protection of PI and all that.
8 The plaintiff's case talked about a
9 registration for the queue. You know, it sounds like
10 something like that would have to be considered. The
11 broader -- the sooner the access goes, back in the
12 system, the greater risk that we are publishing
13 information either that we should keep confidential
14 or in a way that, you know, gives access to
15 confidential information. And I think I said this
16 before, the reason why attorneys are filers is
17 because they have to listen to the orders of the
18 Court, and what they say. And others, you know, we
19 don't have any control the press, or whoever might be
20 the press. I have no concerns about CNS. They
21 appear to be a top-flight superb First Amendment
22 press organization. But I doubt an order would limit
23 us in ways that we could keep restricting information
24 in the way we do now at least for things that have
25 been filed, been accepted. So things would get out

there to other folks who call themselves press, or who would try to save their right of access, the same as that of CNS. But if we do, we'd have to be compliant.

Q. Okay. We heard testimony earlier that nobody has ever found sealed information on SOPA. Do you know why that might be?

A. Could be because we have a process where the clerks look at what gets filed before they accept it. And if it's happened -- and I don't know that it has -- I haven't surveyed the clerks' offices to find out -- but in the very unlikely event somebody tried to do that, I don't think the clerks would let it go through as an accepted document. So I can't say that it's happened. But if it had been attempted, it probably wouldn't have succeeded, is my guess.

Q. Okay. We also heard testimony about -- that the members of the press are required to fill out this application in order to access SOPA; is that right?

A. Correct.

Q. And, potentially, if they abuse that, then their access to SOPA could be rescinded?

A. That is the consequence we have at our disposal, yes.

1 Q. Okay. Do you believe that that level of
2 protection is sufficient in order to protect the
3 protected documents that you talked about protecting?
4 A. Do I believe it? No, I do not.
5 Q. Why?
6 A. Because the more attenuated you get from
7 lawyers, who are under the Supreme Court, to
8 professional -- I would say press who understand the
9 importance of the security issues and things, to
10 others, who might qualify as press, the less likely
11 it is you're able to exercise a kind of protection
12 you want to exercise on what should be kept private.
13 There is a small difference between what
14 gets submitted and what gets accepted. But in that
15 small difference, I think, is a lot of potential for
16 mischief in a world where one person getting access
17 to it is the same as everybody having access to it.
18 It's a different world than it was before it was so
19 easy to acquire and distribute documents or
20 information.
21 Q. Okay. Thank you, Mr. Pepin. Those are all
22 the questions I have.
23 THE COURT: All right. Thank you, Ms.
24 Lecocq.
25 Mr. Edwards, you have cross-examination of

1 Mr. Pepin?
2 MR. EDWARDS: Thank you, Your Honor.
3 THE COURT: Mr. Edwards.
4 CROSS-EXAMINATION
5 BY MR. EDWARDS:
6 Q. Good afternoon, Mr. Pepin. How are you?
7 A. Hello.
8 Q. I just want to confirm a few things from
9 your -- I think it's 2016 memorandum, which you were
10 looking at in the binder, if we could go back to
11 that. Have you got that in front of you?
12 A. I do.
13 Q. And I think on page 3, we talked about this
14 with Mr. Girdner, and you just mentioned it in
15 direct, but you did actually confirm with Nevada,
16 Georgia, and California at that time that Tyler
17 letter installed press queues at no cost; correct?
18 A. Yes, it's a long time ago, but I think that
19 Ms. Reilly's email was the source of this
20 information. It was actually to Mr. Noel. So I
21 confirmed it because Mr. Noel had confirmed it, yes.
22 Q. And Ms. Reilly had confirmed, by email to
23 Judge Noel at the end of this document -- if you look
24 at the final page -- that, in fact, Tyler already had
25 the press queue configured; correct?

A. She confirmed that they had something that, yes, was called the press queue in counties in Georgia and California. She did mention Clark County also.

Q. And, in fact, you understood that Tyler had actually acquired that software, Press Review Queue software, from WIZnet when it purchased that company?

A. I don't know that. But I have no reason to believe that's not true.

Q. Any reason to dispute that they already had the configuration in their database, and they just needed to set it up?

A. I'm sure there would be something they had to do for our configuration, but it would be minor, I would say, yes.

Q. In fact, she goes on to state, "All the court would tell us is the location, case types that would be made accessible, and we would do the configuration." Do you see that?

A. Yes.

Q. Do you understand that they're able to make configurations to the Press Review Queue to eliminate confidential information?

A. I understood the testimony I heard today, and based on what I knew before, I think that's

1 correct. They would try, for sure.
2 Q. Right. And you understand that this Court
3 and most federal courts use the PACER system, where
4 access is provided essentially on receipt; correct?
5 A. I do not. I know very little about PACER.
6 I don't practice in federal court. I haven't
7 practiced in a long time.
8 Q. But as a court administrator for so many
9 years in New Mexico, you've never heard of the PACER
10 system?
11 A. Oh, gosh, no, I know about PACER. I know
12 it's a significant generator of revenue. I know it
13 provides access to documents. I'm just not a user of
14 the system. I have no reason to dispute that people
15 actually use the system, and say that they get early
16 access.
17 Q. And you talk to court administrators
18 throughout the country, as well?
19 A. Sure, oh, yes.
20 Q. And you're familiar with the district court
21 offices that have implemented the Tyler Press Review
22 Queue?
23 A. Yes, I know that -- as I said at the
24 beginning, some states are state organized. A lot of
25 these places you're talking about are county based.

1 In California, Tyler would do a contract with each
2 county to implement their -- whatever they're
3 implementing, for example.
4 Q. You mentioned New Mexico being a unified
5 court system state. Do you know if Utah is?
6 A. Yes.
7 Q. And you understand they have an auto accept
8 system?
9 A. That's what I heard today. I'm not trying
10 to be coy. I don't know exactly what all the states
11 use. But if you tell me that, it makes sense to me
12 that whatever you file gets accepted, and that's the
13 rule.
14 Q. Fair enough. And is Arizona a unified
15 court system?
16 A. No.
17 Q. And do you know whether the other states
18 that have implemented on-receipt access are also
19 unified court systems?
20 A. They're mixed. You know, many states are
21 unified in the sense that there is a central
22 administration, but they're funded locally by the
23 county, particularly at the district court level.
24 And that could affect the kinds of technology they
25 use. So I'm not able to really answer your question

1 completely about all the states.
2 Q. Some states have it, some don't?
3 A. Yes, correct.
4 Q. Some states do on-receipt access and some
5 of those states are unified court systems; correct?
6 A. I believe that's correct.
7 Q. Okay. And you're not suggesting that a
8 unified court system is somehow a barrier to
9 implementation of an on-receipt access system;
10 correct?
11 A. I'm suggesting that a county couldn't
12 decide to do what you are asking on their own in this
13 state, in New Mexico. It would have to be a
14 determination by the Supreme Court that the statewide
15 system, the Odyssey system, would make these
16 documents accessible at the time -- at the point
17 you're asking.
18 Q. In 2016, when JIFFY met to discuss the
19 Press Review Queue, Judge Noel was opposed to it;
20 correct?
21 A. I believe that's right.
22 Q. And, in fact, he made a motion both --
23 ruled on 5-3 -- that people would have to go to the
24 courthouse to look at records; right?
25 A. I don't have that in front of me, but that

1 sounds consistent. That's the same advice we got
2 from Ms. Reilly in the email to which you were just
3 referring as well, in 2018.
4 Q. Judge Noel actually abstained from the vote
5 to implement SOPA; right?
6 A. I don't have that record in front of me,
7 but if you're telling me that's what it says, I'm
8 sure it's what he did.
9 Q. But you understood he had general
10 opposition to online access?
11 A. No. As a member of the Online Access
12 Subcommittee, I would say he wasn't opposed to online
13 access. He was concerned about making sure that
14 information that was released, particularly the
15 closer we came to general public release, was --
16 protected the kinds of interests that we felt
17 necessary to protect. But I couldn't say that he was
18 opposed to accessing the documentation or electronic
19 access.
20 Q. But you don't recall him moving to make a
21 recommendation that the press and the public have to
22 go to the courthouses to obtain access?
23 A. He very well may have, because in 2016,
24 that was probably the best we thought we could do in
25 making the correct balance of interests. It's still

1 true today. You can go to the courthouse and do
2 that.
3 Q. Sure. You have Exhibit 3 in front of you,
4 the Tyler contract?
5 A. I don't know where it is.
6 Q. It may be on that ledge right there where
7 the exhibits are.
8 A. I see. I have some OAS minutes. I only
9 have D and E. Beyond that, the OAS minutes --
10 Q. You do not have Exhibit 3?
11 A. Do not.
12 Q. Okay. Let me just see if I can ask you
13 from memory, see how far we get.
14 A. I signed the contract.
15 Q. Yeah, let me ask you that. You signed the
16 re:Search agreement with Tyler?
17 A. The re:Search agreement.
18 Q. Correct.
19 A. Yes.
20 Q. The one that was implemented, is it still
21 ongoing, that contract?
22 A. Oh, yes.
23 Q. And that's a three-year term, with
24 automatic renewals?
25 A. Subject to notification of nonrenewal, yes.

1 Q. All right. And you heard Mr. Girdner
2 testify about the revenue split that was negotiated
3 between Tyler and AOC; is that correct?
4 A. Yes.
5 Q. Did he describe it correctly?
6 A. Yes, he read it.
7 Q. All right. And so Tyler shares with AOC
8 revenues generated from certain value added features
9 and services provided; correct?
10 A. To the extent they succeed in marketing
11 those to attorneys, yes.
12 Q. Have they been successful?
13 A. No.
14 Q. And that's for attorneys -- you said
15 attorneys, but there are other features; correct?
16 A. I believe the subscription service may be
17 limited to attorneys, but I haven't looked at the
18 contract in a while. I know that they are not
19 generating anything anyone would call significant
20 revenue from that.
21 Q. All right. And you understand SOPA tier 1
22 sealed documents are not made available; correct?
23 A. That is. They are not allowed to be
24 accessed, that's correct.
25 Q. And actually, sealed documents are not --

1 at least sealed complaints to the originating
2 document for a case is not e-filed; correct?
3 A. I think you're right about that. They
4 shouldn't be. You could try, but I don't think you'd
5 succeed.
6 Q. Well, are you aware of any instance in
7 which one was?
8 A. I am not. But I'm not operating this
9 system myself.
10 Q. Understood. But you're not personally
11 aware of it ever happening?
12 A. No.
13 Q. Now, this timeline chart, I think you have
14 in front of you, Defendant's Exhibit A?
15 A. No. I have the structure of courts, and I
16 have an OAS meeting minutes from November of 2016.
17 Unless it's in here.
18 Q. I think they're disappearing on us. I'm
19 not sure where they're going, but anyway --
20 A. The one that Ms. Orchard was using?
21 Q. Yeah, the timeline document.
22 A. There is a copy over there. I don't think
23 there is one here. I'm sorry.
24 Q. Is that the actual exhibit?
25 MR. EDWARDS: If I may approach, Your

1 Honor?
2 THE COURT: You may.
3 A. I don't think she took it with her, but I
4 don't have one.
5 Q. We've got plenty of copies.
6 Now, you were asked about where in this
7 point in the process of this timeline that Courthouse
8 News was requesting access. Do you recall that?
9 A. Yes.
10 Q. And you said when they press the submit
11 button; right?
12 A. My understanding.
13 Q. I'm sorry?
14 A. Yes.
15 Q. And you understand that, in fact, it's a
16 two-stage level that we're requesting it, after it's
17 received by the court's review queue?
18 A. So, if I understand your question, you
19 think I was in the blue box over there that says
20 "submitting," and you really are in the tan box that
21 says, "submitted"?
22 Q. Correct. And the reason I'm asking for
23 clarification is you testified that you thought that
24 we were wanting access when the submit button is
25 pressed. And I just want to clarify with you that,

1 no, that's not, in fact, when we're requesting
2 access. It's after it's received in the queue; it
3 may take minutes, but it's after it's received in the
4 queue, which in our mind is parallel to being
5 received by the clerk in a paper filing world.
6 A. Yes, I understand now that's your position
7 it's before the clerk reviews, but after it lands at
8 the clerk's --
9 Q. So we're not grabbing into a mailbox, as
10 the analogy you gave, where we're snatching out of
11 the mailbox or anything like that. It's after it's
12 been received by the clerk's office. Understood?
13 A. If my analogy isn't apt, then use something
14 else. But I understand what you're saying. It's
15 after they press a button, when it comes to the
16 clerk's computer, at that moment, which is probably
17 close to simultaneous, but that's what you're talking
18 about.
19 Q. When it's received by the clerk's office --
20 A. Um-hum.
21 Q. -- correct?
22 Now, you indicated you had several problems
23 with access we're requesting. And you mentioned some
24 things that I consider -- maybe you disagree -- that
25 are administrative tasks, clerical tasks, like case

1 number assignment, verifying the file number is
2 correct, clerical type tasks. Would you agree that
3 that's the majority of what you were talking about?
4 A. Yes.
5 Q. And then you mentioned a couple other
6 things. You mentioned personal private identifier
7 information. Do you recall that?
8 A. Yes.
9 Q. And you agree with me that the state rules
10 place the obligation not to file PPI unredacted on
11 e-file; correct?
12 A. They tried to, and they are written that
13 way.
14 Q. But that is the rule?
15 A. That is the rule.
16 Q. And the rule also says the court clerk is
17 not required to screen court records released to the
18 public to prevent disclosure of protected personal
19 identifier information; correct?
20 A. I think it actually says they're not
21 required to reject because it has that information.
22 Q. I'm happy to show you --
23 A. That would be helpful.
24 MR. EDWARDS: May I approach?
25 THE COURT: You may.

1 Q. It's in the box here. And for the record
2 this is NMRA Rule 1-079 D 2 in the box at the top.
3 Does that refresh your memory?
4 A. Yes, I think this record also says it
5 doesn't necessarily govern electronic filing. But
6 I'd have to go through it. In any event, yes, that's
7 what it says, that "The court clerk is not required
8 to screen court records released to the public to
9 prevent disclosure under this rule."
10 Q. So no duty imposed by state law on the
11 clerk's office to review for PPI; correct?
12 A. No duty under that rule, I would say. They
13 are -- I mean, as I said, there were other ways, and
14 I mentioned a particular statute that we, the courts
15 are obligated, and therefore the clerks are obligated
16 to follow.
17 Q. Right. But that rule specifically says
18 you're not required to; correct?
19 A. Under that rule, which has to do with the
20 sealing of records, I think. But I'd have to look at
21 it again.
22 Q. Well, actually, the whole section is
23 "limitations on public access." It includes --
24 A. Okay.
25 Q. And there is a section specific to

1 protection of personal identifier information. And
2 that's what we're reading from?
3 A. It is, yes. Go ahead, sorry.
4 Q. Okay. And you said pro se people, pro se
5 individuals, cannot file e-file; correct?
6 A. Right. What we call SRLs, they can't
7 e-file. They can now via email file, sort of, but
8 they're not part of the File & Serve system.
9 Q. Okay. So that's off the table. They file
10 in paper form; right?
11 A. Yes, for now that's right -- or by email.
12 Q. So all we have are attorneys e-filing with
13 Odyssey File & Serve. They can't file sealed
14 documents; correct?
15 A. They are not supposed to, that's right.
16 Q. Complaints, sealed complaints. They have
17 the obligation under the rule we just read to redact
18 PPI; correct?
19 A. Yes, that is correct.
20 Q. The clerks don't have that duty, correct,
21 we just read that?
22 A. That's right.
23 Q. Now, you talked about how a local rule
24 could be adopted to reject pleadings that had PPI
25 unredacted in it; correct?

1 A. Yes.
2 Q. Are you aware of any such local rule that
3 exists today?
4 A. I am not.
5 Q. So let's talk about the safeguards that
6 exist to meet the government interests of protecting
7 confidential information. Now, we know on the front
8 end, we've spoken about the e-filing interface that
9 the attorneys use. There is not a case type for a
10 sealed document. And as far as you know, there is
11 not a way for them to filed a sealed complaint;
12 correct?
13 A. I agree.
14 Q. So that's one safeguard against
15 confidential information potentially getting into a
16 press review queue; correct?
17 A. Yes.
18 Q. And you understand a press review queue is
19 limited to e-filing, that's all we're asking for;
20 right?
21 A. Yes.
22 Q. Not paper documents that have been scanned?
23 A. Yes. I don't know how you'd get access to
24 those, but yes.
25 Q. So you've got specifically protections

1 here. On the front end of the e-filing service
2 manager, only attorneys, so no paper, pro se things
3 being filed, no paper sealed documents, no paper
4 confidential information. Only what's being e-filed.
5 A. On the complaint filings, yes.
6 Q. We talked about the PPI. And then SOPA has
7 the nondisclosure agreement that your office requires
8 people to sign; correct?
9 A. Yes, sir.
10 Q. And if you were already fulfilling your
11 duty to protect against confidential information
12 given to SOPA, why would you need an NDA?
13 A. Experience shows that people file a lot of
14 PPI that the rule tells them not to. Now, you could
15 argue, well, you should sanction the attorneys, and
16 maybe some of that happens. But it's a very common
17 matter that things are in there that shouldn't be in
18 there.
19 Q. Right. And that's why you have the
20 failsafe of NDA?
21 A. That's one reason, yes.
22 Q. And you could also have an NDA for a press
23 review queue as a failsafe; correct?
24 A. We sure could.
25 Q. And you said you spoke to someone at Tyler

1 about this $108,000 charge?
2 A. I have an email from Ms. Reilly telling me
3 it would be 108,000 -- well, actually telling someone
4 who works for me, but I got it as a copy.
5 Q. So Ms. Reilly, the same individual who said
6 a few years ago there is no charge is now saying it
7 will cost you 108,000?
8 A. That is correct.
9 Q. Did she ever explain the basis of that
10 charge?
11 A. I never asked her. I haven't explored what
12 would be required technically to do this. I do know
13 that there are press queues in other states. I don't
14 know exactly how they operate.
15 I do know that I was told in 2018, there
16 was no additional charges for those states. I don't
17 know their contracts were amended to include it
18 within all the things they were already paying for.
19 I just don't know. But I do know that I was told
20 recently by Ms. Reilly -- well, she communicated to
21 us on behalf of Tyler that it would cost $108,000.
22 Q. All right. And is Greg Saunders still with
23 your office?
24 A. No, he is not.
25 Q. And Mr. Saunders was someone I think in

1 your memo back in 2016, you indicated: It's great,
2 Tyler -- it's not going to take much efforts
3 configuring the database. Greg won't have much work
4 to do. Do you recall saying that?
5 A. I do not. But I'm an optimist, l might
6 have said that.
7 Q. And if the press queue is already in
8 existence, Tyler has rolled it out numerous times,
9 they configure it, sitting here today can you even
10 tell this Court what effort would require for AOC to
11 implement?
12 A. Not beyond what I've already described.
13 I do want to emphasize that the point at
14 which we provide access to CNS and others is
15 determined not because it would be so much more
16 expensive to do it earlier, although there would be
17 effort in changing it. If you change a system it
18 always takes some effort. And possibly $108,000.
19 But because we think it serves the interests that we
20 feel are protected by at least waiting until there
21 has been a review through the clerk review.
22 Q. Understood. Now, do you recall whether
23 your staff questioned Ms. Reilly about why they were
24 charging, when just in August of this year they
25 provided the same queue to San Mateo, California, at

1 no charge?
2 A. I'm pretty sure my staff didn't know or can
3 confirm that about San Mateo, and that they didn't
4 ask, no.
5 Q. So no follow-up to figure out the basis of
6 this charge?
7 A. Not that I'm aware of.
8 MR. EDWARDS: I'll pass the witness, Your
9 Honor.
10 THE COURT: Thank you, Mr. Edwards.
11 Ms. Lecocq, do you have anything further?
12 MS. LECOCQ: No.
13 THE COURT: All right. Mr. Pepin, you may
14 step down. Thank you for your testimony.
15 All right. Ms. Lecocq, do defendants have
16 their next witness or evidence? Mr. McDonald?
17 MR. McDONALD: Yes, Your Honor. Suzanne
18 Winsor is in the Zoom waiting room right now.
19 THE COURT: All right. We'll see if we can
20 find her.
21 MR. McDONALD: Ms. Winsor, are you in the
22 hearing now?
23 THE WITNESS: Yes, sir. There we go.
24 THE COURT: All right. Ms. Winsor, if you
25 will stand and raise your right hand, Ms. Rotonda, my

1 courtroom deputy, will swear you in.
2 SUZANNE WINSOR,
3 after having been first duly sworn under oath,
4 was questioned and testified as follows:
5 DIRECT EXAMINATION
6 THE COURT: All right. You may be seated,
7 Ms. Winsor. Ms. Winsor. Mr. McDonald.
8 BY MR. McDONALD:
9 Q. Ms. Winsor, thank you for appearing today
10 remotely. Please introduce yourself for the record.
11 A. My name is Suzanne Winsor.
12 Q. What is your job, Ms. Winsor?
13 A. I'm the IT Odyssey support manager.
14 Q. And how long have you been in this
15 position?
16 A. Three years.
17 Q. And let me go back really quick. Who do
18 you work for as the IT Odyssey support manager?
19 A. I work for the Supreme Court of the State
20 of New Mexico, Administrative Office of the Courts,
21 Judicial Information Division.
22 Q. And how long have you been in the Judicial
23 Information Division?
24 A. 22 years.
25 Q. And what were you doing in your previous

1 positions at the division?
2 A. I have had several titles over the years.
3 But I was what's currently called a business analyst.
4 So I designed court processes. I designed reporting.
5 I did training. And I worked a lot with the case
6 management system. Odyssey is the second case
7 management system that I've worked with.
8 Q. Okay. And in your current position, what
9 would you describe your duties as right now?
10 A. So I am a manager of a team with 15 people,
11 and that team supports the service set or what used
12 to be called the Help Desk, Odyssey. And we do both
13 configuration of Odyssey and also design business
14 processes and reporting with Odyssey. We also
15 support File & Serve. Support of File & Serve is a
16 little different, because the Judicial Information
17 Division does not host File & Serve. So when we need
18 configuration changes or new users added or
19 performance problems solved, we have to work directly
20 with Tyler Technologies, who hosts the application.
21 We also support the Secure Odyssey Public Access
22 application, or SOPA as we call it. Also, the
23 Odyssey Public Access application or OPA, as we refer
24 to it. Guide and File, which is an application
25 designed for self-represented litigants, to help them

1 create forms or pleadings to be filed with the court.
2 We provide all of the Odyssey and File & Serve
3 training for the court. We also support Judge
4 Edition, which is an application designed for the
5 judges to help them run their docket in the
6 courtroom, and be able to see documents, out-of-court
7 cases. We also design all the reporting for the
8 courts, including (Zoom audio garbled.)
9 THE COURT: Ms. Winsor, it got garbled
10 there. So go back to when you said we also support
11 judges with the application designed for judges to
12 help run their docket. Repeat from about there on.
13 A. Okay. We also support an application
14 called Judge Edition, which is specifically designed
15 for judges in the courtroom. While they are running
16 their docket, it allows them to make notes about
17 cases and to pull the documents out of the Odyssey
18 and look at them while they're in court. We also
19 design and work with the developers at the Judicial
20 Information Division on reporting, not only for the
21 courts, but also for the legislature and for other
22 agencies like the FBI. And we run the Court Data
23 Quality Program.
24 Q. Thank you, Ms. Winsor.
25 So how often would you say you engage with

1 New Mexico's e-filing system on a weekly basis?
2 A. Oh, myself and my team engage with e-filing
3 on a daily basis.
4 Q. So let's back up really quick and chat
5 about that system. We already heard from Ms. Orchard
6 about how documents will navigate through it, but I'd
7 like to key in on the first and last steps with you.
8 So what is the last step that a clerk will take in
9 the e-filing process?
10 A. They click a button that says "Accepted."
11 Q. What does that entail? What would that
12 cause?
13 A. So once that button is clicked, the data
14 and the documents that reside in the e-filing
15 application upload into Odyssey. And depending on
16 whether it's an initial filing or a subsequent
17 filing, more or less happens. So if it's an initial
18 filing, a case number is assigned and a new case is
19 created, parties are created. And then the filing
20 code becomes an event code that has the document
21 attached to it.
22 And if it's a subsequent filing, usually
23 all that happens is an event code is created and the
24 document is attached to it. Once in a while a party
25 is added or an attorney is added based on what the

1 attorney who -- or attorney's staff who did the
2 filing entered into the e-filing application.
3 Q. And at that point, is there a program that
4 someone can view that document on?
5 A. Well, what happens -- oh, yes, yes. The
6 data appears in Odyssey for the court staff. It also
7 will then appear in SOPA and OPA. Because SOPA and
8 OPA are not based on a different database, they pull
9 their data directly out of Odyssey.
10 Q. Okay. And could a member of the press go
11 through the SOPA program to view the document at that
12 point?
13 A. Yes.
14 Q. So how long does it take for a document to
15 become available through SOPA, after the clerk hits
16 that accept button?
17 A. So we have just -- or Tyler Technologies
18 has just changed the way the program works a little
19 bit. They used to store the data in the Tyler
20 Technologies' Data Center. And on September 15th,
21 they moved our database that feeds File & Serve into
22 the AWS, which is the Amazon cloud. So I asked for
23 new numbers last week. And it takes about a minute.
24 Now, there are occasions when there is a heavy volume
25 of filing. The example they gave me was after a

1 three-day weekend, or just if we've had a lot of
2 filings come in overnight or over the weekend, and
3 then it might take as long as three or four minutes.
4 Q. Okay. And can someone only see that
5 document if they have a SOPA account?
6 A. No. We also have the application we call
7 OPA or Odyssey Public Access that resides on kiosks
8 in the lobbies of the courthouses. And if someone
9 were to go down to the courthouse and sit at one of
10 those kiosks, they could also pull up that data.
11 Q. And is this data available on those kiosks
12 as quickly as it's available on SOPA remotely?
13 A. Yes, it is.
14 Q. Okay. So I want to go back to the first
15 bit of the filing process now. Who are the first
16 people to see a document when an attorney submits it
17 through the e-filing program?
18 A. At this point in time, the data goes into
19 queues that the clerks can access. And the clerks
20 will access this data during court business hours.
21 Q. And could anybody besides the court clerk
22 access the data at that point?
23 A. Not at that point.
24 Q. We've been hearing today about a thing
25 called a press queue. Are you familiar with that

1 concept?
2 A. With the concept, yes.
3 Q. And could you describe how you're familiar
4 with that? How did you hear about the press queue?
5 A. Yes, I inquired about it to Tyler
6 Technologies, and they sent me a marketing brochure.
7 Q. Could you describe, based on your knowledge
8 of it, what you believe a press queue is?
9 A. I believe that it is a way for somebody to
10 have a login and a password and to be able to access
11 the documents either before or at the same time the
12 clerks are accessing the documents and the data that
13 comes in with the e-filing.
14 Q. Okay. So just to reiterate there, would
15 the press -- would an individual or a member of the
16 press with access to the press queue system
17 potentially be able to review this data before a
18 clerk gets to see it?
19 A. Yes.
20 Q. And this is a bit of a hypothetical, if I
21 can walk through it properly. Suppose an attorney
22 submits a document at 10:00 p.m. when the clerks are
23 out of the office. Would the press be able to see
24 that document before the clerks review it in the
25 morning?

1 A. That is my understanding.
2 Q. Okay. Thank you. And do you believe,
3 based on your knowledge of the court system and the
4 e-filing system, that this would cause any potential
5 problems for litigants?
6 A. Yes. So there are a couple of problems
7 that it may cause. First of all, sometimes we return
8 filings to the person who filed them, the attorney or
9 the attorney's staff. And we return them for a
10 number of reasons. Sometimes the pleading isn't
11 signed, sometimes it's lacking something. This is
12 the same process we followed when people came down to
13 the courthouse and walked up to the window and handed
14 pleadings to the clerks. The clerks have a whole
15 list of things to check for. They still have that
16 list. And if the things that they were authorized to
17 check for were lacking, they would hand the pleadings
18 back to the person filing them.
19 The other thing that can happen is that
20 attorneys rarely go through the filing themselves.
21 They often have their staff file them. And every so
22 often they'll file the wrong thing. And it's usually
23 not signed, and that's how we know they filed the
24 wrong thing. And those also get returned to the
25 attorney or their staff.

1 Q. Okay. And so for this press queue, would
2 only journalists have access to it, or to your
3 knowledge, would there be a way for the general
4 public to access this press queue?
5 A. What it says is that you have to have a
6 login and a password. It doesn't say that we would
7 only be allowed to give access to the press. So it
8 has occurred to me from reading the marketing
9 literature that we could give access to it to anyone
10 that the Supreme Court approves us giving access to.
11 And, sir, I forgot one more thing from the
12 previous question. May I go ahead and add it?
13 Q. Please.
14 A. So another process that takes place in the
15 courts is that attorneys will file a motion to seal,
16 and they'll file the document at the same time. The
17 clerks don't have authorization to seal those. What
18 they do is they make sure that the judge gets both
19 the motion to seal and the document. And then the
20 judge rules whether to seal the document or not, and
21 will issue an order. And then the staff will put it
22 into Odyssey in a sealed state. So one of my
23 concerns about people being able to see documents
24 before they've been processed by the court is that
25 some of the documents that need to be sealed may get

1 out before when they shouldn't.
2 Q. Okay, thank you. So do you know if New
3 Mexico has a press queue system?
4 A. No.
5 Q. Do you know how much it would cost to
6 implement and to run the system?
7 A. So again, in my role as IT Odyssey support
8 manager, I queried Tyler Technologies, and I was told
9 it would cost $108,000.
10 Q. And is that just the upfront cost or does
11 that include administration of the program?
12 A. I believe that's an annual cost that would
13 include administration of the program. We don't call
14 it administration, we call it support of the program.
15 Q. Okay.
16 A. I still believe there would be support
17 required from my team as well.
18 Q. Okay. So, to your knowledge, have
19 journalists ever been able to access pleadings before
20 they were accepted by a clerk?
21 A. No. And let me explain the system that
22 existed before e-filing. For the first 19 years I
23 worked for the Judicial Information Division, I was
24 housed at the Second Judicial District Court. And I
25 worked with the court on training and business

1 processes, and anything else they needed help with
2 that involved the case management system. So I was
3 witness to what happened with the press before we had
4 e-filing. And the process went like this: The
5 people who were filing pleadings -- and they could
6 be -- often the attorneys would send runners or they
7 could be self-represented litigants -- would stand in
8 line in front of the window at the clerk's office.
9 And when it was their turn, they would hand their
10 pleadings to the clerk. And the clerk would examine
11 them for signatures, and everything. They had a last
12 of things they looked for. And then, if they had all
13 the requirements on the list, then they would file
14 stamp them and put them in a basket to be docketed.
15 Now, before we had Odyssey, oftentimes the
16 court would be two or three weeks behind in their
17 documents (interruption).
18 Oh, I'm sorry, they're doing a fire alarm
19 test here in the hotel, so I'm sorry. That startled
20 me when they came and announced that.
21 Let me go on. So because for a while
22 there, I think it was maybe a couple of years, they
23 were behind on such a regular basis that they had
24 filing cabinets that they built. They weren't the
25 filing cabinets where you put hanging folders in.

1 They were the type of cabinets where you usually
2 store office supplies. And they had the shelves
3 labeled with dates on them. And then they would have
4 piles that came in on each date. And they would
5 allow the press to come in and look through those
6 pleadings. They also often had to look through the
7 pleadings to find something the judge needed for a
8 hearing that day. So they also kept logs of all of
9 the pleadings as they came in and what shelf they had
10 put them on.
11 Q. So back when that was the system, when
12 there was stacked documents on a shelf, were clerks
13 at least able to begin their review process to make
14 sure things could be sealed if necessary before a
15 journalist came back behind the counter to look at
16 those documents?
17 A. Yes. If there was a document that came in
18 with a motion to seal, it was routed immediately up
19 to the judge's office for review. And then it came
20 back down to the clerk's office. And those were
21 usually docketed promptly and sealed appropriately
22 and put into the file.
23 In those days, the way we sealed a document
24 was that it was put in a manila envelope and taped
25 shut, and then the manila envelope had holes punched

1 in it, and it was put in the court file along with
2 the other pleadings.
3 Q. So sticking with this time period, was
4 there any process in place besides that initial clerk
5 review to ensure that no one came back behind the
6 desk and saw things that should be sealed that were
7 not yet?
8 A. No.
9 Q. And has this issue been resolved since
10 then?
11 A. I think what you're getting at is nowadays,
12 things are processed much more quickly. Odyssey and
13 e-File & Serve have led us to efficiencies where most
14 pleadings are processed within a day. Occasionally,
15 especially around the holidays, and if we have a lot
16 of people out sick, they may get two or three days
17 behind. But there are no courts in the state of New
18 Mexico that are still weeks behind in their
19 docketing.
20 COVID may have affected that a little bit,
21 but it's not anywhere near the way it was with the
22 Legacy Case Management System.
23 Q. And to your knowledge, is there other
24 benefits of restricting access to only clerks before
25 the acceptance stage, before documents are accepted?

1 A. No. Just to protect the ones that need to
2 be sealed. And again, to make sure that they meet
3 the minimum requirements.
4 Q. Okay. Let me rephrase that. I apologize,
5 Ms. Winsor. Are there benefits to -- and it sounds
6 like you listed those in your exhibit. I want to
7 make sure I'm asking it properly this time. Are
8 there benefits to having clerks be the only people to
9 see documents as soon as they're accepted, and not
10 members of the public?
11 A. You mean before they're accepted?
12 Q. Yes.
13 A. So I've already explained this, but I'll
14 reiterate. The number one is the sealing issue, and
15 that's probably the most important. The other is
16 that sometimes things are filed that lack the minimum
17 requirements, and those are returned to the attorneys
18 or their staff. Basically, if we're returning it to
19 the attorney, it's sometimes their staff that sees it
20 first and not the attorney. Or things can be filed
21 by accident. And those usually aren't signed, so it
22 gives us a big clue they were filed by accident. And
23 those also get returned.
24 Q. Okay. Thank you. As a final question, Ms.
25 Winsor, you mentioned that e-filing has become much

1 more efficient lately. To your knowledge, is there
2 any step that could be cut from this process to try
3 and speed everything up, while keeping documents
4 secure and keeping the courts running properly?
5 A. Not with current technology, no.
6 MR. McDONALD: Thank you, Ms. Winsor.
7 Your Honor, that's all I have.
8 THE COURT: All right. Thank you, Mr.
9 McDonald.
10 Mr. Edwards, do you have cross-examination
11 of Ms. Winsor?
12 CROSS-EXAMINATION
13 BY MR. EDWARDS:
14 Q. Good afternoon, Ms. Winsor. How are you?
15 A. I'm fine. Good afternoon.
16 Q. I just have a few questions today. I want
17 to go over a few things you mentioned. You say, when
18 the e-filer user hits the submit button, it goes into
19 queues; is that right?
20 A. What happens is that it gets uploaded into
21 a database that sits in the Amazon cloud. It's in
22 the Amazon cloud since the 15th of September. Before
23 that, it was in the Tyler Data Center they called it.
24 And because it is sitting in that database, it is
25 visible to the clerk through a queue setup.

1 Q. And that queue -- when it hits that queue,
2 is that when a notice is sent to the e-filer, the
3 first notice?
4 A. Yes, the first notice is sent as soon as
5 the uploading successfully happens.
6 Q. And that notice to the e-filer is telling
7 them that the e-file went through and it's in the
8 clerk's queue?
9 A. What it's really telling them is that it's
10 now stored in the database.
11 Q. And another way of saying that is the
12 database is a queue for the clerk to review; correct?
13 A. Actually, it's a lot more than that,
14 because it keeps a history. It also keeps a history
15 of the email that is sent and whether or not the
16 email has been opened. So, yes, it's that and more.
17 Q. It's that and more. Okay.
18 Now, you mentioned you spoke -- I'm sorry,
19 you're in communications with a Tyler representative
20 about the Press Review Queue recently?
21 A. Yes.
22 Q. Did you speak to a representative?
23 A. No, I emailed.
24 Q. What did your email say?
25 A. I asked what it would cost to set up the

1 Press Review Queue. It would have been a misnomer to
2 say purchase it, because it's one of those
3 applications that they host, we don't. So,
4 basically, they would set it up, and they would still
5 have control over it, and New Mexico would have the
6 use of it.
7 Q. All right. So it's a software tool already
8 in existence and they would have to configure it for
9 you?
10 A. There is more to it than that, but yes,
11 that would be a part of it.
12 Q. All right. And was this Colleen Reilly
13 that you emailed?
14 A. I did.
15 Q. And she responded?
16 A. She did.
17 Q. Have you produced that email thread to the
18 Attorney General's Office?
19 A. I did.
20 Q. All right. The marketing brochure, you
21 said she sent one to you for the Press Review Queue?
22 A. It was attached to the same email, and I
23 also provided that.
24 Q. I haven't seen either one, so I was just
25 curious if you had provided it to counsel. And you

1 have?
2 A. I have.
3 Q. Okay. Now, you said -- just to
4 summarize -- two essential reasons why you don't
5 personally like the Press Review Queue. One is --
6 you said that sealed documents is one issue; you have
7 a risk, potentially, of sealed documents getting out.
8 And then other one is clerical mistakes that are
9 made, they're returned, and have to be corrected. Is
10 that fair?
11 A. That's fair.
12 Q. Okay. Now, you understand that sealed
13 initial complaints, civil complaints, can't be
14 e-filed through the Odyssey File & Serve; correct?
15 A. That is true. We do not, at this point in
16 time, allow cases that are filed upon initiation to
17 be filed through File & Serve. But those include
18 abuse/neglect cases. Conservator/guardianship cases
19 are sealed in a special way upon initiation, because
20 we have to make the docket sheets available to the
21 public, but not documents. So that one is a little
22 more tricky. Also mental health cases. And there
23 are a few more case types. But yes, anything that by
24 statute is sealed upon initiation, is not allowed to
25 use the e-File & Serve system.

1 Q. And you understand -- or maybe you don't --
2 that what Courthouse News is requesting is only
3 e-filed civil public complaints that have been
4 filtered into the Press Review Queue? Do I have that
5 understanding?
6 A. So the Press Review Queue, it is my
7 understanding from that marketing brochure, that the
8 Press Review Queue would give you access to all
9 documents filed, both initial filings and subsequent
10 filings.
11 Q. But you also understand it can be
12 configured to filter out nonpublic documents;
13 correct.
14 A. It does say that. And that would take a
15 lot of work --
16 Q. I'm not asking you about the work. I'm
17 asking you --
18 A. -- on our part, because that's not the way
19 things are set up at the moment.
20 Q. -- if you had the capability -- please
21 answer my question. My question is you understand
22 there is a configuration that Tyler can make to
23 screen or filter out nonpublic filings; correct?
24 A. I do.
25 Q. And so this whole concern over sealed

1 documents wouldn't even apply if that configuration
2 is made; correct?
3 A. No, I would still be concerned, because I
4 see the filings that come in, and a lot of times the
5 codes and that that are chosen by the attorney staff
6 are incorrect. So I would still have a concern.
7 Q. Have you personally ever seen a sealed
8 initial complaint in a civil proceeding that was
9 filed and ended up in SOPA?
10 A. I have not looked into that.
11 MR. EDWARDS: All right. I'll pass the
12 witness.
13 THE WITNESS: I can't answer that question.
14 MR. EDWARDS: Thank you, Your Honor.
15 THE COURT: All right. Thank you, Mr.
16 Edwards.
17 Mr. McDonald, do you have redirect of
18 Ms. Winsor?
19 MR. McDONALD: Thank you, Your Honor.
20 THE COURT: Mr. McDonald.
21 REDIRECT EXAMINATION
22 BY MR. MCDONALD:
23 Q. Ms. Winsor, thank you. I just want to
24 briefly expand on the final question you were asked
25 on cross there, to make sure I properly understand

1 it. So is there a way that an e-filer, an attorney
2 or their staff, could submit an initial filing for an
3 abuse/neglect case without properly labeling it as
4 such, so that it ends up in the public queue?
5 A. Well, I have seen, and I've helped court
6 staff clean up cases where the attorney purposefully
7 filed something in an incorrect manner so that they
8 could e-file it, and then they called the court and
9 asked them to change the coding on it. So actually,
10 I have.
11 Q. Okay. Thank you. And would that not have
12 been -- that error or that problem not have been
13 fixed without human intervention from the clerk's
14 office or from your office?
15 A. That's correct. In fact, it was a lot of
16 work to fix it.
17 MR. McDONALD: Thank you, Ms. Winsor.
18 That's all I have.
19 THE COURT: Thank you, Mr. McDonald.
20 Mr. Edwards, do you have further questions?
21 MR. EDWARDS: Just one question.
22 RECROSS-EXAMINATION
23 BY MR. EDWARDS:
24 Q. Ms. Winsor, in that one instance you just
25 talked about, the attorney intentionally did it;

1 right?
2 A. Yes.
3 MR. EDWARDS: All right. Pass the witness.
4 THE COURT: Anything further, Mr. McDonald?
5 MR. McDONALD: I'm through, Your Honor.
6 THE COURT: All right. Ms. Winsor, you may
7 step down. Is there any reason that Ms. Winsor
8 cannot be excused from the proceedings, Mr. McDonald?
9 MR. McDONALD: No, Your Honor.
10 THE COURT: Can she be excused?
11 MR. EDWARDS: Yes, Your Honor.
12 THE COURT: All right. You're excused from
13 the proceedings. Thank you for your testimony.
14 THE WITNESS: Thank you.
15 THE COURT: All right. Do the defendants
16 have their next witness or evidence?
17 MR. McDONALD: Yes, Your Honor. Monica
18 Baca should be in the hallway now.
19 THE COURT: Ms. Baca, if you'll come up and
20 stand next to the witness box on my right, your left,
21 before you're seated, my Courtroom Deputy,
22 Ms. Rotonda, will swear you in.
23
24
25

1 MONICA BACA,
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:
4 DIRECT EXAMINATION
5 THE CLERK: Please be seated, and please
6 state your name for the record.
7 THE WITNESS: My name is Monica Baca.
8 THE COURT: Ms. Baca. Mr. McDonald.
9 MR. McDONALD: Thank you, Your Honor.
10 BY MR. McDONALD:
11 Q. Ms. Baca, thank you for being here today.
12 Would you please let the Court know your job?
13 A. I'm sorry, could you repeat that?
14 Q. I apologize. Can you please state your job
15 for the record?
16 A. Yes, I'm a Deputy Court Executive Officer
17 with the Second Judicial District Court.
18 Q. And how long have you been in this
19 position?
20 A. Two years, about two years.
21 Q. And how long have you been working in the
22 court system?
23 A. I've been with the courts over 16 years
24 now.
25 Q. And what are your duties in your current

1 position?
2 A. So I oversee the divisions of the clerk's
3 office.
4 Q. And how many employees would you say you
5 supervise in that role?
6 A. About 110 employees.
7 Q. And what are some of their titles, what
8 kind of employees do you supervise?
9 A. So we have three court managers; we have
10 eight supervisors; 12 lead workers. And right now
11 about 75 clerks.
12 Q. And how long would you say it takes to
13 fully train a new clerk?
14 A. It takes about a year.
15 Q. And how many divisions do you oversee?
16 A. We have eight divisions in our clerk's
17 office.
18 Q. Can you list them, please?
19 A. Yes. We have civil, criminal, domestic
20 matters, domestic violence, child support
21 enforcement, children's court, special services, and
22 X files, which is our records and archives division.
23 Q. How many pleadings would you say your
24 office processes daily?
25 A. We can process anywhere from 1800 to 2000 a

1 day, depending on the day.
2 Q. Do you have a ballpark figure for the last
3 fiscal year how many pleadings you processed?
4 A. Yes. So the last fiscal year we processed
5 over 444,000 pleadings.
6 Q. Is that a normal amount for a year?
7 A. That's a little bit low from previous
8 years. Usually, it's a little higher.
9 Q. Do you know why it might have been lower
10 this year?
11 A. COVID, you know, having just slowing of
12 filings.
13 Q. Do you know how that compares with
14 statewide filing numbers or numbers in other
15 districts?
16 A. I know we handle about 40 percent of the
17 caseload in New Mexico. I'm not sure how that
18 compares, but we do handle about 40 percent.
19 Q. Thank you. So Ms. Baca, are you familiar
20 with the e-filing process?
21 A. Yes, I am.
22 Q. So could you please take us through this
23 process step by step from the perspective of the
24 clerk's office?
25 A. Yes, of course. So, of course, it starts

1 with the attorney uploading and submitting a pleading
2 for filing. At that point, the clerks log onto the
3 system and begin our review process. So we review
4 documents for legibility, completeness, for
5 confidentiality. We ensure that it's -- you know,
6 that it's filed, if it's an initial filing, the
7 correct category was selected, the correct case type
8 was selected, and stuff like that.
9 Q. Okay. So if a pleading passes this review
10 process, what does the clerk do at that point?
11 A. So once we complete the review process,
12 we'll accept the pleading, and it then is transferred
13 over to our Odyssey, which is our case management
14 system.
15 Q. And is there a program that an attorney or
16 journalist can use to view that pleading at that
17 point?
18 A. Yes. There is SOPA, which is our Secure
19 Odyssey Public Access program.
20 Q. Okay, thank you. And just to reiterate --
21 this is a bit redundant -- but is it the clerk's duty
22 to review those documents before they're uploaded to
23 SOPA?
24 A. Yes.
25 Q. Odyssey, rather.

A. Yes.

Q. So you said that you -- the clerks review documents for things like legibility, completeness, confidentiality. Do clerks review for personal identifier information?

A. No, we do not. Under the rules we're not required to, so we do not review.

Q. Do you know what protected personal identifier information is?

A. Yes, it's all but the last four digits of the Social Security number. It can be a taxpayer identification number, a driver's license number, all but the last year of birth for a person.

Q. And does that mean the clerks don't review for any personal or confidential information?

A. No, we absolutely review for confidential information and other things like that. So we'll go through each page, look for completeness. But then we also review attachments to make sure nothing is included that should be sealed, such is maybe medical records, financial statements, evaluations, and stuff of that nature.

Q. What happens if a pleading does not pass this clerk review process?

A. So if it doesn't pass, they usually return

1 it to the attorney. We'll try and contact them, or
2 we'll just return it with a detailed comment or
3 message saying, you know, these are concerns, or this
4 is what we found, and wait for them to respond or
5 resubmit it, when the corrections are made.
6 Q. Have you personally seen documents that
7 were not approved by clerks?
8 A. Yes, I have.
9 Q. Would you describe a couple of those,
10 please?
11 A. Yes. In one instance, we actually had a PQ
12 case, which is actually a guardianship/conservator
13 case that came through our e-filing system. We, of
14 course, through the review process, realized this was
15 a guardianship case that had to be filed at the
16 counter. And it contained a lot of confidential
17 information.
18 Q. So if not for the clerk's review process,
19 would that document have been exposed to the public?
20 A. Yes, if they don't do that review and just
21 accept it, yes.
22 Q. In your experience, do you believe that
23 would have had negative consequences for litigants?
24 A. I believe so, yes.
25 Q. This may seem redundant again, but could

1 you describe those potential consequences?
2 A. Yes. Now, you have sensitive information,
3 such as somebody's medical records, somebody's
4 financial statements that have now been public or
5 made public.
6 Q. And do you think that also would have had
7 an impact on the administration of the court process
8 as a whole?
9 A. Yes. So everything we do in the clerk's
10 office affects every other division. So we have to
11 make sure that everything is filed under the correct
12 case category, under the correct case type, you know,
13 the process is followed so that we have a clear and
14 correct record, court record.
15 Q. Okay. So would your office ever reject a
16 document for technical issues, such as someone
17 submitting on lined paper or misnumbering pages,
18 things like that?
19 A. No.
20 Q. Would the office ever reject a document for
21 another issue, like the ones you discussed earlier?
22 A. We return documents, yes, if there are
23 issues, if there are attachments that shouldn't be,
24 or that are just concerning, that maybe should be
25 sealed, or things like that.

1 Q. Just to clarify, you said you would return
2 a document, not reject it?
3 A. Yes, we return them.
4 Q. And could you -- once again, this might be
5 a bit redundant -- but would you describe the
6 difference between returning a document and rejecting
7 it?
8 A. So if we return a document, we're notifying
9 the attorney's office of issues or concerns that we
10 were alerted to through the review process. So, you
11 know, we give them the opportunity -- maybe if it's
12 filed in the wrong jurisdiction; maybe their caption
13 clearly states the Thirteenth District and they're
14 filing in the Second, we alert them to that, say, you
15 know, we've noticed this. Are you trying to file it
16 in the Second? Most of time they'll say, Oh, cancel
17 the submission and it is for the Thirteenth or things
18 of that nature.
19 Q. So what would happen if an attorney either
20 is unwilling or unable to correct a document?
21 A. We'll just notify the judge's office, and
22 say, you know, this is what's going on. And just
23 wait for guidance or direction from the judge's
24 office, or just notify that this is the way the
25 document is being filed.

1 Q. Okay. And why does your office go through
2 all these steps in the process here?
3 A. It's very important -- I mean, we take our
4 job seriously. We take an oath to support the
5 Constitution of the United States, the Constitution
6 of New Mexico, to follow local rules and statutes,
7 and we just make sure that every document that comes
8 through the e-filing system, that the fields are
9 filled out correctly. This is for initial quality
10 assurance. All the information that is inputted into
11 the system is going to be transferred over to our
12 case management system. It's a lot easier to perform
13 that quality assurance, and make sure we verify party
14 information is entered correctly, the names are
15 spelled correctly. Like I said, a category, correct
16 case types; filing fees are -- you know, everything
17 is taken care of before we accept it and all that
18 information is transferred over to our case
19 management system.
20 Q. And are there, I guess, reasons beyond what
21 you mentioned there? Is there a directive from any
22 individual or authority asking you to take these
23 steps?
24 A. Yes. We have standard operating procedures
25 that are Supreme Court approved that we need to

1 follow. We have directives from our chief judge. We
2 have judges from our presiding judges, our
3 administrative authority that we have to follow. So
4 there is a lot of processes and procedures out there
5 the clerk's office has to follow.
6 Q. And taking you a large step back regarding
7 the entire process, before the advent of the e-filing
8 system, do you know when the entire review and
9 acceptance process took place?
10 A. Yes. Pre e-filing, all this review
11 processes were taking place at the counter between
12 the clerk and the filer.
13 Q. And were individuals able to ever access
14 these documents before clerks did review them, to the
15 best of your knowledge?
16 A. Not -- no.
17 Q. And in your opinion, is there any step that
18 could be cut from this whole process that would make
19 it go faster without impeding the work of the courts
20 or litigants?
21 A. Not to my knowledge. I mean, the clerk's
22 office is extremely efficient. We make efficiency,
23 productivity our priority. We have to ensure that
24 these steps are taken so the information that's
25 transferred over is correct and accurate.

1 MR. McDONALD: Thank you, Ms. Baca. That's
2 all I have for you.
3 THE COURT: Thank you, Mr. McDonald.
4 Mr. Edwards, do you have cross-examination
5 of Ms. Baca?
6 CROSS-EXAMINATION
7 BY MR. EDWARDS:
8 Q. Good afternoon, Ms. Baca.
9 A. Good afternoon.
10 Q. A few questions for you. Are you familiar
11 with the process of paper filing before the advent of
12 e-filing?
13 A. Yes.
14 Q. And were there instances in which a check
15 would bounce on a filing fee?
16 A. I really didn't deal with the financial
17 aspects. We just took the check in, and then our
18 fiscal department would deal. So if anything
19 happened like that, it would go through our fiscal
20 department.
21 Q. But it would already have been deemed filed
22 at that point; correct?
23 A. Yes, I believe so.
24 Q. Okay. And actually file stamps were placed
25 on the document in the paper filing world, as soon as

they crossed the counter; correct?
A. We would review them before we filed them.
Q. The file stamp -- I'm asking about the file stamp -- would go on the document as soon as it crossed the counter; correct?
A. After a review process.
Q. When you say "review," you mean thumbing through it to make sure it's complete?
A. Yes. We would look through it and check for basically the same information.
Q. Those essential tasks before file stamping are clerical in nature, you'd admit it?
A. Yes.
Q. And I think you said this already, but your office does not check for PPI, personal private information?
A. For personal identifiers, no.
Q. And your understanding is you're not required to; correct?
A. That's correct.
Q. For the sealed initial civil complaints, are those e-filed?
A. Civil complaints, yes.
Q. I'm talking about sealed civil complaints. Are they e-filed?

A. I guess I'm misunderstanding the question.
Q. I'm filing an initial civil complaint, and I'm on Odyssey File Serve and I'm e-filing. Is there a case type or designation for me to file a sealed complaint?
A. No.
Q. All right. So you mentioned this PQ case. And that was an instance where it was incorrectly filed; correct?
A. Yes.
Q. And, in fact, whoever filed it, should have filed it over-the-counter on paper; correct?
A. Yes.
Q. And are you aware of other instances where it was incorrectly filed?
A. Of other cases that have been incorrectly filed?
Q. Well, PQ cases, e-filed?
A. It happens on occasion.
Q. But there is no case type on the e-filing system for PQ; correct?
A. No.
Q. All right. And are you familiar with PACER in the federal system?
A. I am not.

Q. Okay. And you said clerks look at every page of every document for confidential information; is that correct?

A. To make sure it's legible.

Q. Legible, okay. Not for confidential?

A. We also look -- so we are looking for a few things at the same time. We're looking to make sure the document is legible, all the way -- from the beginning all the way to include attachments. Anything like that we'll review it.

Q. Okay. But do you have a list of what's confidential so your clerks will know what it is when they see it?

A. The clerks have been trained. They're seasoned. They know what documents are usually sealed. They don't have a list.

Q. My question is: The clerks do not have a list that they can check when they're looking through every page of 444,000 documents each year, they look at every page, they don't have a list that tells them what is confidential; correct?

A. Correct.

Q. All right. And most of these pleadings that you referred to are subsequent filings; they're not initial complaints; correct?

1 A. That I'm referring to, as far as the review
2 process, or --
3 Q. Well, when you mentioned sealed documents,
4 typically motions for sealing are subsequent filings,
5 not initial complaints; correct?
6 A. We get initial complaints that are also
7 sealed.
8 Q. But they should be filed in paper form;
9 correct?
10 A. No. We have civil cases that are sealed;
11 they're just not sealed yet. We have things like
12 emergency medical petitions that are civil case types
13 that will come through the e-filing system, and we
14 have to wait for the order to seal to be able to seal
15 them.
16 Q. They're filed without a motion or an order?
17 A. Yes, the order is usually sent to the
18 judge's office.
19 MR. EDWARDS: I'll pass the witness, Your
20 Honor.
21 THE COURT: Thank you, Mr. Edwards.
22 Mr. McDonald, do you have redirect of Ms.
23 Baca?
24
25

1 REDIRECT EXAMINATION
2 BY MR. McDONALD:
3 Q. Just a brief question for you. Could
4 somebody put confidential information into a civil
5 complaint filed through the e-filing system?
6 A. Yes.
7 Q. And is there any way to stop that or filter
8 that out without the clerk's office reviewing it?
9 A. Not to my knowledge, no.
10 MR. McDONALD: Thank you, Your Honor.
11 That's all I had.
12 THE COURT: All right. Thank you, Mr.
13 McDonald.
14 Anything further, Mr. Edwards?
15 MR. EDWARDS: No, Your Honor.
16 THE COURT: All right. Ms. Baca, you may
17 step down. Is there any reason that Ms. Baca cannot
18 be excused from the proceedings? Mr. McDonald?
19 MR. McDONALD: No, Your Honor.
20 THE COURT: All right. Mr. Edwards?
21 MR. EDWARDS: No, Your Honor.
22 THE COURT: All right. You're excused from
23 the proceedings. Thank you for your testimony.
24 All right. Do the defendants have their
25 next witness or evidence?

1 MS. LECOCQ: Yes, Your Honor. Our final
2 witness is Judge James Noel, who I believe Mr.
3 McDonald is getting from the hallway.
4 THE COURT: Judge Noel, if you'll come up
5 and stand next to the witness box on my right, your
6 left, before you're seated, my Courtroom Deputy,
7 Ms. Rotonda, will swear you in.
8 JAMES A. NOEL,
9 after having been first duly sworn under oath,
10 was questioned and testified as follows:
11 DIRECT EXAMINATION
12 THE CLERK: Please be seated, and please
13 state your name for the record.
14 THE WITNESS: My name is James A. Noel.
15 And do I need to continue wearing the mask?
16 THE COURT: You can take it off.
17 THE WITNESS: Thank you.
18 THE COURT: All right. Judge Noel. Ms.
19 Lecocq.
20 BY MS. LECOCQ:
21 Q. Good afternoon, Judge Noel.
22 A. Good afternoon.
23 Q. You've already stated your name for the
24 record. Could you tell us what your current position
25 is, please?

A. I'm a District Court Judge for the Thirteenth Judicial District Court of New Mexico.

Q. And remind me, where is the Thirteenth?

A. The Thirteenth consists of Sandoval, Valencia, and Cibola Counties.

Q. And where is the courthouse for the Thirteenth?

A. Well, the one that I work from is the one in Bernalillo, New Mexico, Sandoval County.

Q. Before you -- how long have you been a judge?

A. I was appointed in February of 2020, so about a year and a half.

Q. And what did you do before that?

A. I was a Court Executive Officer for the Second Judicial District Court.

Q. And what does that mean?

A. The Court Executive Officer is, in the case of the Second, what's called the administrative authority for the court. So we had mostly classified staff that worked at the court, although there were some at-will staff that worked for me as well. And that was about 350 people in total. The clerk's office itself was about 120 of the 350, plus or minus.

1 Q. Okay. And what were your duties as part
2 of -- as the Court Executive Officer?
3 A. Day-to-day operations, making sure that the
4 clerk's offices were functioning properly, making
5 sure that we had, you know, the internet -- that
6 systems were operating, phones were operating, the
7 lights were on. I did budget prep, cost control.
8 But, of course, I had staff in different --
9 structurally in different portions of the court. So
10 we had a fiscal division, we had an HR division, and
11 we had a pretrial, and jury. So basically, I mean,
12 the CEO runs the day-to-day operations. What my job
13 was was to make sure that the judges had what they
14 needed to have in order to adjudicate cases.
15 Q. And remind me, again, where is the Second
16 Judicial District?
17 A. Catty-corner, right across the street.
18 Q. Here in Albuquerque?
19 A. Yes.
20 Q. What positions have you held other than the
21 CEO of the Second? Sorry, let me clarify that. When
22 you were CEO of the Second, did you sit on any
23 committees?
24 A. Yes, I did. I was a member of what's
25 called JIFFY, and I was also a member of the Online

1 Access Subcommittee through JIFFY. I was part of
2 CEOC, so --
3 Q. So let's back up. We've heard a little bit
4 of testimony about JIFFY. It has a new name now; is
5 that right?
6 A. JTECH.
7 Q. So just briefly, because we've heard
8 testimony about JIFFY already, can you tell me what
9 your role was when you sat on the JIFFY committee?
10 A. Well, I was on a JIFFY as the CEO for the
11 Second, so I was a member of JIFFY. And there were
12 several members; we had a chair, I was a member.
13 Q. Okay. And then you said you were also a
14 member of the Online Access Subcommittee; is that
15 right?
16 A. Yes, I was a member of that, and then --
17 I'm trying to remember whether I was appointed as the
18 chair, I guess I was appointed chair of that before I
19 went to the bench.
20 Q. Do you still sit on the Online Access
21 subcommittee?
22 A. I'm still the chair of that.
23 Q. Again, you also heard a little bit of
24 testimony about this, but can you tell us what your
25 role as chair of the Online Access Subcommittee is?

1 A. We conduct monthly meetings. And the
2 Online Access Subcommittee, the purpose of the
3 committee itself is to expand and improve electronic
4 access, remote access, essentially, to court records,
5 but also to expand and improve e-filing. So
6 e-filing, until fairly recently, was something that
7 occurred with district courts, there was some
8 e-filing, I think more recently, the Supreme Court
9 and the Court of Appeals. But here in the last year,
10 plus or minus, we expanded at the district court
11 level to doing e-filing associated with criminal
12 matters, what we call subsequent pleadings filing.
13 And then we also -- online access was sort of the
14 driver behind the JID staff, who were doing e-filing
15 for metropolitan court, which also is here in
16 Bernalillo County, but also for the magistrate courts
17 throughout the state. So there is now civil e-filing
18 in the magistrate courts, and that's just happened in
19 the last year, year and a half; less than a year and
20 a half. More like a year. And --
21 Q. Okay. Go ahead.
22 A. I was going to say, and to make sure -- one
23 of the sort of a large aspect of Online Access'
24 responsibility is to make sure that there is
25 electronic access to filed case documents. And so

1 that's a big part of the effort that Online Access
2 does.
3 Q. So when you say electronic access to case
4 documents, what are you talking about?
5 A. What I'm talking about is the ability of an
6 attorney to be sitting in his or her office, and to
7 be able to get into the electronic case file of the
8 case they may be working on. And there are different
9 forms of access. Basically, that's part of it.
10 There is also access that is allowed to
11 self-represented litigants to their own cases,
12 whereas, attorneys may have a broader access.
13 Q. So let's talk about this: We've heard --
14 again, we've heard a lot of testimony about the
15 different types of systems that we have in New
16 Mexico; Odyssey, et cetera. What is the application
17 called where the attorneys or the press can have
18 access to case documents?
19 A. So that is done through what's called SOPA.
20 And SOPA, it's an acronym that stands for Secured
21 Online Public Access. It's really not public access.
22 But it's Secure Online Access. So that's the
23 mechanism. It's sort of like a back end to Odyssey.
24 Odyssey is the database that includes all of the
25 electronic case files that have been entered into it.

1 And then SOPA is a back end, where there is data
2 constantly being put into SOPA, and that's where
3 attorneys, SRLs -- self-represented litigants -- the
4 press, justice partners, and others, they access
5 those court records through SOPA, not through
6 Odyssey.
7 Q. Okay. What is re:Search New Mexico?
8 A. Re:Search New Mexico is -- it's a new
9 product that Tyler -- Tyler is the organization, the
10 company that developed Odyssey, and that also
11 developed e-File & Serve. And so re:Search is
12 another way to gain access to case files that have
13 been filed into Odyssey that would be an alternative
14 to SOPA. And, in fact, OAS, that's been one of the
15 projects that Online Access has been working on for
16 quite -- from since before I was the chair -- to try
17 to transition from SOPA to re:Search New Mexico. One
18 of the reasons is SOPA is no longer being maintained
19 by Tyler. So at some point, its shelf life is going
20 to expire, and we're not going to be able to use it.
21 So we need an alternative to that going forward.
22 Re:Search is one of those.
23 And as part of that, re:Search was also a
24 tool that we were looking at for purposes of
25 redaction. And so there was this possibility that

1 re:Search could be used as a tool, both externally
2 and internally, to redact things like personal
3 identifying information from pleadings. And so we
4 were looking at it in sort of different ways and
5 different reasons.
6 Q. And has it been implemented yet?
7 A. It has not. It was -- we had a couple of
8 different implementation schedules. It was meant to
9 be in place earlier this year, but the schedule has
10 slipped a couple of times. Actually, it was meant to
11 be in place even before that, I think in 2020, was
12 the original schedule was to try to do that. But it
13 slipped. And some of the reasons that it slipped is
14 in the development process you've got to validate the
15 systems. You've got to test it in the test
16 environment and production environment, make sure
17 it's going to work and that it's doing what it's
18 supposed to be doing. So that schedule has slipped,
19 but it's still being worked on, and it's taking a lot
20 of JID, Judicial Information Division, staff time.
21 Q. Why is it important that you go through all
22 of these testing processes before you implement
23 re:Search?
24 A. Well, we want to make sure that it works
25 properly. We want to make sure that it does what

1 it's meant to do, and that it doesn't do things that
2 it's not meant to do. So, for instance, providing
3 access, but access in the way that it's meant to.
4 There are different kinds of cases in any court. In
5 state district court, we have sequestered cases,
6 cases that are not open to the public, is cases that
7 are not open to attorneys unless they're actually
8 attorneys of record on those. Making sure that, if
9 there are sealed filings within an otherwise open
10 case, that those matters are sealed, and that they're
11 not accessible.
12 THE COURT: Ms. Lecocq, could we take about
13 a 15-minute break here and let Ms. Bean rest her
14 fingers? We've been going about an hour and a half.
15 All right. We'll be in recess about 15 minutes.
16 (The Court stood in recess.)
17 THE COURT: All right. Judge Noel, I'll
18 remind you you're still under oath. Ms. Lecocq, if
19 you wish to continue your direct examination of Judge
20 Noel, you may do so at this time.
21 MS. LECOCQ: Thank you, Your Honor.
22 THE COURT: Ms. Lecocq.
23 Q. I think we stopped when we were talking
24 about the Online Access Subcommittee. Does that
25 sound right?

1 A. Yes, that sounds correct.
2 Q. And you were talking about the purpose of
3 the Online Access Subcommittee. And because I didn't
4 write it down, can you just remind me what the
5 purpose of that it is?
6 A. Certainly. It's to improve, enhance,
7 expand access both to records and to filing in to the
8 court system records. So that's the short answer,
9 but there is a lot of mechanics that goes along with
10 that.
11 Q. That's right. And then we were talking
12 about re:Search New Mexico and that process.
13 A. Correct.
14 Q. And re:Search -- you were telling me why it
15 was important that re:Search New Mexico has -- makes
16 it more efficient to access these things. Is that
17 what we were talking about?
18 A. Well, there are a couple of things. One I
19 would agree with you that re:Search New Mexico, if
20 it's implemented properly and does what it's touted
21 to do, then it's going to provide a broader range of
22 accessibility, types of accessibility, including
23 functionality; for instance, being able to go in and
24 sort things and do queries and pull stuff up in
25 certain ways. And the key on this is that SOPA is no

1 longer being supported by Tyler, and so at some point
2 it's going to die, and we need to have something in
3 place to pick it up, metaphorically of course, but we
4 need something in place that's going to serve that
5 role. And re:Search New Mexico has been identified
6 as the entity or the product to do that.
7 Q. How has it been identified as a product to
8 do that?
9 A. So this would be a process that exists
10 within different levels of the New Mexico judiciary.
11 So looking at and evaluating re:Search New Mexico --
12 my recollection is it started with JIFFY. And then
13 this is something then, as JIFFY, this body meets,
14 discusses, looks at it; then they may make a
15 recommendation to the State Supreme Court saying:
16 Look, this is a tool that we think can meet different
17 multiple purposes for the New Mexico judiciary. We
18 recommend that you approve the -- essentially, the
19 judiciary to move forward in purchasing this and
20 implementing it. And so the Supreme Court will weigh
21 in; they'll take a look at it; they'll have
22 questions. I'm sure they did have questions. I
23 wasn't involved in that aspect of it. But the fact
24 that we have a Tyler system in Odyssey -- the fact
25 that we have Odyssey is something that went through

1 the State Supreme Court, and they made the
2 determination that, yes, we're going to adopt Odyssey
3 as our electronic case management system. But that
4 was years ago. That was well before me being around.
5 Q. And that system that you just described,
6 that's something that's required to do before any
7 other application like this is implemented; is that
8 right?
9 A. The process itself being reviewed, and
10 yeah -- well, yes, I mean, if we're going to adopt
11 some application, we have -- the White Paper says you
12 can get the whole range of different applications,
13 but yes, generally speaking, when there is a large
14 acquisition of software, it's going to go through at
15 least two different levels of review.
16 Q. Okay. Are you familiar with Courthouse
17 News Services?
18 A. I am.
19 Q. How are you familiar with them?
20 A. When I first started as the CEO at the
21 Second Judicial District, I received a correspondence
22 from Bill Girdner. And at this point I don't
23 remember whether it was late 2015 or early 2016. But
24 it was time between November of '15 and maybe January
25 or February of '16. And it was a correspondence from

1 Mr. Girdner, and he had provided me with a number of
2 pages of documentation that he was suggesting
3 indicated that there was a delay in the access to
4 Second Judicial District Court filings.
5 Q. And did he make a request?
6 A. I don't remember the exact nature of the
7 letter. But, essentially, what he wanted was he
8 wanted to let us know that he believed we weren't
9 giving him quick enough access to court records. Is
10 there something you guys can do -- help me out on
11 this. He didn't say that, but he wanted faster
12 access, basically.
13 One of the things that I think is important
14 to recognize with the communication -- and I don't
15 remember if it was part of that communication or a
16 subsequent one -- but he sort of laid out this
17 picture of, you know, before you guys were using
18 electronic filing, we had someone that could take up
19 residence in the clerk's office, and that individual
20 was given access behind the clerk's desk and could
21 take a look at all the new filings that came in the
22 clerk's window. And what he was suggesting was,
23 what's happening now through the electronic system is
24 not providing them with that. And they want access.
25 And press access is a very important thing. The

1 judiciary, I think -- I can't speak for them -- but
2 the judiciary, certainly as a judge, I think the
3 press is entitled, and I want them to have access.
4 The press, their access is very important. They
5 serve as surrogates for the public. The public is
6 not able to get into the court every day and sit in
7 here and listen to what's happening in cases. And so
8 the press serves a very important role to make sure
9 the public is informed of what's going on and
10 important issues that come up.
11 Q. Okay. What I'd like you to do, with the
12 Court's permission, I would like you to draw a
13 diagram of your understanding of Courthouse News
14 Services' request, if you may?
15 A. I'd be happy to. Should I use this?
16 Q. Here is a marker.
17 A. Let's look at this as Mr. Girdner was
18 talking about it. So I'm going to divide this in two
19 to start out with. And let's call this one
20 pre-Odyssey. And let's -- Odyssey/e-File & Serve up
21 here. And then let's call this one post-Odyssey and
22 e-File & Serve.
23 Okay. So pre-Odyssey, what Mr. Girdner --
24 or what I understand the situation -- and my drawing
25 is not going to be very good -- but we've got a clerk

1 behind a desk, and then we've got this box over here.
2 And then you've got this line of people. So we're
3 standing in front of the clerk's window here, and
4 they've got pleadings that they want to get filed in.
5 Now, it could be new complaints; it could be filings
6 on open cases, whatever the case may be. My
7 impression, my understanding is is that what Mr.
8 Girdner would see in the -- and the press is
9 interested in new civil case filing, new open cases.
10 So we can look at that. So what would happen is,
11 these are representing individuals and each
12 individual has something they want to get filed. So
13 they go up to the clerk. And then the clerk takes a
14 look at it, does what the clerk does. And then if
15 it's acceptable for filing, the clerk then stamps it
16 and takes a copy of that, shoves it in this box,
17 okay? And because there was a Courthouse News
18 Service person right there, they could take a look at
19 what's in here and keep track of it.
20 Now, this is a bit of a -- how do I say
21 this? This doesn't do justice to the volume of
22 matters that exist in the Second Judicial District
23 Court. And I can speak to the Second. What I can
24 say is the following: At the Second, in calendar FY
25 2020, we had 622,000 filings -- not new case

1 openings, but filings -- that went through. Now,
2 this was not in the pre. This was down here, so this
3 is 2020. But that's the volume that comes through
4 the Second.
5 In addition to that, in terms of new cases
6 that we're talking about, we had approximately 40,000
7 new and reopened cases, okay? So 40,000 new
8 complaints, new criminal matters, new DM, new PD, new
9 PQ, whatever the case may be, 40,000 of those in 2020
10 and 622. Now, this is part of that number, but
11 that's a lot, that's a huge volume.
12 Now, what's happening here, back to the
13 manual process, let's say these folks are going
14 through the line, and we've got 1, 2, 3, 4, 5, 6, 7.
15 So let's say, if this happens for whatever reason,
16 number 3 is turned away: Oh, you've got the wrong
17 caption, you've got -- there is something wrong with
18 it, so we can't file this for you right now, so you
19 need to go and fix it. Then let's say the same thing
20 happens with number 6. So what happens is the ones
21 that ends up here on this day are 1, 2, 4, 5, and 7.
22 But actually number 3 and 6, since they're out of the
23 picture, what happens from an accession number
24 standpoint, from a case file numbered standpoint is,
25 you have 1 through 5, that end up in here. And in

1 the Second Judicial District Court, those are going
2 to run a case number like D, for district court; dash
3 0202, for the Second Judicial District. And if that
4 is in -- let's say this was in 2000, then it would
5 carry 2000. And then it would be dash 00001 through
6 00005. And that's what would be in here, okay? And
7 they would take a look at that.
8 Now, with post- with the e-file process, it
9 happened slightly different. What we've got with
10 e-file is, let's call this the Odyssey database.
11 Then we have this front end to Odyssey over here,
12 which is called e-File & Serve, all right? This is
13 maintained by Tyler; although this is essentially
14 maintained by Tyler also, this is here, we do -- this
15 is physically here at the Second, in Santa Fe, and
16 all the districts. But this is something that if
17 there is a problem with e-filing, if the attorney is
18 having difficulty with e-File & Serve, they go
19 directly to Tyler on that.
20 So then you have this back end, then, which
21 is called SOPA, okay? So when an attorney is
22 actually looking at a filing in a case, that is a
23 case in Odyssey, you're not looking in Odyssey. What
24 you're looking at is SOPA. And there is this
25 exchange of data from Odyssey to SOPA that's just

1 ongoing, it's regular, it's syncing every, whatever,
2 second, quarter of a second, tenth of a second -- I
3 don't know how quickly it happens, but it's
4 immediate; that I can say, it's immediate. If it's
5 filed into Odyssey, you're going to see it in SOPA
6 immediately, okay?
7 So then what happens is we have --
8 essentially, attorneys -- let's do our seven folks,
9 okay? So there are our seven people, which is really
10 40,000 or 622,000, depending on how you look at it,
11 and they're all submitting stuff in the e-file. And
12 so what happens is they can do this 24/7, 365, so
13 they can do this at times when the court is not
14 actually open. And that happens all the time. Now,
15 I found it interesting, being the CEO at the Second,
16 we would have filings on Christmas Day, New Year's
17 Eve, Thanksgiving Day. So stuff is always coming in,
18 but it's not always being looked at for filing here.
19 And that's the person that's not in here 24/7, 365.
20 That's the clerk.
21 So what we do have is if we clerks that are
22 looking at what are called the queues, the filing
23 queues. And so, if these folks are all filing
24 something after hours or during the day, during the
25 workday, whatever the case may be, they're getting

1 chunked into a queue -- if I spelled that
2 correctly -- that's in e-File & Serve. And the
3 important part of this in a different set we'll see
4 from what happens in this manual and what happens
5 down here is, even if there is a rejection -- so
6 let's do that; let's do 7, and number 3 and number 6
7 are no good, and the clerk sends that back and says,
8 Hey, there is a problem with this, you need to fix
9 it, can you please go ahead and fix this. Then what
10 happens is these actually still get time stamped
11 on -- in this order and on the day and time that they
12 were submitted to the e-File & Serve queue.
13 Now, the important thing on this is that
14 while they're in queue, they're not filed in; they
15 don't have like in federal court, the blue streak
16 across the top that indicates it's been filed in.
17 These are nonfiled documents.
18 And the other thing that's sort of
19 significant, important about this is that because
20 these are not actually court records yet, the
21 attorneys can call and say, Hey, I made a mistake on
22 such-and-such; can you not file that. I'm going to
23 resubmit, or send it back to me, or do whatever. And
24 they can do that, the clerks can do that. And the
25 fact of the matter is, if there is an error in

1 something that's sitting in the e-File & Serve queue,
2 that can be changed without authorization from the
3 court. And so if it's something that's actually gone
4 past this -- then I'll draw my clerk right here --
5 the clerk is actually looking at these, the queues
6 electronically. It's equivalent to this, except
7 they're looking at an electronic version of it. And
8 then they say: Okay, this is good, or number 3 and
9 number 6 are bad, those are essentially rejected.
10 But, as I said, they carry the same date and time in
11 this order that goes in here. And so what's
12 interesting about this is, at the end of this day, 1,
13 2, 4, 5, and 7 are going to show up in SOPA, and it
14 may be a day or two days later that 3 and 6 are going
15 to end up in SOPA. But because 3 and 6, their
16 accession number is in this order, the D 0202.2020,
17 blah, blah, blah, it's going to carry the 3 and it's
18 going to carry the 6, and it's going to carry the
19 date and the time that's associated with these
20 filings there, okay? So that's what's going to show
21 up. But, like I said, it may be that it doesn't show
22 up in SOPA for a day or two days, depending on what
23 happens with the rejection and the refiling.
24 But again, the key here is there is
25 something wrong with that document. The same thing

1 that's wrong up here, whereas, in this particular
2 situation the clerk said: Go back to your office and
3 fix this problem, and it didn't get an accession
4 number; here the clerk says: Go back to your office
5 and fix this, but we're giving you the number that's
6 associated with the order in which it came in.
7 And so what we've got is the difference
8 between a manual, physical line sitting in the
9 clerk's office versus a virtual line sitting inside
10 an e-File & Serve. And so I'm trying to think is
11 there anything else on that.
12 MR. EDWARDS: Your Honor, could we proceed
13 by question and answer format from here forward?
14 THE COURT: Why don't you break it up a
15 little bit.
16 Q. Yeah. Thank you.
17 I do have a question about the time of
18 filing. Because you said that it's stamped with the
19 time of filing now that we're in Odyssey. So is
20 there a rule that governs time of filing that you're
21 aware of?
22 A. Yes, there is the rule of civil and
23 probably criminal procedure that establishes that
24 when the matter is -- and I don't know the name of
25 the rule off the top of my head -- 79 maybe.

1 Q. Does Rule 1-005.2 sound right?
2 A. That could be it. But the idea behind that
3 is to make sure that if someone is trying to meet,
4 like a deadline for statute of limitations, and they
5 actually get it submitted, even though it may be
6 after court hours that they get it submitted, it will
7 carry that date and time, so that they don't blow the
8 statute of limitations. And that's the beauty of
9 what this whole e-file system and process is, that if
10 the clerk's office closes at 5:00, and you get there
11 at 5:01, you know, you're out of luck. But if you
12 can go ahead and file it through e-file and file it
13 at 5:01, it's not a problem.
14 Q. And I'm actually going to hand you a copy
15 of the rule after I show it to opposing counsel. And
16 it's 005.2G, is what I'm interested in. And if you
17 could just read the highlighted portion of that,
18 please.
19 A. "For purposes of electronic filing only,
20 the date and time that the filter submits the
21 electronic filing envelope will serve as the filing
22 date and time for purposes of meeting statute of
23 limitations or any other filing deadlines,
24 notwithstanding rejection of the attempted filing or
25 its placement into an error queue for additional

1 processing."
2 Q. Okay, thank you.
3 Could I ask you what your understanding of
4 that rule is with respect to what you just described?
5 A. Well, what it means is is that in this
6 particular case, where 3 and 6 were not accepted on
7 this particular day, these two, while they were not
8 accepted on that particular day, if whatever the
9 problem was was fixed, then they could still carry
10 that date and time.
11 And again, the interesting thing about this
12 is that they're not going to show up in SOPA until
13 after the clerk files them, actually allows them to
14 be filed in. And before the clerk files them in,
15 it's not a court record, it's not something the judge
16 can act on. In fact, it can be changed. We already
17 talked about that. The fact of the matter is, the
18 filer can go back and make a change to that.
19 Whereas, if it had been filed in, the only way to
20 make a change to a filed document is through notice
21 of errata, motion to amend, some official action that
22 requires an official determination by a judge. But
23 when it's sitting in e-File & Serve, you don't need
24 the judge to act on it, because it's not a court
25 record.

1 Q. Okay, great. You can go ahead and have a
2 seat. Thank you very much.
3 So with this understanding of how the
4 systems differed pre e-filing and post e-filing, what
5 is your understanding of Courthouse News Service
6 requests for this -- actually, let me back up. Are
7 you familiar with this request for a press queue or a
8 press review tool?
9 A. Yes. Mr. Girdner, CNS, has asked for this
10 Press Review Queue. And what -- and using this
11 diagram here, what my understanding of what he's
12 asking for is he wants inside this e-file thing, this
13 front end to Odyssey. So he wants to see this either
14 at the same time or before the clerks even see it.
15 And it would be -- the equivalent of that would be --
16 if one assumes that the press queue is going to be an
17 officially sanctioned thing of the court -- the
18 equivalent here would be the court, the clerk going
19 to each one of these seven people and saying: You
20 need to give a copy of what it is you intend to file
21 to this person here before I even see it. That's the
22 equivalent of what Mr. Girdner is asking for. He
23 wants that before the clerk even sees it.
24 Q. And remind me again, at what point does it
25 become an official court record?

A. When it's endorsed by the clerk.

Q. Okay. So explain that to me. Is it when it's accepted?

A. Accepted. When you accept it out of the queue, it gets stamped; there is a stamp that goes up in the upper right hand, and it's immediately dumped into Odyssey; then it's immediately available on SOPA. So the fact of the matter is, this is publicly available within seconds -- less than seconds -- of the time the clerk accepts it as a public record as a court record.

Q. So is it a court record before or after the clerk does her review?

A. After. It's not a court record here.

Q. You wrote an email in 2016. And there's a binder right there, if you want to look at it. This is Exhibit F, which is attached to Exhibit A. Let me know if you need help finding it. I can help you find it. But in Exhibit A, which was attached to the plaintiff's initial motion, there is another attachment to it marked as Exhibit F, which is an email. And again, let me know if anyone needs help finding it.

A. I see a 2018. I know what email you're talking about, I'm pretty sure, but I guess I don't

1 see it in here.
2 Q. Let me help you out. Okay. And you
3 recognize this email?
4 A. Yes, I do.
5 Q. How do you recognize it?
6 A. Well, because I wrote it.
7 Q. And when did you write it?
8 A. On October 26th of 2016.
9 Q. Okay. What did you write this email in
10 response to?
11 A. The request by CNS to get access to records
12 before they actually get filed into the court system.
13 Q. And did you say that you are opposed or in
14 favor of this request in this email?
15 A. Well, I'll quote it. "I am reluctant" --
16 parenthetically, "if not adamantly opposed" -- out of
17 parentheses -- "to such access by CNS."
18 Q. Why at that time were you adamantly opposed
19 or reluctant to this access?
20 A. Because that access is access to records
21 that aren't court records. They've not been filed
22 in. They're not official records of the court. They
23 carry no weight or meaning within the court. As a
24 judge, if someone is asking me to make a
25 determination or decision on a document that hasn't

1 been filed in, I've got nothing to do with that.
2 There is nothing I can do with that document because
3 it's not a court record. So I think that's part of
4 it.
5 But I even said in here, "I disagree with
6 Mr. Rogers' conclusions that such documents are
7 subject to inspection. I'm concerned that CNS will
8 have access to documents that may never actually be
9 filed with the court."
10 These two folks, 3 and 6, that got turned
11 away, they might not even come back. That does
12 happen, that someone may file something and then it's
13 gone.
14 Q. If you look at the next page of that, there
15 is another email where you're speaking to Colleen
16 Reilly -- we've heard testimony about her being the
17 Tyler liaison -- and that email is written in
18 response to an email that she sent you. Do you see
19 that?
20 A. We did build a configuration for Clark
21 County, that one?
22 Q. Yes, that one.
23 A. Yes.
24 Q. So I want to talk a little bit about that,
25 because there has been some discussion about the cost

1 of this, the $108,000 versus being free. Could you
2 just look at this email that Ms. Reilly wrote. At
3 the end of the first paragraph she states: There is
4 no cost associated with this work; is that right?
5 A. That's what she says, yes.
6 Q. And then is there a recommendation in this
7 email about this access, about this work that she --
8 that may not have a cost associated with it? The
9 paragraph right after that.
10 A. Yes, they recommended access be available
11 only through courthouse kiosks or computers. And if
12 I can -- but through a courthouse kiosk or a
13 courthouse computer, that's not an e-file queue.
14 That's a filed document. And the kiosks are
15 available, people do have access to filed court
16 records through the kiosk.
17 Q. Okay. Great, thank you. Just a second.
18 Do you believe -- based on your
19 understanding of this request and your, you know,
20 experience as a CEO, and now as a judge -- do you
21 believe that Courthouse News is asking for more,
22 less, or the same access as they had pre e-filing?
23 A. They're asking for more.
24 Q. And why do you believe that?
25 A. Because what they want is they're asking

1 for access to records that have not yet been filed
2 in, they're not official court records, and they're
3 asking for access to records that may never actually
4 be filed in the court. And again, that does happen.
5 Q. Are you aware of the kind of general goals
6 of the judiciary as a whole in New Mexico?
7 A. The general goals of the judiciary, well,
8 it's to adjudicate matters that come before it. But
9 judiciaries in general are very transparent bodies or
10 institutions of government are -- the decisions that
11 are made within the court systems, are published,
12 they're out there, they're available for people to
13 take a look at. And I think I said before, that
14 press access is extremely important. In fact, there
15 is actually -- the Bench Bar Media Committee,
16 commission, group, that meets on a fairly regular
17 basis. It didn't during COVID, but they're resuming
18 meetings here soon, which is -- there are a whole
19 wide range of issues that may get discussed at those
20 meetings. And transparency is a very important
21 aspect of the work that the court does.
22 Q. And is -- actually, explain a little bit
23 more about transparency.
24 A. Transparency, making sure that the work of
25 the court is available and understandable, and that

1 the public knows how we operate. And again, as
2 surrogates for the public, making sure the press
3 knows.
4 Q. Okay. Does the judiciary, the court
5 system, do they need to balance that transparency,
6 that goal of transparency, with anything else?
7 A. Absolutely. The balance that needs to be
8 struck is the efficient and effective operation of
9 the court system. And part of that efficient and
10 effective operation of the court system is making
11 sure that when things are being submitted through
12 e-File & Serve that a clerk has an opportunity to
13 take a look at it and make sure that it's subject to
14 filing; that it's going to take that next step into
15 being an official court record.
16 Q. Okay. Does the court system, or the
17 judiciary, have any obligations with respect to --
18 not just a goal, but an actual obligation to the
19 public with respect to what you just stated about the
20 court record and reliability, confidentiality, those
21 things?
22 A. Yes. Part of the balance that you're
23 talking about is to make sure that matters that are
24 sequestered matters are not publicly available,
25 matters that where there may be essentially a case

1 that's a tier 1 case, but there are sealed matters
2 within that. There is -- in both certain kinds of
3 civil actions as well as criminal actions, there is
4 personal identifying information that is contained in
5 the filings. There is bank -- not necessarily bank
6 records, but certainly bank accounts, investment
7 accounts. There is children's names, dates of birth,
8 Social Security numbers. All of these things show up
9 in filings with the court.
10 And one of the things that happens also in
11 this e-File & Serve side of things is, if there is
12 something that someone is asking to be sealed, that's
13 going to be in here. And before that is viewed by
14 anybody, it needs to be reviewed by a judge. Before
15 a judge can review it, the motion itself has to be
16 filed in, and then the judge can take a look at that
17 and say: Yes, we're going to seal this, or no, we're
18 not going to seal this. And if it's sealed, it's not
19 available. Whereas, if it's just sitting in here and
20 there is a press queue that allows access to that,
21 it's now available, and Mr. Girdner could publish
22 whatever that is. And it's something that is either
23 asked to be sealed or ultimately is going to get
24 sealed. So yeah, there is a huge balance that
25 exists.

1 Q. So you talked a little bit earlier about
2 re:Search New Mexico, and how it might be working on
3 redacting automatically something. Do you believe
4 that it's possible to automatically protect -- not
5 redaction of PPI, but actual confidential
6 information, do you believe that that is something
7 that's automatically -- able to be automatically
8 done?
9 A. Re:Search New Mexico was a product that
10 Tyler originally touted as something that would
11 provide that kind of service. At this point, I don't
12 think that's on the table, that kind of redaction.
13 Where I think re:Search New Mexico could be
14 helpful in the situation with Courthouse News
15 Service, is in a different way. And that different
16 way is some of the search functionality that exists
17 or the query functionality that exists with re:Search
18 New Mexico.
19 And let me give you an example. Right now,
20 in the e-file process, in order for the Courthouse
21 News Service staff to figure out what all got filed
22 in on a given day, is they just simply have to --
23 it's sort of a, you go in -- it's trial and error --
24 to figure out what's coming in. So it's a much more
25 complicated process.

1 Going through SOPA is a lot more
2 complicated than going through this box. Because
3 this box has 1 through, in this case 5, in order,
4 boom, there they are. Whereas, in SOPA, you've got
5 to actually look for them. And you can't do any
6 queries in SOPA.
7 Now, re:Search New Mexico may have the
8 capability to say, okay, I want to query all of the
9 new civil filings that came in on such-and-such a
10 date. That would be an equivalent for looking at
11 that. But that's a different function. I'm not
12 saying that re:Search has that. But it may. It
13 could do that.
14 But re:Search does have search and query
15 functionality. So that would be a way to CNS -- it
16 would simplify what they have to do now, which, while
17 it gives them faster access -- way faster access than
18 they had up here -- it's more difficult to actually
19 get it in SOPA.
20 But with re:Search you're going to have
21 much faster and the possibility that it's easier.
22 You can just query it, boom, here they are. But
23 you're still going to have these holes that show up
24 here until later on. But the beauty of that is,
25 then, you can go back and query a day or two days

1 before and pick these things up.
2 Whereas, now, again, it's hit and miss in
3 SOPA. You've got to keep going in there and trying
4 to figure out: Has it come in or not?
5 Q. Okay.
6 A. And it may never -- that's the thing, it
7 may never come in.
8 Q. Okay. Ultimately, as a member of OAS, the
9 Online Access Subcommittee, did you make a
10 recommendation to the Supreme Court, or did you in
11 some way let the Supreme Court know your thoughts on
12 this request?
13 A. Yeah, I drafted up a memo, I guess.
14 Q. And did you make a recommendation or did
15 you just do some analysis, if you remember?
16 A. I would surprised if I didn't make a
17 recommendation. But frankly, I don't remember. And
18 if I did, it would be: One, y'all need to get with
19 the State Bar and make sure that they don't have any
20 concern about someone having access to something that
21 is their record, that has not yet been filed in,
22 because they could pull it. And two, I don't think
23 you should do it because it's not a file -- it's not
24 a court document, it's not official. It's
25 meaningless until it gets filed in.

1 Q. Did the court -- do you remember what the
2 court ultimately decided with regard to this press
3 queue -- the Supreme Court, I should say?
4 A. I do not know what -- my recollection is
5 there is something that came out of the Supreme Court
6 Clerk's Office, that essentially said: We're not
7 going the direction of a press queue.
8 MS. LECOCQ: I think those are all the
9 questions I have for you, Judge. Thank you very
10 much.
11 THE COURT: All right. Thank you, Ms.
12 Lecocq.
13 Mr. Edwards, do you have cross-examination
14 of Judge Noel?
15 MR. EDWARDS: Thank you, Your Honor.
16 THE COURT: Mr. Edwards.
17 CROSS-EXAMINATION
18 BY MR. EDWARDS:
19 Q. Good afternoon, Judge Noel. How are you?
20 A. I'm doing fine, Mr. Edwards. How are you?
21 Q. I'm well.
22 A. Good.
23 Q. You would agree with me that the U.S.
24 District Courts of this country have an interest in
25 efficient judicial administration as well?

1 A. Yes.
2 Q. In securing court records, making sure the
3 records are secure, and the integrity of the court
4 records, all of those kind of things?
5 A. Yes.
6 Q. Same interests the State of New Mexico has
7 in its court records; right?
8 A. Yes.
9 Q. And U.S. District Courts are able to
10 perform exactly what your second diagram shows here,
11 and provide on-receipt access; correct?
12 A. I can't speak to the systems the federal
13 district courts have.
14 Q. Are you familiar with PACER?
15 A. I am aware that PACER exists. And if I've
16 used it, it's been a very rare occasion many years
17 ago.
18 Q. Are you aware that, when you e-file with
19 PACER, that the original complaint is made available
20 within minutes prior to a human clerk looking at it?
21 A. No.
22 Q. You're not familiar with that?
23 A. No.
24 Q. Would it surprise you if that existed?
25 A. If you're representing that that's the

1 case, then sure.
2 Q. Do you think that, by doing so, the U.S.
3 Federal Court System is somehow jeopardizing the
4 integrity of the court records?
5 A. No.
6 Q. No. I don't think so either.
7 So you were adamantly opposed to the Press
8 Review Queue that Mr. Girdner had requested; right?
9 A. I was reluctant, if not adamantly opposed,
10 that's exactly right.
11 Q. And you remain adamantly opposed; correct?
12 A. I think it's a bad idea, yes.
13 Q. Let's see what we can agree on. You agree
14 with the core principle that the public has a
15 substantial interest in the transparency of the court
16 system?
17 A. Yes.
18 Q. They have substantial interest in the
19 transparency of the clerk's offices and how they do
20 their job?
21 A. Yes.
22 Q. All right. And they're being paid by tax
23 money; right?
24 A. Correct.
25 Q. You agree that there is a significant

1 public interest in having timely access to court
2 records?
3 A. Yes.
4 Q. All right. And that would include
5 nonconfidential civil complaints in the state courts
6 of New Mexico?
7 A. Yes.
8 Q. All right. Now, you would agree with me,
9 in the top diagram you drew there of the paper filing
10 world, generally, if the press wanted to look in that
11 box, they would have same-day access; right?
12 A. Yes.
13 Q. In other words, as pleadings crossed the
14 counter to the clerk and were placed in the box, they
15 would, essentially, see those the same day they were
16 filed?
17 A. Yes.
18 Q. And that's not the case now with e-filing;
19 correct?
20 A. That's incorrect.
21 Q. Let me rephrase the question. Cases that
22 are filed, for instance, at 4:00 today, in the Santa
23 Fe State District Court, are not going to be
24 available in SOPA at least for 24 hours; right?
25 A. No, that's incorrect.

1 Q. Well, that's what the statistics show that
2 we presented in evidence. I think the state's
3 evidence shows that at least 30 or 40 percent are not
4 made available the same day?
5 A. Well, what you're doing is not -- you're
6 using the terminology "filed." And what I'm saying
7 is, if it's filed, it's available right then and
8 there. If it's sitting in the e-file queue, it's not
9 available, you're right on that score. But if it's
10 filed in, it's available right then and there.
11 Q. I think we have a difference in definition
12 of terms. It seems like you are defining filed to be
13 post acceptance by the clerk.
14 Are you familiar with the legal authority
15 where courts may have determined that, no, filing is
16 when it's placed in the custody of the clerk, the
17 custodian of records, and it's at that point in time
18 when it's deemed filed? Are you familiar with that?
19 A. I think that perhaps you and I may disagree
20 about the definition of custody of the clerk.
21 Q. I'm asking if you're aware of legal
22 authority that filing means when the document is
23 placed into the custody of the clerk, and courts
24 have interpreted that to mean on receipt. Are you
25 familiar with those cases?

1 A. Again, I think we'll probably disagree on
2 the interpretation of that. Of course, that's
3 something for Judge Browning.
4 Q. Absolutely. But I want there to be no
5 confusion that there is a definition issue here with
6 terms. You are using the word "filed" to mean post
7 processing, acceptance by the clerk; right?
8 A. What I consider "filed" is a record that
9 has been file stamped and accepted by the clerk; that
10 at that point in time it's in the custody of the
11 clerk.
12 Q. Okay.
13 A. Whether it's me as the CEO, the Clerk of
14 Court at the Second, or the clerk that's sitting at
15 the counter right there doing it. But it's not in
16 their custody and control until it's filed in.
17 Q. And that's your understanding, but Judge
18 Browning will actually evaluate the case law?
19 A. He will let us all know.
20 Q. But we definitely have a difference of
21 opinion about when a document is deemed filed.
22 Let me ask you this: SOPA access users
23 have to sign an NDA; correct?
24 A. Well, the NDA -- I assuming you're meaning
25 they can't disclose personal identifying information,

1 so on and so forth?
2 Q. The office of the court administration
3 requires applicants to gain a login to SOPA to sign
4 an NDA; correct?
5 A. A nondisclosure agreement.
6 Q. Exactly.
7 A. Right.
8 Q. And that's used as a failsafe in case
9 something accidentally got into SOPA that shouldn't
10 be there; right?
11 A. No. Certainly, it could apply to that, but
12 it also applies to personal identifying information
13 that's contained in filings that go into the court
14 record. Because SOPA has got everything; everything
15 that's in Odyssey is in SOPA. And there are criminal
16 cases and civil cases that contain personal
17 identifying information. So the idea behind
18 nondisclosure is we're allowing you to have direct
19 access to this stuff, immediate access, but you can't
20 disclose PII and other information that should not be
21 disclosed.
22 Q. Right. And a similar NDA could be used
23 with a Press Review Queue; right?
24 A. I suppose one could come up with something.
25 Q. And you weren't present when Mr. Girdner

1 testified that is, in fact, what happens. Tyler
2 Press Review Queue users sign an NDA, just as they do
3 with SOPA, so that failsafe would be in place with
4 the Press Review Queue, just as it is with SOPA;
5 correct?
6 A. Sure.
7 Q. And, in fact, you agree that the rules of
8 procedure require -- do not impose a duty upon the
9 clerk to review court records for protected personal
10 identifier information; correct?
11 A. That is correct.
12 Q. All right. So that's not an obligation
13 that the clerk is under in New Mexico; correct?
14 A. I believe that to be the case.
15 Q. All right. So it looks like we've got
16 several protections available in New Mexico for
17 making sure that confidential or sealed information,
18 PPI, doesn't get into SOPA. And that would include
19 on the front end the e-filer, the attorney e-filer,
20 there are protections in place. I just want to walk
21 through and see if you agree.
22 A. What you just said was there are
23 protections against having PII going into SOPA.
24 Q. We're going to talk about SOPA first, and
25 then we'll talk about Press Review Queue.

1 A. There is no protections on PII showing up
2 in SOPA. PII does show up in SOPA.
3 Q. Well, let me walk you through this, see if
4 you agree with me. On the front end, PPI is in
5 control of the e-filer. If the e-filer doesn't want
6 to include it, they can redact it and not file it;
7 correct?
8 A. Yes.
9 Q. And, in fact, it's clear under the rules of
10 procedure that it's the e-filer's obligation to do
11 that; right?
12 A. Yes.
13 Q. So that's one protection at least, that the
14 e-filer is under the obligation not to do it; would
15 you agree?
16 A. Yes.
17 Q. All right. So that's on the front end.
18 And you have an NDA on the back end that says, Hey,
19 if it gets through this system and gets into SOPA,
20 you can't use it, you can't disclose it. We'll
21 terminate you if you do; right?
22 A. Yes.
23 Q. All right. So you've got those front and
24 back end protections. Those same protections would
25 apply with a Press Review Queue; right, or could?

1 A. They could, sure.
2 Q. Right. Now, you've mentions re:Search. Is
3 it re:Search or re:Search?
4 A. These are product development things. It's
5 lower case r-e, colon, capital S, search, New Mexico,
6 re:Search New Mexico.
7 Q. And we've reviewed in evidence today
8 Exhibit 3, which is the Tyler/AOC agreement regarding
9 re:Search. And it's true that there is an agreement
10 where AOC and Tyler share revenue based on what
11 subscriptions they can sell for access to the records
12 in re:Search; correct?
13 A. That's an issue that you'll have to ask
14 somebody else.
15 Q. You're not familiar with that?
16 A. No, I'm not.
17 Q. And you said -- you mentioned that SOPA is
18 going to get phased out and re:Search is going to be
19 the replacement tool?
20 A. Right now, that's what's on the drawing
21 board. But, you know, it was supposed to be put in
22 place months ago, and it still isn't in place. But,
23 yeah, that's what's on the drawing board.
24 Q. But you don't understand that Tyler
25 generates revenue by selling access to court records

1 through re:Search?
2 A. Right now there is a form of re:Search, I
3 think, that's available for people. And there is --
4 I don't think that anyone is paying to get access
5 directly to court records. I believe Tyler has other
6 products within re:Search that are subscription kinds
7 of products, and I think that's where they're going
8 to make their money.
9 But this is something that, you know, AOC
10 has the lowdown on that. I do not.
11 Q. Okay. And Mr. Girdner's request in this
12 case is really that access be provided after original
13 complaints cross the virtual counter; do you
14 understand that?
15 A. No, that's not what he's asking for.
16 Q. Well, in fact, the e-filing software itself
17 does some of the screening that's done by the clerk
18 in the paper world; correct? In other words, it will
19 turn you back if you don't enter certain fields, if
20 you enter the wrong fields. There are things being
21 done by the electronic front end of the e-file server
22 that were done, historically, by the clerk at intake;
23 correct? Is that true?
24 A. Well, there is certainly data points that a
25 filer has to enter when they want to submit

1 something --
2 Q. Right.
3 A. -- to e-file.
4 Q. They have to complete certain things, which
5 is one of the things the clerk did in the paper
6 world, to make sure it's complete. That's being done
7 now by software; right?
8 A. Well, the clerk has their own things
9 they've got to enter in.
10 Q. I'm not opposing you on that. I'm just
11 saying the software itself is doing some of the
12 things that the human clerk did in the paper filed
13 world; right?
14 A. I don't think so. What the software may be
15 doing is taking care of some interaction between the
16 filer and the clerk.
17 MR. EDWARDS: Let me see if I have anything
18 else. I think that's all I have. I'll pass, Your
19 Honor.
20 THE COURT: Thank you, Mr. Edwards.
21 Any redirect?
22 MS. LECOCQ: No, Your Honor. Thank you.
23 THE COURT: Thank you, Ms. Lecocq.
24 All right. Judge Noel, you may step down.
25 Can the Judge be excused from the proceedings?

1 MS. LECOCQ: Yes, Your Honor. Thank you
2 very much.
3 MR. EDWARDS: Yes, Your Honor.
4 THE COURT: Judge Noel, you're excused from
5 the proceedings. Thank you for your testimony.
6 THE WITNESS: Thank you, Your Honor.
7 THE COURT: All right. Do the defendants
8 have any further witnesses or evidence they wish to
9 present?
10 MS. LECOCQ: No, Your Honor.
11 THE COURT: All right. Any rebuttal, Mr.
12 Edwards?
13 MR. EDWARDS: No, sir, Your Honor.
14 THE COURT: All right. Do you want to
15 argue in support of your motion?
16 MR. EDWARDS: Yes, Your Honor.
17 THE COURT: Take a look at these cases.
18 They look like they're pretty evenly split. Would
19 you agree with that characterization? You've won
20 about half these, lost about half of them?
21 MR. EDWARDS: That's probably close to
22 being accurate, yes, Your Honor.
23 THE COURT: What's your best circuit case
24 in your favor? Because you've got the Seventh going
25 off on Younger abstention; the Fourth, it looks like

1 you lost them.
2 MR. EDWARDS: You're talking about just on
3 the abstention?
4 THE COURT: No, I'm talking about across
5 the board. Seventh they went off on -- they found
6 abstention.
7 MR. EDWARDS: Correct.
8 THE COURT: Fourth, you lost, which is the
9 most recent; right?
10 MR. EDWARDS: Well, no, no. Well, Brown
11 decision out of the Seventh Circuit did grant the
12 motion on abstention.
13 And then there was a Gilmer decision, a
14 lower district court decision that followed Brown,
15 without any further analysis.
16 But the Ninth Circuit in Planet has now
17 been joined by the Fourth Circuit in Schaefer with
18 rejecting abstention. So the two circuit courts of
19 appeal that have addressed the matter beyond Brown in
20 the Seventh have rejected abstention.
21 THE COURT: They rejected abstention, but
22 you didn't win on the merits in the Fourth; correct?
23 MR. EDWARDS: No. In Schaefer there was a
24 declaratory judgment issued, declaratory judgment
25 that the access could not be delayed past processing.

1 Now, the other courts actually entered
2 preliminary injunctions.
3 THE COURT: Wouldn't that be a loss for
4 you?
5 MR. EDWARDS: No. A declaratory judgment
6 was, in effect, a win.
7 THE COURT: Well, no, but the point of the
8 Fourth was it didn't have -- you can correct me if
9 I'm wrong, I'm not reading the case or I'm confusing
10 it with another -- didn't it say that up to a point
11 of processing you did not have access, a
12 constitutional right of access to the documents?
13 MR. EDWARDS: I don't believe it said up to
14 a point. I think they said that the defendants did
15 not meet the Press Enterprise 2 case of showing that
16 the delays were not narrowly tailored to serve the
17 governmental interests. I think that was the
18 declaratory judgment in that case, if we're talking
19 about Schaefer, the Fourth Circuit case. That's my
20 memory of that case, Your Honor.
21 But I don't know if you would rather me
22 address abstention first, or just go straight to the
23 elements of --
24 THE COURT: Well, you can go ahead and
25 address abstention. I'm having trouble what I would

1 be abstaining for. There is not a state proceeding
2 that I'm aware of. So I didn't particularly find the
3 Seventh Circuit's reasoning very persuasive. It
4 seemed to me a bit strained. Now, the state may
5 persuade me otherwise. But I wasn't quite tracking
6 with their reasoning.
7 MR. EDWARDS: I think "strained" is a good
8 way of interpreting Brown. And I think Schaefer, in
9 fact, said in a footnote that they didn't follow
10 precedent or the Supreme Court guidance, particularly
11 in Sprint, which is the U.S. Supreme Court's
12 pronouncement -- most recent pronouncement in 2013,
13 which just reiterated, Younger abstention is very
14 limited to the three elements.
15 The main important element that's missing
16 here is there no pending concurrent state proceeding,
17 as you mentioned. And the Tenth Circuit case law
18 that we cite in our briefs reflect that very
19 requirement of an ongoing state court proceeding, the
20 type of which is due deference under Younger, and
21 where the federal plaintiff, citing the Stein case,
22 is a party to those proceedings.
23 And it's undisputed there is no concurrent
24 state court proceeding. We think for that reason
25 alone the Court should not abstain. But in any

1 event, they will argue that there are rules of court
2 and the Supreme Court standing order that would cause
3 you to abstain. But, again, they don't fit within
4 the parameters of Younger. There is no requirement
5 that a federal district court can't impede state
6 policy, particularly if it's unconstitutional.
7 THE COURT: Well, I guess I'm not
8 tracking -- I mean, for better or worse, we have to
9 declare state laws unconstitutional all the time.
10 And I don't see any difference between a court rule
11 or a court order or anything like that.
12 MR. EDWARDS: I agree completely with Your
13 Honor. And that's why, unless you have further
14 questions, I'll move on from abstention. I just
15 don't think there is support in the case law for
16 abstention, other than this outlier of Brown, which
17 we think did exactly what the Supreme Court said not
18 to do, and that is to engage in this generalized
19 federalism analysis and comity analysis, when the
20 elements of Younger should be strictly applied.
21 So turning to the elements of our request
22 for injunctive relief, of course, we have to first
23 establish likelihood to succeed on the merits. We
24 think this involves a couple of questions, Your
25 Honor. The first being: Is there a constitutional

1 right to timely access? And we don't think that's
2 really being challenged in this case. And I think
3 the witnesses even indicate, yeah, you're entitled to
4 timely access. But what does that mean in the
5 context of this case?
6 So we believe that the precedent from Press
7 Enterprise 2 establishes we've met the experience
8 prong, the logic prong of why there has been
9 traditional access in the paper filing world.
10 And this Court and other courts and the
11 state courts allow on-receipt access. And that's our
12 basic argument is the right of access under the First
13 Amendment attaches upon receipt of the filing.
14 Now, we've seen with Judge Noel, and other
15 witnesses have tried to say, No, filing really occurs
16 later. It's only after process. And that's not what
17 the courts in Planet in the Ninth Circuit, in
18 Tingling in New York, in Jackson in Texas, that's not
19 what those courts found. Filing is upon receipt.
20 And we cite the Court as well to New Mexico case,
21 Hurley which is -- quote says, "To file a paper is to
22 place it in the official custody of the clerk." So
23 our position is when the complaint is handed to the
24 clerk, whether it be in person or virtually -- in the
25 virtual world it's the queue, the clerk queue, goes

1 into their queue -- that's receipt, that's filing for
2 purposes of First Amendment access.
3 If you follow the defendants' theory and
4 argument that, no, filing occurs at some later point
5 when processing is complete, theoretically, they
6 could make processing last a week or a month, and
7 totally insulate review of that delay from First
8 Amendment analysis.
9 That cannot be the standard. It has to be
10 a fixed point in time. It can't be a floating
11 standard that each court or state can create First
12 Amendment protections at their whim.
13 So filing occurs on receipt is our
14 position. And therefore, delays in access after that
15 point in time have to be established under Press
16 Enterprise 2 analysis. In other words, is there an
17 overriding governmental interest in the delay, and is
18 the denial of more timely access narrowly tailored?
19 And we cited the Court to many cases
20 including -- starting with Jackson in Houston, that
21 said, "The state's interest in clerical processing
22 does not and cannot override the First Amendment."
23 The Planet case specifically talked about
24 the same issue, with delays. "The governmental
25 interest in administrative processing and docketing

1 making sure case numbers are correct, making sure
2 court numbers are right, these are all clerical
3 administrative tasks. They cannot possibly equate to
4 or surpass the interests of the press and the public
5 in timely access to court records."
6 Now, that's why we think the defendants
7 here -- and they've done this in other litigation --
8 other defendants -- say: Well, this is a
9 confidentiality issue. There is sealed documents,
10 there is personal information. We have to be careful
11 about that.
12 Well, the problem with that, Your Honor, is
13 that the Federal U.S. District Courts don't have a
14 problem with providing on-receipt access, the very
15 access we're requesting. Numerous other state courts
16 do it, we've been through that with Mr. Girdner's
17 testimony. There is no practical obstacle for
18 accomplishing it. Confidentiality can be protected.
19 There are steps you can take to safeguard that
20 information. In fact, the New Mexico State District
21 Courts take safeguards to ensure it doesn't happen
22 with SOPA, and the current system. They use NDAs,
23 they use e-filer front end screening and filtering.
24 And there is tools available right now from
25 Tyler Technologies, the Press Review Queue, which is

1 highly practical, it's readily available. And the
2 evidence has shown it's been at no cost for years.
3 All of a sudden, now, they come in to court and say
4 there is a cost now, it's 108,000 a year. We think
5 that's highly suspicious, Your Honor, given the
6 documentary evidence and the evidence and testimony
7 of Mr. Girdner, and the emails from Tyler, just from
8 a new years ago, that say there is no cost. The
9 configuration is already in our database. You just
10 tell us the court case types and location, we'll set
11 it up for you.
12 And so there is an available tool that is a
13 less restrictive means of achieving their interest in
14 protecting confidential information than what they're
15 doing now.
16 So the delays can be 24 hours, 48 hours, 72
17 hours. Judge Noel in his declaration says: If you
18 file it right before Thanksgiving, it's five days
19 before you see it. There is no reason in the
20 e-filing world for an original complaint, a civil
21 case, public case, to go unreported or unknown to the
22 public for five days. There is just no good reason
23 for that. Certainly one that outweighs the interests
24 of the press and the public and timely access.
25 THE COURT: But what percentage of your

1 cases are really five days?
2 MR. EDWARDS: Well, I'm giving that as an
3 example, you're right.
4 THE COURT: But didn't the Fourth Circuit
5 say that we're not going to declare a state procedure
6 unconstitutional because of some outliers like that?
7 MR. EDWARDS: I agree, Your Honor. It's an
8 outlier. It's an example of delays that occur. But
9 you're right, the statistics, though, that we've
10 shown and proven through the records are that
11 somewhere around 30 to 40 or 50 percent are 24 hours
12 or more. And as Mr. Girdner says, that news is stale
13 bread.
14 THE COURT: What did the Fourth Circuit say
15 about 24 hours?
16 MR. EDWARDS: You're talking about the
17 Schaefer case; right?
18 THE COURT: I thought it gave the state
19 that much time.
20 MR. EDWARDS: I think that was in the paper
21 world, the Fourth Circuit was dealing with -- no, it
22 wasn't dealing with paper. I think it was -- that
23 there couldn't be a delay for processing purposes.
24 That's what the holding in Schaefer was.
25 But that's the argument that defendants are

1 making here, is that you have to get all the way to
2 the point that processing is complete and submission
3 occurs. And that could be 48 or 72 hours or more.
4 And there is a significant percentage of cases that
5 fall within that category.
6 THE COURT: Well, I'll have to study the
7 Fourth Circuit more. I didn't think it prohibited
8 the state from processing before it made the
9 documents available. But you're saying it does?
10 MR. EDWARDS: Your Honor, that's my
11 recollection. I'd have to look again, too. But my
12 understanding was that Schaefer -- and I have it with
13 me, I could look at it briefly, if I have a few
14 minutes in rebuttal, I can answer your question more
15 directly.
16 So, Your Honor, I think we've met the
17 burden of showing that the First Amendment right of
18 access attaches at filing; filing occurs upon
19 receipt; and the defendants have not met their burden
20 of establishing a significant enough government
21 interest to outweigh that access right. And they
22 certainly haven't used a narrowly tailored way of
23 doing it. And under Elrod versus Burns, the U.S.
24 Supreme Court case, irreparable harm and imminent
25 harm is presumed in a constitutional violation case

1 like this. The harm is imminent because it's
2 ongoing. The balance of equities --
3 THE COURT: I'm looking at -- I hope I'm
4 quoting the Fourth Circuit correctly when it says --
5 "held that contemporaneous in this context means the
6 same day on which the complaint is filed, insofar as
7 is practicable. And when not practicable, on the
8 next court day, excepting inconsequential deviations
9 and extraordinary circumstances, which may, without
10 violating the Constitution, delay access."
11 MR. EDWARDS: Yes.
12 THE COURT: "This flexible standard does
13 not require perfect or instantaneous access; rather
14 it provides courts with some leeway where same-day
15 access would be impracticable and fully exempts
16 inconsequential delays and those caused by
17 extraordinary circumstances."
18 So isn't it building in, the Fourth
19 Circuit, basically a 24-hour period?
20 MR. EDWARDS: Well -- and I'm reading it
21 now, too, Your Honor. It's section 5, where it
22 states that they "must be available as expeditiously
23 as possible." And under the facts in the record of
24 that case, the court did talk about the statistics.
25 But in that case it was almost 90 percent day of

1 filing. And the evidence here is different, very
2 different than that, in terms of the number of the
3 delays.
4 But the Tingling and Planet court cases,
5 Your Honor --
6 THE COURT: Well, are we getting about 70
7 percent day of filing here?
8 MR. EDWARDS: Well, in the Santa Fe
9 District Court, no, it's worse than that. It's
10 around 60 to 65, and all of the state district courts
11 it's approximately 70.
12 THE COURT: And what are the numbers for
13 within 24 hours, say?
14 MR. EDWARDS: That is the number within 24
15 hours, it would be 70 percent district -- statewide,
16 or approximately 60 percent in Santa Fe.
17 THE COURT: Is that on the day filed?
18 MR. EDWARDS: Within 24 hours. So that's
19 not exactly the same day. For instance, if it's
20 filed at 2:00 in the afternoon, it's going to be the
21 next day. But that's deemed within 24 hours. So
22 we're not getting same-day access at a much lower
23 number than those statistics would reveal for a
24 24-hour delay period.
25 THE COURT: Well, I have to study the

1 numbers. I'm not quite tracking what you're saying.
2 What is the access on the day the document is handed
3 to the court, what are the percentages of that?
4 MR. EDWARDS: Well, I believe the
5 statistics we compiled look at 24-hour delay,
6 versus --
7 THE COURT: Well, put that aside, try to
8 focus on my question. Day filed, what is percentage
9 of access?
10 MR. EDWARDS: Well, that's why I'm
11 struggling, because the statistics we gathered were
12 based on whether they could see it the same day or
13 not, or had to see it the next day. And we're
14 tracking the delays by how many --
15 THE COURT: But you can't give me the
16 statistics or the numbers of what the percentage is,
17 the day the court takes custody of it, it is
18 accessible?
19 MR. EDWARDS: It would be less than the
20 amount of the 24-hour period, which is currently --
21 THE COURT: We just don't know, the record
22 doesn't give me that information?
23 MR. EDWARDS: I'm trying to think if there
24 is a way to deduce that information from the data.
25 But as presented, it's based on a 24-hour or greater

1 time delay. But I could look more closely so I can
2 answer your question directly.
3 THE COURT: Well, I mean, it doesn't seem
4 like we know.
5 MR. EDWARDS: Well --
6 THE COURT: It seems like the most basic
7 thing we should know is what is the access of the
8 press on the day a document is given to the court.
9 And we, here at 4:00, don't know that.
10 MR. EDWARDS: Part of the problem is we
11 don't know when it was given to the court, if that
12 makes sense. Because if it's e-filed, we don't
13 necessarily see it until the next day, but we see a
14 file stamp that shows it was filed the previous day
15 at noon. So there probably is a way we can reverse
16 engineer the numbers. And I can work on getting you
17 that statistic.
18 THE COURT: All right.
19 MR. EDWARDS: So, for those reasons, unless
20 you have further questions, Your Honor, I think we've
21 met our burden. I don't think they've been able to
22 establish the Press Enterprise 2 standard for
23 justifying the delays past receipt.
24 And, again, the confidential argument,
25 sealing argument, we're looking at only e-filed

1 original complaints, not subsequent filings. And the
2 testimony has been that they are -- unless there is
3 some error made on the front end --
4 THE COURT: What is the magic of the
5 complaint as opposed to other pleadings or other
6 filings in a case?
7 MR. EDWARDS: Well, other pleadings can
8 certainly have newsworthy information in them. But
9 as Mr. Girdner explained in his declaration, the
10 original complaint is the sounding bell of a legal
11 battle, and can often be very newsworthy right out of
12 the gate. And that's the significance of the
13 original complaints. Not to say that other pleadings
14 aren't newsworthy.
15 THE COURT: I guess, in the old days, I
16 thought papers of record continued -- they took a
17 great deal of pride in tracking a case all the way
18 through to conclusion. That doesn't seem to be the
19 case anymore. There is a lot of publicity about the
20 filing, and then nothing ever is said about a case
21 again.
22 MR. EDWARDS: I think it depends on the
23 nature of the case and the controversy. If it's
24 something that involves a public figure --
25 THE COURT: That's true. But there are a

1 lot of cases in the Albuquerque Journal that are
2 never mentioned again.
3 MR. EDWARDS: I'm sure that's true as well,
4 Your Honor.
5 THE COURT: I mean, it just seems like all
6 the focus is on filing, and no follow-up at all.
7 We had a trial in this courtroom of a case
8 that was -- you know, in the press at the filing, and
9 it's never covered or never even mentioned again.
10 MR. EDWARDS: Well, Your Honor, that's all
11 I have, unless you have additional questions.
12 THE COURT: All right. Let me hear from
13 the defendants, and then I may have some. Thank you,
14 Mr. Edwards.
15 MR. EDWARDS: Thank you.
16 THE COURT: So do you concede that there is
17 a right of access to these documents?
18 MS. LECOCQ: Absolutely.
19 THE COURT: And it's based in the First
20 Amendment of the Constitution?
21 MS. LECOCQ: Absolutely, yes.
22 THE COURT: And how do you define that
23 access?
24 MS. LECOCQ: It's a qualified right of
25 access, which has been -- both Schaefer and Planet, I

1 think almost all of the circuit cases have mentioned
2 this qualified right of access.
3 THE COURT: What makes it qualified?
4 MS. LECOCQ: It's the ability -- you know,
5 we talked about earlier in testimony -- the ability
6 to balance the administrative clerical duties that
7 the court must do with timely access.
8 THE COURT: I guess I'm a little surprised
9 that you're doing all this screening for confidential
10 information. How does a clerk know that?
11 MS. LECOCQ: I think, as Ms. Baca
12 testified, there is a significant amount of training
13 that goes into training a clerk, to have him or her
14 identify what is confidential information.
15 THE COURT: I guess I'm sort of astounded
16 that clerks are down there rejecting pleadings
17 because they're making some determination that
18 something in a complaint is confidential. What
19 right, really, does a clerk have to do that?
20 MS. LECOCQ: Well, I think there are a
21 couple parts to your question here. Number one,
22 they're not rejecting the pleading. They're
23 returning it to the filer to either ask for -- again,
24 we have a difference in definition of personal
25 protected information with the Social Security

1 numbers and things, and confidential pleadings which
2 would be like abuse/negligent cases or medical
3 records or something like this. So if the clerk were
4 to see one of those things --
5 THE COURT: But they're not really -- I
6 don't know, I don't see complaints with Social
7 Security numbers in them. I don't see complaints
8 with medical records in them. So I guess I'm not --
9 I don't know what this screening is going on over
10 there. I don't think it's going on in this building.
11 MS. LECOCQ: Well -- and that might be. I
12 mean, there is --
13 THE COURT: So it seems to me this is a bit
14 of smoke here, that you can't really justify what's
15 going on with this.
16 MS. LECOCQ: Well, there is a difference,
17 first of all, between the federal court system and
18 the state court system, in that the state has
19 statutes that say you can't have personal protected
20 information posted on a state website, and have court
21 rules that say that certain things need to be --
22 THE COURT: We don't allow that sort of
23 stuff either, I mean -- but clerks aren't screening
24 that downstairs when it's filed on CM/ECF.
25 MS. LECOCQ: Well, I think the question

1 would be, if you were to file something, a medical
2 malpractice case, for example; that is an open civil
3 case that would be nonconfidential, but it would
4 contain medical records, probably necessarily, in the
5 complaint. But those records would need to be
6 sealed. And that --
7 THE COURT: Really?
8 MS. LECOCQ: I would think so. That's when
9 you have --
10 THE COURT: Not "think so." Is that what's
11 happening over in state court? Somebody files a
12 medical malpractice case, and somebody sits there and
13 reads it and says: Hey, in paragraph 22 there is a
14 confidential medical thing, and we're going to hand
15 the complaint back and not consider it filed?
16 MS. LECOCQ: I don't know that they would
17 read the complaint. I think it would be the
18 attachments. And those attachments, if they
19 contain --
20 THE COURT: Really? They're going through
21 attachments in a complaint and handing it back?
22 MS. LECOCQ: Yes. We heard testimony from
23 Ms. Baca that is what they to.
24 THE COURT: How many times does that occur?
25 MS. LECOCQ: I don't know if she mentioned

1 that. And I don't know that it's often. But it does
2 happen.
3 THE COURT: Well, like, once every 20
4 years?
5 MS. LECOCQ: No, no, no. I would
6 imagine --
7 THE COURT: 10 years?
8 MS. LECOCQ: No. Probably --
9 THE COURT: I mean, I've never heard of
10 this. I've never heard of anybody -- clerks
11 screening attachments to complaints for medical
12 records.
13 MS. LECOCQ: Well -- and that's what Ms.
14 Baca testified about, but she's --
15 THE COURT: Well, I know, but I'm finding
16 it a little hard to believe.
17 MS. LECOCQ: But she's required under
18 either --
19 THE COURT: She may be required. But I
20 just don't think that's the way the real world works.
21 MS. LECOCQ: And if Ms. Baca says that
22 that's what it is, I think I have to take her as the
23 clerk --
24 THE COURT: I don't.
25 MS. LECOCQ: Okay. I can talk about the

1 abstention argument, if you'd like, or --
2 THE COURT: Well, you can try to convince
3 me, but you can tell I'm not very persuaded by --
4 what's the state proceeding that I'm abstaining for?
5 MS. LECOCQ: So it isn't a state
6 proceeding. And really --
7 THE COURT: Isn't that an essential
8 component of Younger abstention?
9 MS. LECOCQ: Of Younger, yes. But there
10 was an extension of Younger by SKS v. Dart. And they
11 talk about the underlying principles of Younger; that
12 Younger analysis stops at, is there a competing state
13 and federal proceeding. But SKS extended it, and
14 said the underlying principle, the reason why Younger
15 abstention applies in that particular case is, you
16 could potentially have conflicting orders from the
17 federal court and the state court. And that belies
18 that those underlying principles of comity, equity,
19 and federalism.
20 So in Younger, the plaintiff sought a
21 federal injunction to stop state court proceedings
22 that he claimed violates constitutional rights.
23 Here, what we're being asked is a federal court order
24 that could potentially be contrary to New Mexico
25 Statutes and New Mexico Supreme Court orders. And

1 SKS v. Dart directly addressed this issue, and said
2 that based on those principles of equity, comity, and
3 federalism an abstention is required when a delay in
4 state court processes adversely affects the
5 plaintiff, and the plaintiff can and must seek
6 remedies through the state court themselves first.
7 And that is the case that Brown followed
8 when it argued for abstention in a case like this.
9 It says, "Specifically, a preliminary injunction is
10 affecting the state processes that we have." It
11 isn't necessarily a proceeding. And we've heard
12 ample testimony from Mr. Pepin and Judge Noel that,
13 really, these processes are dictated by the New
14 Mexico State Supreme Court.
15 And Courthouse News Services is not
16 challenging a statute or a court rule. Specifically,
17 they're challenging the process that is identified
18 and is required by the state statutes. So what Brown
19 said is that they don't want to impose a significant
20 limitation on a state court's ability to manage its
21 own affairs.
22 And that is what we have here. We have a
23 unified judiciary with the New Mexico Constitution
24 and the federal Constitution on top, with statutes
25 and court rules underneath that. And all of that is

1 upheld by the New Mexico Supreme Court.
2 And Brown, in its conclusion said, "The
3 level of intrusion that Courthouse News Services is
4 seeking from the federal court into the operations of
5 the state court was too high, at least before the
6 state courts had an opportunity to address the
7 constitutional issue."
8 Now, Mr. Edwards has said that they didn't
9 bring this in state court because it didn't seem
10 right to ask the State Supreme Court to determine
11 itself and its own processes to be unconstitutional.
12 But that kind of undermines the New Mexico State
13 Supreme Court. And we need to give them an
14 opportunity to look at its own processes from this
15 perspective, and make that determination as to
16 whether its own processes are unconstitutional, under
17 both the federal Constitution and the New Mexico
18 Constitution.
19 And there are several ways to do that.
20 There are other remedies available. We have a
21 declaratory action about the constitutionality of the
22 processes here in New Mexico or an as-applied
23 challenge for any one of those court records that
24 Courthouse News stated that were -- that they didn't
25 have access to initially.

1 They could file an extraordinary writ,
2 something like asking for superintendent control from
3 the Supreme Court to, based on its arguments, to
4 reexamine the reasons that all of these were not
5 adopted, and see if it passes constitutional muster
6 from their perspective.
7 But, ultimately, the state is the one that
8 is best positioned to examine its own processes,
9 because it is most knowledgeable about those
10 processes. And it should be the first one to balance
11 the access right and the interests of the state that
12 are at play in this type of case.
13 And the denial in the Fourth Circuit and
14 the Ninth Circuit, I think, it just didn't go far
15 enough when it stopped the abstention analysis,
16 because it just looked at it and said, there is no
17 competing federal and state court case; therefore,
18 Younger doesn't apply. And they didn't take the SKS
19 policy reasoning and go further, like they did in
20 Brown.
21 So that is why the state believes that
22 abstention in this case is warranted, again, because
23 this is a state processes question.
24 However, even if abstention is not
25 warranted, the state doesn't believe that access to

1 pleadings applies upon receipts, but only upon
2 acceptance. Again, this is not an absolute right.
3 This is a qualified right of timely access.
4 THE COURT: But you still have to apply the
5 compelling state interest; correct?
6 MS. LECOCQ: Yes.
7 THE COURT: So help me understand your
8 argument. Are you arguing that the state's
9 compelling state interest comes from its own rules?
10 MS. LECOCQ: Well, it comes from the rules
11 that identify the interest. So, no, the rules
12 identify the state interest.
13 THE COURT: I guess I'm wondering if that's
14 really a legitimate analysis to say: We can create
15 these rules, and therefore, there is a compelling
16 state interest. Don't you have to look at the whole
17 package and say: Does the state have a compelling
18 state interest in doing what they're doing?
19 MS. LECOCQ: The compelling state interest
20 here is reliability and trustworthiness of the court
21 system and the judiciary as a whole. And I think
22 it's two sides of the same coin here, really, that
23 Mr. Edwards and Mr. Girdner have said.
24 THE COURT: Let me frame it this way. I
25 mean, you can't have compelling state interest here

1 in New Mexico that's different from a compelling
2 state interest elsewhere. The federal law has to be
3 somewhat consistent from state to state. So one
4 state can't create a bunch of rules, say that's the
5 compelling interest, and another one have a different
6 set of rules, say that's the compelling state
7 interest, and it always overrides the federal
8 interests. Do you agree with that?
9 MS. LECOCQ: I do agree with that.
10 THE COURT: So I have to look -- I have to
11 look at your package of rules, to see if those are
12 really compelling; right? I mean, if California
13 doesn't do this or Texas doesn't do this, the fact
14 that New Mexico does it doesn't make it compelling.
15 MS. LECOCQ: Right. But the compelling
16 interest is the trustworthiness and the reliability
17 of the court system. And in order to ensure that
18 that interest is consistent in New Mexico, that is
19 the reason that the Supreme Court has adopted these
20 rules that help facilitate that.
21 THE COURT: But if you have court systems
22 that are not doing what New Mexico is doing, as far
23 as screening, then these complaints could be
24 available to the press much earlier.
25 MS. LECOCQ: They could. But in both

1 Planet and Schaefer -- in fact, Planet says that "the
2 court does not demand immediate preprocessing access
3 to newly filed civil complaints." All of the cases
4 allow --
5 THE COURT: But don't you have some
6 problems with your statistics, though? They don't
7 seem to be as good as Virginia's in the Fourth
8 Circuit.
9 MS. LECOCQ: Well --
10 THE COURT: You seem to have more problems
11 than they do.
12 MS. LECOCQ: And that, really, when you're
13 comparing state to state, I think that's difficult,
14 because number one, Virginia wasn't the entire state.
15 It was a county. The same in Planet, it was Ventura
16 County. Here, we have the entire state, and
17 everything is under a court rule.
18 THE COURT: What constitutional difference
19 would that make, though?
20 MS. LECOCQ: I don't think it makes a
21 constitutional difference.
22 THE COURT: I mean, if New Mexico --
23 however it's doing is not making access available the
24 day that it handed to the court -- it seems to me
25 that under that Fourth Circuit case you may have some

1 problems, if that's the correct statement of the law.
2 MS. LECOCQ: Well -- and I think that that
3 kind of goes into this question of the day that it's
4 handed to the court.
5 THE COURT: Let me go back to my question,
6 though. Would you agree with me that if the Fourth
7 Circuit is a correct statement of the law, New
8 Mexico's got some problems with that.
9 MS. LECOCQ: I don't agree with that. The
10 Fourth Circuit says it needs to be made available as
11 expeditiously as possible.
12 THE COURT: Well, it puts a high premium on
13 that day.
14 MS. LECOCQ: It does. I think the filing
15 deadline in Schaefer was 4:00, and the filing
16 deadline here in New Mexico is midnight. So if
17 somebody files it at 11:59 at night, that cannot be
18 made available on the same day, if it's made
19 available at 6:00.
20 THE COURT: But we don't have any
21 statistics before the Court that makes that
22 differentiation; right? How many are filed at
23 midnight, as opposed to how many are filed during the
24 business day?
25 MS. LECOCQ: We do. State's Exhibit C,

1 even though Ms. Orchard admitted that she made some
2 errors in the calculation of the total numbers and
3 the percentages, State's Exhibit C is a month look at
4 all civil filings. It a 30-page document, with every
5 single --
6 THE COURT: So how many are filed before
7 4:00?
8 MS. LECOCQ: And that -- before -- that I
9 didn't -- I don't think Ms. Orchard actually
10 synthesized that particular data. But the raw data
11 is there.
12 THE COURT: So if you want me to focus,
13 though, on same-day filings, and give you the benefit
14 of filings that are in the later hours of the day,
15 how do I do that with the record that's before me?
16 MS. LECOCQ: Well -- and I think, actually,
17 I think Ms. Orchard corrected it in her snapshot.
18 But if you look at the number of filings that we
19 have, and those that are made available -- that
20 they're sent and they're received by this kind of
21 server that puts them in a press queue, it's kind
22 of -- it's actually really difficult to do, because
23 it's a false equivalent. If the server receives it
24 at 10:00, the court doesn't actually receive it until
25 8:00 the next morning. So it looks like it's a delay

1 of 10 hours, but it's not actually any delay, because
2 there isn't any way that the clerk would receive it
3 and look at it at 10:00 at night. That distinction,
4 though, that's the problem here before the court, is
5 that, as a Judge Noel stated, that document is not an
6 official court record until the clerk looks at it and
7 accepts it.
8 THE COURT: But the Fourth Circuit didn't
9 seem to be focusing on that. It seemed to be
10 focusing not on when the state decided that it was
11 filed. It seemed to focus it on when the Court had
12 the document. Would you agree with that reading of
13 that case?
14 MS. LECOCQ: I think that that term
15 "filed," and the term with the court --
16 THE COURT: That's the reason I'm trying
17 not to use it, because the Fourth Circuit doesn't
18 seem to be terribly interested in that either. It
19 seems to be at the time the court gets the document.
20 It seems New Mexico is adding this layer of saying
21 that it has to be processed before they're making it
22 available. And I don't see the Fourth Circuit
23 hinging its constitutional analysis on that.
24 Let's do this: I need to let Ms. Bean have
25 a break. So let's take a break for 15 minutes, and

1 I'll come back and let y'all finish up your argument.
2 (The Court stood in recess.)
3 THE COURT: All right. Ms. Lecocq, if you
4 wish to continue your argument, you may do so at this
5 time.
6 MS. LECOCQ: Thank you, Your Honor.
7 THE COURT: Ms. Lecocq.
8 MS. LECOCQ: I think we were talking about
9 the -- well, actually, I want to go back a little bit
10 and start talking about filing. I think that the
11 Courthouse News has alleged that the state is
12 attempting to create a new definition of the word
13 "filing" relying on Ennis and Hurley, which by the
14 way, are both New Mexico cases. And they say, "A
15 document is deemed filed when the clerk receives it
16 for purposes of the statute of limitation and other
17 deadlines. When an attorney presses submit" --
18 THE COURT: Does this have any
19 constitutional significance? Because it seems to me,
20 in looking at the cases, whether they're for -- they
21 rule in favor of the state or against the state, it's
22 just when you got the document.
23 MS. LECOCQ: Well -- so let's back up a
24 little.
25 THE COURT: Do you have a case that doesn't

1 analyze it that way?
2 MS. LECOCQ: No. But we do have -- we are
3 under a heightened scrutiny, but it's not strict
4 scrutiny. We have rigorous scrutiny. And this is
5 what -- Planet mentioned this; that for this type of
6 case, because we have restrictions that resemble
7 time, manner, or place restrictions, we have a
8 rigorous scrutiny. And the clerk "must demonstrate
9 that there is a substantial probability that the
10 orderly administration of justice would be impaired."
11 And that's what we're talking about.
12 THE COURT: But isn't the problem for the
13 state -- any state, not just New Mexico -- is that,
14 if the federal courts are not doing certain things,
15 it's going to be hard for the state to argue that
16 it's a compelling state interest?
17 MS. LECOCQ: No, I don't agree with that.
18 And the reason is because the federal court, they
19 have -- it's a limited jurisdiction. The federal
20 court, you have to have a reason to be in federal
21 court. The state court, for lack of a better term,
22 is the people's court. That is where you go for
23 relief.
24 THE COURT: But if we're not doing some
25 things that y'all are doing, I just think it's kind

1 of hard for you to come in and say: What we're doing
2 is a compelling state interest.
3 MS. LECOCQ: Well, I think that --
4 THE COURT: Particularly, if other states
5 are not doing it.
6 MS. LECOCQ: Well, so those are all
7 different questions. I think the federal court is
8 not bound by New Mexico statutes and rules and
9 procedures.
10 THE COURT: Well -- but I thought we agreed
11 before the break that you can't come in here with a
12 set of rules and say: That's the compelling state
13 interest.
14 MS. LECOCQ: No.
15 THE COURT: You have to prove that it is a
16 compelling state interest that overrides the First
17 Amendment right; not that those rules require you to
18 do certain things.
19 MS. LECOCQ: Okay. So there is a couple
20 pieces here.
21 THE COURT: The state just can't create a
22 compelling interest by saying we have all these
23 rules.
24 MS. LECOCQ: I agree.
25 THE COURT: Therefore, when we follow the

1 rules, it's a compelling state interest.
2 MS. LECOCQ: I agree. I think the rules
3 are created because of that compelling state
4 interest. They're created --
5 THE COURT: But if other states and the
6 federal court are not doing those things, and not
7 protecting those interests, isn't it difficult for
8 New Mexico to say: We're going to protect those?
9 MS. LECOCQ: Well, it isn't -- as Your
10 Honor mentioned earlier, it isn't across the board.
11 There are states where we say that, yes, the way that
12 we do things is protected. It is a compelling state
13 interest. And I think that the way Your Honor
14 phrased it, that the First Amendment said --
15 something about against the First Amendment. I want
16 to be really clear that we 100 percent concede that
17 the press has a First Amendment right to access to
18 these documents. But it has to be balanced with the
19 compelling state interest. And the compelling state
20 interest is orderly administration of the courts.
21 And the way that New Mexico as a whole --
22 because New Mexico is a unified judiciary, the way
23 that that is done, the orderly administration of the
24 court is going to differ state by state.
25 Now, Utah it was suggested is also a

1 unified judiciary, but I don't know anything about
2 the way that Utah runs its court system, or the way
3 the California runs its court system, or New York.
4 But the way New Mexico runs its court system is we
5 have this idea of this -- that the court needs to
6 be -- the documents within the court need to be
7 reliable, because the court needs to be trustworthy.
8 And transparency and trustworthiness of the court is
9 one of the linchpins of a democracy.
10 So we -- I think the rules and the statutes
11 that New Mexico has created are done in order to
12 ensure that that compelling state interest is
13 followed across the state, again, because we have
14 this unified judiciary.
15 And so we are able to demonstrate that if
16 Courthouse News is able to access these documents at
17 the time when they're requesting access upon receipt,
18 that that access would impair the orderly
19 administration of justice. And Judge Noel and
20 Mr. Pepin both said that it would -- and one of the
21 examples is that that document is not a court record
22 yet. It's not reliable. It can be changed. It can
23 be amended. And you don't need a court order to do
24 that until the clerk presses "accept."
25 THE COURT: But what constitutional

1 significance does that have?
2 MS. LECOCQ: Well, I think it goes
3 directly, again, to that orderly administration of
4 the court, which is what -- the state is allowed to
5 have some sort of say in ordering -- in the
6 administration of its court. And that processing,
7 that administration, doesn't hinder the First
8 Amendment right of press access. That's something
9 that the state is permitted to do. And in every
10 case, Planet, Schaefer, Brown, all of the cases have
11 said that that is something that the state is
12 permitted to do.
13 And the question here is, really, as long
14 as --
15 THE COURT: But you may have to do it
16 within a period of time. If you want to do it, you
17 may have to do it in a more compressed period of
18 time.
19 MS. LECOCQ: Yes, we may have to do it in a
20 more compressed period of time, but --
21 THE COURT: I'm concerned. If we look at
22 that Fourth Circuit case, it's difficult to see that
23 New Mexico is doing it in that timeframe.
24 MS. LECOCQ: Well -- and I think looking at
25 the Fourth --

1 THE COURT: You're wanting more time.
2 MS. LECOCQ: We're not wanting more time.
3 Schaefer says contemporaneous access is required, and
4 it means within a reasonable amount of time. The
5 same day, insofar as it is practicable. And that's
6 kind of the key phrase there. If you look at our
7 court system, the 600,000 pleadings that come through
8 the clerk's office and the 75 clerks that have to do
9 that, and they're required under Supreme Court rules
10 and statutes to ensure that nothing confidential
11 appears on a public website in order to follow that
12 statute, then yes, they have to look at every single
13 one of those documents.
14 Again, to bypass the processes that are in
15 place, it would create a significant impairment to
16 the orderly administration of the court for the same
17 reasons: Reliability of the court; it needs to be an
18 actual court record, and all of this needs to be done
19 in order to maintain the integrity of the court
20 system.
21 And again, we've talked a lot about the
22 press queue; that this could be a reasonable
23 alternative. But I think the cost that we've
24 mentioned, the $108,000, is not really what's at
25 issue here. Because when the Supreme Court believed

1 that it was free, the Supreme Court still said no,
2 that this isn't something that we're implementing;
3 that it is when the record -- when the document
4 becomes a court record, at that exact moment, that is
5 when the press currently have access to that
6 document. And it can't be done any earlier, because
7 then it wouldn't be a court record.
8 And we do have SOPA account available for
9 the press. We have viewing kiosks. And finally, you
10 can call the clerk if you have questions about a
11 specific case.
12 And so, unless the Court has any further
13 questions, I don't know that I have anything else to
14 say, other than we are respectfully asking that the
15 Court abstain so that the state can consider the
16 constitutionality of its own processes. And if it
17 chooses not to, to not issue a preliminary
18 injunction, because Courthouse News Services is
19 unlikely to succeed on the merits because we have
20 reasonable restrictions that allow clerical
21 administration, which are permitted under the
22 Constitution, because it's a qualified right of
23 access the press has. The clerical administration is
24 necessary for the orderly administration of the
25 courts. And we don't have a reasonable alternative,

1 because to do so would impair the integrity of the
2 courts. So we're asking that the Court deny the
3 preliminary injunction.
4 Thank you, Your Honor.
5 THE COURT: Well, again, I'm not saying
6 that the Fourth Circuit is a correct statement of the
7 law. I haven't certainly studied this enough to know
8 that. But it says -- it provides the court with some
9 leeway where same-day access would be impracticable.
10 But that certainly seems to me that it's suggesting
11 that the same day is the rule.
12 MS. LECOCQ: And I mean -- and that could
13 be possible.
14 THE COURT: And if I understand these
15 statistics -- and you can correct me if I'm wrong --
16 we're only batting about 50 percent on same day.
17 MS. LECOCQ: Well, and that's difficult --
18 THE COURT: And I guess I'm struggling to
19 see how that would comply with this Fourth Circuit
20 test.
21 MS. LECOCQ: Same day, insofar as is
22 practicable. And --
23 THE COURT: Well, but I think it says,
24 Where same-day access would be -- it provides court
25 with some leeway where same-day access would be

1 impracticable. So it's really -- the presumption
2 seems to me to be that it's going to be the same day.
3 Because the paragraph begins by saying that the
4 public and press generally have a contemporaneous
5 right of access to court documents. So they're
6 trying to figure out what contemporaneous means. And
7 they give the state leeway to make it the same day.
8 So that's what contemporaneous means, and they say
9 that themselves: The same day on which the complaint
10 is filed, insofar as is practicable. And when not
11 practicable, on the next court date.
12 MS. LECOCQ: For Schaefer, specifically.
13 But that paragraph you're looking at, on page 328 of
14 Schaefer, it says, "The Court says with flexibility
15 in accordance with precedent in recognizing that the
16 Constitution does not require the impossible. And we
17 define contemporaneous in this context to require
18 that the Court act as expeditiously as possible."
19 And in Schaefer, I don't know what the
20 filing deadline was in New York, but here in New
21 Mexico, the midnight filing deadline, anytime you
22 file between 4:00 and midnight, 4:00 and 8:00 the
23 next morning, it's not possible -- well, 4:00 and
24 midnight, it wouldn't be possible to get that on the
25 same day.

1 And so, even though the numbers may show
2 you only have --
3 THE COURT: You would be able to if you use
4 this technology; right? It's because you don't use
5 the technology that it's impossible.
6 MS. LECOCQ: Well, no. We don't use the
7 technology, because --
8 THE COURT: I mean, things are filed here
9 in this building all night long, and it's immediately
10 accessible to the public.
11 MS. LECOCQ: Well, again, I contend that
12 the difference between the federal court and the
13 state court, again, is a false equivalency. I think
14 the numbers of court documents just themselves that
15 come through the federal court and the state court
16 are vastly different.
17 And again, we have -- there are statutes
18 and court rules that New Mexico has put in place to
19 ensure the orderly administration of justice that
20 need to be followed. And so I don't think that it's
21 a proper equivalency to compare the federal court
22 with the state court system in New Mexico.
23 I do think, again, that even if we were to
24 grant this access, even if this access were granted
25 to Courthouse News Services and other press at the

1 time they're requesting, just to get the numbers up
2 isn't something that we need to do, because it would
3 impair the orderly administration of justice. The
4 clerks have an obligation under state court rules and
5 statutes to look at every single document. And so,
6 when they do that, and when they upload it, they are
7 doing it as expeditiously as possible. And that is
8 what Schaefer requires.
9 THE COURT: All right. Anything further,
10 Ms. Lecocq?
11 MS. LECOCQ: No. Thank you, Your Honor.
12 THE COURT: Thank you, Ms. Lecocq.
13 All right. I'll give you the last word on
14 your motion.
15 MR. EDWARDS: Thank you, Your Honor.
16 And I want to start off by where I
17 butchered the answers to your questions about
18 statistics and same day access. So in Exhibit 2,
19 admitted today, we have the delay logs that were
20 created by Victoria Prieskop. And those logs reflect
21 the same day percentage in all of state district
22 courts in New Mexico of 69.47. In Exhibit 2 to her
23 declaration, and was admitted into evidence today, in
24 the Santa Fe District Court, the same day access is
25 40.82 percent. She also submitted supplemental logs

1 for the period of July 1st through September 17th,
2 that showed 70.46 percent in all district courts,
3 same day, and Santa Fe 43.25 percent. So we're still
4 dealing with anywhere from 60 to 30 percent are not
5 being available the same day.
6 With respect to Schaefer, Your Honor, I
7 think it needs to be pointed out that that was a case
8 about paper filings. And that's why the court looked
9 at same-day access and looked at what was practicable
10 for a paper filed court.
11 If you look at the e-file courts, like
12 Tingling, the decision in Manhattan, that was an
13 e-file court. And a court entered an injunction
14 saying: You can't delay access until after process.
15 That was the injunction that was ordered in the
16 Tingling case. We think that's more instructive
17 because it's an e-filing case, instead of Schaefer,
18 which was a paper filed case.
19 THE COURT: Who was the district judge on
20 that case in the Southern District?
21 MR. EDWARDS: Ramos. Mr. Girdner is
22 reminding me. He knows these cases better than I do
23 sometimes, Your Honor. But Judge Ramos was the lower
24 court judge in that case.
25 Let me just briefly address this compelling

1 state interest argument that the defendants are
2 making. Almost all of the work they're talking about
3 needs to do, it's clerical work. I don't think
4 they're looking at all pages of every 444,000
5 documents being filed in confidential documents. I
6 don't think the clerks are trained to do it, and I
7 certainly don't think they have a duty to do it.
8 They're not doing it.
9 The policy of this orderly administration
10 of the courts is, frankly, I just don't understand
11 it, because U.S. District Courts and many other state
12 courts are able to conduct the administration of
13 justice in an orderly fashion and still provide
14 access to the press and public in a contemporaneous
15 fashion, which means upon receipt by the clerk.
16 And we think that can be accomplished here.
17 And there is no compelling state interest to justify
18 not doing it. In fact, we've already established
19 that there is a tool readily available; they just
20 don't have the will to implement it. And we found
21 that in other jurisdictions, where there is a will to
22 do it, it's done upon request, without litigation.
23 Where there is not a will to do it, litigation
24 ensues, battles start, and then, ultimately, we have
25 to rely on the courts for injunctions and declaratory

1 relief.
2 And we think that there is certainly not a
3 narrowly tailored way of accomplishing these
4 interests, even if clerical tech work is of a
5 compelling state interest, or somehow the orderly
6 administration of courts is jeopardized by allowing
7 press access as we've requested.
8 THE COURT: Ms. Lecocq said that the test
9 is not strict scrutiny. Would you agree with that?
10 MR. EDWARDS: Well, Schaefer certainly
11 reached that conclusion, that it was rigorous
12 scrutiny. But I think it still requires --
13 THE COURT: And what exactly is the
14 difference between rigorous scrutiny and strict
15 scrutiny?
16 MR. EDWARDS: I'm a little unclear about
17 that in the case law, Your Honor.
18 THE COURT: But they were drawing a
19 distinction; they thought it was a lesser, more
20 relaxed standard than strict scrutiny?
21 MR. EDWARDS: The Fourth Circuit in
22 Schaefer certainly used the language, "rigorous
23 scrutiny" in reliance on the Doe case, rather than
24 strict scrutiny. But they did still require that it
25 be narrowly tailored.

1 THE COURT: I see the citation to Doe, but
2 Doe is from where?
3 MR. EDWARDS: Let's see here. I'm sorry,
4 the citation is to Glow, with the statement that
5 "Limitations on the right of access that resemble
6 time, place, and manner restrictions on protected
7 speech, will not be subject to such strict scrutiny."
8 That's at headnote 20. They said, "The clerk's
9 practices do resemble time, place, and manner
10 restrictions. So we apply more relaxed scrutiny. In
11 the context of this case, this requires that the
12 access be content neutral, narrowly tailored, and
13 necessary to preserve the court's interest in the
14 fair and orderly administration of justice."
15 THE COURT: So they're still using a
16 "narrowly tailored" test?
17 MR. EDWARDS: That is correct.
18 THE COURT: So does the flexibility come in
19 the application rather than the statement of the
20 test? The statement of the test is no different;
21 it's just a more generous to the state?
22 MR. EDWARDS: It may be slightly more
23 generous in this instance. I'm not sure I agree with
24 the court that it's merely a time, place, and manner
25 restriction.

1 I think it's a Press Enterprise 2 case,
2 where you have to show that there is a compelling
3 state interest and narrowly tailored, it's more
4 strict scrutiny.
5 But certainly the Fourth Circuit in
6 Schaefer took the rigorous scrutiny approach.
7 THE COURT: Let me circle back to Ms.
8 Lecocq's arguments about abstention. She was
9 suggesting that it wasn't really Younger abstention,
10 and maybe taking it from Pennzoil and Sprint, that
11 Younger applies to civil proceedings involving
12 certain orders that are in furtherance of a state's
13 ability to perform their judicial functions. Maybe
14 there has to be a proceeding for strict Younger. But
15 do the states have an interest in performing their
16 judicial functions that Sprint protects?
17 MR. EDWARDS: Well, I think Sprint made
18 clear, Your Honor, that all three components of
19 Younger had to apply, "including the ongoing state
20 civil enforcement proceeding, or a pending civil
21 proceeding involving certain orders, uniquely in
22 furtherance of the state court's ability."
23 There is no pending civil proceeding
24 regarding any order relating to a judicial function.
25 And I don't believe there are any orders or rules in

1 place that have been cited to this Court that relate
2 to the judicial function, the adjudicative function
3 of the courts. In other words, take a case specific
4 adjudicative act or order or judgment. We're talking
5 about administrative policy. It may be implemented
6 and enforced at the Supreme Court level, and through
7 the Administrative Office of the Courts, but it's an
8 administrative policy, not a judicial order or
9 judgment in the traditional sense.
10 I don't think Younger applies. And Sprint
11 specifically says, "In order to guide other federal
12 courts, we today clarify and affirm Younger extends
13 to the three exceptional circumstances identified in
14 the New Orleans case, NOPSI, but no further." It was
15 clear that there shouldn't be a relaxed Younger
16 application. Certainly not as Brown did in the
17 Seventh Circuit.
18 So I think the Younger -- and I think the
19 Tenth Circuit has made clear in Ute Indian Tribe that
20 we cited in our briefs, and Stein, that the federal
21 plaintiff, in this, Courthouse News, has to be a
22 plaintiff in a state court proceeding, which -- and
23 there is no state court proceeding challenging the
24 Supreme Court's standing order, the rules of court,
25 the access being provided, none of those things. And

1 we think that answers the abstention question.
2 THE COURT: All right. Anything else, Mr.
3 Edwards?
4 MR. EDWARDS: I think that's it, Your
5 Honor. Thank you for your time.
6 THE COURT: Let me ask you this: And I
7 largely rely upon the plaintiff here, because you're
8 the one that is wanting the injunctive relief, I
9 would like to study this issue and take it under
10 advisement, but I also want to be a good judge and
11 give you a timely ruling on your request for a
12 preliminary injunction. How long do I have? At what
13 point do I begin -- you don't think I'm doing my job
14 and getting out a timely order on your request for a
15 preliminary injunction?
16 MR. EDWARDS: That's a difficult question,
17 Your Honor. I would certainly defer to you on that.
18 We would certainly request as soon as practicable, in
19 the language of Schaefer.
20 THE COURT: But when is that for you? I'll
21 just set a deadline, and I'll get you an order of
22 some sort by that deadline. But I --
23 MR. EDWARDS: My client is signaling to me
24 that we do not wish to impose a deadline on Your
25 Honor, but we would --

1 THE COURT: I'm going to press for one,
2 because at some point, a district judge is not
3 thought of as doing his or her job, if he doesn't get
4 an opinion out on a PI.
5 MR. EDWARDS: Well -- and there is the
6 ongoing issue of imminent harm, which I have argued.
7 So to fulfill that argument, I would say that we
8 would like one -- today is -- the end of next week?
9 THE COURT: All right. I'll have you some
10 ruling by 5:00 next week; Friday of next week;
11 correct?
12 MR. EDWARDS: Yes, Your Honor.
13 THE COURT: Did I understand you correctly?
14 Friday, next week?
15 MR. EDWARDS: Correct, Your Honor. And
16 again, for the record, we would defer to the Court
17 and its schedule.
18 THE COURT: No, I need to get it done.
19 I'll do the best I can, and have you something by
20 5:00 next Friday.
21 MR. EDWARDS: Thank you, Your Honor.
22 THE COURT: All right. Is there anything
23 else we need to discuss while we're together -- oh,
24 two things -- three things, actually -- I have a
25 document here that I think is the defendants'

1 document and it seems to be free-floating. Did you
2 have a two-page exhibit that I need to attach this
3 to? Let me hand it to you and see if this needs to
4 be admitted, or if I just am not attaching it to the
5 right document.
6 MS. LECOCQ: Yes, this is the second page
7 of Exhibit A.
8 THE COURT: All right. Okay.
9 And second, does anybody have any objection
10 if I hang on to that chart, and then to the butcher
11 block paper to help me, as I maybe go through the
12 transcript, to know exactly what I'm -- just help me
13 to have it. Do you have any objection?
14 MR. EDWARDS: I have no objection.
15 MS. LECOCQ: No objection.
16 THE COURT: Is that okay? So I'll take
17 custody of those. And then, if you get a hankering
18 to have them back, you can work with me after I issue
19 the order next week.
20 All right. Anything else we need to
21 discuss while we're together? Anything else I can do
22 for you, Mr. Edwards?
23 MR. EDWARDS: No. Thank you, Your Honor.
24 THE COURT: Ms. Lecocq?
25 MS. LECOCQ: No, Your Honor.

THE COURT: All right. I appreciate y'all's hard work and presentations, and I'll try to have something to you out by the end of the week next week.

All right. Y'all be safe in your travels and be safe out there, period.

So this gets attached to what?

MS. LECOCQ: Exhibit A, Your Honor.

THE COURT: A, okay.

(The Court was adjourned.)

C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA
DISTRICT OF NEW MEXICO

I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR, Official Court Reporter for the State of New Mexico, do hereby certify that the foregoing pages constitute a true transcript of proceedings had before the said Court, held in the District of New Mexico, in the matter therein stated.

In testimony whereof, I have hereunto set my hand on October 3, 2021.

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