

1 **Vol IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 **CLARK COUNTY SCHOOL**
3 **DISTRICT,**

4 Appellant.

5 vs.

6 **LAS VEGAS REVIEW-JOURNAL,**

7 Respondent.

Supreme Court No. 75534

District Court No. A750151

District Court Dept. No. XVI

Electronically Filed
Sep 07 2018 12:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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15 **APELLANT'S APPENDIX**
16 **VOLUME II**
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23 Adam Honey, Nevada State Bar No. 9588
24 Clark County School District
25 Office of General Counsel
26 5100 W. Sahara Avenue
27 Las Vegas, NV 89146
28 *Counsel for Appellant, Clark County School District*

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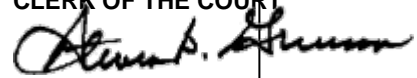
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Attorney for Respondent

AN EMPLOYEE OF THE OFFICE OF THE
GENERAL COUNSEL-CCSD



EXHS

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ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

701 East Bridger Avenue, Suite 520

Las Vegas, NV 89101

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Counsel for Petitioner

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Respondent.

Case No.: A-17-750151-W

Dept. No.: XVI

**APPENDIX OF EXHIBITS IN
SUPPORT OF PETITIONER LAS
VEGAS REVIEW-JOURNAL'S
MOTION FOR ATTORNEY'S
FEES AND COSTS**

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Exhibit	Description	Bates Nos.
1	Declaration of Margaret A. McLetchie	MAFC001-003
2	Attorney's Fees	MAFC004-034
3	Attorney's Costs and Expenses	MAFC035-039
4	Transcript of August 17, 2017 Deposition of Cynthia Smith-Johnson	MAFC040-138
5	Transcript of August 18, 2017 Deposition of Daniel R. Wray	MAFC139-233
6	Exhibit 24 to Daniel R. Wray's Deposition; January 23, 2009 Transcript of Evidentiary Hearing in <i>Karen Gray vs. Clark County School District</i> (Case No. A843861)	MAFC234-277
7	Declaration of Kathleen Jane England	MAFC278-282

DATED this 19th day of September, 2017.

/s/ Margaret A. McLetchie

MARGARET A MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

Counsel for Petitioner

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CERTIFICATE OF SERVICE

Pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, I hereby certify that on this 19th day of September, 2017, I did cause a true copy of the foregoing APPENDIX OF EXHIBITS IN SUPPORT OF PETITIONER LAS VEGAS REVIEW-JOURNAL’S MOTION FOR ATTORNEY’S FEES AND COSTS in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W, to be served electronically using the Odyssey File&Serve system, to all parties with an email address on record.

Pursuant to NRCP 5(b)(2)(B) I hereby further certify that on the 19th day of September, 2017, I mailed a true and correct copy of the foregoing APPENDIX OF EXHIBITS IN SUPPORT OF PETITIONER LAS VEGAS REVIEW-JOURNAL’S MOTION FOR ATTORNEY’S FEES AND COSTS by depositing the same in the United States mail, first-class postage pre-paid, to the following:

Carlos McDade, General Counsel
Adam Honey, Asst. General Counsel
Clark County School District
5100 W. Sahara Ave.
Las Vegas, NV 89146
Counsel for Respondent, Clark County School District

/s/ Pharan Burchfield
An Employee of MCLETCHE SHELL LLC

DECLARATION OF MARGARET A. MCLETCHIE

I, MARGARET A. MCLETCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330, as follows:

1. I have personal knowledge of the facts set forth below, and, if called as a witness, could testify to them.

2. I am an attorney duly licensed to practice law in Nevada.

3. I am a partner at the law firm of McLetchie Shell, LLC, and I am lead counsel for the Las Vegas Review-Journal in *Las Vegas Review-Journal v. Clark County School District*, Clark County District Court Case No. A-17-750151-W.

4. I am making this declaration to provide information justifying the fee and costs request in this case, to authenticate documents attached as exhibits in support of Petitioner Las Vegas Review-Journal's Motion for Attorney's Fees, and to verify factual representations contained in the Motion.

5. The work performed by my firm is detailed in the summary attached to the Motion as Exhibit 2. I certify that this bill accurately reflects work by my firm. I manage work flow at my firm and routinely review time entries made by other attorneys and staff at the firm, and attest that the entries listed reflect work in fact conducted by my firm in this matter, *less reductions made in the spirit of cooperation*.

6. I billed and structured my firm on this matter with an eye to avoiding duplicative work and using lower billing attorneys (or staff people) wherever possible (both within my firm and among co-counsel). At the time my office performed work in this matter, I believed the work we were all doing was reasonably necessary to protect and further the interests of this client.

7. As the partner at my firm responsible for this matter, I have carefully reviewed the billing statement and corrected any errors. I also exercised my billing judgment and deducted and/or removed a number of entries to err on the side of avoiding billing for *potentially duplicative* work—and in the spirit of cooperation. The fee request in this matter includes 138.2 hours at my rate (\$450.00), which totals \$62,190.00. (*See* Exh. 2.)

8. The time spent on this case included in the fee request also includes time for work performed by Ms. Shell. I routinely monitor the work performed by all people who work at my firm, including Ms. Shell. For this case, I reviewed the time entry records for Ms. Shell and reduced time entries as appropriate. (*Id.*) I am billing Ms. Shell at the current rate of \$350.00 per hour. (*Id.*) Thus, the reduced total for Ms. Shell's time on this matter is \$30,065.00.

9. The time spent on this case for which I am seeking compensation also includes work for Pharan Burchfield, my paralegal. I am billing Ms. Burchfield at the current rate of \$150.00. (*Id.*) I reviewed each of Ms. Burchfield's entries, resulting in a total of 29.6 hours on this case. (*Id.*) Thus, the total for Ms. Burchfield's time I am seeking compensation for is \$4,440.00. (*Id.*)

10. Gabriel Czop, working a total of 2.6 hours on this case, was a law clerk at McLetchie Shell, enrolled and in good academic standing at the William S. Boyd Law School at the University of Nevada Las Vegas. Although Mr. Czop's work would typically be billed at the rate of \$100.00 per hour, in the spirit of cooperation I have not included his time in this request for attorney's fees.

11. I exercised appropriate billing judgment and structured work on this case to maximize efficiencies, and the hours listed in the fee request are neither duplicative, unnecessary nor excessive.

12. To keep billing as low as possible, Ms. Shell conducted work where appropriate. Further, I utilized a student law clerk and a paraprofessional to perform tasks such as research and organization to assure that attorneys with higher billing rates were not billing for tasks that lower billers could perform.

13. The rates I billed in this matter are reasonable. I manage my firm, and set the firm's billing rates, which exceed those charged in this matter. Further, the work performed by my firm in this matter was more complex and required more specialized expertise than in routine matters.

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14. In all these ways, I have charged a reasonable and reduced rate for the attorneys' time.

15. I exercised appropriate billing judgment by *not* including in this application certain time, even time which would likely be compensable.

16. The description of costs and fees in this case also excludes the majority of the time spent working on this Motion, or as will be necessary to Reply to any Opposition to this Motion.

17. I am also seeking compensation for \$4,330.87 of expenses reasonably and necessarily incurred in this matter. (Exh.3.)

18. I certify and declare under the penalty of perjury under the law of the State of Nevada that the foregoing is true and correct, and this declaration was executed at Las Vegas, Nevada, the 19th day of September, 2017.

/s/ Margaret A. McLetchie
MARGARET A. MCLETCHIE

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
1/18/2017	0.1	Margaret McLetchie	\$ 450.00	Communications with clients.	\$ 45.00
1/19/2017	0.2	Alina Shell	\$ 350.00	PRA letter - CCSD - Kevin Child. Review and edit letter.	\$ 70.00
1/19/2017	2.1	Margaret McLetchie	\$ 450.00	Review correspondence, compile exhibits, and draft demand letter.	\$ 945.00
1/19/2017	0.9	Pharan Burchfield	\$ 150.00	Review Ms. Pak-Harvey's email with CCSD; redact forwarding information. Prepare exhibits and Ms. McLetchie's letter to CCSD re delayed response on Public Records Act request.	\$ 135.00
1/20/2017	0.5	Margaret McLetchie	\$ 450.00	Finalize letter and calendar next steps.	\$ 225.00
1/20/2017	1.0	Pharan Burchfield	\$ 150.00	Finalize letters (and exhibits) to CCSD. Mail/email to Mr. McDade re same. Email communications with clients.	\$ 150.00
1/25/2017	1.1	Leo Wolpert	\$ 175.00	Proofread and edit motion for writ of mandamus regarding Amelia Pak-Harvey's NPRA requests to CCSD.	\$ 192.50
1/25/2017	3.1	Margaret McLetchie	\$ 450.00	Email to team re strategy in case. Follow up with reporter re petition to get information re communications with PIO officers. Attention to research/drafting of petition.	\$ 1,395.00
1/25/2017	0.2	Pharan Burchfield	\$ 150.00	Begin shelling Petition for Ms. McLetchie's review.	\$ 30.00
1/26/2017	0.9	Alina Shell	\$ 350.00	Revise draft petition relating to CCSD request; add facts regarding nature of request and supplemental request. Check and verify legal citations and citations the NPRA.	\$ 315.00
1/26/2017	2.0	Margaret McLetchie	\$ 450.00	Finalize petition.	\$ 900.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
1/26/2017	0.1	Pharan Burchfield	\$ 150.00	Finalize and prepare exhibits re Petition and file re same. Draft and file Civil Cover Sheet and Initial Appearance Fee Disclosure. Email communications with clients.	\$ 15.00
1/27/2017	0.1	Pharan Burchfield	\$ 150.00	Contact and schedule Junes Legal Services re request process of service re Clark County School District of Petition and Summons.	\$ 15.00
1/30/2017	0.4	Margaret McLetchie	\$ 450.00	Email to Mr. McDade re courtesy copy of complaint, requesting meeting re briefing schedule. Review response re same. Email communications with clients.	\$ 180.00
2/1/2017	0.4	Margaret McLetchie	\$ 450.00	Call with Mr. McDade. Email communications with clients.	\$ 180.00
2/2/2017	0.5	Margaret McLetchie	\$ 450.00	Email to Mr. McDade regarding complaint. Email communications with clients.	\$ 225.00
2/2/2017	0.1	Pharan Burchfield	\$ 150.00	Draft cover and file Affidavit of Service re Complaint.	\$ 15.00
2/3/2017	3.4	Margaret McLetchie	\$ 450.00	Call/ email to Carlos. Take call from Scott Greenberg. Email memorializing same. Further calls and emails. Review first batch of documents received via email; confer with client. Address call from Kevin Child. Meeting at CCSD to review redactions. Email communications with clients.	\$ 1,530.00
2/6/2017	0.6	Admin Admin	\$ 25.00	Drop off Ex Parte Motion to Department 16 chambers	\$ 15.00
2/6/2017	1.1	Alina Shell	\$ 350.00	Review and edit Ex Parte Motion for Order Shortening Time. Send edited draft to Ms. McLetchie. Revise and edit declaration in support of Order Shortening Time.	\$ 385.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
2/6/2017	4.9	Margaret McLetchie	\$ 450.00	Draft Order Shortening Time re scheduling; begin drafting brief in support of petition. Communications with clients.	\$ 2,205.00
2/6/2017	1.5	Pharan Burchfield	\$ 150.00	Finalize and prepare exhibits for Ex Parte Motion for Order Shortening Time. Email opposing counsel and clients re same.	\$ 225.00
2/6/2017	0.2	Pharan Burchfield	\$ 150.00	Prepare Motion and Order for Shortening Time for Ms. McLetchie's review.	\$ 30.00
2/7/2017	0.6	Admin Admin	\$ 25.00	Deliver Order for Shortening Time to Department 16 chambers for Judge's signature	\$ 15.00
2/7/2017	0.1	Pharan Burchfield	\$ 150.00	Revise Order on Shortening Time pursuant to Ms. McLetchie (as instructed by Department 16); to be delivered to chambers today.	\$ 15.00
2/8/2017	2.3	Admin Admin	\$ 25.00	Dropped off Ex Parte Motion for Order Shortening Time and Request for Expedited Hearing, Order Setting Hearing on Writ of Mandate, copy of letter dated 02/082017 to Judge Williams, and picked up redacted documents from Clark County School District: 5100 W Sahara Ave, Las Vegas, NV 89146, and dropped of letter to Judge Williams at: 200 Lewis Ave. Las Vegas NV, 89101. Total miles 10.3.	\$ 57.50
2/8/2017	0.4	Admin Admin	\$ 25.00	Picked up Order Setting Hearing on Writ of Mandate from the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 department 16.	\$ 10.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
2/8/2017	0.7	Admin Admin	\$ 25.00	Picked up second Order Setting Hearing on Writ of Mandate at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas NV, 89101.	\$ 17.50
2/8/2017	5.3	Margaret McLetchie	\$ 450.00	Review court order / amended court order; attention to service and filing of same / work with paralegal to accomplish immediate service; review letter from Mr. McDade; draft letter to court re redacted set and errors in McDade letter; emails to and calls with Mr. McDade and his office; review redacted finally received; provide updates to client throughout and plan strategy for 2/14/17 hearing.	\$ 2,385.00
2/8/2017	0.5	Pharan Burchfield	\$ 150.00	Draft and send letter to Honorable Judge Williams (fax) and copy (email) to opposing counsel re same.	\$ 75.00
2/8/2017	0.3	Pharan Burchfield	\$ 150.00	File Order Setting Hearing on Writ of Mandate; draft, file, and serve/mail/email Notice of Entry of Order re same.	\$ 45.00
2/9/2017	1.1	Alina Shell	\$ 350.00	Draft additional records requests for information pertaining to investigation of CCSD Trustee Kevin Child.	\$ 385.00
2/9/2017	0.4	Margaret McLetchie	\$ 450.00	Review pertinent documents. Communications with clients.	\$ 180.00
2/9/2017	0.2	Pharan Burchfield	\$ 150.00	Begin drafting shell for Public Records Act request to Clark County School District re Kevin Child.	\$ 30.00
2/9/2017	0.3	Pharan Burchfield	\$ 150.00	Create courtesy copy to go to Honorable Judge Williams in preparation of upcoming hearing.	\$ 45.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
2/10/2017	1.3	Margaret McLetchie	\$ 450.00	Review responsive records from Mr. Honey and fwd to clients. Draft additional request, addressing in part documents appearing to be missing from initial responses.	\$ 585.00
2/10/2017	0.2	Pharan Burchfield	\$ 150.00	Finalize and send (mail/email) Public Records Act request re CCSD-Kevin Child to Mr. Honey.	\$ 30.00
2/13/2017	3.0	Margaret McLetchie	\$ 450.00	Review materials received (log of redactions) and provide to clients. Call Mr. Honey to confirm delay in providing to other outlets (Wed) and other matters. Receive and forward additional documents. Work with Ms. Burchfield on hearing binder. Closely review log and redactions on documents; prepare for hearing.	\$ 1,350.00
2/13/2017	0.4	Pharan Burchfield	\$ 150.00	Prepare pleadings (binderize) for preparation of upcoming hearing for Ms. McLetchie's review.	\$ 60.00
2/14/2017	0.6	Alina Shell	\$ 350.00	Edit draft of order granting petition for writ of mandamus: check facts, citations, and organization.	\$ 210.00
2/14/2017	6.9	Margaret McLetchie	\$ 450.00	Prepare for and attend hearing. Prepare draft order; review with clients and incorporate edits and send to CCSD Counsel at 3:43 p.m. Respond to Mr. Honey's email re same and make some revisions to proposed order. Email communications with clients.	\$ 3,105.00
2/14/2017	0.2	Pharan Burchfield	\$ 150.00	Draft proposed order for Ms. McLetchie's review.	\$ 30.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
2/15/2017	0.7	Admin Admin	\$ 25.00	Dropped off Order Granting Writ of Mandate at the Las Vegas Regional Center: 200 Lewis Ave., Las Vegas NV, 89101 department 16.	\$ 17.50
2/15/2017	0.8	Margaret McLetchie	\$ 450.00	Emails with Mr. Honey re differences in order; re-review minutes and review Mr. Honey's proposed order; revise order and prepare transmission letter; direct Ms. Burchfield to submit to court; ask Mr. McDade to submit CCSD's order.	\$ 360.00
2/15/2017	0.2	Pharan Burchfield	\$ 150.00	Draft and send (email/hand-deliver) letter to the Honorable Judge Williams re proposed order.	\$ 30.00
2/16/2017	0.3	Margaret McLetchie	\$ 450.00	Emails re order, compliance.	\$ 135.00
2/17/2017	0.3	Margaret McLetchie	\$ 450.00	Call to Mr. Honey. Communications with clients.	\$ 135.00
2/20/2017	0.1	Margaret McLetchie	\$ 450.00	Email communication with clients.	\$ 45.00
2/21/2017	1.0	Margaret McLetchie	\$ 450.00	Email to chambers and Mr. Honey re status of order. Call with Mr. Honey re same, plan for compliance with order, and re 2/10/17 request. Draft letter to Mr. Honey memorializing call and responding to 2/17/17 letter. Communication with clients.	\$ 450.00
2/21/2017	0.2	Pharan Burchfield	\$ 150.00	Finalize follow-up letter to Mr. Honey re Kevin Child Public Records Act request. Send (mail/email) re same.	\$ 30.00
2/22/2017	0.4	Pharan Burchfield	\$ 150.00	File Order Granting Writ of Mandate; email courtesy copies to opposing counsel and clients; draft Notice of Entry of Order; file and serve/mail re same.	\$ 60.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
2/23/2017	0.1	Pharan Burchfield	\$ 150.00	Email file-stamped copies of Notice of Entry of Order Granting Order of Writ of Mandate to Mr. Spousta and Ms. Pak-Harvey.	\$ 15.00
2/24/2017	0.4	Admin Admin	\$ 25.00	To Courthouse Re: Letter to Judge Williams in Dept. XVI	\$ 10.00
2/24/2017	1.1	Margaret McLetchie	\$ 450.00	Review documents produced. Call to CCSD general counsel office. Address issue re improper redaction. Forward documents to client. Respond to letter to court re vacating 3/2 hearing.	\$ 495.00
2/24/2017	0.5	Pharan Burchfield	\$ 150.00	Draft and send/email letter to Department 16 (Honorable Judge Williams) re CCSD's produced documents and request to vacate upcoming status check hearing.	\$ 75.00
2/27/2017	0.3	Margaret McLetchie	\$ 450.00	Email to Mr. Honey requesting status update on 2/10 request in advance of 3/2 hearing. Review document received. Communication with clients.	\$ 135.00
2/28/2017	0.2	Margaret McLetchie	\$ 450.00	Email communication with clients.	\$ 90.00
3/1/2017	0.6	Admin Admin	\$ 25.00	Dropped off: Amended Public Records Act Application Pursuant to NRS 239.001/ Petition for Writ of Mandamus Expedited Matter Pursuant to NRS 239.011, and letter to Judge Williams at the Las Vegas Regional Justice Center - 200 Lewis Ave. Las Vegas NV, 89101, Department 16.	\$ 15.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
3/1/2017	6.0	Alina Shell	\$ 350.00	Confer with Ms. McLetchie regarding amending petition. Review records disclosures from CCSD and correspondence between Ms. McLetchie and CCSD. Begin amending petition. Revise amended petition pursuant to comments from and conversation with Ms. McLetchie. Draft declaration for Ms. McLetchie. Review and organize Exhibits to Amended petition.	\$ 2,100.00
3/1/2017	1.1	Margaret McLetchie	\$ 450.00	Call to Mr. Honey. Direct Ms. Shell re amending petition and identify pertinent communications to include. Communications with clients.	\$ 495.00
3/1/2017	1.0	Pharan Burchfield	\$ 150.00	Prepare exhibits and finalize, file, and serve/mail Amended Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011. Draft and send/email letter to the Honorable Judge Williams re same.	\$ 150.00
3/2/2017	2.3	Margaret McLetchie	\$ 450.00	Follow up re obtaining documents (Mr. Honey directed me to Mr. McDade; Mr. McDade's office says Mr. Honey is lead counsel - neither is responsive. (.2) Prepare for and attend hearing in front of Judge Williams. (2.0) Communication with clients (.1).	\$ 1,035.00
3/2/2017	0.1	Margaret McLetchie	\$ 450.00	Review forwarded email from CCSD PIO to Ms. Pak-Harvey.	\$ 45.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
3/3/2017	0.6	Margaret McLetchie	\$ 450.00	Review redacted documents and accompanying letter rec'd from CCSD and send to client. Respond to Mr. McDade and Mr. Honey asking for log and for search information. Communication with client.	\$ 270.00
3/7/2017	0.1	Margaret McLetchie	\$ 450.00	Communication with clients.	\$ 45.00
3/8/2017	0.3	Margaret McLetchie	\$ 450.00	Call with Mr. Honey; review email re stipulation to schedule for attorney's fees briefing (to allow for efficient, consolidated hearing on fees for petition, amended petition).	\$ 135.00
3/9/2017	0.7	Margaret McLetchie	\$ 450.00	Draft stipulation re fees hearing; email to Mr. Honey re same.	\$ 315.00
3/9/2017	0.4	Pharan Burchfield	\$ 150.00	Draft Stipulation and Order re attorneys' fees application for attorneys' review. Email communications with Mr. Honey re same.	\$ 60.00
3/10/2017	0.6	Admin Admin	\$ 25.00	Dropped off Stipulation and Order at the Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 15.00
3/10/2017	0.9	Admin Admin	\$ 25.00	Picked up Stipulation and Order at the Clark County School District: 5100 W Sahara Ave, Las Vegas, NV 89146.	\$ 22.50
3/13/2017	1.1	Margaret McLetchie	\$ 450.00	Email with Mr. Honey re status (.1) Email with clients. (.1) Begin preparing for status check, and provide clients with hearing information. (.3) Review and consider issues with letter from CCSD counsel received at 4:09 p.m. re searches and other matters;	\$ 495.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
				continue preparing for hearing. (.6)	
3/13/2017	0.3	Pharan Burchfield	\$ 150.00	Prepare hearing binder for Ms. McLetchie for tomorrow's status check hearing.	\$ 45.00
3/14/2017	1.6	Margaret McLetchie	\$ 450.00	Prepare for and attend status check. Provide update to clients/ upcoming dates; emails with clients.	\$ 720.00
3/14/2017	0.1	Pharan Burchfield	\$ 150.00	Review Ms. McLetchie's notes from today's status check hearing; draft proposed order for attorneys' review re same.	\$ 15.00
3/16/2017	0.4	Admin Admin	\$ 25.00	Picked up Signed Stipulation and Order at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 10.00
3/16/2017	0.1	Pharan Burchfield	\$ 150.00	File Stipulation and Order re attorneys' fee application deadline.	\$ 15.00
3/20/2017	1.4	Margaret McLetchie	\$ 450.00	Revise and circulate proposed order.	\$ 630.00
3/20/2017	0.1	Pharan Burchfield	\$ 150.00	File and send Notice of Entry of Order to opposing counsel/ general counsel for CCSD.	\$ 15.00
3/21/2017	0.7	Admin Admin	\$ 25.00	Drop off signed Order regarding briefing schedule at Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 17.50
3/21/2017	1.2	Admin Admin	\$ 25.00	Picked up signed Order regarding briefing schedule from Mr. Honey at 5100 W	\$ 30.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
				Sahara Ave, Las Vegas, NV 89146.	
3/21/2017	0.2	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, proofread letter to Mr. McDade regarding search terms used by CCSD in responding to records request.	\$ 70.00
3/21/2017	0.3	Gabriel Czop	\$ -	Provide cites and edits to Ms. McLetchie's letter to CCSD.	\$ 0.00
3/21/2017	0.9	Gabriel Czop	\$ -	Research for Ms. McLetchie.	\$ 0.00
3/21/2017	2.1	Margaret McLetchie	\$ 450.00	Research. Draft letter to CCSD re: (1) need for additional searches to be consistent with NPRA; and (2) reasons why October Report re Child, Title VII issues (and related documents) should be produced.	\$ 945.00
3/21/2017	0.2	Pharan Burchfield	\$ 150.00	Finalize and send (mail/email) Ms. McLetchie's letter to Mr. McDade.	\$ 30.00
3/24/2017	0.2	Margaret McLetchie	\$ 450.00	Emails with Department 16 re order for pickup; direct filing of notice of entry.	\$ 90.00
3/24/2017	0.3	Margaret McLetchie	\$ 450.00	Review revised log received from CCSD. Communication with clients.	\$ 135.00
3/27/2017	0.6	Admin Admin	\$ 25.00	Picked up Order Regarding Briefing Schedule at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 15.00
3/27/2017	0.2	Pharan Burchfield	\$ 150.00	File Order Regarding Briefing Schedule; draft, file, and serve/mail Notice of Entry of Order re same; email clients re same.	\$ 30.00

MCLETCHIE SHELL

Date	Time Expended	Billor	Rate	Description	Total
3/28/2017	4.4	Alina Shell	\$ 350.00	Meeting with Ms. McLetchie regarding opening brief. Review letter to Mr. McDade and Mr. Honey summarizing recent issues and begin drafting brief.	\$ 1,540.00
3/28/2017	3.4	Margaret McLetchie	\$ 450.00	Work with Ms. Burchfield re compiling exhibits for opening brief in support of petition for writ of mandamus; compiling factual history. Preliminary edits/ provide direction to Ms. Shell re draft opening brief.	\$ 1,530.00
3/29/2017	6.3	Alina Shell	\$ 350.00	Resume drafting memorandum in support of petition. Attention to editing statement of facts. Draft arguments regarding privileges asserted by CCSD. Draft introduction. Edit facts and insert record citations.	\$ 2,205.00
3/29/2017	0.5	Gabriel Czop	\$ -	Assignment from Ms. McLetchie to review Nevada Public Records Act cases.	\$ 0.00
3/29/2017	0.2	Gabriel Czop	\$ -	Locate and download a memorandum with recommendations re: Trustee Child dated October 19, 2016 from the Office of Diversity and Affirmative Action.	\$ 0.00
3/29/2017	2.5	Leo Wolpert	\$ 175.00	Edit (proofread and cite-check) opening brief.	\$ 437.50
3/29/2017	6.5	Margaret McLetchie	\$ 450.00	Attention to revising and editing opening brief in support of petition on writ of mandamus. Ensure all necessary exhibits are compiled.	\$ 2,925.00
3/29/2017	5.9	Pharan Burchfield	\$ 150.00	Prepare exhibits and index re Opening Brief cite-check Opening Brief; file and serve/mail re same.	\$ 885.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
4/20/2017	3.5	Leo Wolpert	\$ 175.00	Review petition, opening brief, opposing brief, case law regarding NPRA in preparation to draft reply to opposing brief.	\$ 612.50
4/23/2017	2.3	Leo Wolpert	\$ 175.00	Outline reply brief and begin drafting per direction from Ms. McLetchie.	\$ 402.50
4/24/2017	6.7	Alina Shell	\$ 350.00	Draft sections of Reply Brief pertaining to CCSD Regulations and the predecisional/deliberative process privilege. Edit all sections. Compile Exhibits. Finalize and file document.	\$ 2,345.00
4/24/2017	10.8	Leo Wolpert	\$ 175.00	Draft, edit, and finalize reply to answer to opening brief re NPRA petition.	\$ 1,890.00
4/24/2017	0.2	Margaret McLetchie	\$ 450.00	Contact opposing counsel to request extension due to Ms. Burchfield out of office (call and email); no response provided.	\$ 90.00
4/24/2017	8.9	Margaret McLetchie	\$ 450.00	Revising / expanding of reply brief (re PRA for Child records). Call with Mr. Spousta re same.	\$ 4,005.00
4/25/2017	0.3	Margaret McLetchie	\$ 450.00	Communication with clients. (.2) Email to CCSD counsel documenting destruction of arbitration brief they sent to us in error. (.1)	\$ 135.00
4/25/2017	0.3	Pharan Burchfield	\$ 150.00	Create courtesy copy of briefing for Honorable Judge Timothy C. Williams to be delivered to chambers prior to the May 9, 2017 hearing.	\$ 45.00
4/25/2017	0.1	Pharan Burchfield	\$ 150.00	File and serve/mail Amended Certificate of Service re Reply.	\$ 15.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
4/26/2017	0.4	Admin Admin	\$ 25.00	Dropped Courtney copy binder of hearing regarding Search Parameters to Judge Timothy C. Williams at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas NV, 89101 Department 16.	\$ 10.00
5/8/2017	2.6	Alina Shell	\$ 350.00	Meeting with Ms. McLetchie to discuss hearing on petition for public records. Create chart of requests and production for Ms. McLetchie's reference at hearing.	\$ 910.00
5/8/2017	0.4	Margaret McLetchie	\$ 450.00	Call with client. Attention to argument preparation.	\$ 180.00
5/8/2017	3.4	Margaret McLetchie	\$ 450.00	Prepare for 5/9 hearing.	\$ 1,530.00
5/8/2017	0.5	Pharan Burchfield	\$ 150.00	Prepare binders for Ms. McLetchie's review in preparation of tomorrow's hearing. Provide Ms. McLetchie's of copies of all cases referred to in briefing.	\$ 75.00
5/9/2017	7.3	Margaret McLetchie	\$ 450.00	Prepare for and attend hearing. Respond to A. Honey email requesting extension. Provide direction to Ms. Burchfield regarding exhibits. Review article about hearing. Communications with clients.	\$ 3,285.00
5/10/2017	0.2	Margaret McLetchie	\$ 450.00	Emails with Mr. Honey.	\$ 90.00
5/15/2017	1.9	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, draft order regarding amended petition for records pertaining to Trustee Kevin Child. Review minutes from 5/9/17 hearing in drafting order. Discuss same with Ms. McLetchie, and email draft to Ms. McLetchie.	\$ 665.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
5/15/2017	1.1	Margaret McLetchie	\$ 450.00	Edit Order.	\$ 495.00
5/15/2017	0.1	Margaret McLetchie	\$ 450.00	Respond to Mr. Honey re email re order.	\$ 45.00
5/15/2017	0.1	Pharan Burchfield	\$ 150.00	Fax JAVS request to Ms. Isom, court reporter in Department 16, re May 9, 2017 hearing.	\$ 15.00
5/16/2017	0.2	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, review prior privilege logs and correspondence from CCSD to verify information in proposed order.	\$ 70.00
5/16/2017	0.9	Alina Shell	\$ 350.00	Review and address Ms. McLetchie's edits to draft order granting amended petition.	\$ 315.00
5/17/2017	1.4	Margaret McLetchie	\$ 450.00	Revise/ finalize draft order; send to Mr. Honey.	\$ 630.00
5/18/2017	1.4	Margaret McLetchie	\$ 450.00	Send Mr. Honey word version of proposed order per his request. Emails. Call with Mr. Honey.	\$ 630.00
5/19/2017	0.5	Admin Admin	\$ 25.00	Delivered Proposed Order to Las Vegas Regional Justice Center, 200 Lewis Avenue, Department 12, Las Vegas, NV 89101	\$ 12.50
5/19/2017	1.1	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, review edits to redlined order transmitted by CCSD counsel Mr. Honey. Review and verify factual statements in order. Edit for errors.	\$ 385.00
5/19/2017	1.4	Margaret McLetchie	\$ 450.00	Emails with Mr. Honey re proposed order. Revise and finalize proposed order; letter re same.	\$ 630.00
5/19/2017	0.3	Pharan Burchfield	\$ 150.00	Finalize proposed order; draft and send attorney update letter to Honorable Judge Thompson re proposed order; to be delivered to judge's chambers.	\$ 45.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
5/23/2017	0.2	Margaret McLetchie	\$ 450.00	Emails with Mr. Honey re Bates-stamping/ re-production of documents not previously Bates-stamped.	\$ 90.00
5/24/2017	0.3	Margaret McLetchie	\$ 450.00	Review CCSD's correspondence to court. Communication with clients.	\$ 135.00
5/26/2017	0.9	Alina Shell	\$ 350.00	Edit letter to Court regarding CCSD competing order and assertions made by Mr. Honey in his correspondence to the Court. Review and compare competing orders. Correct error to May 19, 2017 order submitted to the Court.	\$ 315.00
5/26/2017	0.7	Gabriel Czop	\$ -	travel to Regional Justice Center; deliver proposed order to Department 16; return to office	\$ 0.00
5/26/2017	0.4	Margaret McLetchie	\$ 450.00	Correspondence to court re order.	\$ 180.00
5/26/2017	0.2	Pharan Burchfield	\$ 150.00	Finalize and email Ms. McLetchie's letter to the Honorable Judge Williams re Mr. Honey's correspondence re competing proposed orders.	\$ 30.00
6/1/2017	0.1	Margaret McLetchie	\$ 450.00	Email to Mr. Honey re status (request information about whether documents had been provided in camera, and copies of certifications and log; not provided).	\$ 45.00
6/2/2017	0.1	Margaret McLetchie	\$ 450.00	Review and respond to email from Mr. Honey re status.	\$ 45.00
6/5/2017	1.0	Margaret McLetchie	\$ 450.00	Review email from opposing counsel; preliminary review of documents received. Call with clients, emails with clients. Prepare for 6/6 status check.	\$ 450.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
6/6/2017	0.6	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, locate and email Exhibit W to Opening Brief in Support of Amended Petition to assist in status hearing. Search for correspondence from Ms. McLetchie to Mr. Honey regarding prior CCSD representations re withheld documents.	\$ 210.00
6/6/2017	2.9	Margaret McLetchie	\$ 450.00	Prepare for and attend status check; follow up email re same. Communication with clients.	\$ 1,305.00
6/6/2017	0.7	Margaret McLetchie	\$ 450.00	Review and respond to emails from Mr. Honey (working on trying to obtain all documentation CCSD provided to court). Review certifications received from Mr. Honey.	\$ 315.00
6/6/2017	0.4	Pharan Burchfield	\$ 150.00	File Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters; draft, file and serve/mail Notice of Entry of Order re same. Email communications with clients.	\$ 60.00
6/11/2017	1.9	Margaret McLetchie	\$ 450.00	Review privilege log. Research.	\$ 855.00
6/12/2017	2.3	Alina Shell	\$ 350.00	Review CCSD privilege log and produced documents. (1.0) Create chart for court's review of propriety of redactions to produced documents (1.3).	\$ 805.00
6/12/2017	6.8	Margaret McLetchie	\$ 450.00	Communication with clients. Begin drafting response to certifications and log; draft procedural history, section re inapplicability of CCSD regulations, Title VII section, and outline entirety of argument. Assign table and drafting of deliberative process privilege to Ms. Shell.	\$ 3,060.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
6/12/2017	0.4	Pharan Burchfield	\$ 150.00	Binderize Clark County School District's most recent correspondence, production, and log re June 6, 2017 hearing for Ms. McLetchie's review.	\$ 60.00
6/13/2017	0.5	Admin Admin	\$ 25.00	Dropped off: Binder of Memorandum Regarding CCSD's Privilege Log and Certification to Honorable Judge Williams at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 12.50
6/13/2017	1.3	Alina Shell	\$ 350.00	Draft section for response to CCSD privilege log about deliberative process privilege.	\$ 455.00
6/13/2017	0.7	Alina Shell	\$ 350.00	Draft section of response to CCSD privilege log regarding its argument that draft documents pertaining to its investigation of Trustee Child are "non-record" materials as defined by NAC 239.051.	\$ 245.00
6/13/2017	3.4	Alina Shell	\$ 350.00	Edit and augment section in Memorandum regarding CCSD's certification re record searches. Review, edit, and finalize Memorandum. Review and edit Ms. McLetchie's declaration.	\$ 1,190.00
6/13/2017	0.3	Leo Wolpert	\$ 175.00	Edit and review chart of withheld/redacted documents.	\$ 52.50
6/13/2017	1.8	Leo Wolpert	\$ 175.00	Proofread, cite check and edit motion re withheld documents.	\$ 315.00
6/13/2017	4.8	Margaret McLetchie	\$ 450.00	Finish revising/editing memorandum responding to log, certifications (draft section re certifications; incorporate and revise other sections, revise chart of documents, revise declaration and list of exhibits). Follow up/ transmission to	\$ 2,160.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
				chambers, copying opposing counsel.	
6/13/2017	4.1	Pharan Burchfield	\$ 150.00	Prepare exhibits (Bates and index) re Memorandum Regarding CCSD's Privilege Logs and Certifications; draft Ms. McLetchie's Declaration in support of re same. Format and prepare for filing. File, serve/mail and provide Judge Williams with courtesy copy (binder) and draft and send (email) letter to Honorable Judge Williams re same.	\$ 615.00
6/14/2017	0.1	Margaret McLetchie	\$ 450.00	Emails with clients re 6/15 hearing.	\$ 45.00
6/14/2017	0.8	Margaret McLetchie	\$ 450.00	Review and organize case materials in preparation for 6/15 hearing.	\$ 360.00
6/15/2017	0.6	Alina Shell	\$ 350.00	Assist Ms. McLetchie with preparation for hearing on privilege log/in camera documents: print cases cited by LVRJ and CCSD; identify exhibits for use in hearing.	\$ 210.00
6/15/2017	3.1	Alina Shell	\$ 350.00	In court for hearing on CCSD log and withheld documents; take notes.	\$ 1,085.00
6/15/2017	3.1	Margaret McLetchie	\$ 450.00	Prepare for hearing; attend court (hearing continued).	\$ 1,395.00
6/16/2017	0.2	Margaret McLetchie	\$ 450.00	Review and forward document received from CCSD counsel (CCSD had indicated it would withhold but decided to produce).	\$ 90.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
6/19/2017	0.1	Margaret McLetchie	\$ 450.00	Emails with Mr. Honey to set phone conference as part of LVRJ's continued attempts to determine if any matters in case can be resolved without court intervention. Meeting set for 6/21.	\$ 45.00
6/21/2017	0.9	Margaret McLetchie	\$ 450.00	Call with Adam Honey; begin preparation for hearing.	\$ 405.00
6/27/2017	3.5	Alina Shell	\$ 350.00	Attend hearing on CCSD's privilege log and withheld documents.	\$ 1,225.00
6/27/2017	0.6	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, review CCSD disclosures to determine if CCSD has disclosed any records regarding previous counseling to Mr. Child re inappropriate behavior.	\$ 210.00
6/27/2017	0.2	Margaret McLetchie	\$ 450.00	Direct Ms. Shell re preparation of order.	\$ 90.00
6/27/2017	4.1	Margaret McLetchie	\$ 450.00	Prepare for (draft argument outline and review materials) and attend hearing re withheld records and certification/production issues. Communication with clients.	\$ 1,845.00
6/27/2017	0.2	Pharan Burchfield	\$ 150.00	Assist Ms. McLetchie with preparation for today's hearing.	\$ 30.00
6/28/2017	2.3	Alina Shell	\$ 350.00	Draft proposed order regarding release of withheld documents and depositions of Mr. Wray and Ms. Smith-Johnson.	\$ 805.00
6/28/2017	0.2	Alina Shell	\$ 350.00	Review transcript from 6/26/2017 hearing re CCSD's revised privilege log. Revise draft proposed order based on review of transcripts.	\$ 70.00
6/28/2017	0.5	Margaret McLetchie	\$ 450.00	Emails with paralegal re transcript order (confirmed ordered at hearing). Review transcript from hearing for final preparation of order.	\$ 225.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
6/28/2017	0.3	Margaret McLetchie	\$ 450.00	Receipt of transcript from hearing; preliminary review of same.	\$ 135.00
6/29/2017	0.6	Admin Admin	\$ 25.00	Dropped off Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions, and a letter to Honorable Judge Williams date 06/29/2017 to the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 department 16.	\$ 15.00
6/29/2017	0.3	Admin Admin	\$ 25.00	Dropped off payment (Check #:2062) to Court Reporter Margaret Isom for invoices: 13707, and 13753 at Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 department 16.	\$ 7.50
6/29/2017	3.5	Alina Shell	\$ 350.00	Attention to revising proposed order re disclosure of withheld records.	\$ 1,225.00
6/29/2017	0.4	Alina Shell	\$ 350.00	Draft letter to Court regarding proposed order.	\$ 140.00
6/29/2017	1.6	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, make additional revisions to proposed order.	\$ 560.00
6/29/2017	0.4	Leo Wolpert	\$ 175.00	Edit and proofread order drafted by Ms. Shell.	\$ 70.00
6/29/2017	2.6	Margaret McLetchie	\$ 450.00	Work with Ms. Shell on order; review and direct revisions. Compare to transcript and prior orders to ensure all issues addressed. Multiple efforts to work with Mr. Honey re order input. Letter to chambers. Communication with clients.	\$ 1,170.00
6/29/2017	0.2	Pharan Burchfield	\$ 150.00	Finalize/prepare for Ms. McLetchie's signature Proposed Order and letter to the	\$ 30.00

MCLETCHIE SHELL

Date	Time Expended	Billor	Rate	Description	Total
				Honorable Judge Williams; email re same.	
6/30/2017	0.8	Admin Admin	\$ 25.00	Delivering Ms. McLetchie's correspondence to Judge Williams' chambers.	\$ 20.00
6/30/2017	0.2	Alina Shell	\$ 350.00	Edit letter to Court regarding correspondence from Adam Honey.	\$ 70.00
6/30/2017	0.1	Pharan Burchfield	\$ 150.00	Prepare Ms. McLetchie's letter to Honorable Judge Williams in response to Mr. Honey's correspondence.	\$ 15.00
7/3/2017	0.5	Alina Shell	\$ 350.00	Legal research re stay. Draft memo to Ms. McLetchie re same.	\$ 175.00
7/3/2017	0.3	Alina Shell	\$ 350.00	Research regarding the ordered depositions of CCSD employees Wray and Smith-Johnson. Review of transcript from 6/27/2017 hearing re same issue.	\$ 105.00
7/3/2017	1.0	Margaret McLetchie	\$ 450.00	Review email to Chambers and Adam Honey's proposed order. Update clients regarding CCSD's stated intent to appeal, and plan to file emergency motion for stay. Begin working with Ms. Shell on related procedural research.	\$ 450.00
7/5/2017	0.2	Margaret McLetchie	\$ 450.00	Call with Adam Honey.	\$ 90.00
7/6/2017	0.2	Margaret McLetchie	\$ 450.00	Emails with Adam Honey re depositions.	\$ 90.00
7/7/2017	0.1	Margaret McLetchie	\$ 450.00	Further emails with Mr. Honey re deposition scheduling.	\$ 45.00
7/10/2017	0.1	Margaret McLetchie	\$ 450.00	Emails with CCSD's General Counsel's office re deposition scheduling.	\$ 45.00
7/10/2017	0.2	Margaret McLetchie	\$ 450.00	Communication with clients.	\$ 90.00

MCLETCHIE SHELL

Date	Time Expended	Biller	Rate	Description	Total
7/11/2017	0.4	Admin Admin	\$ 25.00	Picked up signed Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions from - the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101.	\$ 10.00
7/11/2017	0.1	Pharan Burchfield	\$ 150.00	File Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions.	\$ 15.00
7/12/2017	0.1	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, determine whether NRAP 8 contains any deadline for filing a motion for a stay.	\$ 35.00
7/12/2017	0.2	Pharan Burchfield	\$ 150.00	Review Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions; draft, file, and serve/mail Notice of Entry of Order re same. Communication with clients.	\$ 30.00
7/13/2017	0.2	Alina Shell	\$ 350.00	Discuss CCSD's motion for stay on order shortening time and strategy for response with Ms. McLetchie.	\$ 70.00
7/13/2017	3.4	Alina Shell	\$ 350.00	Draft opposition to motion for stay: draft procedural history and legal standard regarding motion for stay. Respond to arguments in Motion for stay regarding serious	\$ 1,190.00
7/13/2017	2.0	Alina Shell	\$ 350.00	Read CCSD's motion for a stay pending appeal. Review rules regarding orders shortening time. Review NRAP 8 and NRCP 62. Research.	\$ 700.00
7/17/2017	3.3	Alina Shell	\$ 350.00	Complete draft of response to motion for stay: address arguments regarding likelihood of success on appeal. Circulate to Ms. McLetchie for review.	\$ 1,155.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
7/17/2017	2.2	Alina Shell	\$ 350.00	Review Ms. McLetchie's comments and revisions to draft response to motion for stay. Address comments and edits and incorporate into new draft.	\$ 770.00
7/17/2017	0.9	Margaret McLetchie	\$ 450.00	Review and suggest changes to draft opposition to motion to stay.	\$ 405.00
7/18/2017	1.5	Alina Shell	\$ 350.00	Legal research. Incorporate same into motion. Address additional comments and suggests provided by Ms. McLetchie.	\$ 525.00
7/18/2017	0.4	Alina Shell	\$ 350.00	Per Ms. McLetchie's request, review exhibits submitted in case and correspondence with CCSD to confirm factual representation in opposition to motion to stay that CCSD resisted providing a privilege log. Memo to Ms. McLetchie re same.	\$ 140.00
7/18/2017	1.5	Alina Shell	\$ 350.00	Pursuant to Ms. McLetchie's request, re-order portion of the argument in opposition to motion for stay. Incorporate additional facts into procedural history. Review draft for consistency and errors.	\$ 525.00
7/18/2017	1.1	Margaret McLetchie	\$ 450.00	Continued attention to Motion for Stay; review memo from Ms. Shell re CCSD privilege log. Review and edit latest draft of Opposition	\$ 495.00
7/18/2017	0.1	Pharan Burchfield	\$ 150.00	Email clients draft Opposition to Respondent's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions Pursuant to NRCP 62(c), (d) & (e) Pending Appeal on Order Shortening Time for review.	\$ 15.00

Date	Time Expended	Biller	Rate	Description	Total
7/19/2017	0.4	Pharan Burchfield	\$ 150.00	Finalize, file, and serve/mail Petitioner Las Vegas Review-Journal's Opposition to Respondent Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c),(d), & (e) Pending Appeal on Order Shortening Time. Email copy to clients re same.	\$ 60.00
7/20/2017	0.5	Admin Admin	\$ 25.00	Dropped off Petitioner Las Vegas Review - Journal's Opposition to Respondent Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRC 62(c), (d), & (e) Pending Appeal on Order Shortening Time at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas NV, 89101 Department 16.	\$ 12.50
7/24/2017	0.1	Alina Shell	\$ 350.00	Edit draft stipulation to extend deadline for application for attorney's fees.	\$ 35.00
7/24/2017	0.1	Alina Shell	\$ 350.00	Phone call from Ms. Hanna re stipulation to extend time for application for attorney's fees. Communication with Ms. McLetchie re same.	\$ 35.00
7/24/2017	0.2	Alina Shell	\$ 350.00	Phone call to Ms. Hanna at CCSD General Counsel Office re stipulated extension of time for attorney fee application. Communication with Ms. McLetchie re same.	\$ 70.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
7/24/2017	0.2	Pharan Burchfield	\$ 150.00	Draft Stipulation and Order re extension of deadline to file application for attorneys' fees; email to opposing counsel re review/approval.	\$ 30.00
7/24/2017	0.1	Pharan Burchfield	\$ 150.00	Email clients file-stamped copy of Respondent's Reply in Support of Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withhold Records Pursuant to NRCP 62(c), (d) & (e) Pending Appeal on Order Shortening Time with hearing reminder.	\$ 15.00
7/26/2017	0.4	Admin Admin	\$ 25.00	Dropped off Stipulation and Order at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 10.00
7/26/2017	1.1	Admin Admin	\$ 25.00	Picked up Stipulation and Order at the Las Vegas School District: 5100 W. Sahara Ave. Las Vegas, NV, 89146.	\$ 27.50
7/26/2017	0.2	Alina Shell	\$ 350.00	Phone call from Ms. Hanna at CCSD re notification pursuant to NRAP 27 that CCSD will file an emergency motion for stay with the Supreme Court in advance of 7/27 hearing. Communication with Ms. McLetchie re same.	\$ 70.00
7/26/2017	0.1	Pharan Burchfield	\$ 150.00	Send follow-up email to Mr. McDade re proposed Stipulation re extension.	\$ 15.00
7/27/2017	0.6	Admin Admin	\$ 25.00	Dropped off Respondent's Response to Status Report/ Notice of Intent to File Response at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 15.00

Date	Time Expended	Billor	Rate	Description	Total
7/27/2017	2.5	Margaret McLetchie	\$ 450.00	Prepare for and attend hearing. Update clients.	\$ 1,125.00
7/27/2017	0.3	Pharan Burchfield	\$ 150.00	Begin preparing Response/Opposition to CCSD's Emergency Motion for Stay in the Nevada Court of Appeals.	\$ 45.00
7/27/2017	0.4	Pharan Burchfield	\$ 150.00	Draft Response to Status Check and Notice of Intent to File Response to Emergency Motion to Stay; phone call with Mr. Harris at Nevada Supreme Court/Court of Appeals Clerk's Office re emergency filing; fax and mail re submission; and mail/email/delivery re service re same.	\$ 60.00
7/27/2017	0.1	Pharan Burchfield	\$ 150.00	Prepare hearing binder for attorneys for hearing on Motion to Stay Pending Appeal.	\$ 15.00
7/31/2017	0.3	Admin Admin	\$ 25.00	Picked up Stipulation and Order at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 7.50
7/31/2017	2.4	Margaret McLetchie	\$ 450.00	Begin working on opposition to motion to stay.	\$ 1,080.00
7/31/2017	3.7	Margaret McLetchie	\$ 450.00	Draft proposed order denying stay.	\$ 1,665.00
7/31/2017	0.3	Pharan Burchfield	\$ 150.00	Begin drafting proposed Order for Ms. McLetchie's review; phone call with Ms. Gerace re set up a phone call with attorneys to discuss proposed Order; email draft proposed Order Denying Stay to Mr. McDade.	\$ 45.00
7/31/2017	0.2	Pharan Burchfield	\$ 150.00	File Stipulation and Order (re continue deadline to file Motion for Attorney's Fees); draft, file, and serve/mail Notice of Entry of Order re same.	\$ 30.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
8/1/2017	0.7	Admin Admin	\$ 25.00	Dropped off Order Denying Stay, and Letter to Judge Williams dated 08/01/2017 at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 17.50
8/1/2017	1.3	Leo Wolpert	\$ 175.00	Edit, proofread, and cite check proposed order.	\$ 227.50
8/1/2017	1.2	Pharan Burchfield	\$ 150.00	Finalize and submit (email/hand-delivery) Proposed Order Denying Stay; draft and send/email cover letter to Honorable Judge Williams re same.	\$ 180.00
8/3/2017	0.1	Admin Admin	\$ 25.00	Deposition Subpoena of Dan Wray, and Cynthia Smith - Johnson issued at the Las Vegas District Court: 200 Lewis Ave. Las Vegas, NV, 89101.	\$ 2.50
8/3/2017	3.7	Alina Shell	\$ 350.00	Draft motion for leave to file excess pages in Response to CCSD's motion for stay pending appeal. Draft response to same, and circulate to Mr. Wolpert and Ms. McLetchie for review and editing.	\$ 1,295.00
8/3/2017	0.2	Margaret McLetchie	\$ 450.00	Review and approve deposition notices for Cynthia Smith-Johnson and Matthew Wray.	\$ 90.00
8/3/2017	0.5	Pharan Burchfield	\$ 150.00	Begin drafting Motion for Excess Pages re Response to Emergency Stay. Submit via fax and mail to Nevada Court of Appeals for filing; serve/email/mail opposing counsel/general counsel and Honorable Judge Williams re same.	\$ 75.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
8/3/2017	1.2	Pharan Burchfield	\$ 150.00	Draft Deposition Notices re Mr. Wray and Ms. Smith-Johnson; draft subpoenas re depositions; prepare witness fee checks; schedule depositions with Veritext Legal Solutions; serve (eserve, email, and mail) re all same.	\$ 180.00
8/4/2017	0.2	Pharan Burchfield	\$ 150.00	File Order Denying Stay; draft, file, and serve/mail Notice of Entry of Order.	\$ 30.00
8/16/2017	0.4	Pharan Burchfield	\$ 150.00	Prepare potential deposition exhibits for upcoming depositions of Ms. Smith-Johnson and Mr. Wray. Confirm depositions with Veritext Legal Solutions and court reporter.	\$ 60.00
8/16/2017	0.1	Pharan Burchfield	\$ 150.00	Send email reminder re Early Assessment Conference call to mediator and opposing counsel.	\$ 15.00
8/17/2017	3.5	Alina Shell	\$ 350.00	Attention to matters pertaining to deposition of Cynthia Smith-Johnson: refine deposition outline. Print out additional exhibits (correspondence between Ms. Smith-Johnson and Ms. Pak-Harvey; court orders, etc.). Attend deposition of Ms. Smith-Johnson. [NO CHARGE.] Organize our copies of deposition exhibits.	\$ 1,225.00
8/17/2017	0.6	Alina Shell	\$ 350.00	Revise Wray deposition outline.	\$ 210.00
8/17/2017	0.1	Margaret McLetchie	\$ 450.00	Communication with clients.	\$ 45.00
8/17/2017	3.4	Margaret McLetchie	\$ 450.00	Prepare for deposition of Ms. Smith-Johnson. Consider next steps. Plan for Wray deposition.	\$ 1,530.00

MCLETCHE SHELL

Date	Time Expended	Billor	Rate	Description	Total
8/18/2017	2.3	Alina Shell	\$ -	Assist Ms. McLetchie at deposition of Dan Wray regarding efforts to search for public records responsive to RJ requests.	\$ -
8/18/2017	0.1	Margaret McLetchie	\$ 450.00	Communication with clients.	\$ 45.00
8/18/2017	3.3	Margaret McLetchie	\$ 450.00	Prepare for and take deposition of Dan Wray.	\$ 1,485.00
8/24/2017	0.2	Alina Shell	\$ 350.00	Discuss pending deadline for motion for attorney's fees with Ms. McLetchie. Email Mr. McDade and Mr. Honey regarding request for stipulation to extend filing deadline.	\$ 70.00
8/25/2017	0.1	Alina Shell	\$ 350.00	Follow up email to McDade, Honey, et al. regarding stipulation to extension of time for filing motion for attorney fees.	\$ 35.00
8/28/2017	0.3	Admin Admin	\$ 25.00	Dropped off Stipulation and Order at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16.	\$ 7.50
8/28/2017	0.7	Admin Admin	\$ 25.00	Picked up Stipulation and Order at the Las Vegas Clark County School District: 5100 West Sahara Ave. Las Vegas, NV 89146.	\$ 17.50
8/28/2017	0.1	Alina Shell	\$ 350.00	Phone call with Ms. England to request a declaration in support of request for attorney's fees.	\$ 35.00
8/28/2017	0.1	Alina Shell	\$ 350.00	Review and approve draft stipulation to extend time for filing application for attorney's fees.	\$ 35.00
8/28/2017	0.1	Pharan Burchfield	\$ 150.00	Draft Stipulation re extension re attorneys' fees application for attorneys' review.	\$ 15.00

MCLETCHE SHELL

Date	Time Expended	Biller	Rate	Description	Total
9/5/2017	0.3	Pharan Burchfield	\$ 150.00	Download and review deposition transcripts from Ms. Smith-Johnson and Mr. Wray.	\$ 45.00
9/11/2017	0.1	Margaret McLetchie	\$ 450.00	Review request for transcripts filed by CCSD.	\$ 45.00
9/12/2017	0.2	Pharan Burchfield	\$ 150.00	File Stipulation and Order (extension attorneys' fees application); draft, file, and serve/mail Notice of Entry of Order re same. Update attorneys and calendars accordingly.	\$ 30.00
9/18/2017	2.2	Alina Shell	\$ 350.00	Attention to drafting motion for attorney's fees. Pursuant to Ms. McLetchie's request, contact CCSD counsel regarding stipulation to extension of time for filing because of scheduling conflict. Resume work on motion while awaiting response from counsel regarding stipulation.	\$ 770.00
9/18/2017	0.2	Margaret McLetchie	\$ 450.00	Communications with Ms. Shell regarding motion for attorney's fees.	\$ 90.00
Total Attorney's Fees					\$ 101,367.50

M C L E T C H I E S H E L L

Date	Description	Total
1/20/2017	Postage: mailing expense - Letter to CCSD's General Counsel, Mr. McDade re Public Records Act request.	\$ 2.20
1/26/2017	E-filing fee: Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011 [Amount: \$3.50; Court Fee: \$270.00; Card Fee: \$8.10].	\$ 281.60
1/26/2017	E-filing fee: Initial Appearance Fee Disclosure.	\$ 3.50
1/31/2017	Copying Costs: Through January 31, 2017: 77 pages at \$0.08 per page.	\$ 6.16
2/2/2017	E-filing fee: Affidavit of Service.	\$ 3.50
2/8/2017	E-filing fee: Ex Parte Motion for Order Shortening Time and Request for Expedited Hearing.	\$ 3.50
2/8/2017	E-filing fee: Order Setting Hearing on Writ of Mandate.	\$ 3.50
2/8/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
2/8/2017	Postage: mailing expense - Notice of Entry of Order mailed to CCSD's general counsel.	\$ 0.67
2/8/2017	Travel: Dropped off Ex Parte Motion for Order Shortening Time and Request for Expedited Hearing, Order Setting Hearing on Writ of Mandate, copy of letter dated 02/08/2017 to Judge Williams, and picked up redacted documents from Clark County School District: 5100 W Sahara Ave, Las Vegas, NV 89146, and dropped off letter to Judge Williams at: 200 Lewis Ave. Las Vegas NV, 89101. Total miles 10.3 at \$0.54/ per mile.	\$ 5.56
2/8/2017	Junes Legal Service Invoice # EP126361 for serving summons to the Clark County School District.	\$ 43.00
2/10/2017	Postage: mailing expense - PRA: Public Records Act request sent to Mr. Honey (Assistant General Counsel for CCSD).	\$ 0.46
2/22/2017	E-filing fee: Order Granting Writ of Mandate.	\$ 3.50
2/23/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
2/23/2017	Postage: mailing expense - Notice of Entry of Order mailed to CCSD's general counsel.	\$ 1.40
2/28/2017	Copying Costs: February 1, 2017 - February 28, 2017: 359 pages at \$0.08 per page.	\$ 28.72
2/28/2017	Legal Research: WestLawNext - charges for 16 transactions for February 2017.	\$ 10.13
3/1/2017	E-filing fee: Amended Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011.	\$ 3.50

MCLECHIE SHELL

Date	Description	Total
3/1/2017	Postage: mailing expense - Amended Public Records Act Application Pursuant to NRS 239.001 / Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011 mailed to CCSD's general counsel.	\$ 2.87
3/1/2017	Junes Legal Service Invoice # EP126361 for Summons and Complaint Served to the Clark County School District.	\$ 43.00
3/10/2017	Picked up Stipulation and Order at the Clark County School District: 5100 W Sahara Ave, Las Vegas, NV 89146. Total miles: 13 at \$0.54/ per mile.	\$ 7.02
3/16/2017	E-filing fee: Stipulation and [Proposed] Order.	\$ 3.50
3/20/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
3/20/2017	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel/general counsel for CCSD.	\$ 0.46
3/21/2017	Postage: mailing expense - Ms. McLetchie's letter sent to Mr. McDade.	\$ 0.46
3/21/2017	Picked up signed Order regarding briefing schedule from Mr. Honey at 5100 W Sahara Ave, Las Vegas, NV 89146.Total miles: 11.3 at \$0.54/ per mile.	\$ 6.10
3/27/2017	E-filing fee: Order Regarding Briefing Schedule.	\$ 3.50
3/27/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
3/27/2017	Postage: mailing expense - Notice of Entry of Order to opposing counsel/CCSD's general counsel.	\$ 0.46
3/29/2017	E-filing fee: Opening Brief.	\$ 3.50
3/29/2017	Postage: mailing expense - Opening Brief and Exhibits sent to opposing counsel/CCSD's general counsel.	\$ 13.60
3/31/2017	Copying Costs: March 1, 2017 - March 31, 2017: 853 pages at \$0.08 per page.	\$ 68.24
3/31/2017	Legal Research: WestLawNext - charges for 67 transactions for March 2017.	\$ 275.48
4/24/2017	E-filing fee: Reply Brief To Respondent's Answering Brief To Petitioner's Opening Brief And Public Records Act Application / Petition For Writ Of Mandamus.	\$ 3.50
4/25/2017	Postage: mailing expense - Reply Brief To Respondent's Answering Brief To Petitioner's Opening Brief And Public Records Act Application / Petition For Writ Of Mandamus sent to opposing counsel/CCSD's general counsel.	\$ 2.45
4/25/2017	E-filing fee: Amended Certificate of Service for Reply Brief.	\$ 3.50

MCLETCHE SHELL

Date	Description	Total
4/26/2017	Dropped Courtesy copy binder of hearing regarding Search Parameters to Judge Timothy C. Williams at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas NV, 89101 Department 16. Total miles 0.6 at \$0.54/ per mile.	\$ 0.32
4/30/2017	Copying Costs: April 1, 2017 - April 30, 2017: 2 pages at \$0.08 per page.	\$ 0.16
4/30/2017	Legal Research: WestLawNext - charges for 43 transactions for April 2017.	\$ 17.79
5/17/2017	Invoice # 13719: Court Reporter's Transcript of May 9, 2017 hearing.	\$ 409.60
5/31/2017	Copying Costs: May 1, 2017 - May 31, 2017: 303 pages at \$0.08 per page.	\$ 24.24
5/31/2017	Legal Research: WestLawNext - charges for 33 transactions for May 2017.	\$ 20.71
6/6/2017	E-filing fee: Order Granting Writ of Mandamus as to Jurisdiction and Search Parameters.	\$ 3.50
6/6/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
6/6/2017	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel/CCSD's general counsel.	\$ 1.40
6/13/2017	E-filing fee: Memorandum Regarding CCSD's Privilege Log and Certifications.	\$ 3.50
6/13/2017	Postage: mailing expense - Memorandum Regarding CCSD's Privilege Log and Certifications sent to opposing counsel/CCSD's general counsel.	\$ 1.40
6/28/2017	Invoice # 13753: Court Reporter's Transcript of June 27, 2017 hearing.	\$ 770.43
6/28/2017	Invoice # 13753: Court Reporter's Appearance Fee of May 9, 2017 hearing.	\$ 80.00
6/29/2017	Dropped off payment (Check #:2062) to Court Reporter Margaret Isom for invoices: 13707 and 13753 at Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16. Total miles: 0.9 at \$0.54 / per mile.	\$ 0.49
6/29/2017	Dropped off Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions, and a letter to Honorable Judge Williams date 06/29/2017 to the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101 Department 16. Total miles 0.9 at \$0.54 / per mile.	\$ 0.49
6/30/2017	Copying Costs: June 1, 2017 - June 30, 2017: 980 pages at \$0.08 per page.	\$ 78.40
6/30/2017	Legal Research: WestLawNext - charges for 42 transactions for June 2017.	\$ 29.04

Date	Description	Total
7/11/2017	E-filing fee: Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions.	\$ 3.50
7/11/2017	Picked up signed Order Granting Writ of Mandamus as to Withheld Records and Requiring Depositions from - the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas, NV, 89101. Total miles: 0.9 at \$0.54/ per mile.	\$ 0.49
7/12/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
7/12/2017	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel/general counsel for Clark County School District.	\$ 1.61
7/19/2017	Postage: mailing expense - Petitioner Las Vegas Review-Journal's Opposition to Respondent Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c),(d), & (e) Pending Appeal on Order Shortening Time sent to opposing counsel/general counsel.	\$ 1.82
7/19/2017	E-filing fee: Petitioner Las Vegas Review-Journal's Opposition to Respondent Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRCP 62(c),(d), & (e) Pending Appeal on Order Shortening Time.	\$ 3.50
7/20/2017	Dropped off Petitioner Las Vegas Review - Journal's Opposition to Respondent Clark County School District's Motion to Stay Enforcement of Order Granting Writ of Mandamus as to Withheld Records Pursuant to NRC 62(c), (d), & (e) Pending Appeal on Order Shortening Time at the Las Vegas Regional Justice Center: 200 Lewis Ave. Las Vegas NV, 89101 Department 16. Total miles: 0.9 at \$0.54 / per mile.	\$ 0.49
7/26/2017	Picked up Stipulation and Order at the Las Vegas School District: 5100 W. Sahara Ave. Las Vegas, NV, 89146. Total miles 13.0 at \$0.54/ per mile.	\$ 7.02
7/27/2017	Postage: mailing expense - Respondent's Response to Status Check and Notice of Intent to File Response to Emergency Motion to Stay sent to opposing counsel and Nevada Court of Appeals.	\$ 0.92
7/31/2017	E-filing fee: Stipulation and Order.	\$ 3.50
7/31/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
7/31/2017	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel/general counsel.	\$ 0.46
7/31/2017	Copying Costs: July 1, 2017 - July 31, 2017: 343 pages at \$0.08 per page.	\$ 27.44

MCLETCHE SHELL

Date	Description	Total
7/31/2017	Legal Research: WestLawNext - charges for 186 transactions for July 2017.	\$ 210.54
8/3/2017	Postage: mailing expense - Subpoenas and Deposition Notices re Dan Wray and Cynthia Smith-Johnson sent to opposing counsel/general counsel.	\$ 1.61
8/3/2017	Check # 2072 - Deposition Witness Fee - Cynthia Smith-Johnson.	\$ 40.00
8/3/2017	Check # 2073 - Deposition Witness Fee - Dan Wray.	\$ 40.00
8/3/2017	Postage: mailing expense - Motion for Excess Pages re Response to Emergency Stay mailed to opposing counsel/general counsel and Nevada Court of Appeals.	\$ 1.34
8/4/2017	E-filing fee: Order Denying Stay.	\$ 3.50
8/4/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
8/4/2017	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel/general counsel.	\$ 2.03
8/4/2017	Postage: mailing expense - Response to Emergency Motion for Stay, Appendix of Exhibits, and Supplement to Appendix of Exhibits mailed to opposing counsel/general counsel and Nevada Court of Appeals.	\$ 27.20
8/28/2017	Picked up Stipulation and Order at the Las Vegas School District: 5100 W. Sahara Ave. Las Vegas, NV, 89146. Total miles 13.0 at \$0.54 / per mile.	\$ 7.02
8/31/2017	Copying Costs: August 1, 2017 - August 31, 2017: 804 pages at \$0.08 per page.	\$ 64.32
8/31/2017	Legal Research: WestLawNext - charges for 16 transactions for August 2017.	\$ 13.48
9/11/2017	Invoice: 13824 - Margaret Isom (Court Reporter) Appearance fee for hearing: 07/27/2017.	\$ 40.00
9/12/2017	E-filing fee: Stipulation and Order.	\$ 3.50
9/12/2017	E-filing fee: Notice of Entry of Order.	\$ 3.50
9/12/2017	Postage: mailing expense - Notice of Entry of Order sent to opposing counsel/general counsel.	\$ 0.67
9/13/2017	Veritext Deposition Invoice CA3084162 for Cynthia Smith-Johnson taken on: 08/17/2017.	\$ 764.60
9/15/2017	Veritext Deposition Invoice CA3089360 for Daniel R. Wray taken on: 08/18/2017.	\$ 748.80
Total Costs and Expenses		\$ 4,330.87

1 EIGHTH JUDICIAL DISTRICT COURT

2 CLARK COUNTY, NEVADA

3
4 LAS VEGAS REVIEW-JOURNAL,

5 Petitioner,

6 vs.

7 CLARK COUNTY SCHOOL DISTRICT,

8 Respondent.

Case No.:

A-17-750151-W

Dept. XVI

_____/

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12
13
14 DEPOSITION OF CYNTHIA SMITH-JOHNSON

15 Thursday, August 17, 2017

16 Las Vegas, Nevada

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21
22 Reported by:

Michelle C. Johnson, RPR-CRR

23 NV CCR 771, CA CSR 5962

24 Job No. 2674600

25 Pages 1 - 99

Page 1

1 BE IT REMEMBERED that, pursuant to the laws
2 governing the taking and use of depositions, and on
3 Thursday, August 17, 2017, commencing at 1:03 p.m.
4 thereof, at Veritext Legal Solutions, 2250 South
5 Rancho Drive, Suite 195, Las Vegas, Nevada, before me,
6 MICHELLE C. JOHNSON, a Certified Court Reporter in the
7 States of Nevada and California, personally appeared
8 CYNTHIA SMITH-JOHNSON, called as a witness by the
9 Petitioner.

10 APPEARANCES:

11 For the Petitioner:

12 MARGARET A. McLEITCHIE
13 ALINA M. SHELL
14 Attorneys at Law
15 McLEITCHIE SHELL LLC
16 701 Bridger Avenue
17 Suite 520
18 Las Vegas, Nevada 89101
19 702/728-5300
20 maggie@nvlitigation.com
21 alina@nvlitigation.com

22 For the Respondent:

23 ADAM D. HONEY
24 Assistant General Counsel
25 CLARK COUNTY SCHOOL DISTRICT
5100 West Sahara Avenue
Las Vegas, Nevada 89146
702/799-5373
ahoney@interact.ccsd.net

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WITNESS

CYNTHIA SMITH-JOHNSON

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Examination by Ms. McLetchie

5

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1 CYNTHIA SMITH-JOHNSON,
2 being first duly sworn to tell the truth, the whole
3 truth, and nothing but the truth, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MS. McLETCHE:

7 Q. Hi there. Do you go by Ms. Smith-Johnson or
8 Ms. Smith or Ms. Johnson?

9 A. Smith-Johnson.

10 Q. Smith-Johnson.

11 A. Cindy is fine too.

12 Q. For the record, I may call you
13 Ms. Smith-Johnson today --

14 A. Okay.

15 Q. -- but I appreciate that.

16 Just for the record, could you state your
17 full name.

18 A. Cynthia Smith-Johnson.

19 Q. And could you spell that for the record.

20 A. S-m-i-t-h hyphen J-o-h-n-s-o-n.

21 Q. And you are currently employed by the Clark
22 County School District?

23 A. Yes.

24 Q. If we have time at the end, we might talk a
25 little bit about your background.

1 But are you represented by anybody in
2 connection with this deposition?

3 A. I am.

4 Q. And who is your counsel?

5 A. Mr. Honey.

6 Q. When did he become your counsel?

7 A. When the order came through.

8 Q. Which order are you referring to?

9 A. February document notifying us that we were
10 going to discuss this matter.

11 Q. When did he agree that he was going to
12 represent you? Did he represent you at that time or
13 just the Clark County School District?

14 A. Just within the Clark County School District.

15 Q. At some point, did you specifically agree
16 that he would represent you and become your counsel
17 for this deposition?

18 A. He was assigned to me.

19 Q. You understand that Clark County -- you
20 haven't been sued in this litigation, right?

21 A. Right, no.

22 Q. And before the deposition, you weren't a
23 party in this litigation?

24 A. Correct.

25 MR. HONEY: For clarification, you still

1 aren't a party in this litigation.

2 MS. McLEITCHIE: No, you're not to party;
3 you're just here for deposition.

4 Q. But earlier on, Mr. Honey represented the
5 school district. I'm presuming he didn't become your
6 personal attorney in February.

7 A. No.

8 Q. Is he personally representing you today in
9 the deposition --

10 A. I believe so.

11 Q. -- or is he representing the school district?

12 MR. HONEY: I'm representing the school
13 district, which she's an employee of, so I'm
14 representing her as an employee. But to your question
15 do I represent her as personal counsel, no.

16 MS. McLEITCHIE: Are you representing her for
17 the purposes of defending her in this deposition?

18 MR. HONEY: Yes.

19 BY MS. McLEITCHIE:

20 Q. Have you been deposed before
21 Ms. Smith-Johnson?

22 A. No.

23 Q. Do you understand your testimony today is
24 exactly the same as if you were in court, and that
25 means that it is under the penalty of perjury?

1 A. Yes.

2 Q. And do you understand that means that you
3 have to tell the truth?

4 A. Yes.

5 Q. Have you ever testified in a courtroom?

6 A. No.

7 Q. Do you understand what it means to testify
8 under oath?

9 A. Yes.

10 Q. And you understand that you're under oath
11 today?

12 A. Yes.

13 Q. To make it easier on the court reporter,
14 we're going to make sure that one person at a time
15 talks. Even though you can anticipate kind of where
16 I'm going, let me finish my question. Sometimes I
17 speak quickly, and if the court reporter wants to slow
18 me down, she might do that. And just so she has a
19 clear record. Okay?

20 A. Okay.

21 Q. Also, just another kind of ground rule, let's
22 make sure that we don't do head nods or speak uh-huh;
23 we'll do full sentences, yes, no, just so the record
24 is clear.

25 Does that work for you?

1 A. Yes.

2 Q. Okay. I am entitled to your best
3 recollection. So that means, even if you don't
4 remember every specific detail, but you have general
5 memory, I'm entitled to hear from you about what you
6 do recall.

7 Do you understand that?

8 A. Yes.

9 Q. Okay. Your counsel might object from time to
10 time today, and do you understand that even if he
11 objects, you still have to answer my questions unless
12 he instructs you not to answer?

13 A. Yes.

14 Q. Okay. The deposition today is only supposed
15 to run about two hours, so it's a relatively quick
16 deposition. But if you need a break at any time, just
17 let one us of know. The only thing I ask is that if
18 you want to take a break, don't take a break after I
19 have asked a question and before you have answered it.
20 But any other time, if you need to break or you're
21 going to anticipate needing a break, just let us know
22 and feel free. Okay?

23 A. Okay.

24 Q. All right. What did you do to prepare
25 yourself for this deposition?

1 A. I reviewed some of the things I did for this
2 file, this particular request.

3 Q. When you say you reviewed some things that
4 you did, did you review -- and you reviewed a file.
5 What file is that?

6 A. So I have files on my requests that I get,
7 and then I keep documentation in there of my steps
8 that I take to work it through. So I reviewed that
9 file.

10 Q. Do you have that file with you today?

11 A. I don't.

12 Q. Besides looking at that file, what else did
13 you do?

14 A. I met with Mr. Honey.

15 Q. I don't want to know anything you talked
16 about --

17 A. Okay.

18 Q. -- during your meeting with Mr. Honey. But
19 how many times did you meet with Mr. Honey?

20 A. Twice.

21 Q. And when were those meetings?

22 A. I believe they were this week.

23 Q. Did you meet with anybody else from CCSD?

24 A. No.

25 Q. Did you talk to anybody, like Mr. Wray or

1 anybody else?

2 A. No.

3 Q. Do you have any documents whatsoever with you
4 here today?

5 A. No.

6 MS. McLEITCHIE: All right. And for the
7 record, I'm going to give you a copy of the deposition
8 notice and subpoena, just to make that Exhibit 1.

9 (Petitioner's Exhibit 1 was marked for
10 identification.)

11 BY MS. McLEITCHIE:

12 Q. And you are aware you got subpoenaed to come
13 and participate in this deposition today?

14 A. Yes.

15 Q. So I'm going to launch right into it.

16 Do you recall the first -- do you recall the
17 first time you heard from Amelia Pak-Harvey at the
18 Las Vegas Review-Journal regarding records pertaining
19 to Trustee Kevin Child?

20 A. Yes.

21 Q. And when was that?

22 A. That was December of 2016.

23 Q. Here, Adam. This is 2.

24 So if you take a look at this. Does that
25 appear to be -- whenever you have a chance to look at

1 it, let me know.

2 A. Okay.

3 Q. Does that appear to be the first request that
4 you received from Ms. Pak-Harvey?

5 A. Yes.

6 Q. And that was on December 5th?

7 A. Yes.

8 MS. McLETCHE: Okay. We'll mark that as
9 Exhibit 2, please.

10 (Petitioner's Exhibit 2 was marked for
11 identification.)

12 BY MS. McLETCHE:

13 Q. So you received a request from Ms. Pak-Harvey
14 on December 5th, 2016 requesting certain documents
15 from Mr. Child -- regarding Mr. Child. Correct?

16 A. Correct.

17 Q. And what did you do when you received this
18 request on December 5th?

19 A. I sent it to legal department for a heads up.

20 Q. Did you do anything else?

21 A. No. I set up the file.

22 Q. And when you say you "set up the file," what
23 did you do?

24 A. I just took a file and I recorded the date
25 that I received this and that I actually received it

1 from Michelle Booth.

2 Q. Okay.

3 A. And sent an email to legal.

4 Q. Okay. Anything else?

5 A. No.

6 Q. And then turning to that document you have in
7 front of you, this appears to be an additional email
8 from Ms. Pak-Harvey dated June 6th -- I'm sorry;
9 December 8th, 2016.

10 Do you remember receiving that?

11 A. Yes.

12 Q. It appears to me that she's just making sure
13 that you received a copy of the original request.

14 A. Uh-huh.

15 Q. Did you do anything additional when you
16 received that email?

17 A. I did not.

18 (Petitioner's Exhibit 3 was marked for
19 identification.)

20 MR. HONEY: Those copies are for you.

21 THE REPORTER: No, they're not.

22 MS. McLEITCHIE: I'm giving you courtesy
23 copies. I'm giving one copy that's an exhibit and you
24 have a courtesy copy for you and her.

25 MR. HONEY: Fair enough.

1 BY MS. McLEITCHIE:

2 Q. So turning to this, which appears to be a
3 December 9, 2016 email from you. This appears that
4 you have acknowledged receipt of the public records
5 request from Ms. Pak-Harvey.

6 A. Yes.

7 Q. And when you received this and you said it's
8 being processed, what does that mean?

9 A. It means the request is being processed. I'm
10 waiting -- in this case, I'm waiting from legal for
11 direction on what to do.

12 Q. Okay. So you weren't doing anything until
13 you heard from legal?

14 A. That is correct.

15 MS. McLEITCHIE: So give that to the court
16 reporter, and I think that will be Exhibit 4.

17 (Petitioner's Exhibit 4 was marked for
18 identification.)

19 MS. McLEITCHIE: There you go, Adam. There
20 you go, Ms. Smith-Johnson.

21 Q. And does this appear to be a December 9th,
22 2016 supplement to Ms. Pack-Harvey's December 5th,
23 2016 request?

24 A. Yes.

25 Q. So you understood she was asking for

1 additional documents regarding Trustee Kevin Child?

2 A. Yes.

3 Q. And do you remember receiving this letter?

4 A. Yes.

5 Q. This supplement to the December request.

6 If I say "December request" today, will you
7 understand that I mean the December 5th and
8 December 9th supplement?

9 A. Yes, yes.

10 Q. Thank you.

11 What did you do when you got this request?

12 A. I forwarded it to legal department.

13 MS. McLEITCHIE: And we'll mark that as
14 Exhibit 5, I believe. Or are we on Exhibit 6?

15 THE REPORTER: 5.

16 MS. McLEITCHIE: 5.

17 (Petitioner's Exhibit 5 was marked for
18 identification.)

19 BY MS. McLEITCHIE:

20 Q. And you didn't do anything else?

21 A. No.

22 Q. I'll give one to Adam: Mr. Honey.

23 And this appears to be a December 13th, 2016
24 response to the December 5th and December 9th, 2016
25 requests; is that correct?

1 A. Yes.

2 Q. And you state here that we're unable to
3 provide the information within five business days, and
4 you said you anticipate a further response by close of
5 business day on December 16th, if not before.

6 So why did you anticipate that you would be
7 able to provide a further response by December 16,
8 2016?

9 A. Most likely, I was advised of that from the
10 legal department.

11 Q. Okay. And when you say here, "We anticipate
12 a further response," did you intend to produce
13 documents?

14 A. In some cases, we do, yes.

15 Q. In this case. I'm talking about this case.

16 On December 13th, you emailed Ms. Pak-Harvey
17 and you said, "We anticipate a further response by
18 close of business day on December 16th, 2016, if
19 not before."

20 In this case, did you anticipate providing
21 documents?

22 A. Yes.

23 Q. Had you already searched for documents?

24 A. No.

25 Q. And you didn't -- did you start searching for

1 documents on December 13th?

2 A. I'm not sure what date I started searching.

3 Q. Okay. Do you know whether you started
4 searching for documents in December?

5 A. I did review documents in December.

6 Q. You did. Do you remember when in December it
7 was?

8 A. I do not.

9 MS. McLETCHE: Okay. And we'll mark that as
10 Exhibit 6.

11 (Petitioner's Exhibit 6 was marked for
12 identification.)

13 BY MS. McLETCHE:

14 Q. All right, and here you go.

15 This appears to be an email from Amelia
16 Pak-Harvey following up about the request. Is that
17 correct?

18 A. Yes.

19 Q. And she confirms that you have received the
20 request for an addendum, correct?

21 A. Yes.

22 Q. Did you do anything else after receiving this
23 request for an update?

24 A. No.

25 Q. And you're not sure whether or not you had

1 started looking at responsive documents?

2 A. Correct.

3 MS. McLEITCHIE: And we'll mark that as
4 Exhibit 7.

5 (Petitioner's Exhibit 7 was marked for
6 identification.)

7 BY MS. McLEITCHIE:

8 Q. And this looks like Amelia Pak-Harvey is
9 following up again on December 19th.

10 A. Yes.

11 MS. McLEITCHIE: Okay. We'll mark that as
12 Exhibit 8.

13 (Petitioner's Exhibit 8 was marked for
14 identification.)

15 BY MS. McLEITCHIE:

16 Q. Do you remember her following up about that a
17 couple of times in December?

18 A. Yes.

19 Q. When she did that, did you do anything
20 additional?

21 A. I forwarded that to legal.

22 Q. So essentially, was everything in legal's
23 hands?

24 A. Yes.

25 Q. Whether or not to provide responsive

1 documents was up to legal?

2 A. Yes.

3 Q. Was it you or the legal department that began
4 collecting and looking at documents in December?

5 A. I believe in December, my first initial
6 documents came from legal that I just reviewed and
7 redacted.

8 Q. So the only documents you looked at in
9 December came from legal?

10 A. Correct.

11 Q. And so you don't know how the responsive
12 documents were searched for?

13 A. I do not.

14 MS. McLEITCHIE: We'll mark that, if we
15 haven't yet, as Exhibit 9.

16 I'm sorry; was that Exhibit 8?

17 THE REPORTER: Yes.

18 MS. McLEITCHIE: We have marked that.

19 This is Exhibit 9. Here we go.

20 Q. So at this point in time in December,
21 essentially you look at documents and Ms. Pak-Harvey
22 keeps emailing you and asking you what the status is.
23 But you haven't yet produced any documents whatsoever,
24 right?

25 A. Correct.

1 Q. So on December 19th, which is a Monday,
2 December 19, 2016, this document in front of you, this
3 email in front of you -- and this is an email you
4 sent?

5 A. Yes.

6 Q. And you recall sending this?

7 A. Yes.

8 Q. And so you said, "I expect to get back to you
9 with something tomorrow or Wednesday. I'll get back
10 to you either way."

11 Do you remember sending this email?

12 A. Yes.

13 Q. And did you get back to her on -- did you get
14 back to her on Tuesday?

15 A. I don't recall.

16 MS. McLEITCHIE: We'll mark that as Exhibit 9.

17 (Petitioner's Exhibit 9 was marked for
18 identification.)

19 BY MS. McLEITCHIE:

20 Q. Were you waiting to hear from legal at this
21 point as to whether or not you could get back to her?

22 A. Yes.

23 Q. And you don't recall at this point whether or
24 not you had even looked at any responsive documents?

25 A. Correct.

1 Q. At some point in December, but you don't know
2 when?

3 A. Correct.

4 Q. Okay. And this appears to be on Tuesday.
5 You didn't get back to Ms. Pak-Harvey, but she got
6 back to you and asked you again what the status was?

7 A. Yes.

8 Q. And you remember receiving this email?

9 A. I do.

10 Q. And you would have forwarded this to legal?

11 A. Correct.

12 MS. McLEITCHIE: Okay. And we'll mark that as
13 Exhibit 10.

14 (Petitioner's Exhibit 10 was marked for
15 identification.)

16 BY MS. McLEITCHIE:

17 Q. Do you recall responding to that email?

18 A. I do not.

19 Q. This looks like an email on December 21st,
20 2016 from Amelia Pak-Harvey to you, again following
21 up. And she says she's trying to get information.

22 Do you remember receiving this email?

23 A. I do.

24 Q. And do you remember whether you did anything
25 besides forward this to legal?

1 A. No.

2 MR. HONEY: Objection. She hasn't testified
3 that she forwarded this email.

4 BY MS. McLEITCHIE:

5 Q. Did you forward this to legal?

6 A. I did.

7 Q. All of these emails from Ms. Pak-Harvey, did
8 you forward to legal?

9 A. I did.

10 MR. HONEY: Let me clarify. You mean all of
11 the emails you have already spoken in regards to?

12 MS. McLEITCHIE: Mr. Honey, I would ask that
13 you state an objection for the record, but not that we
14 get in any kind of dialogue and not that you ask
15 questions. You can ask questions at the end. Right
16 now, the questioning is mine; you can feel free to
17 lodge an objection.

18 MR. HONEY: Right. I object to the last
19 question as being vague and ambiguous as to which
20 emails you are referring to.

21 BY MS. McLEITCHIE:

22 Q. Ms. Smith-Johnson, all of the emails you
23 received from Ms. Pak-Harvey, did you forward each and
24 every email to legal?

25 A. I did.

1 Q. Was it up to legal how to respond?

2 A. Yes.

3 Q. Was it up to legal how to search for
4 responsive documents?

5 A. Yes.

6 Q. Was it up to legal which sources to search?

7 A. Yes.

8 MS. McLETCHE: Mark this as Exhibit 11.

9 (Petitioner's Exhibit 11 was marked for
10 identification.)

11 BY MS. McLETCHE:

12 Q. This appears to be an email from you on
13 December 21st, 2016 finally responding to
14 Ms. Pak-Harvey. It appears that you promised to get
15 back to her on Thursday, correct?

16 A. Correct.

17 Q. At this point, are you waiting to hear back
18 from legal as to what you can do?

19 A. Yes.

20 MS. McLETCHE: We'll mark that as Exhibit
21 12.

22 (Petitioner's Exhibit 12 was marked for
23 identification.)

24 BY MS. McLETCHE:

25 Q. This appears to be a December 22nd, 2016

1 email from you to Ms. Pak-Harvey.

2 Do you recall sending this email?

3 A. Yes.

4 Q. And you said that you needed additional time?

5 A. Yes.

6 Q. And you said you'd follow up in January?

7 A. Correct.

8 Q. Do you recall -- can you explain to me why
9 additional time was needed?

10 A. I hadn't reviewed, I don't believe, any
11 documents at this point, and was waiting for direction
12 from legal.

13 MS. McLEITCHIE: We'll mark that as Exhibit
14 13.

15 (Petitioner's Exhibit 13 was marked for
16 identification.)

17 BY MS. McLEITCHIE:

18 Q. Do you recall receiving this email?

19 A. Yes.

20 Q. And is this a January 4th, 2017 email from
21 Ms. Pak-Harvey again following up?

22 A. Yes.

23 MS. McLEITCHIE: We'll give that to the court
24 reporter and mark it Exhibit 14.

25 (Petitioner's Exhibit 14 was marked for

1 identification.)

2 BY MS. McLEITCHIE:

3 Q. This appears to be a January 9th, 2017 email
4 from you responding to Ms. Pak-Harvey and anticipating
5 a further response on January 13, 2017.

6 And can you tell me why you needed additional
7 time again to provide a response?

8 A. I did not have any documents yet to provide.

9 Q. Earlier you said that you think you may have
10 started reviewing documents in December. Is it
11 possible that you didn't start reviewing documents
12 until later?

13 A. It's possible.

14 Q. If you had reviewed documents in December,
15 then why would you need additional time to provide
16 them?

17 A. I wasn't at liberty to release anything; I
18 hadn't had direction yet.

19 Q. So if I'm correct in understanding this, you
20 think you may have reviewed responsive documents in
21 December?

22 A. Correct.

23 Q. But you couldn't produce them without the
24 okay from legal?

25 A. Correct.

1 Q. And you have no idea how they searched for
2 the December documents -- the documents that you think
3 you reviewed in December?

4 A. Correct.

5 Q. You weren't in charge of figuring out what
6 sources to review?

7 A. Correct.

8 Q. Do you remember how many -- when you reviewed
9 documents in December, do you remember about how many
10 documents you looked at in December?

11 A. I do not.

12 Q. Do you remember what types of documents they
13 were?

14 A. Emails.

15 Q. They were all emails?

16 A. Yes.

17 Q. Do you remember whose emails they were?

18 A. I don't.

19 Q. Did you -- when you were reviewing those
20 documents in December, what did you do in reviewing
21 those documents?

22 A. I read through the emails and I redacted like
23 district InterAct addresses, personal cell phone
24 numbers, just standard things like those two items I
25 redact always. Any names of employees I redact.

1 Q. I'm sorry; you always redact the InterAct
2 email addresses?

3 A. Correct, yes.

4 Q. And you redacted personal cell phone numbers?

5 A. Yes.

6 Q. Was there anything else you redacted?

7 A. If there was a name of a child or something,
8 perhaps that would have been redacted.

9 Q. Okay. Can you recall anything --

10 A. I don't recall any specific child names in
11 these emails.

12 Q. Okay. So the only thing you recall -- the
13 only thing you specifically recall that you probably
14 redacted were InterAct email addresses, personal cell
15 phone numbers, and perhaps student names?

16 A. Correct.

17 Q. You don't remember redacting anything else?

18 A. I don't.

19 Q. Did you think these documents were public
20 records that you were looking at?

21 A. Yes.

22 Q. But you did not produce them when you looked
23 at them?

24 A. No.

25 Q. Because you're waiting to hear from legal?

1 A. Yes.

2 Q. Did you get a universe of documents that you
3 separated into a pile that you thought were responsive
4 to the request and a pile you didn't think were
5 responsive to the request at this point in December?

6 A. No.

7 Q. You thought they were all responsive?

8 A. Yes.

9 Q. So essentially all you did, and you think
10 this was in December, was make redactions that you
11 thought were appropriate and wait to hear from legal
12 to produce these public records?

13 A. Yes.

14 MS. McLEITCHIE: So did we mark Exhibit 15?

15 THE REPORTER: We did now.

16 MS. McLEITCHIE: Thank you very much,
17 Reporter.

18 (Petitioner's Exhibit 15 was marked for
19 identification.)

20 BY MS. McLEITCHIE:

21 Q. So on January 9th, you had told her that you
22 anticipated a further response on January 13, and you
23 told her that -- and then in response, Ms. Pak-Harvey
24 appears to have sent you an email saying that she was
25 concerned and confused about the delay, right?

1 A. Correct.

2 Q. Do you remember receiving this email?

3 A. I do.

4 MS. McLEITCHIE: Mark that as Exhibit 16.

5 (Petitioner's Exhibit 16 was marked for
6 identification.)

7 BY MS. McLEITCHIE:

8 Q. You don't recall responding to this email, do
9 you?

10 A. I don't.

11 Q. But you had told her you would get back to
12 her January 13th, correct?

13 A. Right.

14 Q. Did you get back to her on January 13th?

15 A. I don't remember.

16 Q. So this appears to be another email from her
17 after January 13th, and it appears that you have not
18 responded to her on January 13th.

19 A. Correct.

20 Q. Do you usually -- when you -- you mentioned a
21 file that you keep and kind of a checklist document,
22 tracking document, of some sort.

23 Am I correct in understanding that from
24 earlier?

25 A. It's not a tracking document, no, just a file

1 with printouts of these types of things in there.

2 Q. When you tell somebody you're going to get
3 back to them on January 13th, how do you make sure you
4 do that?

5 A. Normally, I would put that information on a
6 calendar that would let me know what I have due that
7 day.

8 Q. Do you recall whether this was on your
9 calendar?

10 A. I'm sure it was, yes.

11 Q. And did you not respond on January 13th
12 because legal instructed you not to?

13 A. No.

14 Q. Do you recall why you didn't respond on
15 January 13th as you had promised?

16 A. I believe it was because I hadn't had
17 direction on what response to provide to
18 Ms. Pak-Harvey.

19 Q. Do you recall why you didn't email her, when
20 you told her you would get back to her on
21 January 13th, and tell her, I still need more time?

22 A. No.

23 Q. Is that your normal practice, to promise a
24 response by a certain date and then just not provide
25 the response?

1 A. No.

2 Q. Do you recall receiving this email on
3 January 16th with her again following up on the status
4 of the request?

5 A. I do.

6 Q. And do you recall responding to this email?

7 A. I don't.

8 MS. McLEITCHIE: And we'll mark that as
9 Exhibit 17.

10 (Petitioner's Exhibit 17 was marked for
11 identification.)

12 BY MS. McLEITCHIE:

13 Q. Do you recall Las Vegas Review-Journal -- did
14 you become aware that the Las Vegas Review-Journal had
15 filed a court action to obtain these documents?

16 A. I did.

17 Q. And do you recall when that was?

18 A. February.

19 Q. It was on January 26, 2017. Does that
20 refresh your recollection?

21 A. I don't recall the specific date.

22 MR. HONEY: Was the question when it was
23 filed or when she learned about it?

24 MS. McLEITCHIE: Mr. Honey, you are allowed to
25 make objections; you are not allowed to ask me

1 questions. Do you have an objection for the record?

2 MR. HONEY: Objection. The last question was
3 vague and ambiguous.

4 BY MS. McLETCHE:

5 Q. Do you recall doing anything different in
6 addition to look for responsive documents after the
7 Las Vegas Review-Journal filed a lawsuit to get
8 records in this case?

9 A. Yes.

10 Q. And what was that?

11 A. Review emails.

12 Q. And when -- so you have reviewed -- were
13 these the emails that you reviewed in December?

14 A. No.

15 Q. These were additional emails?

16 A. Yes.

17 Q. So in December, approximately December, you
18 reviewed some emails in response to Ms. Pak-Harvey's
19 original request. You couldn't produce them because
20 legal told you couldn't produce them yet, right?

21 MR. HONEY: Objection. States information
22 not in evidence. She did not testify she was directed
23 not to produce it.

24 MS. McLETCHE: Those are speaking
25 objections, just for the record.

1 Q. Did you -- so in December, you had reviewed
2 responsive records, that's your recollection, correct?

3 A. Yes.

4 Q. And those are the documents you redacted?

5 A. Correct.

6 Q. And why did you not produce them?

7 A. I wasn't told to produce them at that point.

8 Q. So you were waiting for the okay from legal,
9 correct?

10 A. Correct.

11 Q. So in December, you review some documents; by
12 the time the Las Vegas Review-Journal files suit in
13 January, you haven't produced any of these documents
14 because you are still waiting for permission from
15 legal to do so, correct?

16 A. Correct.

17 Q. And then the Las Vegas Review-Journal files
18 suit?

19 A. Correct.

20 Q. And then you review additional emails?

21 A. Correct.

22 Q. Did you search for these additional emails?

23 A. No.

24 Q. Who searched for those additional emails?

25 A. Dan Wray.

1 Q. Did you get those directly from Dan Wray or
2 did you get them from legal?

3 A. I got those documents from Dan Wray.

4 Q. And did you know how he came to search for
5 them? Had you asked him to search for them?

6 A. I did not ask him to search for them.

7 Q. Do you know who asked him to search?

8 A. I believe legal told him to search, gave him
9 search terms. He searched those, and then he placed
10 the file on my lap -- or my desktop.

11 Q. Do you recall when that was that he placed
12 this file on your desktop?

13 A. I do not. The first one, I do not.

14 Q. When you say "the first one," what do you
15 mean?

16 A. There were several searches.

17 Q. So at some point, Dan -- at some point, it's
18 your understanding that legal gave Mr. Wray direction
19 to search for additional documents, and you started
20 getting documents from Mr. Wray to review?

21 A. Yes.

22 Q. And when you were -- when you were instructed
23 to review them, were you instructed to produce them,
24 or to provide them back to legal?

25 A. To provide them to legal once the search was

1 complete.

2 MS. McLETCHE: Understood. Okay.

3 What exhibit are we on, Court Reporter?

4 THE REPORTER: 18.

5 MS. McLETCHE: Okay.

6 Q. I understand -- I'm not going to ask you to
7 authenticate this. This is a certification of
8 Mr. Wray that was produced in this case, and attached
9 to it are some printouts of search terms and dates,
10 and what I believe are email custodians. It just
11 might help us with some of these dates.

12 And if you turn to the first page of it, in
13 the little corner it says LVRJ027. And at the top of
14 that page, it appears that there were -- that the
15 email boxes of Mike Barton and Pat Skorkowsky were
16 searched in December 9th -- on December 9th, 2016.

17 Do those appear to be the -- does this
18 refresh your recollection about whose emails you
19 searched in December?

20 A. I didn't search --

21 Q. I'm sorry. Whose email -- I apologize. I'll
22 withdraw and rephrase that question.

23 Does this document refresh your recollection
24 regarding whose emails you were reviewing when you
25 reviewed documents in December?

1 A. Yes.

2 Q. And whose they were?

3 A. Mike Barton and Pat Skorkowsky's emails.

4 Q. And those were the only emails that you
5 searched in December, that you recall?

6 A. Correct. I didn't actually search the
7 emails, though.

8 Q. I'm sorry, review.

9 A. Reviewed, yes.

10 MS. McLETCHE: I apologize. Thank you.

11 And we can mark that as Exhibit 18, and we
12 may turn back to that.

13 (Petitioner's Exhibit 18 was marked for
14 identification.)

15 BY MS. McLETCHE:

16 Q. So you mentioned that at some point Mr. Wray
17 started putting documents on your desktop. Do you
18 remember that he put them on your machine or he gave
19 you hard copies?

20 A. Put them on -- it's an icon on my desktop.

21 Q. Okay. So he gave you -- there were folders
22 that would appear on your desktop for you to review of
23 potentially responsive documents to the Las Vegas
24 Review-Journal's requests regarding Trustee Child,
25 correct?

1 A. Yes.

2 Q. Okay. Were you aware of any court orders
3 regarding how to redact documents for production and
4 how to search -- and what sources to search for in
5 this case?

6 A. No.

7 Q. You never saw any order --

8 A. No.

9 Q. You never saw any court order saying this is
10 what you were allowed to redact?

11 A. No, I don't recall.

12 Q. When you were reviewing these folders that
13 you received that showed up on your desktop that
14 Mr. Wray had put there through the magic of computers,
15 when you were reviewing them, were you reviewing these
16 folders for responsiveness?

17 A. Yes.

18 Q. In other words, you were evaluating whether
19 or not they were responsive to the request that the
20 Las Vegas Review-Journal had made?

21 A. At this point, it's a new request. And I
22 believe it was your request.

23 Q. Understood. Okay. We'll turn to that now.
24 Perfect timing.

25 And when you say my request, do you mean the

1 request that appears to be in front of you that I made
2 on behalf of the Las Vegas Review-Journal?

3 A. Yes.

4 Q. And that was sent on February 10th?

5 A. Yes.

6 Q. And did you receive it on February 10th?

7 A. I don't believe so.

8 Q. Do you recall when you received it?

9 A. I don't.

10 MS. McLEITCHIE: We'll mark that as Exhibit
11 19.

12 (Petitioner's Exhibit 19 was marked for
13 identification.)

14 BY MS. McLEITCHIE:

15 Q. At any point -- we talked about the December
16 request. Now if we refer to this to February 10th,
17 2017 request, we might refer to it as the February
18 request.

19 Will that make sense to you?

20 A. Yes.

21 Q. And you'll understand that I mean this
22 February 10th, 2017 letter request?

23 A. Yes.

24 Q. So at any point with regard to any documents
25 that were -- that you reviewed or handled in any way

1 for either the December request or the February
2 request or for court-ordered compliance, at any time
3 were you responsible for identifying where responsive
4 documents might be?

5 A. No.

6 Q. In other words, did you do any searching and
7 collection of documents, or did you only review --
8 have you only reviewed Trustee Child documents for
9 responsiveness and redaction?

10 A. I'm sorry; can you repeat?

11 Q. So have you done any searching for documents
12 for any of the Review-Journal's requests regarding
13 Trustee Child?

14 A. Other than the emails on my desktop, no.

15 Q. But you clarified to me that you didn't
16 collect the documents on your desktop, that Mr. Wray
17 put them in folders and they appeared there.

18 A. Correct.

19 Q. And that earlier, you got documents in
20 December from legal, correct?

21 A. Correct.

22 Q. So you received documents and then you
23 reviewed them, correct?

24 A. Correct.

25 Q. Did you do anything to go out and look for

1 responsive documents within CCSD?

2 A. No.

3 Q. In response to public records requests, do
4 you usually search for responsive documents?

5 A. I do.

6 Q. And how do you do that?

7 A. Depending on the request and where I feel the
8 information might be within another department, I'll
9 reach out to that area.

10 Q. Okay. Do you search -- when you receive a
11 request, do you only search -- do you usually only go
12 out and ask for emails and search for emails?

13 A. No.

14 Q. And what other places might you look for
15 responsive documents in response to a request?

16 A. To a request, depending on what type, again,
17 I'll go to a specific department and ask for whatever
18 it is that the request is. You know, they don't all
19 ask for emails.

20 Q. Was it your understanding that the Las Vegas
21 Review-Journal's requests for only for emails?

22 A. No.

23 Q. Was it your understanding that additional
24 documents were asked for?

25 A. I was under the understanding of what was

1 requested.

2 Q. And what was your understanding of what was
3 requested?

4 A. The information that was requested was any
5 information regarding several different situations
6 that possibly Trustee Childs (sic) had been in.

7 Q. Okay. And so when you say "information,"
8 that could be a document of -- that could be documents
9 of different types, correct?

10 A. Correct.

11 Q. So that could be emails?

12 A. Correct.

13 Q. That can be hard copies?

14 A. Possibly.

15 Q. And when you -- and sometimes you do search
16 for hard copy records in response to public records
17 requests, correct?

18 A. Correct.

19 Q. You don't limit all responses just to emails.
20 When you're responding --

21 A. Correct.

22 Q. I'm talking -- now, I understand you didn't
23 search for the responsive documents in this case. I'm
24 talking now about your general practice in your role
25 as public information officer at CCSD.

1 A. Yes.

2 Q. Okay. When do you -- when do you involve
3 legal in a response to a request for public records
4 and when do you not?

5 A. If I know exactly where the documents are
6 housed, I will go retrieve them. Then I send that
7 information to legal for advice on response.

8 Q. So legal reviews each and every Public
9 Records Act response?

10 A. Yes.

11 Q. So in this case, why didn't you go to
12 retrieve documents?

13 A. I did not think there were any documents that
14 anyone would have on a trustee.

15 Q. So when you received -- back in December when
16 you received the request from Ms. Pak-Harvey, you
17 didn't think there would be any responsive documents?

18 A. No, that's not what I --

19 Q. I'm sorry. Can you explain to me again,
20 then.

21 You said that you didn't think there would
22 be -- anyone would have any responsive documents on a
23 trustee.

24 A. A file kept on a trustee, let's say on
25 someone's desk.

1 Q. Okay.

2 A. I don't believe anyone would have hard copies
3 of a file on a trustee.

4 Q. Okay. So that's why -- sometimes -- but you
5 thought -- did you think people may have emails?

6 A. Yes.

7 Q. But you didn't look for emails?

8 A. We did look for emails.

9 MR. HONEY: Objection.

10 MS. McLEITCHIE: I'm asking -- go ahead, lodge
11 your objection.

12 MR. HONEY: Objection. Assumes evidence,
13 information not in evidence; specifically, that she
14 can even search for those emails.

15 MS. McLEITCHIE: Mr. Honey, I would ask you
16 not to make speaking objections, just for the record.

17 Q. So I'm asking why. Sometimes when you get a
18 Public Records Act request from the R-J or from any
19 other person making the request, sometimes you do,
20 yourself, go and search for responsive documents,
21 right?

22 A. Yes.

23 Q. And sometimes do you personally contact
24 Mr. Wray from information technology and ask him to
25 collect documents?

1 A. No.

2 Q. The requests for Mr. Wray always go through
3 legal --

4 A. Yes.

5 Q. -- is that correct?

6 A. Yes.

7 Q. Just for the record, let's make sure I finish
8 my question --

9 A. Yes.

10 Q. -- so we can have a clear record on the
11 transcript. Okay?

12 A. Yes.

13 Q. All right. So you didn't think there would
14 be any hard copy records in this case, so you
15 forwarded the request to legal?

16 A. Correct.

17 Q. That's the only reason you forwarded this
18 request to legal?

19 A. No.

20 Q. What were the other reasons you forwarded
21 this request to legal?

22 A. It appeared to be a high-level request, so I
23 wanted my guidance to be from legal.

24 Q. When you say "high level," what do you mean?

25 A. It's a trustee.

1 Q. So is it fair to say this request took longer
2 than the average public records request?

3 A. Yes.

4 Q. How long do you usually take to produce
5 responsive documents in response to requests?

6 A. It depends on the request.

7 Q. So -- but you did say that usually you
8 responded quicker?

9 A. Yes.

10 Q. So in this case -- in this case,
11 Ms. Pak-Harvey first requested documents on
12 December 5th, and the Review-Journal filed a lawsuit
13 in the end of January 2017, so at this point almost
14 two months elapsed, right?

15 A. Yes.

16 Q. And you don't remember any responsive
17 documents being produced before February, right, of
18 2017?

19 A. Correct.

20 Q. So that's over two months, right?

21 A. Yes.

22 Q. And is that longer than usual for --

23 A. Yes.

24 Q. -- public records?

25 A. Yes.

1 Q. Give Mr. Honey time to object, if he wishes
2 to.

3 So in this instance, the response took longer
4 than the typical Public Records Act response, correct?

5 A. Correct.

6 Q. So after the Las Vegas R-J filed suit in
7 February, you mentioned that folders started appearing
8 on your desktop of documents, and you were
9 instructed -- I don't want you to -- I'm not going to
10 ask you what Mr. Honey told you, but you were at some
11 point instructed to review those documents and redact
12 them; is that correct?

13 A. No.

14 Q. What were you instructed to do?

15 A. Just review.

16 Q. And review -- I'm sorry.

17 A. I don't review and redact all at the same
18 time. So I have to review first.

19 Q. Okay. So let's break this down for me so
20 we're clear we're using the same terms and I
21 understand how you go about things. Because I make
22 requests, but I don't respond to them, so -- and if
23 you can explain it to me, that would be great.

24 So you said you review and you redact. Those
25 are two different steps, correct?

1 A. Yes.

2 Q. So the first step, when you say you review,
3 that means that you look at documents and you
4 determine whether or not they're responsive to public
5 records request; is that correct?

6 A. Yes.

7 Q. So when I say "review," that's what you mean?

8 A. Yes.

9 Q. Okay. So in this case, you reviewed folders
10 that were placed on your desktop. Earlier, we talked
11 about documents that you looked at in December. And
12 all of those that you reviewed, you deemed were
13 responsive -- correct -- back in December?

14 MR. HONEY: Objection: compound question.
15 If you could rephrase that.

16 THE WITNESS: Could you repeat that?

17 BY MS. McLEITCHIE:

18 Q. Sure. When we talked about the documents
19 that you reviewed in December, you were provided a
20 universe of documents, correct?

21 A. Yes.

22 Q. And earlier when I asked you about it, you
23 stated that you thought they were all responsive
24 public records, correct?

25 A. Yes.

1 Q. Was this the case with all the documents you
2 looked at later?

3 A. No.

4 Q. And so at some point, you reviewed additional
5 documents that you received on your desktop from
6 Mr. Wray?

7 A. Yes.

8 Q. And you started looking at those documents
9 before May, correct?

10 A. Yes.

11 Q. And so you started -- you started looking at
12 these documents and deciding whether or not they were
13 responsive to the requests, correct?

14 A. Yes.

15 Q. Are you talking about the February request or
16 the December request or both?

17 A. February.

18 Q. So when you were looking at the documents
19 after -- after what you looked at in December, when
20 you looked at documents after -- starting in February
21 of 2017, you were only looking at documents -- for
22 documents that you deemed to be responsive to the
23 February 10th request from my office, correct?

24 A. Yes.

25 Q. And when you were evaluating whether or not a

1 document was responsive, can you explain to me how you
2 made that determination?

3 A. Yes. They're all emails. I had to read each
4 email, and I read through everything in that folder to
5 see if there was anything responsive to the request.
6 If there was, I would print that email.

7 Q. And then when you would print the email,
8 where would it go?

9 A. Once I was completely done with that file,
10 those printed emails would be scanned and sent to
11 legal.

12 Q. And then you mentioned there was a second
13 step of redacting. Were you involved in redacting
14 documents -- redacting documents after December in
15 this case?

16 A. Yes.

17 Q. And so the first step is you review for
18 responsiveness, you print them out, they go to legal.

19 When did redacting happen?

20 A. Once legal had their review, they would send
21 those documents back to me highlighted, and I would
22 redact.

23 Q. So it was a different set of documents --
24 when you did the final review for redactions, it could
25 have been a different set of documents than the one

1 you originally sent to legal, correct?

2 A. It was a scanned copy that I sent to legal.
3 They would print those out, highlight that
4 information, and then I would get hard copies back.

5 Q. Okay. When legal looked at the documents,
6 were -- did all the documents that you sent to
7 legal -- right? -- that you said these are all
8 responsive, did you receive those all back to be
9 redacted?

10 A. Yes.

11 Q. Okay. And do you recall these searches that
12 we're talking about, were those all in February?

13 A. I don't recall if everything was in February.

14 Q. Okay. So now we've talked about -- we've
15 talked about -- my understanding is we've talked about
16 sort of two batches of review on your part, one that
17 happened -- that you think happened in December of
18 2016 in response to the December request, and then a
19 second set of reviewing of responsive documents that
20 occurred in response to the February request from my
21 office. Correct?

22 A. Yes.

23 Q. And did you do additional review besides the
24 review for the December request and the review for the
25 February request?

1 A. No.

2 Q. Okay, so this is a certification that you
3 provided in this case.

4 Does this look familiar?

5 A. Yes.

6 Q. Is that your signature on the second page?

7 A. Yes.

8 Q. Okay. On paragraph -- in paragraph 3, here
9 is where I'm trying to figure out what's going on. It
10 says, "I have personally reviewed 11,907 emails
11 provided by Dan Wray, executive director of technology
12 information systems department, between the dates of
13 May 10th and May 15th to identify emails responsive to
14 the December and February records requests made by the
15 Las Vegas Review-Journal."

16 When did -- so this is a review that happened
17 in May, is that correct?

18 A. Yes. Uh-huh. Yes.

19 Q. So this is in addition to the two searches
20 and two sets of documents we're talking about before;
21 is that correct?

22 A. (No response.)

23 Q. We had talked about December, in December you
24 reviewed documents?

25 A. Yes.

1 Q. And then we were just speaking about
2 documents that you think you were reviewing for
3 responsiveness and then later on for redactions -- you
4 were making redactions on in February, correct?

5 A. I believe so.

6 Q. Do you think it could have been another time?

7 A. No.

8 Q. Do you -- is this a separate set of review
9 that you were doing in May?

10 A. Yes, I believe so.

11 Q. Okay. And it says here that you personally
12 reviewed 11,907 emails provided by Dan Wray between
13 these two -- between just May 10th and May 15th.

14 So this isn't -- this certification isn't
15 discussing what you did in December or what you did --
16 what you believe you did in February, correct?

17 A. Correct.

18 Q. So this is just between May 10th and May 15th
19 of 2017. And you reviewed 11,907 emails between those
20 dates, correct?

21 A. Yes.

22 Q. That's a lot of documents to look at.

23 A. Yes.

24 Q. And again you searched those for
25 responsiveness?

1 A. Yes.

2 Q. So you identified -- you were -- you were
3 solely responsible for identifying from the
4 documents -- you don't know how they were collected,
5 but once they got placed on your computer in these
6 folders from Mr. Wray, you were solely responsible for
7 determining what documents were responsive to the
8 public records requests or court orders in this case,
9 correct?

10 A. Yes.

11 Q. And in paragraph 5, it sounds like you
12 identified just 43 pages.

13 A. Yes.

14 Q. So of all those emails, just 43 pages were
15 responsive?

16 A. Yes.

17 Q. And so you provided those documents -- you
18 provided those documents to counsel?

19 A. Yes.

20 Q. So in this case -- in this case, there has
21 actually been more than these 43 pages produced;
22 additional documents were identified and produced
23 after this date.

24 Do you recall that?

25 A. (No response.)

1 Q. Do you have any idea how or why any, after
2 this -- after May 15th there would be more than 43
3 pages that were produced, where those would have come
4 from?

5 A. Unless it was my email searches, I do not
6 know what specifically you're talking about.

7 Q. Okay. So you said your email searches. Do
8 you just mean that -- your review for responsiveness
9 of the folders of emails that you received on your
10 desktop from Mr. Wray?

11 A. Yes.

12 Q. So you didn't actually go search anybody's
13 emails?

14 A. No.

15 Q. And you had nothing to do with figuring out
16 how we find responsive documents in response to any of
17 these requests, right?

18 A. I'm sorry; could you --

19 Q. You weren't involved in determining whose
20 emails to search?

21 A. Correct.

22 Q. Or where to find responsive documents?

23 A. Correct.

24 Q. That wasn't part of your job in this case?

25 A. Correct.

1 Q. Okay. With regard to either the December
2 request or February request or any court order,
3 correct?

4 A. Correct.

5 Q. Okay. So at some point in May, you reviewed
6 these 11,907 emails, which is a lot to review in
7 five -- in that time period. And you identify 43
8 pages, and you handed them over to legal counsel,
9 correct?

10 A. Yes.

11 Q. After that can date, did you do any other
12 review for responsiveness?

13 A. After May. I don't recall.

14 Q. Would anybody else have been responsible for
15 reviewing documents for responsiveness?

16 A. No.

17 Q. On this case, no?

18 A. No. Other than what I sent to legal and then
19 they review.

20 Q. But nobody else that -- nobody -- no other
21 public information officer was assigned to this
22 matter, correct?

23 A. Correct.

24 Q. You're the only -- and legal was not
25 reviewing for responsiveness; you were reviewing for

1 responsiveness, correct?

2 A. Right.

3 Q. You were culling through all the emails,
4 correct?

5 A. Right.

6 Q. I want to talk a little bit more about what
7 your process is when you have all these emails.

8 You had 11,907 emails. So some of them could
9 have been more than one page, right?

10 A. Yes.

11 Q. And the -- this is a lot of documents. How
12 did you go about -- how do you -- what's your process
13 in reviewing documents for responsiveness?

14 A. I literally open that file which shows every
15 email listed that was from the search term, and I open
16 them up to see if they're responsive. Now, some of
17 them can be duplicates, and if you can't spot a
18 duplicate, you know, I will print that as a duplicate.
19 But I have to read -- open every email, read it to see
20 what it's about. And a lot of them, you know, are not
21 responsive.

22 Q. When you say -- we keep saying "not
23 responsive," so let's see if we can get on the same
24 page with responsive, what isn't responsive.

25 For the Las Vegas Review-Journal's request,

1 what emails did you determine were not responsive and
2 not worth producing?

3 A. Emails such as appointments Trustee Childs
4 might have had, visits to schools, secretary emails to
5 him that say you're scheduled for this, you're
6 scheduled for that, stuff like that.

7 Q. Okay. Anything else that you can remember?

8 A. As far as?

9 Q. Any other types of emails or documents that
10 you remember looking at and thinking these aren't
11 responsive?

12 A. Just day-to-day business emails back and
13 forth were not responsive.

14 Q. Okay. And what types of emails did you
15 determine were responsive in this case?

16 A. Any email that indicated any of the bullet
17 points that were requested.

18 Q. Okay. So let's go back. When you say
19 "bullet points," we're talking about the bullet points
20 in the February letter that I sent; is that correct?

21 A. Yes. Yes.

22 Q. So did you have that letter open?

23 A. Yes.

24 Q. And so you had -- there's a lot of bullet
25 points here in my letter.

1 A. Yes.

2 Q. So you had this letter open.

3 Did you give yourself a checklist or anything
4 like that of documents to look for?

5 A. Not a checklist. What I do is I have both
6 these pages side by side sitting here, and I read this
7 so I know what I'm looking for in response.

8 Q. Was there -- I'm sorry. Go ahead; I didn't
9 mean to cut you off.

10 A. (Shakes head.)

11 Q. Was there anything that was in a gray area
12 that you weren't sure was responsive? Were there any
13 documents like that?

14 A. I'm sure, yes.

15 Q. And when that happens, what do you do?

16 A. Print those.

17 Q. And provide them to legal?

18 A. Yes.

19 Q. So if you think something might be
20 responsive, you let legal make the call?

21 A. Yes.

22 Q. And do you remember documents that might have
23 been in the gray area here?

24 A. I don't.

25 MS. McLETCHE: Can we take a brief break.

1 THE REPORTER: Did you want to mark --

2 MS. McLETCHE: Let's mark the certification
3 as Exhibit 20.

4 Thank you very much.

5 (Petitioner's Exhibit 20 was marked for
6 identification.)

7 (Recess taken.)

8 BY MS. McLETCHE:

9 Q. Here you go.

10 A. Okay.

11 Q. Ms. Smith-Johnson, does this appear to be a
12 response to my February 10th, 2017 request on behalf
13 of the Las Vegas Review-Journal for records regarding
14 Kevin Child?

15 A. Yes.

16 Q. So you responded to this request on
17 February 17th, and this looks like a correct copy of
18 that document?

19 A. Yes.

20 MS. McLETCHE: We will mark that as Exhibit
21 21.

22 (Petitioner's Exhibit 21 was marked for
23 identification.)

24 BY MS. McLETCHE:

25 Q. At this point you say, in this email -- you

1 can take it back -- it says you anticipate a further
2 response on March 3rd, 2017.

3 What else had to be done at this point to
4 produce documents in response to my request?

5 A. I'm sorry; could you repeat your question?

6 Q. Why did you anticipate -- why did you need
7 more time to anticipate a further -- why did you
8 anticipate a further response?

9 A. I don't believe that any documents had been
10 responsive and returned back to requester at that
11 point.

12 Q. At this point, had you looked at any
13 responsive documents -- any documents that were
14 potentially responsive to the February 10th request
15 that I made?

16 A. In February, I believe there were documents,
17 but I don't recall at that point.

18 Q. Earlier, we talked about the fact that you
19 couldn't -- you were waiting for the okay in December
20 to produce documents in response to the December
21 request, right? You were waiting for the okay from
22 legal, right?

23 A. Correct.

24 Q. Were you again waiting for response, okay
25 from legal for the February 10th request?

1 A. Yes.

2 Q. And you couldn't produce any documents until
3 you had the okay from them?

4 A. Correct.

5 Q. Can we go back to Exhibit 18, the Wray
6 certification that's in front of you. And if we turn
7 back to that exhibit there, you can kind of -- if you
8 want to look through it for a second. The way it
9 looks to me -- but I want you to look at it too --
10 it's in date order and it shows a name, terms, and
11 then a date.

12 And it looks to me like after December 9th,
13 the first time any additional documents were -- at
14 least any emails -- were searched for is
15 February 21st, 2017.

16 A. I don't know what his -- I don't know what
17 that date is for him.

18 Q. But if he didn't search -- assuming that this
19 is the date that he searched for documents, you
20 couldn't have reviewed any documents before he gave
21 you documents to look at?

22 A. Right.

23 Q. So you couldn't have done -- assuming this
24 date reflects that this is the date he did a search
25 on, then you could not have -- you couldn't have

1 looked at any responsive documents before?

2 A. Correct.

3 Q. And -- okay. And you have no reason to
4 think -- if you go back to the first page, this is a
5 "Certification of Dan Wray," and it says that he
6 conducted the searches, and you have no reason to
7 think he didn't accurately reflect when searches were
8 conducted, right?

9 A. Right.

10 Q. Do you recall receiving batches of documents
11 on the various documents reflected on this attachment?
12 If you look through, it says December 9th, and then it
13 says February 21st, February 22nd, March 28,
14 May 12th -- I'm sorry, April 5th, I missed that one --
15 May 12th, and I believe there is one more date --
16 May 12th, and May 15th.

17 Do you remember receiving documents from him
18 in batches around these dates?

19 A. Yes.

20 Q. And when you talked about documents that you
21 reviewed in May in your certification, do you know
22 which of these documents that corresponds to?

23 A. I don't.

24 Q. Okay. You just remember three kind of sets
25 of review for you -- the December, the February, and

1 then the May -- correct?

2 A. I don't believe that's complete.

3 Q. Okay. So let's go back to it, because I want
4 to make sure I'm not missing anything.

5 A. Okay, yeah.

6 Q. You testified that you reviewed responsive
7 documents in December, right?

8 A. Yes.

9 Q. And when is the next time you think you
10 reviewed responsive documents?

11 A. February maybe.

12 Q. February. And again these are all documents
13 that were placed on your -- provided to you?

14 A. Yes.

15 Q. Okay. So February, you remember reviewing
16 documents in February?

17 A. Yes.

18 Q. Do you remember reviewing documents before
19 May 5th -- before May -- between February and May?

20 A. I don't.

21 Q. Okay. So you said that what I said earlier
22 wasn't accurate. Explain to me why it wasn't
23 accurate.

24 A. You had mentioned three sets of reviews.
25 That's what I thought I heard. I've looked at a lot

1 more than three sets of --

2 Q. I apologize. So when you say -- when I say
3 "sets," I'm not talking about folders of documents or
4 anything like that; I'm talking about three time
5 frames in which you were reviewing documents. One was
6 in December, one was in February, and one was in
7 March. Correct?

8 A. Correct.

9 Q. I'm sorry; not March. One in December, one
10 in February, and one in May?

11 A. Correct.

12 Q. And those are the only time frames in which
13 you recall reviewing and producing documents?

14 A. No.

15 Q. Okay. So when else do you recall reviewing
16 and producing documents?

17 A. I believe there were documents reviewed in
18 amongst those time periods from like May -- February
19 to May. I can't tell you specific dates, but I know
20 that it was more than just three times that I reviewed
21 documents, you know, February --

22 Q. Okay.

23 A. -- December, February, and May.

24 Q. Understood. In your -- in your
25 certification, going back to -- that's Exhibit 20 --

1 you identify documents that you reviewed between
2 May 10th and May 15th.

3 A. Yes.

4 Q. That's all that's spelled out here.

5 How did you -- obviously when you are writing
6 that, you have a more clear memory or access to
7 information to help your memory, than you have right
8 now, right?

9 A. Yes.

10 Q. You were able to give exact dates. Right
11 now --

12 A. Yes.

13 Q. Right now you think sometime in December,
14 sometime in February, but you don't remember exact
15 dates, right?

16 A. Right.

17 Q. Okay. So -- and this certification only
18 deals with a review that you did in May --

19 A. Yes.

20 Q. -- it says May 10th to May 15th?

21 A. Yes.

22 Q. Okay. So how did you -- how did you figure
23 out the specifics of this search? The review that you
24 did for responsive records between May 10th and
25 May 15th, when you were writing your certification,

1 how did you figure that out?

2 A. The time frame that I was told to review was
3 just the May time frame. So with the 11,000
4 documents, that was just that time frame.

5 Q. I'm sorry. What do you mean, when you were
6 told to review?

7 A. Well, when the case came up and I was told to
8 review what I had done so that I could document it, it
9 was just based on what had happened in May.

10 Q. Okay. So you could have provided additional
11 information about what you did in December or in
12 February or maybe other dates between February and
13 May, correct?

14 A. Correct.

15 Q. But you were told to only document what you
16 did between May 10th and May 15th?

17 A. We were only looking at that 11,000 -- those
18 specific 11,000 emails --

19 Q. Okay.

20 A. -- which came within that time frame.

21 Q. So what I'm trying to figure out is what are
22 the other -- what are these other emails you looked at
23 and when did you look at them?

24 A. I don't recall the dates specific to the
25 other searches from Dan Wray.

1 Q. But you could -- you could provide that
2 information with specificity if you were at your
3 computer right now, for example, correct?

4 A. Correct.

5 Q. Because you were able to figure it out for
6 the searches --

7 A. Yes.

8 Q. -- that were --

9 A. Yes.

10 Q. I'm sorry; the review for responsive records
11 that you reviewed between May 10th and May 15th?

12 A. Yes.

13 Q. So you could do that for any of the other
14 dates that we've been talking about today. We've been
15 muddling through it a little bit together trying to
16 make sure that I'm understanding you. But you could
17 do this easily sitting at your computer, correct?

18 A. Correct.

19 Q. Okay. But you were only told to it do for
20 this one set of review that you did?

21 A. Correct.

22 Q. And you were told by counsel?

23 A. Yes.

24 Q. Let's talk a little bit about your -- just
25 some general -- some general -- some general things

1 and policies. We talked about a little bit -- we've
2 talked a little bit about this as we've been going
3 through with regard to the Child requests, but I'm
4 just trying to make sure what your policy is when
5 you'd get Public Records Act requests.

6 I think you said, generally when you get a
7 request, you start a file.

8 A. (Nods head.)

9 Q. What does that mean?

10 A. I actually start a file, manila folder, label
11 it with the title of the request. That's when I mark
12 down my dates, reply dates, and then I determine who
13 might have those specific documents that they're
14 requesting. And then I will email or I will phone
15 call the department managers and try to obtain that
16 information.

17 Q. When you say you try to determine who might
18 have responsive records, how do you figure that out?

19 A. Well, it -- as an example, if it's for
20 something to do with budget, then I would go to the
21 budget department. A lot of times, there might be
22 different requests all rolled into one. I'll have to
23 obtain one item from budget, another item from another
24 department, from HR, all for the same request.

25 Q. So based on the request, you try to figure

1 out where the documents might be --

2 A. Yes.

3 Q. -- and you go there and you try to get them?

4 A. Yes.

5 Q. Okay. And do you usually provide responsive
6 documents within five days, or what's your usual
7 practice?

8 A. I have five days to respond back to the
9 requester whether I have documents or not. Within
10 those five days, I hope to have at least a time frame
11 of the other department providing me with that
12 information so that I can base a further response off
13 of those dates.

14 Q. In this case, did you tell Ms. Pak-Harvey
15 within five days of her original December request
16 whether or not responsive records existed?

17 A. I don't word it like that.

18 Q. Ah. So -- I'm sorry.

19 How do you word it?

20 A. Within five days on this particular case, I
21 didn't know if there were responsive documents. So,
22 no, I would not have told her that we did or did not
23 have responsive documents within five days.

24 Q. Did you tell her you had to ascertain whether
25 or not responsive records existed?

1 A. I don't recall that wording.

2 MS. McLEITCHIE: I think, going back to --
3 back to -- here's another document.

4 What exhibit are we on?

5 THE REPORTER: 22.

6 (Petitioner's Exhibit 22 was marked for
7 identification.)

8 BY MS. McLEITCHIE:

9 Q. So in this response, for example, you say, "I
10 have received your request and am processing it." You
11 don't tell her whether responsive records exist,
12 right?

13 A. Correct.

14 MR. HONEY: Objection. Record speaks for
15 itself.

16 BY MS. McLEITCHIE:

17 Q. I'm sorry; go ahead.

18 A. I do not tell her. I do not know that at
19 that point.

20 Q. And at some point -- at some point, going
21 back to Exhibit 6, you had told her, "We're unable to
22 provide the information to you within five business
23 days." And you just said, "We anticipate a further
24 response by close of business day..."

25 Is that because you didn't know whether

1 responsive documents existed?

2 A. Yes.

3 Q. But usually, if you can ascertain whether or
4 not responsive documents exist, you do let them know
5 whether responsive documents exist?

6 A. No.

7 Q. You just say, I'll provide further response?

8 A. Yes.

9 Q. Is there a policy that you're following when
10 you respond in that manner?

11 A. In what manner?

12 Q. When you just say -- when you don't identify
13 whether or not -- when you get a public records
14 request, within the five days your general practice is
15 to respond and say I anticipate a further response and
16 then you give a date, correct?

17 A. Correct.

18 Q. When you are responding to requests in this
19 manner, are you following any CCSD policy?

20 A. I don't believe it is a policy. It is a
21 public records law that gives us the five days. It
22 doesn't say that I have to tell the requester if there
23 are documents or not, and most of the time, in five
24 days, I don't know that yet. I just want them to be
25 aware that I have received that -- their request and I

1 am working on it.

2 Q. So the five days -- the five -- in your view,
3 the five-day response that's required in the Public
4 Records Act is just to acknowledge receipt and tell
5 them you're working on it?

6 A. Yes.

7 Q. Okay. How long have you been working at
8 CCSD?

9 A. 15 years.

10 Q. What's your title?

11 A. Document Control Specialist.

12 Q. Has that been your title the entire time you
13 have worked there?

14 A. No.

15 Q. What was your title when you started?

16 A. I started as a substitute teacher.

17 Q. Oh.

18 A. And then became support staff. I think I was
19 a Specialist 1 or something like that.

20 Q. Okay. How long have you been -- tell me
21 again the formal title.

22 A. Document Control Specialist.

23 Q. How long have been a Document Control
24 Specialist?

25 A. I believe 12 years.

1 Q. 12 years?

2 A. Uh-huh.

3 Q. At CCSD?

4 A. Yes.

5 Q. How many requests do you think you have
6 responded to in this time?

7 A. Well, I haven't been doing this job for 12
8 years. I've been a Document Control Specialist in
9 other capacities. But in this particular case, I
10 think six years.

11 Q. So six years, you have been --

12 A. Yes.

13 Q. -- responsible for responding to public
14 records requests?

15 A. Yes.

16 Q. Who do you report to?

17 A. Currently, I report to Nicole Rourke.

18 Q. And what's her title?

19 A. She's the new chief of communication --
20 community government relations.

21 Q. Did you communicate with her about the
22 requests for records concerning Trustee Child?

23 A. I did not.

24 Q. And why was it that you did not communicate
25 to her if you report to her?

1 A. She was in Carson City this whole time. She
2 receives a report from me of what I'm doing, but she
3 knows that I work diligently with legal.

4 Q. You work closely with legal?

5 A. Yes.

6 Q. Do you work with them on every single public
7 records request?

8 A. Yes.

9 Q. You hesitated. There are some requests that
10 you might just respond to?

11 A. There could be.

12 Q. When would you just respond to one without
13 including legal?

14 A. If it's something that we have done before
15 and it's repetition.

16 Q. So if I were --

17 A. And it's been -- sorry.

18 Q. No, go ahead.

19 A. If it's something that's been released before
20 and it's just repetition --

21 Q. Okay.

22 A. -- it's okay just to send it out; it's an
23 update, it goes out.

24 Q. Okay. Can you think of any instance when you
25 wouldn't involve legal, other than reproducing a

1 document?

2 A. No.

3 Q. Okay. In this case, you did involve legal.
4 Is this the longest it's ever taken to get back to a
5 Public Records Act request?

6 A. I don't know. I don't recall.

7 Q. Do you track how long it takes you to respond
8 to public records requests?

9 A. I do. I think I do. I have a tracking
10 system and -- I could figure it out. It's not
11 something that this one took me 100 days, this one
12 took me 5 days; I don't keep a document like that.

13 Q. When you say you have a tracking system, what
14 is that tracking system?

15 A. Just system that tells me when something is
16 due, when the five days is coming, when two weeks
17 after that is coming. I could, you know, track it
18 like that.

19 Q. What is that system?

20 A. It's calendaring. I just --

21 Q. Oh, okay. So you have a calendar that
22 reflects when you received a request, when you
23 responded to it, and when you produced documents?

24 A. Yes.

25 Q. Is it like an Outlook calendar, or is it a

1 hard copy calendar?

2 A. It's a hard copy.

3 Q. So you write all of this stuff out?

4 A. I do.

5 Q. Wow.

6 How many other people are responsible for
7 responding to Public Records Act requests?

8 A. No one.

9 Q. No one. Is it all that you do; is it your
10 only job duty?

11 A. Yes.

12 Q. And you are responsible for responding --
13 with assistance from legal and your supervisor, you
14 are responsible for responding to each and every
15 public records request that comes to Clark County
16 School District?

17 A. Yes.

18 Q. Do you like your job?

19 A. I do.

20 Q. What do you see as the purpose of your job?

21 A. To help -- to help get information that
22 belongs out to requestors out.

23 Q. Do you see part of your job as keeping
24 information out of the request that doesn't belong
25 out?

1 A. No.

2 Q. Then why do you involve legal and why do you
3 redact?

4 A. That's --

5 MR. HONEY: Objection. Argumentative.

6 THE WITNESS: That's my process. That's the
7 way I have to do it.

8 BY MS. McLEITCHIE:

9 Q. So you keep a hard copy calendar.

10 You have also mentioned that you send your
11 supervisor reports of what you're doing. Is that only
12 when she's in Carson City or is that all the time?

13 A. It's -- to be honest, I don't believe I have
14 bothered her when she was in Carson City. So when she
15 is in Vegas in the office.

16 Q. Do you have a routine time frame -- I'm
17 sorry; I didn't mean to cut you off.

18 A. No.

19 Q. Do you have a routine time frame in which
20 you -- is it every couple weeks, every month, every
21 quarter -- that you provide reports to your
22 supervisor?

23 A. There is no specific -- I don't do it every
24 week or every two weeks. If -- I don't have a set
25 date.

1 Q. And those just -- do those just go to her?

2 A. No.

3 Q. Who else do they go to?

4 A. Legal.

5 Q. And on those reports, do you list each -- do
6 you list all your open requests?

7 A. Yes.

8 Q. And all your closed requests?

9 A. No.

10 Q. Do you list -- do you list a request that has
11 recently become closed since the last report?

12 A. No.

13 Q. No. So the only thing that's reflected in
14 these reports are open requests?

15 A. Active, yes.

16 Q. And what the dates, the due dates, are?

17 A. Yes.

18 Q. Anything else?

19 A. No.

20 Q. So will it identify who the requester is?

21 A. Yes.

22 Q. Will it identify what the request is for?

23 A. Maybe a synopsis of it.

24 Q. Okay. And then it will list date you
25 responded?

1 A. No.

2 Q. No. What else will it list?

3 A. It just has a due date, when it's due, and
4 where we're at, what I'm waiting on.

5 Q. Okay. So it has the requester, the date the
6 request was made, I'm assuming. Is that correct?

7 A. No.

8 Q. No.

9 A. It just has the due date.

10 Q. Okay. Has the requester, the due date, a
11 synopsis of the request, and status?

12 A. Correct.

13 Q. Is that -- anything else, or is that all of
14 it?

15 A. I think that's all of it.

16 Q. All right. Earlier -- I'm going to turn to
17 this in a second, but earlier we were talking about
18 searching, and it's my understanding that -- I
19 understand that Mr. Wray searched for all the emails,
20 electronic records, responsive to this request.

21 Do you have access to people's email boxes?

22 A. I do not.

23 Q. So you don't conduct email box searches?

24 A. No.

25 Q. Do you have any direct access to any other

1 files at CCSD, other than your own files?

2 A. No.

3 Q. No?

4 A. No.

5 Q. So you mentioned the folder that showed up on
6 your -- the folders of potentially responsive
7 documents regarding Trustee Child that showed up on
8 your computer.

9 A. Yes.

10 Q. Are those on your -- those are -- are those
11 on your local computer? Where -- how do you see
12 those; those are on your local computer?

13 A. They're on my desktop.

14 Q. Okay, so on your desktop.

15 What else is on your desktop?

16 A. Those particular emails are on my desktop in
17 my InterAct. So in my email, not actually on my
18 computer, work computer.

19 Q. I understand. So they're folders sort of
20 like within an email system?

21 A. Yes.

22 Q. Okay. So they look like any other email
23 folder that you might personally save?

24 A. Yes.

25 Q. So if you saved all emails from Mr. Honey,

1 and you had an email inbox that said Mr. Honey that
2 looks like a folder, and then there's another folder
3 that says documents received from Mr. Wray and
4 whatever date?

5 A. Yes.

6 Q. Is it like Outlook or something like that?
7 Is this InterAct --

8 A. It's an InterAct -- I don't think it looks
9 like Outlook.

10 Q. But it's an email -- it's an email system?

11 A. Yes.

12 Q. And there are inboxes?

13 A. Uh-huh.

14 Q. Sent boxes?

15 A. Yes.

16 Q. And you can create folders?

17 A. Yes.

18 Q. And you can create subfolders?

19 A. Yes.

20 Q. It's sort of like Outlook.

21 Okay, so that's where those documents were.

22 Besides InterAct, what else -- what other
23 CCSD documents can you access from your computer?

24 A. I can't access documents from my computer
25 that are housed in other areas.

1 Q. So what can you access?

2 A. Documents that I have saved.

3 Q. So only documents that you have saved?

4 A. Yes.

5 Q. You don't have access -- so only documents
6 that you have saved personally, that's all you have
7 access to on your computer?

8 A. Yes.

9 Q. What about CCSD policies or anything like
10 that?

11 A. Policies and procedures, you can go out into
12 the CCSD website and look at those.

13 Q. Just like I can?

14 A. Yes.

15 Q. Okay. In front of you, you actually happen
16 to have a CCSD regulation. Have you seen this before?

17 A. Yes.

18 Q. And what is this regulation; what does it
19 pertain to?

20 A. Retention of documents.

21 Q. And if you turn -- it's very long --

22 MR. HONEY: Real quickly, I'm going to object
23 as to relevance to the case at hand.

24 You can go ahead.

25 BY MS. McLEITCHIE:

1 Q. We can keep talking. He can lodge his
2 objections, we can keep talking.

3 So this looks like it's a retention policy
4 that deals with records that people are supposed to
5 save, right? What has to be saved and what doesn't
6 have to be saved; is that generally what your
7 understanding of the retention policy is?

8 A. Yes.

9 Q. What it covers?

10 A. I would -- I would agree.

11 Q. Is there anything I'm missing?

12 A. I don't think so.

13 Q. Okay. So if you turn to page 19, which is
14 towards the end -- it's a long policy. The second to
15 last page.

16 And you have seen this policy before, right?

17 A. I believe so.

18 MS. McLEITCHIE: Alina, would you pull it up
19 on the website and confirm it's the correct version.

20 MS. SHELL: Sure.

21 BY MS. McLEITCHIE:

22 Q. So I'm going to give you a second to look at
23 it.

24 A. Okay.

25 Q. Have you had enough time to read it?

1 A. Uh-huh.

2 Q. Are you familiar with this policy?

3 A. Yes.

4 Q. And it appears to me -- it appears to me, and
5 I want you to correct me if I'm wrong, but it appears
6 to be a policy that pertains to public records that
7 are emails and what somebody is supposed to do with
8 that record. Is that correct?

9 A. Yes.

10 Q. And it says in the middle that, Once an email
11 transmittal is determined to be a public record,
12 district employees have an obligation to apply the
13 appropriate records retention schedule. For retention
14 purposes, the records should be maintained in an
15 easily accessible location, which may include printing
16 out a copy and filing a hard copy in the relevant
17 subject matter file; or, 2) moving the file out of the
18 email system and storing a copy of the email in an
19 electronic document management system.

20 So can you tell me what the electronic
21 document management system this refers to in the
22 bottom here is?

23 A. I cannot.

24 Q. Have you ever moved a file out of the email
25 system and stored it in an electronic document

1 management system?

2 A. I'm not sure what they refer to as an
3 electronic document management system. We don't have
4 a document management system.

5 Q. Okay. So it says that one of the things that
6 you can do -- it says, For retention purposes, the
7 records should be maintained in an easily accessible
8 location, which may include: 1) printing out a copy
9 and putting it in a hard copy file; 2) moving it and
10 storing it in an electronic document management
11 system.

12 A. Yes.

13 Q. You don't know what the electronic document
14 management system is?

15 A. Not specific to -- if there is a specific
16 system they are referring to, I don't not know what
17 that is.

18 Q. Well, do you know what they're referring to
19 when they say "an electronic document management
20 system"?

21 A. I can only imagine that it would be someone's
22 individual choice to store it however they choose to.

23 Q. Okay. Have you ever asked somebody for
24 records that are stored in their electronic document
25 management system?

1 A. I have not.

2 Q. And then the other option it gives for public
3 records is it says, "Printing out a copy and filing a
4 hard copy in the relevant subject matter file."

5 Do you know what this is referring to, "in
6 the relevant subject matter file"?

7 A. If it is referring to me -- because this is
8 for everyone in the district to follow. So if I was
9 going to follow this, and I'm referring to myself, it
10 would be my file that I keep of anything that
11 references a request that they may have an email for.

12 Q. So it sounds like there are two options
13 here --

14 A. Right.

15 Q. -- for public records for employees, right?

16 A. Yes.

17 Q. One is to print it out and put it in a hard
18 copy, or save it in an electronic document management
19 system?

20 A. Yes.

21 Q. And do you follow this policy?

22 A. I do.

23 Q. And so you print out -- you follow this
24 policy by printing out and filing a hard copy?

25 A. Yes.

1 Q. And when you say "hard copy" -- when we say
2 "hard copy" of the relevant subject matter file, as
3 you interpret this policy and apply it to yourself,
4 are we talking about the files like you mentioned you
5 created for this case -- for this matter?

6 A. As my storage, yes.

7 Q. So in -- for the requests from the Las Vegas
8 Review-Journal, there is the December request, there
9 is the February request, there is various times you
10 looked at documents. Is all of the work about this
11 request in one file? About -- the requests from the
12 Las Vegas Review-Journal for records pertaining to
13 Trustee Child, are they all in one hard copy file, or
14 do you have multiple hard copy files?

15 A. There's two requests here that we're talking
16 about are so there is two files.

17 Q. Okay, understood. When you say "two
18 requests," are you treating the two December requests
19 as one request?

20 A. (No response.)

21 Q. She supplemented the request; remember we
22 went over that?

23 A. Yes, the supplement is one request in
24 December, and then another one in February, yes.

25 Q. Okay. What have you printed out and put in

1 the hard copy file about the December request or about
2 the February request?

3 A. I have copies of all the emails that we have
4 looked at today in those files, depending on which
5 file it's for. And I have copies of responses that I
6 have gotten from the requester in that file. And then
7 I have copies of emails that were printed out for
8 that -- for that individual file.

9 Q. When you say "emails that were printed out,"
10 do you mean the responsive records?

11 A. The responsive records.

12 Q. Responsive records to the public records
13 request?

14 A. Correct.

15 Q. So in your public records file about a public
16 records request, you've got the requests, the
17 responses, and the documents that were responsive?

18 A. Correct.

19 Q. And are they sitting -- and they sit there in
20 your hard copy file.

21 What about your communications with, say,
22 Mr. Wray about a public records request, would those
23 sit in that file as well?

24 A. Repeat that, please.

25 Q. Let's say you emailed Mr. Wray and said, I'm

1 looking for the folder of Child emails. Would that
2 email to Mr. Wray be printed out and put in this hard
3 copy --

4 A. Yes.

5 Q. -- file?

6 A. Yes.

7 Q. Let's make sure I finish my question just so
8 the court reporter can make a good record.

9 So that would be in there. What about your
10 communications with legal about these public records
11 requests?

12 A. Yes.

13 Q. So this is how you -- this is kind of how you
14 handle it.

15 Have you ever gone to -- have you ever gone
16 to anybody within the school district and asked them
17 to see their hard copy file of public records?

18 A. Any public records?

19 Q. Well, when you have looked at -- sometimes
20 you directly go and look and search for responsive
21 records, right? We talked about that earlier.
22 Sometimes you --

23 A. This --

24 Q. I sorry.

25 Any kind of responsive records to a public

1 records request, sometimes you get a request and go
2 out and do the work of going out and searching for
3 responsive records, right?

4 A. (No response.)

5 Q. You call people?

6 A. Yes.

7 I need to clarify.

8 Q. Please do.

9 A. I don't actually physically drive to a
10 facility and go through their files. I will either
11 call them and say I'm looking for X, Y, Z; do you have
12 that, or I will email them that.

13 Q. Okay. Have you ever -- have you ever -- have
14 you ever called someone and said, I need to look at
15 your hard copy file regarding topic X or whatever, or
16 asked them whether they have hard copy files regarding
17 a certain matter?

18 A. No, I don't believe I used that term ever:
19 "hard copy file."

20 Q. Have you ever asked -- when you have been
21 doing the work of trying to find responsive records,
22 have you ever called anybody and said, there's two
23 ways you're supposed to store public records, where
24 did you store the public records that might be
25 responsive to this request?

1 A. No.

2 Q. So you just ask them generally, do you have
3 records about X?

4 A. Yes.

5 Q. You don't ever say, "I want to see your hard
6 copy public records file"?

7 A. Correct.

8 Q. And you don't ever say, "I want to see your
9 email" -- I'm sorry -- "I want to see your electronic
10 document management system public records file"?

11 A. I do not.

12 Q. So you don't really follow this policy -- you
13 follow this policy yourself, but you don't really
14 utilize this policy when you're searching for -- when
15 you're going out there trying to collect potentially
16 responsive records, right?

17 A. I don't know how they store their
18 information. So I don't care where they store it,
19 just as long as they give it to me.

20 Q. But you don't ever ask them for their hard
21 copy file about a topic or -- you don't ever
22 specifically say, "I would like your hard copy file on
23 this topic"; you don't ever specifically say, "If you
24 don't keep a hard copy file, I'd like to see your
25 electronic document management system file on this

1 topic"; instead, you just say, "I want documents about
2 Trustee Child," for example, and then you look at what
3 give you, right?

4 A. I will ask them, "Do you have information
5 responsive, readily available, responsive to X, Y, Z?"

6 Q. What does "readily available" mean?

7 A. If it's readily available, it's something
8 that they can produce. They don't have to create
9 something; they have it already, and they can turn it
10 over.

11 Q. How do they know what you mean when you say
12 "readily available"? If you asked me, for example,
13 for my readily available emails with Adam, Mr. Honey,
14 I might say, "I don't have any readily available
15 emails; I'd have to search, there are so many, we've
16 had so many email communications about this case," and
17 I email you back and say, "I have no readily available
18 emails," how do you communicate to people what
19 "readily available" means?

20 A. If they're confused, they'll ask me.

21 Q. So you rely on them asking you?

22 A. Yes.

23 Q. So when you go out and collect documents, you
24 just say, give me your readily available documents on
25 whatever the topic is in the public records request

1 that you're working on, right?

2 A. I'll ask them if they have it. I don't
3 actually say give me these, because I don't know if
4 they have it. I'll ask them if they have documents
5 responsive.

6 Q. And you don't give guidance about how to
7 search for these documents; you just ask for documents
8 on a specific topic or for a specific document, right?

9 A. That is correct.

10 MS. McLEITCHIE: Take another short break, and
11 I might be done.

12 (Recess taken.)

13 BY MS. McLEITCHIE:

14 Q. Earlier, when we were talking about the
15 process in this case for producing documents, you
16 mentioned that you don't search for responsive
17 documents and redact them at the same time; that you
18 first figure out what's responsive, give those to
19 legal; legal highlights them and sends them back to
20 you. Is that correct?

21 A. In this case, that's correct.

22 Q. Is it different in other cases?

23 A. Yes.

24 Q. Sometimes you do review and redact at the
25 same time?

1 A. (No response.)

2 Q. What's different in other cases?

3 A. In other cases, I may do it all before it
4 goes to legal for a final review.

5 Q. Understood. But in this case, you reviewed
6 the documents, you gave the -- you did not make any
7 redactions; you gave them to legal. They highlighted
8 things and they sent them back to you. Correct?

9 A. Correct.

10 Q. And were the items they highlighted the
11 things to be redacted?

12 A. Correct.

13 Q. How would you redact?

14 A. I have a program that I redact --

15 Q. Is it --

16 A. -- online.

17 Q. Is it Adobe?

18 A. It is.

19 Q. Okay. It's the fancy Adobe where you can do
20 the redacting on there?

21 A. I don't know if it's fancy, but yes.

22 Q. But you can do the redacting on there?

23 A. Yes.

24 Q. There's Adobe Reader and then there's
25 Acrobat.

1 A. Yes.

2 Q. Okay, so then you're actually redacting in
3 the electronic version?

4 A. Correct.

5 Q. And then in this case, did you give them to
6 legal for production?

7 A. The scanned copies.

8 Q. After you made the -- so you review the
9 documents; you send them to legal. Legal highlights
10 them; they send them back to you. You make the
11 redactions electronically; you send them back to
12 legal. Is that correct?

13 A. Correct.

14 Q. And that was the last you had anything to do
15 with it?

16 A. Correct.

17 Q. In the report that you provide to your
18 supervisor periodically regarding the status of open
19 requests that we were talking about earlier, you
20 mentioned that you also copy legal. Is that correct?

21 A. Correct.

22 Q. Do those reports discuss litigation?

23 A. No.

24 Q. Are you discussing legal matters in those
25 reports?

1 A. No.

2 Q. It's just the synopsis of the request and the
3 status?

4 A. Yes.

5 Q. And the date of the -- and the date the
6 response is due?

7 A. Correct.

8 MS. McLEITCHIE: That's all I have. Unless
9 Mr. Honey has anything further.

10 MR. HONEY: No, nothing.

11 MS. McLEITCHIE: I'm sorry; I do have one more
12 question.

13 Q. Did you speak to Mr. Honey during the break?

14 A. No.

15 Q. Did you have anything you wanted to add or
16 correct based on what we talked about today?

17 A. I don't believe so.

18 Q. Do you want the opportunity to review the
19 transcript?

20 MR. HONEY: Yes.

21 BY MS. McLEITCHIE:

22 Q. So you'll have the opportunity to read the
23 transcript, and if you think something is wrong,
24 you'll be able to correct it, or you'll be able to
25 approve the transcript.

1 A. Okay.

2 Q. Obviously this isn't a case where we're going
3 to have a trial, but obviously -- you're free to make
4 any corrections you see fit; I can certainly make
5 arguments based on the nature of corrections you might
6 make.

7 A. Okay.

8 Q. Any questions before we finish?

9 A. I don't think so.

10 MS. McLETCHE: Okay. Then this deposition
11 is concluded.

12 (Thereupon, the taking of the
13 deposition was concluded
14 at 2:50 p.m.)

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* * * * *

I, CYNTHIA SMITH-JOHNSON, deponent herein, do
hereby certify and declare the within and foregoing
transcription to be my deposition in said action; that
I have read, corrected, and do hereby affix my
signature to said deposition this ____ day of
_____, 2017.

CYNTHIA SMITH-JOHNSON

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REPORTER'S DECLARATION

I, Michelle C. Johnson, CCR 771, declare as follows:

That I reported the taking of the deposition of the witness, CYNTHIA SMITH-JOHNSON, commencing on Thursday, August 17, 2017 at 1:03 p.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I simultaneously transcribed my said shorthand notes into typewriting via computer-aided transcription, and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes taken down at said time. That prior to completion of the proceedings, review of the transcript pursuant to NRCP 30(e) was requested.

I further declare that I am not a relative or employee of any party involved in said action, nor a person financially interested in the action.

Dated: August 31, 2017.



Michelle C. Johnson, RPR-CRR, CCR No. 771

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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

LAS VEGAS REVIEW-JOURNAL,
Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT,
Defendants.

-----/

Case No.:
A-17-750151-W
Dept. XVI

DEPOSITION OF DANIEL ROBERT WRAY
Thursday, August 10, 2017
Las Vegas, Nevada

Reported by:
Michelle C. Johnson, RPR-CRR
NV CCR 771, CA CSR 5962
Job No. 2674603
Pages 1 - 95

1 BE IT REMEMBERED that, pursuant to the laws
2 governing the taking and use of depositions, and on
3 Thursday, August 10, 2017, commencing at 10:01 a.m.
4 thereof, at Veritext Legal Solutions, 2250 South
5 Rancho Drive, Suite 195, Las Vegas, Nevada, before me,
6 MICHELLE C. JOHNSON, a Certified Court Reporter in the
7 States of Nevada and California, personally appeared
8 DANIEL ROBERT WRAY, called as a witness by the
9 Petitioner.

10 APPEARANCES:

11 For the Petitioner:

12 MARGARET A. McLETCHIE
13 ALINA M. SHELL
14 Attorneys at Law
15 McLETCHIE SHELL LLC
16 701 Bridger Avenue
17 Suite 520
18 Las Vegas, Nevada 89101
19 702/728-5300
20 maggie@nvlitigation.com
21 alina@nvlitigation.com

22 For the Respondent:

23 ADAM D. HONEY
24 Assistant General Counsel
25 CLARK COUNTY SCHOOL DISTRICT
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Las Vegas, Nevada 89146
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ahoney@interact.ccsd.net

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WITNESS

DANIEL ROBERT WRAY

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EXHIBITS PREVIOUSLY MARKED

NUMBER

PAGE REFERENCED

Petitioner's

Exhibit 18 "Certification of Dan Wray" 36
(LVRJ025 - 41)

Exhibit 19 2/10/17 McLetchie letter to Honey 39

EXHIBITS

NUMBER

PAGE MARKED

Petitioner's

Exhibit 23 Deposition subpoena and notice 6

Exhibit 24 1/23/09 "Recorder's Transcript of 72
of Hearing Re: Evidentiary Hearing"
in Karen Gray vs. Clark County School
District

Exhibit 25 CCSD regulation re. Records 85
Retention Schedule

1 DANIEL ROBERT WRAY,
2 being first duly sworn to tell the truth, the whole
3 truth, and nothing but the truth, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MS. McLETCHE:

7 Q. Mr. Wray, I'm Maggie McLetchie, and I
8 represent the Las Vegas Review-Journal in the matter
9 concerning public records and the Clark County School
10 District.

11 First and foremost, can you state your full
12 name and spell it for the record.

13 A. Daniel Robert Wray. It's Daniel,
14 D-a-n-i-e-l, Robert, R-o-b-e-r-t, Wray, W-r-a-y.

15 Q. And are you represented for the purposes of
16 this deposition by Mr. Honey?

17 A. Yes.

18 Q. When did he agree that he would represent
19 you --

20 A. Well, as --

21 Q. -- in regards to this deposition?

22 A. As an employee of the district, he's here
23 representing my actions for the district in this case.

24 Q. Okay. So he's here to represent you in this
25 deposition; is that correct?

1 A. As an official of the district, yes.

2 Q. I think my question was when did you agree he
3 would represent you for purposes of this deposition.

4 A. When they notified me I had been called for
5 the deposition.

6 Q. Do you remember when that was?

7 A. Couple of weeks ago, I guess.

8 Q. Okay. I have here with me -- do you have
9 your stuff from yesterday?

10 MR. HONEY: Yes.

11 MS. McLEITCHIE: So we're just going to
12 continue the exhibits. And just as a matter of
13 formality, here are -- and you probably have these,
14 Mr. Honey, but there you go.

15 Q. That's a deposition notice and a deposition
16 subpoena for this deposition.

17 Have you seen these documents before?

18 A. These specific documents, no.

19 Q. Your counsel didn't provide you copies of
20 these documents?

21 A. Not in this format, at least.

22 Q. But you understand you have been subpoenaed
23 here --

24 A. Yes.

25 Q. -- for the deposition?

1 A. Yes.

2 Q. Let's give that to the court reporter, and
3 we'll mark that as -- what's the next exhibit number
4 in the sequence?

5 THE REPORTER: 23.

6 MR. HONEY: Ms. Court Reporter, what was
7 Exhibit 22?

8 THE REPORTER: It's a December 9 email.

9 MR. HONEY: Okay.

10 MS. McLEITCHIE: We did not -- at the end of
11 the deposition, we did fail to make the policy an
12 exhibit.

13 (Petitioner's Exhibit 23 was marked for
14 identification.)

15 BY MS. McLEITCHIE:

16 Q. Let's go over some ground rules for
17 depositions.

18 Have you ever had your deposition taken
19 before?

20 A. Yes.

21 Q. How many times?

22 A. At least once, it may have been twice.

23 Q. At least once. What case was that?

24 A. It was a case in regards to the Clark County
25 School District and an employee matter.

1 Q. So it was an employment discrimination case?

2 A. Something like that.

3 Q. And what was the other case you think you
4 might have been deposed?

5 A. I've done affidavits. I don't remember if I
6 have been deposed in another case.

7 Q. And have you testified in court before?

8 A. I have testified in the courthouse.

9 Q. How many times?

10 A. Once.

11 Q. Was that in the Karen Gray matter?

12 A. It was.

13 Q. So you understand your testimony today is
14 just like it was in that court proceeding or it would
15 be in an affidavit, that you are testifying under the
16 penalty of perjury, correct?

17 A. Yes.

18 Q. And there is nothing, no medication you are
19 on or any other reason why you can't give your best
20 testimony today?

21 A. No.

22 Q. So just to make it easier for the court
23 reporter, sometimes I talk quickly, let's make sure
24 that I finish my questions, and if Mr. Honey lodges an
25 objection, that he is able to lodge his objection, and

1 then that you are able to then state your answer, just
2 so the court reporter can create a clean record.
3 Okay?

4 A. I will try to remember.

5 Q. And the other thing too is that depositions,
6 we're going to be talking today so it might seem like
7 a conversation, but so the record is clear too, the
8 court reporter can't take down nonverbal signals and
9 even uh-huhs are hard on her, so if you're answering a
10 yes-or-no question, for example, if you could say
11 either yes or no.

12 Does that sound fair?

13 A. Yes.

14 Q. And it's a short deposition today, it will
15 only be about two hours. But I may take a break at
16 some point, and you're welcome to take a break at any
17 point, the only -- just let us know. The only thing I
18 ask is that you can't take a break while a question is
19 pending. Okay?

20 A. Yes.

21 Q. Before we get started, do you have any
22 questions about the procedure today?

23 A. No.

24 Q. What did you do to prepare yourself for this
25 deposition?

1 A. I reviewed the emails that I sent to
2 Mr. Honey, to Ms. Pochert Hanna of CCSD, and to
3 Cindy Smith-Johnson.

4 Q. I'm sorry; the second person. You said
5 emails to Mr. Honey, emails to -- who was the
6 second --

7 A. Jeanne-Marie Pochert Hanna, also one of the
8 assistant general counsels for the district.

9 Q. And could you spell that? Because I can't.

10 A. Jeanne-Marie is J-e-a-n-n-e hyphen M-a-r-i-e,
11 next name is Pochert, P-o-c-h-e-r-t, and Hanna,
12 H-a-n-n-a.

13 Q. Thank you. The court reporter will
14 appreciate that.

15 And the third, I think you said there was a
16 third group of emails, and these -- emails to
17 Mr. Honey, emails to the other person in the general
18 counsel's office, who was the third group?

19 A. Cynthia Smith-Johnson.

20 Q. Did you ever have any communications about
21 any public records request from the Review-Journal
22 regarding Trustee Child with anybody else other than
23 those three individuals that you just mentioned?

24 A. Carlos McDade.

25 Q. Did you have any emails with him?

1 A. He was cc'd on emails to those other
2 individuals.

3 Q. Okay. Was there anything else that you
4 looked at or did to prepare for this deposition?

5 A. No.

6 Q. Do you have any documents here with you
7 today?

8 A. No.

9 Q. Did you meet with Mr. Honey?

10 A. Yes.

11 Q. How many times?

12 A. Once.

13 Q. And when was that?

14 A. Monday? This last Monday.

15 Q. Did you speak with anyone besides Mr. Honey
16 about this deposition?

17 A. Other than letting my secretary know where I
18 would be, no.

19 Q. Did you speak to Ms. Smith-Johnson?

20 A. No.

21 Q. Did you speak to Mr. McDade?

22 A. No.

23 Q. How long have you been at Clark County School
24 District?

25 A. 20 years.

1 Q. Have you always worked in information
2 technology at Clark County School District?

3 A. Prior to my employment with the Clark County
4 School District, I worked with the Nevada System of
5 Higher Education, also in information technology.

6 Q. What was your job at NSHE?

7 A. A variety of jobs. I was a technical
8 consultant, manager of network analysis. Those were
9 my two titles.

10 Q. Can you briefly explain what each of those
11 jobs does?

12 A. The --

13 Q. To a nontech person.

14 A. At the time, a technical consultant assisted
15 university staff, sometimes students, with the use of
16 software --

17 Q. Okay.

18 A. -- systems; occasionally assisted them with
19 some of their research using statistical programs --

20 Q. Okay.

21 A. -- things like that.

22 As the manager of network analysis, operated
23 and maintained the computer networks within the
24 university's systems, connections between Las Vegas
25 and Reno, as well as the Internet, and maintaining

1 those operations.

2 Q. So that would have included -- that would
3 have included storage and retention of electronic
4 data?

5 A. Not most of -- in the sense of it being on a
6 file server, yes. But that was not the main concern
7 of the job.

8 Q. But you were responsible for the network for
9 the Nevada System of Higher Education?

10 A. For some of the connections in the network.

11 Q. So -- I'm sorry, go ahead.

12 A. The phone lines and the high speed
13 connections.

14 Q. Okay. So not for managing the network and
15 ensuring that records -- ensuring how documents were
16 retained or anything like that. It was more about
17 connections between UNR and UNLV; am I understanding
18 it correctly?

19 A. Correct.

20 Q. So then about 20 years ago, you started
21 working for Clark County School District?

22 A. Uh-huh.

23 Q. Before you worked at Nevada System for Higher
24 Education, where did you work?

25 A. Summer jobs pumping gas, et cetera.

1 Q. So what is your degree in?

2 A. Statistics and computer science.

3 Q. And what's the highest degree that you
4 attained?

5 A. Bachelor's degrees.

6 Q. When did you get your bachelor's degree?

7 A. 1988.

8 Q. Since you got your bachelor's degree, have
9 you done any kind of education in information
10 technology, anything pertaining to your duties at
11 CCSD?

12 A. Fairly regular learning, no specific
13 certifications or degrees, no.

14 Q. When you say "fairly regular learning," what
15 does that mean?

16 A. Research, data on trade magazines, going to
17 conferences, et cetera.

18 Q. But no formal --

19 A. No formal.

20 Q. Okay. Online or in person?

21 A. I have not taken any online classes.

22 Q. When you said that you have attended
23 conferences, what kind of conferences are those?

24 A. I've attended Cisco networkers in the past; I
25 have attended various user group meetings; I have

1 attended the Council of Great City Schools Chief
2 Information Officers seminars that occur annually, et
3 cetera.

4 Q. So do any of those seminars pertain to
5 storing electronic data?

6 A. They typically have a session or two on that.
7 I may or may not have attended them; I do not recall.

8 Q. Okay. So you don't recall whether you have
9 attended anything on storage of electronic data?

10 A. No.

11 Q. Do you have any specific training with regard
12 to working on public records requests?

13 A. Specifically with regard to public records
14 requests, no, other than searching our systems in
15 response to a public records request and what our
16 system can -- how to search our system.

17 Q. I was involved in the Gray case too; I know
18 that you have been working on those matters for quite
19 some time.

20 I was asking about any sort of formal
21 training on it.

22 A. No.

23 Q. I'm not a computer expert, so please be
24 patient with my questions about how networks work and
25 that kind of thing. And I'm particularly not -- I

1 don't quite understand how an organization like CCSD
2 stores all their electronic information. That's way
3 beyond my small firm, for example, with its little
4 server. But I want to understand how it works so I
5 can understand what went on in this case.

6 So CCSD has a bunch of employees that use
7 computers, right?

8 A. Yes.

9 Q. How many employees does it have?

10 A. Clark County School District has roughly
11 40,000 employees.

12 Q. How many are issued computers or electronic
13 devices of some sort?

14 A. There are computers issued to desks, not
15 necessarily to individuals. Some individuals may have
16 a computer or a laptop issued to them by their
17 department, et cetera, but that is not, you know, upon
18 your employment, here's your computer.

19 Q. So when you say "desks," and you refer to
20 upon your employment, here's a computer, you're
21 talking about a desktop -- are you talking about a
22 desktop computer?

23 A. It may be a desktop and it may be a laptop.

24 Q. Okay. But you're talking about -- a
25 department may additionally assign somebody a laptop,

1 but what you're talking about, the computers assigned
2 to desks, you're talking about a kind of fixed
3 computer that always goes with a particular position,
4 am I understanding that correctly?

5 A. It's on the -- it's at the person's work
6 location. For example, a secretary comes in and she
7 has a desk and there's a computer for her use. That's
8 what I'm referring to.

9 A bus driver does not have a computer
10 assigned to them for their regular use. There may be
11 one in the central bus drivers' lounge that they
12 share.

13 Q. Okay. Thank you for that clarification.

14 For that bus driver that might use a shared
15 terminal, are they assigned any -- would the bus
16 driver be assigned an email address that they could
17 then access at this shared terminal?

18 A. Yes.

19 Q. So does every employee at CCSD get an email
20 address?

21 A. Yes.

22 Q. And so I'm getting ahead of myself a little
23 bit. But let's say a CCSD bus driver goes to this
24 terminal and logs on to their email and they send an
25 email. Where is that -- where does that email --

1 where is that email stored?

2 A. They're -- the district's email system is
3 operated off of a central server, so all of the emails
4 are stored on that central server.

5 Q. Is that also true for somebody that has a
6 desktop or laptop assigned to their work location?

7 A. Yes.

8 Q. And you mentioned sometimes that a department
9 might issue somebody a laptop.

10 A. Uh-huh.

11 Q. Would that be in addition to the work
12 location computers that we're talking about?

13 A. The same situation -- all of the email is
14 centrally stored on the server.

15 Q. I'm going back a step; I'm not asking about
16 emails anymore. I'm trying to understand who is
17 assigned computers, and it sounds like -- and what
18 computers are assigned to people.

19 It sounds like there is a bunch of machines
20 that are issued to work locations. Right?

21 A. Yes.

22 Q. And then you also mentioned that a department
23 might issue a machine to somebody?

24 A. Yes.

25 Q. So what's the difference between those two

1 kinds of machines that are issued out?

2 A. An employee typically would not be assigned a
3 desktop to carry with them; it would typically be a
4 laptop.

5 Q. Okay. So in addition to a desktop, somebody
6 might be assigned a laptop?

7 A. Correct.

8 Q. So when you talk about the
9 departmental-assigned machines, those are generally
10 laptops?

11 A. Yes.

12 Q. Okay.

13 A. If assigned to an individual, it would be a
14 laptop.

15 Q. Does the department issue any other computers
16 besides laptops? Or are they -- the other machines
17 that are issued are the ones that are tied to work
18 locations that you mentioned?

19 A. There could be tablets.

20 Q. Okay. So we've got tablets, laptops. What
21 else?

22 A. That's pretty much it.

23 Q. What about phones?

24 A. Phones, if there are phones being assigned, I
25 don't have specific knowledge of that.

1 Q. Are you aware of any policy about
2 reimbursement for cell phone usage?

3 A. I believe there is. For some administrative
4 employees there is a policy that they can be
5 reimbursed.

6 Q. But no part of your duties involves --
7 involves managing cell phone lines or anything like
8 that?

9 A. The E-Rate subsidies for voice communications
10 that have existed in the past as part of the federal
11 E-Rate Program, one of my departments operates that
12 E-Rate Program.

13 Q. I am not familiar with what you are talking
14 about. Can you explain that to me?

15 A. On the bottom of your phone bill, you will
16 see a small amount that says Federal Subscriber
17 Charge, Universal Access Charge.

18 Q. Okay.

19 A. That is also known as the federal E-Rate
20 fund.

21 Q. Okay.

22 A. It's a multibillion dollar fund that the
23 federal government uses to subsidize libraries and
24 schools for connectivity, and also for folks in
25 poverty for their phone lines.

1 Q. Okay. So it's a charge that everybody gets
2 on their cell phone bills?

3 A. All phones.

4 Q. All phones.

5 A. Correct.

6 Q. So do you deal with the E-Rate subsidy for
7 any cell phones?

8 A. There were E-Rate subsidies. Cell phone
9 services were allowed to be -- receive a subsidy or a
10 rebate. That is being phased out by the federal
11 government.

12 Q. I understand what you're talking about now
13 with regard to what E-Rate subsidies are. I'm getting
14 a little confused about whether or not CCSD issues
15 cell phones.

16 A. I --

17 Q. I thought you testified it doesn't -- let me
18 finish.

19 If it doesn't issue cell phones, I'm confused
20 about why you would deal with E-Rate subsidies for
21 cell phones.

22 A. Departments may issue them. I am not
23 personally involved in the issuance of cell phones to
24 employees.

25 Q. Understood. Thank you.

1 So if a department issues a cell phone, who
2 is responsible -- what's your current title at Clark
3 County School District?

4 A. Chief Technology Officer.

5 Q. Describe what that -- describe what that is
6 to me, what your job is.

7 A. Chief Technology Officer supervises and
8 directs the work in a number of departments within the
9 technology division and serves as a resource for
10 information to other departments when they are seeking
11 advice regarding technology.

12 Q. Do other departments -- do other departments
13 have separate, independent information technology
14 staff?

15 A. Yes.

16 Q. So those staff may be involved in matters
17 such as managing cell phone lines for people that may
18 be assigned cell phones and managing the laptops that
19 are issued, am I understanding that correctly?

20 A. Yes.

21 Q. And so you don't personally manage those cell
22 phones or laptops that are managed by department IT
23 staff?

24 A. Correct.

25 Q. But you assist them and you provide them

1 information?

2 A. (Nods head.)

3 Q. And you are aware -- you are generally aware
4 of their practices with regards to issuing cell phones
5 and laptops, correct?

6 A. Yes.

7 Q. So if I understand it correctly, you are
8 responsible for managing the email system, InterAct,
9 right?

10 A. Correct.

11 Q. And you are responsible for managing,
12 maintenance of all aspects of the workstation-issued
13 computers we were talking about?

14 A. Yes.

15 Q. And you are responsible for providing advice
16 and guidance for department IT staff that manages any
17 other machines that might be issued by a department?

18 A. Yes.

19 Q. I think I'm getting it. Thank you.

20 Those department IT staff, do they report to
21 you, or do they report within the department?

22 A. Within the department.

23 Q. Got it. So as Chief Technology Officer, how
24 many IT staff report to you?

25 A. There are roughly 200.

1 Q. And when we were talking earlier, I had asked
2 you about how many computers were issued, and then you
3 started explaining to me the difference between
4 work-location computers and issued laptops, issued
5 cell phones. So how many workstation issued machines,
6 desktop machines, are there?

7 A. When you say "issued," keep in mind, as a
8 school district operating schools, the great majority
9 of computers are in schools and they're not issued to
10 an individual, nor are they issued to a student.
11 They're student -- they're used for purposes of
12 student access.

13 Q. Okay. How many machines are there for
14 student access?

15 A. There are roughly 150,000 desktop/laptop
16 computers in the Clark County School District.

17 Q. For student use?

18 A. Total. I don't have the exact total, how
19 many may be for student use or for employees.

20 Q. And how many staff did you say there are at
21 the Clark County School District?

22 A. Roughly 40,000.

23 Q. Of those 40,000, how many of them are
24 issued -- how many of them work on work-location
25 computers that you are responsible for?

1 A. I do not have that information with me.

2 Q. Do you have a rough number?

3 A. I do not.

4 Q. You have no idea how many computers?

5 A. Off the top of my head, I do not.

6 Q. I am entitled -- if you don't know an exact
7 number, just so you know, Mr. Wray, I am entitled to
8 your best recollection. Or if you can give an
9 estimate, I am entitled to an estimate.

10 A. I would have to do more research to get even
11 more of an estimate of that, what that breakdown is.

12 Q. Okay. Would you say at least half of the
13 Clark County School District employees have some sort
14 of computer that they work on as part of their daily
15 duties?

16 A. Yes.

17 Q. And some may be only issued laptops?

18 A. Correct.

19 Q. And all CCSD email communication goes through
20 InterAct, right?

21 A. Correct.

22 Q. Can you explain to me what InterAct is?

23 A. InterAct is an -- our name for the
24 FirstClass -- OpenText FirstClass email system.
25 FirstClass is the name of the product, OpenText is the

1 name of the company that produces the product.

2 Q. Okay. So it's an email system sort of like
3 Outlook?

4 A. Outlook is not an email system; Outlook is a
5 client for an email system. Exchange, Microsoft
6 Exchange, would be the email system.

7 Q. So InterAct -- when you say "email system,"
8 what does that mean?

9 A. Email system would be the set of software
10 programs that allow you to send a message to another
11 user on a system within that system or externally to
12 that system.

13 Q. So InterAct is the system that allows CCSD
14 employees to get an email address and to send and
15 receive emails from that system?

16 A. Correct.

17 Q. Is InterAct also the system that allows them
18 on their desktop or laptop or whatever machines they
19 have, to store emails?

20 A. Emails are not stored on the laptop or
21 desktop. All emails are stored centrally. They are
22 accessed through a client, but the emails are not
23 stored on the computers.

24 Q. When you say they are accessed by a client,
25 do you mean a client like Microsoft Outlook?

1 A. I mean a client similar to Microsoft Outlook,
2 but it is not Microsoft Outlook. It is a client
3 specifically for the FirstClass system that accesses
4 that content on the server.

5 Q. What's it called?

6 A. The FirstClass client.

7 Q. Okay. And you said emails are not stored
8 locally; they are not stored on the machine; they're
9 stored on the server --

10 A. Correct.

11 Q. -- on the CCSD server?

12 Let's make sure I finish my questions, just
13 so the court reporter can keep a record.

14 But they are stored on the server?

15 A. Yes.

16 Q. But a person using InterAct and the
17 FirstClass client can create a folder to move an email
18 into, correct?

19 A. They can create a folder to move on email
20 into, and that also remains on the server.

21 Q. Understood. But they can interact with the
22 way the emails are saved, correct?

23 A. Yes.

24 Q. Not to use a the word "interact" in an
25 incorrect way. But they can create a folder; they can

1 create a subfolder, right?

2 A. Yes.

3 Q. They can delete emails?

4 A. Yes.

5 Q. They can send and receive emails?

6 A. Yes.

7 Q. And so it's -- can they -- can they -- on the
8 work-issued cell phones, for example, can Clark County
9 School District employees email on these work-issued
10 cell phones?

11 A. There is an InterAct -- a FirstClass client
12 that can be used on both Apple IOS devices as well as
13 Android devices.

14 Q. You said "can be." Is it used by any Clark
15 County School District employees --

16 A. Yes.

17 Q. Let me finish my question for the record.

18 Is it used by any Clark County School
19 District employees?

20 A. Yes.

21 Q. Got it. So we have talked about emails.

22 Phones, are you also responsible for managing
23 the phone system for Clark County School District?

24 A. A department under my supervision does.

25 Q. So ultimately, yes?

1 A. Yes.

2 Q. And you're responsible for all the
3 departments under your supervision?

4 A. Yes.

5 Q. Okay. So what's the name of that department?

6 A. Telecommunications.

7 Q. And what phone system does CCSD use?

8 A. Currently, there are two systems in use, one
9 is Alcatel-based system and one is a system using the
10 Asterisk operating system.

11 Q. What's the difference between the two
12 systems, who uses which?

13 A. The older systems that are aging out are the
14 Alcatel systems; the newer systems that are replacing
15 those are the Asterisk systems.

16 Q. So basically it's not departments; you're
17 just in the process of phasing out the system?

18 A. Yes.

19 Q. Yes.

20 And are those Internet-based phones?

21 A. They -- the Alcatels and the Asterisks, in
22 certain functions, may use a protocol known as VOIP,
23 or voice over Internet protocol. That does not mean
24 they use the Internet for communications.

25 Q. Well, then what do they use for

1 communications?

2 A. Our internal wide area network; that is not
3 the Internet.

4 Q. But it's an internal connectivity network?

5 A. It's an internal connectivity network.

6 Q. But obviously they couldn't use this internal
7 connectivity network to call outside the district,
8 right?

9 A. They can. There are gateways that hook to
10 the public telephone system.

11 Q. What do you mean by "public telephone
12 system": landline?

13 A. Yes.

14 Q. Okay. And so when do they -- when do you use
15 the internal system versus over the Internet to --
16 when does Clark County School District use one or the
17 other to make calls?

18 A. Employees are encouraged to use a dialing
19 scheme that allows them to call from extension to
20 extension across the various sites when they're making
21 internal calls, as opposed to dialing (702) 799, you
22 know, 5555.

23 Q. How do you know they're doing that? Can you
24 see records of who's calling who and how calls are
25 being made?

1 A. I personally do not see those records. I
2 believe there are records for those calls that are
3 being made using the (702) 799 type. As for --

4 Q. I'm sorry. When you say "(702) 799 type,"
5 what does that mean?

6 A. The regular telephone number, dialing a phone
7 number as you would do when you were dialing your home
8 phone.

9 Q. Okay.

10 A. When they are using the extension dialing, I
11 do not know if there are records of those calls, if
12 those are logged per se.

13 Q. Okay, so if Mr. Honey here were to call my
14 office, there would be a record of that call --
15 correct -- because it's an external number?

16 A. Yes.

17 Q. But you don't know whether or not, if
18 Mr. Honey called Mr. McDade, if there was a record of
19 that?

20 A. Correct.

21 Q. Okay. So we have talked about phones. We
22 have talked about emails. What about other kinds of
23 electronic records, such as word processing files,
24 spreadsheets, PowerPoint presentations, things like
25 that, where are those stored?

1 A. Those are stored either on the user's hard
2 disc incorporated into their own computer that they
3 are using, or the recommended would be to place them
4 on the department- or division-level server.

5 Q. When you say "recommended," is there a policy
6 requiring them to do that? By "them," I mean
7 employees.

8 A. Employees are encouraged to do so for backup
9 purposes.

10 Q. How are they encouraged to do so?

11 A. By their local department administrator.

12 Q. So there is no CCSD-wide guidance about this?

13 A. Not that I am aware of.

14 Q. And why are they encouraged to do this?

15 A. For computer backup purposes in case of
16 viruses, in case of a deletion -- accidental
17 deletion -- of a file so that the file can be
18 restored.

19 Q. So the best practice is -- could they save
20 it -- instead of just doing a backup later and saving
21 it on the server, when you're working on a computer
22 issued to you at CCSD, can you automatically default
23 to save on the server?

24 A. Yes.

25 Q. Could the machines be set up to require that?

1 A. They are set up as the default to save files
2 to the server.

3 Q. So then why do they need to be encouraged to
4 do that, if that's the default; do some employees go
5 ahead and overwrite that default?

6 A. Employees can choose to where to save the
7 file. Sometimes, depending on the size of the file,
8 there may not be sufficient server space to save a
9 very large file. They may choose to put it on onto
10 the local drive instead.

11 Q. When you say there isn't sufficient server
12 space, isn't CCSD's server huge?

13 A. There are many servers throughout the
14 district, not all servers have exceedingly large
15 amounts of disc space.

16 Q. You said "there are many servers." Is there
17 any central server that all of these servers back up
18 to or anything like that?

19 A. There are backups for servers. Some of them
20 are operated by the technology division and my
21 networking services department, and some may be
22 operated by local departments that handle the backup
23 themselves.

24 Q. Wouldn't it be better if all the IT people
25 worked directly for you rather than some working for

1 departments?

2 A. Not necessarily.

3 Q. Do you think it would be better?

4 A. I have had thoughts both ways in my career.

5 Q. Why would it be better to have them be
6 central?

7 A. For standardization, control.

8 Q. For ensuring records are backed up properly?

9 A. A number of reasons.

10 Q. Is that one of them?

11 A. That would not be an overriding one in my
12 mind, no.

13 Q. You don't think that if all the IT staff
14 reported to you and you could have clear requirements
15 about where people save documents and how they back
16 them up, that there would be more systematic retention
17 of records?

18 A. Not to my experience.

19 Q. Why?

20 A. Employees tend to do what they want to do, if
21 they are able to do it. A computer typically has the
22 ability to access a number of drives that are
23 accessible, and you cannot prevent someone from using
24 the drive that's on the computer. So human nature.

25 Q. Okay, understood.

1 With regard to -- you did mention that
2 InterAct emails are saved on the central server,
3 correct?

4 A. Yes.

5 Q. Let's make sure I finish for the record.

6 So, yes, they are?

7 A. Yes, they are.

8 Q. What else is saved on the central server?

9 A. When you say "central server," there are many
10 central servers, depending on purpose. The InterAct
11 email server is different.

12 Q. So the InterAct central server is a central
13 server?

14 A. Is a central server used for InterAct,
15 period.

16 Q. Okay, I got it.

17 So there are central servers and then there
18 are many other servers that are maybe department
19 servers. Am I understanding it right?

20 A. In a simplistic way of looking at it, yes.

21 Q. Is there anything wrong with what I just
22 said?

23 A. No.

24 Q. Can you access all of the servers or only
25 the -- what we're calling central servers?

1 A. I can only access the central servers.

2 Q. So if there is a department-specific server,
3 for example, you can't access that server?

4 A. That is correct.

5 Q. You would have to contact that department's
6 IT staff --

7 A. Yes.

8 Q. -- if you wanted to search it?

9 Okay. So let's talk about this case a little
10 bit and see if we can -- I can kind of put together
11 these pieces.

12 When did you first become aware that Las
13 Vegas Review-Journal had made a public records request
14 for documents concerning Trustee Child?

15 A. I believe there was a request sent to me by
16 Jeanne-Marie Pochert Hanna in December of 2016.

17 Q. Do you remember when in December?

18 A. I believe it was the 7th or 9th. I do not
19 recall the specific date.

20 Q. And were you instructed to search for
21 documents?

22 A. I was instructed to search certain users'
23 InterAct accounts for certain key words.

24 Q. So did you see the actual public records
25 request at issue?

1 A. I was emailed some instructions to follow.

2 Q. I don't think you answered my question. Did
3 you --

4 A. I did not see a legal document like these.

5 Q. Did you see an email from a reporter saying,
6 Hey, I'm looking for the following? Dear Cynthia,
7 will you give me these documents?

8 A. Occasionally when I see those public record
9 requests, those are attached at the bottom, sometimes
10 they are not. I do not recall in this instance.

11 Q. Okay. So you don't recall whether you saw
12 it. What you do recall is that you were just
13 instructed to search certain users' InterAct emails
14 for certain search terms. Is that correct?

15 A. Correct.

16 (Petitioner's Exhibit 18, previously marked
17 for identification, was referenced.)

18 BY MS. McLEITCHIE:

19 Q. Okay. At some point in the case, you created
20 a -- this is Exhibit 18. If we go to the top of it,
21 does this appear to be your certification?

22 A. It is.

23 Q. Is that your signature?

24 A. Yes.

25 Q. So you prepared this certification and

1 executed it for this litigation, correct?

2 A. Yes.

3 Q. So on the attached "Exhibit A," it has two
4 searches that were conducted, looks like two searches
5 conducted in December.

6 A. Correct.

7 Q. And those were the only searches that you
8 were asked to conduct?

9 A. Correct.

10 Q. And you were not -- you were not asked to
11 freeze any records, ensure that other records weren't
12 deleted?

13 A. No.

14 Q. And these are the only -- this is the only
15 thing you did for the public records request from the
16 R-J back in December for the public records request --
17 when I say "public records request," by the way, will
18 you understand that I mean public records request for
19 Trustee Child records?

20 A. These are the terms and the people whose
21 mailboxes I was asked to search.

22 Q. So these are the only -- here's my question.
23 With regard to the public records request from the R-J
24 in December for records concerning Trustee Child, this
25 is the only thing that the IT department did; it

1 searched these two inboxes for these search terms,
2 correct?

3 A. That's -- these are the things that I was
4 asked to do, correct.

5 Q. These are not just the only things that you
6 were asked to do, these are the only things you did,
7 correct?

8 A. Correct.

9 Q. You didn't freeze any other records?

10 A. No.

11 Q. And this is all you did because you were
12 following instructions from the general counsel's
13 office?

14 A. I was asked to search these two individuals
15 for these search terms; that is what I did. Those
16 were the only instructions I was given.

17 Q. So you followed -- so in doing searches for
18 responsive records to the Las Vegas Review-Journal
19 public records request concerning Trustee Child, this
20 was the searches, on "Exhibit A," LVRJ027 on December
21 9th, these are the only searches you did because these
22 are the only searches the general counsel's office
23 asked you to do, correct?

24 A. Correct.

25 Q. And you understood your responsibility is

1 just to follow the instructions from the general
2 counsel's office?

3 A. Correct.

4 (Petitioner's Exhibit 19, previously marked
5 for identification, was referenced.)

6 BY MS. McLEITCHIE:

7 Q. Okay. So do you recall seeing a letter from
8 myself on behalf of the Las Vegas Review-Journal?
9 It's Exhibit 19 right there.

10 A. I do not recall seeing this letter, no.

11 Q. Okay. So you weren't aware that I asked for
12 electronic records besides emails?

13 A. Not that I was made aware of, no.

14 Q. And the only records you have ever searched
15 for in this case are emails, correct?

16 A. Correct.

17 Q. Okay. When you search in InterAct -- when
18 you search an InterAct email account, I'm assuming
19 that you are accessing the central server that's
20 utilized for storing InterAct email accounts.
21 Correct?

22 A. Correct.

23 Q. We talked about other servers, but no other
24 server is used to store email, correct?

25 A. Correct.

1 Q. So that makes accessing emails easier?

2 A. Yes.

3 Q. So you will go into the central server. Can
4 you search more than one person's email account at a
5 time?

6 A. No.

7 Q. Could that be set up with InterAct?

8 A. The server searches one user at a time. I
9 can set it up to do sequential searches of named
10 individuals.

11 Q. Okay. So is it like writing a program or is
12 it a query form or how does it work in InterAct
13 when -- let's say you are essentially instructing
14 InterAct to search various email accounts one after
15 the other.

16 A. It entails creating an alias of the user's
17 mailbox into a new folder and then telling it to
18 search that folder. This is a fairly time-consuming
19 process.

20 Q. Why is it time-consuming?

21 A. The mailboxes all have the same name,
22 "Mailbox." Hence when you make the alias, it's also
23 called "Mailbox," and then you have to verify that
24 you've got the right one. And then as you get large
25 lists of Mailbox, all named Mailbox, 10, 20, 30, 50,

1 100, 300 all named Mailbox, it is -- it can be
2 time-consuming to ensure that you haven't duplicated
3 one or left one off of your list as you were trying to
4 maintain --

5 Q. Got it.

6 A. -- your tracking on that.

7 Q. Would there be a way to fix that on the
8 InterAct?

9 A. No.

10 Q. Have you talked to InterAct about this?

11 A. Yes.

12 Q. And are they working on this?

13 A. No.

14 Q. Are you looking at getting a different email
15 system?

16 A. Yes.

17 Q. In part to solve this problem?

18 A. Yes.

19 Q. How likely do you think it is that you're
20 going to get a different email system?

21 A. There are a number of considerations: cost,
22 ease of use. I believe that there is a likelihood
23 that the Clark County School District may eventually
24 move off of InterAct as its email system.

25 Q. And in part that's the case because it would

1 help you review records for litigation, public records
2 requests, other matters?

3 A. I believe that is a side benefit. I believe
4 the primary driving force is schools working with
5 students on email and things, and the schools are more
6 interested in using those consumer-based email
7 systems: Google or Office 365, et cetera.

8 Q. Okay. So when you search these -- when you
9 run the program, you don't have to search -- you can
10 ask it to search for all of these search terms at
11 once, correct?

12 A. One search term at a time.

13 Q. So you have to run -- so let's turn to this
14 page together, LVRJ027.

15 A. Yes.

16 Q. And let's just walk this through for me. So
17 you ran a search -- this means you ran a search in
18 Mike Barton's email for the term "Trustee Child"?

19 A. Yes.

20 Q. And then for "Kevin Child"?

21 A. Yes.

22 Q. And then "guidelines for trustee visit"?

23 A. Correct.

24 Q. And then "trustee visit"?

25 A. Correct.

1 Q. And then "school visit"?

2 A. Correct.

3 Q. And it appears you did the same thing for Pat
4 Skorkowsky's email.

5 A. Correct.

6 Q. How long did it take you to do these
7 searches?

8 A. The searches take varying times depending how
9 busy the server is. I very often do these searches
10 after hours to avoid putting additional load on the
11 server when users are trying to use the system.

12 Q. Makes perfect sense.

13 A. So depending on the size of the user's
14 mailbox, it can take 15 minutes; it can take 3
15 minutes.

16 I do not recall how long it took to run these
17 specific searches, whether that was 1 minute or 20
18 minutes on each specific term.

19 Q. It certainly wasn't something that you
20 thought was extraordinary use, for example?

21 A. I was --

22 MR. HONEY: Objection: calls for a legal
23 conclusion.

24 BY MS. McLEITCHIE:

25 Q. You can answer.

1 A. I was bothered by the number of search terms,
2 yes.

3 Q. There's one, two, three, four, five search
4 terms.

5 A. It was a very busy time of year.

6 Q. But you said you think it took anywhere from
7 3 minutes to 15 minutes to run the search terms?

8 A. Per term.

9 Q. So if it took 3 minutes, it would take 15
10 minutes?

11 A. If it took 3 minutes. Both of these
12 individual's mailboxes are a little larger than your
13 average teacher.

14 Q. Okay. So let's say it took 10 minutes, it
15 would take 30 minutes to run the search?

16 A. I expected that it would take -- with these
17 number of search terms, it was going to take well over
18 an hour per server -- per individual.

19 Q. Do you recall --

20 A. I do not recall what it took.

21 Q. Okay. So it looks like those are the only
22 things you did on December 9th. And you never -- you
23 don't recall seeing any emails from Ms. Pak-Harvey,
24 the R-J reporter, making the original requests back in
25 December, right?

1 A. No, I don't.

2 MR. HONEY: Objection: asked and answered.

3 BY MS. McLEITCHIE:

4 Q. And you did not see this letter from me?

5 MR. HONEY: Objection: asked and answered.

6 BY MS. McLEITCHIE:

7 Q. Correct?

8 A. No, I do not recall seeing that letter.

9 Q. And you did not -- you haven't -- did you see
10 any court orders in this case regarding additional
11 work the district was required to do to respond to the
12 public records request from the R-J for the records of
13 Trustee Child?

14 A. I did not see any court orders; I read about
15 the case in the R-J.

16 Q. Okay. But these were -- you were reading the
17 news articles; you weren't looking at that to give you
18 direction on what to do with regard to searching for
19 records, right?

20 A. Correct.

21 Q. All the direction you got was from the
22 general counsel's office?

23 A. Yes.

24 Q. You didn't make any independent decisions
25 about who to search, correct?

1 A. That is correct.

2 Q. You didn't make any independent decision
3 about when to search?

4 A. The time of day, yes. After being requested
5 to search, I then made the decision when to conduct
6 the search to minimize impact on our system's users.

7 Q. But you weren't -- you waited to do the
8 searches until you were told to do the searches by
9 general counsel's office?

10 A. Correct.

11 Q. So who searches, when to do the search, and
12 what search terms, all that direction came from the
13 general counsel's office?

14 A. Correct.

15 Q. Other than maybe waiting until after hours to
16 avoid impact on the server and to make it quicker for
17 you probably when doing the searches, you didn't
18 exercise any independent judgment whatsoever with
19 regard to these public record requests?

20 A. No.

21 Q. So just so I'm clear. So on here, I see -- I
22 see "Name." Again, that's the email box that you
23 searched?

24 A. The owner of the mailbox.

25 Q. The owner of the mailbox.

1 And "Terms," that's the terms that you
2 searched for?

3 A. Yes.

4 Q. And "Date," that is the date you ran the
5 searches?

6 A. That is either the date I ran the searches or
7 the date I completed that batch.

8 Q. Got it. So it's the date you completed it?

9 A. It's both. Sometimes it was the same day;
10 other times it may have been the following day.

11 Q. Okay. But which date would you pick to list
12 here?

13 A. The date that I completed it.

14 Q. Okay. So this is the date you completed the
15 search. Sometimes you might have started it the day
16 earlier, but the date listed is the date you completed
17 the search?

18 A. That's right.

19 Q. So you completed a search on February 21st,
20 it looks like.

21 A. A set of searches, yes.

22 Q. Do you recall when -- and then you did a
23 second set of searches on the 22nd of February 2017.

24 A. Correct.

25 Q. So this means no searches whatsoever were

1 done between December and February?

2 A. Correct.

3 Q. And then we have December 21st, December
4 22nd, the next page at the bottom it looks like we get
5 to March 28th.

6 So that was another date you did searches?

7 A. Correct.

8 Q. And on the next page we've got April 5th and
9 May 12th?

10 A. April 5th, correct.

11 Q. And May 12th?

12 A. May 12th is the date that I finished a large
13 number of searches.

14 Q. Keep going, there's a lot of May 12ths,
15 you're are right. We go all the way to the back, and
16 there were a few searches that were conducted on
17 May 15th?

18 A. That is correct.

19 Q. So all of these searches were conducted
20 because you received emails from general counsel's
21 office saying search the following email boxes for the
22 following terms?

23 A. Correct.

24 Q. And when you got -- and these were the only
25 searches that you did for emails in this case for

1 Trustee Child records?

2 A. Correct.

3 Q. And these are the only searches -- you only
4 did email searches?

5 A. Correct.

6 Q. And you haven't done any searches since the
7 date of the filing, correct?

8 A. Right.

9 Q. And once you ran these searches, what did you
10 do with the results?

11 A. I copied the results from the search window
12 into a new folder, and then I placed that folder on
13 the desktop of Cynthia Smith-Johnson, and occasionally
14 the attorney -- one or more of the attorneys.

15 Q. Okay.

16 A. Sometimes it was Jeanne-Marie Pochert Hanna
17 and sometimes it was Adam Honey.

18 Q. Okay. And would it be the same folder that
19 was placed on -- would Cynthia Smith-Johnson have also
20 received a copy of the folders that were provided to
21 general counsel's office?

22 A. Yes.

23 Q. Were they the same folder --

24 A. Just a moment.

25 Q. Okay.

1 A. That would be my instruction would be to
2 place a copy of the results on both Cynthia
3 Smith-Johnson and the attorneys' desktops. That would
4 be my normal action.

5 I do not specifically recall in the December
6 searches if I was asked to provide to Cynthia
7 Smith-Johnson or only to the attorney. I do not
8 recall.

9 Q. Okay. What about in February?

10 A. In February, the Februarys, the March, the
11 April, and the Mays, I was asked to do to Cynthia
12 Smith-Johnson and to attorneys.

13 Q. Okay. And were they duplicate folders that
14 were provided to the attorneys or were they the same
15 folder on a server?

16 A. It is the same folder, and alias to the same
17 folder is placed on each of their --

18 Q. "Alias," like a link, a copy, a way to get
19 into it?

20 A. Yes.

21 Q. Okay. So could -- could Mrs. Johnson have
22 deleted emails in these folders?

23 A. I'm thinking about the permissions, whether
24 or not having an alias, if she would be able to delete
25 them. And I would have to check. I do not know -- I

1 cannot tell you for sure one way or the other right
2 now.

3 Q. Is the same thing true for general counsel's
4 office?

5 A. Yes.

6 Q. So you don't know whether or not they can
7 delete any emails that were put in there?

8 A. Correct.

9 Q. And "in there," I mean that were in these --
10 that they had access through these aliases placed on
11 their desktops.

12 A. Right.

13 Q. So going to the first page, since we have
14 this out, in this certification, if you look at
15 paragraph 3, it states that between December 9th and
16 May 15th, "I have conducted the searches identified on
17 the attached 'Exhibit A'; in total, 1,242 searches of
18 email boxes were conducted on 621 user mailboxes."
19 And it states, "Each user was searched once for 'Kevin
20 Child' and a second time for 'Trustee Child.'"

21 This doesn't appear quite consistent with the
22 December 9th searches, because additional searches
23 were done on the December 9th inbox, correct?

24 A. That would be correct.

25 Q. Okay. So --

1 A. The number would be slightly higher with
2 those two searches because there were additional
3 search terms.

4 Q. Okay. Was there anything else -- I'm just
5 trying to make sure I understand the universe of the
6 searches that you did, and I want to make sure that
7 there is nothing else missing from paragraph 3 and
8 paragraph 4 about what searches you did. Feel free,
9 if you want to take a second.

10 A. Other than the count of individuals, I will
11 assume that there are 621 here, I believe that is
12 correct from looking at the spreadsheet that I
13 previously produced --

14 Q. Okay.

15 A. -- that there are 621.

16 But the number, 1,242, I believe was just 621
17 times two, where, in reality, there would have been a
18 few more based on the additional searches that were
19 performed on December 9th.

20 Q. Other than the issues I pointed out that it
21 may be underinclusive based on the searches done in
22 December, this certification includes each and every
23 search that you did for records about Trustee Child?

24 A. Correct.

25 MS. McLEITCHIE: Let's take a brief break, if

1 that's okay, be off the record.

2 (Recess taken.)

3 BY MS. McLEITCHIE:

4 Q. So I want to go back and talk -- well, let's
5 just make sure I'm not missing anything. Besides the
6 email communications that you received giving you
7 instructions of what to search, what to search for,
8 whose email boxes to search, did you receive any other
9 direction about responding to these public records
10 requests from general counsel's office?

11 A. No.

12 Q. Did you ever communicate directly with
13 Ms. Smith-Johnson?

14 A. Other than telling her that the folders were
15 on her desktop, no.

16 Q. Other than your meeting this week about this
17 deposition, were all of your communications with the
18 general counsel's office about the R-J's public
19 records request for Trustee Child records, were they
20 all by email?

21 A. I may have called Jeanne-Marie Pochert Hanna
22 on the phone in December regarding the time frame with
23 the holidays, et cetera, about how fast I needed to do
24 this.

25 Q. Okay. So other than that phone call that may

1 have happened, anything else?

2 A. Primarily -- I do not recall any others. My
3 normal method would be email communication.

4 Q. And you do recall getting emails in this case
5 from general counsel's office about what searches to
6 do, correct?

7 A. Yes.

8 Q. And you don't recall any other communication
9 other than possibly the call in December about timing,
10 correct?

11 A. Correct.

12 Q. Okay. And you wouldn't -- besides
13 Ms. Smith-Johnson and general counsel's office, is
14 there anyone else you would have communicated with
15 about the R-J's public record requests for Child
16 records?

17 A. I would have informed my supervisor -- I may
18 have informed my supervisor that I was doing them.

19 Q. Who is your supervisor?

20 A. Rick Neal.

21 Q. And what is -- what is Rick Neal's title?

22 A. Chief Operating Officer.

23 Q. You did tell us what your title was. How
24 long have you been -- I know we talked a little bit
25 more about some of your duties. How long have you

1 been in that position at CCSD?

2 A. Since December of 2014.

3 Q. And what was your title before that?

4 A. Executive Director of Technology Division.

5 One is the No. 2 person in the technology
6 division and one is the No. 1 person in the technology
7 division.

8 Q. So what duties do you have now that you did
9 not have as executive director?

10 A. The supervision of the student records
11 services department, the supervision of the user
12 support services department, the supervision of the
13 human capital management systems department, and the
14 supervision of the student information systems
15 department.

16 Q. Okay. So you've got additional duties, but
17 you're still -- you supervise the current executive
18 director?

19 A. There is no executive director. That
20 position was eliminated upon my exiting the position.

21 Q. So you still have all the duties of your old
22 position?

23 A. Correct.

24 Q. So you are essentially the executive director
25 and the chief technology officer?

1 A. Which can be a bone of contention at times.

2 Q. Okay. And part of your duties -- this isn't
3 the only time that you have run searches for
4 responsive records to record requests, correct?

5 A. Correct.

6 Q. Do you consider it part of your job to help
7 other CCSD departments work on responses to public
8 records requests?

9 A. Unfortunately, yes.

10 Q. Why do you say "unfortunately"?

11 A. Because it is a duty that I would be glad to
12 hand off to someone else.

13 Q. Why?

14 A. Because I do not enjoy doing it; because
15 sometimes it takes a large chunk of time; because
16 sometimes it must be done after hours, et cetera.

17 Q. Do you think it's an important part of your
18 job?

19 A. It is, in the scheme of things, a minor part
20 of my job.

21 Q. What about with regard to litigation and
22 searches for documents for litigation; are you
23 involved in that at all?

24 A. No.

25 Q. So if -- you're never involved in ensuring

1 that document freezes occur?

2 A. I sometimes receive a copy of a litigation
3 hold with regards to documents. Sometimes I see
4 those, specifically with regards to the email, et
5 cetera. Sometimes I see those -- those come, and they
6 may be talking about videos or other things that are
7 sent to -- other people are also cc'd on that
8 litigation hold letter.

9 Q. So you don't do -- you said you see them. Do
10 you do anything to ensure that documents are retained
11 and not destroyed?

12 A. With regards to the email system, we have
13 backups. When I receive a litigation hold letter with
14 regards to an email -- a litigation hold letter, there
15 may be questions back to legal, okay, this -- what do
16 you want me to do here? I can export the user's
17 mailbox as of the date I received it, but that's all I
18 can do, given our current email system.

19 Q. Okay. What else could be done?

20 A. Well, other systems may be able to go back in
21 time and always hold data and never anything is --
22 nothing is ever deleted, et cetera.

23 Q. Okay.

24 A. I do not have one of those systems.

25 Q. Okay. But you said you don't have anything

1 to do with litigation holds. But it sounds like you
2 do, because you may freeze email boxes; you may create
3 a copy of an email box and ensure that those emails
4 are not deleted, correct?

5 A. Correct.

6 Q. Is there anything else you do in response to
7 litigation hold letters?

8 A. No.

9 Q. Is there anything else you do in response to
10 public records requests besides conducting searches
11 pursuant to direction from general counsel's office?

12 A. No.

13 Q. Does the direction always come from general
14 counsel's office, or sometimes does it come from
15 Ms. Smith-Johnson?

16 A. Always from general counsel's office.

17 Q. Okay. We started to talk --

18 A. Can I say --

19 Q. Yes, of course.

20 A. I believe one time Cynthia Smith-Johnson sent
21 the email, but general counsel's office was cc'd on
22 the email.

23 Q. So general counsel's office is always
24 involved --

25 A. Yes.

1 Q. -- in every single public records request?

2 A. Yes.

3 Q. Okay. So earlier, we talked a little bit
4 about other electronic records, and we started talking
5 about the fact that some people might save it locally,
6 it might be saved on a department server.

7 For example, Ms. Smith-Johnson creates a
8 Word -- I'm assuming you guys use Microsoft Word.

9 A. Yes.

10 Q. Let's say she created a Microsoft Word
11 document, Dear R-J, you can have these documents; you
12 can't have these; she saves it on her computer.

13 Do you ever search for electronic documents
14 like that in response to public records?

15 A. I do not.

16 Q. Do you know if anybody else does?

17 A. I do not -- none of my staff have been asked
18 to do that, to my knowledge.

19 Q. And is -- so you don't do that because you
20 have never been asked to do it by general counsel's
21 office?

22 A. Correct.

23 Q. Have you ever been copied on an email to a
24 department saying, Hey, search for electronic records?

25 A. I have received copies of a litigation hold

1 letter that said to freeze things, but not to search
2 for something, no.

3 Q. So you are not aware of anybody at CCSD ever
4 searching for emails that could be responsive to
5 public records requests?

6 A. Outside of my direct requests that came to me
7 to search the email, I am not aware of anything that
8 wouldn't have been my area.

9 Q. So you are not aware of anybody at CCSD --

10 A. I am not aware because it would not have come
11 to me.

12 Q. Who would it have come to?

13 A. The general counsel's office, could have gone
14 to whoever they went to. It wouldn't have been my job
15 function to tell them who to go to.

16 Q. If they asked anybody that worked in your
17 department, would you know that?

18 A. I would imagine my department leads would
19 have mentioned it to me.

20 Q. So to the best of your knowledge, nobody in
21 your department has ever searched for public records
22 responsive to public records request?

23 A. With regards to this item or with regards to
24 other items?

25 Q. With regard to any item.

1 A. Documents, no. Emails, yes.

2 Q. So besides emails, no one in -- to the best
3 of your knowledge, no one in your department has ever
4 searched for any responsive electronic records?

5 A. I do not -- I do not recall that, no.

6 Q. Okay. So I'm not an IT person, as you can
7 tell by my questions today. But we use the word
8 "electronic records," sometimes when lawyers send out
9 freeze letters, as you mentioned.

10 To you, what does "electronic record" mean?

11 A. "Electronic record," to me, might -- clearly
12 would entail email. It could entail files on a
13 server; it could entail other things that are stored
14 electronically on a computer.

15 Q. Okay. So if I said to you, Mr. Wray, I need
16 you to save all electronic records on your computer
17 about Maggie McLetchie -- let's imagine that you had
18 records about me on your computer -- what records
19 would you -- and you have to do this and you have to
20 save all these records, what would all the electronic
21 records that would pertain to somebody include?

22 A. If they -- files on my computer, emails in my
23 account, would be the things that I would be searching
24 for.

25 Q. So files, like the example I gave, a saved

1 Microsoft Word file is an electronic record, right?

2 A. Yes.

3 Q. So if you had to save every single electronic
4 file in your computer, you would save all the Word
5 files, spreadsheet files -- essentially, all the
6 records stored on your computer or on a server at CCSD
7 are by definition electronic records because of how
8 they're stored, right?

9 A. Yes.

10 Q. When CCSD gets a litigation hold letter, you
11 mentioned seeing some of those and being required to
12 save documents for that. Do you ever save electronic
13 records that are stored either on machines or on
14 networks?

15 A. I do not, no.

16 Q. Do you ever direct anybody to?

17 A. Because my department typically is not
18 involved in those issues and we do not do that as a
19 service, no. The schools, when they are in a
20 situation like that, they have access to do that
21 themselves, and that is the school's responsibility to
22 do that, not the central services.

23 Q. Okay. So let's say a teacher in a school
24 emailed a Word document to a principal at that school.
25 Some teachers could save their files to a central

1 server, as we were talking about earlier, correct?

2 A. Yes.

3 Q. And those central servers are under your
4 department, right?

5 A. We have access to the backups and such, and
6 the school has access also.

7 Q. Okay. So you could go and search those. If
8 a document is saved on a server of some sort, you
9 could go and search those documents, correct?

10 A. I believe so.

11 Q. When -- earlier we were talking about the
12 fact that it's encouraged that people created backups
13 to a central server, right?

14 A. They are encouraged to save their file to a
15 central server so the automatic backup system can
16 function.

17 Q. If somebody does follow what's encouraged and
18 save a backup -- I'm sorry -- save a file to a central
19 server that's then backed up, it's then on that
20 central server and it's backed up, correct?

21 A. Correct.

22 Q. So somebody could still have a copy on their
23 personal computer, but there would be two other
24 iterations of this document out there?

25 A. Backup copies of the document, yes.

1 Q. Both on the central server and on the backup
2 of the central server?

3 A. Most likely, yes.

4 Q. Okay. And how long -- how long are
5 electronic records -- like electronic files besides
6 emails, like Word documents -- how long are those
7 retained by the district?

8 A. I do not have that information off the top of
9 my head.

10 Q. Do you have an internal policy within your
11 department on retention of electronic files?

12 A. I would say I do not have a policy within my
13 department. My divisions, when they are doing that,
14 setting that up to back up those servers, they have a
15 policy, and I'm not aware of the details of that
16 policy off the top of my head.

17 Q. So there is no direction from your level down
18 about saving electronic files?

19 A. There is direction to make sure the backups
20 occur for disaster recovery purposes.

21 Q. What is that direction?

22 A. That we should be able to recover the system
23 as it exists in the case of hardware failure, malware
24 attack, virus attack, something like that, that we
25 should be able to restore the server as it existed.

1 Specific document retention as far as
2 expiration of it, when those documents expire, if so,
3 I do not have that off the top of my head right now.

4 Q. Okay. What about emails?

5 A. Email system -- the emails in mailboxes have
6 a default expiration by the system of 90 days in
7 FirstClass. Users can change those themselves, that
8 expiration time. They can decide to keep them longer;
9 they can decide to keep them shorter. I'm not aware
10 of anybody that does that. They can adjust -- the
11 user can adjust that themselves.

12 We do backups, and those backups are kept for
13 a period of 21 days for the purpose of disaster
14 recovery. They are -- those backups themselves are
15 not searchable separate; it has to be -- it would have
16 to be restored, restoring the entire system, in order
17 to then have a live system to search.

18 Q. Okay. So let's say a teacher at a school in
19 December emailed somebody and said, Trustee Child is
20 making me really uncomfortable. If that email -- if
21 either side of that email, the To and the From, were
22 searched between December and March, it's possible
23 that that email could have been destroyed pursuant to
24 the 90-day default destruction policy, correct?

25 A. It is possible, if the message had been sent

1 sometime prior and the 90 days had passed, that the
2 message could have expired, yes. If both parties had
3 the default 90 days.

4 Q. Is there any instruction to -- the default is
5 90 days, right?

6 A. The default is 90 days.

7 Q. Do you know whether most people change their
8 default?

9 A. I think most of the administrative offices do
10 change their default. I believe most teachers
11 probably do not, although some do. It is not
12 something -- they're allowed to.

13 Q. Are they allowed to make it shorter?

14 A. Yeah, they would be allowed to. I -- I
15 believe the system allows them to do it shorter; I
16 would have to check.

17 Q. Okay.

18 A. The default is 90, I do know that.

19 Q. Okay. And you don't search -- I think you
20 just indicated that you can't search the backups?

21 A. No.

22 Q. And you don't store a backup in order to do a
23 search?

24 A. Correct.

25 Q. So when you're performing services under

1 direction from general counsel's office, you are only
2 aware of what is in there as of the date you are
3 performing the search, correct?

4 A. Correct.

5 Q. So if somebody sent an email in November and
6 they've got a -- they've got a 30-day default, and you
7 search in December, you're not going to get that
8 email?

9 A. Depending on the days. If the 30 days had
10 expired, the potential for not getting that email
11 exists.

12 Q. Got it. I'm going to give you a new
13 document, which might take you down memory lane.

14 This is going to be Exhibit 24.

15 Do you recall this case?

16 A. Yes.

17 Q. What case is this?

18 A. I believe this was Karen Gray wanting all the
19 trustees' emails.

20 Q. So if you turn to page 12 -- and do you
21 recall testifying in this case?

22 A. I recall being in the -- testifying, yes.

23 Q. In an evidentiary hearing?

24 A. I don't recall what kind of hearing it was.
25 I recall being there.

1 Q. Actually, let's go back to page 11 so you get
2 a little bit of context.

3 There is some conversation here where the
4 court is saying, on line 13 -- and it was Judge Susan
5 Johnson -- she says, "Okay, before we hear from
6 counsel for the ACLU and Ms. Gray, I'm going to ask
7 you to do something for me and talk a little bit more
8 in English."

9 And "The Witness" is you. We can go earlier
10 on if you want to see where you were sworn in. That's
11 on page 6.

12 A. I remember being there, it's okay.

13 Q. I just want to make sure we're on the same
14 page.

15 So the court is basically asking you to do a
16 little bit what I have asked you to do today, to
17 explain some -- to explain about reviewing emails.

18 So if you want to read to yourself at the
19 bottom of page 11 what she's asking you and asking to
20 understand.

21 A. As I recall, I was somewhat confused about
22 what she was asking.

23 Q. I don't see you asking for clarification.

24 A. No, I understand that.

25 Q. So in your answer there -- she is asking for

1 information about storage and emails and documents.
2 And, again, Karen Gray was trying to get trustee
3 emails and the district was trying to not give them to
4 her. And in full disclosure, I worked with the ACLU.

5 In the witness's answer there, that's you, on
6 line 6, it says: I was notified in February of 2007,
7 when it was my understanding that Ms. Gray went to the
8 school board and said that she wanted to get this
9 information. It's my understanding that Shirley
10 Barber then made that request. And at that point,
11 Mr. Hoffman said you need to make sure you preserve
12 the mailboxes at that point. So we did. We took a
13 snapshot as the system existed that day -- we believe
14 the day was February 23rd, 2007 -- and preserved that,
15 okay? Since then, time marches on -- then time -- as
16 time marches on, you know, people add, delete the
17 system. It has an auto expiry. The default expiry is
18 90 days, so these messages could easily have been
19 deleted in that -- in the intervening time.

20 Do you see that?

21 A. Yes.

22 Q. So in that case, Ms. Gray asked for records,
23 the school district didn't want to hand them over,
24 there were issues about who should pay for what costs.
25 But while that dispute was happening, it seems like

1 when Ms. Gray -- the way I understand your
2 testimony -- is it when Ms. Gray asked for the
3 records, while we were litigating and while we were
4 trying to figure out everything that was going on in
5 this case, you did freeze the email boxes of the
6 people she was trying to get email from?

7 A. General counsel asked if I could make a copy
8 of the mailboxes, and I said their mailboxes were
9 quite large and the system wouldn't let me just export
10 the mailboxes.

11 So we took a backup snapshot at that time and
12 watched as that -- the way technology works is the
13 size of the snapshot grows as it continues to
14 differentiate. As time marches on, as the system
15 changes from what it looked like then, the size of the
16 backup gets larger and larger and larger and larger
17 and larger, and so we did a snapshot for backup
18 purposes for that date that I was asked to do that.
19 And that was the easiest thing that we could do at
20 that point.

21 Q. Okay. And then the next paragraph, it says:
22 So in order to get the system as it existed on the
23 date I was told to preserve the evidence, we have to
24 go to that backup.

25 So at some point, you went to that backup to

1 produce records, right?

2 A. Correct.

3 Q. And the reason you did that backup was to
4 preserve records and evidence?

5 A. The general counsel asked me to preserve
6 these mailboxes.

7 Q. And you were never asked to preserve records
8 regarding Trustee Child in response to the
9 Review-Journal's public records request, were you?

10 A. I do not believe so, no.

11 Q. Earlier we talked about everything you did to
12 search for and to respond to these public record
13 requests, you certified everything that you did other
14 than the minor correction about how many searches were
15 done in December, correct?

16 A. Correct.

17 Q. And you do not recall that you were asked to
18 search -- I'm sorry -- that you were asked to preserve
19 records that might be responsive to the Review-Journal
20 public record requests about Trustee Child, correct?

21 A. No.

22 Q. So in the Gray case, you did remember that
23 you were asked to?

24 A. Yes.

25 Q. If you had been asked to in this case,

1 wouldn't you recall?

2 A. Yes.

3 Q. Because you can remember all the way back to
4 the Gray case?

5 A. Because I remember it -- it's not always
6 comfortable sitting with counsels and being asked
7 questions. But, yes, it tends to be fairly traumatic
8 for your average citizen.

9 MS. McLEITCHIE: So we'll mark that as Exhibit
10 24.

11 (Petitioner's Exhibit 24 was marked for
12 identification.)

13 MS. McLEITCHIE: And then we'll go to what I
14 forgot to make an exhibit yesterday, and this will be
15 Exhibit 25.

16 Q. I think the things I want to ask -- feel free
17 to leaf through, if you want to get familiar with the
18 document, but the things I want to ask you about are
19 on page 19.

20 Are you familiar with this document,
21 Mr. Wray?

22 A. I have seen it before, yes.

23 Q. And on the first page, it says, "Clark County
24 School District Regulation R-3621, Records Retention
25 Schedule."

1 And it looks like this is a document that
2 pertains to retention schedule for records.

3 A. Yes.

4 Q. So if you go to that page 19, under item
5 No. 4, this appears to be a directive to CCSD
6 employees about how to store documents that are public
7 records.

8 Does that appear to be correct to you?

9 A. Yes.

10 Q. And at the bottom, for example, we've been
11 talking about emails, it says, "Once an email
12 transmittal is determined to be a public record,
13 district employees have an obligation to apply the
14 appropriate records retention schedule. For retention
15 purposes, the records should be maintained in an
16 easily accessible location, which may include:

17 "1) Printing out a copy and filing a hard
18 copy in the relevant subject matter file; or,

19 "2) Moving the file out of the email system
20 and storing a copy of the email in an electronic
21 document management" -- in "an electronic document
22 management system."

23 Where -- first of all, are you familiar with
24 this policy?

25 A. Yes.

1 Q. Do you follow this policy?

2 A. Try to.

3 Q. And how do you try to?

4 A. When I am made aware that something is -- me
5 personally that there is an item of public record,
6 print it out, it gets filed.

7 Q. So when you think a document on your own
8 computer is a public record, your practice is to print
9 it and file it?

10 A. Yes.

11 Q. And how do you determine whether something is
12 a public record that you have to do this for?

13 A. When it's certain things that as you --
14 during the course of business, things that are policy
15 directives, et cetera, you know, they -- as you work
16 on it, that's a public record, we should file that.
17 You just try to keep that idea in your mind, together
18 with my secretary, to try to keep track of those
19 things.

20 Q. You said policy directive. So there is a
21 document --

22 A. Policy directive, all of those things that
23 are listed here that may constitute public record.
24 Some of them stay on the computer, they don't get
25 printed out, okay? But they are accessible because it

1 backs up, et cetera, it's still available as an
2 electronic document. Others get printed. Most of the
3 time when we're thinking, hey, that's a public record,
4 we try to print it and file it.

5 Q. Okay. And the policy says that you should
6 either print it and file it or move it out of -- if
7 it's an email --

8 A. If it's an email.

9 Q. -- move it out of the email and store it in
10 electronic document management system, right?

11 A. Uh-huh.

12 Q. Doesn't say you should try to, says you
13 should.

14 A. Yes, it does.

15 Q. And you do this for emails by printing out
16 hard copies?

17 A. For emails, I mostly do not. Most of the
18 time, the emails stay in the email system until there
19 is an issue that's come up. And then search the
20 emails and then make a copy of the email.

21 Q. So you don't archive your emails as this
22 policy directs you to until something comes up?

23 A. I personally keep my -- I personally keep my
24 sent messages, all of them.

25 Q. Keep them where?

1 A. Within the email system. But I keep them
2 within the email, all of my sent mail. When people
3 send them to me, I do let those expire. But messages
4 I send, I keep. I've been doing that since 2002 or
5 so.

6 Q. So you have no expiration date of sent
7 emails?

8 A. Due to my former role as one of the system
9 administrators, I gave myself unlimited access space
10 to do that.

11 Q. Okay. But not everybody has that ability?

12 A. No, most people do not.

13 Q. Okay. And that's why they're supposed to
14 either print it out or put it in a different
15 electronic document retention system?

16 A. Correct.

17 Q. But a public record could be in someone's
18 inbox, correct? You could receive a copy of a public
19 record.

20 A. Yes.

21 Q. It seems like you have defined public record
22 as a record that's relevant if something comes up. I
23 don't understand what that means.

24 A. By the definition here, it's a matter of
25 public record. But do we always have the resources,

1 et cetera, to do every one of these things? I would
2 say that most employees probably do not.

3 Q. So you don't know if this policy is followed?

4 A. I would think -- in my own experience, I do
5 not always follow this policy.

6 Q. And you testified that most employees
7 probably don't?

8 A. I do not have firsthand knowledge of that,
9 but I am guessing that most employees probably do not
10 print out every copy of their email that might fall
11 into a work schedule or an assignment or an agenda of
12 a meeting that they receive. I would imagine that
13 they don't all print those out and file them after
14 they're done with that specific agenda.

15 Q. The other option would be to store a copy of
16 that in an electronic document management system,
17 right?

18 A. That's what it says, yes.

19 Q. But what does that mean?

20 A. An electronic document management system?

21 Q. Uh-huh.

22 A. Those are number -- those are envisioned by
23 some people as a separate product that you scan a
24 document in and then it makes a copy of it. And some
25 people have, in the district, have bought those what

1 we have referred to as eCabinets, and done that with
2 that.

3 Q. But just to be clear, it's some other
4 electronic document management system other than the
5 email, because it says moving the file out of the
6 email system and storing a copy in an electronic
7 document management system.

8 A. If you let me finish my previous --

9 Q. I apologize.

10 A. Okay.

11 That is one view of some departments, et
12 cetera, an eCabinet, a separate system.

13 I believe most of our users treat their email
14 system as that electronic document management system.
15 That's how most of them treat it.

16 Q. Okay. So most of them treat it that way, but
17 what the policy says is to move -- to either print it
18 out or to move the file out of the email system and to
19 store a copy in an electronic document system.

20 A. That is what that text says.

21 Q. So it does not seem to contemplate just
22 leaving it in their InterAct system?

23 A. That is not what it says.

24 Q. I'm sorry; so it doesn't say --

25 A. In discussions with a former general counsel,

1 we discussed it, and I wanted him to put that in
2 there, and he did not.

3 Q. Okay.

4 A. So I felt like we could leave it there in the
5 email system, et cetera, and that would suffice for
6 the policy, but that's what the policy would have to
7 say.

8 Q. Would it suffice for a policy if a records
9 retention schedule is longer than 90 days?

10 MR. HONEY: Would you repeat the question,
11 please?

12 BY MS. McLEITCHIE:

13 Q. Would it suffice -- did you need me to repeat
14 the question?

15 A. Yes, please.

16 Q. Okay. You can ask me to repeat a question at
17 any time.

18 So the policy, you said most people -- you
19 wanted general counsel to add something here saying
20 that storing something in your email would be
21 sufficient. But storing in email with a default
22 destruction date that's shorter than the retention
23 schedule would not suffice under this policy, would
24 it?

25 A. No. But a user could and should change the

1 expiration of that email or that set of emails, and
2 that is easily done for them.

3 Q. Okay. So this policy could have been adapted
4 to instruct people to have a longer retention schedule
5 on their -- a longer save period on their email, if
6 you will, and then it would suffice under this policy?

7 A. For those messages that matched public record
8 policy here.

9 Q. Okay. Okay, so there is a list here of
10 what's a public record. But is it your understanding
11 that any record created by an employee of the school
12 district, the default is that it's a public record?
13 Is that your understanding?

14 A. No.

15 Q. What's your understanding?

16 A. My understanding is that these things may
17 constitute a public record that many -- some records
18 are transitory, some are duplicate, some are personal
19 messages. All of those occur.

20 Q. Okay. So --

21 A. As a matter of fact, I would think that in
22 many instances, the public record, as it was done, was
23 done via memo or something like that, and that the
24 message in the email was either a duplicate or was a
25 transitory-type, confirmatory-type situation. I think

1 most -- we go to a meeting, there is a printed agenda,
2 et cetera.

3 Q. So it's your view that if there is a draft of
4 that agenda, it's not a public record?

5 A. That would be my --

6 MR. HONEY: Objection: misstates his
7 testimony. He didn't say anything about a draft.

8 BY MS. McLEITCHIE:

9 Q. You've answered my question, but let's make
10 sure, if Mr. Honey wants to object, you give him time
11 to do so.

12 But the example that I gave, you said if
13 there is a final agenda, that's the public record.
14 Other versions of that agenda wouldn't be public
15 records?

16 A. That would be how -- that would be my
17 interpretation. I am not the person who makes that
18 policy with CCSD.

19 Q. I understand. I want your understanding,
20 that's all I'm trying to get here.

21 You mentioned "transitory." What does that
22 mean?

23 A. It's just a temporary message, Hey, I'm going
24 to be late to a meeting, something like that.

25 Q. Okay. And you mentioned personal use. In

1 the Gray case, you probably recall that there were
2 some issues about the costs involved in searching, and
3 one of the issues was that CCSD allowed employees to
4 use their email boxes for personal emails.

5 We've also discussed today issues about, you
6 know, you have to go on a server after hours because
7 the server can get overloaded and there is a lot of
8 employees, a lot of students, a lot of information.

9 Is it -- are you aware of whether CCSD has
10 ever instructed its employees not to further burden
11 the system by using CCSD email for personal business?

12 A. It has been said -- while the current
13 acceptable use policy says, I believe, that
14 nonincidental personal use is acceptable, that they
15 should, with the advent over time of free email
16 services, a la Hotmail, Google email, et cetera, that
17 people, general public, can get an email account for
18 free, that it has been discouraged. I've heard people
19 say you shouldn't be using InterAct for your personal
20 email.

21 Nevertheless, I believe the policy is -- the
22 acceptable use policy still states nonincidental --

23 Q. I'm just going to --

24 A. Excuse me.

25 Now, I don't remember what word it says, but

1 it is not forbidden, but it is not encouraged.

2 Q. Okay. Am I correct in thinking that if we
3 don't -- if CCSD employees don't use CCSD email, the
4 email system, for personal emails, that makes
5 searching easier, for example, in response to public
6 records requests?

7 A. The searching of the email system is just
8 searching messages, whether they're -- it may add
9 time, additional CPU cycles or computer time to search
10 it, and it would add additional messages -- if every
11 Facebook posting alert was in their InterAct mailbox,
12 there would be more messages that have to be
13 searched -- but it's not -- once the search is
14 occurring, the computer is searching the volume of
15 those, whatever that is.

16 Q. When we were talking earlier, when I asked
17 whether or not you thought responding to these record
18 requests involved extraordinary use, you did mention
19 that you had objection to the search terms because it
20 took time.

21 So time is one of concerns when you're trying
22 to do work responding to public records requests?

23 A. It's a concern of mine. Does not mean that I
24 don't do it when I'm asked.

25 Q. I understand. And you don't like responding

1 to public record requests at all?

2 A. It's not my favorite activity in the scheme
3 of things.

4 Q. Okay. So going back to this policy for a
5 second. Have you ever -- have you ever searched
6 either a hard copy file or a backup electronic
7 document management system file when searching for
8 emails in a response to a Public Records Act request?

9 A. When that public records request was with
10 regards to me, I have. When it's been with regards to
11 other people's things, no, I have not.

12 Q. Okay. How long is the retention policy --
13 how long do the emails in your inbox get stored?

14 A. My personal inbox expires after a number,
15 limit number, is reached. I store 4,096 messages. So
16 for me that varies: sometimes that might be 4 months;
17 it might be 12 months. I have made that decision to
18 keep 4- -- 4,000, roughly, messages in my inbox. Not
19 counting sent messages, I keep that 4,000.

20 Q. Do you have subfolders in your inbox?

21 A. Yes, I do.

22 Q. And how long are those saved for?

23 A. They stay there until I either remove them or
24 delete them.

25 Q. Okay. So they're like your sent folder?

1 A. They are -- the Sent folder is one of those
2 folders, but I may keep other frequently asked
3 questions. I get asked questions about when is the
4 wi-fi refreshment going to occur at XYZ elementary,
5 middle, or high school. So I keep -- that's a
6 document that I frequently access, I keep that -- that
7 email was sent with that list, I keep that in my
8 frequently asked questions folder that doesn't expire.

9 Q. Okay. So there are certain folders in your
10 inbox that don't expire?

11 A. As a user, yes. I have made those
12 nonexpiring by action.

13 MS. McLEITCHIE: Understood.

14 Let's just take a brief break to make sure I
15 don't have any further questions. We'll be off the
16 record for a few minutes.

17 (Petitioner's Exhibit 25 was marked for
18 identification.)

19 BY MS. McLEITCHIE:

20 Q. I just have a few questions.

21 So the -- are there some electronic documents
22 that are -- besides email -- that are only stored on
23 the central server at CCSD?

24 A. There isn't one central server.

25 Q. I'm sorry. On a central server. We talked

1 about servers that are department servers and some
2 servers that are kept centrally under the control of
3 your department.

4 So are there some documents that are
5 electronic documents that may only be saved on the
6 central server?

7 A. Yes.

8 Q. On a central server?

9 A. Yes.

10 Q. But you have ever searched a central server
11 for electronic records other than emails?

12 A. I have not.

13 Q. Do you know of anyone who has?

14 A. I do not know if they have.

15 Q. Okay. Either for litigation or for
16 responding to public records requests?

17 A. Not that I have personal knowledge of. I
18 have every reason to believe that, because of a
19 litigation hold letter, that schools have searched
20 their servers that they have access to for responsive
21 public records or electronic records.

22 Q. Right. But when we talk about a school
23 server or department server, I'm not talking about
24 those servers; I'm talking about a central server.

25 A. Those central servers are used by departments

1 and schools.

2 Q. Okay. Oh. So I think I understand.

3 But for InterAct email, those are only stored
4 on a central server?

5 A. Correct.

6 Q. And do you have access -- so you're calling
7 this department -- when the department, a school, for
8 example, saves electronic records on a central server,
9 are those controlled by the department or by your
10 department?

11 A. Both entities have access.

12 Q. Okay. So are there -- do schools, for
13 example, have access to the InterAct server?

14 A. The individual users have access to the
15 server, hence --

16 Q. That -- I'm sorry; go ahead.

17 A. Hence, if a principal has a situation going
18 on with a litigation hold letter and he knows who the
19 student is and who the teachers are, he may very well
20 ask the teachers involved to search their emails and
21 produce those in PDF or print them, et cetera. And he
22 could have them -- he could request that they do that
23 as the employee.

24 Q. As part of litigation holds, is that the
25 usual practice, or is it the usual practice for you to

1 also search the InterAct server?

2 A. It's normal practice that the school handles
3 it.

4 Q. But you have searched the InterAct server for
5 litigation and for public records requests?

6 A. Yes.

7 Q. Are you -- and you are aware that schools do
8 their own searches sometimes of InterAct for
9 litigation?

10 A. I believe that they do, yes.

11 Q. Do you know if they do for public records
12 requests?

13 A. I am not privy to those public records
14 requests; it doesn't come to me, so I am not aware of
15 it. I have every reason to believe that they probably
16 do.

17 Q. Would there be a reason for the general
18 counsel's office to ask you to search the InterAct
19 server, like they did in this case, for example, and
20 also have the school do a search?

21 A. They may. I do not know.

22 Q. I'm trying to understand why that might
23 happen. Because you mentioned that you think it could
24 happen.

25 A. I don't know.

1 Q. Okay. So let's say I wanted to get copies of
2 electronic files regarding Trustee Child that were
3 sent that may be in the possession of principals at
4 various schools. How would I go about getting those?

5 A. If it were me, I would contact the
6 principals. I would tell the principals to search
7 their files and servers.

8 Q. If a principal creates a Microsoft Word
9 document, let's imagine that they're writing a list of
10 terrible things that Trustee Child did, and they're
11 creating this Microsoft Word document -- this is just
12 hypothetical right this second -- they create a Word
13 document, and it's a report of behavior by Trustee
14 Child. They create this Microsoft Word document and
15 they save it. It would either be saved -- it could be
16 saved on your desktop, right?

17 A. (Nods head.)

18 Q. If they had a laptop, it could be saved on
19 your laptop?

20 A. (Nods head.)

21 Q. Yes?

22 A. Yes.

23 Q. I think when I asked the question --

24 A. I was waiting for you to finish the question
25 to answer.

1 Q. So if they created a Word document about
2 Trustee Child, a principal, it could be saved on the
3 principal's desktop, correct?

4 A. Yes.

5 Q. Or it could be saved on the principal's
6 laptop, correct?

7 A. Yes.

8 Q. If the principal set up their backup system
9 this way, it could be saved on a central server at the
10 school, correct?

11 A. Yes.

12 Q. It could also be printed out in a hard copy,
13 correct?

14 A. Yes.

15 Q. Is there anywhere else it could be?

16 A. If the school had purchased some other
17 document management system, it might be in that, but
18 that would be something at the school.

19 Q. Are you familiar with schools purchasing
20 their own document management systems?

21 A. No, I am not.

22 Q. We're just --

23 A. Hypothetically speaking.

24 Q. You mentioned tablets. Who gets issued
25 tablets?

1 A. That is handled at the department level.

2 Q. So you don't really know?

3 A. I do not know. I may be aware of, in the
4 sense that they might call my user support, Hey, how
5 do I do this; how do I configure it to access the
6 Internet; how do I configure it to access the server;
7 how do I --

8 Q. Got it.

9 A. -- but I am not involved in the dissemination
10 of those with the exception of student devices where
11 my department may actually go out there -- my user
12 support department may go out there and assist a
13 school with dissemination of student devices.

14 Q. So going back to my hypothetical where a
15 principal created a Microsoft Word document about
16 Trustee Child and saved it. They could also save it
17 on a USB drive, right?

18 A. Correct.

19 Q. If they use their desktop machine at CCSD
20 with another email account, it could have been emailed
21 through that account, correct?

22 A. Yes.

23 Q. There is no bar about going on the Internet
24 and logging on to, say, Gmail at CCSD?

25 A. No, there is not. Currently, there is not.

1 Q. Are you thinking about doing that?

2 A. No. We used to.

3 Q. Oh, I understand. Okay.

4 Do you have a cell phone issued to you from
5 CCSD?

6 A. I do not.

7 Q. Do you know who does?

8 A. I do not.

9 Q. Do you know if somebody has them?

10 A. There are some people who have them as part
11 of their work responsibilities.

12 Q. So how do you know that if you don't know who
13 has them?

14 A. Well, I know individuals, but I do not know
15 them as -- categories, I know that my networking
16 services department, its technicians that are in the
17 field, they issue cell phones to them because it
18 provides both communication and tracking.

19 Q. Got it. Anybody else that you know has a
20 cell phone issued by CCSD?

21 A. There are people that are in facilities that
22 are in that same situation. These are technicians
23 primarily.

24 Q. Got it.

25 A. I believe I have heard of others, but I do

1 not have any personal knowledge of that. And I do not
2 do it for my administrators.

3 Q. Do you know of any trustees that have cell
4 phones issued by the district?

5 A. I do not know.

6 MS. McLEITCHIE: I've got no other questions,
7 unless Mr. Honey does.

8 MR. HONEY: No questions.

9 MS. McLEITCHIE: Is there anything you wanted
10 to add?

11 THE WITNESS: How busy is Chick-fil-A at this
12 time of day?

13 MS. McLEITCHIE: Before we go off the record,
14 Mr. Honey, did you want the opportunity to allow
15 Mr. Wray to review the transcript?

16 MR. HONEY: Sure.

17 MS. McLEITCHIE: You'll get a copy of the
18 transcript, and Mr. Honey might review it with you,
19 and you can go over it. And you are entitled to make
20 changes, corrections; I certainly can make arguments
21 in a court of law about any additions, changes that
22 you made.

23 We took a brief break today. Is there
24 anything that you testified earlier to today that you
25 need to correct?

1 THE WITNESS: Not that I recall.

2 MS. McLEITCHIE: We talked -- I think we
3 covered exhaustively everything that you did to assist
4 general counsel's office and to otherwise respond to
5 public records requests from the Las Vegas
6 Review-Journal regarding Trustee Child.

7 Is there anything that you didn't tell me
8 that we didn't talk about today that you did with
9 regard to the Las Vegas Review-Journal's public
10 records request for documents concerning Trustee
11 Child?

12 THE WITNESS: No.

13 MS. McLEITCHIE: That's all I have. Thank
14 you.

15 (Thereupon, the taking of the
16 deposition was concluded
17 at 11:58 a.m.)

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REPORTER'S DECLARATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

I, Michelle C. Johnson, CCR 771, declare as follows:

That I reported the taking of the deposition of the witness, DANIEL ROBERT WRAY, commencing on Thursday, August 10, 2017 at 10:01 a.m.

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth.

That I simultaneously transcribed my said shorthand notes into typewriting via computer-aided transcription, and that the typewritten transcript of said deposition is a complete, true, and accurate transcription of said shorthand notes taken down at said time. That prior to completion of the proceedings, review of the transcript pursuant to NRCP 30(e) was requested.

I further declare that I am not a relative or employee of any party involved in said action, nor a person financially interested in the action.

Dated: September 5, 2017



Michelle C. Johnson,
RPR-CRR, CCR No. 771

ORIGINAL

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DISTRICT COURT
CLARK COUNTY, NEVADA

E. J. [Signature]
CLERK OF THE COURT

KAREN GRAY,

Plaintiff,

vs.

CLARK COUNTY SCHOOL DISTRICT,

Defendant.

CASE NO. A-543861

DEPT. XXII

BEFORE THE HONORABLE SUSAN H. JOHNSON, DISTRICT COURT JUDGE
JANUARY 23, 2009

**RECORDER'S TRANSCRIPT OF HEARING RE:
EVIDENTIARY HEARING**

APPEARANCES:

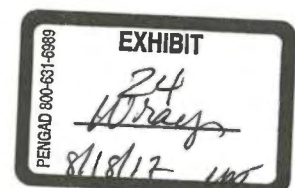
For the Plaintiff:

MAGGIE MCLETCHIE, ESQ.
LEE B. ROWLAND, ESQ.
ALLEN K. LICHTENSTEIN, ESQ.

For the Defendant:

BILL HOFFMAN, ESQ.

RECORDED BY: NORMA RAMIREZ, COURT RECORDER



CCSD341

CLERK OF THE COURT

MAR 16 2009

RECEIVED

1 FRIDAY, JANUARY 23, 2009, AT 9:11:30 A.M.

2
3 THE DEPUTY MARSHAL: All rise. Department 22 is now in session, The
4 Honorable Susan Johnson presiding. Please be seated.

5 THE COURT: Good morning. We're here on Gray versus Clark County
6 School District, case number A843861. Would counsel please identify themselves
7 for the record?

8 MS. ROWLAND: Your Honor, Lee Rowland for the Plaintiff Karen Gray.

9 MS. MCLETCHE: Maggie McLetchie also for Ms. Gray.

10 MR. LICHTENSTEIN: And Allen Lichtenstein again for Plaintiff.

11 MR. HOFFMAN: Bill Hoffman for the Clark County School District.

12 THE COURT: Okay. And who's with you, counsel?

13 MR. HOFFMAN: With me is Dan Wray, he's a -- he's gonna be the witness
14 this morning. He's a director of techno resources.

15 THE COURT: Okay. Very good.

16 This is the hearing in response to my order which was filed on January
17 7th. And in essence, I went through the files and I was a little bit troubled by what it
18 would take to retrieve the information that is being requested by Ms. Gray and why
19 that would be -- that would consume extraordinary effort in terms of personnel and
20 technological resources. Mr. Hoffman, I will just tell you that what my concern was
21 is that I reviewed the affidavits that were provided by Ms. Krohn and by others. And
22 it appeared to me that it would not take the extraordinary effort, but I wanted to give
23 the School District the opportunity to show why it would take extraordinary effort in
24 terms of personnel and technological resources. So with that, that is what the
25 purpose of this hearing is for.

1 In the interim, I will tell you that I received a couple of other things from
2 the Plaintiff, namely Plaintiff's Motion for Clarification and Motion for Continuance of
3 Evidentiary Hearing as well as Errata to the Plaintiff's Motion for Clarification and
4 Motion for Continuance of the hearing. These documents were filed on January 15
5 and January 16. Mr. Hoffman, did you get an opportunity to receive these?

6 MR. HOFFMAN: I did receive 'em, Your Honor.

7 THE COURT: Okay. Is this something that we should take up first?

8 MS. ROWLAND: Well, Your Honor, what I can say is the meat of our
9 complaint is that we believe the evidentiary hearing is irrelevant factually, so we just
10 want to make sure we put that on the record.

11 So, obviously Your Honor likely disagrees, so assuming we're gonna
12 proceed with hearing, I would just like to place on the record a standing objection for
13 relevancy for any evidence produced here today. The substance of that argument is
14 that in both the law and the attorney general opinion that is actually been submitted
15 by Defendants, it's clear that the extraordinary use of personnel resources applies to
16 only reproduction of a record. It's both in the definition of the statute as well as the
17 attorney general's opinion. So, from our point of view, I just have to preserve on the
18 record our standing objection that because Plaintiff here only requested to inspect
19 existing public records, we do not believe that the District should be able to present
20 evidence of extraordinary use here because any extraordinary use necessarily
21 would come from their own filing system not from the request by Plaintiff for existing
22 public records which we believe they already have a standing duty to make it
23 available.

24 So, clearly your order has anticipated this hearing, so if it's all right with
25 Your Honor -- unless you want to go further into argument which I'm happy to, we'd

1 just like to put that standing objection on the record so that I'm not interrupting the
2 proceedings if Your Honor gives me an opportunity to cross examine and object.

3 THE COURT: You will be given an opportunity to cross examine. Obviously
4 I'm very interested in the issue as you are and as everyone in this room is.

5 I will tell you, counsel, from what I reviewed and researched, it
6 appeared to me that the issue is not necessarily providing copies; it is retrieval of the
7 information. And I went through the history as you know of this chapter and that's
8 why I'm interested in what it would take to retrieve the information because frankly
9 every governmental agency can't be expected to keep their filing system such that
10 we can always retrieve every piece of information at a snap of a finger and
11 sometimes it may take extraordinary efforts. We change our technological
12 resources -- it's amazing to me almost on a monthly, weekly basis, and so
13 sometimes it takes a little bit of extraordinary effort. When I started the practice of
14 law we used -- we used cards, we used, you know, hand calendars. Well, now
15 we've got these things all computerized. And so if you were to ask me to retrieve all
16 my calendars from twenty years ago or all the list of cases I had from twenty years
17 ago, it would take some effort. Maybe today it would not, but I'm just telling you that
18 that's what my concern is, it's retrieval it's not necessarily copies.

19 MS. ROWLAND: Absolutely, Your Honor. And I think as a brief response,
20 that -- what I would say is I think there's a special irony here in that Ms. Gray could
21 go in and for a box of old fashion paper records and browse through it at her heart's
22 content and find what she needs. It's precisely because of the technology that that
23 has become impossible. So, from our point of view, it is the Clark County School
24 District's choice of how they're archiving and storing those records and perhaps
25 even in their selection of the on-line system that makes it difficult to do so, and our

1 argument is that the way the state law is written is inappropriate to pass those costs
2 on to Ms. Gray.

3 And we of course recognize the realities here; this may have happened
4 years ago for all I know the decision that made these records difficult to get. I think
5 our -- you know, from our point of view the state law trumps in terms of the
6 openness. And while there's no question that these prudential concerns are
7 incredibly difficult, what we're trying to do is provide incentives to government
8 officials to make sure that they do take these considerations into account and
9 ensure that public records are findable, searchable, and eventually inspectable.
10 And, you know, again, I think what's amazing about Ms. Gray is she really is the
11 kind of watch dog who is willing to go in and look through -- for a needle in a
12 haystack, and unfortunately the way the records have been set up electronically
13 really does prevent her from doing so. So, there's no question that it's difficult. I
14 think our argument would be the difficulty can't be passed to Ms. Gray because
15 while there's no question that technology is developing, what's crucial is that we
16 navigate that new frontier in a way that still allows meaningful access to public
17 record.

18 So obviously Your Honor is holding a hearing, that's fine. Just again for
19 the record, I'd have a standing relevancy objection to the information presented
20 here.

21 THE COURT: I appreciate your position, counsel.

22 MS. ROWLAND: Thank you very much.

23 THE COURT: All right. Mr. Hoffman?

24 MR. HOFFMAN: Thank you, Your Honor. We'll call Mr. Dan Wray.

25 THE COURT: Okay.

1 THE DEPUT MARSHAL: Sir, I need you to be sworn at the front podium right
2 there. Face the Clerk of the Court.

3 DANIEL WRAY

4 Having been called as a witness and being first duly sworn, testified as follows.

5 THE COURT CLERK: Please state your name and spell it for the record.

6 THE WITNESS: My name is Daniel Wray. I go by Dan, W-r-a-y.

7 THE DEPUTY MARSHAL: Sir, step over here, please.

8 MR. HOFFMAN: Dan, state your name and spell your last name.

9 THE WITNESS: My name is Dan Wray, W-r-a-y.

10 DIRECT EXAMINATION

11 BY MR. HOFFMAN:

12 Q Are you currently an employee of the Clark County School District?

13 A I am.

14 Q In what capacity?

15 A I'm currently the director of technical resources.

16 Q And for how long have you been so assigned?

17 A I've been in that position for nine and a half years.

18 Q What are your responsibilities in that position?

19 A The technical resources department runs the Clark County School
20 District website. We provide web posting services for schools, we also provide
21 database and programming services for various divisions within the District and we
22 operate and administer the e-mail system.

23 Q Are you generally familiar with the request for the production of e-mails
24 of trustees what was made in November of 2006?

25 A Yes.

1 Q Were you asked in November of 2006 to provide an estimate of the
2 costs to retrieve a years worth of e-mails that would have been in the trustee's e-
3 mail system?

4 A Yes. Cindy Krohn from the office of the board of trustees contacted me
5 and asked me to provide her an estimate for that retrieval.

6 Q And did you provide an estimate?

7 A I did.

8 Q And how did you arrive at your estimate?

9 A At that point in order to retrieve the information we would have to go to
10 a snapshot or backup of and have a separate server copy those billions of files to a
11 new storage array in order to do that, and I estimated that the time elapsed would be
12 for to five days and it would -- with a technician keeping an eye on that process
13 during the days because Windows has some problems copying those large amounts
14 of files. It would take approximately thirty hours of staff time to do that and complete
15 the retrieval.

16 Q So, what you're describing then is the retrieval of the universe of e-
17 mails that existed at that time?

18 A Correct.

19 Q Okay. And approximately how many hours did you anticipate that
20 would take?

21 A That -- I anticipated that would take twenty to twenty-five hours and
22 then another five hours or so, you know, give or take to extract from the universe of
23 e-mails, so to speak, the trustees mail boxes.

24 Q And who would have accomplished that task in your office?

25 A One of my -- my technical support manager.

1 Q And generally what is the per hour rate with benefits of your
2 technicians?

3 A For him it's approximately \$60.00 an hour.

4 Q So, in your affidavit that you submitted to the Court that the Court said
5 that they had reviewed, there was an estimate of there -- eighteen hundred dollars
6 and that was arrived at by the -- about thirty hours at about --

7 A About sixty, correct.

8 Q -- at about \$60 an hour?

9 A Correct.

10 Q Okay. Did there come a time after November that you are asked to re-
11 examine those -- that estimate?

12 A Yes. In January of 2007, Cindy Krohn again e-mailed me and asked
13 that I provide another estimate. I didn't know why she was asking that, but I
14 provided -- I went ahead and gave her -- revised my estimate. In the December of
15 2006 time frame we had received a request from a department where an employee
16 had inadvertently deleted a large archive of e-mail related to their department that
17 they felt was extremely important that they retrieve, so we went through this process
18 with a -- with the backup that they notified us of. I believe it was in September that
19 they realized they had deleted these files and they notified us and we went through
20 that process. Because we can't go through it during the normal workday when the
21 system is busy, we went through that during the winter break and we found out -- it
22 did take approximately four to five days, but the actual number of staff hours was a
23 little bit less so I revised my estimate at that time down to twenty hours and then
24 about another seven hours to export the various mailboxes.

25 Q And that was then at \$45.00 an hour?

1 A At \$45.00 an hour because a different technician would be able to do it.
2 Q And why was it a different technician?
3 A That different lower level technician had the skills necessary.
4 Q Because of the experience --
5 A Because of the experience --
6 Q -- that you had gotten --
7 A --that he'd -- we'd been able to train an additional member of the staff
8 and we did that in December.
9 Q You were reasonably certain of the accuracy of your estimate --
10 A Yes.
11 Q -- when you gave the second --
12 A Correct.
13 Q -- estimate. Okay. Now, fast forward then to last Friday in our
14 preparation for this hearing. Have the -- has your estimate for the cost to produce
15 this body of documents changed?
16 A Yes, it has.
17 Q Okay. And we talked about that on Friday.
18 A Um-hmm.
19 Q What has changed?
20 A In 2008 our storage array vendor where the snapshot is kept, provided
21 software that allows us to not have to make the copy of those billions of files from
22 that archive that we can point the server that we're going to use to retrieve this
23 information directly at that snapshot without having to copy it, and we were able to
24 do that in a much reduced time from my initial -- from my estimate in 2006 and early
25 2007.

1 Q So what is your estimate now of the --

2 A Approximately three hours.

3 Q Three hours. What will happen in that three hours?

4 A The technician will prepare the storage array to be able to access that
5 snapshot and then set up a server to access that snapshot, start that server up,
6 create the scripts that are necessary to export the universe of e-mail that existed at
7 the time of the snapshot and export those mailboxes.

8 Q And so when you say the mailboxes you mean the individual trustees --

9 A Correct.

10 Q -- mailboxes?

11 A Correct.

12 Q Okay. And so am I correct to say that then those individual trustee
13 mailboxes will then be -- or will now be readable?

14 A Correct. They will then be on an on-line state on a separate server
15 where they can be -- they could then be accessed and exported.

16 Q And so for example when you say exported, you could forward the files
17 of the --

18 A The individual e-mail messages --

19 Q -- of the --

20 A -- etcetera --

21 Q So, you could --

22 A -- could then be exported to a cd as a text file or, you know, move to
23 your mailbox, etcetera.

24 Q So you could actually send a trustees mailbox from that time to me and
25 then I could look at it on my computer?

1 A Correct. That is correct.

2 Q Or you could put it on a cd and it could be given to anyone who has the
3 right software and would be able to read it?

4 A It'd be a text file, so any, you know, text process or word processor
5 would be able to open those files.

6 Q And so your estimate now is -- is it correct to say your estimate now is
7 about three hours at about \$45.00?

8 A Correct. Plus the effort to actually export the individual mailboxes
9 which depending on the size of the mailboxes, the format that we're gonna export it
10 to could take, you know, approximately up to an hour per mailbox.

11 Q Okay.

12 MR. HOFFMAN: All right, I'll pass the witness.

13 THE COURT: Okay. Before we hear from counsel for the ACLU and Ms.
14 Gray, I'm gonna ask you to do something for me and talk a little bit more in
15 English.

16 THE WITNESS: I will try.

17 THE COURT: Now, don't get me wrong, I understand a lot of what you're
18 saying, but I will tell you where my rub was. I reviewed all these -- the evidence that
19 was presented to me and it appeared that e-mails could be retrieved from your
20 system very similarly as I could retrieve information and e-mails from my system,
21 meaning that if I were -- and I get about a hundred e-mails a day as probably you
22 do, Mr. Hoffman, everyone in this room probably does, but if I needed to find an e-
23 mail from five months ago, a year ago, I would hit the -- plug in what I needed, hit
24 the find feature and it would pull up like all the e-mails that I may have received from
25 Dan Wray. Is -- that was what my problem was as far as why it would take, you

1 know, twenty to twenty-five hours because I would be able to pull up all that
2 information and all the e-mails I may have received from anyone. So, can you
3 explain how that -- how your system works maybe in conjunction a regular PC or -- a
4 personal computer?

5 THE WITNESS: Yes, Your Honor. What we had done -- what we had done
6 there is in the course of events, I was notified in February of 2007 when -- it was my
7 understanding that Ms. Gray went to the school board and said that she wanted to
8 get this information. It's my understanding that Shirley Barber then made that
9 request and at that point Mr. Hoffman said you need to make sure you preserve the
10 mailboxes at that point. So we did, we took a snapshot as the system existed that
11 day. We believe the date was February 23, 2007 and preserved that, okay? Since
12 then time -- as time marches on, you know, people add, delete the system. It has
13 an auto expiry -- the default expiry for messages is ninety days, so those messages
14 could have easily been deleted in that -- in the intervening time.

15 So, in order to get the system as it existed on the date I was told to
16 preserve the evidence, we have to go back to that backup. It's not in an on-line
17 state that I can search and that's why you can't use the on-line -- the -- if you say
18 Mr. Wray, I want to see your e-mails today, yes, you could use and search, you
19 know, any e-mails that are in my mailbox as it exists today, January 23, 2009, but if
20 you wanted to say I want to look at your mailbox as it existed on February 23, 2007,
21 I have to restore the system as it existed on that day because I add -- receive e-
22 mail, I delete e-mail, e-mail expires, etcetera.

23 THE COURT: All right. Thank you.

24 BY MR. HOFFMAN:

25 Q And this was also a look back for a years period of time, right? And

1 what's the automatic delete --

2 A The system default expiry is for ninety days.

3 Q So, the user -- as the Judge was saying, the user would have ninety
4 days of e-mails --

5 A Correct.

6 Q -- but the other e-mails would be in the system or --

7 A Or would potentially be out of the system.

8 Q Or out of the system. They might be gone.

9 THE COURT: Well, they'd be archived on a backup, correct?

10 THE WITNESS: Backups are maintained on a three week cycle for us as --
11 with the amount of data -- so we have a three week back up, and after the backups
12 had been overwritten etcetera, that data is gone.

13 THE COURT: Okay.

14 BY MR. HOFFMAN:

15 Q So the -- so the effect of seizing the information on the 23rd of February
16 2007 was to make sure that there was no more attrition of the data?

17 A Correct.

18 MR. HOFFMAN: Okay. Pass the witness.

19 THE COURT: All right. Thank you.

20 Counsel, cross?

21 MS. ROWLAND: Thank you, Your Honor.

22 **CROSS EXAMINATION**

23 BY MS. ROWLAND:

24 Q Hello, Mr. Wray, my name is Lee Rowland, I'm representing the Plaintiff
25 Karen Gray and I'm obviously not a technical expert that's why I went to law school.

1 So, if I ask any nonsensical questions just let know if you don't understand anything
2 I ask.

3 The first questions I have are just broader about how one might access
4 your system on a smaller scale. I know here we're talking about Ms. Gray's request
5 which was a full year as you testified. Let's say I wanted to ask for a particular e-
6 mail that came on August 15th from a certain person to a certain person, how would
7 your staff handle that request?

8 A To begin with, if we had received a subpoena for that data we would
9 look in the current system and see if, you know, as it existed right -- you know,
10 today, look in the person's mailbox and see if the message was there.

11 Q Okay. About how long would that take do you think?

12 A That would -- you know, depending on, you know, the size of the
13 person's mailbox and sorting it, it'd probably take about a half an hour.

14 Q It would take about a half and hour. Would you consider that an
15 extraordinary use of resources?

16 A For one message, you know, probably not.

17 Q Probably not. Okay. Now, alternatively let's say I knew an e-mail
18 existed from a person to another individual and I knew the time frame but I didn't
19 know exactly or precisely when it was sent. Let's say I have a week range and I'm
20 looking for an e-mail to this person and this person about certain topic and I ask you
21 for that, what would that process look like?

22 A Again, in the existing system, that would probably take roughly thirty to
23 forty minutes.

24 Q Okay. Now, is there a list anywhere available to the public that
25 describes metadata, metadata being the subject line, the to/from line, the header,

1 the subject line that would enable them to say narrow their requests?

2 A That is in the system and they can -- it can be searched by that
3 information, yes.

4 Q Can it be searched by members of the public?

5 A No.

6 Q No. Because that system isn't segregated between public and non-
7 public records --

8 A Correct.

9 Q -- is that correct? So, is there any way for a member of the public to
10 search public records on your system?

11 A To search the system as, you know, as -- if it has a message that has
12 been flagged as a public record that's accessible to the public?

13 Q Right.

14 A No.

15 Q Okay. Are you aware by the way of state guidance from the attorney
16 general's office as to how public entities are ideally supposed to structure electronic
17 records for retention?

18 A We have the information from the Clark County School District. I
19 believe it's regulation 3621 that I'm familiar with, yes.

20 Q Okay. Are you aware that the model policies actually do suggest that
21 employees do precisely that which is flag what they consider to be public records?

22 A Yes, I am aware of that.

23 Q And the District has not yet adopted a policy like that?

24 A I believe the District has adopted -- I believe it was May 2008 that the
25 last revision of regulation 3621 tells employees that they are -- it's the employees

1 responsibility for maintaining and keeping a copy of those items that are public
2 record; either printing them or maintaining them in a -- an appropriate electronic
3 format, but as the attorney general -- state archivist had said there's real no
4 standard for electronic at this current time.

5 Q Sure. But, it's suffice to say you guys don't have a central kind of
6 separate public records database of any kind?

7 A I am not aware of that.

8 Q Okay. And there's also, as you said, no way for the public to access
9 the metadata and kind of narrow -- if I had this idea of this e-mail but I'm not sure
10 exactly what date it was sent, there's no way for the public to kind of browse in the
11 system to figure out how to request that?

12 A Not to just browse through it, no.

13 Q Okay. Is there any way for a member of the public that you can think of
14 to identify without incurring extraordinary resources to find a public record if they
15 don't know the date of the e-mail?

16 A If they don't know the date of the e-mail it depends on whether or not
17 it's a -- something that's in the relative reason that we would be expected to still be
18 in the person's mailbox or it was something, you know, much older that would not
19 necessarily be expected to be in the individual's mailbox so --

20 Q Okay. So if the member of the public knew exactly what document
21 they're looking for and that it already exists and they're coming to you knowing
22 exactly what they want, that you're telling me is probably maybe a half hour request
23 assuming it's fairly narrow in breath and not what you would consider extraordinary?

24 A And assuming with the expectation was -- that it was still on the system.

25 Q Right. So even if somebody asked for something specific, that's it's a

1 possibility it could be stored in such a way that it would take extraordinary
2 resources?

3 A Yes.

4 Q Okay. Even if the person just wanted to look at it, right, as opposed to
5 say receive a paper -- a hard file of that there's no way for the public to look at it
6 without the hard copy, is that correct?

7 A Correct.

8 Q Is there a way for a member of the public to look at any electronic
9 record without a hard copy being made?

10 A I don't -- I'm not responsible for all of those various systems, so I don't
11 know that I would be the proper one to answer.

12 Q To your knowledge -- in your department anyway, there's not say a
13 public computer terminal where members of the public can view electronic records?

14 A Not to access the e-mail system --

15 Q Okay.

16 A -- correct.

17 Q So, it's fair to say that any requests to inspect an electronic record does
18 require a copy to your -- to the best of your knowledge?

19 A Any electronic record, I don't know, with regards to the e-mail system.

20 Q E-mail. Okay, I'll restrict it to e-mail. So, with respect to e-mail you'd
21 say that's a --

22 A There's --

23 Q -- that's a fair characterization?

24 A Because it is a -- you have -- have to be authenticated, you have to
25 have the user id and a password and an account on the system knowing any

1 member of the public couldn't come through and, you know, let me see all the public
2 records that happened to exist in everybody's e-mail box or even a certain person's
3 e-mail box --

4 Q Sure.

5 A -- should know that does -- there's no -- not a public terminal for that.

6 Q Okay. And before I think I said if I give a date range of a week it might
7 take you forty minutes, I think you said, is that true?

8 A And that is assuming that it was expected that it's in the current live
9 system that you -- I would then be able to search the live system as it exists. At that
10 time I would be able, you know, probably do your search and find out if it was there
11 or not and be relatively certain -- the results of that within a half hour.

12 Q What would you guess would be the average kind of safe time for
13 something to be in the active system?

14 THE COURT: Okay. I don't want guess.

15 MS. ROWLAND: Okay.

16 THE COURT: Estimate -- you can give an estimate.

17 BY MS. ROWLAND:

18 Q What would you -- yeah, what would you estimate would be about the
19 amount of time that one could search on the active live system?

20 A Well, as I stated before, the default expiration time for e-mail messages
21 on the system is ninety days.

22 Q So, three months?

23 A Correct.

24 Q So, if I were looking for a public document and I knew precisely what it
25 was and it was four months old, you guys would have to go into the older back up

1 system to retrieve that?

2 A Yes.

3 Q And how long would that take approximately?

4 A Then that is -- as I testified earlier, you know, in 2006 that would have
5 taken about twenty hours to restore --

6 Q Right.

7 A -- from that backup. Now that process is significantly reduced, it would
8 take about three hours.

9 Q So, it would take three hours whether I was looking for a particular
10 document or whether I was looking for an entire year's worth of documents?

11 A I would be restoring the entire universe of e-mail as it existed on that
12 date. Then you would be -- then working to -- if you knew the user etcetera, you'd
13 be able to get that, if you were searching for -- again, the e-mails are not flagged
14 with a checkmark that said this is public record.

15 Q Right.

16 A So -- and we're not required to do that and there is no requirement that
17 it be marked in the e-mail system, it's the employee's responsibility according to the
18 regulations to keep copies of documents that are public record.

19 Q Okay. So, with respect to -- let's say I want a contract that's five
20 months old and it's gonna take three hours because it's gonna require the snapshot,
21 is that something generally that you would term as extraordinary?

22 A That probably wouldn't be coming out of the e-mail system to begin with
23 --

24 Q Okay.

25 A -- they were probably purchasing, and they maintain their contracts on a

1 separate system. But through an e-mail system and it was five months old, the
2 likelihood that that -- you know, the first thing we would do it check and see what the
3 user's expiration period was. Did they have the default -- or have they set their
4 expiration to never or one year, or what have they individually done? Because that
5 is a user decision --

6 Q Okay.

7 A -- that they would -- and if it was a longer period we'd probably just go
8 through the normal process of searching that. If it wasn't then we'd be going back to
9 the backups in which case it would be an extraordinary.

10 Q Okay. So it's fair to say that pretty much any request that's older than
11 three months old for a public e-mail -- a public record e-mail could involve an
12 extraordinary use?

13 A It could.

14 Q Okay.

15 A It would depend on the individual circumstance.

16 Q Okay. But there's a possibility you might be charging the member of
17 the public for extraordinary use in any case where say they're requesting a single
18 public document that's four months old?

19 A If it was in the e-mail system and older than ninety days and that user --
20 you know, I -- there's lots of ands there.

21 Q Sure. Sure. But all I was asking is that there's always a possibility --

22 A There is that possibility.

23 Q -- that it could require the extraordinary use after that point.

24 A There's also a possibility that the user may have deleted it inadvertently
25 even within the ninety days.

1 Q Sure. Okay. Now, so you mentioned when you're taking a snapshot,
2 now whether you do it for the full year period as you were talking about Ms. Gray's
3 request or whether you're looking for my hypothetical four month old contract, that
4 snapshot now takes about the same amount of time, is the three hours --

5 A Correct.

6 Q -- as you estimated? So then after that, the additional looking through
7 to find the particulars of what a person has requested, for instance Ms. Gray, that's
8 the second part of that --

9 A Correct.

10 Q -- technological? Okay. And when you gave your estimate, did you
11 choose the lowest pay grade available that you had employees --

12 A The lowest pay grade of the person who was trained to do the work --

13 Q Who was trained to do so. Okay.

14 A -- and that -- and then into the January time frame when I revised that I
15 chose the new lowest employee who was trained to do that.

16 Q Okay. So, for instance, administrative computer services specialists or
17 computer systems specialists, those are not employees that are trained to do this --

18 A Correct.

19 Q -- kind of search? Okay. Can I ask how many employees you have in
20 your department by the way?

21 A There are a total of thirteen employees in my department. Amongst the
22 various responsibilities we have -- that work with the e-mail system there's four.

23 Q Now, you've said that the default set up for folks to delete their
24 materials is ninety days, are you able to instruct users that that period should be
25 longer, set the default longer?

1 A We could set --
2 Q You could.
3 A -- the default longer.
4 Q And with respect to deletions, have employees been notified that they
5 should not be deleting potentially public e-mails? That's part of the regulation --
6 A Part of the regulation --
7 Q -- we went though earlier.
8 A -- correct.
9 Q Okay. Are you aware of any available software that would bring that
10 three hour time down to something --
11 A That new --
12 Q -- significantly less?
13 A -- software released by the storage vendor, you know, cut it from twenty
14 -- a twenty hour process down to a three hour process. I'm not aware of anything
15 that would, you know, simplify that further at this time.
16 Q So as a far as you know, that's fairly cutting edge in terms of
17 information retrieved?
18 A Yeah, it's a 2008 released software from the vendor which we were
19 very excited to see it was made available to us.
20 Q Okay. And are you aware of any special protocol regarding Ms. Gray in
21 particular or her requests for public records?
22 A No.
23 Q No. You haven't been asked to process those --
24 A No.
25 Q -- differently at all? Okay. So, just to make sure I'm understanding, as

1 a general matter -- just to wrap up, with respect to finding things in the system, if
2 somebody doesn't know the specifics of a document they know the general -- pretty
3 much that's always gonna involve a snapshot search, is that correct?

4 A Because that --

5 Q They're gonna need the time span.

6 A The possibility is that they don't know when; it could be four years ago,
7 two years ago, it could have been yesterday, you know, it's gonna require
8 something -- a snapshot to pull back that information that may not be in the system
9 any longer.

10 Q So, pretty much any time you're -- well, every time you're pulling a
11 snapshot is an extraordinary use --

12 A Yes.

13 Q -- right? And so any time a member of the public doesn't precisely
14 know how to identify the existing public record, it's an extraordinary use?

15 A No, I wouldn't necessary agree with that. I -- be --

16 Q Any -- is it -- can I revise and say any time the member of the public is
17 looking for something in a certain time span that is not time specific that's gonna
18 require a snapshot that's extraordinary use?

19 A Potentially.

20 Q Okay. And as you noted, there is no publically available list or way for
21 the public to access the records --

22 A To browse --

23 Q -- so they can --

24 A -- through --

25 Q -- narrow down requests?

1 A -- public records and the e-mail system, no.

2 Q Okay. Thank you very much.

3 MS. ROWLAND: Thank you, Your Honor.

4 THE COURT: Uh-hmm. Redirect?

5 MR. HOFFMAN: Thank you, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MR. HOFFMAN:

8 Q Mr. Wray, are all e-mails public records?

9 A No, they are not. By the regulation I believe there are four types. And
10 you'll have to help me; I can normally get three of the four. Duplicate records,
11 transitory, of course public record, and then I always forget the fourth one.

12 Q Are personal e-mails public --

13 A Personal e-mails.

14 Q -- records?

15 A No.

16 Q So those are the four categories.

17 A Okay.

18 Q There was a question about whether or not there are any public records
19 on-line. In fact, the Clark County School District website has public records on-line.

20 A Lots of public records that are on-line and perusable by the public.
21 Policies and regulations, a variety of documents that are a matter of public record
22 that are on-line.

23 Q Agendas --

24 A Absolutely.

25 Q -- minutes of meetings --

1 A Minutes of meetings.

2 Q -- school information.

3 A Correct.

4 Q You said the regulation requires that the employee maintain their own
5 personal records. Why don't you maintain everybody's personal records?

6 A I wouldn't necessarily -- A; I don't necessarily have the time to browse
7 40,000 e-mail boxes to know what is -- what is -- if that was a public record because
8 it may be a duplicate of a paper contract. And then it's not the public record, the
9 paper contract is the public record. It's not within my department's purview to, a;
10 establish that or to keep track of those things.

11 Q So for example, a contract for the purchase of textbooks would be
12 maintained by the purchasing department?

13 A Correct.

14 Q And e-mails related to that that were a public record would be
15 maintained by the purchasing department.

16 A By the purchasing department.

17 Q And if there was a question about school construction, they'd maintain
18 their own public records?

19 A Correct.

20 Q And there was -- a question just to make sure it's clear, maybe I
21 misheard counsel, but you don't instruct anybody as to the period of time --

22 A No, I do not.

23 Q -- for the retention of e-mails?

24 A There is a default on the system but users can change that. And there
25 are instructions on our system about how they can do that, how they can change

1 their -- the default expiry period for mailboxes.

2 THE COURT: And just, Mr. Wray, just so that I'm clear, the purpose of the
3 default is to basically archive the information so that it makes the system run
4 smoother and faster?

5 THE WITNESS: And proper use of -- the proper and, you know, non-
6 excessive use of resources as data -- you know, in the technology world as we say
7 data expands to fill all available space which is why we get new computers every
8 year or every month or every month it seems like. And so we have those things in
9 place to, you know, maintain proper utilization of the resource.

10 THE COURT: All right. Anything further, counsel?

11 MS. ROWLAND: Can I ask one more question, Your Honor?

12 THE COURT: Sure.

13 **RECROSS EXAMINATION**

14 BY MS. ROWLAND:

15 Q You just mentioned that one of the difficulties in separating the records
16 is that some of them are personal e-mails, is that correct?

17 A Yes.

18 Q Okay. This is on a public system that's funded by the tax payers, is that
19 correct?

20 A Yes. The system is actually -- the licenses for the software are actually
21 paid for by the public education foundation, but the District provides the resources
22 for the computers and the personnel who operate it.

23 Q Okay. Would it be possible to instruct, say, members of the boards of
24 trustees that they should not be using their work e-mail for personal e-mails that
25 they wouldn't want potentially made public?

1 A I -- it wouldn't be my responsibility to do that, but absolutely they could
2 be notified of that.

3 Q And are you aware of any disclaimer or notice to those employees that
4 such e-mails might be made public by virtue of being on a --

5 A That --

6 Q -- public system?

7 A Part of our acceptable use policy says that while it is not our intention to
8 disclose e-mails or the system administrators to disclose e-mails -- obviously we
9 have access in the operations system but it's not out intention to, but when required
10 by, you know, correctly a little authority, we will release them as part of, you know,
11 any court order or, you know, proper release of the e-mails, yes.

12 Q But would it be accurate to say that the increased volume of personal
13 e-mails makes finding the public records more difficult for you?

14 A Incidental personal use is allowed, it's part of our acceptable use policy.
15 But again, is it -- it is incidental and employees for example in a legislative session,
16 employees are encouraged to use their personal e-mail accounts if they have them
17 to contact their legislature. So, if they don't have them, they -- after work hours as
18 part of incidental personal use, they could e-mail a legislator, you know, with regards
19 to their -- and just like telephones, employees don't always have control over who e-
20 mails them, you know, grandma, you know, people find out people's e-mail
21 addresses. And it's not solicited but people send them, they send them jokes, they
22 send them -- it's -- if one of us hasn't done that or received one of those, wonderful,
23 you know, spam happens.

24 Q Even from my co-workers --

25 A Yes.

1 Q -- frankly, Mr. Wray.

2 MS. ROWLAND: Thank you so much, Mr. Wray. Thank you, Your Honor.

3 THE COURT: Okay. Sir, you may step down.

4 MR. HOFFMAN: Just --

5 THE COURT: Oh, I'm sorry. Yes.

6 MR. HOFFMAN: Just one more inquiry just to make -- just to make it clear.

7 **FURTHER DIRECT EXAMINATION**

8 BY MR. HOFFMAN:

9 Q the District's acceptable use policy and the acceptable use policy is that
10 policy that describes how the e-mail system and technology is used. The District's
11 acceptable use policy allows the use of the District e-mail for personal use --

12 A Section.

13 Q -- on a not to interfere basis?

14 A Correct. Section J; incidental personal use, correct.

15 Q Okay.

16 MR. HOFFMAN: Thank you, Your Honor.

17 THE COURT: All right. Sir, you may step down.

18 Any further witnesses?

19 MR. HOFFMAN: No, that's all.

20 THE COURT: Okay. Would counsel like to say anything further?

21 MR. HOFFMAN: Well, it -- it works out that the District's estimate is \$135.00
22 for the retrieval of that information.

23 THE COURT: Would you agree that's not really an extraordinary cost or use
24 of personnel and technical --

25 MR. HOFFMAN: I absolutely would not, Your Honor. I completely disagree

1 that that's not an extraordinary use. The -- and in fact, I provided an attorney
2 general's opinion that opined that thirty minutes was an extraordinary use.

3 Imagine that the four individuals in Mr. Wray's department faced with a
4 series of requests each of which took three hours, that's gonna shut down that
5 system and I strongly argue and urge the Court to find that at three hours is an
6 extraordinary use. These are public employees whose responsibility is to provide
7 public education. And if the -- if a citizen wants to have access to the information,
8 they absolutely can have access to the information but they need to pay for it. And
9 that's -- we believe that's what the law requires.

10 THE COURT: What is your position about personal e-mails on the system?
11 Or is -- is that a public record?

12 MR. HOFFMAN: Oh no, no. And the next question that we're gonna have to
13 get to, Your Honor, if -- assuming that the \$135.00 appears and assuming that's the
14 Court's order and that that's an extraordinary use and we believe it is, then the next
15 problem is gonna be -- we're gonna have the e-mail boxes for a year -- for the
16 trustees, and we're gonna have to go through those. I think what we'll do is we'll put
17 those on to a computer so that they can be read electronically then we're going to
18 have to identify which of those are public records, personal e-mails are not. We
19 believe transitory e-mails are not, and there are other categories of e-mails that are
20 just informational. Are you gonna be at the meeting tomorrow, that sort of thing.
21 We don't believe that those are public records that are required to be retained;
22 you're not required by any set of rules to put those in a file and keep 'em some
23 place, so we don't think they're public record. So that's one issue that goes on.

24 Then after we've identified those public records, then we need to
25 identify which of those public records contains confidential information. If they --

1 THE COURT: And I've already made my ruling on that issue as you know.

2 MR. HOFFMAN: That's right. And I -- but what I wanted to say was then
3 those confidential records are going to have to be printed off, copied from the
4 computer to a hard copy so that the information that's confidential can be redacted
5 which is what the state law now requires. It didn't require it then but it does now.
6 And those copies then would have to be redacted and then that copy would have to
7 be made because we couldn't change the electronic -- the electronic version
8 because that's the original version.

9 THE COURT: Right.

10 MR. HOFFMAN: I suspect that there going to be some disagreements if
11 we're asked to produce those records on number one; what's a public record? And
12 number two; what constitutes confidential information? Now, we believe that that's a
13 matter that's left to the discretion of the District. There are records or there are
14 documents and we are allowed to make the decision as to what is required to be
15 retained by the retention schedule that the District has. The same regulation that
16 Mr. Wray referred to, we have to retain those documents. And how do we handle
17 those confidential copies that we're not gonna get paid for? Those are issues that
18 are -- that also need to be resolved. But since we haven't done the work yet
19 because we haven't been paid for the work, we don't know what's in there, we don't
20 know what effort of work it is.

21 If there are eighteen hundred e-mails and each e-mail takes a minute,
22 that will take thirty hours for somebody to review all of those. Assuming there are no
23 attachments -- and I'm sure there are attachments which all have to be reviewed
24 and then the extra time to download and everything, that also is an extraordinary
25 use of personnel. And we understood -- we understand that -- the Court's decision,

1 we disagree with it, but we understand it.

2 THE COURT: Well, there are --

3 MR. HOFFMAN: I just wanted to give you that information.

4 THE COURT: And, counsel, I will say that there's seven wise one's that
5 would probably be very anxious to hear what your position is, and I understand your
6 position.

7 It is -- with respect to the records that are not produced, it is -- from
8 what I've read of the statutes and the cases, it is the District's burden to indicate why
9 it should not be produced and I would anticipate that there's gonna be a log with
10 respect to items that are not produced. For example -- and I think we used this the
11 last time, if there are e-mails that are -- within the purview of the attorney/client
12 privilege, you may be producing a log to Ms. Gray indicating that those records,
13 those e-mails are not being produced because it is protected by that. But, it is up to
14 the District to -- it is the burden of the District to indicate why it is not producing it.
15 And it doesn't have to be a log, obviously it could be something else but they have
16 to give the reason why.

17 MR. HOFFMAN: I agree the law requires that as to confidential records, but it
18 doesn't as to the threshold question of whether it's a public record. You see, that's
19 gonna be -- we anticipate that's gonna be an issue that it's gonna be difficult to deal
20 with.

21 THE COURT: Let me ask you this, Mr. Hoffman. According to the statute, it
22 indicates that a public record is defined by something being created, kept, and paid
23 for by the governmental entity. You brought up something intriguing. In my view, is
24 why aren't transitory e-mails then public records? And I know other states have a
25 different view, but why aren't personal e-mails, jokes, spam, that are created, kept,

1 and paid for by the District, why aren't those public records?

2 MR. HOFFMAN: They're not public records because they're not records. The
3 definition is records which are created and maintained as you said. There are also
4 other definitions in the statute that define for example what a non-record is. Believe
5 it or not, there's a statute that says a non-record is and it says for example
6 memoranda, informal memoranda are not public records. And we're prepared to
7 argue that, I don't think we should do it in a vacuum because we don't have any
8 cases to point or any e-mails to point to. But, one of the findings of the Court in your
9 order was is that the District has conceded that all of these documents were e-mails
10 -- or all these documents were public records, all these e-mails were public record.
11 That clearly is not the case, we don't concede that. And your finding of fact number
12 five highlights that the system has both private and public documents and so I just
13 wanted to lay that out.

14 But, this question of what constitute -- what e-mails constitutes a public
15 record is an important issue. I can tell you just as an offer of proof that we talked
16 with the state archivist who has -- who has looked in to this issue. And in fact the
17 same document that counsel referred to as far as the state's retention plan, is the
18 model that the District used for its retention plan and how you deal with e-mails.
19 And you have that evidence before you, it's regulation 36.1 and it describes --

20 THE COURT: I do.

21 MR. HOFFMAN: -- what Mr. Wray described about things that are not public
22 records. That was not original thinking when the -- it was drafted, that was based
23 upon the state archivist decision, and we've actually talked to him and we would be
24 willing to call him as a witness and have him explain this question of public records if
25 we get to that point. And we're happy to do that because it's an important issue too.

1 We don't think that everything -- for example, the notes that I have taken here -- or
2 the notes that Mr. Wray took during this meeting -- if he did take any notes, would
3 not be public records, those are his personal notes. Telephone memoranda or
4 telephone notes, just because they were created during business by a person who's
5 getting paid by the District that doesn't create a public record, is just creates a piece
6 of paper.

7 In litigation the Court is well aware that any e-mail could be discovered
8 in order to pursue additional information that might be there. If we were litigating
9 about a construction contract which I think you do in here, if --

10 THE COURT: Regularly.

11 MR. HOFFMAN: I know. And in that situation the e-mail -- the request for the
12 e-mails of the CEO to the CFO about a particular issue clearly would be
13 discoverable evidence. It would be burdensome, it would be very difficult maybe but
14 it is what it is, and that's -- I agree that that would be discoverable.

15 That's not what the question is here. The question here is not what's
16 discoverable; the question is what is a [indecipherable] public record? And we think
17 that very few of those e-mails are going to be public records, but we need to look at
18 'em and we'll give the Court our opinion if we're asked to.

19 THE COURT: Just out of curiosity and to help the Court, what statute or what
20 Nevada administrative code defines non-public records?

21 MR. HOFFMAN: It's a non-record is what --

22 THE COURT: A non-record.

23 MR. HOFFMAN: -- it is. Let me see if I brought it, Your Honor.

24 THE COURT: If not I'll look it up. I -- we've been doing a lot of research on
25 our end as well.

1 MR. HOFFMAN: It is NAC 239.051. And we are prepared to brief this
2 question if the Court -- if the Court wants to look at it. As I said, it's hard to do it in a
3 vacuum because we don't know what we're gonna find, but we're sure we're gonna
4 find some personal e-mails, we're sure we're gonna find some stuff that maybe for
5 example somebody saying to the trustee, are you gonna be at the meeting tonight --

6 THE COURT: Which is a transitory. But I will tell you that I was intrigued by
7 your statement that that would not be a public record when it might be. I haven't
8 even thought about that one but -- because face it, we get text messages, we get e-
9 mails that may have just yes, no, you know, one word.

10 MR. HOFFMAN: I think that the definition of public records which is not well
11 established in Nevada there's no question about that, that's why we're arguing about
12 it --

13 THE COURT: Right.

14 MR. HOFFMAN: -- but we think the public record is something more than just
15 everything that's produced by a public employee which is -- which is pretty much
16 what that one definition that you talked about said. We think that a public record is
17 something that records the activities of the business; it'd be like a business record.
18 How do you lay the foundation for a business record? Well, it's a record that's
19 maintained in the normal course of business. Well, the question whether or not
20 you're going to the meeting tonight in an e-mail is not something that's maintained in
21 the regular course of business. And if it's a public record then where is the retention
22 schedule? What's the logic behind retaining a document that is just informational?
23 I'll see you at the meeting or let's have lunch or, you know, the meeting went so long
24 last night, all of those sorts of things. How can that be -- how would you retain that
25 so that Ms. Gray could search it? And why would you? Why would the government

1 spend any effort, any time and money to file alphabetically by date a bunch of that
2 kind of stuff? You're not gonna do it.

3 What our regulation says is that the e-mail system is another way to
4 communicate and you -- the user, for example, a legal office or the purchasing office
5 or the construction office or the -- whatever it is, they are responsible for recognizing
6 what's a public record that needs to be downloaded and put into the paper file or
7 taken electronically and put into an electronic file. And we all have that
8 responsibility, that's what the regulation says. So, the stuff that doesn't get pulled
9 out of the e-mail and put some place is gonna disappear because it's not a public
10 record. There's no duty to retain it, there's no duty to maintain it, it just is there, it's
11 just a new form of communication.

12 THE COURT: Okay. Thank you.

13 MS. ROWLAND: Thank you, Your Honor.

14 From my point of view, there's no question that making all public
15 records available to the public is difficult and costly and mandatory. And so I think
16 one of the problems in this case is that there's no question that the law is onerous
17 for the School District because of the number of records they produce. That doesn't
18 change the text of the law. And I think what was most striking about Mr. Wray's
19 testimony is that they acknowledge that there is absolutely no way for a member of
20 the public to browse or to identify records that they don't already know exist, and
21 that's not much in a way of meaningful public oversight.

22 What they did state is that in order to receive any of those records that
23 a copy would have to be made because there is no ability to look in that record
24 electronically, and almost anything over three months could potentially be an
25 extraordinary use and anything where you don't know precisely the time can

1 potentially be an extraordinary use. I am pretty positive that when you look at those
2 statutes that's not what the legislature intended. And when you look at the
3 examples in the legislative history as you yourself cited in the opinion, the types of
4 things that they are contemplating are when people are asking for things in a certain
5 format or requiring a program to be written to put out a certain output of public
6 records, and that's exactly the opposite of what we have in this case. Ms. Gray
7 literally just requested public records. And now we've got --

8 THE COURT: Or, counsel, if -- in fact, one thing that I was thinking about
9 back in the paper record purview, if the School District, you know, of course boxed
10 up their paper records and it was stored in a warehouse --

11 MS. ROWLAND: Um-hmm.

12 THE COURT: -- located in the abyss, in, you know, Area 51, that might be an
13 extraordinary effort to go get that -- retrieve that information to make it available for
14 Ms. Gray.

15 MS. ROWLAND: It could be, but I think the Court's would have look at the
16 balancing tests and the statute and say it always comes out on the side of public
17 records. And frankly, I think the answer would be if the School District chooses to
18 put its warehouse in Area 51 and it makes every request or a public record an
19 extraordinary use, guess what? You can't charge the public for that. And
20 unfortunately that's exactly what we're looking at; we're looking at an electronic
21 version of Area 51. It may be current technology, they may be doing it in good faith,
22 but it's not enough to meet the mandate of the public records law. And basically we
23 know that the snapshots can be taken of any period of time, so there's no question
24 for one -- just offhand, I'm not a tech specialist, but snapshots should be taken of
25 the -- however many years are available and those should be stored somewhere so

1 that when somebody comes up and ask for a public document they don't have to go
2 in and require somebody to do a snapshot for them but you have existing snapshots
3 that are searchable, and that only gives you kind of second half of the tech
4 assessment to do.

5 But I think more importantly, is the fact that there is no way for a
6 member of the public to browse these documents without a hard copy. And the
7 law -- 239.0501 is -- literally includes the words: The term does not include actual
8 cost, it does not include any costs that the public entity incurs regardless of whether
9 or not a person requests a copy of the record. You know, we literally quoted that I
10 think -- and I apologize for being redundant, twenty times in our briefs because I
11 really think that sentence is the key to this case.

12 You also can't charge if someone else would request the same record,
13 right? So, Ms. Gray is asking for public records and this may be the first time
14 they've had to produce these, but if I came next week and asked for the same
15 records it would already be produced. So they can't take all that cost, make it
16 fungible and pass it on to Ms. Gray because right now what -- we've got a system is
17 where as Your Honor has we believe rightly held, they can't pass the cost on of
18 segregating attorney/client privilege and not -- and confidential and not to the public,
19 but they are attempting to pass on the cost of segregating public record from non-
20 public record to the public. And I think the statute of 239.010, the original public
21 record statute is so crystal clear, it says they must be available at all times for
22 inspection by the public. That's clearly not what's going on here. I don't even know
23 if that's physically possible, but clearly the second best thing is when someone first
24 requests those public records you make them available and it may take a while.
25 And, you know, all the public records statute says is you have to give them notice in

1 a few days of how long it's gonna take. This is not a case where Ms. Gray said I
2 want this this week. It may be difficult but those are public records, they have a pre-
3 existing duty to make available for inspection.

4 So, from our point of view is we've argued all along, the fact that it takes
5 them a long time to get to Area 51 whether that's metaphorical or electronic or
6 whatever, that's not Ms. Gray's problem. And we understand it's a problem, it's
7 difficult, but the point is we have to recognize the law and we have to provide correct
8 incentives to government to make sure that that's a real consideration for them that
9 instead of perhaps allowing employees to do it themselves, that they create strict
10 regulations, that they tell people to cut down on personal e-mails at work, that they
11 tell people to auto-segregate e-mails that are clearly public records. And frankly
12 under the AG opinions that have been included in the record for you, it's clear that
13 the Donrey balancing test is -- if we're getting into what a public record is, that the
14 Donrey balancing test is very clear that the burden -- or rather -- I'm sorry, that the
15 default is that it should be public, that any --

16 THE COURT: How about the test on -- in DR Partners? Is that --

17 MS. ROWLAND: Yeah --

18 THE COURT: -- what your --

19 MS. ROWLAND: -- actually it's in the Donrey case I'm looking at here. DR
20 Partners does allude to Donrey, but I'm specifically alluding right now to Attorney
21 General Opinion 2002-32. And in that they note, quote: Under the Donrey
22 balancing test a governmental record, meaning any record creating -- created by a
23 governmental system; will be deemed to be public unless the public interest and
24 disclosure is outweighed by the public interest and non-disclosure. Under those I
25 would argue that a transitory e-mail is clearly a public e-mail because there's no

1 public interest in not having it revealed who's meeting who for lunch. Number one;
2 that might for instance, evince some alliances that are relevant to the public. And
3 number two; they're at work. We shouldn't forget that; these are folks who are at
4 work, on their work e-mails and their work systems. And frankly if a troubling
5 percentage of those e-mails, we have a public interest in non-disclosing them
6 because of a private nature of the e-mail, that's a problem.

7 And so the fact that there are too many personal e-mails on the system
8 where that figuring out a public e-mail is too difficult, those simply cannot be
9 arguments as to why Ms. Gray is not entitled to receive those public documents for
10 inspection once they they're determine to be public. And in the question of what a
11 public record is is a little bit of a red herring in this case because Ms. Gray asked for
12 public records. It's a bit tautological, but she was looking for a record. She didn't
13 know the date of it, she had a feeling these records existed and what she's trying to
14 actually do is trying to provide oversight.

15 THE COURT: Is it your position that a public record encompasses transitory
16 and personal e-mails?

17 MS. ROWLAND: Probably not personal. Generally -- because I think the
18 Donrey test -- there is an interest in non-disclosure of personal e-mails. Even if it's
19 on a public system I think that even the trustees have a right to the incidental use.
20 And again, it may be without their consent, right? If grandma writes you an e-mail,
21 you don't want grandma's personal information becoming a public document. So,
22 not necessarily.

23 I think again the test is pretty clear under the AG opinion that it's a
24 balancing test that favors disclosure, and so I think in the personal context that's a
25 trickier balance. And the transitory e-mail context where it's just a piece of junk,

1 there's clearly no public interest in non-disclosure. So, while I'm not arguing that
2 those are the most critical records, it's just odd to kind of dismissively say well those
3 aren't public records because under the law that's not the case, the burden is on the
4 School District to say that the interest of non-disclosure outweighs disclosure and
5 with something transitory the argument is it's not important. So, clearly there can't
6 really be a weighing of balances that clearly says non-disclosure is the answer. And
7 as I noted, those transitory e-mails may actually have critical information in them,
8 you know, who's meeting with who might very well tell you how policy is being
9 made. And we may think of it as a small and silly thing, but while there's no
10 question we want this -- everybody here wants the School District to be able to
11 educate children. Nobody is attempting to remove their resources from education to
12 other important things, but the reality is that every public entity in this state is
13 governed by these laws and they're incredibly difficult and there are clearly ways
14 that the School District could make this less onerous by taking snapshots ahead of
15 time, by requiring employees to segregate public e-mails, by keeping public e-mails
16 in a separate database so that the public could search or find their own e-mails
17 without relying on District personnel who charge \$40.00 an hour, and those things
18 haven't been done.

19 And so what we see are state laws that are being pretty clear
20 indications that public entities need to prioritize these issues, not simply kind of
21 make the good effort to comply but actually consider these as serious policy issues
22 when they set up these systems and when they store their documents. And nobody
23 believes there's gonna be a magical answer, but what we should all have is a
24 meaningful right to public oversight and that's clearly what the statutes taken
25 together and require. And we are now in a position with the system that CCSD has

1 chosen that is an Area 51. And it is that because you don't know precisely what
2 you're looking for and you don't know precisely when it happened, we're talking
3 about an extraordinary use. And what we're talking about is a defacto system that's
4 only for rich people, and that is clearly not what the public records law anticipates.

5 So, the bottom line for us is that while Mr. Wray is likely operating in
6 good faith and certainly seems to be in the system he's given, this system isn't good
7 enough to meet the state records laws. And we know it's difficult, but we think it's
8 critical that they be obeyed especially in a time when we're exploring new
9 technological resources because if they fall by the wayside and become something
10 where every single search for a public record becomes something where you have
11 to pay thousands or even hundreds of dollars, hundreds of dollars is prohibited to
12 many citizens for a record because you don't already know exactly what it is and
13 what it says, that's no kind of oversight at all. Thank you, Your Honor.

14 THE COURT: Mr. Hoffman, would you like to conclude?

15 MR. HOFFMAN: I think -- Thank you, Your Honor.

16 I think the Court understands the gest here that the District is in the
17 business of -- we're a governmental entity, we understand and completely
18 acknowledge our obligation to provide a public record. And I can represent to the
19 Court that like all of the laws that apply to the School District, we take this law very
20 seriously and -- but we believe that the law first of all is not crystal clear on these
21 issues and we concede that. But, we believe that the law the way that it's written,
22 we believe that the legislative history of this law is intended to, number one; make
23 sure that the documents are available, but number two; if somebody makes an
24 extraordinary request and I -- and if asking for a years worth of e-mails is not an
25 extraordinary request, then --

1 THE COURT: Of seven trustees.

2 MR. HOFFMAN: Of seven trustees. Then I don't know what is. It's a fishing
3 expedition and I don't think that the law is intended to protect that sort of request. I
4 think that in that situation the extraordinary use of personnel and technological
5 resources, I think that's why that's there. And I think the legislative history that the
6 Court cited in the order which is the same information that we gave the Court is --
7 the recognition is Senator Raggio says I'm concerned about -- I'm concerned about
8 how this is gonna affect the municipalities from nuisance type of requests --

9 THE COURT: Yet it doesn't want to create a disincentive to the public to
10 acquire the records. I understand your position.

11 MR. HOFFMAN: That's right. And the response was, but there are other
12 places in the statute that would protect the municipality. That's the regulation that
13 says in the case of extraordinary use; extraordinary personnel or technology. Then
14 yes you have to produce the records and we're okay with that, but you have to pay
15 those employees. Three hours for four -- he's got four guys. He had four requests,
16 twelve hours worth of work that has to be done by his four guys. You get eight
17 requests, pretty soon he's spending his whole time doing nothing but providing this
18 service. When is he going to do his educational responsibilities? And by the way,
19 the -- 239 requires a five day response now which is new to the law, it wasn't at that
20 time but now it's a five day response.

21 But the issue of public records is big deal. We don't have -- the Court
22 has not seen and it will not see a situation where an individual comes in and says,
23 I'd like to see a particular record of a particular time and a particular circumstance, I
24 want to see that contract, I want to see that whatever it is. That's not where the
25 issue is, the issues is where somebody comes in and they say we want to see a

1 years worth of e-mail, we want to see all of the contracts that the District has
2 entered in the last year, we want to see all of the purchases of textbook that the
3 District has made in the last three years from a particular company. I didn't make
4 those up, those are pending public records requests that we're dealing with. And if
5 we can't pass the costs of those searches on, it is gonna detrimentally impact the
6 District's ability to provide education services.

7 THE COURT: All right.

8 Both of you brought up some additional issues that I'd like to do some
9 more research on and I will get out another written decision about this. I will be a
10 little faster than I was the last time. It just -- I will tell you, I was struggling with this
11 one and I wanted to make sure I was thorough with it. And you brought some
12 additional facts; I thank Mr. Wray for coming in and clarifying some things. I'm also
13 excited that we have a new computer system in to where it won't take thirty hours it'll
14 take maybe three hours.

15 But, in any event, I will get this out very quickly because I know that
16 Ms. Gray may want to use this information for the legislature which they start, what,
17 the fifth? When do they start?

18 MS. ROWLAND: Yeah, the fourth or the fifth. I haven't --

19 MS. HOFFMAN: It starts on the seventh, Your Honor.

20 THE COURT: Okay. I imagine all of you will probably be up there; I will be
21 here working. But I imagine you all -- all be up there from time to time dealing with
22 the legislature

23 But with that said, thank you so much for your time today, and I will get
24 you out a written decision as soon as I can.

25 MR. ROWLAND: Thank you, Your Honor.

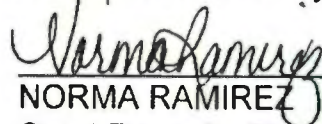
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THE COURT: All right.

[Proceedings concluded at 10:13:21 a.m.]

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video recording in the above-entitled case to the best of my ability.



NORMA RAMIREZ
Court Recorder/Transcriber
District Court Dept. XXII
702 671-0572

1 **DECLARATION OF ATTORNEY KATHLEEN J. ENGLAND**

2 I, KATHLEEN JANE ENGLAND, hereby declare under the penalty of perjury that the
3 following is true and correct:

4 1. I am an attorney fully licensed to practice in all courts in Nevada. The facts stated
5 below are based on my personal knowledge and belief, are true and correct and I am competent to
6 so testify. I am making this Declaration in support of a portion of a fee petition and the hourly rates
7 being sought colleagues of mine.

8 2. I have been asked by the McLetchie Shell law firm to provide a declaration in
9 support of a fee petition in the state court matter of *The Las Vegas Review-Journal v. Clark County*
10 *School District.*, Case No. A-17-750151-W. It is my understanding that this is a case involving the
11 Las Vegas Review-Journal's efforts to obtain public records from the Clark County School District
12 pursuant to the Nevada Public Records Act ("NPRA").

13 3. I graduated from Michigan State University *cum laude* in 1975, and from Suffolk
14 University Law School in Boston in 1978. I moved to Nevada in August, 1978 and clerked for the
15 Las Vegas City Attorney. I became a Deputy City Attorney in 1979 after passing the Nevada bar,
16 the same year I passed the Massachusetts bar. In 1982, I joined Vargas & Bartlett where I worked
17 on many large civil litigation matters in state and federal courts for seven years. Twice I was
18 appointed and served as co-chair of Defendants' Settlement Committee in the MGM Grand Fire
19 Litigation, MDL #453. In 1989, I started Combs & England, doing employment and complex civil
20 litigation. In 1994, I created England Law Office. In 1999, I re-joined my colleagues at Kummer
21 Kaempfer Bonner & Renshaw as a partner from 1999 to 2001. In 2001, I restarted the England
22 Law Office where I practiced as a solo practitioner or with one or two associates. In September
23 2016, I joined The Law Offices of Gary M. Gilbert, PC, a national law employment law firm; we
24

1 created the Gilbert & England Law Firm, a NV Rule 7.5A multijurisdictional law firm, where I
2 am the managing resident Nevada attorney.

3 4. In addition to Nevada, I am admitted to practice in the US District Court (Nevada)
4 (1980), the Court of Appeals for the Ninth Circuit (1980) and the U.S. Supreme Court (1997.)

5 5. I am familiar Ms. McLetchie and Ms. Shell, their reputation for handling civil rights
6 matters and cases and their expertise in matters involving constitutional law. Their reputation is
7 excellent and well-deserved. For the past few years, I have often referred them cases which I am
8 unable to handle or which are outside of my expertise or which would benefit from their particular
9 expertise in constitutional law. I call upon their expertise informally on matters of case strategy
10 and handling. Since 2012, I have enlisted Ms. McLetchie and now Ms. Shell as co-counsel to assist
11 me in representing clients with difficult and complex cases against large, well-funded defendants
12 such as the Clark County School District, which has a large in-house staff of attorneys.

13 6. In the past three years, I have relied upon McLetchie Shell's research and work
14 product without hesitation, and I have worked alongside them and their highly competent staff in
15 drafting, revising and finalizing pleadings. Based on those interactions, I can safely say they are
16 entitled to command the highest rates for their legal work.

17 7. I understand that Ms. McLetchie was first admitted to the California bar in 2002,
18 and I am aware of her diverse and extensive legal experience, including in criminal matters and in
19 complex litigation. I know that Ms. McLetchie previously served as a staff attorney, Legal
20 Director, and Interim Southern Program Director for the American Civil Liberties Union of
21 Nevada, where I had occasion to work with her on some cases.

22 8. I have had the opportunity to work or consult with Ms. McLetchie during both her
23 time at the ACLU of Nevada and in private practice. Based on my experience in working with her,
24

1 I know that Ms. McLetchie is a versatile, experienced and creative litigator, with special expertise
2 in challenging governmental actions and wrongdoing.

3 9. I understand that Ms., McLetchie has been involved in the following cases
4 involving public records:

- 5 • *Karen Gray v. CCSD et al.* (Case # 07A543861) [2007-2009];
- 6 • *Las Vegas Review-Journal v. Steven B. Wolfson, Clark County District Attorney*
7 (Case # A-14-711233-W; NSC # 70916; NSC # 73457) [2014-ongoing]
- 8 • *Las Vegas Review-Journal v. City of Henderson* (Case # A-16-747289-W; NSC #
9 73287) [2016-ongoing]
- 10 • *Las Vegas Review-Journal v. Clark County Office of the Coroner/Medical*
11 *Examiner* (Case # A-17-758501-W) [July 2017-ongoing]

12 I have had several opportunities to consult with Ms. McLetchie regarding public records requests
13 and I can state that Ms. McLetchie is one of the most knowledgeable attorneys in this state
14 regarding the NPRA. Her knowledge of public records law is masterful and comprehensive and I
15 have relied on her advice in crafting my own public records request to governmental entities. It is
16 my understanding that this matter involves a dispute over the Review-Journal's request for public
17 records from the Clark County School District.

18 10. Ms. Shell, I understand who was admitted to the Nevada bar in 2009, has almost
19 eight years of legal experience. I understand that Ms. Shell was an attorney with the Federal Public
20 Defenders (FPD) for the District of Nevada from then until going into private practice in 2015.
21 While employed by the FPD, I understand that Ms. Shell represented numerous defendants in a
22 variety of criminal cases in federal courts and that she wrote and argued several complex criminal
23 appeals in the United States Court of Appeals for the Ninth Circuit. Her subsequent work since
24 moving into private practice in June 2015 shows the high level of past work she engaged in and
how she has transitioned those skills from criminal work to the civil side, which is quite impressive

1 in this short period of time. I am aware that Ms. Shell has represented plaintiffs in state and federal
2 court in civil matters, including civil rights and employment cases. I applaud her commitment to
3 do so because very few practitioners aspire to do this kind of work.

4 11. I have had several occasions to work with or consult with Ms. Shell during her time
5 in private practice, and have found her to be an intelligent and effective researcher and legal
6 analyst, is a talented writer and defective advocate for her clients.

7 12. Pharan Burchfield is a paraprofessional (paralegal) at McLetchie Shell. I
8 understand that Ms. Burchfield has an associate's degree in paralegal studies (2014, College of
9 Southern Nevada) and has been a paralegal for three years. As I have stated on other occasions,
10 this surprises me because her work product and work ethic are clearly equivalent to someone with
11 10-15 years of paralegal litigation experience. Ms. Burchfield has assisted me in preparing a
12 number of complex filings in federal civil matters. Ms. Burchfield is one of the best paralegals I
13 have had a chance to work with; she is tireless and patient, has great attention for detail and the
14 highest level of computer skills. She is organized, is able to organize others and remains calm and
15 poised in the face of nerve-wracking deadlines and last minute obstacles. She is a problem-solver
16 and works very efficiently and very effectively.

17 13. I have been practicing in Nevada for the last 37 years and have submitted and
18 received multiple fee awards in state and federal courts and so I keep myself generally informed
19 of prevailing market rates in Las Vegas. As a result of a recent case where my client was granted
20 partial summary judgment by the U.S. District Court, I have recently re-familiarized myself with
21 the prevailing hourly rates for experienced employment law/civil rights attorneys and their staff
22 in the local Las Vegas legal community, both on the plaintiff and on defense side (where the
23
24

attorneys may accept lower hourly rates in exchange for regular and non-contingent billings and immediate payments by their clients who provide streams of billable work.


14. I understand that McLetchie Shell, LLC's billing rates are as follows:

Attorney/Biller	Year of Admission	Billing Rate
Margaret McLetchie	2002 (California)	\$450.00
	2008 (Nevada)	
Alina Shell	2009	\$350.00
Leo Wolpert	2012	\$175.00
Law clerk (law student)	n/a	\$100.00
Support staff and paralegal	n/a	\$150.00

15. In my opinion, based on my recent research on fees and hourly rates, and my personal knowledge and because these often involve matters which are hotly disputed by opposing counsel and well-funded defendants, each of the rates set forth above are reasonable market rates for the McLetchie Shell folks in question, of whom I have personal knowledge. Indeed, these rates might even be considered low for the experience, talent and mastery that McLetchie Shell brings to all of its legal work, which oftentimes difficult and not as remunerative as other practice areas.

16. Further your affiant sayeth naught.

Dated: September 19, 2017


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