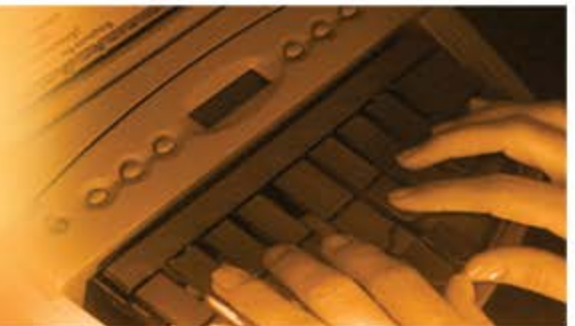


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1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

3 *****

4 CHRISTOPHER HORNER, et al.,

5 Petitioners,

6 -vs-

CASE NO. CL15004712-00

7 RECTOR & VISITORS OF

8 GEORGE MASON UNIVERSITY,

9 Respondent.

ORIGINAL

10 *****

11 TRANSCRIPT OF PROCEEDINGS

12 BEFORE THE HONORABLE MELVIN R. HUGHES, JR.

13 Richmond, Virginia

14 Monday, February 29, 2016

15 10:12 a.m.

16 Pages 1 - 30

17 Reported by: Tracy W. Koschara, Court Reporter

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 THE COURT: Which case is this?

3 MR. HARDIN: Morning, Your Honor. This is
4 Christopher Horner and the Competitive Enterprise
5 Institute versus Rector & Visitors of George Mason
6 University.

7 THE COURT: Are there two petitioners?

8 MR. HARDIN: There are two petitioners.
9 This is Mr. Horner, Christopher Horner. And the
10 other is a corporate entity, the Competitive
11 Enterprises.

12 THE COURT: Are you a lawyer?

13 MR. HARDIN: Yes, Your Honor. My name is
14 Matthew Hardin.

15 THE COURT: So you represent both?

16 MR. HARDIN: Yes, Your Honor.

17 THE COURT: And your name, sir?

18 MR. MONCURE: Tom Moncure, Your Honor. I
19 represent, I'm assistant attorney general, and I
20 represent George Mason University.

21 THE COURT: All right. Thank you.

22 It's your motion, I believe.

23 MR. HARDIN: Your Honor, I'll believe we'll
24 start off with, we have a stipulation of undisputed
25 facts.

1

2

(Brief recess)

3

4

MR. HARDIN: We have a statement of undisputed facts that I would like to present to the Court.

7

THE COURT: All right.

8

MR. HARDIN: Your Honor, this case began with a FOIA request filed by Mr. Horner and the Competitive Enterprise Institute. The University and the petitioners have reached an agreement on much of the facts. You have the stipulation of facts with you.

14

There were two depositions conducted. We have decided not -- we stipulated the admission of those depositions subject to objections that were made on the record then to avoid having to call people down from Fairfax to testify here today.

19

What we have in this case are two issues, and those issues briefly are did the University ever conduct a search for records in response to the Virginia Freedom of Information Act request that they receive; and if so, did they rightfully withhold records. Now, in this case we have a situation in this case where the University has a FOIA officer,

1 Ms. Woodley, she is sitting at defense counsel's
2 table. And she testified in the depositions that
3 it's George Mason's policy that they ask their
4 employees to provide the response of records, that
5 George Mason does not conduct an independent search
6 for records. They in this case asked their employee
7 for records, and he responded with a very narrow
8 response. He said that he did not author a letter on
9 University time.

10 THE COURT: Well, let me ask you this: If
11 the petitioner is seeking records, what kind of
12 records and from whom?

13 MR. HARDIN: It's correspondence records
14 relating to a professor named Edward Maibach at the
15 George Mason University. He's director of the George
16 Mason Center for Climate Change and he's a professor
17 in the communications department.

18 He responded to the FOIA officer and said
19 that he didn't author one particular letter on
20 University time, and therefore the University
21 responded that they had no public records to provide
22 in response to this Freedom of Information Act
23 request.

24 THE COURT: So the petitioner is seeking a
25 letter?

1 MR. HARDIN: Seeking a volume of
2 correspondence. What we have subsequently
3 determined, and I hate to bog down the procedure,
4 there were civil discovery measures before, subpoena
5 duces tecum, and we now have a lot of records
6 produced, several hundred pages. We've submitted 190
7 of those to the Court for in camera review, but there
8 is probably somewhere in the neighborhood of a
9 thousand pages or more of records.

10 THE COURT: So there's some in camera
11 material I am supposed to be looking at?

12 MR. HARDIN: There was some in camera
13 material that was filed with the Court, yes, Your
14 Honor.

15 THE COURT: 190 pages?

16 MR. HARDIN: There's 190 pages that we
17 selected. It's representative of a much larger body
18 of correspondence. What we are arguing over today is
19 whether that correspondence is public record subject
20 to the Virginia Freedom of Information Act. I think
21 we are in agreement now that records do exist. All
22 we're arguing about is are they public records to
23 which the petitioners are entitled or are they
24 private records that the University just happened to
25 have.

1 In this case, there was initially no search
2 conducted, Your Honor. Ms. Woodley, the University's
3 FOIA officer, didn't search for records. She asked
4 an employee. He responded, but he didn't say he had
5 searched. He said he didn't write one particular
6 letter on University time. She then responded to
7 Mr. Horner, the petitioner, and said the University
8 possessed no responsive records at all.

9 We deposed Ms. Woodley and we deposed the
10 professor in question. The professor testified twice
11 that he didn't search for records. Ms. Woodley
12 testified she didn't search for records. In this
13 case, Your Honor, simply no search occurred. And the
14 Supreme Court of Virginia has held in the American
15 Tradition Institute versus Rectors & Visitors of
16 Virginia, a 2014 case, the search means to look into
17 or over carefully or thoroughly in an effort to find
18 something or to uncover --

19 THE COURT: Well, why are you discussing
20 this if you have told me that you have a set of
21 records already and that you've called culled from
22 those records or whatever at least 190 pages, and the
23 only question is whether these records that you have
24 are in the records that you submitted for in camera
25 review are public?

1 MR. HARDIN: Certainly, Your Honor.

2 THE COURT: So are you worried that there's
3 some additional searching that needs to be done?

4 MR. HARDIN: The original petition that was
5 filed in this case sought an order directing the
6 University to conduct a search for records because
7 they had not up to the point where litigation began.
8 We no longer seek that order, because a search has
9 been conducted now in response to civil discovery in
10 this case. However, that does not mean that a
11 violation of the Virginia Freedom of Information Act
12 did not occur. In fact, it did, because they didn't
13 search until litigation began and they got subpoenas.
14 That means that no search occurred. We are entitled
15 to declaratory relief on that and we are entitled to
16 attorney's fees if we prevail, because no search
17 occurred until this all began. So what I'm arguing
18 is not search occurred. We've got two people
19 testifying no search occurred. Now we have records.
20 And I'm happy to move on and talk about --

21 THE COURT: That's fine. I just, in light
22 of the stipulation and what you told about me about
23 with the records you have and the records that are in
24 camera review, and that's fine.

25 MR. HARDIN: Right.

1 THE COURT: So you didn't get the search.
2 You're not satisfied that a search was actually
3 undertaken until you filed this lawsuit?

4 MR. HARDIN: Yes, Your Honor, that's
5 correct.

6 Now, a search has been undertaken now, but
7 only because a subpoena was issued. And that's a
8 violation of the Virginia Freedom of Information Act.

9 Now, we have the second issue of what
10 records are involved here. And all we are arguing
11 over is are these records covered by the Virginia
12 Freedom of Information Act or are they not. The
13 Virginia Freedom of Information Act covers records
14 that are generated in the transaction of public
15 business. The University will argue here today that
16 these records are not the transaction of public
17 business but private records.

18 THE COURT: They are private according to
19 the Commonwealth?

20 MR. HARDIN: According to the University,
21 these records are private records of a professor that
22 just happened to be housed on the University server.

23 However, *Burton v. Mann*, a case out of
24 Loudon County, sets forth the test for what a public
25 record is in Virginia. And it says what the Court

1 should look to is whether there is a nexus between
2 the record and the position of public trust held by
3 the official. These are records relating to climate
4 change communication. It's an effort to lobby
5 certain federal government entities to take actions,
6 investigate racketeering, to clamp down on climate
7 denial, or what the professor believes is climate
8 denial. What we are here to show is that there's a
9 connection between these records and his position of
10 public trust. He is a professor of communications.
11 He's the director of the George Mason University
12 Climate Change Center. I don't know what could
13 possibly be more clear than communicating and
14 lobbying and leading an advocacy effort relating to
15 climate change. There is a clear nexus. Now, the
16 University will say this was private advocacy. But
17 the question that this Court has to evaluate isn't
18 whether it was private or whether it was public. The
19 question is whether there's a nexus between the
20 record and his position of public trust.

21 If I were to -- I'm sorry, the records in
22 question have also been released by two other states.
23 You'll notice the petition in this case had exemplars
24 attached to it as Exhibit B. Florida State
25 University received a request, they provided records.

1 Florida law, I have the provision, it's Section
2 119.01 of the Florida Revised Statute, says that only
3 records generated in a public business are covered by
4 Florida law. Florida provided records. Same thing
5 in Washington state. Washington state provided
6 records pursuant to the Revised Code of Washington,
7 42.56.010. Suddenly when we get to Virginia, these
8 are not public records.

9 These are relating to correspondence
10 between professors of various universities. So there
11 were other requests filed at Florida State University
12 and University of Washington, and that's how we knew
13 that these records existed and eventually led to this
14 suit being filed.

15 What I will say, Your Honor, is while
16 there's not necessarily always a bright line between
17 what is public and what is private, what is covered
18 by the Virginia Freedom of Information Act is what
19 your public trust is. If I sent a request for, you
20 know, your grocery list, Your Honor, if it happened
21 to be in chambers, that probably would not be covered
22 by the Virginia Freedom of Information Act because
23 you are a judge. However, if I sent a Freedom of
24 Information Act request for the grocery list of a
25 school cafeteria here in Richmond, it probably is

1 because that's their public trust. You can't just
2 look at something, you know, from 30,000 feet in the
3 air and say is that public or is it not. You have to
4 look at the position of public trust and the record
5 and see whether there is a nexus. Here, Your Honor,
6 we submit that there quite clearly is a nexus between
7 the professor of climate change communication and
8 records relating to climate change.

9 We ask the Court to grant the petition,
10 grant attorney's fees. And if Your Honor would like
11 to review the in camera documents for a second, we
12 certainly have them.

13 THE COURT: Let me ask you, this professor,
14 you say he's the director of climate change or the
15 director of the Climate Change Center?

16 MR. HARDIN: Yes. He has two positions at
17 the University. He's a professor of communications,
18 and he's also director of the George Mason Climate
19 Change Communication Center or the George Mason
20 Center for Climate Change Communication.

21 THE COURT: So he has two hats?

22 MR. HARDIN: He has two hats.

23 THE COURT: Professor of communication,
24 does that communication aspect relate to his job as
25 the director of the climate change center? In other

1 words, is he a professor of communication for the
2 climate change center?

3 MR. HARDIN: He holds two positions. The
4 Climate Change Center engages in research on activism
5 basically and how to influence the debate regarding
6 climate change. He also teaches basic communication
7 classes.

8 THE COURT: As you would in the world of
9 media, television and radio and that sort of thing,
10 apart from specifically involvement with climate
11 change?

12 MR. HARDIN: Yes, Your Honor.

13 Now, one of the things that you will
14 notice, too, in his deposition testimony, he said
15 that he agrees to interviews, and he is director of
16 the Center for Climate Change and lobbies for climate
17 change activism. That sort of activism is exactly
18 what's expressed in these e-mails.

19 THE COURT: Well, those lobbying efforts, I
20 guess you're arguing are tied to or connected with
21 his job responsibility?

22 MR. HARDIN: Yes, Your Honor. In fact,
23 also in the deposition testimony, he testified that
24 he was teaching a class on climate change
25 communication right now, and that he might mention in

1 that class the subject of RICO investigations, which
2 is also the subject of the records that are at issue.

3 THE COURT: RICO? It's racketeering, RICO.
4 All right. Well, so, but as director of Climate
5 Change Center, I mean, that has an advocacy tone or
6 it could be something else. I mean, as a University
7 professor, one might look at that job title as one
8 who studies climate change. It doesn't involve any
9 advocacy. On the other hand, you mentioned lobbying.
10 Are you suggesting that tag this professor is also
11 involved with lobbying for, against or advising about
12 climate change?

13 MR. HARDIN: The Court will find attached
14 to my bench memo for this case, I don't have it in
15 front of me, George Mason's biography of what this
16 professor does. And one of the things that it says
17 in George Mason's own website and their biography on
18 what he does, is he engages in advocacy on the issue
19 of climate change. So George Mason seems to think
20 that advocacy is part of his job because it's in his
21 job description, it's in his biography.

22 THE COURT: And you're seeking that -- the
23 information that you have, you've already garnered,
24 and the 190 pages that were set for in camera review,
25 is the petitioner satisfied, is this petitioner

1 satisfied that that is the material that they want
2 under the Freedom of Information Act?

3 MR. HARDIN: The search was adequately
4 conducted, and, yes. What I think might --

5 THE COURT: But the dispute is really about
6 the 190 pages now, isn't it?

7 MR. HARDIN: No, Your Honor. There was a
8 protective order entered in this case on February the
9 10th, I believe. What happened, we sent civil
10 discovery demands. And the respondent objected to
11 those civil discovery demands, believed that they
12 were either irrelevant or that the information that
13 they would have to produce would be exempt under the
14 Virginia Freedom of Information Act. How we resolved
15 that dispute instead of coming to court and arguing
16 over the discovery issue, they produced those records
17 to us under seal for counsel only to look at and for
18 the Court look at in an in camera review.

19 So I have gone to George Mason and looked
20 at a thousand pages of records, and I have picked out
21 190 that I thought the Court would be assisted by,
22 but those records are not available to the public.
23 They are under protective order right now. If this
24 petition is granted, of course, those would be public
25 records that anybody could look at, and Mr. Horner's

1 legal rights would be vindicated.

2 THE COURT: All right. Thank you very
3 much.

4 Yes, sir.

5 MR. MONCURE: Your Honor, if I may take the
6 Court's indulgence, I am going to stand. I have
7 tinnitus in my left ear and am having a difficult
8 time hearing you. So if I can get my right ear
9 closer to you, I will be able to hear your questions.

10 Two propositions. Your Honor, first of
11 all, the University has in this case acted in accord
12 with the Freedom of Information Act. The petitioners
13 object to the absence of a search. The typical
14 records request is for subject matter records; for
15 example, in one of the opinions they cited, all
16 categories of records relating to the widening of a
17 road in Prince William County. This most usual
18 request requires that the agency representative first
19 identify which employees might have responsive
20 records; second, what records might exist; and third,
21 to determine what, if any, exclusions might apply.
22 This is a search. No search in the case at bar was
23 required. Petitioner's request was for discrete
24 records, e-mails by word relating to a petition to
25 President Obama directed to a specific individual,

1 Professor Edward Maibach. Petitioners knew from
2 other sources that e-mails related to the Obama
3 petition existed. Neither Maibach or the University
4 FOIA officer, Elizabeth Woodley, has denied the
5 existence of the e-mails. These e-mails were not
6 provided, as they were not provided to the requestor,
7 as they were not prepared for or used in the
8 transaction of public business.

9 Rather than search, Ms. Woodley contacted
10 the one person in the University most familiar with
11 the e-mails, Professor Maibach. Petitioners have
12 also noted the involvement of another University
13 professor, Jaadish Shukla in the Obama petition in
14 the high profile of this issue. This was not
15 unfamiliar to Ms. Woodley. What the petitioners are
16 actually seeking from Ms. Woodley is not a search but
17 a review of those e-mails.

18 The FOIA practice of the University has
19 been when a request is directed to a specific
20 professor to look to that same professor for a
21 response. As pointed out in my memorandum with that
22 FOIA's counsel opinion, this practice, at least to
23 this point, has been approved by the FOIA counsel.
24 Given three major campuses, approximately 6,500
25 employees, and particularly considering the breadth

1 of academic and scholarly pursuits, this approach, we
2 would submit, is reasonable.

3 The act imposes penalties of up to \$5,000
4 on each officer, employee and member of the public in
5 his individual capacity for a willful or knowing
6 failure to respond to a request. A public body, a
7 state agency, ultimately acts only through its
8 officers, employees and members. In the absence of
9 indications to the contrary, the University presumes
10 that individual employees will faithfully discharge
11 their duties in the absence of anything to the
12 contrary.

13 Permit me to suggest now that the
14 petitioners have uncovered a fundamental flaw in the
15 structure of the act. I'm aware of no other
16 provision in the code imposing a duty on individual
17 state employees where those employees can be held
18 civilly liable as individuals for failing to
19 discharge a duty. The structural flaw is while
20 requests are submitted to the agency, it is the
21 individual employees who are obligated to respond.
22 The only other individual identified in the act is an
23 agency point of contact who has a responsibility
24 either to assist the requestor or to respond to
25 requests. The role of this person is best described

1 as facilitator, particularly when a request is
2 directed to a specific individual. There are under
3 current law no other duties assigned to this person.

4 It appears a structural flaw has come to
5 the attention of the current session of the General
6 Assembly. House delegate (inaudible) would for the
7 first time vest the agency's FOIA officer with
8 specific duties to coordinate and oversee a public
9 body's compliance with FOIA. This is the type of
10 authority that petitioners suggest the University's
11 FOIA officer should have exercised in the case at
12 bar. It appears highly probable that this bill will
13 become law as of by July if it were to pass the house
14 and the senate committee today, but it is not the law
15 as we speak.

16 Second proposition is that the e-mails
17 sought by petitioners were not prepared for or used
18 in the transaction of public business, and therefore
19 not the subject of FOIA. We will acknowledge readily
20 that everything, almost everything has been put in
21 front of you. Everything that is there is related to
22 the Obama petition.

23 Let me pose a simple proposition, that
24 petitioning the President of the United States and
25 the United States Attorney General to investigate

1 corporations and other organizations that have
2 knowingly deceived the American people about climate
3 change for possible prosecution under Federal RICO is
4 not the transaction of public business either of the
5 University or the Commonwealth, and therefore not
6 subject to FOIA.

7 The petition to President Obama does not
8 appear on University letterhead. It contains the
9 names of people from several other institutions. To
10 put a fine point on this, neither the University nor
11 any responsible official of this Commonwealth so far
12 as I know has taken any position as to whether or not
13 corporation or are other organizations that have
14 knowingly deceived the American people about climate
15 change should be investigated for federal prosecution
16 or prosecution under federal law. To suggest that a
17 professor seeking federal prosecution by the use of
18 University e-mail has prepared records in the
19 transaction of public business defies both logic and
20 common sense.

21 The petitioners have argued that the
22 petition to President Obama has sufficient nexus to
23 Professor Maibach's position as the director of the
24 University's Center for Climate Change Communication,
25 that it necessarily falls within the scope of his

1 employment. Under this logic any scribbling by him
2 at any time for any purpose concerning climate change
3 becomes a public record.

4 Edward Maibach holds a Ph.D. in
5 communication and is a tenured professor. This is
6 what he does professionally. And to the extent that
7 our professional endeavors define us as individuals,
8 this is what he is. There is no way I was
9 psychologically or philosophically to create a unique
10 and absolute distinction between who we are and what
11 we do. The University has a valid --

12 THE COURT: Let me ask you, he's the
13 director of climate change, isn't he? I'm told he's
14 the director of climate change.

15 MR. MONCURE: The Center for Climate Change
16 Communication.

17 THE COURT: Is he is an advocate against
18 the -- does he advocate warnings of climate change?

19 MR. MONCURE: Absolutely, yes, sir. The
20 question is whether he does it in an individual
21 capacity or as an employee.

22 THE COURT: Doesn't he do it in his
23 official capacity though?

24 MR. MONCURE: I would submit to the Court
25 that an e-mail addressed to the President and the

1 U.S. Attorney General not on University letterhead
2 containing the names of several other people, several
3 other universities is not the transaction of
4 University public business.

5 THE COURT: So he's working on his own
6 time?

7 MR. MONCURE: Yes.

8 THE COURT: Even though he is in the
9 position to urge about the dangers of climate change?

10 MR. MONCURE: Your Honor, if you follow the
11 petitioners' argument to its logical conclusion, then
12 an English professor who teaches poetry and has
13 written a poem even at home at night by candlelight
14 has created a record subject to FOIA, or the writer
15 professional who specializes in campaign speaking,
16 has written a speech for a political candidate on his
17 own time for a fee has already created a record,
18 public record subject to FOIA. Virtually every
19 subject in which a professor has intellect or insight
20 becomes a public record. At some level, and let me
21 suggest to you that this is the crux of the issue
22 before the Court. Not every activity concerning a
23 professor's endeavor is the public's business. Even
24 the most devoted service to the Commonwealth are
25 entitled to have a measure of life outside of work.

1 It is with some reluctance, and I've included in my
2 memo, some of the first amended jurisprudence from
3 the Supreme Court of the United States, a deeper well
4 than any moral should dive into, but the Wayne case
5 in particular offers you guidance. The standard set
6 there calls for a distinction between matters within
7 the scope of duties and those that merely concern
8 those duties. Professor Maibach, no argument, is the
9 director of the Center for Climate Change
10 Communication, his scope of duty. He and others
11 petitioned the President a manifestation of his
12 legitimate concern over climate change.

13 THE COURT: And he is doing that privately?

14 MR. MONCURE: Yes, sir. When dealing with
15 academic and scholarly matters, I would submit to the
16 Court the gray area is probably large. But no
17 stretch of reason, I would submit to the Court, does
18 advocating potential criminal prosecution to climate
19 change -- for potential prosecution follows in the
20 scope of his duties. The e-mails are not public
21 business. Thank you.

22 MR. HARDIN: Your Honor, if I may in
23 rebuttal, it's noted on page two of the petition in
24 this matter that in Maibach is a professor of, and I
25 quote, "climate change communication, strategic

1 communication and social marketing and how to
2 immobilize populations to adopt behaviors and support
3 public policies that reduce greenhouse gas emissions.
4 He's an advocate, Your Honor.

5 Now, the University talked about the
6 typical FOIA request as being broad and seeking
7 subjects, records related to a certain subject. This
8 request was more targeted, related to certain words.
9 It didn't say relating to this topic. Now, the
10 professor wrote a letter to the President and to the
11 Attorney General, but that is not, that one letter is
12 what this request sought. This request sought
13 correspondence relating to --

14 THE COURT: Let me ask you this. You just
15 said related to certain words. In other words, you
16 sought to garner communications, writing and things
17 that had words, certain words connected with that?

18 MR. HARDIN: Yes. If you look at Exhibit 8
19 of the complaint, it's the original request. The
20 request sought e-mails using certain words, like
21 racketeering, RICO, key words like that, so you could
22 go into his e-mail and just type it in.

23 THE COURT: Key words.

24 MR. HARDIN: Now, Professor Maibach wrote a
25 letter and the President and the Attorney General in

1 a campaign advocating for climate change action. We
2 seek e-mails relating to that campaign, which is part
3 of his job. And we will refer the Court to the bench
4 memo that was filed and the examplars that are cited
5 in the bench memos, as well as exemplars from other
6 states that were attached to the petition. Now,
7 Professor Maibach signed this correspondence, as well
8 as the letter to the President and the Attorney
9 General as a professor of George Mason. He didn't
10 say, Ed Maibach, here is my address. He said,
11 Professor, George Mason University.

12 Now, Florida State University and
13 University of Washington produced records. Those
14 weren't on letterhead. They just signed those as
15 professor of Florida State University or professor,
16 University of Washington.

17 Now, the University says that they informed
18 the petitioner that they had records but they weren't
19 public when the initial FOIA request was answered,
20 and that is not the case in fact. What happened, the
21 University responded that they had no records. The
22 petitioner did not know that they had records, that
23 the University was just asserting that those records
24 were except until he received records from Washington
25 State under a very similar law in that state.

1 Now, the University now turns to the first
2 amendment and talks about Lane and Garcetti. That is
3 jurisprudence about punishing people for speech, and
4 it's just not relevant to this case. We are not
5 seeking to punish anybody. We're not seeking to
6 restrict anybody. In fact, George Mason has a speech
7 code, so if anybody is restricting the speech of
8 George Mason and professors and students, it's George
9 Mason. We are not seeking to punish anybody. We
10 just want open records that we are entitled to under
11 the Virginia Freedom of Information Act.

12 Now, the University says that we want the
13 law to be something different than it is. That may
14 be true, and there might be better laws, but in fact
15 what we want is for this law to be followed as the
16 Supreme Court of Virginia said in 2014, a search
17 means a search. There were several records that were
18 not uncovered by this search because it wasn't a
19 search. In fact, some of the records that are under
20 seal relate to Puerto Rico, because one of the words
21 was RICO, and he didn't even bother to think, oh,
22 wait -- he didn't bother to search his e-mail for
23 anything that said RICO, or he would have uncovered
24 Puerto Rico. He was trying to organize a conference
25 in Puerto Rico. He didn't bother to search. He just

1 thought, I don't have anything, and that's not an
2 adequate response. Thank you, Your Honor.

3 THE COURT: Well, all right. Thank you
4 gentlemen. I will need to look at these materials,
5 and obviously it's 190 pages. And they are with the
6 clerk in the clerk's office?

7 MR. HARDIN: They are filed under seal. I
8 filed them under seal. I believe the Court has the
9 deposition testimony as well that we have stipulated
10 to, but in case it doesn't, I will go ahead and hand
11 the deposition transcripts to you as well.

12 THE COURT: And the under the protective
13 order, only counsel has been exposed to these 190
14 pages?

15 MR. HARDIN: That is correct, Your Honor.

16 THE COURT: All right. Now, one final
17 question. Are you seeking a fine?

18 MR. HARDIN: No Your Honor. Now, the
19 statute does allow civil liability for individuals.
20 We haven't sued under that. It's for a knowing
21 violation, and we sued for that. And we haven't sued
22 for that. What we're seeking is for the records to
23 be made public, and attorney's fees and costs
24 reimbursed in this case.

25 Like I said, the original petition

1 requested a search to be ordered, and a search has
2 now been conducted, so we will not ask for a search
3 to be ordered. We just ask for declaratory relief,
4 that a search was conducted and for attorney's fees
5 because of that.

6 THE COURT: I understand. Now, what about
7 the attorney's fees? Did you submit anything?

8 MR. HARDIN: I have not submitted them.
9 But what I would suggest, if the Court believes that
10 we are entitled to relief --

11 THE COURT: Okay. And costs as well. I
12 suppose that could be covered if a decision is made
13 to allow the fees and costs.

14 MR. HARDIN: Yes, sir.

15 THE COURT: All right. Well, I will -- now
16 what you have given me again is the depositions of
17 the information officer --

18 MR. HARDIN: And the professor.

19 THE COURT: And the professor. Thank you.

20 I will let you know about this. I am going
21 away out of town Wednesday. I will be back the
22 following week, so I will try to get something to you
23 by the end of next week or the beginning of the
24 following week.

25 MR. HARDIN: Thank you, Your Honor.

1 MR. MONCURE: We have been dealing with
2 this for a while, so that is fine.

3 THE COURT: My wife has arranged a trip for
4 me. Thank you.

5

6 (Proceedings concluded at 10:45 a.m.)

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CERTIFICATE OF COURT REPORTER

I, Tracy W. Koschara, Certified Court Reporter, Notary Public in and for the Commonwealth of Virginia at Large, certify that I reported verbatim the proceedings in the Circuit Court for the City of Richmond, in Staunton, Virginia, in the captioned cause, heard by the Honorable Melvin R. Hughes, Jr., Judge of said court, on February 29, 2016.

I further certify that the foregoing transcript, numbering pages 1 through 30, inclusive, constitutes a true, accurate, and complete transcript of said proceedings.

Given under my hand this 23rd day of March, 2016.

Tracy W. Koschara



Tracy W. Koschara, Notary Public
Commonwealth of Virginia at Large
NOTARY REGISTRATION NO: 193599

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