

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
2 IN AND FOR THE COUNTY OF CHELAN

3 TIMOTHY BORDERS, et al, )  
4 )  
5 Petitioners, ) No. 05-2-00027-3  
6 v. )  
7 )  
8 KING COUNTY, et al, )  
9 )  
10 Respondents, )  
11 and )  
12 )  
13 Washington State Democratic Central )  
14 Committee, )  
15 )  
16 Intervenor Respondent, )  
17 )  
18 and )  
19 )  
20 Libertarian Party of Washington )  
21 State, et al, )  
22 )  
23 Intervenor Respondents.)

13 \_\_\_\_\_

14 DEPOSITION UPON ORAL EXAMINATION OF

15 NICOLE WAY

16 \_\_\_\_\_

17 Friday, May 13, 2005  
18 9:10 a.m.  
19 Davis Wright Tremaine  
20 1501 Fourth Avenue, Suite 2600  
21 Seattle, Washington

22  
23  
24 Laurie E. Heckel, CSR, RPR  
25 Court Reporter  
26 CSR License No. HE-CK-EL-E386DM

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Friday, May 13, 2005  
Seattle, Washington

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A P P E A R A N C E S

3

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Libertarian Party Representative

19

20  
21  
22  
23  
24  
25

DAVID McDONALD  
Washington State Democratic Central  
Committee Representative

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Witness: NICOLE WAY

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1

NICOLE WAY

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having been called as a witness, was duly sworn and testified

3

as follows:

4

## E X A M I N A T I O N

5

BY MR. MAGUIRE:

6

Q Good morning, Ms. Way. My name is Rob Maguire. I'm one of  
7 the lawyers for the petitioners in the election contest case  
8 pending in Chelan County Superior Court. Thank you for  
9 coming today. And over the course of the day, several of us  
10 are going to ask you questions pertaining to the November  
11 2004 general election in King County. When I talk about the  
12 election, that's the election to which I'll be referring.

13

Okay?

14

A Okay.

15

Q First, if you would state your full name for the record,  
16 please.

17

A Nicole Way.

18

Q And what is your occupation, Ms. Way?

19

A I'm the mail ballot supervisor for King County Elections.

20

Q For how long have you been the mail ballot supervisor for  
21 King County Elections?

22

A Just under a year.

23

Q And what did you do before you were the mail ballot  
24 supervisor?

25

A I was the assistant mail ballot supervisor.

1 Q For how long were you the assistant mail ballot supervisor?

2 A Somewhere around five years. I don't remember exactly.

3 Q And before you were the assistant mail ballot supervisor?

4 A I worked in the absentee ballot section doing various  
5 functions.

6 Q Did you have a particular job title?

7 A No.

8 Q For how long were you in the absentee ballot section prior to  
9 becoming the assistant mail ballot supervisor?

10 A I was hired permanent, I believe, June of '96. I'm not  
11 entirely sure on the year.

12 Q Were you working in the absentee ballot section under a  
13 temporary status prior to that?

14 A Yes.

15 Q For how long?

16 A I started in, I believe, 1992.

17 Q And prior to 1992, what were you doing?

18 A I was in high school.

19 Q Can you generally describe your job responsibilities when you  
20 were a temporary worker in the absentee ballot section?

21 A I was a chad checker. I verified signatures. I was a  
22 troubleshooter of issues, a runner, ballot tabulator, data  
23 entry.

24 Q And then when you became a member of the permanent staff in  
25 June of 1996, approximately, what were your job

1 responsibilities?

2 A Data entry, sorting the daily mail, corresponding with  
3 out-of-state and military voters, customer service, handing  
4 out reports.

5 Q Anything else?

6 A Well, I still did signature verification, ballot opening,  
7 tabulation, issued ballots over the counter.

8 Q And what were your responsibilities as the assistant mail  
9 ballot supervisor?

10 A A lot of the same stuff, and I -- when the supervisor wasn't  
11 there, I supervised the staff that was working, handled the  
12 statistics for the section.

13 Q What kind of statistics?

14 A How many ballots are issued, how many ballots are returned  
15 for each recollection.

16 Q Anything else?

17 A Not that I can think of.

18 Q And what are your job responsibilities as the mail ballot  
19 supervisor?

20 A I supervise the mail ballot warehouse, all of the crews that  
21 work there, the hiring, making sure that there is the  
22 staffing levels needed and maintaining the warehouse.

23 Q Were you --

24 A And everything else that --

25 Q Everything else that you were responsible for as assistant

1 mail ballot supervisor?

2 A Right.

3 Q The warehouse you referred to, is that the mail ballot  
4 operation satellite?

5 A Yes.

6 Q As the mail ballot supervisor, were you still responsible for  
7 keeping track of the number of ballots issued and returned?

8 A Yes.

9 Q And that's just with respect to absentee ballots?

10 A Right.

11 Q Does that include federal write-in ballots?

12 A Yes.

13 Q And absentee ballots issued to people in the Address  
14 Confidentiality Program?

15 A Once they're returned, yes.

16 Q Can you describe the ways that an absentee ballot can be  
17 issued in King County?

18 A As far as how a person can ask for one?

19 Q Yes.

20 A And receive it?

21 Q Yes.

22 A You can ask for it in writing, in-person, over the phone,  
23 over the Internet, through e-mail. You can ask for a  
24 one-time absentee ballot or a permanent absentee ballot.

25 Q When a voter requests an absentee ballot in person, they do

1 so at the King County Administration Building?

2 A Yes.

3 Q And you still work at the counter where absentee ballots were  
4 given to voters who requested ballots in-person?

5 A I don't work at the counter any longer. I'm at MBOS.

6 Q But your years at King County it did include time when you  
7 worked --

8 A I used to.

9 Q Okay.

10 A That, I don't do anymore because I'm not at the office.

11 Q All right. Do you know whether the procedures have changed  
12 for giving out ballots over the counter since you worked at  
13 the admin building?

14 A I'm not entirely sure.

15 (Exhibit 1 marked for identification.)

16 Q Ms. Way, the court reporter has handed you a document marked  
17 as Exhibit 1. The Bates number on the first page is  
18 partially cut off, but appears to be KC 03459 and the second  
19 Page 03460, and is an e-mail chain. And the first e-mail at  
20 the top of the page from you to Garth Fell, dated October  
21 28th, the subject is a Forward Problems; is that right?

22 A Yes.

23 Q Do you recognize this e-mail?

24 A Yes, I do.

25 Q You sent the e-mail at the top of the page?

1 A I'm sorry?

2 Q You sent the e-mail that's at the top of the page on Exhibit  
3 1?

4 A Yes, I did.

5 Q And the e-mail in the middle of the page with a time stamp of  
6 12:55?

7 A I sent that also.

8 Q In the 1:06 p.m. e-mail, among other things you wrote: I am  
9 sorry to say this, but DIMS is very lacking in any real  
10 tracking of anything. I can not say for certain how many  
11 ballots have been issued/mailed, how many reissued, who has  
12 been issued what, how many ballots are actually  
13 returned/batched (Wanda errors, etc.), how many ballots are  
14 actually verified and accepted versus challenged by us and  
15 challenged by Wanda. I know I keep saying this, but it is a  
16 serious concern of mine. And I am really getting frustrated  
17 that every time these things happen it is a problem with the  
18 worker or process we are doing, never an issue with DIMS or  
19 the training we have received.

20 Is that right?

21 A Yes.

22 Q Did you believe that DIMS was lacking in any real tracking of  
23 anything?

24 A Yes.

25 Q Were you able to say for certain how many ballots had been

1 issued or mailed for the November election?

2 A No.

3 Q Do you remember if Mr. Fell responded to this e-mail?

4 A No, I don't believe so.

5 MR. HAMILTON: Rob, just to interrupt, if you could keep  
6 your voice up. The air-conditioning is right over my head.

7 MR. MAGUIRE: Sure.

8 MR. HAMILTON: Thanks.

9 MR. PORTER: Let me just object to that last question as  
10 vague in that I'm not sure if you were asking whether  
11 responded by return e-mail or responded in any fashion  
12 whatsoever.

13 MR. MAGUIRE: Responded in any fashion is what I was  
14 looking for.

15 After you sent this e-mail to Mr. Fell, did he  
16 communicate with you in any way as to the concern you  
17 expressed regarding uncertainty as to how many ballots had  
18 been issued or mailed?

19 THE WITNESS: I don't recall.

20 Q (By Mr. Maguire) What are the ways in which King County tries  
21 to keep track of the number of ballots that have been issued  
22 or mailed?

23 A We would run reports out of DIMS.

24 Q Are there any other ways that King County tries to keep track  
25 of the number of absentee ballots issued or mailed?

1 A Not that I can think of.

2 Q Did you or anyone in your crew keep handwritten logs or notes  
3 indicating ballots that were issued or mailed?

4 A In the beginning we kept a log of how many ballots we took to  
5 the post office.

6 Q At some point you stopped keeping the log?

7 A I don't think it was kept current. I don't remember exactly.

8 Q Do you remember what that log looked like? What information  
9 was contained on it?

10 A It was an Excel spreadsheet.

11 Q Did it list every ballot and every delivery to the post  
12 office?

13 A From what I recall, it listed the type of ballots, the date,  
14 and how many.

15 Q Did the log indicate to whom the ballots were being sent?

16 A To whom as in voter?

17 Q Yes. Did it break down Joe Smith's ballot is here and Jane  
18 Smith's?

19 A No.

20 Q It was just for each drop-off, there was a single line entry  
21 with the total number, the date and the type of ballots  
22 included in that mailing?

23 A Yes.

24 Q Was that something you kept or one of your subordinates?

25 A One of my staff members kept that.

1 Q Who was that?

2 A I'm trying to remember. It may have been Joanne Gardner.

3 Q But you don't believe that it was kept current through the  
4 end of the mailing process?

5 A I don't believe -- I'm not sure.

6 Q Was Ms. Gardner or anyone else instructed to keep such a log,  
7 or was this something she did on her own initiative?

8 A It was something that we did on our own.

9 Q Was one of the reasons that your group did that on its own,  
10 that the reports from DIMS would not allow you to say for  
11 certain how many ballots had been issued?

12 A No, that's not why we did it.

13 Q Why did you do it?

14 A We were mailing so many different -- in the beginning, so  
15 many different groups, in order to keep track of what we had  
16 mailed, we started keeping track in an Excel spreadsheet.

17 Q Why did you want to keep track of the ballots that were  
18 mailed?

19 A They were being mailed in different fashions in the beginning  
20 and we wanted to -- I wanted to keep track of how many went  
21 this route, how many went the regular through PSI.

22 Q What are the different fashions in which a ballot can be  
23 mailed?

24 A The military ballots were mailed through the post office for  
25 a special process.

1 Q And the remaining ballots went normal mail through the post  
2 office?

3 A Through PSI.

4 Q PSI, the vendor?

5 A Yes.

6 Q The vendor takes care of mailing the absentee ballots to  
7 voters in King County?

8 A I'm not sure I understand.

9 Q I'm not sure I understood what you meant by PSI's involvement  
10 in sending out the ballots. Does PSI print the ballots?

11 A No. PSI takes the ballots to the post office for us. We  
12 take the ballots to PSI.

13 Q And where do you get the ballots from?

14 A Diebold.

15 Q Why do you take the ballots to PSI for them to mail rather  
16 than taking them directly to the post office?

17 A I believe they sort them into destination zip code order and  
18 we get the bulk rate nonprofit postage that way.

19 Q Did you think it was important to know how many ballots had  
20 been issued?

21 A Yes.

22 Q Why is that important?

23 A I think it's important to know how many ballots we've -- how  
24 many voters we have sent ballots to.

25 Q Is one of the reasons it's important to make sure that you

1 don't get back more ballots than you sent out?

2 A That would be one reason.

3 Q Are there reasons you can think of?

4 A Well, I knew we would have to report how many ballots we had  
5 issued.

6 Q Report to the canvassing board?

7 A Uh-huh, yes.

8 Q Did you express your concern that you couldn't say for  
9 certain how many ballots had been issued or mailed to anyone  
10 other than Mr. Fell at King County?

11 A I believe so.

12 Q Who else?

13 A I remember talking about it with Harry Sanders.

14 Q Mr. Sanders was the project lead on the team that implemented  
15 the DIMS data base?

16 A Yes.

17 Q What did you say to Mr. Sanders about knowing the number of  
18 ballots that had been issued or mailed?

19 A We were putting stats on the web, and we were trying to  
20 determine the most accurate way to pull the stats to get the  
21 right amount, and we had a discussion of is that number that  
22 DIMS is giving us the amount of voters that are getting  
23 ballots or the amount of ballots that we are mailing out.

24 Q Those numbers could be different because a voter might be  
25 sent more than one ballot?

1 A Right.

2 Q Do you remember whether the statistics on the website were  
3 the number of voters that received ballots or the number of  
4 ballots that were sent out?

5 A I believe I was told it was the number of voters.

6 Q Was there a record of the number of ballots sent out?

7 A I'm not sure.

8 Q Do you know how the number of voters being sent ballots was  
9 determined for the website?

10 A Scott Turnbull ran a report in DIMS.

11 Q In your conversation with Mr. Sanders about issuing ballots  
12 and tracking the number that had been issued, did you express  
13 concern that King County was not able to say for certain how  
14 many ballots had been issued?

15 A I believe so.

16 MR. HAMILTON: Objection, asked and answered.

17 THE WITNESS: I believe so.

18 Q (By Mr. Maguire) Do you remember his response?

19 A No, I don't. I believe that the conversation took place in  
20 the meeting about the absentee stats, but I can't remember  
21 exactly.

22 Q Do you remember who else was in the meeting?

23 A I remember a meeting talking about the stats, and Harry -- I  
24 believe Garth Fell was there, Scott Turnbull, Bill  
25 Huennekens. I think it was one of the Tuesday night

1 supervisor meetings.

2 Q There were regular meetings on Tuesday nights of the  
3 supervisors in the Elections Department?

4 A A few weeks before the election.

5 Q And they were the supervisors from just the absentee ballot  
6 section or from all of the sections within the Elections  
7 Department?

8 A All of Elections.

9 Q Did Mr. Logan attend those meetings?

10 A Yes.

11 Q Do you remember whether he was at the meeting where the issue  
12 of tracking the number of ballots that had been mailed or  
13 issued arose?

14 A Yes.

15 Q He was there?

16 A I believe so.

17 Q Did this subject come up in more than one of the supervisors'  
18 meetings?

19 A I'm not really sure.

20 Q Did Mr. Huennekens say anything about the subject of tracking  
21 the number of ballots that had been issued or mailed during  
22 the supervisors' meeting?

23 A I don't remember.

24 Q Do you remember if Mr. Logan did?

25 A I remember at one point him saying something about making

1           sure that Scott and I were using the same statistics.

2   Q       Were you using different statistics than Mr. Turnbull was?

3   A       No, we were using -- we were both running separate reports in  
4           DIMS with the same parameters.

5   Q       Were you producing the same numbers?

6   A       I'm not sure.

7   Q       Do you remember Mr. Logan saying anything else about this  
8           subject of tracking ballots issued or mailed?

9   A       That's the only specific thing I remember.

10   Q      And other than the supervisor's meeting, do you remember  
11          discussing with Mr. Huennekens or Mr. Logan the subject of  
12          tracking the number of absentee ballots issued or mailed?

13   A      I'm not sure.

14   Q      In your e-mail marked as Exhibit 1, it also indicates that  
15          you had a serious concern that included not knowing for  
16          certain how many ballots had been reissued; is that right?

17   A      That's part of my concern.

18   Q      What was your concern with respect to the number of ballots  
19          being reissued?

20   A      Nothing specific.

21   Q      A reissued ballot is sent to a voter under what  
22          circumstances?

23   A      If something on their record had been changed after the first  
24          ballot was sent, if they called and said I didn't get the  
25          first ballot, or any -- if something happened to the first

1 ballot. Their mailing address had changed, a number of  
2 reasons.

3 Q A request to be reissued an absentee ballot can come over the  
4 telephone?

5 A Yes.

6 Q The voter doesn't need to send anything in writing?

7 A No.

8 Q Do you know whether a voter can update their address over the  
9 telephone?

10 A Yes.

11 Q If a person calls in to update their address and request  
12 reissuance of an absentee ballot, does King County do  
13 anything to confirm that the person who is calling is the  
14 same registered voter to whom the first absentee ballot was  
15 issued?

16 A I'm not sure what they were doing. I wasn't doing that  
17 process.

18 Q Is it voter services who handles that part of the process?

19 A Yes.

20 Q Was it important to know how many absentee ballots had been  
21 reissued in King County?

22 A I can't think of why it was important. It was just something  
23 I wanted to know.

24 Q Why did you want to know?

25 A I had known that in the past.

1 Q But now with DIMS it was difficult to know that number?

2 A Yes.

3 Q And DIMS was a new system?

4 A Yes.

5 Q In your e-mail in Exhibit 1, you also indicate that, We can  
6 not say for certain who has been issued what; is that right?

7 A Yes.

8 Q Was that part of the serious concern you refer to in the  
9 e-mail?

10 A All of it was a concern of mine. That wasn't a very serious  
11 part of it.

12 Q What is the serious part of your concern?

13 A We didn't know how many ballots we had received back.

14 Q Why was that a serious concern of yours?

15 A Because we didn't know how many ballots we were supposed to  
16 be processing.

17 Q Is one of the reasons that you want to know how many ballots  
18 you were supposed to be processing to make sure that ballots  
19 weren't lost in the process?

20 A Yes.

21 Q And to make sure ballots aren't added in the process?

22 A That wasn't a concern of mine.

23 MR. HAMILTON: Read the answer back.

24 MR. MAGUIRE: That wasn't a concern of mine.

25 MR. HAMILTON: That wasn't. Okay.

1 Q (By Mr. Maguire) Why wasn't that a concern of yours?

2 A That possibility never crossed my mind.

3 Q Do you remember communicating with anyone in King County  
4 Elections about the serious concern you had as to how many  
5 ballots King County received back from voters?

6 MR. PORTER: Aside from the e-mail, Exhibit 1?

7 MR. MAGUIRE: Yes.

8 THE WITNESS: We had a number of discussions of how to  
9 keep track because we couldn't rely on the numbers from DIMS.

10 Q (By Mr. Maguire) Who is the we that you're talking about?

11 A Garth Fell, Bill Huennekens. I'm not sure who else.

12 Q This was a serious concern you raised more than once?

13 A Yes.

14 Q Was this concern the subject of multiple discussions with  
15 Mr. Fell?

16 A Yes.

17 Q And multiple discussions with Mr. Huennekens?

18 A More than one. I can't remember exactly how many.

19 MR. PORTER: I'm going to object to the last question as  
20 to I think it creates a vagueness as to whether there were  
21 separate discussions with Mr. Fell and then with  
22 Mr. Huennekens, or if we're talking about the same pool of  
23 discussions.

24 Q (By Mr. Maguire) Did you ever have discussions with Mr. Fell  
25 on this subject when Mr. Huennekens wasn't present?

1 A Wasn't present?

2 Q Was not present.

3 A I had many discussions with Garth Fell when Mr. Huennekens  
4 was not present.

5 Q On the subject of tracking the number of absentee ballots  
6 that were returned?

7 A Yes.

8 Q Did you have any discussions with Mr. Huennekens when  
9 Mr. Fell wasn't present on that subject?

10 A I'm not sure.

11 Q But you remember more than one conversation on this subject  
12 with Mr. Huennekens where Mr. Fell was present?

13 A Yes.

14 Q Do you remember when these discussions took place?

15 A Garth set up a meeting with Bill and I in I think June of  
16 last year to discuss how we were going to handle this issue,  
17 and then closer to the election, we had another meeting to  
18 discuss a spreadsheet that I maintain that shows how many  
19 ballots are issued and returned.

20 Q Were you the person in the Elections Department who raised  
21 this issue?

22 A I'm not sure if anybody else raised the issue.

23 Q I just want to understand the channel of the communications.  
24 It wasn't Mr. Huennekens who came to you and said in  
25 substance, Ms. Way, we need to figure out a way to track

1 returned ballots. It was you going to Mr. Fell and  
2 Mr. Huennekens expressing concern about the tracking of  
3 ballots that were being returned?

4 A Yes.

5 Q At the meeting in June with -- it was with Mr. Fell and  
6 Mr. Huennekens?

7 A Yes.

8 Q Do you remember the substance of what you said?

9 A We hadn't seen in DIMS how it was going to track how many  
10 ballots are issued and returned, and we didn't think that  
11 there was an adequate process to track that in DIMS. But we  
12 weren't sure yet. So we were discussing if there wasn't  
13 adequate accounting in DIMS other possible ways to track it.

14 Q In answering that question, you used the word, we. Who are  
15 you referring to?

16 A I'm sorry. I had had previous discussions with Garth Fell  
17 about this issue, and then he and I together went to Bill  
18 with what we had discussed.

19 Q So prior to the June meeting with Mr. Huennekens and  
20 Mr. Fell, you had expressed your concern to Mr. Fell; is that  
21 right?

22 A Yes.

23 Q Is did Mr. Fell share in your concern?

24 A He did. I believe so.

25 Q And then he arranged a meeting for the two of you with

1 Mr. Huennekens to talk about this issue?

2 A Correct.

3 Q And that meeting occurred in June. Mr. Fell expressed the  
4 view that he didn't think DIMS could track the number of  
5 absentee ballots issued?

6 A I don't remember exactly.

7 Q I should say did Mr. Fell express to you the view that he  
8 didn't think DIMS could track of number of ballots returned?

9 A He was also concerned.

10 Q How did Mr. Huennekens respond in the June meeting?

11 A From what I can remember, we talked about our concerns and he  
12 asked us to keep looking into it and find ways to account for  
13 the ballots.

14 Q Did he indicate in substance that it was important to account  
15 for the number of absentee ballots returned?

16 A I believe he thought it was important. I can't remember  
17 exactly.

18 Q Why do you believe he thought that was important?

19 A Because he wanted us to keep looking into it.

20 Q As a consequence of Mr. Huennekens' instruction to keep  
21 looking into it, did you or Mr. Fell do anything after the  
22 June meeting?

23 A We tried looking in DIMS to find reports, and then we  
24 discussed keeping a separate spreadsheet and started working  
25 on how that would look like.

1 Q What was the problem with DIMS?

2 MR. HAMILTON: Object to the form of the question.

3 Q (By Mr. Maguire) Why couldn't DIMS track the number of  
4 ballots returned?

5 A I don't know.

6 Q Why did you think that DIMS couldn't track the number of  
7 ballots returned?

8 A At that point, everything that I had seen and the people that  
9 I had talked to that used DIMS, from what I had learned, it  
10 didn't seem to track things on the scale that we would need  
11 it.

12 Q How did information regarding the return of an absentee  
13 ballot get entered in DIMS?

14 A There is a couple different ways.

15 Q What are they?

16 A We pick up the ballots at the post office, take them to PSI  
17 where they are sorted, and the information from the bar code  
18 is captured, and then we're given a disk with all of that  
19 information and we load the disk into DIMS batch by batch.

20 Q Is there another way?

21 A We can create our own batch instead of going through PSI, or  
22 you can credit just the voter and not go through the batch  
23 process.

24 Q Workers can manually access a voter's individual history and  
25 credit them with voting. Is that what you mean?

1 A Yes.

2 Q Was there something in the first process you mentioned,  
3 uploading a disk from PSI, that affected DIMS's ability to  
4 track the absentees that were returned?

5 A Yes.

6 Q What kinds of problems would occur in uploading the  
7 information that would make the data in DIMS with respect to  
8 the number of absentee ballots returned unreliable?

9 A DIMS would automatically reject some voter ID's.

10 Q Were there particular voter ID's that would be rejected?

11 A No. There was a number of reasons why it would happen.

12 Q What are the reasons?

13 A If the ballot was reissued, the first ID number was  
14 suspended, and the voter was given a new ID number, so that  
15 suspended ID would be rejected. If the voter had already  
16 returned a ballot. If the ballot was from a wrong election.  
17 If the voter had been inactivated for some reason after we  
18 mailed the ballot. I think there was others, but I don't  
19 remember.

20 Q Were those categories referred to as Wanda rejects?

21 A Yes.

22 Q What happened to Wanda rejects after DIMS automatically  
23 rejected them?

24 A We tried to sort them to their different reject reasons.  
25 Then they were put aside until the end.

1 Q And what happens to them at the end?

2 A They're looked up to see if that ballot should be counted.

3 Q And by the end, you mean, before certification of the  
4 election?

5 A Yes.

6 Q Wanda rejects that aren't later counted don't appear anywhere  
7 in the DIMS system?

8 A Right.

9 Q If it's later determined they should be counted, will they  
10 appear in the DIMS system?

11 A Yes.

12 Q So towards the end of the canvass period, individuals look  
13 through the Wanda rejects and determine if some should be  
14 counted; is that right?

15 A Yes.

16 Q And if they are going to be counted, an election worker  
17 manually updates the record in DIMS to reflect that the  
18 ballot was returned and will be counted?

19 A Yes.

20 Q How about for the Wanda rejects that are never brought back  
21 into the -- to be counted pile? Are they accounted for in  
22 DIMS?

23 A No.

24 Q Are they accounted for anywhere?

25 A They are counted as a challenged uncounted ballot, but there

1 is no record of that voter.

2 Q Does somebody do a hand-count of those ballots?

3 A Yes.

4 Q When is the hand-count done?

5 A Shortly before certification.

6 Q Is it only done once?

7 A I'm not sure.

8 Q Other than Wanda rejects that are not later counted, are  
9 there any other categories of ballots returned that would not  
10 be reflected in DIMS?

11 A Not reflected in DIMS and not counted?

12 Q If I understood your testimony correctly, when the PSI data  
13 is uploaded in the DIMS, all of the information for the  
14 ballots that are not Wanda rejects at that time makes its way  
15 into the DIMS data base indicating that those voters have  
16 returned ballots. Was that right?

17 A Yes.

18 Q And then the subset of Wanda rejects are not initially in  
19 DIMS, but if it is later determined that some of those  
20 rejects should be counted, those rejects will have their  
21 information entered into DIMS reflecting that those voters  
22 returned ballots; is that right?

23 A Yes.

24 Q So that leaves only Wanda rejects that are not later  
25 determined to be valid as the category of ballots returned

1 for which information is not contained in DIMS?

2 A No. There is other ballots that there is no information in  
3 DIMS on.

4 Q What are those ballots?

5 A Federal write-in ballots, if the voter wasn't registered. If  
6 they're on the address confidentiality program, there is  
7 nothing in DIMS.

8 Q Any other categories?

9 A Not that I can think of right now.

10 Q Were the number of federal write-in ballots tracked?

11 A There was a hand-count done on them.

12 Q When was that hand-count done?

13 A When they put the ballots into batches to be put through,  
14 they counted them.

15 Q Did they record that information somewhere?

16 A It was written on the batch slip.

17 Q Were federal write-in ballots all placed in the same batch?

18 A There was a couple batches.

19 Q Was there anything on the batch slips for the federal write-  
20 in ballots that indicated they were federal write-in ballots?

21 A I'm not sure.

22 Q Do you know the number of federal write-in ballots that were  
23 returned to King County?

24 A No, I don't, off the top of my head.

25 Q Where would you look to determine that number?

1 A I'm not sure if we kept it written down somewhere.

2 Q Who would know for sure?

3 A Well, I know at one point, we counted them and gave the  
4 number to, I believe, Bill.

5 MR. MAGUIRE: Mark that as the next exhibit, and the  
6 next one after.

7 (Exhibits 2 and 3 marked for identification.)

8 MR. PORTER: Do you have an extra set?

9 MR. MAGUIRE: I do.

10 Ms. Fell, the court reporter has just handed you two  
11 exhibits, one marked as Exhibit 2, and the other marked as  
12 Exhibit 3.

13 MR. PORTER: I think you said, Ms. Fell.

14 MR. MAGUIRE: I'm sorry. Ms. Way. We spent a fair  
15 amount of time with Mr. Fell in the last day.

16 MR. EVEN: And, Rob, could you let us know which one is  
17 which?

18 MR. MAGUIRE: Certainly. I believe the January 5th  
19 printout, the Fact Sheet Military and Overseas Ballot, is  
20 Exhibit 2, and 3 is the January 7, 2005, King County updates  
21 voter registration file document. Is that right, Ms. Way?

22 THE WITNESS: Yes.

23 Q (By Mr. Maguire) Do you recognize these as documents posted  
24 on the King County website?

25 A Yes.

1 Q On Exhibit 2, the second page indicates 1,342 write-in  
2 ballots received, and 1,081 validated and counted. This is  
3 under the number of federal write-in ballots received and  
4 counted. Do you see that?

5 A Yes, I do.

6 Q And on Exhibit 3, in the fourth paragraph from the bottom of  
7 the first page, it indicates that 251 federal write-in  
8 absentee ballots were tabulated. Do you see that?

9 A Uh-huh, yes.

10 Q Do you know whether either of these numbers is correct?

11 A I believe they both are.

12 Q One of them says 1,081 were validated and counted. The other  
13 says 251 were tabulated; isn't that right?

14 A Yes. The -- I would have to read the entire thing, but I  
15 believe Exhibit 3 is talking about there is 251 federal  
16 write-in ballots that were tabulated that the voter wasn't  
17 credited in DIMS.

18 Q And what is Exhibit 2 talking about?

19 A The total amount of federal ballots we counted or tabulated.

20 Q So that means that the difference between those two numbers,  
21 1,081 minus 251, are individuals who submitted federal write-  
22 in ballots and who were credited with voting in DIMS?

23 A I believe so.

24 Q Okay. Are these the numbers you gave to Mr. Huennekens that  
25 you were talking about?

1 A I believe they are.

2 Q Are you the person most knowledgeable about the number of  
3 federal write-in ballots returned?

4 A Probably.

5 Q Is there someone else you think might have that information  
6 in King County?

7 A Not that I can think of.

8 Q And are you also the person most knowledgeable in King County  
9 as to the number of individuals who submitted federal write-  
10 in ballots who were not credited with voting?

11 MR. HAMILTON: Objection, lack of foundation. I'm not  
12 sure this witness can testify about the number of  
13 individuals.

14 THE WITNESS: I'm probably the person who knows the most  
15 about that.

16 Q (By Mr. Maguire) Exhibit 3 also refers to 69 voters in the  
17 address confidentiality program; is that right?

18 A Yes.

19 Q Do you know whether that is the number of individuals who  
20 were in the Address Confidentiality Program who cast ballots  
21 in the November election?

22 A To the best of my knowledge, that's how many.

23 Q Do you know how that number was determined?

24 A We kept a record of the envelopes that came back from ACP  
25 voters.

1 Q Were they kept separate from the other envelopes?

2 A They were in a separate batch altogether.

3 Q Was anything written on the batch slip or anywhere else  
4 associated with those ballots that indicated that they were  
5 part of the Address Confidentiality Program?

6 A I'm not sure.

7 Q Other than the federal write-in ballots, the Address  
8 Confidentiality Program voters, and the Wanda rejects that  
9 are never determined to be valid ballots, are there any other  
10 categories of ballots you can think of or information  
11 reflecting that returned to King County is not reflected in  
12 DIMS?

13 A Not that I can think of.

14 Q How about for in-house batches you mentioned as the second  
15 way that data is entered into DIMS, is there any information  
16 from the in-house batches that is not reflected in DIMS?

17 A It's the same as the other batches.

18 Q They have Wanda rejects as well?

19 A Yes.

20 Q Were the federal write-in ballots in-house batches?

21 A Yes, it was all done in-house.

22 Q And the Address Confidentiality Program ballots?

23 A Done in-house.

24 Q Are there any other problems you can think of with DIMS that  
25 affected DIMS's ability to track the number of absentee

1 ballots returned?

2 A Yes, there were a couple other issues.

3 Q What were those issues?

4 A Sometimes when people were doing data entry, it was giving  
5 the voter a returned date, which made it appear the voter had  
6 returned the ballot.

7 Q That was a problem identified in October?

8 A Yeah.

9 Q Was that the problem referred to in Exhibit 1 created by  
10 osborn?

11 A Yes.

12 Q Can you generally describe that problem?

13 A From what I recall, we were issuing the ballots, and they  
14 were changing the issue source, but somehow a returned source  
15 was also changing.

16 Q So when an election worker pulled up a registration record in  
17 DIMS and tried to manually input that an absentee ballot had  
18 been issued to that person, in some instances it filled out  
19 the return field as well?

20 A Yes. The voter was already in for having a ballot issued.  
21 We were just changing the type of ballot they were being  
22 issued and the return type was also changing.

23 Q The type rather than the date?

24 A The return source was changing and it was automatically  
25 filling in the date.

1 Q For what ballots or voters would you need to change the type  
2 of ballot issued?

3 A We were instructed to put a note in the ballot, the reissued  
4 ballots, and in order to get those on a separate file, we  
5 would go in and change their source and rerun a file with  
6 just that source.

7 Q Other than reissued ballots, were there other categories of  
8 ballots where workers had to change the type of ballot  
9 issued?

10 A Not that I recall.

11 Q Do you know approximately how many reissued ballots were  
12 involved -- let me rephrase that. Do you know how many times  
13 election workers went in to DIMS to change the type of ballot  
14 issued?

15 A No, I don't.

16 Q Do you know how many ballots were reissued?

17 A No, I don't.

18 Q Do you have an approximate number?

19 A I know it was over a couple hundred that they had done  
20 with -- that this e-mail refers to.

21 Q Did somebody take a look at and clean up the problems?

22 A As best they could.

23 Q What did they do to clean up the problems?

24 A They went back through the lists that they had worked from  
25 and took out the return date for the voters on those lists.

1 Q So they had a list of everybody that could have been affected  
2 by this issue?

3 A Yes.

4 Q And somebody was given the task of going back through every  
5 name on that list and checking for the problem?

6 A Yes.

7 Q And then fixing the problem if they saw it?

8 A Yes.

9 Q And somebody did that?

10 A Yes.

11 Q Were any instructions given or steps taken to prevent the  
12 problem from happening in the future?

13 A When they did that process, after this, they watched for the  
14 return date to get filled.

15 Q Who was doing the work?

16 A Craig Osborn and Samantha Duncan.

17 Q You mentioned that there were two other issues in DIMS with  
18 tracking. This issue of DIMS filling in the return date is  
19 one of them. Is that one of the two issues that you're  
20 referring to?

21 A I'm not sure which -- where did I refer to that?

22 Q Are there other issues with respect to DIMS that affect the  
23 ability to track the number of absentee ballots returned  
24 beyond what we've already discussed?

25 A Not that I can recall.

1 Q You mentioned a meeting closer to the election than the June  
2 meeting with Mr. Huennekens and Mr. Fell to discuss a  
3 spreadsheet showing the number of absentee ballots issued and  
4 maintained; is that right?

5 A Issued and returned.

6 Q Returned. When did that meeting take place?

7 A I don't recall specifically.

8 Q Do you remember whether it was after the primary?

9 A I think it was before the primary.

10 Q Do you remember the substance of the discussion?

11 A There is a spreadsheet that I had to maintain for Bill and  
12 Dean, and I wasn't sure what data to put into it or how to  
13 get the data to put into it.

14 Q What information did Mr. Huennekens and Mr. Logan want  
15 contained on the spreadsheet?

16 A How many ballots we issued each day and total ballots issued,  
17 and how many ballots were returned each day and total ballots  
18 returned.

19 Q During that meeting, did you express concern that you could  
20 not say for certain how many of the absentee ballots had been  
21 issued or returned each day?

22 A I recall a conversation that I was concerned if the numbers  
23 that we were putting in the spreadsheet were accurate and  
24 what they actually reflected.

25 Q Where were you getting the information for the spreadsheets?

1 A From a statistics report in DIMS.

2 Q So that report wouldn't reflect Wanda rejects that were never  
3 counted, federal write-in ballots, or individuals in the  
4 address confidentiality program?

5 A Correct.

6 Q Did you explain that to Mr. Huennekens or Mr. Fell?

7 A Yes.

8 Q What did they say?

9 A I believe we were -- I believe I was told to put how many  
10 voters credited in the returned column.

11 Q Did anyone suggest physically counting the number of ballots  
12 that are returned each day?

13 A I don't believe so.

14 Q Did that instruction come from Mr. Huennekens or Mr. Fell?

15 MR. HAMILTON: Object to the form of the question.

16 Q (By Mr. Maguire) I'm sorry. The instruction to put the  
17 number of voters credited in your returned column on the  
18 spreadsheet, was that Mr. Fell or Mr. Huennekens?

19 A I believe it was Bill.

20 Q Were you satisfied with the guidance Mr. Huennekens provided  
21 you with respect to completing that spreadsheet?

22 A I was satisfied that I knew what to put in the spreadsheet.

23 Q Were you concerned that the information in the returned  
24 column on the spreadsheet would not accurately reflect the  
25 number of absentee ballots returned to King County?

1 A Yes.

2 Q And you expressed that concern to Mr. Fell and Mr. Huennekens  
3 after Mr. Huennekens' instruction?

4 A I believe so.

5 Q Do you remember how they responded?

6 A From what I recall, the spreadsheet was to be how many voters  
7 were credited, and even though we had the ballot, it wasn't  
8 considered valid yet. So we didn't need to put it in the  
9 spreadsheet.

10 Q That's what Mr. Huennekens said?

11 A That's what I recall the explanation for --

12 Q That explanation came from Mr. Huennekens or from Mr. Fell?

13 A I believe it came from Bill, but I can't remember exactly the  
14 conversation.

15 MR. PORTER: I've got 10:30, Rob. Do you want to take  
16 ten minutes, please?

17 MR. MAGUIRE: Sure. Let's go off the record and take a  
18 break.

19 (Off the record.)

20 Q (By Mr. Maguire) Ms. Way, before the break, we were talking  
21 about a conversation between you, Mr. Huennekens, and  
22 Mr. Fell that occurred you think shortly before the primary  
23 election regarding a spreadsheet that you were keeping to  
24 track the number of ballots issued and returned; is that  
25 right?

1 A Yes. We may have had the conversation before the general  
2 also, because I kept the spreadsheet for each election, and  
3 when I was setting up for the next election, I think we  
4 talked about it again, but I can't remember the specifics.

5 Q Do you remember generally whether Mr. Huennekens reiterated  
6 his instruction with regard to putting the number of voters  
7 credited in the returns column on your spreadsheet?

8 A I can't remember exactly.

9 Q Do you remember any change in the instructions Mr. Huennekens  
10 had provided from the previous meeting?

11 A At one point, we changed that spreadsheet, and I don't  
12 remember if it was during last fall. But the instruction was  
13 always the ballots returned is the voters credited.

14 Q So any ballot that was challenged would not receive credit,  
15 right?

16 A No, they wouldn't receive credit. I'm sorry. The -- what we  
17 were putting in the report was how many ballots show returned  
18 in DIMS, not specifically credited. Well, I can't remember  
19 if we had the credited or challenge -- or if the challenged  
20 ballots were included in that report. I'd have to look at  
21 the report.

22 Q The number returned in DIMS wouldn't include the Address  
23 Confidentiality Program, the federal write-in ballots, or the  
24 Wanda rejects that we already discussed this morning?

25 A No, it wouldn't.

1 Q Okay. And you mentioned a change in the spreadsheet that  
2 occurred sometime after this conversation with Mr. Fell and  
3 Mr. Huennekens. What was the change?

4 A At some point, we changed the spreadsheet and added a column  
5 to try and account for the Wanda rejects, but I'm fairly  
6 certain that wasn't until the February election this year.

7 Q With respect to the general election in November, did you  
8 have any other conversations involving either Mr. Fell or  
9 Mr. Huennekens regarding tracking the number of absentee  
10 ballots returned?

11 A I think we talked about it at one of the Tuesday night  
12 meetings as far as how the stats were being pulled and  
13 what -- who is pulling the stats.

14 Q During that Tuesday night meeting, did you indicate that the  
15 number of ballots returned that you were tracking were simply  
16 the report from DIMS?

17 A I believe we discussed that Scott Turnbull would be pulling  
18 the report from DIMS and I would just be using the numbers  
19 from his report.

20 Q Was there any other source of information for your  
21 spreadsheet than what Mr. Turnbull provided to you?

22 A I don't believe so.

23 Q Mr. Huennekens knew that the report did not include all of  
24 the ballots returned to King County?

25 MR. PORTER: Objection, lack of foundation.

1 THE WITNESS: I believe --

2 MR. HAMILTON: Join in that objection.

3 THE WITNESS: I believe so.

4 Q (By Mr. Maguire) Why do you believe so?

5 A I recall saying that this doesn't include the Wanda rejects.  
6 It's just the ballots that DIMS accepted.

7 Q Do you recall saying that to Mr. Huennekens?

8 A I believe he was one of the people I said it to.

9 Q And another one of the people you said it to was Mr. Fell?

10 A Yes.

11 Q Were there any other people you said it to?

12 A That specific about that report, I don't believe so.

13 Q Other than the Tuesday night supervisors' meeting and the  
14 other discussions you've already mentioned, do you recall any  
15 other communications regarding the tracking of absentee  
16 ballots returned for the general election?

17 A I can't recall specifically.

18 Q Do you recall generally whether there were any other  
19 conversations?

20 A I felt like I was talking about those issues quite a bit to  
21 anyone that would listen.

22 Q This was a serious concern yours --

23 A Yes.

24 Q -- that you expressed frequently to your supervisors and  
25 anyone in your department who would listen?

1 A I felt that's what I was doing.

2 Q Did you feel that the concern was addressed by your  
3 supervisors?

4 A I felt like they recognized it as a concern, but they felt we  
5 could track it in other ways.

6 Q Did you agree that you were able to track it in other ways?

7 A I didn't think that we would be able to track it accurately  
8 enough in other ways.

9 (Exhibit 4 marked for identification.)

10 Q Ms. Way, the court reporter has handed you a document marked  
11 as Exhibit 4. The first page is the meeting agenda for the  
12 King County Canvassing Board from November 17, 2004 with  
13 attachments. Do you recognize these documents?

14 A Yes.

15 Q The second page of the exhibit is the mail ballot report for  
16 the general election; is that right?

17 A Yes.

18 Q Do you know who prepared this document?

19 A I prepared this document with Garth Fell.

20 Q The first item listed on mail ballot report is the, Total  
21 number of ballots issued; is that right?

22 A Uh-huh, yes.

23 Q Did you calculate the number of ballots issued for this  
24 report?

25 A No. We took that number off of the -- I believe we got it

1 off of the website.

2 Q Do you know the source of the data that was on the website?

3 A Scott Turnbull would run a report every day that they used to  
4 post the website.

5 Q That's a report from DIMS?

6 A I believe so.

7 Q The same report on which you were instructed to rely to  
8 complete your spreadsheet?

9 A Yes.

10 Q And the number listed on the mail ballot report is 646,537;  
11 is that right?

12 A Yes.

13 Q Does that accurately indicate the total number of absentee  
14 ballots issued?

15 A That's the number that came from DIMS. I don't know if it's  
16 accurate or not.

17 Q Do you know if DIMS accurately tracked the total number of  
18 ballots issued?

19 MR. HAMILTON: Objection, asked and answered.

20 THE WITNESS: I don't know.

21 Q (By Mr. Maguire) The second line is, Total number of ballots  
22 returned, 568,333; is that right?

23 A Yes.

24 Q Do you know where the data for this entry came from?

25 A Yes.

1 Q Where did it come from?

2 A We took the total amount of ballots counted from GEMS and  
3 added up the hand-count of the ballots that were not counted.

4 Q So that number is not a report from DIMS?

5 A No.

6 Q That's different than the information contained on your  
7 spreadsheet?

8 A Correct.

9 Q Did you decide to use that different number there than what  
10 was on your spreadsheet, or a different method of calculating  
11 total number of ballots returned?

12 A The number on my spreadsheet was total number of ballots  
13 loaded into DIMS. It didn't include the various things we've  
14 already talked about. So we couldn't use that number.

15 Q Did you have a discussion with anyone when you were creating  
16 the mail ballot report as to what information should be  
17 reflected in the total number of ballots returned?

18 A Yes.

19 Q With whom did you have the discussion?

20 A Garth Fell.

21 Q And what was the substance of the discussion?

22 A We discussed how to fill out this report, because we didn't  
23 have an accurate number of ballots returned.

24 Q Did Mr. Fell decide that the number reflected on the mail  
25 ballot report of ballots returned should be the sum of the

1 total counted by GEMS and those rejected?

2 A I believe so.

3 Q Was anyone else involved in the conversation between you and  
4 Mr. Fell on this subject?

5 A I only discussed this with Garth Fell.

6 Q You're not sure whether it was his idea or your idea?

7 A We discussed how to fill out this report, and we both agreed  
8 that the only thing we could do is take the GEMS count and  
9 add in what we hadn't counted.

10 Q Did you discuss any other alternatives?

11 A Not that I recall.

12 Q The third line on the mail ballot report is the, Total number  
13 accepted valid and counted is 564,222. Is that right?

14 MR. PORTER: Were you asking her if that's the right  
15 figure?

16 MR. MAGUIRE: No, is that what the document says.

17 THE WITNESS: 564,222 is what the document says.

18 Q (By Mr. Maguire) Do you know how that number was derived?

19 A That's how many ballots the GEMS data base showed as being  
20 tabulated.

21 Q And the mail ballot report indicates 4,111, Total number of  
22 ballots rejected. That's what the report says?

23 A Yes.

24 Q Do you know how that number was calculated?

25 A We hand-counted all of the ballots that were rejected, and

1 that's the total of the various categories.

2 Q Would the GEMS report used for the total number accepted as  
3 valid and counted reflect ballots cast by individuals in the  
4 Address Confidentiality Program?

5 A Yes.

6 Q And individuals who cast federal write-in ballots?

7 A Yes.

8 Q The mail ballot reports has some subcategories under the  
9 section for, Total number of ballots rejected. The first big  
10 subcategory is Prior to Validation, Postmarked after election  
11 date, 1,700. Do you know how that number was calculated?

12 A Ballots that are received with a too late postmark are set  
13 aside and then hand-counted at the end, and that's the total  
14 of the hand-count.

15 Q During the verification process?

16 A Yes.

17 Q They are sorted into their own containers?

18 A Yes.

19 Q And the, No signature on envelope line of 502, is that  
20 derived in the same manner?

21 A Yes.

22 Q And the same for the, Not voter's signature, 1,561?

23 A Yes.

24 Q How about, Mailed marked voter "deceased" or "moved" 56, how  
25 is that derived?

1 A The same process.

2 Q And in subcategory, After Validation, Item e says, Wrong  
3 Election, 89. How is that determined?

4 A The same process. They're pulled out of the stream and put  
5 aside as challenged and then hand-counted.

6 Q And, Returned multiple ballots, 203, how that is determined?

7 A The same process.

8 Q How does an election worker know that a particular voter has  
9 returned multiple ballots?

10 A They don't. These are actually numbers. Those are probably  
11 Wanda rejects.

12 Q Are Wanda rejects separated into different categories for the  
13 reason of their rejection?

14 A Yes.

15 Q And that's done automatically by DIMS?

16 A No.

17 Q By the Wanda utility?

18 A No.

19 Q After the Wanda rejects are kicked out by the utility, an  
20 election worker goes through the rejects and sorts them into  
21 different categories manually?

22 A Yes.

23 Q And how is the, number of ballots returned by the USPS which  
24 are undeliverable contained on the mail ballot report  
25 calculated?

1 A I believe Carlos Webb had those hand-counted at the office.

2 I got the number from him.

3 Q When you finished preparing the mail ballot report, what did  
4 you do with it?

5 A I e-mailed it to Garth Fell.

6 Q Do you remember whether you included any message text in your  
7 e-mail, or was it simply an attachment?

8 A I believe it's just an attachment, but I'm not sure.

9 Q After you e-mailed it to Mr. Fell, did you discuss it with  
10 him?

11 A To be honest, I believe he was sitting at my desk when we  
12 were filling it out, and we discussed it then. Then I just  
13 e-mailed it to him for him to turn in.

14 Q You worked on each category together while sitting at your  
15 computer?

16 A From what I recall, that's how we did it.

17 Q Did he tell you what he was going to do with the mail ballot  
18 report?

19 A No.

20 Q Did you know what he was going to do with the mail ballot  
21 report?

22 A I assumed he was going to turn it in to Bill.

23 Q Mr. Huennekens?

24 A Yes.

25 Q And Mr. Huennekens would give it to the canvassing board?

1 A Yes.

2 Q Did you ever discuss the mail ballot report with  
3 Mr. Huennekens?

4 A Not that I recall.

5 Q Did you ever discuss --

6 MR. PORTER: Sorry, Rob, can I just make sure that you  
7 intended that question to refer to the completed mail ballot  
8 report?

9 MR. MAGUIRE: Yes.

10 MR. PORTER: Because I think she had addressed whether  
11 there were discussions about --

12 MR. MAGUIRE: Total numbers returned.

13 MR. PORTER: Yes.

14 Q (By Mr. Maguire) Yeah. And you don't recall any discussions  
15 with Mr. Huennekens about the mail ballot report after it was  
16 completed?

17 A Prior to certification or during certification?

18 Q Let's go one by one. Prior to certification, do you remember  
19 any discussions?

20 A No.

21 Q No. During certification?

22 A Not that I recall.

23 Q After certification?

24 A There was a discussion about the not voter's signature  
25 category.

1 Q When did that discussion take place?

2 A Shortly after the Larry Phillips no signature on file issue.

3 Q And what was the substance of that discussion?

4 A I was asked where the no signature on file are accounted for  
5 and why they don't have their separate -- have a separate  
6 category.

7 Q And what did you say?

8 A That this is how -- this is the report that I had been given  
9 to always fill out, and the no signature on file had always  
10 been included as a signature problem.

11 Q So the 735 no signature on file absentee ballots that came to  
12 King County's attention after Larry Phillips' communications  
13 are reflected on the mail ballot report in the, Not voter's  
14 signature box?

15 A Yes.

16 Q Do you know how absentee ballots with no signature on file  
17 were treated in the primary election in King County?

18 A We looked for a signature in the system. We sent voter a  
19 letter. If the letter came back, the ballot was counted. If  
20 the letter didn't come back, the ballot was not accepted.

21 Q And in other elections in 2004 prior to the primary, was that  
22 the same practice?

23 A Prior to the primary, we also tried to find the voter's  
24 original registration card.

25 Q And during the primary did you look for the original voter

1 registration cards?

2 A No.

3 Q Why was there a difference in the way the primary was handled  
4 than previous elections in 2004?

5 A At that time it was my understanding that all of the  
6 signature cards that were missing had been scanned into the  
7 system, and that they weren't able to locate some cards, and  
8 that those voters had been sent notices. So it was our  
9 understanding that there was no cards to go and find.

10 Q Earlier in 2004, election workers had searched for original  
11 voter registration signatures where a digital image couldn't  
12 be found in DIMS?

13 A Yes.

14 Q When did that search occur?

15 A When we converted to DIMS, there was a large amount of  
16 signatures missing, and I believe that was in June.

17 Q As a result of the search in June, did King County take any  
18 steps to try and obtain signatures from the voters for whom  
19 no signature could be found on file?

20 A My understanding was the voters they couldn't find a card for  
21 were sent a letter.

22 Q That happened in the summer 2004?

23 A Yes.

24 Q And if the voter returned the letter with a new signature,  
25 that signature would be scanned into DIMS?

1 A I believe so, but I didn't work on that project.

2 Q Who did work on that?

3 A Carlos Webb headed that project.

4 Q By the time of the primary, you understood that King County  
5 had done everything it could to locate the original  
6 registration cards or the no signature on file records in  
7 DIMS?

8 A That was what I understood, yes.

9 Q And on what did you base that understanding?

10 A A discussion I had with Carlos Webb where he told me they had  
11 finished the signature scanning project and he was sending  
12 letters to the voters that he couldn't locate registration  
13 cards for.

14 Q That was a discussion before the primary?

15 A Yes.

16 Q Did you have any discussions with Mr. Huennekens with respect  
17 to the no signature on file records during the primary  
18 election?

19 A Not that I recall.

20 Q How about prior to the primary election?

21 A Not that I recall.

22 Q Did you discuss them with him during the general election?

23 A With Mr. Huennekens?

24 Q Yes.

25 A No -- oh, I'm sorry.

1 Q Other than when he came and talked to you about the mail  
2 ballot report?

3 A No, I -- I did discuss the no sig on files at one of the  
4 Tuesday night meetings.

5 Q That was prior to certification?

6 A It was I believe October 26.

7 Q Why do you think it was October 26?

8 A I had taken notes at the meeting.

9 Q Do you still have those notes?

10 A Yes.

11 Q Do you have them with you today?

12 A No.

13 Q Are they in your office?

14 A They're at my home.

15 Q Have you reviewed them recently?

16 A Yes.

17 Q What do they say?

18 A It was brought to my attention at MBOS that there was a -- an  
19 amount of signatures missing -- ballots being returned where  
20 a signature wasn't scanned and the voter had just recently  
21 registered to vote. So they didn't know how to handle it  
22 because the registration card was -- we assumed at the office  
23 and was not scanned yet.

24 Q Who brought that to your attention?

25 A I don't remember which specific person. One of the people

1 working on the reconciling of ballots at MBOS.

2 Q You raised the issue of recent registrations that didn't have  
3 digital images of voter registration signatures at the  
4 meeting on October 26 where Mr. Huennekens was present?

5 A Yes, and I asked how we should handle them.

6 Q Mr. Fell was also present?

7 A Yes.

8 Q When you asked how you should handle them, who responded?

9 A I believe I asked if we should handle them like the rest and  
10 send them a letter, and I am not sure if it was Bill or Dean  
11 that said, yes, send them a letter.

12 Q Were there any -- was there anymore to the discussion?

13 A Then Carlos said that they would begin scanning those cards  
14 that hadn't been scanned yet that night, and they should have  
15 it completed by the next -- end of the next day.

16 Q Were the instructions to send letters to everyone who had a  
17 challenge code if no signature on file?

18 A We were only specifically talking about the newer voter  
19 registration ones at that point.

20 Q Do you know whether everyone who received a challenge code  
21 with no signature on file received a letter from King County?

22 A That was part of the process, yes.

23 Q Part of the normal process if an absentee ballot is not  
24 verified, King County sends a letter to the voter prior to  
25 certification and gives them an opportunity to correct

1 signatures?

2 A Yes.

3 Q Do you know whether letters were sent again to the  
4 individuals with recent registrations?

5 A I believe we send letters to them.

6 Q Do you know whether Mr. Webb did scan the recent  
7 registrations into the system?

8 A Prior to certification?

9 Q Right.

10 A I don't believe they were all scanned.

11 Q When did you first learn that they hadn't been all scanned  
12 prior to certification?

13 A When we verified the signatures of the no signature on file  
14 ballots prior to Christmas, some of the ones that I verified  
15 I noticed the registration cards were recent registrations  
16 that I had discussed at that meeting.

17 Q So it was not until Larry Phillips alerted King County about  
18 his ballot that you learned that Mr. Webb or his group had  
19 not scanned all of the recent registrations prior to  
20 certification?

21 A Correct.

22 Q Prior to the general election, do you know whether the  
23 absentee group and the group handling provisional ballots  
24 communicated with respect to the treatment of no signature on  
25 file ballots?

1 A I don't believe there were ever any discussions with respect  
2 to the no signature on file.

3 Q Prior to the general election, do you remember any  
4 discussions with anyone as to whether the ballot that's coded  
5 as no signature on file should be counted or rejected?

6 A In the spring of 2004, we were told if we did not have a  
7 signature to compare it to, the ballot was not to be counted.

8 Q Who told you that?

9 A Bill.

10 Q Mr. Huennekens?

11 A Yes.

12 Q Was that a change in practice at King County?

13 A It was.

14 Q So prior to spring of '04, NSOF ballots were simply counted,  
15 even if King County couldn't find original registration  
16 signature on file?

17 A Yes.

18 Q Did Mr. Huennekens explain why he was changing the practice?

19 A Yes.

20 Q What did he say?

21 A That we had to have a signature to compare the ballot to. It  
22 was not okay to just take it simply because we couldn't  
23 locate the voter's signature.

24 Q That is because it's important to determine that the person  
25 who submitted the ballot is the person who is registered to

1 vote?

2 MR. PORTER: Object to the form of the question.

3 MR. HAMILTON: Join in the objection.

4 THE WITNESS: I assume that's what he meant.

5 Q (By Mr. Maguire) That is the purpose of doing a signature  
6 comparison, isn't it?

7 A Yes.

8 Q After Larry Phillips contacted King County about his absentee  
9 ballot with no signature on file, were you involved in the  
10 process of searching for signatures for the no signature on  
11 file ballots?

12 A Searching for the signature card?

13 Q Yes.

14 A No, I didn't.

15 Q Were you involved in identifying the 735 ballots that fell  
16 into the category of no signature on file?

17 A I pulled the ballots out of the secured cage, but they were  
18 all mixed in with all of the signature issue ballots.

19 Q How did the issue come to your attention in December after  
20 Mr. Phillips contacted King County?

21 A Garth Fell called me at MBOS and --

22 Q What did he say?

23 A He asked to me to look up Lawrence Phillips' record, and I  
24 did, and it said he was challenged for no signature on file.  
25 He asked me if I knew who Lawrence Phillips was.

1 Q And what did you say?

2 A I said, is it Larry Phillips?

3 Q And what did he say?

4 A He said yes.

5 Q And Larry Phillips is on the King County Council?

6 A Yes.

7 Q He's the chair of the council?

8 A Yes.

9 Q And what did Mr. Fell say next?

10 A Something about were there more no signature on file ballots  
11 that weren't counted.

12 Q And what did you say?

13 A I said yes.

14 Q And what did he say?

15 A That he would call me back, I think.

16 Q Did he call you back?

17 A I believe so, but I don't really remember.

18 Q After the first phone call ended, did you do anything with  
19 respect to the no signature on file ballots?

20 A Not until they came to look at the ballots.

21 Q Who came to look at them?

22 A Bill Huennekens.

23 Q Had you retrieved them before Mr. Huennekens came to look at  
24 them?

25 A No.

1 Q How quickly did Mr. Huennekens come to look after your  
2 conversation with Mr. Fell?

3 A I believe my conversation with Garth was on Sunday night, and  
4 Bill came to MBOS sometime on Monday.

5 Q What did Mr. Huennekens say to you that Monday?

6 A That we need to pull the no sig on file ballots.

7 Q Did he say why?

8 A Because they should be counted.

9 Q Did he say that King County first needed to locate original  
10 signatures before counting them?

11 A Yeah, he said they should be pulled to find signatures to go  
12 before the canvassing board, I think is what he said.

13 Q Did he say anything else?

14 A I don't remember.

15 Q Did you then go and gather the no signature on file ballots?

16 A I took him into the secured cage, showed him where they had  
17 been stored.

18 Q They had all been sorted together?

19 A They were all mixed in. The 1,561 was one large group.

20 Q All the ballots that had been rejected for either a signature  
21 miscompare or no signature on file were sorted together?

22 A Yes.

23 Q And about half of them were no signature on file ballots?

24 A Correct.

25 Q What did Mr. Huennekens do when you showed him the ballots?

1 A He had me pull those trays out and took them to the front  
2 desk at MBOS.

3 Q Was there anyone else in the room or at the front desk?

4 A Yes.

5 Q How many people?

6 A 20, 25.

7 Q Is this a part of the building that the public has access to?

8 A Yes.

9 Q What did he do with the ballots at the front desk?

10 A I explained to him what might be written on them and that the  
11 trays were sorted into the alphabetical order.

12 Q When you say explained what might be written on them, does  
13 that mean you explained what notation on the 1,561 would  
14 indicate no signature on file?

15 A Yes.

16 Q So that he could select those?

17 A Uh-huh, yes.

18 Q And what did he do?

19 A He went through all of the trays that we pulled out and  
20 pulled all of the ballots with NSOF written on them.

21 Q And what did he do with those ballots?

22 A He put them in another tray and took them to the office.

23 Q To the office in MBOS?

24 A No, I'm sorry. He transported them to the admin building.

25 Q Did anyone go with him?

1 A I believe somebody rode with him, but I can't remember  
2 specifically who.

3 Q Another King County employee?

4 A Yes.

5 Q Were any political party observers with him?

6 A No.

7 Q Did you have any further communications with Mr. Huennekens  
8 about the no signature on file ballots?

9 A There was more discussions.

10 Q What were those discussions?

11 A There was a meeting, I believe, the Tuesday night after they  
12 were brought up in Dean Logan's office.

13 Q Who was at that meeting?

14 A Garth Fell, Dean Logan, Bill Huennekens, Sean Bouffiou was  
15 there. I can't remember who else.

16 Q Who is Sean Bouffiou?

17 A He's the human resource and finance manager for our office.

18 Q Were there any lawyers present?

19 A No, I believe Harry Sanders and Kevin -- no, I can't  
20 remember. They weren't at that meeting. I don't think. I  
21 don't remember.

22 Q What was the substance of the discussion at that meeting?

23 A The no signature on file ballots and why they had not been  
24 counted.

25 Q Who was asking the question as to why they had not been

1 counted?

2 A Dean Logan.

3 Q And who responded?

4 A I responded some. I don't remember who else was answering.

5 Q And what did you say to Mr. Logan?

6 A He asked why the ballots hadn't been counted. And I told him  
7 that we were under the impression that the signatures had all  
8 been scanned and there were no cards to go and find. And --

9 Q Was Mr. Webb at this meeting?

10 A I don't believe so.

11 Q What did Mr. Logan say after you indicated that you thought  
12 that the signatures had all been scanned or that there were  
13 no cards?

14 A He also wanted to know why the amount of ballots that had  
15 been pulled didn't match the DIMS reported number.

16 Q Did anyone answer that question?

17 A I believe I said that there was a number of reasons why. It  
18 could be coded wrong in the system; it could have had the  
19 wrong thing written on the outside of the ballot.

20 Q Which number was larger, the number in DIMS or the number  
21 pulled?

22 A The number in DIMS. And I believe Travis Elsom was there. I  
23 believe he said he or Harry Sanders pointed out that 100 or  
24 so of the unaccounted for ballots all began with last names  
25 that started with A or B.

1 Q That there were a hundred ballots from people with the last  
2 names A or B in DIMS that hadn't been pulled physically?

3 A Of all the physical ballots that had been pulled, none of  
4 them had a last name that started with A or B, but there was  
5 names on the DIMS report that started with A or B.

6 Q Was someone instructed to look at all of the absentee ballots  
7 that had been identified on the DIMS report as NSOF?

8 A I'm sorry. Can you repeat?

9 Q Was someone instructed to look for all of the absentee  
10 ballots that were coded as NSOF on the DIMS report?

11 A Before that meeting, all I know is the ballots were just gone  
12 through with a visual looking for the NSOF. There was no  
13 report used.

14 Q After that meeting?

15 A After that meeting, we had a report to look at, and we went  
16 in and compared the report to the ballots.

17 Q And somebody looked for each ballot listed on that report?

18 A They were looking for the A's and B's when we had the report.

19 Q Were there more names on the DIMS report starting with the  
20 last letter -- last name with a letter C through Z than had  
21 been physically pulled in the visual inspection?

22 A I'm not sure.

23 Q Do you know if anyone checked that?

24 A I know they compared the list of ballots to the list from  
25 DIMS.

1 Q Who did that comparison?

2 A I believe it was someone on the DIMS team, Travis Elsom or  
3 Scott Turnbull.

4 Q Do you remember any more of the discussion at that meeting  
5 with Mr. Logan, Mr. Huennekens, Mr. Fell and Mr. Bouffiou?

6 A We discussed that there was probably another tray of ballots  
7 in the cage that hadn't been gone through accounting for the  
8 A's and B's.

9 Q And was someone instructed to go through that tray?

10 A We were told that with observers we would be -- we would have  
11 to go back and look for them.

12 Q Were observers present when the first trays were pulled by  
13 Mr. Huennekens?

14 A There were observers in the building.

15 Q Were there observers at the cage where the ballots were being  
16 taken from?

17 A Yes.

18 Q Did any observers go in with Mr. Huennekens and with you?

19 A No observers were allowed in the cage.

20 Q Were observers told what Mr. Huennekens was doing?

21 A Not that I know of.

22 Q Did any of the observers ask?

23 A Not that I recall.

24 Q Do you remember anything else in the meeting with Mr. Fell,  
25 Mr. Huennekens, Mr. Logan and others?

1 A Not specifically.

2 Q Were there additional meetings with respect to the no  
3 signature on file ballots?

4 A Not that I was involved in, I don't think.

5 Q Did you have additional discussions with anyone about the no  
6 signature on file ballots after that meeting?

7 A Just with how the signatures were going to get found and  
8 compared.

9 Q With whom did you have those discussions?

10 A I think it was Bill Huennekens.

11 Q What did Mr. Huennekens say in those discussions?

12 A Other people were looking for the registration cards, but  
13 when it came time for the signature comparison, he wanted  
14 myself and my staff to do the comparisons.

15 Q Was it voters services looking for the original registration  
16 cards?

17 A Yes.

18 Q That's Mr. Webb's unit?

19 A Yes.

20 Q Do you know where they looked?

21 A I know they looked at MBOS. I don't know where else they  
22 looked.

23 Q At some point were you given a stack of original voter  
24 registration cards for the no signature on file ballots?

25 A The cards were paper clipped to the ballots, and we were

1 given the ballots to compare.

2 Q Of the 735, do you know for how many of them King County was  
3 able to locate in the original voter registration record?

4 A I don't know.

5 Q Do you know whether it was for all of them?

6 A I know they couldn't locate all of them.

7 Q For the ones that were found, did you do the signature  
8 verification?

9 A Some of it.

10 Q Other people on your team also did it?

11 A Yes.

12 Q Do you know whether any of those were instances where the  
13 signature on the ballot did not match the signature on the  
14 voter registration card?

15 A Yes, some of them didn't match.

16 Q Were some of them rejected for other reasons than the  
17 signature mismatch?

18 A I don't recall.

19 Q Do you remember how many were rejected?

20 A I don't remember.

21 Q Do you remember any discussions at that time regarding the  
22 counting of no signature on file provisional ballots?

23 A No.

24 Q At some point, did someone in King County indicate to you  
25 that they had completed their search for original voter

1 registration signatures for the no signature on file ballots?

2 A For the Larry Phillips ballot?

3 Q Yes.

4 A I believe they were looking up until the time that we checked  
5 them.

6 Q Do you know if anyone in King County continued to look for  
7 the registrations after that point?

8 A I don't know.

9 Q Do you know whether any of the individuals who had ballots in  
10 the Larry Phillips category were contacted in December  
11 regarding their ballots?

12 A I don't know.

13 Q That's something that Mr. Webb would know?

14 A Probably.

15 Q It would be his group that would contact voters and send out  
16 those kinds of letters?

17 A It was his group that was looking for the signatures at that  
18 point.

19 Q Which group sends out the normal letters that are sent to  
20 people when absentee ballots are challenged and invites them  
21 to make corrections?

22 A We send those letters from MBOS.

23 MR. MAGUIRE: Let's go off the record.

24 (Off the record.)

25 (Lunch break from 11:55 p.m. to 12:50 p.m.)

1 Q Ms. Way, are you familiar with the crediting process for  
2 absentee ballots?

3 A Yes.

4 Q When did crediting occur for absentee ballots cast in the  
5 November election?

6 A Began mid-October when we started receiving returned absentee  
7 ballots.

8 Q Was it completed?

9 A We completed crediting before certification of the election,  
10 but we added -- we found other stuff later we had to clean  
11 up.

12 Q What stuff did you find later that you had to clean up?

13 A The no signature on file Larry Phillips ballots.

14 Q The individuals in the Larry Phillips no signature on file  
15 category were people who had not previously been credited  
16 with voting; is that right?

17 A Right.

18 Q And after a certain number of them were determined to be --  
19 or after a certain number of them were counted, those  
20 individuals were then credited in December?

21 A Correct.

22 Q Were there any other changes made to crediting after  
23 certification?

24 A I believe there was some voters credited after certification  
25 in reconciling in January.

1 Q What was done in January in terms of reconciling?

2 A I believe they were looking at the voter file versus the  
3 ballots cast, and we found there were some discrepancies.

4 Q They were reconciling the number of voters credited with  
5 voting in DIMS with the number of ballots cast; is that what  
6 was going on?

7 A In January, there was the -- I believe there was public  
8 records requests and stuff that were asking why the amount of  
9 ballots cast didn't match the amount of voters credited. So  
10 in looking into that, we found some instances of where voters  
11 should have been credited and weren't.

12 Q What were those instances?

13 A We found a couple military ballots that the voter hadn't been  
14 properly credited, but the ballot was cast. That's the only  
15 thing that really comes to mind.

16 Q Only a handful of --

17 A Yeah.

18 Q -- ballots in the -- for which credit had not been previously  
19 given that were credited?

20 A There is only a handful I can think of.

21 Q Less than 50?

22 A That I can recall.

23 Q Who else was involved in that process?

24 MR. PORTER: You asking specifically about absentee  
25 ballot crediting?

1 MR. MAGUIRE: Yes.

2 THE WITNESS: I don't remember who all was involved. I  
3 was doing it at the direction of Bill Huennekens.

4 Q (By Mr. Maguire) Why did Mr. Huennekens direct you to do this  
5 reconciliation?

6 MR. HAMILTON: Objection, calls for speculation.

7 THE WITNESS: I understood from him that they wanted to  
8 know why there were more ballots counted than voters  
9 credited.

10 Q (By Mr. Maguire) He told you that's the reason why he wanted  
11 the reconciliation done?

12 A I believe that's what he said.

13 Q Was this during the first week of January?

14 A I think that was the week before -- between Christmas and New  
15 Year's.

16 Q Was that the part of the reconciliation work that's referred  
17 to in Exhibit 3, the January 7 press release from King  
18 County?

19 A Yeah, I believe so.

20 Q So the work was completed prior to the issuance of this press  
21 release?

22 A Yeah.

23 Q Do you know of any subsequent work on reconciling the  
24 absentee ballots?

25 A Not that I can think of.

1 Q At the conclusion of the reconciliation process for absentee  
2 ballots, was there a discrepancy between number of ballots  
3 cast and the number of voters credited?

4 A I'm sorry. Can you repeat that?

5 Q When the reconciliation process was finished, was there still  
6 a discrepancy between the number of ballots cast and the  
7 number of voters credited?

8 A Yes.

9 Q What was that discrepancy?

10 A I can't remember.

11 MR. HAMILTON: I was going to make an objection, but I  
12 guess I won't. You have an answer.

13 Q (By Mr. Maguire) Were you in charge of doing that  
14 reconciliation for absentee ballots?

15 A I was asked to find out how many ballots had been counted  
16 that hadn't been credited and to report back on that.

17 Q Did you do so?

18 A Yes.

19 Q Do you believe you identified all of the ballots that had  
20 been counted that hadn't been credited?

21 A No.

22 Q Why not?

23 A Because when we were done, there was still a discrepancy.

24 Q Was the discrepancy that there were more absentee ballots  
25 counted than individuals credited with voting by absentee?

1 A I believe so.

2 Q Other than individuals in the Address Confidentiality Program  
3 and those submitting federal write-in ballots, are there any  
4 other categories of ballots that would account for the  
5 discrepancy?

6 A Not that I can think of.

7 Q In late March of 2005, did the Elections Department in King  
8 County identify some absentee ballots that had been  
9 determined to be valid but were not counted from the November  
10 election?

11 A Yes.

12 Q Do you know how many ballots?

13 A How many ballots total have been?

14 Q Yes.

15 A I don't know the exact number.

16 Q 95 sound approximately right?

17 A That sounds correct.

18 Q Do you know the circumstances surrounding the identification  
19 of those ballots in late March?

20 A Yes.

21 Q What were the circumstances?

22 A In looking through the boxes of empty envelopes, they  
23 discovered some ballots still in the box in the envelopes.

24 Q Were you one of the people looking through the boxes?

25 A I looked through some of the boxes, yes.

1 Q And why were people looking through the boxes?

2 A To find the absentee voters' absentee envelopes for I believe  
3 discovery from the lawsuit.

4 Q Prior to that search through the absentee ballot envelopes  
5 conducted as a result of discovery in the election contest,  
6 was King County aware that these absentee ballots had not  
7 been tabulated?

8 MR. PORTER: Object to the form of the question, calls  
9 for speculation, foundation, personal knowledge.

10 THE WITNESS: Were we aware that those ballots were out  
11 there? Is that the question?

12 Q (By Mr. Maguire) Sure. You were the mail ballot supervisor,  
13 right?

14 A Yes.

15 Q Did you know that there were 95 uncounted absentee ballots?

16 A No.

17 Q What did you do when you learned of these ballots?

18 A I went and got Garth Fell and told him the ballots had been  
19 found.

20 Q How were you made aware of the find of the ballots?

21 A I was in a training class, and Samantha Duncan called,  
22 contacted me.

23 Q What did she say to you?

24 A That they had found a group of ballots still in the envelopes  
25 in the boxes they were going through.

1 Q Did she say anything else?

2 A She told me who had found them, and how many they had found,  
3 what batch they were from, I think.

4 Q What did you say to her?

5 A I think I told her to put them somewhere safe, and that I was  
6 going to go and talk to Garth about it.

7 Q What did you say to Mr. Fell about it?

8 A I told him that they had located a bundle of envelopes with  
9 ballots still inside in the boxes they were going through at  
10 MBOS.

11 Q What did he say to you?

12 A I can't remember exactly what he said.

13 Q Do you remember the substance?

14 A That that wasn't the best news he'd gotten, and we needed to  
15 go talk to Bill Huennekens.

16 Q And did you go talk to Bill Huennekens then?

17 A Yes, we did.

18 Q And who spoke to Mr. Huennekens, you or Mr. Fell?

19 A I was with Garth. Garth told Bill.

20 Q And what did Mr. Huennekens say?

21 A He said he had just been talking to another county about  
22 something about the possibility of ballots still being in  
23 envelopes.

24 Q Did he say anything else?

25 A That I think he was going to talk to Dean, and just to

1 continue working on the projects that we were working on, and  
2 put the ballots in the cage, I believe.

3 Q What were the projects you were working on that he wanted you  
4 to continue?

5 A Pulling the envelopes for the public disclosure requests that  
6 we had.

7 Q Did somebody decide to go through all of the absentee ballot  
8 envelopes to look for additional uncounted ballots?

9 A Yes.

10 Q Who did that? Who made the decision?

11 A I understand it was Dean Logan's decision.

12 Q How was that decision communicated to you?

13 A I think it was Garth Fell that told me.

14 Q And did your team go through all of the absentee ballot  
15 envelopes?

16 A Yes.

17 Q And found more?

18 A Yes.

19 Q Do you know why they weren't tabulated prior to  
20 certification?

21 A No.

22 Q Did you look at the batch slips for the batches that  
23 contained the uncounted absentee ballots?

24 A I believe I saw some of the batch slips.

25 Q Did the batch slips indicate a discrepancy between the number

1 tabulated and the amount ready for tabulation?

2 A Yes.

3 Q During the November election, were workers instructed to  
4 investigate discrepancies between the number of ballots  
5 tabulated according to a batch slip and the amount ready for  
6 tabulation?

7 A Yes, there was instructions on how to handle that.

8 Q What were the instructions?

9 A If the amount tabulated was different, the batch was cleared  
10 out of GEMS and rerun. If the count came up the same, then  
11 one of the leads looked at the batch, tried to determine why  
12 there was a discrepancy, and one of the steps that they would  
13 go through is pull the empty envelopes and go through the  
14 envelopes.

15 Q Do you know whether anyone at King County has contacted the  
16 opener for any of the batches associated with the 95  
17 uncounted absentees?

18 A I don't know.

19 Q Do you know whether anyone at King County has contacted the  
20 tabulator or tabulators associated with the batches from  
21 which the 95 uncounted absentees come from?

22 A I don't know.

23 Q Or the verifiers for those batches?

24 A I don't know.

25 Q You didn't try and contact any of those people?

1 A I don't believe so.

2 Q Do you know where the ballots were kept between election day  
3 and the discovery at the end of March?

4 MR. PORTER: Objection, vague, the ballots.

5 Q (By Mr. Maguire) The 95 uncounted absentee ballots that we've  
6 been discussing, do you know where they were kept between  
7 election day and the discovery of them in late March?

8 A I assume that they spent that entire period where they were  
9 found.

10 Q Which was where?

11 A In the archive boxes for the empty signature envelopes.

12 Q Where are the archive boxes for empty signature envelopes  
13 kept?

14 A At MBOS.

15 Q Whereabouts in MBOS?

16 A Under the pallet shelving out in the opening, warehouse.

17 Q Are they secured in a room within MBOS?

18 A No.

19 Q Who has access to the area where they were kept?

20 A Anybody working at MBOS.

21 Q Do the 95 uncounted absentee ballots appear on the mail  
22 ballot report contained in Exhibit 4?

23 A I don't believe so.

24 Q That's because the total number of ballots returned on the  
25 mail ballot report does not accurately reflect the total

1 number of ballots that were returned at King County; is that  
2 right?

3 A Yes.

4 Q This was the kind of problem that you were worried about when  
5 you expressed serious concerns about tracking for returned  
6 ballots in June; is that right?

7 A Yes.

8 Q And, again, when you expressed that concern to your superiors  
9 prior to the general election?

10 A Yes.

11 Q And, again, during the canvassing period of the general  
12 election?

13 A Yes.

14 Q Is it possible there are other uncounted ballots, absentee  
15 ballots in King County?

16 MR. HAMILTON: Objection, calls for speculation, lack of  
17 foundation.

18 THE WITNESS: It's possible.

19 Q (By Mr. Maguire) How did King County determine when these  
20 ballots were found that they were valid and should have been  
21 counted?

22 A We looked up the voter to see if they were -- showed a ballot  
23 being returned in that batch, and then we looked at the batch  
24 slip to see if there was a discrepancy in that batch.

25 Q Was there any indication on the absentee envelope that the

1 ballot should have been sent to tabulation?

2 A Not that I remember.

3 Q Are there typically such indications on an envelope if the  
4 ballot that's contained within it is going to be tabulated?

5 A No, I don't believe so.

6 Q It's just that a challenge code would be written on there if  
7 the ballot was not going to be tabulated?

8 A Correct.

9 Q Did these ballot envelopes have challenge codes written on  
10 them?

11 A Of the ones I saw, I don't believe so.

12 Q After the discovery of the 95 uncounted absentee ballots, did  
13 King County try to verify them again?

14 A I don't believe so, but I didn't do all of the work.

15 Q There was something already in the system that indicated  
16 those ballots were supposed to have been tabulated?

17 A Correct.

18 Q What was that in the system?

19 A It showed that they had a returned date. They were in a  
20 batch, and there was no challenge code.

21 Q Was the box in the module for verification checked for each  
22 one?

23 A I don't recall.

24 Q During the canvassing process, are all of the batch slips  
25 gathered together and examined for errors?

1 A Not specifically for errors, no.

2 Q Are they examined for other purposes?

3 A We might refer to them for some reasons.

4 Q What kind of reason?

5 A If there is a discrepancy in the batch, that's pretty much  
6 the only reason we go back to them.

7 Q And how would that discrepancy come to your attention?

8 A Either after tabulation of the ballots, or someone might not  
9 understand what something says on it, and they might bring it  
10 to me.

11 Q If the batch slip comes to your attention after the  
12 tabulation of ballots, is that something the tabulator would  
13 have to bring to your attention?

14 A No. The tabulator would bring it to one of the leads in  
15 tabulation. They may or may not bring it to my attention.

16 Q They would try and do a -- another count of the ballots to  
17 see whether that solved the discrepancy?

18 A Correct.

19 Q And if that didn't solve the discrepancy, they would bring it  
20 to your attention?

21 A They might bring it to my attention.

22 Q What else would they do if they didn't bring it to your  
23 attention?

24 A They may put it aside for further investigation later that  
25 day, or they might try and figure out what happened on their

1 own.

2 Q Was there any systematic process of checking all batch slips  
3 for discrepancies?

4 A Not really.

5 Q Why not?

6 A A lot of the batch slips sometimes just had bad data put into  
7 them.

8 Q Who put bad data into batch slips?

9 A The beginning number in the batch slip is how many ballots  
10 are originally in that batch. If the person that wrote that  
11 number down didn't include the Wanda reject, or did include  
12 the Wanda rejects, that beginning number could have been  
13 wrong, then everything after it is going to be wrong.

14 Q So sometimes the individual recording the original count on a  
15 batch slip included Wanda rejects in them and sometimes they  
16 didn't?

17 A They may or may not have.

18 Q What were they instructed to do?

19 A I believe they were instructed to include the Wanda rejects.

20 Q Were batch slips a means of accounting for absentee ballots  
21 as they moved from verification to opening to tabulation?

22 A That's the purpose of them, yes.

23 Q Other than looking at batch slips, is there any way to  
24 determine whether ballots were removed from or added to a  
25 batch in any of those steps?

1 A The only way I can think of is looking up every voter in that  
2 batch and seeing if they belong in that batch or not.

3 Q Have you ever heard Mr. Logan refer to problems in the  
4 culture of the elections office?

5 A Yes.

6 Q Do you think there are problems in the culture of the  
7 elections office?

8 A I'm not sure I understand what he means.

9 Q Do you think there are problems with individuals in the  
10 elections office being accountable for their actions?

11 MR. PORTER: Object to the form of the question, calls  
12 for opinion testimony.

13 THE WITNESS: Yes.

14 Q (By Mr. Maguire) What kinds of problems?

15 MR. PORTER: Same objection.

16 THE WITNESS: I think that the people don't always take  
17 responsibility for the work that they are supposed to  
18 accomplish.

19 Q (By Mr. Maguire) Do you remember any specific examples with  
20 respect to the November election?

21 A The signatures not getting scanned.

22 Q What person or people didn't take responsibility for the  
23 signatures not getting scanned?

24 MR. PORTER: Same objection. I'm just going to have a  
25 continuing objection to this line of questioning.

1 MR. MAGUIRE: Sure.

2 THE WITNESS: I was told the signatures would be scanned  
3 in late October, and in mid-December they still hadn't been  
4 scanned.

5 Q (By Mr. Maguire) And that was Mr. Webb who told you?

6 A Yes.

7 Q You reported directly to Mr. Fell; is that right?

8 A Yes.

9 Q Did you often raise concerns with Mr. Fell?

10 A Yes.

11 Q And did you find Mr. Fell responsive to your concerns?

12 A He listened.

13 Q Did he take steps to address your concerns when you raised  
14 them?

15 A I think he tried to find ways to.

16 Q Did you raise concerns to Mr. Huennekens?

17 MR. PORTER: Object as overly broad.

18 THE WITNESS: Yes.

19 Q (By Mr. Maguire) Did you find Mr. Huennekens responsive when  
20 you raised a concern?

21 A He listened.

22 Q Did he generally take steps to address your concerns?

23 A I don't know.

24 Q Why don't you know?

25 MR. PORTER: Objection, argumentative.

1 THE WITNESS: I wasn't always at the office. I didn't  
2 know what was going on up there.

3 Q (By Mr. Maguire) So you couldn't tell if he addressed your  
4 concerns, because you weren't present when he would have done  
5 so?

6 A Correct.

7 MR. MAGUIRE: I thank you for coming in today, Ms. Way.  
8 I don't have anymore questions for you.

9 THE WITNESS: Thanks.

10 MR. HAMILTON: I do have some questions. I don't know  
11 if you want to take a short break between.

12 MR. PORTER: Do you want to take a break?

13 THE WITNESS: I don't care. That's fine.

14 MR. PORTER: Okay. Keep going.

15 E X A M I N A T I O N

16 BY MR. HAMILTON:

17 Q Hi, Ms. Way. My name is Kevin Hamilton. We've introduced  
18 ourselves before the deposition began, but I'll do so again  
19 on the record. My name is Kevin Hamilton. I represent the  
20 Washington State Democratic Central Committee, who is  
21 intervenor respondent in this election contest action.

22 My purpose is to ask you a few questions that are  
23 relevant to the case. I'm going to do my best to be clear  
24 and direct with my questions, but if you don't understand  
25 them, or I'm confusing in the way that I've phrased my

1 question, please let me know, and I'd be happy to rephrase  
2 the question. I appreciate your cooperation in appearing  
3 here today. I know that some of these questions can be  
4 difficult and I'll try and be as careful as I can. If you  
5 need a break or if you'd like a break at any time, just let  
6 me know and I'll be happy to offer you that.

7 A Okay.

8 Q I'd like to start by going back through a few of the things  
9 that Mr. Maguire asked you about earlier today. Mr. Maguire  
10 was asking you about the importance of knowing how many  
11 absentee ballots were issued by King County. Do you recall  
12 those questions?

13 A Yes, I do.

14 Q And he suggested a couple of reasons why it might be  
15 important to track that information, one of which is to  
16 ensure that you don't get more ballots back than had been  
17 sent out, correct?

18 A Correct.

19 Q When King County issues an absentee ballot, a notation is  
20 made in the registration system that that particular voter  
21 has been sent an absentee ballot, correct?

22 A Yes.

23 Q And when the absentee ballot comes back and goes through the  
24 processing you've been describing today, there is a notation  
25 that the ballot has been received back, correct?

1 A Correct.

2 Q One of the steps that the verifiers do is to look and see  
3 whether an absentee ballot has previously been received from  
4 that voter, right?

5 A The verifier doesn't look at that.

6 Q It's one of the steps in the process?

7 A DIMS checks that when the ballot is loaded into the system.

8 Q I see. And so if a particular voter has previously returned  
9 an absentee ballot and been credited with returning an  
10 absentee ballot, it will be kicked out as a Wanda reject,  
11 right?

12 A It should be.

13 Q Should be. Okay. Mr. Maguire also asked you some questions  
14 about the e-mail, which is Exhibit No. 1, on reissuing  
15 ballots to particular voters. Do you recall those lines of  
16 questions?

17 A Yes.

18 Q When an absentee ballot is returned, one of the steps is --  
19 well, I guess you just mentioned is for the DIMS system to  
20 check the voter ID, the AV ID against the registration data  
21 base, and if the registration data base records a prior  
22 absentee ballot returned by that voter, it will be kicked  
23 out, correct?

24 A Correct.

25 Q If not, it goes to the verifier who does the signature check

1       against the signature maintained by King County in the  
2       registration data base?

3   A    Correct.

4   Q    That's true whether a voter has been issued one absentee  
5       ballot or two absentee ballots, that is, someone has been  
6       reissued an absentee ballot, right, in both cases, DIMS is  
7       going to check whether one has already been returned, and in  
8       both cases, someone is going to do an independent signature  
9       verification?

10  A    Correct.

11  Q    Mr. Maguire asked you some questions about the -- some kinds  
12       of returned ballots that weren't reflected in the DIMS  
13       system, and you mentioned federal write-in ballots if the  
14       voter was not previously registered in King County, and the  
15       voters participating in the Address Confidentiality Program.  
16       Do you recall those questions?

17  A    Yes.

18  Q    In addition, an out-of-state voter who is not registered in  
19       King County can submit an -- a ballot for that election only,  
20       right?

21  A    I believe so.

22  Q    And that voter, if they're not registered in King County by  
23       definition, won't be in the DIMS data base either?

24  A    I guess they wouldn't be.

25  Q    We talked a moment ago about the batch slips that were filled

1 out, and I believe I heard you say that they're not  
2 systematically audited after the election; is that true?

3 A We don't go back over each batch slip, no.

4 Q And you said they often contain bad data? Is that your  
5 testimony?

6 A They --

7 MR. PORTER: Object, I think the question misstates the  
8 previous testimony.

9 THE WITNESS: They can contain bad data.

10 Q (By Mr. Hamilton) The people who are filling out the batch  
11 slips, some of these individuals are temporary employees?

12 A Correct.

13 Q Is it fair to say that sometimes they make mistakes in  
14 filling out the forms?

15 A Correct.

16 Q Sometimes they make math errors in doing the subtraction and  
17 addition?

18 A Yes.

19 Q In fact, if we were to pull out all the batch slips from the  
20 November 2004 general election, it probably wouldn't be very  
21 difficult to come up with some examples of simple arithmetic  
22 errors by the people filling those out, right?

23 A Correct.

24 Q And Mr. Maguire asked you if there was any other way other  
25 than using batch slips to determine whether ballots were

1 added or removed from a batch during processing; do you  
2 recall that question?

3 A Yes, I do.

4 Q Have you ever seen anyone at MBOS intentionally or improperly  
5 either remove or improperly add ballots to a batch during  
6 processing?

7 A Not that I've seen.

8 Q So another way that King County tries to prevent that sort of  
9 misconduct from occurring is actually instructing its  
10 employees, don't destroy ballots, don't improperly add  
11 ballots into the mix during processing, right?

12 MR. MAGUIRE: Objection, compound question.

13 THE WITNESS: I'm sorry. Can you --

14 Q (By Mr. Hamilton) Well, one way to determine whether ballots  
15 were added or removed from a batch during processing is  
16 actually watch them and monitor the security of the ballots,  
17 correct?

18 A Yes.

19 Q One way to prevent that kind of ballot tampering is to lock  
20 the ballots in the mail ballot cage at the MBOS facility,  
21 correct?

22 A Yes.

23 Q Another way to prevent ballots from being added or removed is  
24 to have on-site security during the processing, correct?

25 A Yes.

1 Q Another way to prevent that sort of misconduct is to have  
2 political party observers during the signature checking and  
3 verification process prior to certification, correct?

4 A Yes.

5 Q King County does all of those things to try and ensure ballot  
6 security and the integrity of the signature checking and  
7 processing of absentee ballots, right?

8 A Correct.

9 Q And during the time that you worked at King County, I take it  
10 you did your best to conduct yourself in a fair and impartial  
11 manner with respect to the processing of absentee ballots?

12 A Yes.

13 Q Do you try and ensure that the staff beneath you operated  
14 with integrity and fairness in processing absentee ballots?

15 A Yes.

16 Q Is it fair to say you were a little frustrated by the new  
17 DIMS data base registration system and its implementation?

18 A Yes.

19 (Witness conferring with her counsel.)

20 MR. PORTER: Ms. Way would like to clarify a point  
21 relating to security of ballots.

22 MR. HAMILTON: Go ahead.

23 THE WITNESS: We didn't have a security guard at MBOS  
24 until election day.

25 MR. HAMILTON: Okay.

1 THE WITNESS: So --

2 Q (By Mr. Hamilton) Fair enough. And from election day through  
3 certification, was there a security guard there?

4 A I can't remember if they were there every day that we were  
5 working.

6 Q During the period of time -- well, when did you begin  
7 receiving absentee ballots back into MBOS that had already  
8 been voted by voters?

9 A It's about 15 days before the election.

10 Q Okay. From that point forward, were those ballots locked up  
11 in the cage inside the MBOS facility when they're not being  
12 worked on?

13 A Yes.

14 Q And as I understand the cage, it's a completely enclosed,  
15 locked internal cage inside the warehouse itself at MBOS,  
16 correct?

17 A Yes.

18 Q MBOS itself is locked at night, correct?

19 A Yes.

20 Q Who has keys to the ballot cage?

21 A The key is sealed in a box at MBOS.

22 Q At night?

23 A Yes.

24 Q And who has access to that box?

25 A Anybody that has access to MBOS.

1 Q Okay. And those are King County employees?

2 A Yes.

3 Q The MBOS facility during the night has an alarm system?

4 A Yes.

5 Q All right. Thank you for the clarification. Anything else  
6 you want to clarify?

7 A I don't think so.

8 Q If at any point during this examination if you think of  
9 something, I should have said that, please feel free to tell  
10 me, and I'd be happy to give you that opportunity.

11 A Okay.

12 Q I'd like to return to this question of the Larry Phillips  
13 issue, the no signature on file ballots that were found in  
14 December of 2004; do you recall that incident?

15 A Yes.

16 Q All of these 735 ballots were absentee ballots, correct?

17 A Correct.

18 Q Absentee ballots are sent only to registered voters, right?

19 A Yes.

20 Q If you're not registered, you don't get an absentee ballot?

21 A No.

22 Q Who was given the task once the 735 absentee ballots were  
23 identified to look for the hard copy records?

24 A Voter services handled that.

25 Q Do you know who specifically within voter services?

1 A I believe Lisa Moore, but I'm not sure.

2 Q Recognizing that you're not sure, you think Lisa Moore would  
3 be the most knowledgeable about the details of the  
4 investigation into looking for the hard copy signature files?

5 A Probably.

6 Q Do you know if Ms. Moore or those acting with her accessed  
7 the Secretary of State images or copies of registration  
8 records?

9 A I believe they did.

10 Q Do you know if they were able to locate records for all 735?

11 A I don't believe so.

12 Q Do you know how many signatures were -- King County was able  
13 to find, either in its own files, or in the Secretary of  
14 State files?

15 A I don't know the exact number.

16 Q Do you know of an approximate number?

17 A I'm not exactly sure. It seems like it was just under 600,  
18 but I can't -- I don't remember.

19 Q Do you know if there is a document that records the ultimate  
20 disposition of these ballots, which ones were counted, which  
21 ones were not, and why?

22 A I don't know that.

23 Q There were 566 that were ultimately counted?

24 A That sounds about right.

25 Q And for those 566 or so ballots, before they were counted,

1       there was actually a signature comparison that was done  
2       between the ballot and the original signature record that was  
3       found, correct?

4   A    Yes.

5   Q    Now, it sounds like from earlier in your discussion that  
6       you've had a fair bit of experience doing signature  
7       verification?

8   A    Yes.

9   Q    In fact, for almost ten years?

10  A    Correct.

11  Q    From your very first position at King County as a temporary  
12       worker, you were a signature verifier, and then you continued  
13       having either direct or supervisory responsibility over that  
14       function all the way through until today?

15  A    My first position was as a chad checker.  Shortly thereafter,  
16       I started verifying, that's correct.

17  Q    And King County employs a system of looking for a three-point  
18       comparison?

19  A    Correct.

20  Q    Do you know approximately how many absentee ballots were  
21       processed, meaning went through the signature checking  
22       comparison stage at King County in the November 2004 general  
23       election?  Feel free to look at the document if that helps.

24  A    Approximately, 568,000 ballots went through that process.

25  Q    And I believe you said that you began or King County began

1 receiving absentee ballots back about 15 days before the  
2 election?

3 A Yeah.

4 Q I mean, I won't hold you to the exact day, roughly, a little  
5 more than two weeks before the election is when this  
6 signature verification process began?

7 A Yes, we mailed the ballots 20 days before. It's a  
8 Wednesday. We started verifying the following Tuesday.

9 Q Okay. And then the verification process was complete by  
10 certification with the exception of these 735?

11 A Correct.

12 Q So is it fair to say about 568,000 signature comparisons were  
13 done between 15 days before the election and certification?

14 A Correct.

15 Q That's a lot of signatures to compare. Would you agree?

16 A Yes.

17 Q How many people were doing the signature comparisons?

18 A There was about 20.

19 Q Do you know approximately how many signatures that crew was  
20 able to verify -- or strike verify -- evaluate on a daily  
21 basis?

22 A I don't remember.

23 Q Recognizing that some signature checking might take longer  
24 than others for particular signatures, how much time would an  
25 average signature verifier spend on a particular signature?

1 A I don't know, maybe 15 seconds. I've never timed it on the  
2 one signature.

3 Q It doesn't take a great deal of time?

4 A No.

5 Q And King County uses a three-point match system?

6 A Correct.

7 Q Can you describe what that means.

8 A You look for three matching characteristics in the  
9 signatures.

10 Q So for example --

11 (Exhibit 5 marked for identification.)

12 Handing you what's been marked as Exhibit 5, which is two  
13 copies of my own signature, would you be able to match those  
14 two signatures?

15 A Yes.

16 Q Can you identify the three points of comparison that you  
17 might identify on that -- on those signatures?

18 A The way you make your K is the same, the J, the way it goes,  
19 and the H, the way you do them.

20 Q Okay. There is other ways, for example, the way I cross my  
21 T, or the N, or the series of kind of blurry circles that  
22 form the Hamilton?

23 A Uh-huh, uh-huh.

24 Q No question that would be a relatively easy match to do?

25 A Right.

1 Q Okay. Now, I take it from your testimony that I think you  
2 said that you were able to find original signature records  
3 for just under 600 of the 735, but you weren't really sure  
4 about the exact number, fair?

5 A Yes.

6 Q So for the remainder, the however many up to 735, those -- in  
7 those cases, the signature was either never scanned, or the  
8 scanned image was lost and the hard copy record was lost or  
9 misplaced by King County, right?

10 MR. MAGUIRE: Objection, lack of foundation.

11 THE WITNESS: Correct.

12 Q (By Mr. Hamilton) But we know those voters were all  
13 registered because they were sent absentee ballots, true?

14 A Correct.

15 Q The loss of the registration record, either the digital image  
16 or the hard copy or both, was not the fault of the voter,  
17 right?

18 A Correct.

19 Q In looking for the records, Lisa Moore was directly in charge  
20 of the research effort, I believe you testified. Did you  
21 make any suggestions as to where they might look for copies  
22 of the signatures other -- well, just where you might look  
23 for the copies of the signatures?

24 A I don't believe so. I don't recall.

25 Q But once those signatures were located, Mr. Huennekens asked

1           you personally to be in charge of doing the signature  
2           verification or people working under your direction?

3   A       Correct.

4   Q       Did you understand that because you were the most senior  
5           person at King County Records and Elections responsible for  
6           signature verification?

7   A       Yes.

8           (Exhibit 6 marked for identification.)

9   Q       Handing you what's been marked as Exhibit No. 6, this is a  
10          series of e-mails. Your name doesn't appear on them, but my  
11          first question is have you seen this series of e-mails  
12          before?

13   A       I don't believe so.

14   Q       Let me direct your attention to Page 2 of Exhibit 6. It's an  
15          e-mail from Lisa Moore, dated December 19. It's directed to  
16          Mr. Huennekens, and a copy to Mr. Webb and to Mr. Logan. And  
17          it says: Here are the updated signature/images found. And  
18          then it says: NSOF 573: 476. And then I won't read the  
19          whole document. There is a little equation here. To my  
20          reading, this document suggests that there were only 566  
21          images found or signatures found. Do you interpret that the  
22          same way?

23   A       Yeah.

24   Q       Does that refresh your recollection as to -- earlier you  
25          testified just under 600. I'm just trying to understand if

1 your understanding is that it's more than 566, or when you  
2 said just under 600, you think it's about 566?

3 A 566 is about what I thought it was.

4 Q Now, if you look at the first page of Exhibit 6, Mr. Logan  
5 writes to Mr. Huennekens and copies Mr. Webb: I suggest that  
6 you highlight these in a different color for clarity. It  
7 appears to me in my quick review, that all these were entered  
8 for the general election so they are new registrations and  
9 likely have not voted before. Please confirm that for me,  
10 closed quote.

11 First, did I read that correctly?

12 A I believe so.

13 Q Okay. And is that consistent with your understanding that  
14 the Larry Phillips ballots all were or most of them were new  
15 registrations whose images had not been captured?

16 A I'm sorry. What was the question again?

17 Q Is this consistent with your understanding that most of these  
18 no signature on file ballots were new registrations?

19 A I knew that some of them were. I didn't know that most of  
20 them were.

21 MR. PORTER: Do you want to take five?

22 THE WITNESS: Yeah.

23 MR. PORTER: Can we take a five-minute break?

24 MR. HAMILTON: You bet.

25 (Off the record.)

1 (Exhibit 7 marked for identification.)

2 Q (By Mr. Hamilton) Ms. Way, I've handed you what's been marked  
3 as Exhibit No. 7, and I'll represent to you that the top page  
4 of this exhibit is one of the no signature on file ballots  
5 that was not counted.

6 MR. EVEN: Envelopes.

7 MR. HAMILTON: Envelope. Thank you.

8 That was -- that contained a ballot that was not counted  
9 by King County, because they were unable to locate a  
10 signature on file for this ballot envelope. King County has  
11 produced the names, and I've got -- this is one of them.  
12 Page 2 of this exhibit I'll represent to you is a document  
13 that was produced by the department of licensing, Washington  
14 State Department of Licensing for the same voter. Page 3 of  
15 this exhibit is a printout from the Secretary of State,  
16 state-wide registration -- voter registration data base for  
17 the same individual. I'm going to ask you a couple of  
18 questions, but I wanted you to know what this document is  
19 composed of before I begin.

20 THE WITNESS: Okay.

21 Q (By Mr. Hamilton) First of all, we look at the front cover.  
22 Does this appear to be a copy of one of the no signature on  
23 file ballot envelopes?

24 A Yes.

25 Q And we know that because the NSOF is handwritten on the front

1 right above the name?

2 A Correct.

3 Q And then below that it says Batch 1676. What does that mean?

4 A That's the batch number that the ballot was removed from.

5 Q And then next to that, can you read the writing?

6 A Envelope No. 117 it looks like.

7 Q And what does that mean?

8 A The computer keeps track of Batch No. 1676, which voter is  
9 Envelope 1, 2, 3, so on. So this was most likely the 117th  
10 ballot in batch 1676.

11 Q And when would these notations be written on the ballot  
12 envelope?

13 A When the verifier verified the batch.

14 Q Okay. Or in this case, didn't verify this particular  
15 envelope?

16 A They verified the batch this envelope was in. They pulled  
17 this envelope out as they did that.

18 Q I see. And then wrote this notation on it?

19 A Correct.

20 Q And while we're looking at this, we've heard some testimony  
21 from some other folks about the sorting that's done by PSI  
22 when the absentee ballots first come in. Which is the -- of  
23 these two bar codes that are here on the front of Exhibit 7  
24 contains the sorting information that is accessed by PSI?

25 A That's accessed by PSI?

1 Q Right. To do the initial sort into legislative districts.

2 A The bar code on the left.

3 Q That has the number 11/2/2004 above it?

4 A Yes.

5 Q And then the bar code that's on the right, what's the purpose  
6 of that?

7 A If we make an in-house batch.

8 Q Then that's --

9 A The bar code on the right is the bar code that we use.

10 Q And there is some numbers on the bar code on the right just  
11 underneath the bar code. Can you explain the significance of  
12 that?

13 A The first six-digit number is the voter's absentee voter ID,  
14 and the four-digit number is legislative district code.

15 Q So in this case, this is from Legislative District 36?

16 A Correct.

17 \*\*\* BEGINNING OF TESTIMONY DESIGNATED AS CONFIDENTIAL. \*\*\*



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20 \*\*\* END OF TESTIMONY DESIGNATED AS CONFIDENTIAL. \*\*\*

21 Q (By Mr. Hamilton) Handing you what's been marked as Exhibit  
22 85, this appears to be an exchange of e-mail that included  
23 you in the distribution list. Do you recall receiving these  
24 two e-mails?

25 A I don't recall this specific e-mail.

1 Q All right. It's from Scott Turnbull. It's addressed to  
2 Mr. Logan and a few other people, including yourself. Do you  
3 have any reason to doubt that you received it?

4 A No.

5 Q All right. And I'll represent to you that the document  
6 itself was produced from King County. In Mr. Turnbull's  
7 message, at the -- on the bottom portion of Exhibit 85, I'm  
8 going to read it, and then I'm going to ask you if you can  
9 understand what he's saying, quote: It looks like we're at  
10 the end of the absentee returns. I started generating the  
11 file for today and if you look at column "H" you can see we  
12 have negative numbers. I believe this is due to credit being  
13 taken away from absentees returned, but challenged then a  
14 provisional was checked. If we post this and people see  
15 negatives on the legislative side and positives on the  
16 congressional side, we will need to explain it.

17 And then it goes on, and I won't read the rest of it.

18 Do you understand what he's trying to say?

19 A I think what he's talking about is we had some absentees that  
20 had been returned but challenged for various reasons, and  
21 then the voter voted a provisional at the polling place, and  
22 so then they accepted the provisional.

23 Q Why would -- under what circumstances would the absentee be  
24 challenged?

25 A No signature on file, no signature, signature miscompares.

1 Q So if a absentee voter voted both an absentee ballot and then  
2 a provisional ballot, the absentee ballot was rejected for a  
3 signature mismatch, but the provisional ballot did match the  
4 signature, you could count the provisional ballot?

5 A I don't know how they did the provisional ballots. I didn't  
6 work on that part. I just -- from reading this, it looks  
7 like what he's talking about are people that voted an  
8 absentee, but the absentee had not been counted. And --

9 Q So what -- I'm sorry.

10 A And the provisional was validated.

11 Q So when he writes: I believe this is due to credit being  
12 taken away from absentees returned, but challenged -- I'll  
13 just stop there. That means an absentee ballot that's  
14 initially credited, the credit is taken away when a challenge  
15 code is entered?

16 A I'm not sure what he means.

17 Q What does it mean, legislative side and positives on the  
18 congressional side?

19 A I'm not sure.

20 Q It's not shorthand or slang within Records and Elections?

21 A No, we were posting stats on the web that showed legislative  
22 returns and congressional returns. That's what I think he's  
23 talking about. I don't know why there would be negatives on  
24 one and positives on the other.

25 (Exhibit 86 marked for identification.)

1 Q Okay. Exhibit 86 is an e-mail. The first one is dated  
2 October 28 from Samantha Duncan. I'm just looking at the  
3 first page of Exhibit 86. And Ms. Duncan writes to you:  
4 Hey, Nicole - I'm going back in to take the credit away from  
5 these people from the buffer, and I was watching out for the  
6 batch to appear to see if they legitimately returned and if  
7 not, take credit away. However, part way through doing this  
8 I realized the batch number does not show on the first  
9 screen, I have to go to the second tab for the batch and  
10 envelope number to appear. So, I don't know how many (if  
11 any) I have taken away credit from that I shouldn't have  
12 because return batch info was hidden.

13 Then she goes on. Do you do you recall receiving this  
14 e-mail?

15 A Yes.

16 Q Is this part of the problem that you were discussing with  
17 Mr. Maguire earlier today?

18 A I think this is a different problem. I thought the problem  
19 we were discussing earlier was --

20 Q Return date?

21 A This is -- she's doing that work still, yes.

22 Q This is a different problem, or the same as you were  
23 discussing with Mr. Maguire, if you can remember?

24 A It's the same problem as far as the return date.

25 Q Okay.

- 1 A She is talking about a different issue that she ended up  
2 having while working on that problem.
- 3 Q She was going back in to take away credit for voting from  
4 some of the voters?
- 5 A Correct.
- 6 Q And then she got confused and didn't know how many if any she  
7 had taken credit away that she shouldn't have?
- 8 A Correct.
- 9 Q Okay. If you look at Page 2, of Exhibit 86, your response  
10 was, add this to the log, right?
- 11 A Yes.
- 12 Q That was a log of problems you were having with the  
13 registration data base?
- 14 A Yes.
- 15 Q This is a log you and Samantha Duncan were maintaining?
- 16 A Samantha was maintaining it with my input.
- 17 (Exhibit 87 mark for identification.)
- 18 Q Handing you what's been marked as Exhibit No. 87, do you  
19 recognize this document?
- 20 A I do.
- 21 Q Is this a copy of the log that you and Samantha Johnson were  
22 creating, or, I'm sorry, that Samantha Duncan was  
23 maintaining?
- 24 A Yes.
- 25 Q What was the purpose of creating this log?

1 A In the primary, we had a lot of issues with certain things,  
2 and after the fact, we did something like this to try and  
3 document what the problem was, why it happened, and what  
4 effect it had on our work. So for the general, we tried to  
5 do it as we went.

6 Q Was the purpose to identify problems so they could be  
7 corrected?

8 A Yes.

9 Q Did you provide a copy of the log to Garth Fell or others  
10 senior to you at King County Records and Elections?

11 A I don't think we ever got to that opportunity.

12 Q Why not?

13 A The general election never stopped.

14 Q Is it fair to say that a recount started?

15 A Yeah.

16 Q And issues continued to develop?

17 A Yes.

18 Q In your -- you've expressed some frustration, some of your  
19 testimony -- or let me start over. It appears that you had  
20 some frustration with the conversion of the King County  
21 registration system to the DIMS registration system, is that  
22 accurate?

23 A With the conversion?

24 Q The conversion or the operation after the conversion of the  
25 DIMS system.

1 A Yes.

2 Q You expressed various concerns about the operation of the  
3 registration data base to Garth Fell?

4 A Yes.

5 Q To Mr. Huennekens?

6 A Yes.

7 Q To Mr. Logan?

8 A I believe so.

9 Q Okay. They took your concerns seriously?

10 A I'm not sure.

11 Q We'd have to ask them?

12 A Yeah.

13 Q Okay. I think I might have just a couple more questions for  
14 you, and then we'll probably be done.

15 MR. HAMILTON: I have no further questions.

16 MR. EVEN: I have just a couple things.

17 E X A M I N A T I O N

18 BY MR. EVEN:

19 Q If I could direct your attention back to Exhibit 77, give you  
20 a minute to find that. This was -- have you found it?

21 A Yes.

22 Q This was the absentee ballot envelope that had some  
23 handwriting on it that you were discussing with Mr. Hamilton  
24 a few moments ago?

25 A Yes.

1 Q Do you recall that? Does that handwriting -- I think you  
2 indicated it said something like or may say something like  
3 someone else's sig. Does that mean something different to  
4 you than the notation, signature miscompare, or do you know  
5 whether it means anything different than that?

6 A If it says what I think it looks like it says, someone else's  
7 sig on file, we have John Smith scanned where Jeffrey  
8 Downing's signature should be.

9 Q And do you notice if you look at Page 2 of Exhibit 77, is  
10 there a difference in the name between the driver's license  
11 record reproduced there and the absentee ballot envelope,  
12 Page 1?

13 A There is.

14 Q And is the same true of Page 3?

15 A Yes.

16 Q That is, Page 2 and Page 3 are different than Page 1?

17 A Correct.

18 Q And Downing with a W versus Donning two N's?

19 A Correct.

20 Q Now, would that kind of a difference account for the kind of  
21 distinction that you're making, or would that arise only if  
22 there was some other difference, some greater difference in  
23 the signature, if you know?

24 A I still think this notation means that there is an entirely  
25 different name.

1 Q Okay. So you don't think it means that difference --

2 A No.

3 Q -- of one letter? Now, when you were discussing these  
4 envelopes and related documents with Mr. Hamilton, there were  
5 a number of times in which you said that you would seek a  
6 second opinion. Do you recall that?

7 A Yes.

8 Q And when you said that, you did not preface your answer with,  
9 I think it's a match, or I think it's not a match, but I  
10 would seek a second opinion; is that correct?

11 A Correct.

12 Q Did you intend to express any opinion yourself as to whether  
13 you thought those were matches or not matches?

14 A No.

15 MR. EVEN: Thank you. I have nothing further.

16 E X A M I N A T I O N

17 BY MR. MAGUIRE:

18 Q I have a few more questions, Ms. Way. During the  
19 verification process of the November 2004 election, were  
20 election workers allowed to compare signatures on absentee  
21 ballot envelopes with signatures on drivers' licenses to  
22 validate absentee ballots?

23 A No.

24 Q The verification or the comparison had to be between a  
25 signature on an absentee ballot envelope and a voter

1 registration signature, did it not?

2 A Yes.

3 Q And so in answering Mr. Hamilton's questions regarding  
4 similarities between signatures on driver licenses and on  
5 absentee ballot envelopes, when you said you would accept it,  
6 you did not mean that you would accept a ballot for  
7 tabulation based on a comparison with a driver's license  
8 signature?

9 A Correct.

10 Q Mr. Hamilton also asked you questions about a category of  
11 out-of-state voters for whom DIMS would not reflect a  
12 record. Do you remember that question?

13 A Yes.

14 Q Do you know whether there were any such out-of-state voters  
15 in the November 2004 election?

16 A Not that I know of.

17 Q Would anyone else know that number?

18 MR. HAMILTON: Objection, calls for speculation, lack of  
19 foundation.

20 THE WITNESS: I'm not sure.

21 Q (By Mr. Maguire) You would be the person responsible for  
22 tracking that information; is that correct?

23 A Yes.

24 Q Mr. Hamilton also asked you some questions about MBOS, the  
25 mail ballot operation satellite; is that right?

1 A Yes.

2 Q And you mentioned that there was not a security guard on site  
3 until election day; is that right?

4 A As best I recall, that's correct.

5 Q The processing of absentee ballots began prior to election  
6 day; isn't that correct?

7 A Yes.

8 Q And when the security guard was first stationed at MBOS, was  
9 that guard there 24 hours a day?

10 A No.

11 Q For how long each day was the guard present?

12 A While we were working.

13 Q Was there more than one guard on a given day?

14 A I believe on election day there was more than one.

15 Q In shifts, or there at the same time?

16 A Same time.

17 Q And after election day, prior to certification?

18 A I don't recall.

19 Q Did you hear of any reports of the alarm at MBOS going off?

20 A Yes.

21 Q How many times?

22 A Once.

23 MR. PORTER: I'm going to object to vague. During what  
24 time period?

25 Q (By Mr. Maguire) From the time election workers began

1 processing absentee ballots through the certification of the  
2 hand recount, did you hear of any instances of the alarm for  
3 the mail ballot operations satellite going off?

4 A Yes.

5 Q How many times?

6 A I think it went off twice, but once was by us when we were  
7 leaving.

8 Q The other time it went off, what were the circumstances?

9 A I got a phone call middle of the night, 4:00 in the morning,  
10 something like that, from the alarm company.

11 Q And what did they say?

12 A That the alarm had been triggered by the inside sensor at  
13 MBOS.

14 Q There is a sensor that detects movement inside MBOS?

15 A Yes.

16 Q Did anyone investigate that alarm?

17 A The police were dispatched, and I immediately went down  
18 there.

19 Q And what did you find?

20 A The police weren't there when I got there, so I sat outside  
21 in my car until the county sheriff got there, and then we  
22 went in together.

23 Q For how long did you have to wait for the sheriff?

24 A I think about an hour.

25 Q And what happened when you went inside?

1 A One of the signs inside had fallen down in front of one of  
2 the motion detectors.

3 Q Was a police report filed?

4 A I don't believe so.

5 Q Do you remember when this occurred?

6 A I believe it was during the machine recount or that time  
7 period. And I want to clarify. The county sheriff that was  
8 coming to work his shift, I waited for him to come before I  
9 went in. The Seattle police had already come and gone before  
10 I got there. I just wasn't going in by myself.

11 Q You didn't want to go in by yourself because you were  
12 concerned there might be someone in there --

13 A Right.

14 Q -- who had triggered the alarm?

15 A Right.

16 Q Mr. Hamilton also asked you a series of questions, including  
17 one which he said absentee ballots are only sent to  
18 registered voters. Do you agree? Do you remember that  
19 question?

20 A Yes.

21 Q Is it more accurate to say the absentee ballots are mailed to  
22 the most recent address on file for the individual who appear  
23 in DIMS as a registered voter?

24 A Absentee ballots are mailed to anyone actively registered in  
25 DIMS, and whatever they designate as their mailing address.

1 Q King County doesn't check to make sure that the person who  
2 receives the ballot in the mail is in fact the registered  
3 voter?

4 A You mean, the person that picks up the mail?

5 Q Right.

6 A Correct.

7 Q Simply put the ballot in the mail to the most recent address  
8 in the registration record?

9 A Correct.

10 Q And King County did get reports from individuals who had  
11 requested absentee ballots that they had not in fact received  
12 their absentee ballots; isn't that true?

13 A I believe so, but I don't answer the phones, and I didn't  
14 take any of those calls myself.

15 Q But you're aware that ballots were suspended and reissued for  
16 the November election?

17 MR. HAMILTON: Object to the form of the question, calls  
18 for hearsay.

19 THE WITNESS: Can you repeat your question? I'm sorry.

20 Q (By Mr. Maguire) You were aware that ballots were suspended  
21 and reissued during the November 2004 election?

22 A Yes.

23 Q And that one of the circumstances under which that would  
24 happen is if an individual notified King County that they had  
25 not received their absentee ballot?

1 A Correct.

2 MR. MAGUIRE: Thank you, Ms. Way. I don't have anymore  
3 questions.

4 MR. HAMILTON: Just a couple more.

5 EXAMINATION

6 BY MR. HAMILTON:

7 Q Mr. Maguire asked you a moment ago whether election officials  
8 were allowed to compare signatures on absentee ballots to  
9 driver license signatures. Do you recall you said they  
10 weren't?

11 A Correct.

12 Q Were election officials allowed to misplace or lose voter  
13 registration records? They weren't supposed to do that  
14 either, were they?

15 MR. PORTER: Object, that's argumentative.

16 Q (By Mr. Hamilton) You can answer.

17 A No.

18 Q In fact, King County Records and Elections are required to  
19 maintain voter registration records indefinitely as long as  
20 they're active voter registrations, correct?

21 A I don't work with the maintaining of the voter registration  
22 cards. So I don't know what the exact requirement is.

23 Q But you've worked for King County Records and Elections for  
24 ten years in one form or another?

25 A All in absentee ballots.

1 Q Okay. And you're familiar that -- with generally speaking  
2 that King County has an obligation to maintain a voters  
3 registration as a general practice?

4 MR. PORTER: Objection, lack of foundation.

5 THE WITNESS: Yes.

6 Q (By Mr. Hamilton) Mr. Maguire, I think he concluded his  
7 series of questions by saying something to the effect that  
8 you had to compare -- King County signature verifiers had to  
9 compare the signature on the absentee ballot to the original  
10 registration record or an image of the original registration  
11 record, correct?

12 MR. MAGUIRE: Object, that misstates my question.

13 MR. HAMILTON: Something like that.

14 MR. PORTER: Asking her if she recalls that question.

15 Q (By Mr. Hamilton) Let me try again. In the normal course  
16 when an absentee ballot comes back, the signature verifiers  
17 first attempt to check the signature that's captured on the  
18 registration data base in a digital image, correct?

19 A Yes.

20 Q What should have happened if they couldn't find that  
21 signature was that they should have looked for the hard copy  
22 file, correct?

23 A The next step is we send the voter a letter asking them for a  
24 signature.

25 Q Okay. Get to that in a minute. If they are unable to find a

1 registration record, they're supposed to look for the hard  
2 copy signature or hard copy record of the voter's  
3 registration?

4 A Correct.

5 Q Then they also send a letter to the voter indicating that  
6 there is some problem with their signature on file, right?

7 A Correct.

8 Q And if the voter returns an updated signature, King County  
9 Records and Elections can compare the absentee ballot to that  
10 returned updated signature, correct?

11 A Yes.

12 Q And in fact in some instances during the November 2004  
13 general election you received affidavits from registered  
14 voters who had this issue that had been collected and  
15 presented to King County Records and Elections for this very  
16 purpose, correct?

17 A Yes.

18 Q And those signatures were used to compare the absentee ballot  
19 signatures for the purpose of validating those absentee  
20 ballots?

21 A Correct.

22 Q Once the signature match was made, the ballot was counted?

23 A Correct.

24 MR. HAMILTON: Thank you. No further questions.

25

E X A M I N A T I O N

1 BY MR. MAGUIRE:

2 Q Ms. Way, when a voter returned an updated signature in  
3 response to a letter from King County, did that form include  
4 an oath by the voter?

5 A The letter that we send, I don't believe it has an oath, but  
6 it's the letter that we generate.

7 Q The letter that King County sends, you're not sure whether it  
8 contains an oath or not?

9 A I don't believe it contains an oath.

10 Q Similar to the oath that exists on a registration card?

11 A Correct.

12 Q Do you know whether the kinds of affidavits -- you're pausing  
13 to think.

14 A I can't remember if we were sending voter registration cards  
15 with the letter in November. We may have been sending the --  
16 and asking for the card to be signed.

17 Q Do you know whether an individual could update their  
18 signature on file without including an oath?

19 A We accepted it if it came back on the letter that we used or  
20 the voter registration card.

21 Q You accept it if it came back in any other manner?

22 A I'm not sure. I can't think of any other manner that we've  
23 gotten it back.

24 MR. MAGUIRE: Thanks, Ms. Way.

25 MR. PORTER: Done?

1 MR. HAMILTON: I think so.

2 (Whereupon, at 4:40 p.m. the deposition was concluded.)

3 (Signature was reserved.)

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1 C E R T I F I C A T E

2 STATE OF WASHINGTON )

)

3 COUNTY OF KING )

4 I, the undersigned Notary Public in and for the State of  
5 Washington, do hereby certify:

6 That the annexed transcript of Friday, May 13, 2005  
7 deposition of NICOLE WAY was taken stenographically by me and  
8 reduced to typewriting under my direction;

9 I further certify that I am not a relative or employee or  
10 attorney or counsel of any of the parties to said action, and that  
11 I am not financially interested in the said action or the outcome  
12 thereof;

13 I further certify that the annexed Friday, May 13, 2005  
14 deposition of NICOLE WAY is a full, true and correct transcript,  
15 including all objections, motions and exceptions of counsel, made  
16 and taken at the time of the foregoing proceedings.

17 IN WITNESS WHEREOF, I have hereunto set my hand and affixed  
18 my signature this 15th day of May 2005.

19

20

21

22

23

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at Seatac.

24

My commission expires 2/14/06

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S I G N A T U R E

I, NICOLE WAY, hereby certify that I have read the foregoing transcript of my deposition taken Friday, May 13, 2005, and that the corrections, if any, were noted on the enclosed correction sheet, and with those changes, the same is now a true and correct transcript of my deposition testimony.

\_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_  
My Commission expires \_\_\_\_\_