

1 IN THE SUPERIOR COURT  
2 OF THE STATE OF WASHINGTON  
3 COUNTY OF KING

4 TIMOTHY BORDERS, et al.,  
5 Petitioners,

6 vs. No. 05-2-00027-3

7 KING COUNTY, et al.,  
8 Respondents,

9 and

10 WASHINGTON STATE DEMOCRATIC  
11 CENTRAL COMMITTEE,

12 Intervenor-Respondent,

13 and

14 LIBERTARIAN PARTY OF WASHINGTON  
15 STATE, et al.,

16 Intervenor-Respondents.  
17 \_\_\_\_\_

18  
19 DEPOSITION OF GARTH MARVIN FELL

20 Taken on behalf of the State Democratic Party

21 May 12, 2005

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BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the deposition of GARTH MARVIN FELL, Volume I, was taken before Rita Rivera, a Certified Shorthand Reporter, #2991, and a Notary Public for the State of Washington, on May 12, 2005, commencing at the hour of 9:13 a.m., the proceedings being reported at 1201 Third Avenue, Suite 4800, Seattle, Washington.

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1 SEATTLE, WASHINGTON; THURSDAY, MAY 12, 2005

2 9:13 a.m.

3 GARTH MARVIN FELL,

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

6 EXAMINATION

7 BY-MR.HAMILTON:

8 Q. Good morning, Mr. Fell. My name is Kevin  
9 Hamilton. We've introduced ourselves off the record, but  
10 let me do so again on the record.

11 I'm one of the attorneys representing the  
12 Washington State Democratic Central Committee, intervenor,  
13 in this election contest. My purpose here today is to ask  
14 you a few questions about the work you've done for  
15 King County. I'm going to try to be simple and direct  
16 with my questions. If for some reason you don't  
17 understand --

18 MR. HAMILTON: Let's go off the record for just a  
19 second.

20 (Whereupon, a short recess was taken.)

21 BY MR. HAMILTON:

22 Q. Sorry for the interruption. Telephone  
23 malfunction.

24 If for some reason you don't understand my  
25 question, please tell me. I will be happy to rephrase it.

1 I appreciate your cooperation. I will try not to  
2 interrupt your answers, and I ask you to wait until I'm  
3 finished asking or completing the question, even if I  
4 pause in the middle of it. That's simply to avoid having  
5 two of us talking at once, which has a tendency to make  
6 the court reporter have difficulty transcribing everything  
7 it is that's being said.

8 Do you understand?

9 A. I understand how it is.

10 Q. Have you ever been deposed before?

11 A. I have not.

12 Q. Okay. This is not meant to be an endurance  
13 contest. If you need a break either to speak with counsel  
14 or use the rest room, refill your water, just let me know.  
15 I'll be happy to provide you that courtesy. All right?

16 A. Thank you.

17 Q. Can you please state your full name and residence  
18 address.

19 A. Yes. My name is Garth Marvin Fell, and I live at  
20 5707 151st Place Southwest, Edmonds, Washington 98026.

21 Q. Where are you currently employed Mr. Fell?

22 A. I'm employed with King County -- King County  
23 Elections.

24 Q. What's your current job position?

25 A. My current job title is assistant superintendent

1 of Ballot Processing and Delivery.

2 Q. How long have you held that position?

3 A. I've held this position since April or May of  
4 2004.

5 Q. How long have you been employed by King County?

6 A. I've been employed by King County in some form or  
7 another for close to ten years.

8 Q. Can you give us a brief overview of the different  
9 positions you held during that ten years of employment at  
10 King County.

11 A. Certainly. I started as a temporary worker in  
12 the Records, Elections and Licensing Services Division --  
13 at that point I believe it was known as Records and  
14 Elections -- in the Archives and Records Management Unit.  
15 From there I gained permanent employ -- employment as a  
16 records analyst for that group. Then in late May, early  
17 June of 1999, I was hired on as the Election Distribution  
18 Center supervisor in King County, in the Elections  
19 section. And then from that point held that position  
20 until I held my current position as assistant  
21 superintendent of Ballot Processing and Delivery.

22 Q. Before I ask you about your current position, I'd  
23 like to ask you about the one you held before your  
24 position today.

25 You were the Election Distribution Center

1 supervisor?

2 A. That is correct.

3 Q. Can you describe your responsibilities in that  
4 position.

5 A. In that position my responsibilities were to  
6 oversee the distribution of equipment and supplies to  
7 polling places and the preparation of those supplies, as  
8 well as the siting of polling places in support of  
9 elections.

10 Q. So you held that position for about five years?

11 A. That is correct.

12 Q. To whom did you report during those five years?

13 A. There were a number of -- I reported to the  
14 superintendent of Elections. There were a number of  
15 superintendent of Elections during that period.

16 Q. That's the position that Mr. Huennekens holds  
17 now?

18 A. That is correct.

19 Q. So when you say superintendent of Elections,  
20 superintendent of Elections for King County.

21 A. That is correct.

22 Q. Prior to assuming the position in 1999 of  
23 Election Distribution Center supervisor, you held the  
24 position of records analyst for the Archives?

25 A. Archives and Records Management Unit within the

1 Records and Elections Division.

2 Q. What were your responsibilities in that role?

3 A. I would assist agencies in determining what the  
4 record retention periods were for various records that the  
5 agencies would hold.

6 Q. I'm confused because you used the word "agencies"  
7 in the plural.

8 A. King County agencies. King County -- all of -- I  
9 guess the Archives and Records Management section serves  
10 the various agencies within King County government, not  
11 just the Records, Elections and Licensing section.

12 Q. I see. Where were you physically located during  
13 the time that you worked in that position?

14 A. There were several locations. One was the Yesso  
15 Building which is off of Fifth Avenue. We were also  
16 located for a period of time in the Central Building on  
17 Third Avenue.

18 Q. Is that where the records are kept, or is that  
19 simply in the administrative office?

20 A. That's simply in the administrative office.  
21 King County has several storage facilities for records.

22 Q. During what period of time were you holding the  
23 records analyst position?

24 A. I believe I held that position for two years, up  
25 until 1999.

1 Q. So from roughly '97 to 1999.

2 A. Yes. That's going from memory here.

3 Q. Okay. I won't hold you to it.

4 Prior to the records analyst position, you were  
5 employed by King County for approximately three years?

6 A. Two to three years, yes. Two to three years.

7 Q. And were you a temp during those entire two- to  
8 three-year period?

9 A. I was.

10 Q. And what were your responsibilities as a  
11 temporary employee during that two- to three-year period?

12 A. I worked within the records management portion of  
13 the Archives and Records Management Unit and was  
14 responsible for pulling records for various agencies upon  
15 request --

16 Q. Go ahead.

17 A. -- and delivering those records to the agencies  
18 so they could do what they needed to do with the records.  
19 And in addition I worked for the archives work group  
20 underneath the -- which is within the Archives and Records  
21 Management section.

22 Q. And to whom did you report during that period of  
23 time?

24 A. I reported to Tony Adams and the King County  
25 archivist, at that point was Diana Benning.

1 Q. And later when you were working as a records  
2 analyst, to whom did you report?

3 A. I reported to Nancy Craver.

4 Q. What position did she hold?

5 A. She was the -- I don't know her exact title, but  
6 she was essentially the manager of the Archives and  
7 Records Management Unit within the Records and Elections  
8 Division.

9 Q. Prior to being employed by King County, where  
10 were you employed?

11 A. I was not employed. I was a student.

12 Q. I see. And do you hold any degrees?

13 A. Yes. I hold a Bachelor of Science degree.

14 Q. In what field?

15 A. Atmospheric science.

16 Q. From what school?

17 A. University of Washington.

18 Q. And when did you graduate?

19 A. Excellent question. I don't know the exact year  
20 of that diploma.

21 Q. All right.

22 A. It was approximately a year after I started  
23 working for King County.

24 Q. Okay. During the time you were working in the  
25 Election Distribution Center as a supervisor, I believe

1 you testified that you oversaw the distribution of  
2 equipment and supplies.

3 That's to various polling places?

4 A. That is correct.

5 Q. Did that include the distribution of ballots?

6 A. Yes, it did.

7 Q. And then were you also in charge of receiving the  
8 supplies and equipment from the polling places when they  
9 returned after, at the end of election day?

10 A. The supplies and equipment that come back from  
11 polling places are distributed to -- or returned to depots  
12 that we have, and those depots would come back to our  
13 facility. I was in charge of coordinating the activities  
14 surrounding those depots.

15 Q. You were.

16 A. Yes.

17 Q. In your position as Election Distribution Center  
18 supervisor, did you have responsibilities after the  
19 election for the collecting of voted ballots or  
20 provisional ballots or absentee ballots that have been  
21 dropped off at polls and delivering them to the County  
22 center staff?

23 A. The general practice is that absentee ballots or  
24 provisional ballots and any ballots would be pulled from  
25 the base units at the polling places on election night and

1 returned by poll workers. I was responsible for having  
2 staff pick up that equipment that at that point should  
3 have been empty, and returning that to our facilities.

4 Q. Now, during the five years that you were employed  
5 as the Election Distribution Center supervisor, from time  
6 to time did you find ballots in those machines that should  
7 have been empty?

8 A. Certainly.

9 Q. Is that something that happens in most of the  
10 elections?

11 A. I would say that it's not -- it's not a rare  
12 occurrence to find an absentee ballot in a base unit  
13 following election day.

14 Q. When you find those kind of ballots in the base  
15 units after election day, during the time period that you  
16 were the Election Distribution Center supervisor, what was  
17 your practice in dealing with those?

18 A. The practice evolved or changed during the time I  
19 was supervisor. The system we were using was fairly new  
20 when I came on board. And when it was recognized that  
21 this was a potential problem with the type of -- the base  
22 units were not being completely cleared out of ballots on  
23 election night. The practice was then to send out  
24 troubleshooters to check out the base units and ensure  
25 that they were empty. If they did find ballots, they were

1 to record what ballots they found. This particular  
2 process was something that I was coordinated not just with  
3 my -- I did not do the sole coordination on this. This  
4 was done with the Election Operations section as well and  
5 the supervisor who was in charge of the troubleshooters.

6 Q. Who was that?

7 A. During my time in the position of Election  
8 Distribution Center supervisor, that would be Lisa Moore.

9 Q. Okay. Your current position as assistant  
10 superintendent for Ballot Processing --

11 A. -- and Delivery, yes.

12 Q. -- and Delivery, to whom do you report in that  
13 position?

14 A. I report to the superintendent of Elections, Bill  
15 Huennekens.

16 Q. Can you give us an overview of your  
17 responsibility in that position.

18 A. I can certainly try. The Ballot Processing and  
19 Delivery work unit really has three main functions or work  
20 centers. There's the Election Distribution Center which  
21 we talked about, and that's responsible for, again, the  
22 distribution of the supplies to and from polling places  
23 and the siting of polling places. The other work --  
24 another work unit that I oversee is the group that  
25 coordinates the ballot design and tabulation database

1 building prior to each election. And then finally there's  
2 the absentees group, which is also the Mail Ballot  
3 Operations Satellite facility, and they're responsible for  
4 the issuance of absentee ballots and the processing of  
5 those upon return, although I threw the tabulation days.

6 Q. Let me see if I understand what you just said.

7 There are three principal functions of Ballot  
8 Processing and Delivery, first of which is the Election  
9 Distribution Center Operations.

10 A. That is correct.

11 Q. And that's what you described before, your  
12 earlier position as the supervisor of the Election  
13 Distribution Center.

14 A. That is correct.

15 Q. Okay. And then second you said ballot design and  
16 tabulation?

17 A. Right. There is -- prior to each election, it's  
18 necessary to actually build a ballot and design a ballot.  
19 The way that work is kind of managed is we currently have  
20 I.T. support from centralized I.T. Services, and they  
21 assist in the building of those ballots and the building  
22 of the database. There is coordination with other work  
23 units within King County Elections, primarily the Election  
24 Operations group. They assist in proofing the ballot to  
25 make sure that it includes all the necessary races and

1 candidates for a particular precinct, and then overall the  
2 quality of the ballots is acceptable.

3 Q. Can you describe the tabulation function.

4 A. Yes. We currently use a hardware and software, a  
5 system known as GEMS, to perform the tabulation of  
6 ballots. It's manufactured by Diebold Elections, and it's  
7 something that's been certified for use in the state.

8 Q. So part of your responsibilities is not only  
9 designing the ballot, but also when the ballots come back  
10 in, ensuring that they're accurately tabulated?

11 A. The actual tabulation function takes place in  
12 several locations. You've got all your polling places  
13 where tabulation occurs on election day, ballots are being  
14 fed into individual devices. I'm not responsible for  
15 coordinating the poll workers or the poll worker training,  
16 but it is my responsibility to ensure that those devices  
17 have been tested and that they have the proper programming  
18 to read and accept the ballots that are going out there to  
19 those sites. And I guess that would be my responsibility  
20 through subordinate staff.

21 There's also the tabulation of absentee ballots,  
22 and that is something that's within the Mail Ballot  
23 Operations Satellite. That is something that I oversee as  
24 well. It's sort of a coordinated effort with this I.T.  
25 support that we have to ensure that things are tabulated

1 accurately.

2 Q. Okay. Are there other places where ballots are  
3 tabulated other than polling places and at MBOS?

4 A. There would be on occasion a potential to  
5 tabulate ballots up at the Administration Building. We  
6 have the ability to do that through an AccuVote device.  
7 There have been times in the past where following election  
8 day we retabulate ballots from a polling place to ensure  
9 that it includes all the ballots that should have been  
10 tabulated as part of the canvassing process. On occasion  
11 they will identify issues that require us to retabulate.  
12 Actually that's done through the same device that will be  
13 used at a polling place, an AccuVote device with a memory  
14 card.

15 Q. Okay. And then the third area of responsibility  
16 you described was the absentee ballots group. That's the  
17 Mail Ballot Operations Satellite unit?

18 A. That is correct.

19 Q. Sometimes called MBOS?

20 A. That is correct.

21 Q. And that involves not only sending out absentee  
22 ballots, but verifying them and tabulating, processing  
23 them when they come in.

24 A. That is correct.

25 Q. Are there subordinate supervisors for each of

1 these three functions?

2 A. There are subordinate supervisors for the  
3 Election Distribution Center and for the Mail Ballot  
4 Operations Satellite. The third function at this point  
5 does not have a supervisor. Again, it's a coordinated  
6 effort with our I.T. support staff.

7 Q. When you say the third one, that's the ballot  
8 design and tabulation, if you know?

9 A. Exactly.

10 Q. So in the Election Distribution Center, who's  
11 your subordinate employee or supervisor responsible for  
12 the Election Distribution Center at this point?

13 A. The current Election Distribution Center  
14 supervisor is Alicia Luke.

15 Q. And how long has she held that position?

16 A. She's held that position since late July of 2004.

17 Q. And who's the supervisor for the absentee ballot  
18 group at MBOS?

19 A. The supervisor of the MBOS function or staff is  
20 Nicole Way.

21 Q. With respect to the tabulation function in the  
22 polling place, I understand you're not responsible for  
23 training the individual polling place inspectors, but  
24 you're familiar with what's supposed to occur in a polling  
25 place on election day; correct?

1           A.    I have some familiarity with that, yes.

2           Q.    I'd like to walk through for a moment how a  
3 ballot -- or a voter who appears at a polling place is  
4 issued a ballot and cast that ballot.

5                    When a voter first appears at the polling place,  
6 they are to identify themselves to the staff; correct?

7           A.    Yes.  There's a check-in process in which they  
8 would sign a poll book if they are in the poll book.

9           Q.    So when they arrive, they announce themselves to  
10 the staff.  The polling place -- poll workers will then  
11 look at the poll book for the particular precinct to see  
12 if they can find the name in the book?

13          A.    That's correct.

14          Q.    If they find the name in the book, the voter's  
15 supposed to sign next to their name?

16          A.    That is correct.  There's a signature line for  
17 the voter to sign their name.

18          Q.    And then the voter's issued a ballot?

19          A.    Yes, they are.

20          Q.    And the voter votes the ballot and -- or rather  
21 marks the ballot and then feeds it through the AccuVote  
22 machine?

23          A.    In the ideal sense, yes, that's the process.  But  
24 there are potentials for provisional ballot voters, so  
25 that would be a slightly different process.

1 Q. Let's talk about somebody whose name appears in  
2 the poll book and there's no indication that they'd been  
3 issued an absentee ballots or any other reason to issue  
4 them a provisional ballot.

5 A normal ballot voter would sign the poll book  
6 and their name appears. And they'd be issued a ballot,  
7 mark it, and then put it through the AccuVote machine?

8 A. That is correct.

9 Q. Under what circumstances is a voter required to  
10 vote by provisional ballot?

11 A. It would be my -- it's my understanding the  
12 practices at the polling places that the voter will be  
13 issued a provisional ballot if their name did not appear  
14 in any of the poll books.

15 Q. Also if the poll book has a notation that the  
16 voter is or has been issued an absentee ballot?

17 A. That is correct.

18 Q. Okay. So could you describe how that process  
19 works as a general matter, for an absentee ballot to be  
20 issued.

21 A. An absentee ballot?

22 Q. I'm sorry. Provisional ballot.

23 A. In general if the person does not appear in the  
24 poll book or it's indicated that they've been issued an  
25 absentee, they'd be required to fill out a provisional

1 ballot envelope, and the inspector, I believe, would help  
2 with that process. They would then be given a ballot to  
3 vote, and they'd be asked to return that ballot to the  
4 inspector so that it could be sealed in the envelope and  
5 the proper research done following election day.  
6 Potentially we can count -- or if possible, count that  
7 ballot.

8 Q. Now, you're familiar with the allegations in this  
9 election contest that there were a number of provisional  
10 ballots that were improperly fed through the AccuVote  
11 machines rather than returned to the poll place inspectors  
12 and put in envelopes?

13 A. I'm aware that that is a concern, yes.

14 Q. That issue has arisen before in King County;  
15 correct? In other words, this is isn't the first election  
16 in which there's been some indication that a provisional  
17 ballot has been fed at a polling place through an AccuVote  
18 machine?

19 A. I can't recall specific information or incidents  
20 regarding provisional ballots being fed through AccuVote  
21 machines before. Theoretically is it possible?  
22 Certainly. And it isn't something that perhaps the  
23 operations group had identified as a potential perhaps.

24 Q. It's not limited to King County either, is it?  
25 It's a potential that's there in just about every county

1 in the United States?

2 A. I would hate to speak to what other counties'  
3 practices are.

4 Q. You don't know?

5 A. I don't know specifically, no.

6 Q. With respect to the function of ballot design,  
7 how many different ballot styles are there -- or how many  
8 different ballot styles were there in connection with the  
9 November 2004 General Election?

10 A. I don't know the exact number.

11 Q. Okay. I won't hold you to an exact number.  
12 How many, approximately, were there?

13 A. It would be a guess at this point for me, but I  
14 imagine it's someplace between 50 and 150 styles.

15 Q. 50 to 150 different styles?

16 A. Different ballot styles, yes.

17 Q. Can you explain why King County maintains so many  
18 different ballot styles.

19 A. Ballot style's essentially a unique combination  
20 of races or issues that a voter is eligible to vote on.  
21 It's based on your precinct that you're assigned to and  
22 the jurisdictional boundaries that aren't going to make up  
23 that -- jurisdictions that make up that precinct. We have  
24 a large number of jurisdictions in this county. And  
25 whenever a jurisdiction has a race on a ballot, that has a

1 potential for producing an additional ballot style.

2 Q. So is part of the Election Distribution Center  
3 function to ensure that the correct ballot style is  
4 delivered to particular precincts so that all the  
5 elections they'd properly be voting for in a particular  
6 precinct would actually appear on the ballot in that  
7 precinct?

8 A. Part of the process of the staff in preparing for  
9 an election is to verify that the ballots that we get back  
10 from our printers are the appropriate ones for particular  
11 precincts and that they are distributed to the proper  
12 polling places, yes. Each ballot style through the GEMS  
13 software is associated with a precinct. And when the  
14 print vendor prints the ballot, they print the precinct  
15 ballot code and information on the ballot as well. So  
16 that's actually what staff is looking at ensuring, that  
17 the precincts and ballot codes and card styles agree with  
18 what we feel should be going out to these polling places.

19 Q. To make sure I understand what you just said, for  
20 a specific precinct, let's say it's on Capitol Hill  
21 somewhere -- a specific precinct is mailed a specific  
22 ballot style, printed name of the precinct on that ballot.

23 A. Right. And I guess to further clarify, it's not  
24 a one-to-one relationship in the sense that --

25 Q. There may be more than one precinct with the same

1 ballot style.

2 A. That is correct.

3 Q. Okay. So how many precincts are there in King  
4 County, approximately?

5 A. 2,600, approximately, I think.

6 Q. But there's only 50 to 150 different ballot  
7 styles.

8 A. That is correct. For this general election.

9 Q. For this past general election. All right.

10 Now, is it possible for a voter under some  
11 circumstances to be issued a ballot at King County  
12 Administration Building?

13 A. Certainly.

14 Q. Under what circumstances?

15 A. We have the ability to issue ballots over the  
16 counter. So if a voter comes in and would like an  
17 absentee prior to election day, we can issue them an  
18 absentee.

19 Q. Now, you said there are 50 to 150 different  
20 ballot styles.

21 Does King County maintain a large storeroom at  
22 the King County Administration Building with 150 different  
23 stacks of blank ballots available for people who walk in  
24 and issue over the counter?

25 A. No, we do not.

1 Q. Why not? Or, rather, isn't that necessary if  
2 you're going to be able to issue replacement absentee  
3 ballots or just absentee ballots over the counter?

4 A. It is not necessary for King County to have that  
5 stock. I know that other counties do produce extra stock  
6 and distribute over-the-counter absentees that way. Our  
7 Registration Election Management System has the capability  
8 of linking and printing the appropriate ballot style for  
9 the voter that comes in and asks for a ballot over the  
10 counter.

11 Q. Is that an alternative to maintaining this large  
12 volume of blank ballots in a storeroom?

13 A. Certainly.

14 Q. And can just anyone working at King County access  
15 that registration system and print off an extra ballot?

16 A. The registration system is controlled by user IDs  
17 and passwords. The individuals that have access to our  
18 Election Management Voter Registration System would be  
19 employees that have been given the authority to work  
20 within that system.

21 Q. I see. Just like the employees were given  
22 authority to distribute ballots to the polling places on  
23 election day? Those employees were also authorized to  
24 take like-ballots and distribute them to the polling  
25 places; correct?

1           A.    If we're taking blank ballots to the polling  
2 places, that would be something that those individuals  
3 would be authorized to do, yes.

4           Q.    And similarly, some King County employees are  
5 authorized to actually take blank ballots and put them in  
6 absentee envelopes and put them in the mail; right?

7           A.    That is correct.

8           Q.    In fact, hundreds of thousands of ballots get  
9 sent off that way.

10          A.    Yes.   In the process.

11          Q.    Every one of them, when they leave King County,  
12 is blank.

13          A.    Yes.

14          Q.    Now, when a voter appears at King County  
15 Administration, seeks a ballot and is issued a ballot, is  
16 there a record kept that that particular voter's been now  
17 issued an absentee ballot?

18          A.    In issuing ballots over the counter, the process  
19 is that whoever is issuing that ballot needs to go into  
20 our Election Management Voter Registration System and  
21 perform a process, that they have to find the registered  
22 voter and then issue them a ballot.  There is a record --  
23 electronic record kept that a ballot has been issued to  
24 that voter.

25          Q.    So let's return to your current position as

1 assistant superintendent for Ballot Processing.

2 It sounds like there are at least two supervisors  
3 who report to you. Alicia Luke and Nicole Way; correct?

4 A. That is correct.

5 Q. Who else reports to you?

6 A. Directly or indirectly?

7 Q. Well, let's start with direct.

8 Who else directly reports to you besides Alicia  
9 Luke and Nicole Way?

10 A. Nobody directly. Just those two supervisors.

11 Q. Okay. Who indirectly reports to you other -- who  
12 else indirectly reports to you?

13 A. There are our ID support staff who would report  
14 to me there, but that's indirectly in the sense that they  
15 are part of our larger I.T. -- King County's larger I.T.  
16 in that division.

17 Q. How many people are employed there?

18 A. We currently have two individuals from the I.T.  
19 group that are -- that report to me for the purposes of  
20 ballot design and the database design.

21 Q. What responsibility -- and perhaps this falls  
22 within the tabulation responsibility.

23 But what responsibility, if any, do you have for  
24 processing provisional ballots?

25 A. Provisional ballots are tabulated. The actual

1 final product of the provisional ballot is tabulated at  
2 the Mail Ballot Operations Satellite.

3 Q. Do you or any of the people you supervise have  
4 responsibility for validating the registration of voters  
5 who cast provisional ballots?

6 A. No. That responsibility of validating the  
7 information on the provisional ballots would be in Voter  
8 Services Unit.

9 Q. That's Mr. Webb's unit.

10 A. That is correct.

11 Q. You described one of your functions is the  
12 absentee ballot group. I take it the group working under  
13 you does have responsibility for processing absentee  
14 ballots when they're returned.

15 A. That is correct.

16 Q. And that would include validating the  
17 registration of the absentee -- well, no. I take that  
18 back.

19 When an absentee ballot comes back, the  
20 validation process consists of checking signatures;  
21 correct?

22 A. The first step in the process, yes, is --  
23 actually the first step in the process is receiving the  
24 mail. But the validation step would be to verify the  
25 signature on the outside of the absentee envelope and see

1 that it matches the signature we have on file.

2 Q. And absentee ballots are sent only to registered  
3 voters; correct?

4 A. The absentee ballots that come from King County  
5 are only sent to registered voters. There are absentee  
6 ballots that are issued to voter -- to potential voters.  
7 That will be the federal write-in ballot.

8 Q. Or certainly overseas or out-of-state voters?

9 A. Exactly.

10 Q. Fair to say that the vast majority of absentee  
11 ballots are sent to registered voters in King County?

12 A. That would be a fair statement.

13 Q. Just give me a second here.

14 (Whereupon, an e-mail from Travis Elsom to Scott  
15 Turnbull, dated October 18, 2004, was marked as Exhibit-1  
16 for identification.)

17 Q. Handing you what's been marked as Exhibit No. 1.  
18 I know there's a confusion because there's also an earlier  
19 exhibit label on here, but this is Exhibit No. 1 to your  
20 deposition. This is an e-mail exchange between Elvis --  
21 I'm sorry -- Travis Elsom and Scott Turnbull.

22 Do you know those individuals?

23 A. I do know those individuals, yes.

24 Q. And who are they?

25 A. They are currently our DIMS administrators. They

1 administer our Election Management Voter Registration  
2 System.

3 Q. Are either of them -- well, I gather from your  
4 description of your responsibilities and oversight, these  
5 individuals don't report to you.

6 A. That is correct.

7 Q. To whom do they report?

8 A. They report to -- currently they report to the  
9 superintendent of Elections, Bill Huennekens.

10 Q. Directly?

11 A. Yes.

12 Q. From time to time you have occasion to interact  
13 with Mr. Elsom and Mr. Turnbull?

14 A. Oh, certainly.

15 Q. Now, when the absentee ballots are issued, that  
16 is part of your responsibilities?

17 A. Yes. I would say that there's a shared  
18 responsibility in the sense that the over-the-counter  
19 process is something that's done by the Voter Services  
20 group. They are interacting with the customers that come  
21 and want an absentee. They're using our Election  
22 Management Voter Registration System to do that.

23 Q. The vast majority of the absentee ballots that  
24 were issued in connection with the November 2004 General  
25 Election were sent through the mail, not over the counter?

1           A.    Most ballots were sent through the mail, yes.  
2    There were a large number of over-the-counter ballots,  
3    though, issued.

4           Q.    Okay.

5           MR. PORTER:   Kevin, just to be sure our record is  
6    clear, you mentioned there's another exhibit sticker on  
7    here.  That is Logan No. 8?

8           MR. HAMILTON:   Yes.

9           MR. PORTER:   Just to be clear, if we're reading  
10   both transcripts, we're talking about the same document.

11          MR. HAMILTON:   Thank you.  That's accurate.

12          BY MR. HAMILTON:

13          Q.    When absentee ballots are sent through the mail,  
14   they're sent inside an envelope, of course; correct?

15          A.    Correct.

16          Q.    It also includes two return envelopes, one  
17   security envelope and one outside envelope.

18          A.    That is correct.

19          Q.    Okay.  So when the voter opens the ballot -- I'm  
20   sorry -- opens the envelope, they receive containing their  
21   absentee ballot -- inside they'll find three things, the  
22   absentee ballot, the return outside envelope, and the  
23   return inside security envelope.

24          A.    In general three things.  Certain voters do get  
25   additional items, potentially voter's pamphlet or a

1 statement that is provided by the Secretary of State's  
2 office, I believe, to service voters.

3 Q. The outside return envelope is preaddressed to  
4 King County Records and Elections?

5 A. That is correct.

6 Q. And in addition, the outside return envelope for  
7 an absentee ballot has a bar code on it.

8 A. It has at least one bar code, potentially more.

9 Q. Purpose of the bar code is when the -- so that  
10 when the absentee ballot is returned, it could be scanned  
11 and sorted by King County's mail vendor, PSI?

12 A. One of the bar codes on envelopes that are  
13 processed either through our initial mail-out at a print  
14 vendor or envelopes that are created in-house through what  
15 we call our vote remote process would have a bar code that  
16 could be used to -- and is used to sort the ballots upon  
17 return. Not all absentee ballots that go out have that  
18 bar code.

19 Q. Now, if I could direct your attention to Exhibit  
20 No. 1. The message that starts this exchange is at the  
21 bottom. It's from Nicole Way.

22 You know Nicole Way; correct?

23 A. I do.

24 Q. She's one of your direct reports?

25 A. That is correct.

1 Q. And it's addressed to you and Harry Sanders and  
2 copied to a number of other people. And it refers to an  
3 issue of AV label ballots.

4 Are you familiar with this issue?

5 A. I recall that there was an issue initially with  
6 the upload process, yes.

7 Q. Can you describe the issue.

8 A. Let me take a minute to --

9 Q. Sure. Please go ahead. Read the document.

10 A. Could you repeat your question regarding the --

11 Q. It was just simply, do you recall this issue?

12 A. Yes, I do recall this issue.

13 Q. Can you describe it.

14 A. Yes. It appears that it was an issue with the  
15 report that generates the labels that we send out on some  
16 absentees. This could be over-the-counter absentees or  
17 ones we generate in-house.

18 Q. If I understand the issue, it looks like there  
19 was a problem with certain character fields. When they  
20 hit the seventh field, it wouldn't print the label  
21 correctly.

22 A. It appears from the e-mail that, yes, that is  
23 correct. It sounds like it's truncating the final digit.

24 Q. And Nicole Way reported that -- directing your  
25 attention to the bottom e-mail -- that they mailed out --

1 that King County had mailed out over 14,000 ballots with  
2 those labels on them?

3 A. That is correct.

4 Q. Do you know how this issue -- or whether this  
5 issue was resolved?

6 A. I believe it was resolved. Do I know how it was  
7 resolved? At this point I can't recall. But I know that  
8 it did not -- as the e-mail indicates, it did not require  
9 that they handtype in the AV IDs.

10 Q. Did not.

11 A. Did not.

12 Q. AV ID is a unique code that's assigned to a  
13 particular voter when they're issued an absentee ballot?

14 A. That is correct.

15 Q. So you believe this was resolved so that they did  
16 not have to type that in?

17 A. I believe it was. To the best of my knowledge,  
18 yes.

19 Q. You don't recall how?

20 A. I do not recall the solution.

21 Q. Who would know the answer to that question?

22 A. Potentially Nicole Way would know the solution,  
23 or certainly Travis Elsom and Scott Turnbull.

24 (Whereupon, an e-mail from Bobbie Egan to Garth  
25 Fell and Terry Denend, dated December 28, 2004, was marked

1 as Exhibit-2 for identification.)

2 Q. I'll hand you what's been marked as Exhibit  
3 No. 2. This is another e-mail exchange dated late  
4 December. Take a moment to review it, if you could.

5 All right. You've had a moment to review it?

6 A. Yes, I have. Thank you.

7 Q. In the e-mail -- this e-mail exchange appears to  
8 start with an e-mail from a voter. It's called a customer  
9 comment.

10 That's a reference to a citizen?

11 A. Yes. It's a reference to a comment that I  
12 believe came through our website.

13 Q. And in that comment, the person who was writing  
14 in noticed that there were two precincts in which there  
15 were more votes than registered voters listed; correct?

16 A. That is correct.

17 Q. And then Terry Denend, D-e-n-e-n-d, wrote an  
18 e-mail to you on Monday, December 27, asking for your  
19 assistance in responding; is that accurate?

20 A. That is accurate.

21 Q. Who's Terry Denend?

22 A. Terry Denend was the assistant manager of  
23 Records, Elections and Licensing Services Division at the  
24 time.

25 Q. Assistant manager.

1           To whom did he report?

2           A.    It is a female.

3           Q.    Okay.  To whom did she report?

4           A.    And she reported to Dean Logan.

5           Q.    What was her title again?  I'm sorry.

6           A.    I believe her title is assistant manager -- or  
7 was at the time.  She has since retired.

8           Q.    Assistant manager of --

9           A.    -- of the Records, Elections and Licensing  
10 Services Division.

11          Q.    Did Mr. Huennekens report to Ms. Denend?

12          A.    No, he did not.

13          Q.    Can you describe -- this is a name I just haven't  
14 heard before.

15                Could you describe how she fit in the  
16 organizational structure at this point in time in the fall  
17 of 2004.

18          A.    I can potentially describe why she would be  
19 receiving this e-mail and forwarding on to me if that's --

20          Q.    Well, I'll ask you that question next.  But maybe  
21 first we can describe how she, in the fall of 2004 -- what  
22 her role was at King County Records and Elections.

23          A.    She was the assistant manager to Dean Logan and  
24 who would be serving in whatever role he felt was  
25 appropriate for her at the time.  Her involvement with

1 Elections was somewhat limited. She was not directly  
2 supervising anybody within Elections section. So it's  
3 hard for me to describe her role. I'll probably refer to  
4 Dean to describe what her full role would be.

5 Q. Now I'll ask you the question you suggested a  
6 minute ago. I think it was something along the lines of  
7 why is it that she was getting this e-mail and forwarding  
8 it to you.

9 A. Very good. Terry Denend was one of our primary  
10 contacts or primary people responsible for the web  
11 interactions. And when customer comments would come  
12 through the website, she would be able to see what these  
13 particular comments were. And so she could act as a  
14 filter. I'm not sure that was her role, but it is  
15 potentially that she saw this e-mail, had a concern,  
16 wanted to make sure that it was investigated.

17 Q. I see. And then your response with respect to  
18 this particular concern about two precincts with more  
19 votes than registered voters listed was to provide two  
20 alternative explanations for that discrepancy?

21 A. That is correct.

22 Q. And the first was that the list of registered  
23 voters was uploaded on the Thursday prior to the election  
24 and additional voters might have been added after that  
25 time?

1           A.    That is correct.  There was a potential for some  
2 additional voters to be entered into the system.

3           Q.    That would occur if someone had registered to  
4 vote shortly before the election cutoff?

5           A.    Near the cutoff period, yes.

6           Q.    And the second explanation is the one that you  
7 considered more likely?

8           A.    I did consider the second explanation more  
9 likely.

10          Q.    And that's that the registered voter data listed  
11 on the web is only active registered voters?

12          A.    That is correct.  Prior to each election, we  
13 upload into our global Election Management System  
14 registered voter counts by precinct.

15          Q.    Let me just stop you there.

16                The global Election Management System is another  
17 way of describing the GEMS tabulation system?

18          A.    That is correct.

19          Q.    Please continue.

20          A.    And those numbers that we upload are active  
21 registered voters.

22          Q.    A voter can go on inactive status if they don't  
23 vote for a certain number of elections?

24          A.    I believe that it is a potential.  But it's also  
25 if they have returned mail from their address, they could

1 be put on inactive status.

2 Q. But an inactive voter is actually entitled to  
3 vote if they show up at the polls while on inactive  
4 status?

5 A. Certainly. An inactive voter is eligible to  
6 vote.

7 Q. So while we're comparing just the registration  
8 list of active voters for a particular precinct to the  
9 number of ballots cast, there might be a discrepancy that  
10 would be explained by inactive voters voting?

11 A. That is correct.

12 Q. Another possibility would be federal write-ins or  
13 military ballots?

14 A. The areas of possibility that we could have  
15 federal write-ins that were eligible legitimate ballots  
16 but not have individuals registered to vote within the  
17 system at the time those numbers were uploaded, yes.

18 Q. So if one of our military servicemen or women in  
19 Afghanistan or Iraq wanted to cast a ballot in connection  
20 with the November 2004 General Election but were not  
21 registered at all, they could fill out a federal write-in  
22 ballot, send it to King County, and that would be  
23 considered a registration and an application for an  
24 absentee ballot for that particular election?

25 A. For that particular election, yes. And I'd say

1 that it could be from any region in the world.

2 Q. Fair enough. I just wanted to use an example  
3 that might catch the imagination of some of us, because so  
4 many of our servicemen and women are over there.

5 A. Understandable.

6 Q. Now, your tabulation function that you described,  
7 design and tabulation, do the folks working under your  
8 control, direction play any role with respect to crediting  
9 voters with voting, or is that done by Voter Services?

10 A. The absentee process does include procedures that  
11 eventually result in voters getting credited for voting.

12 Q. With respect to poll voters who sign in the poll  
13 book, as I understand the process, they're ultimately  
14 credited with voting through bar code scanning purpose  
15 after the fact.

16 A. That is my understanding as well.

17 Q. Okay. Is that bar code scanning process part of  
18 your responsibilities?

19 A. No, that's not part of my responsibilities.

20 (Whereupon, an e-mail from Nicole Way to Garth  
21 Fell, dated October 28, 2004, was marked as Exhibit-3 for  
22 identification.)

23 Q. I'll hand you what's been marked as Exhibit  
24 No. 3, and I'll give you a moment to review it.

25 You've had an opportunity to review the e-mail

1 exchange?

2 A. Yes, I have. Thank you.

3 Q. Did you receive the top e-mail from Nicole Way of  
4 October 28th, 2004?

5 A. I believe I did.

6 Q. In the attached -- and when you received the  
7 e-mail from Nicole, were these attached -- the e-mails  
8 that appear on Exhibit 3 also attached to that e-mail?

9 A. To the best of my knowledge they were.

10 Q. In the middle of the first page of Exhibit 3  
11 Ms. Way reports a concern of hers to Harry Sanders.

12 Who's Harry Sanders?

13 A. Harry Sanders is currently our manager of our GIS  
14 section or work group. That's Geographical Information  
15 System. At the time of the e-mail he was coming off of  
16 the role of being the project lead on the Election  
17 Management and Voter Registration System implementation.

18 Q. He was the project lead for the implementation of  
19 the new voter registration system?

20 A. That is correct.

21 Q. Now, in the middle of this e-mail here, on the  
22 first page of Exhibit 3, Ms. Way reports a concern about  
23 the system -- the registration system inserting dates into  
24 particular fields; correct?

25 A. That is correct.

1 Q. She writes at the bottom, quote, We should have  
2 that date locked or something. There are others out there  
3 that have been given return dates falsely before we even  
4 started getting ballots back, closed quote.

5 Would that be a concern of yours, if the DIMS  
6 registration system was inaccurately recording the return  
7 date of absentee ballots?

8 A. Certainly a concern.

9 Q. And then she wrote you this e-mail on  
10 October 28th, "she" being Nicole Way. She wrote, quote --  
11 and I won't read the entire thing, just starting from the  
12 middle -- I am sorry to say this, but DIMS is very lacking  
13 in any real tracking of anything. We cannot say for  
14 certain how many ballots have been issued/mailed, how many  
15 reissued, who has been issued what, how many ballots are  
16 actually returned/batched, Wanda errors, et cetera, how  
17 many ballots are actually verified and accepted versus  
18 challenged by us and challenged by Wanda. I know I keep  
19 saying this, but this is a serious concern of mine. And I  
20 am really getting frustrated every time one of these  
21 things happen. It is a problem with the worker or process  
22 we are doing, never an issue with DIMS or the training we  
23 received, closed quote.

24 You received that e-mail from Nicole Way?

25 A. It appears that I did, yes. I would not argue

1 that.

2 Q. Do you recall your response to Nicole Way's  
3 e-mail?

4 A. I do not believe I sent her an e-mail response.

5 Q. What did you do in response to receiving this?

6 A. I believe we would -- would have had a  
7 discussion. I don't recall a specific discussion about  
8 this e-mail of hers.

9 Q. Is it fair to say that Ms. Way was unhappy with  
10 the new registration system?

11 A. I think it would be fair that in this particular  
12 e-mail she appears to be frustrated.

13 Q. You don't recall your specific discussion with  
14 Nicole Way about the issues she raised in this e-mail?

15 A. I do not, no.

16 Q. Do you know if there was an investigation into  
17 the accuracy of the DIMS registration system in response  
18 to these concerns?

19 A. I don't know that there was a formal  
20 investigation.

21 Q. There was an informal investigation?

22 A. I do believe that the particular problem  
23 identified in the e-mail sent at 12:55 on the 28th of  
24 October -- I believe that was looked into.

25 Q. Who looked into it?

1           A.    That would be Harry Sanders and his DIMS  
2 administrators.

3           Q.    Do you recall the result of that investigation?

4           A.    I believe that it was identified that a  
5 particular version of the DIMS software that these  
6 individuals used -- or were using did -- and a particular  
7 process within that software did show that it wasn't  
8 inserting this date.  It was something that staff needed  
9 to be aware of.

10          Q.    Do you know if the issue was resolved ultimately?

11          A.    I don't know that the issue had been resolved  
12 ultimately.  I think that staff are aware of the issues  
13 and understand when it occurs and how to avoid the  
14 occurrence of it.

15                   (Whereupon, an e-mail from Scott Turnbull to  
16 Harry Sanders and Garth Fell, dated October 28, 2004, was  
17 marked as Exhibit-4 for identification.)

18          Q.    I've handed you what's been marked as Exhibit  
19 No. 4.

20                   Have you had an opportunity to review that?

21          A.    Yes, I have.

22          Q.    This appears to be an e-mail from Scott Turnbull  
23 to you and to Mr. Sanders, dated October 28th, 2004.

24          A.    That is correct.

25          Q.    Do you recall receiving this e-mail?

1 A. No, not at this point but --

2 Q. Do you have any reason to -- I'll represent to  
3 you, this document was produced by King County to the  
4 parties in this case.

5 Do you have any reason to believe you didn't  
6 receive it?

7 A. No, I don't.

8 Q. The e-mail is addressed to you from Mr. Turnbull,  
9 by name, and it says -- well, first of all, do you  
10 understand the issue that was being raised by Mr. Turnbull  
11 in the e-mail?

12 A. I believe I do, yes.

13 Q. Can you describe it.

14 A. It appears that Mr. Turnbull's referring to a  
15 particular challenge code that we can give to return  
16 absentees, that is called not in batch or NIB. And that  
17 designation is used when a person is going through -- a  
18 verifier is going through and verifying a batch and comes  
19 across an instance where the envelope for a particular  
20 voter is not in that batch but there is an image on our  
21 Voter Registration Election Management System screen that  
22 indicates that there should be an envelope there. This,  
23 in and of itself, does not mean that there should have  
24 been an envelope there, I would add, though.

25 Q. So let's back up. It might be useful to walk

1           the process of how the absentee ballots are  
2 returned.

3           When absentee ballots are returned, of course  
4 they come through the U.S. mail for the most part.

5           A.   That is correct.

6           Q.   I know that an absentee can also be provided --  
7 or returned to a polling place or directly to King County.  
8 But let's talk about the ones that come through the mail  
9 first.

10           King County Records and Elections staff go to the  
11 U.S. Postal Service with representatives from a vendor  
12 called PSI?

13           A.   We have two Elections -- a minimum of two  
14 Elections personnel go to the USPS distribution plant to  
15 pick up mail. At that point they are accompanied by a  
16 staff of people.

17           Q.   And they take delivery of these ballots and then  
18 take them to this vendor, PSI?

19           A.   They take them to, yes, PSI's mail house.

20           Q.   And then PSI, working under the supervision of  
21 King County Records and Elections employees, puts them  
22 through a scanning process that sorts them into batches?

23           A.   That is correct. The scanning process sorts them  
24 into legislative districts and also captures a bit of data  
25 that is then related back to the AV ID for that particular

1 voter.

2 Q. And the ballots are then sorted into batches,  
3 with a report that's generated, that lists all the AV ID  
4 numbers for the ballots that are in that batch?

5 A. The end result of the process is that we have an  
6 electronic file for each batch that does list all the  
7 AV IDs, yes.

8 Q. And then when that batch is given to the verifier  
9 at King County and they type in the first AV ID number, it  
10 uploads all of the data for all the ballots that are  
11 supposed to be in that batch?

12 A. Yes. There's a small step before that, where we  
13 actually upload the file itself into the system. And then  
14 when the verifier gets it, they key in that batch and  
15 pulls up the images -- the signature images as they  
16 correspond to the ballots in that batch.

17 Q. In order.

18 A. In order.

19 Q. And the idea is to streamline the processing so  
20 that as you pull up the ballot, the screen where the  
21 signature image appears on that.

22 A. That is correct.

23 Q. The problem here, if I understand it correctly,  
24 is that --

25 MR. PORTER: Referring to the exhibit?

1 MR. HAMILTON: Exhibit No. 4, yes.

2 BY MR. HAMILTON:

3 Q. -- is that there appears to be an error in that  
4 PSI file, is showing an absentee ballot is returned, that  
5 might not actually have been returned.

6 A. That is correct, yes.

7 Q. And Mr. Turnbull's reporting that there are as  
8 many as 1,600 ballots in this category?

9 A. It appears that staff had designated  
10 approximately 1,600 individuals in the voter registration  
11 system as NIBs or not in batch ballots.

12 Q. So the verifier -- let's use an example to see if  
13 I can -- make sure I understand this right.

14 Say a batch has 100 ballots in a particular batch  
15 and the verifier uploads the file, it begins going through  
16 verifying the signatures, one, two, three. When they're  
17 done, there's only 98 ballots, actual physical ballots,  
18 that they've been able to look at, but the system is  
19 reporting an additional two that should have been in that  
20 batch.

21 They'll enter this NIB code into the system to  
22 report that these ballots were not in the batch?

23 A. That is correct.

24 Q. Do you know why it is that the PSI file would  
25 report as returned ballots that aren't actually returned?

1           A.    There could be a variety of reasons.  It is  
2 machinery and equipment, and it has an accuracy rating  
3 of -- that is excellent, but there is the potential that a  
4 bar code could be misread by the equipment.

5           Q.    Do you know what the accuracy rate is for the  
6 scanning, the PSI scanning machine?

7           A.    I do not know off the top of my head the accuracy  
8 rating.

9           Q.    Is that something that's measured from time to  
10 time?

11          A.    The machine itself, when it's in operation, has a  
12 read rate meter that is telling you in realtime, you know,  
13 how many -- or a percentage of how many of these ballots  
14 are able to read the bar code.

15          Q.    So it seems like there's two potential problems.  
16 One could be that the bar code reader just simply can't  
17 read the bar code at all.

18          A.    That is a potential problem.

19          Q.    For example, if a voter spilled coffee or smeared  
20 chocolate on the bar code, that might render it illegible.

21          A.    Yes.  The system would -- the sorting machine, if  
22 it cannot get a good read on the bar code, would  
23 side-stack or, for lack of a better word, reject the  
24 ballot in the sorting process.

25          Q.    So it would get kicked off to one side, and it

1 wouldn't be put in a batch.

2 A. That is correct.

3 Q. Another problem is the scanner thinks it's read  
4 the bar code when in fact it hasn't read it; correct?

5 A. That is correct.

6 Q. But there's no measure or report to show how many  
7 times that that kind of error occurs.

8 A. Not to my knowledge, no.

9 Q. But I gather it occurs frequently enough that you  
10 actually have a code to insert into the registration to  
11 indicate there's been some kind of an error here.

12 A. Yes. The code has been in existence for several  
13 years. This is not a new occurrence.

14 Q. So this isn't new to the DIMS system. You had  
15 this similar code that you entered into the registration  
16 database even before DIMS was installed.

17 A. That is correct.

18 Q. And it's NIB for not in batch.

19 A. Yes.

20 Q. And what happens when, let's say, for example,  
21 John Smith's ballot is reported as in the batch by DIMS,  
22 but then the verifier is unable to find John Smith's  
23 particular ballot?

24 A. They would code John Smith in the system as NIB,  
25 and at that point, as it indicates, it still has a return

1 date, it's still associated with that batch.

2 Q. Is John Smith credited with voting?

3 A. I believe that our practice for the general  
4 election was not to credit individuals that had their  
5 ballots challenged for various reasons. That's something  
6 that I would say you might want to check with others.

7 Q. Who?

8 A. Our DIMS administrators would know or Bill  
9 Huennekens would potentially know.

10 Q. Who's the administrators?

11 A. Travis Elsom and Scott Turnbull.

12 Q. As I understand the system, when PSI scans and  
13 sorts these ballots into batches, when the file is  
14 uploaded, every voter in that batch of absentee ballots is  
15 automatically credited with voting unless a challenge code  
16 is put in by the verifier.

17 A. My understanding of the system is that's not  
18 quite that way. That when we initially upload that file,  
19 it does put in a return date for all of those particular  
20 ballots. And it's only when the four images -- our images  
21 in the voter registration come up in series of four. It's  
22 when those four images pop up that then those voters are  
23 checked in the system as being verified.

24 Q. Unless the verifier puts in a challenge code.

25 A. That is correct.

1 Q. And they'd put in a challenge code, for example,  
2 if there was a signature mismatch.

3 A. Yes.

4 Q. Now, for these not in batch ballots, I take it  
5 the first thing that would happen -- let's say we get down  
6 in my earlier hypothetical example. So the last four in a  
7 batch of 100, except that there's only two physical  
8 ballots here and it's being reported as four -- when those  
9 last four pop up, all four of them are going to be  
10 credited with voting.

11 A. That is correct.

12 Q. And then the verifier is going to put in this NIB  
13 code for the last -- for whatever missing ballots are?

14 A. Right.

15 Q. Is the verifier also supposed to put in a  
16 separate challenge code for those, or does the NIB code  
17 itself constitute a challenge code?

18 A. The NIB is the challenge code.

19 MR. PORTER: If we could take five minutes.

20 MR. HAMILTON: Couple more questions, and then  
21 we'll take a break.

22 BY MR. HAMILTON:

23 Q. So in Mr. Turnbull's e-mail, Exhibit 4, there's a  
24 reference to Carlos.

25 Would that be Carlos Webb?

1 A. That would be Carlos Webb.

2 Q. It says, Carlos had someone come to the counter.

3 That would be the counter at the King County

4 Administration Building?

5 A. Yes, that would be.

6 Q. Mr. Webb is in charge of Voter Services.

7 A. That is correct.

8 Q. So Mr. Webb would be in charge of the operation

9 of the public counter at King County Records and

10 Elections.

11 A. That is correct.

12 Q. So it says, Carlos had someone come to the  
13 counter, and we showed the ballot as being returned.

14 Now, am I understanding it correctly, that  
15 someone came to the counter asking for a ballot, and when  
16 they called up the registration system, it showed an NIB  
17 code?

18 A. That is what I read from this e-mail, is, yes,  
19 that someone came to the counter, requested an absentee,  
20 and when they went through the process of issuing them an  
21 absentee, recognized that it appeared that they had a  
22 return date and a challenge code of an NIB in the system.

23 Q. And then Mr. Turnbull said he called Joann, and  
24 she pulled the batch in question, and the ballot wasn't in  
25 there.

1           Now, do I understand that the voter asked for a  
2 ballot at the counter, the worker called up the screen,  
3 and it looked as if the voter had already returned an  
4 absentee vote ballot?

5           A.    That is correct.

6           Q.    And then Mr. Turnbull called Joann, who actually  
7 pulled the batch in question, meaning physically looked at  
8 the batch of absentee ballots?

9           A.    I'm not sure what Joann did, but it appears that  
10 it says here that --

11          Q.    I called and talked to Joanne. She pulled the  
12 batch in question, and the ballot wasn't in there.

13          A.    Yes, that appears that she pulled the actual  
14 batch and looked for the ballot.

15          Q.    Who's Joann?

16          A.    Joann is referring to Joann Gardner. She is an  
17 employee at the Mail Ballot Operations Satellite.

18          Q.    And then Mr. Turnbull says, It looks like someone  
19 didn't code it right.

20                Did that mean they didn't give this NIB code?

21          A.    I would not read that that's saying they did not  
22 give the NIB code. I think --

23          Q.    What did you understand on October 28th, if you  
24 can recall, when you received this e-mail from  
25 Mr. Turnbull he was trying to communicate to you when he

1 wrote, quote, It looks like someone didn't code it right,  
2 closed quote?

3 A. I think there was some -- there was some  
4 misunderstanding on how the NIB code was applied and  
5 should be applied in which scenarios.

6 Q. Misunderstanding by whom?

7 A. By Scott is what --

8 Q. What makes you think that Mr. Turnbull  
9 misunderstood the use of the NIB code?

10 A. The fact that it says the ballot wasn't in there.  
11 That if the ballot is not in there, we would designate it  
12 as an NIB in the system. And so that would be the correct  
13 code for the ballot for that particular voter.

14 Q. Where in this e-mail does it indicate that this  
15 voter had been issued -- or the voter's ballot had been  
16 coded NIB?

17 A. The very first line it says, In looking at the  
18 problem Carlos had today with one voter who came to the  
19 counter -- I misread that to say that it had been  
20 designated as NIB. So that would be an error in my  
21 initial reading.

22 Q. Okay. But in fact -- I'm just trying to  
23 understand the e-mail. In fact, it says, We show the  
24 ballot as being returned.

25 A. Right.

1 Q. So what the problem Mr. Turnbull was pointing out  
2 was that there was a -- this ballot had not been marked  
3 NIB.

4 A. Oh, okay. I would agree with you.

5 Q. Okay.

6 A. Thanks for the clarification on that.

7 Q. And then he did an inquiry, and it shows roughly  
8 1,600 ballots with the same problem; right?

9 A. That --

10 MR. PORTER: If we can take a five-minute break,  
11 I think I might be able to do something to refresh Garth's  
12 recollection.

13 MR. HAMILTON: That's fine. I'll take a break  
14 after he answers this question. I'd just like to get an  
15 answer.

16 THE WITNESS: I'm unclear, based on my knowledge  
17 of the system, whether or not there are 16 ballots --  
18 1,600 ballots in this category.

19 MR. HAMILTON: Okay. Now we can go and take a  
20 break.

21 (Whereupon, a short recess was taken.)

22 BY MR. HAMILTON:

23 Q. Was there something you wanted to clarify?

24 MR. PORTER: My mistake.

25 BY MR. HAMILTON:

1 Q. Mr. Fell, I'd like to back up here for a second.  
2 What did you do to prepare for today's  
3 deposition?

4 A. As far as preparation goes, I did do some review  
5 of e-mails and documents that I've sent and received.

6 Q. Were those provided to you by somebody else, or  
7 did you identify those yourself?

8 A. Some of them had been provided by others, yes.

9 Q. Mr. Porter?

10 A. Yes. Exactly.

11 Q. It's okay to say his name.

12 Mr. Porter provided you with a collection of  
13 documents to review?

14 A. That is correct.

15 Q. And do you recall what was in that collection of  
16 documents?

17 A. There were, in addition to e-mails, portions of  
18 other depositions where folks referred to me as being the  
19 potential person with the answer.

20 Q. And e-mails that you had sent and received?

21 A. I believe there may have been e-mails that I had  
22 sent and received.

23 Q. We just looked at a few e-mails that you appeared  
24 to be named on.

25 Were any of these in the collection that

1 Mr. Porter provided you?

2 A. I can't recall at this point. I don't recall the  
3 last one.

4 Q. All right. Did you meet with anyone to prepare  
5 for the deposition?

6 A. Just Mr. Porter.

7 Q. Was anyone else in attendance at that meeting?

8 A. At periods of time we did bring in one other --  
9 you know, an individual to clarify and talk about events  
10 surrounding certain things.

11 Q. And who was that?

12 A. Scott Turnbull.

13 Q. How long did you meet with Mr. Porter altogether?

14 A. Specifically for this deposition, approximately  
15 two and a half hours.

16 Q. When was that?

17 A. Yesterday.

18 Q. And for how long a portion of time was  
19 Mr. Turnbull in attendance?

20 A. Maybe five minutes.

21 Q. Okay. Were there any specific documents that you  
22 reviewed with Mr. Turnbull and Mr. Porter?

23 A. We were -- documents -- I don't believe we  
24 reviewed -- I'm trying to remember if we reviewed a  
25 document or not. I believe we were discussing --

1 Q. Let me stop you before you finish that sentence.

2 I'm not actually asking you about the contents of  
3 your discussion --

4 A. Okay.

5 Q. -- because of the attorney-client privilege.

6 So you had testified that you had reviewed some  
7 e-mails, some deposition excerpts, and at one point, for  
8 approximately five minutes, Mr. Turnbull attended the  
9 meeting. I'm just trying to figure out if you looked at  
10 any documents or deposition excerpts while Mr. Turnbull  
11 was in the meeting.

12 A. I can't recall specifically. Certainly there  
13 were documents in the room.

14 Q. This meeting yesterday was the only meeting that  
15 you've had to prepare for the deposition?

16 A. I've been involved in other meetings for other  
17 people preparing for depositions, and in that sense was --  
18 received some information on the oversight of the  
19 processing and prepared for that.

20 Q. What other meetings did you attend?

21 A. I was in a portion of the meetings in preparing  
22 Samantha Duncan, and I believe I was in some meetings with  
23 Dean Logan and Bill Huennekens also.

24 Q. In all those meetings Mr. Porter was in  
25 attendance?

1 A. I believe so.

2 Q. Have you reviewed Mr. Logan's or Mr. Huennekens'  
3 deposition transcripts?

4 A. Only the portions that were provided for me, that  
5 referred to me specifically.

6 Q. Did you have any concern about the accuracy of  
7 the statements by Mr. Logan or Mr. Huennekens in the  
8 sections you've seen?

9 A. Nothing that I can recall at this point.

10 Q. Have you reviewed any other deposition  
11 transcripts taken in connection with this matter?

12 A. No.

13 Q. All right. During the processing of absentee  
14 ballots after they come back from the PSI mail sort, we've  
15 talked about they're put in batches and verifiers start  
16 working through the batch.

17 Do you recall that testimony?

18 A. Yes, I do.

19 Q. First of all, how many people are employed as  
20 verifiers at King County?

21 A. It varies for a particular election based on the  
22 size of that election.

23 Q. Then let's focus on the November 2004 General  
24 Election.

25 A. The exact number I'm not sure, but it was

1 approximately 24 individuals doing verifications.

2 Q. And they're doing verifications at the same time?

3 A. Yes, they are.

4 Q. And where is the operation -- where does it occur  
5 physically?

6 A. Physically it occurs at the Mail Ballot Satellite  
7 which is on First Avenue.

8 Q. And each individual is provided with a computer  
9 that connects as the DIMS registration system?

10 A. That is correct.

11 Q. How physically are the ballots delivered to those  
12 verifiers?

13 A. They physically pick up a mail tray that includes  
14 all of the envelopes, and these trays are stored on site  
15 there. And once the tray is uploaded into the system, the  
16 data associated with that tray is uploaded in the system.  
17 Those trays are made available to the verifiers to  
18 retrieve and then go through the process of verifying  
19 signatures.

20 Q. The data from PSI get from PSI to MBOS  
21 specifically on CDs or floppy disks or transmitted  
22 electronically?

23 A. Typically it's received on a CD and it is brought  
24 by the two staff that we have pick up the mail and then  
25 supervising, oversee the sorting process.

1 Q. And is there one CD for each batch or one CD for  
2 an entire delivery of batches?

3 A. Typically it would be one CD for each day or  
4 delivery of batches.

5 Q. And these are -- the processing by the verifiers  
6 begins even prior to election day?

7 A. Yes.

8 Q. And I take it the delivery occurs almost every  
9 day.

10 A. Almost daily. Usually not on a Sunday.

11 Q. And then it continues up until shortly before  
12 certification by the County?

13 A. At some point following election day, the volume  
14 of mail is such that a sort through the PSI vendor is not  
15 advantageous to the process.

16 Q. In other words, it's such a small number, there's  
17 no point in having them sort?

18 A. Exactly.

19 Q. In the batches of one or two?

20 A. Please clarify. Batches of one or two --

21 Q. It's just when the volume gets very small, if  
22 you're sorting it in the legislative districts, each batch  
23 is going to have just one ballot or two ballots in it?

24 A. Yes, potentially. And so with those we do what  
25 we call in-house batching.

1 Q. When the CD -- let's pick a typical day sometime  
2 even shortly before, shortly after election day.

3 What kind of volume might be received by MBOS on  
4 a typical day during a typical high-volume period?

5 MR. PORTER: You're relating this to the  
6 November 2 General Election.

7 MR. HAMILTON: That's correct. 2004.

8 THE WITNESS: You know, I don't have that -- I  
9 don't have a good feeling of that off the top of my head.  
10 I would imagine that we were looking at a large number of  
11 batches or datafiles associated with the trays of mail.

12 BY MR. HAMILTON:

13 Q. Fair to say thousands?

14 A. I'd say for the entire election we received, yes,  
15 thousands of trays of mail.

16 Q. How many absentee ballots were processed in  
17 connection with the 2004 General Election?

18 A. I don't have the exact figure.

19 Q. Can you give us an approximate number?

20 A. 590,000, I believe, someplace.

21 Q. 590,000.

22 A. Yes. That's going off of memory and following  
23 several spring elections.

24 Q. Okay. Fair enough.

25 And the processing of those occurs -- you know it

1 has to end by November 17th, which is the date of  
2 certification; correct?

3 A. Yes. We certify the election at that point. The  
4 processing of absentee ballots would be complete.

5 Q. And when does processing of absentee ballots  
6 first commence?

7 A. It depends on what portion of the processing  
8 you're referring to. The verification usually starts the  
9 Tuesday following our initial mail-out. We generally have  
10 our initial mail-out 20 days prior to the election. That  
11 would be the bulk of the absentees that are sent out.

12 Q. So a week after the mail-out, and the mail-out  
13 occurs 20 days prior to the election.

14 A. In general, yes. There are of course certain  
15 categories of voters who have their ballots mailed out  
16 prior to that period of time.

17 Q. Like the submarine ballots?

18 A. Yes. Your military, your overseas, out-of-state.

19 Q. Well, we'll put those aside.

20 So the vast bulk of ballots, the ending process  
21 about 13 days before the election?

22 A. Yes. Yes. Give or take a few days, certainly.

23 Q. Okay. Approximately 13 days before the election.

24 A. Yes.

25 Q. And ends approximately 17 days -- or actually

1 about 15 days after the election on certification.

2 A. Yes.

3 Q. So in this 28-day period, over half a million  
4 ballots are processed.

5 A. That is correct.

6 Q. So I won't do the math and divide 500,000 by 28.  
7 But I assume that's something like a bell curve, some days  
8 are busier than others.

9 A. Yes. For this particular election, you're going  
10 to see greater initial return, and then following the  
11 election certainly would dip down.

12 Q. Would trail off.

13 A. Yes.

14 Q. When the delivery comes -- so let's pick a date,  
15 shortly before or shortly after the election.

16 On a particular day, King County will have  
17 received thousands of absentee ballots that are sorted and  
18 delivered in batches to MBOS.

19 A. That is correct.

20 Q. And the data for those thousands or potentially  
21 tens of thousands of absentee ballots for that day are  
22 going to be contained on a single CD.

23 A. Typically, yes.

24 Q. Who receives and loads the CDs in the MBOS  
25 registration software?

1           A.    The disk itself is delivered either to the Mail  
2 Ballot Operations Satellite supervisor, which would be  
3 Nicole Way, or the lead person that we have working over  
4 the verification portion of the absentee processing  
5 process.

6           Q.    And that person or persons is responsible for  
7 spinning up the CD and loading it onto the software?

8           A.    For the general election we had two employees  
9 that were doing the upload process.

10          Q.    Who were those two employees?

11          A.    Dan Grant, I believe, is one of those employees,  
12 and Sherry Madson.  And I guess I should add that it is  
13 possible that other folks did upload.  It was not limit --  
14 being the supervisor may have uploaded a series of files.  
15 It's not a process that is -- that we made out of training  
16 somebody to work for a day when somebody's gone or absent.

17          Q.    Were there any errors or anomalies or issues that  
18 arose during the uploading process in connection with the  
19 November 2004 General Election, other than the ones we've  
20 discussed here?

21          A.    I would not rule out the possibility that there  
22 could have been some errors or processing problems during  
23 the upload.  I'm trying to recall specifics, and at this  
24 point I can't recall specific events.  But --

25          Q.    You think there might have been?

1 A. Certainly there's a possibility.

2 Q. All right. So in the normal process, after these  
3 files are uploaded, a tray containing a single batch would  
4 be delivered to one of the 20 verifiers at MBOS?

5 A. Yes. To be simple -- the simplified process,  
6 that would be -- the trays are uploaded. They are put on  
7 some rolling racks and are available for the verifiers to  
8 grab. They're clearly designated as these are the ones  
9 that have been uploaded, these are the ones that have not  
10 been.

11 Q. So if things are working right, one of the  
12 verifiers should take one of the mail trays that's labeled  
13 unverified and bring it to the work station to begin  
14 verification.

15 A. That is correct.

16 Q. And is there a hard copy piece of paper on top  
17 that lists all the voter IDs and names of voters on them?

18 A. It does not list all the voter IDs, but there is  
19 a report that is produced at the time of the upload that  
20 does give some detail about that batch.

21 Q. What detail does that report provide?

22 A. It tells the person doing the verification how  
23 many ballots were accepted by the Voter Registration --  
24 Election Management Voter Registration System, and how  
25 many ballots in that particular datafile associated with

1 that batch were not accepted for various reasons.

2 Q. Can you explain what it means -- under what  
3 circumstances would the registration system not accept a  
4 returned ballot?

5 A. The in-house term we use is, as we call them,  
6 Wanda rejects. And Wanda rejects can occur when a ballot  
7 is returned by a voter and that voter's record had  
8 previously had some indication on it that when their  
9 ballot is returned, we need to do something further with  
10 it. You can potentially prechallenge voters when we send  
11 them out their ballots. This will provide an opportunity  
12 to do additional checking on that ballot.

13 Q. So let's be specific. If a voter reports --  
14 let's say it's an absentee voter who reports they lost or  
15 didn't receive their absentee ballot and they're sent a  
16 second absentee ballot. Would they be coded as a  
17 prechallenge?

18 A. The system functions slightly differently in that  
19 scenario in the fact that when a voter is reissued a  
20 ballot, the first ballot can be suspended. So that if  
21 that ballot does come back, it will be prechallenged by  
22 the system.

23 Q. Is that the normal process when a second ballot  
24 is issued to an absentee voter?

25 A. Yes. The normal process would be to suspend and

1 reissue.

2 Q. Under what other circumstances would a ballot  
3 fall into this Wanda rejects category?

4 A. There could be -- there's a potential that within  
5 the datafile the AV ID associated with a particular ballot  
6 cannot be read by the system. It would be a data issue on  
7 the file. And that ballot might be prechallenged, as we  
8 could not upload this ballot into the system. That would  
9 be the nontechnical version.

10 Q. Any other reasons a ballot might fall into the  
11 Wanda rejects? So far I've got potentially on multiple  
12 issuance of an absentee ballot.

13 A. Correct.

14 Q. Second would be an AV ID number that can't be  
15 read; right?

16 A. Correct.

17 Q. What else might cause a ballot to fall under this  
18 Wanda rejects category?

19 A. If the voter's registration had been canceled,  
20 on-time cancellation, after we had sent out the initial  
21 ballot, when that ballot comes back, it would have been  
22 rejected by the system.

23 Q. Of course if the registration had been canceled  
24 before issuance, then the ballot would never have been  
25 sent?

1 A. That is correct.

2 Q. So this category is for cancellations that occur  
3 after the registration -- or after the absentee ballot has  
4 already been mailed out.

5 A. And then I guess by mailed out, I would clarify  
6 that the system has generated the data that we are using  
7 to mail out ballots in the sense that the files we run for  
8 our absentee instruction process are approximately 30 days  
9 prior to the election. There is a 15-day cutoff period  
10 where there's still activity on the voter registration  
11 file. There's the 30-day cutoff period which, depending  
12 on work volume, there may be changes to the registration  
13 file so --

14 Q. Okay. Fair enough.

15 What other situations might cause a ballot return  
16 to MBOS to be classified as a Wanda reject?

17 A. Those are the ones that I can think of right now.

18 Q. Okay. All right. So it sounds like when these  
19 ballots come back in the mail trays and the verifier  
20 begins to verify them, there's potentially three  
21 categories. There would be the category of ballots that  
22 are recognized and listed in the report. There would be  
23 ballots that would be rejected by Wanda and listed on this  
24 report. And there would be ballots that seemed to be  
25 accepted but aren't actually physically in the batch.

1           A.    That is correct.  There would be those three  
2 potentials.

3           Q.    And when the verifier goes through the batch, at  
4 the end of the processing of that entire batch, at the end  
5 of the mail tray, they should have sorted them into  
6 ballots that were physically in the tray, where the  
7 signatures match, and they would be put in the  
8 to-be-counted pile; right?

9           A.    Yes.  The ballots that are accepted by the system  
10 essentially remain in the tray.

11          Q.    Remain in the tray.  Okay.  I see.

12                   And ballots that are accepted by the system,  
13 where the signatures don't match, are stacked for a second  
14 look by a supervisor or someone else?

15          A.    Right.  I mean, any ballot that is challenged  
16 within that tray is then pulled out of the tray and looked  
17 at by another set of eyes.

18          Q.    What happens to the Wanda -- well, strike that.

19                   Before we get to the Wanda rejects, the next  
20 thing would be these not in batch.  When you reach the end  
21 of the mail tray, the computer suggesting that there  
22 should be two or three more ballots but there aren't, then  
23 those registrations are coded or should be coded not in  
24 batch?

25          A.    That is correct.  I would say that typically we

1 would not find them to be the last three ballots of the  
2 batch. They would be someplace within the batch.

3 Q. Scattered throughout.

4 A. Yes.

5 Q. Do you know how many of these not in batch  
6 ballots all together in the November 2004 General  
7 Election -- how many ballots were coded NIB?

8 A. I do not. Off the top of my head, no.

9 Q. And then the final category is this Wanda reject  
10 category. I take it these are rejected by DIMS, but the  
11 ballots were actually in the mail trays that the  
12 verifier's looking at.

13 A. That is correct.

14 Q. So what does a verifier do with a Wanda reject  
15 ballot?

16 A. Those are pulled as well with the other rejects.

17 Q. And where would they go?

18 A. They are essentially another category of rejects.  
19 It's not one that falls within the DIMS system, because  
20 you don't have voter data associated with that ballot.  
21 But it is manually kept in a tray. And then those ballots  
22 are gone through again to verify that in fact the system  
23 legitimately rejected that ballot.

24 Q. And how does one go through them again to verify  
25 that the system legitimately rejected the ballot?

1           A.    On the outside of the envelope you have the voter  
2 data if it was sent out through our office.  So you look  
3 the voter up in our system, either on the absentee side --  
4 there's two sides, a voter registration information side  
5 and then absentees information side or a portion of the  
6 system, and you would put the voter up in those portions  
7 and try to figure out why the system was rejecting them.  
8 If it was a system reject just because the bar code was  
9 incorrectly read, then those of course -- you'll notice  
10 that as well.  The voter's still eligible for the election  
11 and would be able to process them.

12          Q.    And then that would go back into the batch if  
13 possible?

14          A.    The Wanda rejects would not go back into the  
15 batch because the system has not recognized them yet.  So  
16 they would have to be what we call in-housed.  We would --

17          Q.    -- do an in-house batch.

18          A.    You are correct.

19          Q.    I take it that for the Wanda rejects, in addition  
20 to determining whether they were properly rejected, if  
21 it's determined that the ballot was improperly rejected  
22 and should have proceeded through verification, then the  
23 next step would be to actually do the signature match?

24          A.    Yes.  That's part of the reconciling of all those  
25 Wanda rejects.  If the voter is eligible, that otherwise

1 should have been counted, there still has to be a  
2 signature verification.

3 Q. Okay. So putting aside the not in batch and  
4 Wanda reject categories, the remainder of the batch  
5 proceeds through signature verification; correct?

6 A. To clarify, we're also pulling aside the rejects  
7 that were legitimately rejected by the system.

8 Q. Yes.

9 A. Yes. Then that batch would proceed on to the  
10 opening portion of the process.

11 Q. And I'd like to pause a moment on the  
12 verification step.

13 The verifiers, as I understand it -- or the  
14 system pulls up the ballots in groups of four -- or the  
15 registrations associated with the ballots in groups of  
16 four.

17 A. That is correct.

18 Q. So if things are working right, as I'm looking in  
19 my tray, I'm going to have four ballots in a row, and I'll  
20 have the sequential registration showing up on the  
21 computer screen as I flip through the ballots.

22 A. That is correct.

23 Q. And the first step would be to compare the  
24 signature to the screen.

25 A. Yes. And you're also looking at registration

1 data as well just to verify that this in fact is -- the  
2 ballot I'm looking at is in fact the same person. I am  
3 looking at the voter registration system.

4 Q. So what information would you look at, then?

5 A. You'd simply look at the registration name of the  
6 person's -- the name of the person it's registered under.  
7 And so you're doing a quick check to make sure that, yes,  
8 in fact this is the right person.

9 Q. So Joe Smith, signature matches, registered  
10 voter, count it.

11 A. Correct.

12 Q. How long typically is 590-or-so-thousand absentee  
13 ballots processed in 28 days? I haven't got a calculator  
14 to do the math. How much time is spent on doing the  
15 three-point signature match?

16 A. A considerable amount of time. It takes a  
17 verifier anywhere from 30 to 45 minutes to do one  
18 particular tray.

19 Q. And how many ballots are in the tray?

20 A. It varies. But anywhere from -- I would say on  
21 average, 250 to 350 per tray.

22 Q. So how many minutes per ballot?

23 MR. PORTER: Object to the question. I don't  
24 think you can ask him to do the math. But the record  
25 stands. You really want him to try to do the math?

1           MR. HAMILTON: It's not a math test, no. I'm  
2 wondering if he knows off the top of his head  
3 approximately on average. I assume it varies from ballot  
4 to ballot.

5           THE WITNESS: It certainly will vary from ballot  
6 to ballot. And some signatures are easily recognizable as  
7 matching, and some of them are a little bit more  
8 difficult.

9           BY MR. HAMILTON:

10          Q. Have you done signature matching yourself?

11          A. I have participated in the process, as I try to  
12 participate at some point in all the process, so that I  
13 understand them as clearly as possible.

14          Q. And the 20 verifiers that are going through this  
15 process, they're authorized -- they're applying the  
16 criteria given to them by their supervisors. They believe  
17 there's a signature match, and they confirm the  
18 registration. They're entitled to move that along.

19          A. That is correct.

20          Q. But if they raise a question to it about a  
21 signature match, then a supervisor's supposed to look at  
22 that a second time?

23          A. It's a second team of people that we had employed  
24 at the general election. I'd have to go back and look at  
25 that. They're usually senior or more experienced staff.

1 Q. How does it work as a practical matter? Let's  
2 imagine I'm a verifier and I've verified the first ten and  
3 I hit ballot No. 11 and I've got some questions.

4 Do I raise my hand and call a supervisor while  
5 the registration's still on the screen, or do I pull it  
6 out and put it in a category for a second review?

7 A. That would depend on the situation. But you  
8 could raise your hand and a supervisor would come over and  
9 try to assist you with the logic if it's a particular  
10 challenge and you're trying to figure what challenge code  
11 to give them. It is also something where you could code  
12 it with a particular charge code and the teams of -- the  
13 team we had doing the reconciliation is what we call to  
14 those challenges. We'd go back through and double-check  
15 them as well.

16 Q. Do you know how many -- let me back up.

17 In the November 2004 General Election there were  
18 approximately 590,000 absentee ballots returned; correct?

19 A. Correct. Off the top of my head, that's a  
20 best -- yes.

21 Q. Over half a million.

22 A. Exactly.

23 Q. And so over half a million times somebody at  
24 King County made a signature match in this 28-day period.

25 A. Yes.

1 MR. HAMILTON: Off the record.

2 (Whereupon, a short recess was taken.)

3 BY MR. HAMILTON:

4 Q. Over half a million times in this 28-day period  
5 somebody from King County verified these two signatures.

6 A. Yes. In order for an absentee to move forward,  
7 there would have to be a signature match.

8 Q. Do you know or do you have any way of measuring  
9 how many times out of those roughly 500,000 signature  
10 matches that a second set of eyes was required?

11 A. It would be difficult to obtain some sort of  
12 number like that, since you don't know when a verifier may  
13 have raised their hand and had somebody come over -- one  
14 of these supervisors come over and give them a second  
15 opinion. So there would be no record of those instances.

16 Q. And you don't have a feel for this is something  
17 that happens every second signature or something that  
18 happens every tenth signature or every hundredth  
19 signature, whatever?

20 A. I don't have a good feel for that, no.

21 Q. Who at King County is the most experienced  
22 signature verifier, to your knowledge?

23 A. There are several staff that have done quite a  
24 bit of signature verification.

25 Q. Who would you trust the most to be the most

1 accurate? Well, rather than -- I don't want to put you on  
2 the spot to name one person. If there's more than one,  
3 then I'm happy to take -- I'll tell you the reason why --  
4 I'm just trying to be up-front here. Depending on what  
5 happens with the deposition, we may need to subpoena  
6 somebody who actually did a signature verification, during  
7 the course of this trial. I'm trying to figure out from  
8 you who you trust. Who would be the best person to fill  
9 that role if it becomes necessary?

10 A. If I were to look for somebody to do some  
11 signature verification for me, one person probably is  
12 Linda Smith.

13 Q. Linda Smith.

14 A. Yes.

15 Q. Who else if Ms. Smith were not available?

16 A. Potentially Nicole Way.

17 Q. Both Ms. Smith and Ms. Way are familiar with the  
18 three-point signature verification process as employed by  
19 King County during the November 2004 General Election?

20 A. Yes.

21 Q. Anyone else that you would put up there in the --  
22 we'll call the A Team as the most experienced, reliable  
23 signature verifier?

24 A. I don't have any additional names. Perhaps  
25 others would have some opinion on that as well.

1 Q. Okay. Now, there was an incident that was widely  
2 reported in the press that occurred in December, after  
3 certification, which there was a group of ballots that had  
4 been put aside because no signature had been located on  
5 the electronic file for these ballots. I think there was  
6 something like 735 of them. They involve one of the King  
7 County Council members named Laurie Philips.

8 Do you recall that incident?

9 A. I recall some details in reading that incident,  
10 yes.

11 Q. In that instance, is it accurate to say that  
12 during the verification process, no signature was located  
13 in the electronic file?

14 A. The no signature on file designation is a  
15 designation we give when the image in the Election  
16 Management Voter Registration is blank or is capturing a  
17 portion of the voter registration card that is not the  
18 image of the registered voter.

19 Q. Okay. Maybe you answered this. Just to be  
20 clear, the no signature on file situation, did that  
21 include situations where you had a registration record,  
22 it's just the signature file was blank, the electronic  
23 signature file was blank, or does that include where you  
24 can't find the registration record at all?

25 A. It only includes where the signature would be

1 blank.

2 Q. Because if there were no registration at all, it  
3 would be put in the category of they're not registered.

4 A. Yes. And I would think that the first portion of  
5 that would be probably a Wanda reject. If they're not  
6 registered in the system, we probably wouldn't have issued  
7 them a ballot to begin with.

8 Q. Correct. So in this case, do you recall -- I  
9 said the number 735.

10 Does that sound accurate to you?

11 A. Yes. Roughly.

12 Q. They were all absentee ballots?

13 A. This is -- were absentee ballots, yes.

14 Q. So in each of these cases, they came back, got  
15 scanned, put into these ballot trays, went through the  
16 verification -- or went to the verification process and  
17 where things stopped when they pulled up a physical ballot  
18 and looked at the screen and there was nothing to compare  
19 it to because the signature was missing from the screen.

20 A. The process does not stop for that particular  
21 voter. But, yes, that's where the ballot would be  
22 challenged at that point for no signature on file.

23 Q. And what should have happened? I recognize there  
24 were some things that didn't happen in connection with  
25 this group of ballots. But what should happen if the

1 electronic registration record is missing a signature?

2 A. If the electronic -- if our Election Management  
3 Voter Registration System is missing a signature, the  
4 process would be first to code it for no signature file in  
5 the system. Those voters are all sent a letter, letting  
6 them know that we could not -- there was a mismatch in  
7 their signature. I'm not sure what the exact wording of  
8 the letter is. But essentially we weren't able to compare  
9 their signature. And those voters are given an  
10 opportunity to respond prior to the certification of the  
11 election -- I believe the day prior to the certification  
12 of the election. And then additionally what should be  
13 done is further research to try to find the original  
14 registration card or any other information that would help  
15 us find their signature. It is a potential that voters  
16 that are initially challenged for no signature on file or  
17 any challenge can be resolved in the reconciliation  
18 portion.

19 Q. But one of the steps -- even though you sent a  
20 letter to the voter, one of the steps that King County is  
21 supposed to do is actually look for the original  
22 registration card.

23 A. The current process is, yes, that we go back in  
24 and review our records to look for the original  
25 registration card or a name change card.

1 Q. Sure. You'll agree with me that the absence of  
2 the signature from the electronic file might be caused by  
3 a bunch of -- a number of things, but it's unlikely to be  
4 caused by the voter's mistake.

5 MR. MAGUIRE: Object. Lack of foundation.

6 THE WITNESS: Certainly the most likely scenario  
7 would be something that would be outside the voter's  
8 control. However, there are cases where the voter may not  
9 have signed the signature portion as well.

10 BY MR. HAMILTON:

11 Q. Fair enough. Okay.

12 Putting aside that possibility, if the voter  
13 signed the original voter registration card, the failure  
14 of that registration card to be digitized and put into the  
15 DIMS system during the conversion process isn't something  
16 that was caused by the voter in most cases.

17 A. Yes. In those cases, that would be true.

18 Q. Now, there was an awful lot of attention last  
19 December to this group of ballots that had this no  
20 signature on file problem. I believe there were 735 of  
21 these.

22 Was there another group that was initially coded  
23 as no signature on file that King County went back and  
24 actually found the registration card and was able to match  
25 the signature?

1           A.    I'm not certain of the answer on that.  I'm not  
2   certain of the level or degree of what research was done  
3   prior to the certification of the election.  That would be  
4   something that subordinate staff, in their process, would  
5   have done.

6           Q.    You've got a code for this.  NSOF; right?

7           A.    That is correct.

8           Q.    And this NSOF wasn't invented for the November  
9   2004 General Election?

10          A.    No.

11          Q.    In fact, it's a problem that occurs in just about  
12   every election, that there's some group of ballots that  
13   you can't find electronic signatures for?

14          A.    That is correct.

15          Q.    And that's why you have this established process  
16   to send out the letter and then dig through the old  
17   registration cards.

18          A.    Right.  And -- yes.

19          Q.    Where are the old registration -- original  
20   registration cards kept?

21          A.    They're kept in a variety of locations.  Some of  
22   the old registration cards are at the Mail Ballot  
23   Operations Satellite.  Some of them are in archival  
24   storage, the exact location of which I don't know off the  
25   top of my head.  But there would definitely be retention

1 records that would show the location of those.

2 Q. How long are the original registration records of  
3 King County voters maintained by King County?

4 A. I believe the registration, until the voter  
5 cancels, is a permanent record.

6 Q. You used to work in fact in the archives; right?

7 A. I certainly did.

8 Q. So you're familiar with that process or the  
9 designation of original voter registrations as a permanent  
10 record.

11 A. I believe that is what the retention schedule  
12 says, yes.

13 Q. Permanent. Meaning forever?

14 A. I would have to refer specifically to the  
15 retention schedule. But, yes, until the voter is  
16 canceled, then at that point it may have a different  
17 retention. But I'm not --

18 Q. You're not familiar with that. Okay.

19 But as long as the registration is active, then  
20 King County has an obligation to maintain the original  
21 registration record.

22 A. That is correct.

23 Q. And these original registration records, some of  
24 them -- if I understood what you said, some of them were  
25 kept in MBOS, some of them were kept in archives?

1           A.    In archival storage, yes.  And I believe they  
2   were transmitted -- clarify.  When the agency stores  
3   records with King County Archives and Records Management,  
4   until they reach the end of their retention period,  
5   they're still in the custody of the agency.  The Records  
6   Management simply serves as a process for storing records.

7           Q.    Which ballots are kept at -- I'm sorry.

8                    Which registration records are kept at MBOS, and  
9   which registration records are sent to archival storage?

10          A.    I'd like to back up and clarify one additional  
11   thing.  There are some registration records in the  
12   Administration Building as well.

13          Q.    So three locations.

14          A.    Yes.

15          Q.    What are the criteria that dictate whether a  
16   registration record is kept at King County Records and  
17   Elections, at MBOS, or at archival storage?

18          A.    There is not a criteria with which we transmit,  
19   to my knowledge.  And this is something that the Voter  
20   Services might have more information on.  But to my  
21   knowledge it's not -- there's not a criteria with which we  
22   can say, Okay.  This will now be sent to archival storage.

23          Q.    I assume it's not -- maybe I shouldn't assume  
24   this.  But it's not just random.

25          A.    No.  I think a lot of it happens based on our

1 space and our ability to store the original records. We  
2 did transmit some of the originals to Archives and Records  
3 Management because they have facilities to hold records,  
4 and our office space doesn't allow for us to keep all of  
5 them. Typically those would be the older registrations.  
6 Then we do have some stored at our Mail Ballot Operations  
7 Satellite because we do have additional room there and the  
8 ability to store some registrations there on site.

9 Q. Is that the way they're stored? Chronologically  
10 by registration date?

11 A. Typically it's by date, yes.

12 Q. By registration date.

13 A. That is something that you probably should  
14 clarify with Voter Services. If it's registration date or  
15 what date, I'm not sure.

16 Q. Well, those two dates would be very close to each  
17 other; correct?

18 A. Yes.

19 Q. Typically.

20 A. Typically.

21 Q. So if a ballot is coded no signature on file,  
22 then someone has to go to one of these three locations and  
23 look through the chronological file, with the registration  
24 or input data in hand, to try to find that particular  
25 registration.

1           A.    That is correct.  But if they need some data to  
2    tell them what date it is, then they need to go to the  
3    appropriate location and pull out the original  
4    registration.

5           Q.    Who had the responsibility in the November 2004  
6    General Election to conduct this research to locate the  
7    signatures for these NSOF ballots?

8           A.    The responsibility is somewhat shared in practice  
9    in the sense that Voter Services has information on where  
10   these would be stored.

11          Q.    Okay.

12          A.    And if they're stored at MBOS, we would have been  
13   the ones looking for that, "we" being our Mail Ballot  
14   Operations Satellite.

15          Q.    And if they're stored at the Administration  
16   Building, who has the responsibility there?

17          A.    We would have coordinated to have somebody at  
18   that location look for the original registrations.

19          Q.    Under your supervision.

20          A.    It's a shared supervision in the sense that we  
21   have two workers working on the same problem so --

22          Q.    What's the other worker?

23          A.    Voter Services.

24          Q.    And is the answer the same as to archival  
25   storage?

1           A.    Yes.  It would be a shared responsibility.

2   Typically Voter Services would pull that.

3           Q.    And I can understand how the responsibility might  
4   be dual.  I'm trying to understand practically how it  
5   happens.

6           A.    Right.

7           Q.    Who is specifically in charge of doing this?

8           A.    And I guess I'm thinking of the November general  
9   election.  I can't tell you specifically who was doing  
10  these steps.

11          Q.    So even though this became an issue that went all  
12  the way up to the State Supreme Court, sitting here today,  
13  you can't say who dropped the ball and failed to conduct  
14  the research on these 735?

15               MR. PORTER:  Objection to the form of the  
16  question.  Argumentative.

17               MR. MAGUIRE:  I join in the objection.

18               THE WITNESS:  I cannot say who specifically  
19  dropped the ball on conducting further research.

20               BY MR. HAMILTON:

21          Q.    After this issue arose about the 735 NSOF ballots  
22  that King County failed to find the original voter  
23  registration records for, was there an investigation into  
24  how this could have happened?

25          A.    I'm not sure there was a formal investigation.

1 Certainly there was informal discussions on how this could  
2 have happened and why it did not.

3 Q. Who participated in these discussions?

4 A. The discussions that I participated in included  
5 Bill Huennekens, the superintendent of Elections, the Mail  
6 Ballot Operations Satellite supervisor. And these are not  
7 necessarily the same discussion so --

8 Q. So the discussions you recall is Huennekens,  
9 yourself, and Nicole Way.

10 A. Yes. And I guess I'd add that I'm sure some  
11 comments and discussions were made with Dean Logan.

12 Q. And as a result of that informal -- you call them  
13 informal discussions, were there any conclusions reached  
14 about how this occurred and who was responsible?

15 A. I'm not sure there is a formal conclusion on who  
16 is responsible.

17 Q. Okay. So we'll put aside formal conclusion.

18 A. It appears that there were some communication  
19 issues on what the expectations were with regards to this  
20 particular voters -- or ballots and their designation.

21 Q. And these were communication issues between whom?

22 A. Bill Huennekens and myself, Nicole Way, Dean  
23 Logan.

24 Q. Can you explain what the issues were, what the  
25 communication --

1           A.    I guess I would say that there was an expectation  
2   that a process was occurring, that there was further  
3   research being done, and that the expectation was that it  
4   had occurred to its completion.

5           Q.    And in fact it had.

6           A.    Certainly we did not find all the original voter  
7   registration records for those voters.  That's true.

8           Q.    When the issue was finally resolved by the  
9   Supreme Court, allowing King County to go through and  
10  verify and correct the error and count these ballots, who  
11  was given the responsibility to do that job?

12          A.    I think the ultimate responsibility was with Bill  
13  Huennekens as the superintendent of Elections.  I do not  
14  recall specifically who was charged with going through and  
15  doing further research and what staff were involved in  
16  that to find --

17          Q.    Is it fair to assume that Mr. Huennekens didn't  
18  roll up his sleeves and go down to the archives and start  
19  pulling through dusty boxes?

20          A.    Certainly fair to assume that.

21          Q.    Okay.  So Mr. Huennekens had the ultimate  
22  responsibility for directing others to do it.

23          A.    That is correct.

24          Q.    And you can't name any of the individuals who  
25  were involved in actually going into the boxes and finding

1 these registrations.

2 A. At this point I cannot recall. Please  
3 understand, there was also a recount going on at that  
4 point, and my particular assignment and focus was at the  
5 recount facility.

6 Q. Was Nicole Way involved in finding these  
7 registration records?

8 A. I specifically can't remember. That might be.  
9 It seems reasonable that she would be.

10 Q. Was there anyone else at King County Records and  
11 Elections with the depth of your experience in archival  
12 records storage management, to your knowledge?

13 A. Repeat the question one more time.

14 Q. Was there anyone else employed at King County  
15 Records and Elections, to your knowledge, who had your  
16 depth of experience as a records analyst, having  
17 familiarity with archival records?

18 A. Certainly. Within the Records and Elections  
19 Division there is the Archives and Records Management  
20 section, and that staff would have the depth of knowledge  
21 equal, if not greater than mine.

22 Q. Were they involved?

23 A. I'm not certain to what degree they were  
24 involved.

25 Q. Who would know who specifically was involved in

1 doing this research?

2 A. I would think that Bill Huennekens would know.

3 Q. Anyone else?

4 A. Potentially Nicole Way.

5 MR. HAMILTON: Let's go off the record.

6 (Whereupon, a lunch recess was taken from

7 11:56 a.m. to 1:06 p.m.)

8 BY MR. HAMILTON:

9 Q. When we broke for lunch we were discussing the  
10 issue of the no signature on file ballots.

11 Do you recall that discussion?

12 A. Yes, I do.

13 Q. Okay. I'd like to pick up where we left off.

14 As I recall your testimony, you indicated that  
15 you were not -- you didn't know who actually went into the  
16 archives to look for the hard copy signatures that were  
17 missing as to the 735 ballots; right?

18 A. That is correct. At this point I can't recall  
19 who was involved in that project.

20 Q. Your recollection hasn't been refreshed over the  
21 lunch hour?

22 A. No.

23 Q. There was some indication that in addition to  
24 looking in the three places you indicated, MBOS,  
25 Administration Building, and the archives, that

1 King County checked with the Secretary of State's office  
2 to see if they had images or copies of the signatures of  
3 these voters.

4 Is that an accurate statement?

5 A. I'm unaware of whether or not that happened.

6 Q. This would be either Mr. Huennekens or Ms. Way  
7 who would know the answer to that question?

8 A. Potentially. It makes sense that they would.

9 Q. The four people, to your knowledge, who were most  
10 familiar with or most responsible for obtaining hard  
11 copies of these signatures was yourself, Ms. Way,  
12 Mr. Logan, and Mr. Huennekens?

13 A. We would be the supervisory staff responsible for  
14 that body of work.

15 Q. But as you sit here today, there's nobody else  
16 that was associated with that body of work that you can  
17 name other than these four?

18 A. To name anybody else at this point will be  
19 guesswork on my part. I can't recall specific individuals  
20 involved in that body of work.

21 Q. Okay. At the conclusion -- as I understand it,  
22 at the conclusion of, as we're calling it, the body of  
23 work there was some number of these no signature on file  
24 ballots that were counted and some that were left  
25 uncounted.

1           Is that your understanding?

2           A.    That's my understanding.

3           Q.    There were approximately 566 of these that were  
4 counted?

5           A.    I don't know the exact number but --

6           Q.    Sounds like the right ballpark?

7           A.    Potentially, yes.

8           Q.    And there were about 178 that were left  
9 uncounted?

10          A.    That would be the difference, yes.

11          Q.    Do you know why -- of the ones that were left  
12 uncounted, do you know why they were left uncounted?

13          A.    I believe they were left uncounted because we  
14 could not obtain a signature with which to verify the  
15 signature on the outside of the absentee envelope.

16          Q.    Now, there could be other reasons for leaving a  
17 ballot uncounted for. For example -- I'll just pick out a  
18 few. I'm going to ask you if any of them fell into these  
19 categories.

20                For example, the voter failed to sign the ballot  
21 envelope itself, and it wouldn't matter if you found a  
22 signature on file.

23          A.    If that is -- that is correct.

24          Q.    Were there signatures on all of these absentee  
25 ballot envelopes -- let me put it another way.

1           If there weren't signatures on all of the -- on  
2 these ballots, then they would have been rejected for that  
3 reason rather than a no signature on file reason?

4           A.   That is correct.  They would initially be  
5 rejected for no signature, and then we would receive  
6 potential information -- or signature from the voter as  
7 part of our process.

8           Q.   So is it a fair or accurate assumption that for  
9 all of these no signature on file ballots that we're  
10 discussing, 735 -- that all the envelopes contained  
11 signatures?

12          A.   I think it's a fair assumption.

13          Q.   Okay.  So another reason that they might have  
14 remained uncounted, even after locating the signature on  
15 file, might be that there was a signature miscompare?

16          A.   Potentially, yes.

17          Q.   Do you know if any of the 735 NSOF ballots were  
18 rejected because of a signature miscompare?

19          A.   I do not know.

20          Q.   Who would know the answer to that question?

21          A.   That would, again, probably be Bill Huennekens or  
22 Nicole Way if they were the ones participating in that  
23 process.

24          Q.   I guess the other possibility would be that  
25 King County might have been unable to find the original

1 voter registration for the 178 that were uncounted?

2 A. That is a potential possibility.

3 Q. But you don't know whether any of them fell in  
4 that category either?

5 A. No, I do not.

6 Q. If any fell in that category, then that would  
7 necessarily mean -- wouldn't it? -- that both the  
8 electronic version of the signature and the hard copy of  
9 the signature would have been missing?

10 A. It would have meant that we were unable to find  
11 it, yes, either the hard copy or the digital image.

12 Q. It's either missing or King County couldn't find  
13 it.

14 A. Certainly if -- yes. I would say that's the  
15 assumption, that it's missing.

16 Q. Okay. And in all of these cases, these involved  
17 registered voters, that is, voters who appear on the list  
18 of registered voters in King County for the November 2004  
19 General Election; right?

20 A. Yes.

21 Q. And the loss of the original registration card or  
22 the electronic signature would not have been the fault of  
23 the voter.

24 A. That is correct.

25 Q. The voter in fact did everything right in those

1 instances.

2 A. If they're in our system as a registered voter,  
3 it's safe to say that they, at one point, had a legitimate  
4 registration card with which we put them into the system.

5 Q. And which King County then lost or was unable to  
6 find.

7 A. Correct.

8 Q. Are you familiar with the category "further  
9 researched needed ballots"?

10 A. I am familiar only in the sense that I know it's  
11 a provisional ballot category.

12 Q. And were you involved at all in the processing of  
13 provisional ballots?

14 A. I was not involved in any of the research work  
15 that was done on provisional ballots. The provisional  
16 ballots do get tabulated at the Mail Ballot Operations  
17 Satellite facility, so in that sense there's some loose  
18 involvement. But the process in which a provisional is  
19 accepted as valid or rejected is something that's done  
20 through Voter Services.

21 Q. That would be Carlos Webb's responsibility?

22 A. That is correct.

23 Q. We've been given to understand that there was  
24 some research done by King County Records and Elections  
25 staff with respect to these ballots -- these provisional

1 ballots placed in this research needed category.

2 To your knowledge, were you communicated with  
3 during that process of that research -- that further  
4 research on these provisional ballots in that category?

5 A. No, I was not.

6 Q. Are you familiar with the process by which that  
7 research takes place, in other words, the resources  
8 available, the steps taken?

9 A. No, I am not familiar with that process.

10 Q. In evaluating an absentee ballot when it comes  
11 in, as I understand your testimony, the registration  
12 records are pulled up relatively automatically in groups  
13 of four as the mail trays are processed by the verifiers.  
14 Right?

15 A. That is correct.

16 Q. It's also possible to search the database?

17 A. It is.

18 Q. Do the verifiers sometimes search the database  
19 for registration records?

20 A. Certainly if there is an initial challenge  
21 potentially for a no signature on file, we can search the  
22 database to see if there are any other additional records  
23 in our images available with which to verify the  
24 signature.

25 Q. When you say search the database, we're talking

1 about the DIMS registration database at King County?

2 A. That is correct.

3 Q. That database you can search by last name?

4 A. Yes, you can.

5 Q. Search by date of birth?

6 A. The date of birth is a searchable field, yes.

7 Q. Registration number is a searchable field?

8 A. I believe so, yes.

9 Q. Address is a searchable field?

10 A. Yes.

11 Q. You can combine these fields together? In other  
12 words, I could search for somebody by the last name and  
13 date of birth?

14 A. I believe you can, yes.

15 Q. You can search by address and the last name?

16 A. I believe you can, yes.

17 Q. Okay. If you type in a voter's registration --  
18 specific registration number, assuming that the number's  
19 accurate, that will immediately pull up the entire record;  
20 right? Or it should?

21 A. It should pull up that voter. Then you can go  
22 into their record and see the various pieces of data  
23 associated with that record.

24 Q. You're relatively familiar with the DIMS  
25 registration database; right?

1 A. Fairly familiar, yes.

2 Q. In your experience, if you type in a last name  
3 and a specific date of birth, are you likely to get a lot  
4 of matches?

5 MR. PORTER: Objection. It's vague. It's a  
6 hypothetical without sufficient factual foundation to  
7 respond to.

8 You can respond if you can.

9 THE WITNESS: You could or could not depending on  
10 the combination of name and date of birth.

11 BY MR. HAMILTON:

12 Q. Put a name, date of birth, and registration  
13 number, is it likely that you'd get more than one name?

14 MR. PORTER: Same objection.

15 THE WITNESS: I would say that if all the  
16 information is accurate and correct, probably not get more  
17 than one name but --

18 BY MR. HAMILTON:

19 Q. How fast is the -- this is a software; correct?

20 A. This is a software, yes.

21 Q. And it runs on an IBM computer?

22 A. The database itself is on a server, and then each  
23 of the work stations are -- you know, your PCs -- they're  
24 both PCs. Windows XP.

25 Q. They're running Windows XP?

1 A. I believe so, yes.

2 Q. So if one were to type in the name and hit enter,  
3 can you provide us with -- are you able to provide us with  
4 an estimate of how long before the system returns  
5 information?

6 A. That varies depending on the current load on the  
7 system and the location of the person typing in the name.  
8 The response time down at our Mail Ballot Operations  
9 Satellite is different than our response time at the  
10 Administration Building.

11 Q. Is that an issue -- is that a problem in  
12 processing these ballots, or does it work reasonably well?

13 A. It works reasonably well. I don't -- you know, I  
14 don't think response time is an issue.

15 Q. We've heard some testimony in this case that  
16 there were some efforts to do additional research in  
17 January of 2005, even after the election itself had been  
18 finally certified and the governor sworn into office,  
19 relating to some of these further research needed  
20 provisional ballots.

21 Were you involved in that investigation?

22 A. No, I was not.

23 Q. Do you know who was?

24 A. I don't know specifically, no.

25 Q. Do you know who generally was involved?

1           A.    I guess I would have to make assumptions on who  
2 was involved.

3           Q.    Recognizing that it's an assumption, who would  
4 you assume would be involved in that?

5           A.    Certainly Carlos Webb and his staff.  But that's  
6 an assumption again.

7           Q.    All right.  There's a group of ballots that were  
8 reported by King County at the end of the process,  
9 622 provisional ballots that were not counted because the  
10 registration was canceled or had been previously canceled  
11 by the County.

12                   Are you familiar with that group of ballots?

13           A.    No.

14           Q.    Again, on the provisional ballot side of the  
15 house, and that's not your responsibility?

16           A.    Correct.

17           Q.    Does it ever happen on the absentee side of the  
18 house that one of the verifiers might find a canceled  
19 registration?

20           A.    It is a potential that a ballot may be returned  
21 on a canceled registered voter.

22           Q.    That would be something that might happen, where  
23 the registration's canceled after the ballot's already  
24 been mailed?

25           A.    That is correct.

1           Q.    What happens when the verifier hits a canceled  
2 registration?

3           A.    If the voter's being canceled -- I guess I'd back  
4 up and state that when you are uploading that particular  
5 batch into the system, it will kick it out again as a  
6 Wanda reject.  The verifier will pull those rejects from  
7 their tray, and then all those rejects we go through.  So  
8 they would do further research to make sure that they pull  
9 up the voter and say, yes, this person was canceled, when  
10 were they canceled, you know, what -- they do some further  
11 research to verify that they were actually a canceled  
12 voter.

13          Q.    What if any additional research -- once they  
14 confirm on the computer screen that this registration was  
15 canceled, what, if any, additional research is conducted  
16 into the reasons for the cancellation?

17          A.    I guess I'd have to answer by saying that I don't  
18 think that it's typical that a lot of additional research  
19 is done after you verify that somebody has been canceled.  
20 Certainly if there was a question in the person doing that  
21 checking -- in their mind that their cancellation was  
22 potentially in error, they would do further research.  But  
23 that's -- I'm not sure what the system would be -- what  
24 cue the system would give the verifier sending down that  
25 path.

1 Q. Do you know how many times an absentee ballot was  
2 returned, that was processed by your team, and rejected  
3 for that reason, that the cancellation had been  
4 previously -- that the registration had been previously  
5 canceled?

6 A. No, I do not.

7 Q. Can you ballpark it. More than a dozen? More  
8 than 100?

9 A. It's difficult to ballpark. Again, it's one of  
10 the various reasons of a ballot being rejected at the  
11 upload stage. And so the category, as I would see them --  
12 it would be lumped in with our other Wanda rejects.

13 Q. Would the registration be coded in some way to  
14 indicate what happened?

15 A. The registration is coded in the system when a  
16 voter gets canceled. I guess perhaps I'm not following  
17 the question.

18 Q. I'm trying to figure out, if we wanted to go back  
19 and determine what absentee ballots were rejected and not  
20 counted on account of the registration previously being  
21 canceled, whether we'd be able to do that or not.

22 A. I would find it highly unlikely that there would  
23 be an indication within the system that there was a  
24 returned ballot for that canceled voter. It was not part  
25 of the practice to, say, add something to the comments

1 field or something like that, some additional flag.

2 Q. And I'll tell you the reason why I'm asking, is  
3 the final report, I'm sure you've seen or maybe you've  
4 seen, dealing with provisional ballots --

5 A. Right.

6 Q. -- and it actually breaks out the number of  
7 invalid ballots by reason and shows the cancellation.

8 I take it there's not a similar document for the  
9 absentee ballots?

10 A. As far as canceled voters or ballots rejected  
11 because the voter -- the registration was canceled, that's  
12 not a category that's tracked.

13 Q. Okay. The other reason I'm asking is, there is a  
14 requirement -- I'll represent to you. I know you're not a  
15 lawyer -- requirement in the state law that when a ballot  
16 is not counted for the reason that the registration's been  
17 previously canceled, there's an obligation by the County  
18 to investigate --

19 MR. PORTER: Objection. Provisional ballot;  
20 correct?

21 MR. HAMILTON: It is.

22 MR. PORTER: You're advising him that that  
23 relates to provisional ballots?

24 MR. HAMILTON: I was going to when I finish my  
25 question. Since I didn't have a chance to finish it --

1 are you done?

2 MR. PORTER: You appeared to be done. You left a  
3 key word out. But go ahead.

4 BY MR. HAMILTON:

5 Q. There's an obligation imposed on the County when  
6 it doesn't count a ballot, provisional ballot, for the  
7 reason the registration's been previously canceled to  
8 actually do an investigation into the circumstances  
9 surrounding the cancellation.

10 I'm trying to figure out, on the absentee side,  
11 when you don't count a ballot because the registration's  
12 been previously canceled, whether there's a practice to do  
13 such an investigation.

14 A. There is not a practice to do a formal  
15 investigation or --

16 (Whereupon, an e-mail from Pamela Skelly to  
17 Samantha Duncan, dated September 20, 2004, was marked as  
18 Exhibit-5 for identification.)

19 Q. Okay. Handing you what's been marked as Exhibit  
20 No. 5, have you seen this document before?

21 A. I don't believe I have.

22 Q. Is this one of the documents you reviewed with  
23 Mr. Porter prior to the deposition?

24 A. It does not look familiar, no.

25 Q. Okay. Well, you can just take a moment to review

1 it, and then I'll ask you a question or two.

2 You've had a chance to review it?

3 A. Yes, I have. Thank you.

4 Q. The document appears to be an e-mail from Pamela  
5 Skelly to Samantha Duncan, dated September 20, 2004.

6 Who's Pamela Skelly, if you know?

7 A. Pamela Skelly is an employee -- temporary  
8 employee that we hired in support of the fall elections.  
9 She was acting as a verifier.

10 Q. Is she still employed by King County?

11 A. We do -- we have brought her back since the fall  
12 elections as a temporary employee.

13 Q. Is she currently employed as a temporary employee  
14 by King County?

15 A. Currently, no, she is not working. She did help  
16 us in the April Special Election, and there's the  
17 potential that we may bring her in for a day or two for  
18 the May Special Election. But she is not on the list of  
19 current temporary employees.

20 Q. All right. And it refers to an NGS problem,  
21 which appears to mean no good signature ballot rejection.

22 Is that your understanding of the acronym?

23 A. That is, yes. That is my understanding of the  
24 acronym.

25 Q. And is a no good signature rejection the same as

1 a signature mismatch?

2 A. To my knowledge it is -- it is the same.

3 Q. Okay. So when the verifiers reject a ballot for  
4 the reason that the signature doesn't match, there is a  
5 code put in, NSG?

6 A. Yes. If that's the correct acronym, yes.

7 Q. I'm sorry.

8 A. It appears she used both ways in this document.

9 Q. On the signature line it says NGS, and then the  
10 first line on the text it says NSG. The acronym should be  
11 no good signature, so it should follow the first letter of  
12 the --

13 A. I believe so. And I do not believe that it is a  
14 current challenge code that we have in our system now --  
15 and I'm not sure at what point it was removed -- because  
16 of the fact that it is the same as a signature miscompare.

17 Q. Okay. I'm confused now.

18 When there's a signature miscompare, in other  
19 words, when a verifier looks at the envelope and looks at  
20 the signature that's on the screen, it concludes that they  
21 don't match -- and I know that several supervisors have to  
22 agree with that. But once it's finally concluded that it  
23 doesn't match, what, if any, acronym or designation's put  
24 into the DIMS system to record that fact?

25 A. For signature mismatches there's a code that is

1 signature miscompares.

2 Q. And what's that code?

3 A. The dropdown the verifier actually sees, I  
4 believe, says M space hyphen space signature miscompares.

5 Q. Okay. So now I understand that.

6 What is no good signature? How is that  
7 distinguished in that situation?

8 A. And I apologize. I may have misspoken in the  
9 sense that -- if I may correct myself. I believe that no  
10 good signature was used to -- in a very similar way that  
11 the signature miscompares were used.

12 Q. I'm sorry. I have to ask, though.

13 Similar or the same? If there's a distinction, I  
14 need to understand the distinction between no good  
15 signature and signature miscompare.

16 A. To be frank, I do not know the answer to that  
17 question.

18 Q. Okay.

19 A. The Mail Ballot Operations supervisor would  
20 probably have a better explanation. I believe it's a code  
21 that was brought over from our previous Voter Registration  
22 Election Management System.

23 Q. Who is the current -- or who was the Mail Ballot  
24 Operations supervisor in the November 2004? Was that  
25 Nicole Way?

1 A. That was Nicole Way.

2 Q. So we should ask Ms. Way about that.

3 A. I would. I believe that she would have the most  
4 knowledge about that.

5 Q. All right. This e-mail's dated September 20th,  
6 and it says, Sam, Nicole asked me to document this  
7 program. Signed, Pam.

8 The Sam is Samantha Duncan?

9 A. Yes. It appears that that e-mail was sent to  
10 Samantha Duncan.

11 Q. And then below the couple of little dashes is  
12 something that says, Attention Nicole and Garth.

13 Did you get some version of this e-mail reporting  
14 this issue?

15 A. I don't believe I received a physical hard copy  
16 version.

17 Q. But you might have received an electronic version  
18 of it?

19 A. I guess I may have been told about the issue  
20 verbally. I do recall some of the details within the  
21 e-mail.

22 Q. Okay. And the issue appears to be -- tell me if  
23 I'm misunderstanding it.

24 But it appears to be that the verification team  
25 had encountered a problem, that in some instances were

1 multiple signatures associated with an individual  
2 registration record.

3 A. That is correct.

4 Q. Their concern was that the verifier might not  
5 know how to access all the different signatures associated  
6 with that registration.

7 A. That appears to be the concern in the e-mail,  
8 yes.

9 Q. And the concern would be that if the verifiers  
10 couldn't locate the other signatures, they might  
11 wrongfully reject the ballot that might actually match one  
12 of the other signatures.

13 A. If the first signature that they -- the signature  
14 that appeared on the screen was a mismatch or did not  
15 capture the signature that we have on file appropriately,  
16 it appears that there's a concern that that ballot would  
17 initially be challenged.

18 Q. This e-mail was transmitted on September 20th.

19 Were there any steps taken to address this  
20 problem after this e-mail?

21 A. I believe so. I guess the first thing to  
22 understand is, in addition to the initial challenge done  
23 by the verifier -- again, we have a second group going  
24 back through these, and they were trained on the process  
25 for looking at additional signatures associated with the

1 voter registration record.

2 Q. Do you know if any ballots were rejected  
3 mistakenly because of this problem?

4 A. I do not know any problem.

5 Q. In the signature comparison process, when the  
6 initial verifier concludes that the signatures don't  
7 match -- maybe you already answered this earlier this  
8 morning, and I apologize if I'm asking you again -- is  
9 there a process where the supervisor comes over to the  
10 terminal, or is it simply passed along and the supervisor  
11 looks at it independently, or is there a combination of  
12 events that occur?

13 A. It could be a combination. The verifiers do have  
14 the ability to raise their hand and ask for some  
15 assistance at the time they're doing the initial  
16 verification. If they choose to reject the ballot because  
17 it's clear to them -- or I should say challenge the ballot  
18 because it's clear to them that the signatures don't  
19 match, they can do that as well. And then a second person  
20 will go back and verify -- or essentially verify that  
21 their judgment is accurate to them as well.

22 MR. HAMILTON: Okay. All right. Mr. Fell, I  
23 have no further questions for you at this point. Thank  
24 you very much for your cooperation. I appreciate it.

25 THE WITNESS: Thank you.

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

2 (Whereupon, a short recess was taken.)

3 EXAMINATION

4 BY-MR.MAGUIRE:

5 Q. Mr. Fell, my name is Rob Maguire. I represent  
6 the petitioners in the election contest pending in the  
7 Chelan County Superior Court. I have some questions for  
8 you as well today. Some of these are going to cover  
9 similar ground that Mr. Hamilton covered but in a little  
10 more detail or going into some different areas. First I'd  
11 like to go back and talk about the process of issuing  
12 absentees.

13 How does a voter become an absentee voter in  
14 King County?

15 A. There's a couple of ways that a voter can become  
16 an absentee voter. When they initially register to vote,  
17 they can indicate on their registration form that they  
18 would like to be a permanent absentee voter. In addition  
19 to that process, voters can contact our office and let us  
20 know that they want to be an absentee voter either for one  
21 election or on a permanent basis.

22 Q. When they contact your office and ask to be made  
23 an absentee voter for one or more occasions, do they have  
24 to send something in writing to that effect?

25 A. To be a permanent absentee voter, yes, they would

1 have to sign a request form. For a one-time, I do not  
2 believe they have to sign a form.

3 Q. So for someone who wants to vote by absentee for  
4 one election, it's sufficient for them to call the  
5 Elections office and indicate that they want to be an  
6 absentee voter just that one time?

7 A. Yes. I believe so.

8 Q. Is there a cutoff date before -- was there a  
9 cutoff date before the November 2004 election for  
10 requesting -- for an individual to request that they be  
11 sent an absentee ballot?

12 A. Individuals can request an absentee ballot all  
13 the way up to the day prior to the election. When they  
14 call close to the election, we advise them of the  
15 difficulties and the potential that they may not actually  
16 receive their ballot before election day if there's not  
17 enough transit time within the mail system.

18 Q. And that's because the voter must mail back their  
19 absentee ballot postmarked on the date prior to election  
20 day?

21 A. They must have it postmarked by election day.

22 Q. Election.

23 A. Or in the case of military and overseas voters,  
24 they must have it -- we must receive it before  
25 certification, and it must be dated election day. When I

1 say date, I mean the date of the signature. The date when  
2 the voter signs their absentee ballot.

3 Q. When a person requests an absentee ballot, the  
4 Election workers make some notation of the request?

5 A. There would be a designation in that person's  
6 voter's registration record or the Election Management  
7 Voter Registration System that says this person requested  
8 an absentee ballot.

9 Q. So when a person requests by an initial  
10 registration to become a permanent absentee ballot --  
11 or by voter -- excuse me -- or whether they contact your  
12 office and ask to become an absentee voter at some other  
13 time, an Election worker is supposed to update that  
14 person's registration record and DIMS and indicate they  
15 would be getting an absentee ballot?

16 A. That is correct. There would be an update  
17 process within DIMS.

18 Q. Is that done as soon as the person requests that  
19 they become an absentee ballot voter, or are there  
20 periodic updates?

21 A. It depends somewhat on the timeline of the  
22 election and work volume. It's actually a function that's  
23 done within Voter Services, and so it's difficult for me  
24 to say, you know, that as soon as they receive all of  
25 those forms they'd go in and put them into the system. Or

1 if they receive information from a voter otherwise, that  
2 they'd go in immediately into that system.

3 Q. And I think you talked a little bit about this  
4 with Mr. Hamilton this morning.

5 But when were absentee ballots mailed for the  
6 November election?

7 A. The bulk of the absentee ballots were mailed  
8 20 days prior to the election. There were certain  
9 categories of ballots that were sent out earlier than  
10 that. And then of course if somebody were to request an  
11 absentee following their initial mail-out, we would  
12 respond and get that absentee out within 48 hours or  
13 24 hours if it's the Thursday following that 20-day  
14 period.

15 Q. What categories were sent out earlier than  
16 20 days prior to the election day?

17 A. This would be categories of voters that are  
18 either overseas or in the military. And we have several  
19 categories within our systems that designate some  
20 combination of those types of voters.

21 Q. Okay. Any other --

22 A. Out-of-state voters might be included in there as  
23 well.

24 Q. Other than the mail, how are absentee ballots  
25 delivered to voters?

1           A.    Voters can come in and pick up an absentee ballot  
2 in person over the counter.

3           Q.    Are some ballots e-mailed to voters?

4           A.    There is the potential that some ballots for this  
5 election were e-mailed to voters and a potential that  
6 ballots were faxed to voters as well.

7           Q.    You say that there was a potential that happened.  
8                Do you know whether it happened for the November  
9 election?

10          A.    I believe that it did happen, yes.

11          Q.    Both e-mail and fax?

12          A.    Yes.

13          Q.    How does a person request an absentee ballot by  
14 e-mail?

15          A.    There's not a specific mechanism by which they  
16 can request an e-mail absentee ballot.  It is something  
17 that when we receive a request from a voter and recognize  
18 that we -- or that the mail system would not provide  
19 timely delivery, we will go through the effort of  
20 providing that option for the voter.  That is a call  
21 that's made within the Voter Services section.

22          Q.    So if the day before election day I request an  
23 absentee ballot, someone in Voter Services might contact  
24 me about e-mailing me a ballot?

25          A.    That is a potential, yes.

1 Q. Do you know how that process works?

2 A. I do not know how that process works or worked.

3 Q. Who would be the most knowledgeable person about  
4 that?

5 A. Potentially Carlos Webb.

6 Q. Anybody else?

7 A. His subordinate staff.

8 Q. Do you know whether it would be Vicki Moore or  
9 Lisa Moore?

10 A. Both of them may have some knowledge of that,  
11 yes.

12 Q. Are the circumstances under which an absentee  
13 ballot would be faxed to a voter the same as the e-mail  
14 circumstances?

15 A. To my knowledge, yes.

16 Q. Do you know whether King County keeps any records  
17 of the number of e-mailed ballots?

18 A. I think there are records of instances where  
19 ballots were e-mailed. It is not a current flag within  
20 DIMS to say that a ballot was e-mailed versus mailed.

21 Q. How about for faxed ballots?

22 A. Same situation. I don't believe there's a  
23 category within DIMS that specifies that the ballot was  
24 faxed.

25 Q. Would there be any indication in DIMS that the

1 ballot was issued to that voter, someone who had e-mailed  
2 or faxed an absentee ballot would have to remember to go  
3 to that person's DIMS record later and manually reflect  
4 the issuance of a ballot?

5 A. The process for any person requesting an absentee  
6 would be to go into DIMS and issue them an absentee  
7 through the system. Whether or not that absentee is a  
8 paper ballot versus a faxed ballot or an e-mail ballot is  
9 something that I believe is not, in the system, specified  
10 whether it was e-mailed or faxed.

11 Q. Absentee ballots that are mailed, each one has an  
12 AV ID number; is that right?

13 A. That's correct.

14 Q. It's a unique number for that ballot envelope?

15 A. It's a unique number for that voter and  
16 potentially envelope as well.

17 Q. Potentially envelope? What do you mean by that?

18 A. Well, if a voter -- a voter's brought into the  
19 absentee modular or absentee process, they're assigned a  
20 unique AV ID. If for some reason their ballot is  
21 suspended and reissued, that ID is suspended and reissued,  
22 and they're given another ID. There is the ability,  
23 however, to resend the initial ballot rather than  
24 suspending and reissuing. So you'd be sending the voter  
25 the same -- an envelope with an AV ID that would be the

1 same as the first one.

2 I might add, this is not a problem for the system  
3 in the sense that if you return a ballot, your AV ID is  
4 credited, and if you try to return that same AV ID, say  
5 another ballot that was resent to you, the system would  
6 reject that as a Wanda reject.

7 Q. If it had the same AV ID?

8 A. Yeah.

9 Q. What about in the circumstances of a suspended  
10 and reissued whether it was a new AV ID?

11 A. If they try to send back the first ballot that  
12 had been suspended, that ballot would be rejected by the  
13 system, as what we call Wanda reject, and separated. If  
14 they return the second ballot, that would be accepted by  
15 the system.

16 Q. In what circumstances can King County suspend and  
17 reissue as opposed to resending the same AV ID ballot  
18 number?

19 A. It is our general practice to suspend and reissue  
20 ballots.

21 Q. In what circumstances would you not do that?

22 A. We have -- we have at times re-sent ballots. In  
23 particular with the April Special Election, we sent a bulk  
24 of ballots with the same AV IDs, the thought there being  
25 that it produces fewer Wanda rejects. And the ballot

1 styles have not changed. But in general, for the November  
2 election, the practice was to suspend and reissue.

3 Q. For the November election, were some people sent  
4 or reissued the same ballot with the same AV ID number?

5 A. There is the potential for that. The system  
6 allows for that possibility. Do I know of any in  
7 particular? No, I do not.

8 Q. And in the circumstance where King County issued  
9 an absentee ballot with the same AV ID number, the first  
10 one that was returned would be the one that would be  
11 processed?

12 A. That is -- the first one would be accepted by the  
13 system, yes.

14 Q. And if the signature matched and the ballot made  
15 its way to the verification, it would be tabulated.

16 A. That's correct.

17 Q. When the second one came in --

18 A. -- it would be rejected by the system upon  
19 further research. They would see that that person already  
20 returned the ballot, would be able to do further research  
21 as necessary.

22 Q. Is the AV ID number recorded on the ballot  
23 itself?

24 A. It's not on the ballot itself, no.

25 Q. Is it on the envelope?

1 A. It is on the reply envelope.

2 Q. Is that the outer envelope or the security  
3 envelope?

4 A. Yes, it would on the outer signature envelope,  
5 that's correct.

6 Q. How does a person return to King County a ballot  
7 that had been e-mailed to them from King County?

8 A. They, in returning that ballot -- in receiving  
9 that e-mail ballot, they would also receive an oath to  
10 sign and would return both the ballot and the oath in an  
11 envelope, and it will be received by our office.

12 Q. They can't just e-mail their vote back or ballot  
13 back to King County?

14 A. No. The process is we need to receive the hard  
15 copy.

16 Q. Do the e-mail ballots have AV ID numbers with any  
17 envelope?

18 A. The e-mail ballots do not have an envelope with a  
19 bar code associated with them. And there's a potential  
20 that the voter may have been issued an AV ID and be  
21 returning that, but that's not a requirement in the sense  
22 that we can still process their ballot as long as we can't  
23 connect that back to the voter.

24 Q. What's the purpose of having an AV ID number?

25 A. I'm certain there are several purposes.

1 Programmingwise within the system, it certainly serves  
2 functions to have a unique number tied to a voter and the  
3 ballot they've been issued.

4 Q. What kind of functions can you think of?

5 A. It certainly aids in the signature verification  
6 process in the sense that we can do our sorting and  
7 scanning process -- or sorting and upload process, I  
8 should say. It makes data capture and association of  
9 signatures with that voter easier within the system in  
10 dealing with the unique field.

11 Q. Let me make sure I understand that.

12 One of the functions of having a unique AV ID  
13 number is that it more easily allows King County, when it  
14 receives an absentee ballot back, to tie that ballot to an  
15 electronic record in DIMS for a particular voter?

16 A. It's really the outer envelope of course to the  
17 voter. Yes, it's a unique identifier for that  
18 transaction, if you will, the issuance of that absentee.

19 Q. Another purpose of having a unique AV ID number  
20 is to make sure that a person who submits more than one  
21 absentee ballot only has one of them tabulated?

22 A. Correct.

23 Q. With respect to the e-mail ballots, you said that  
24 a person may have been issued an AV ID number?

25 A. Again, Voter Services was primarily sending out

1 those e-mail ballots and responsible for that function, so  
2 I am not sure what information they were attaching with  
3 the e-mail. Certainly it had the ballot and the oath that  
4 the voter needs to sign.

5 Q. Your group receives the ballot back when the  
6 voters mail them in; right?

7 A. That's correct.

8 Q. When the ballot is received by your group, the  
9 envelope contains an AV ID number?

10 A. I can't recall specific examples of e-mail  
11 ballots the way in which e-mail ballots were coming back.  
12 Since I was not personally handling all of the ballots and  
13 processing it myself, I don't -- I'm not aware of what  
14 information was on the envelopes. And I imagine that it  
15 varied.

16 Q. How about for faxed ballots?

17 A. I would say the same response, that I imagine  
18 that the outer envelope that we receive could vary.

19 Q. Would Nicole Way know the answer to those  
20 questions, do you think?

21 A. She would certainly have a better understanding  
22 of that, I think.

23 Q. This morning Mr. Hamilton was asking you about  
24 the outer envelopes. I believe you said that they may  
25 have one bar code.

1           Are there circumstances where there would be more  
2 than one bar code on an envelope?

3           A.   Certainly.  The mail that we -- the ballots that  
4 we issue through our bulk process and our print vendor --  
5 those envelopes go out with potentially three bar codes on  
6 them.  One bar code is the bar code that contains the sort  
7 information and the ability to capture what the AV ID  
8 number is on the return, and that's a postal bar code.  
9 It's a format of that bar code.  There's also a three of  
10 nine bar code which is an exact AV ID for that voter.  
11 Then there's an additional delivery bar code on the ballot  
12 as well.

13          Q.   On the ballot itself?

14          A.   On the envelope itself.  Sorry.

15          Q.   The first type of bar code you mentioned -- you  
16 said contains sort information, an AV ID information, that  
17 it's a postal bar code; is that right?

18          A.   That is correct.  It contains information about  
19 the AV ID on the sort.

20          Q.   What does that mean?

21          A.   That means it's a bar code that when we receive  
22 the mail back from voters and send it through our  
23 PSI/debulk sort process, I think I referred to earlier,  
24 it's the bar code that's read by the machine.  And then  
25 based on how it reads that bar code, it drops it into the

1 appropriate legislative grouping.

2 Q. So that's a bar code that the vendor reviews and  
3 can determine in which legislative district to sort this  
4 person's absentee ballot?

5 A. Right. And at the same time it captures data  
6 that enables the vendor to associate that with an AV ID.

7 Q. What is the difference between that bar code and  
8 the second one you mentioned, the three of nine bar code  
9 that has the exact AV ID for a voter?

10 A. The difference is that that bar -- the second bar  
11 code, the three of nine that has the exact AV ID, does not  
12 include the sort data. It is, again, the exact AV ID  
13 that's within the system.

14 Q. In both the first part that we were talking  
15 about, that has the sort info, and the second bar code,  
16 there's an exact AV ID number for the voter?

17 A. No, that is not correct. The first bar code that  
18 is used by the postal equipment has a piece of data that  
19 is then associated with the AV ID for that particular  
20 voter.

21 Q. What kind of data?

22 A. I'm not sure what the data string looks like  
23 exactly.

24 Q. Some kind of address-related information?

25 A. No. My understanding is that it would be a

1 numerical piece of data that could then be related to the  
2 AV ID.

3 Q. Okay. And the third type of bar code, delivery  
4 code on envelope, what does that mean?

5 A. There's a bar code above the address information  
6 that is -- it actually appears through the outer envelope  
7 in which we send our ballots out so it can be read by our  
8 postal vendor when they're doing our initial sort, and  
9 that can be used by USPS to deliver the ballot.

10 Q. So that's on the issuance side that bar code is  
11 used?

12 A. Yes.

13 Q. And the other two bar codes are useful on the  
14 return side.

15 A. That is correct.

16 Q. Does King County keep track of the number of  
17 absentee ballots that were issued?

18 A. We keep track within the system, yes, the number  
19 of ballots that were issued to voters based on voters --  
20 comparing in the system as being issued a ballot.

21 Q. If a person is issued multiple ballots, is that  
22 reflected in DIMS?

23 A. There are records within DIMS that do track that.

24 Q. Does King County ever run a report to try to  
25 determine how many ballots exactly are mailed out or

1 otherwise delivered to voters?

2 A. I'm not aware if we run a report to meet that  
3 end.

4 Q. Could King County create such a report that shows  
5 every absentee ballot that was issued, whether by mail,  
6 e-mail, fax, or over the counter?

7 A. I would say that certainly there is data that  
8 exists in DIMS that could be useful in that process.  
9 Whether or not the report exists -- or the process exists,  
10 I'm not sure. That's really more of a technical question  
11 for ID staff or DIMS administrators.

12 Q. So you're not sure whether there's sufficient  
13 data to generate a report that would indicate the number  
14 of ballots issued by absentee in King County?

15 A. I'm confident there's data within the system that  
16 could be used to get a number from the system that says  
17 how many we issued. I guess there's also the potential --  
18 of course it's reflecting what's being done in the system,  
19 so I hesitate to say that you can get an exact number.  
20 That's really a question for our I.T. staff.

21 Q. Who under I.T. staff could answer that question?

22 A. Travis Elsom, Scott Turnbull would probably be  
23 the individuals that could address that.

24 Q. Do you remember any discussions leading up to the  
25 November 2004 election in the Elections department that

1 talked about keeping track of the number of absentee  
2 ballots issued?

3 A. Yes, I do recall that there were conversations  
4 about tracking the issuance of ballots.

5 Q. Who were the people involved in the discussions?

6 A. In no particular order -- or in no particular  
7 discussion, you know, grouped by discussion, I recall Bill  
8 Huennekens, Nicole Way, Dean Logan, Travis Elsom, Scott  
9 Turnbull, a wide variety of people. These were part of  
10 larger discussions that would take place at supervisory  
11 meetings, meetings of supervisory staff.

12 Q. What did Mr. Huennekens say about tracking the  
13 issuance of absentee ballots?

14 A. I can't recall at this point what he stated. I  
15 know that the issue of numbers of issuing ballots is  
16 something that we've discussed, but I can't recall his  
17 specific comments on that.

18 Q. Can you remember the substance of his comments?

19 A. No.

20 Q. How about Nicole Way's comments?

21 A. I can't recall any specifics regarding her  
22 comments as well. Certainly there is an indication in  
23 previous documents that there's some frustration, and one  
24 of the things she did mention was the issuance.

25 Q. Let's turn to one of those previous documents.

1 Take Exhibit 3. This is the October 28th e-mail chain.  
2 At the top of the first page is an e-mail from Nicole Way  
3 to you, with the subject forward problems.

4 Is this the document you were thinking of when  
5 you were talking about Nicole Way expressing some  
6 frustration?

7 A. Yes.

8 Q. And in her e-mail to you on October 28th she  
9 writes, among other things, quote, We cannot say for  
10 certain how many ballots have been issued/mailed, how many  
11 reissued, who has been issued what, how many ballots are  
12 actually returned/batched, Wanda errors, et cetera, how  
13 many ballots are actually verified and accepted versus  
14 challenged by us and challenged by Wanda, end quote.

15 Is that right?

16 A. That's what she says in the e-mail, yes.

17 Q. Do you remember communicating with her regarding  
18 her comments as to not being certain as to how many  
19 ballots had been issued or mailed?

20 A. I am -- I can recall that this would be -- I can  
21 recall that this is probably something we did talk about.  
22 The specifics of what those comments were, I'm not sure at  
23 this point.

24 Q. She's expressing concern that she is unable to  
25 track the number of ballots that had been issued; is that

1 right?

2 A. She is issuing concern that she cannot say for  
3 certain.

4 Q. Is that something that concerned you?

5 A. It is certainly a concern that she did not feel  
6 that she had that information. Again, there are other  
7 sources for information regarding the issuance of ballots,  
8 not just the DIMS system.

9 Q. What other sources?

10 A. They were maintaining logs of what was issued --  
11 or what was mailed, I should say.

12 Q. Who was maintaining logs?

13 A. Nicole Way and her group.

14 Q. Did you ever see any of those logs?

15 A. I have seen some of those logs, yes.

16 Q. Were they spreadsheets?

17 A. I believe one is a spreadsheet.

18 Q. What were the other ones?

19 A. I believe there are also paper documents  
20 detailing how many were -- you know, notes on the  
21 issuance.

22 Q. Nicole Way kept some kind of handwritten notes?

23 A. I've seen notes, handwritten notes, on the  
24 issuance of absentees. Now, it's difficult for me to say,  
25 based on timeline and what's happened, if that's in

1 regards to this election, the November election, or if  
2 those notes are in regards to the spring elections for  
3 this year.

4 Q. The logs that you recall from the November 2004  
5 election were logs created by Nicole Way?

6 A. They were created by her work group.

7 Q. Any other sources as to the number of ballots  
8 issued? So far I think we have DIMS and Nicole Way's work  
9 group logs.

10 A. There would be other documents that talk about --  
11 or detail the issuance of ballots. And I guess I would --  
12 whether or not they're comprehensive is another question.

13 Q. What are the other docs?

14 A. Mailing documents that are -- or Certificate of  
15 Mailing that we receive when we do the bulk mailing.

16 Q. Something you get from the post office?

17 A. Yes.

18 Q. What kind of information is conveyed on the  
19 information -- or the document that comes from the post  
20 office?

21 A. They give a general account of what's being  
22 mailed and --

23 MR. HAMILTON: Rob, when you have a second, take  
24 a short break.

25 MR. MAGUIRE: Sure. Why don't we go off the

1 record.

2 (Whereupon, a short recess was taken.)

3 BY MR. MAGUIRE:

4 Q. Mr. Fell, just before we took the break we were  
5 talking about tracking of absentee ballots that were  
6 issued by King County for the November 2004 election, and  
7 we were discussing the sources King County could use to  
8 determine the number of absentee ballots issued. I think  
9 you identified a few different sources. One was what  
10 existed in the DIMS database.

11 A. That is correct.

12 Q. Another one was logs that was issued -- created  
13 by Nicole Way and her workers; is that right?

14 A. That would be another source, yes.

15 Q. And then the other source you referred to was a  
16 document provided from the post office that would give a  
17 general account of what had been mailed; is that right?

18 A. That's correct.

19 Q. The document provided by the post office, does it  
20 give a specific number of absentee ballots that were  
21 mailed?

22 A. I believe it includes a piece count for a  
23 particular mailing, and that would be for our initial  
24 mailing.

25 Q. For the initial mailing.

1           How about for subsequent mailings?

2           A.    There may be some documents for those as well.  
3    It depends slightly on volume and how those were sent out,  
4    whether or not they were sent out through our postal  
5    vendor or over the counter, just through -- you know,  
6    essentially putting them in the mail stream without doing  
7    a sort on them or anything to it -- to that.

8           Q.    In those circumstances there wouldn't be a  
9    document from the post office indicating that they had  
10   been sent?

11          A.    Right.

12          Q.    And obviously if ballots were e-mailed or faxed,  
13   there wouldn't be a document from the post office about  
14   that.

15          A.    That is correct.

16          Q.    Are there any other sources?

17          A.    Those would be the ones that I would -- that I  
18   can think of at this point.

19          Q.    And you mentioned that -- I think, that you would  
20   be concerned if Nicole Way could not say for certain how  
21   many ballots were issued or mailed.  Is that right?

22          A.    I have a concern.

23                MR. PORTER:  I have to object to the form of the  
24   question.  I think it does misstate the previous  
25   testimony.

1 BY MR. MAGUIRE:

2 Q. I think I understand what you said earlier. I  
3 think I said, did it appear to you that Ms. Way was  
4 concerned that she could not say for certain how many  
5 ballots were issued or mailed.

6 A. It does appear, yes, that she was concerned.

7 Q. Is that something that you'd be concerned too?

8 A. I am certainly interested in knowing how many  
9 ballots we issued and mailed.

10 Q. Why is that?

11 A. Because it's just another level of tracking on  
12 our work to be able to say that, you know, we've mailed  
13 this number, just a total of ballots.

14 Q. What's the point of tracking the number of  
15 ballots mailed?

16 A. It allows you to say that you've mailed ballots  
17 to everyone that you believe should have been mailed a  
18 ballot.

19 Q. So after receiving Ms. Way's e-mail, which is  
20 Exhibit 3, where she's expressing some concern about the  
21 uncertainty of how many ballots had been issued or mailed,  
22 did you do anything in response?

23 A. I believe these issues were addressed in our  
24 supervisory meetings.

25 Q. How were they addressed?

1           A.   Discussions with the supervisory team and the  
2   DIMS administrators on what data is in the system and what  
3   reports are available.  I would say that part of the  
4   concern -- or part of the uncertainty for me is not in  
5   necessarily the system but it's also in --

6           MR. PORTER:  If you feel like you've completed  
7   your answer, you've completed your answer.

8           THE WITNESS:  Okay.  I have nothing to add.

9           BY MR. MAGUIRE:

10          Q.   It sounds like you were saying part of your  
11   uncertainty with DIMS and that you had other uncertainties  
12   or other things that made you uncertain about this issue?

13          A.   Certainly there -- I have some uncertainty on how  
14   it's characterized in the e-mail, that it is a problem  
15   with DIMS.  That's all.  I guess that's what I was  
16   trying --

17          Q.   You think the e-mail --

18          A.   The e-mail is somewhat colored by frustration.

19          Q.   Nicole Way is frustrated with DIMS and is  
20   expressing part of that frustration in Exhibit 3?

21          A.   Yes.

22          Q.   So when she says, We can't be certain how many  
23   ballots have been issued or mailed, she might be referring  
24   to, We can't tell DIMS for certain how many ballots have  
25   been issued or mailed?

1           A.    I think that she herself cannot tell for certain  
2 how many ballots have been issued or mailed but --

3           Q.    Somebody else might be able to?

4           A.    -- somebody else might be able to, using the  
5 system.

6           Q.    She was not good at using DIMS?

7           A.    I would not say that.  I'd say that it was -- it  
8 certainly was a new system and people were certainly  
9 learning new things.

10          Q.    And do you remember discussions with supervisors  
11 and DIMS administrators as to tracking the number of  
12 absentee ballots issued or mailed?

13          A.    Yes.

14          Q.    And what was the substance of those discussions?

15          A.    The substance of those discussions would  
16 primarily be, you know, when running -- or running X  
17 process, what numbers did those generate, what did those  
18 numbers mean.

19          Q.    What do you mean by "X process"?

20          A.    Whatever process we'd be running in DIMS.  You  
21 know, if you were running a certain report in DIMS or to  
22 extract numbers, be it issued and mailed or, you know,  
23 challenges, you have to understand how DIMS comes up with  
24 that report.  And the -- at our meetings there was  
25 considerable discussion on what the numbers actually mean

1 and what they actually represent.

2 Q. Did any of the numbers represent the number of  
3 ballots that had been issued or mailed?

4 A. I can't recall specific details on that. I know  
5 that we do have statistics on our web on what ballots  
6 were -- total number of ballots issued, and there was  
7 discussion about what that number represents.

8 Q. What does that number represent?

9 A. To my knowledge it represents the number of  
10 voters issued ballots.

11 Q. As determined by whom?

12 A. By DIMS and a process within DIMS.

13 Q. Is that the most precise number King County can  
14 identify of absentee ballots issued in the November 2004  
15 election?

16 A. I don't know the answer to that question.

17 Q. Who would?

18 A. Probably the DIMS administrators, Travis Elsom  
19 and Scott Turnbull.

20 Q. Do you know whether the number on the website  
21 reflects the total number of voters who were issued  
22 absentees or the total number of absentee ballots issued,  
23 including multiple ballots issued to the same person?

24 A. It is my understanding that it includes the total  
25 number of voters issued absentees as tracked by DIMS.

1 Certainly there are voters that are within DIMS, those  
2 being some of our Address Confidentiality participants.

3 Q. Is there a way to determine the total number of  
4 absentee ballots issued as opposed to the total number of  
5 voters who were issued absentee ballots?

6 A. Again, that would be a question for the DIMS  
7 administrators.

8 Q. On Exhibit 3 Ms. Way also indicates she can't say  
9 for certain how many absentee ballots were reissued.

10 Do you know whether King County was able to  
11 determine for certain how many absentee ballots were  
12 reissued for the November election?

13 A. I'm not certain that we provided a number on the  
14 number of ballots reissued.

15 Q. Provided the number to --

16 A. To the public. Or if that's something we  
17 produced the number on.

18 Q. It's not a number you provided to the public.  
19 It's a number you came up internally?

20 A. I'm not certain of that.

21 Q. In these discussions with supervisors and DIMS  
22 administrators, did anyone express the view that it's  
23 important for King County to be able to determine with  
24 certainty how many ballots had been issued, mailed, and  
25 how many reissued?

1 MR. PORTER: Object. The question is compound.

2 BY MR. MAGUIRE:

3 Q. Let's take it into two parts.

4 In any of the discussions that you referred to,  
5 with supervisors and DIMS administrators, did anyone  
6 express their view in substance that it's important for  
7 King County to know for certain how many ballots had been  
8 issued in the November 2004 election?

9 A. I think that people did express their concern  
10 that they thought that was important.

11 Q. Do you remember who expressed that concern?

12 A. I think -- specifically, no, I don't know who  
13 expressed that concern. I can say that as a group, it was  
14 something that we certainly wanted to derive as much data  
15 about the election as possible.

16 Q. Was there a group consensus that it's important  
17 for King County to know for certain how many ballots had  
18 been issued?

19 A. I'm not sure that there was a group consensus  
20 that's --

21 Q. Do you remember any steps taken as a result of  
22 the discussions to determine for certain how many ballots  
23 had been reissued for the November 2004 election?

24 A. I do not.

25 Q. Do you remember anyone in those discussions

1 expressing the view that it is important for King County  
2 to know for certain how many ballots had been reissued?

3 A. I don't recall specifics without the reissued  
4 numbers.

5 Q. Is it important to know who has been issued what  
6 in the election?

7 A. Certainly it is important to know that a person  
8 had been issued a ballot and what particular ballot  
9 they've been issued.

10 Q. One of the reasons that's important is to make  
11 sure people who are registered to vote have the  
12 opportunity to do so?

13 A. Certainly, yes.

14 Q. And another reason is to make sure people don't  
15 submit more than one ballot?

16 A. Certainly.

17 Q. Are there other reasons you can think of?

18 A. To make sure that we issued them the correct  
19 ballot as well.

20 Q. Ms. Way, in her e-mail marked as Exhibit 3,  
21 indicates that, We cannot say for certain who had been  
22 issued what. Is that right?

23 A. That is what she says, yes.

24 Q. Do you agree that for the November 2004 election,  
25 King County could not say for certain who had been issued

1 what?

2 A. I'm not sure that I do agree with that portion of  
3 the statement. I think that DIMS does track and provide  
4 records of who's been issued what.

5 Q. Do you know why Ms. Way thought that she couldn't  
6 determine for certain who had been issued what?

7 A. I do not.

8 Q. But you think DIMS accurately reflects who has  
9 been issued what for the November 2004 election?

10 A. DIMS accurately reflects the work that has been  
11 done within DIMS, and I believe that it is fairly accurate  
12 as to what has been issued. There's always a potential  
13 for data entry errors and human errors so --

14 Q. Other than data entry errors, do you think DIMS  
15 accurately reflects who has been issued what for the  
16 November 2004 election?

17 A. I'm fairly confident that it does.

18 Q. During the discussions regarding the tracking of  
19 the issuance of absentee ballots, do you remember  
20 Mr. Logan expressing any views?

21 A. Specific views, no. I imagine that, with the  
22 rest of the group, he had concerns as well to make sure  
23 that we could track as much data as possible.

24 Q. Did Mr. Logan generally express, in meetings with  
25 you, the importance of tracking information?

1 A. Certainly.

2 Q. The importance of tracking the number of absentee  
3 ballots issued, for example?

4 A. I don't have a specific recollection of that as  
5 an example. But the importance of tracking, to the best  
6 of our ability, any data associated with our process, be  
7 it mail-out of absentees or what's been issued.

8 Q. Or what's been returned?

9 A. Or what's been returned.

10 Q. And what's been tabulated obviously; is that  
11 right?

12 A. Yes.

13 Q. Let's talk a little bit about the return of  
14 absentee ballots.

15 Setting aside the overseas and federal absentee  
16 write-in ballots for now, an absentee ballot will be  
17 processed by King County if it's postmarked on or before  
18 election day; is that right?

19 A. That is correct.

20 Q. King County uses particular addresses for  
21 individuals to mail their ballots back.

22 Where do they send their absentee ballots?

23 A. Their ballot has -- when they're provided with an  
24 absentee ballot, they get a return envelope, and that has  
25 a specific address on it, yes.

1 Q. Is it the same specific address for all absentee  
2 ballots issued in King County?

3 A. Yes. It's the same return envelope and the same  
4 address.

5 Q. Is it at a particular post office?

6 A. A particular zip code and room designation, I  
7 believe, or postal code.

8 Q. But it's not at the Admin Building? It's at a  
9 U.S. Postal facility?

10 A. The actual address is at the Admin Building, but  
11 we make arrangements with the United States Postal Service  
12 to pick up ballots at their location prior to large  
13 elections, like the general election.

14 Q. So every absentee ballot envelope issued in  
15 King County has the King County Administration Building  
16 address on it; is that right?

17 A. The return envelope, yes, setting aside the  
18 categories we talked about.

19 Q. Right. And setting aside e-mail --

20 A. Yes.

21 Q. -- and fax.

22 But when a voter mails them back, the post office  
23 knows not to send those ballots to the Administration  
24 Building but to do something else with them.

25 A. Yes. We have arranged through an agreement that

1 the post office will hold that mail for us to pick up on a  
2 daily basis. And we usually start that -- I believe we  
3 said the Tuesday following the initial mail-out.

4 Q. So the post office would collect them all in one  
5 post office location, or are they scattered in different  
6 post offices throughout King County?

7 A. It's my understanding that they collect and  
8 capture all of that mail at their central postal sorting  
9 facility. So you would return your mail, then I go  
10 through your local post office and get to the central  
11 facility where it will get sorted out there for us to pick  
12 up.

13 Q. The central postal facility, where is that?

14 A. It's just south of Boeing. I don't have the  
15 exact address memorized.

16 Q. And it's this facility south of Boeing Field that  
17 two King County Election workers retrieved the absentee  
18 ballots?

19 A. That is correct.

20 Q. How do they know when an absentee ballot is  
21 waiting for them down there?

22 A. We have a scheduled pickup, that we pick up every  
23 morning. And our scheduled time is 5:30 in the morning.

24 Q. Are political observers present for the pickup?

25 A. Typically, no.

1 Q. You say "typically."

2 Were there instances where observers were  
3 present?

4 A. We've had instances where individuals have wanted  
5 to see the process and had followed the process from the  
6 beginning, from the postal pickup to the sorting to the  
7 point it reaches our Mail Ballot Operations Satellite  
8 facility. Did this occur in the general election? I'm  
9 not certain of that. I don't believe it did.

10 Q. It was unusual for political observers to be  
11 present for the pickup from the central postal sorting  
12 facility?

13 A. Yes.

14 Q. When the two Election workers retrieve the  
15 absentee ballots from the central postal sorting facility,  
16 are they instructed to count the number of absentee  
17 ballots they retrieve?

18 A. No, they're not. They do confirm with USPS or  
19 United States Postal Service the total number of trays  
20 that they are picking up. This would be a tray of mail.

21 Q. Does the postal service put a certain number of  
22 ballots in each tray?

23 A. They do not.

24 Q. So some trays could have 50 more absentee ballots  
25 than another tray?

1 A. That is correct.

2 Q. Does the postal office provide King County with  
3 any log or report showing the number of absentee ballots  
4 they are handing over to the Election workers?

5 A. They do not provide that for us, no.

6 Q. And those two Election workers would create their  
7 own log or report when they retrieve it?

8 A. During the general election they did not create  
9 any log or report.

10 Q. Did Elections since then -- have they started  
11 doing that?

12 A. We have created a document that allows our postal  
13 pickup individuals to document their daily work. They do  
14 put a tray count, not a piece count, on this log or on  
15 this document and then also other information as they walk  
16 through the process.

17 Q. I may have misunderstood something you said.

18 For the November 2004 election, were the two  
19 individuals instructed to count the number of trays they  
20 received from postal services?

21 A. They are confirming with the United States Postal  
22 Service the number of trays they are receiving, and the  
23 United States Postal Service does maintain the log for our  
24 pickup of how many trays of mail we are picking up.

25 Q. What kind of vehicle do these two folks have?

1 Must be something fairly big.

2 A. For the general election it was a box truck or  
3 box van, yes. A fairly large-sized vehicle.

4 Q. How many scheduled pickups did they have each  
5 day?

6 A. Just one.

7 Q. Do you know roughly how many trays they would  
8 pick up at a given time?

9 A. I do not. It would vary day to day depending on  
10 returns.

11 Q. At peak time there could be dozens of trays?

12 A. Oh, certainly.

13 Q. Even more than that? Hundreds?

14 A. I hesitate to guess that it could be hundreds,  
15 but certainly on certain days.

16 Q. What were the names of the two people who did the  
17 pickup for the November 2004 election?

18 A. We had a number of staff do that. At this point  
19 I can't recall their names.

20 Q. It wasn't the same two people every day? It  
21 rotated through staff?

22 A. We tried to maintain consistently and certainly  
23 would send somebody new if somebody had been trained and  
24 been through the process before. But I cannot say for  
25 certainty that it was the same two individuals every day.

1 Q. Were they permanent staff?

2 A. Not necessarily. They could be our temporary  
3 staff with either permanent staff or could be two  
4 temporary staff people. We did hire some term-limited  
5 temporary individuals and they're benefited temporary  
6 positions. And at some point we had folks in that  
7 category participate in this process.

8 Q. Is permanent staff in the Elections Division part  
9 of the union?

10 A. I believe that some of the permanent staff within  
11 the Elections Division are parts of unions.

12 Q. Are temporary staff parts of unions?

13 A. It's my understanding that temporary staff  
14 paid -- depending on their position of course, could be  
15 part of -- could pay dues to a union. I'm not sure if --  
16 what that makes them.

17 MR. HAMILTON: Object to that question. Outside  
18 the bounds of relevant -- or evidence reasonably  
19 calculated to lead to the discovery of relevant issue.

20 BY MR. MAGUIRE:

21 Q. When the two individuals would pick up the trays  
22 of absentee ballots from the central postal sorting  
23 facility, what would they do with them next?

24 A. They would transport the trays to the sorting  
25 facility, which is the PSI facility.

1 Q. Where is the PSI facility?

2 A. It's in Kent, Washington.

3 Q. About how long would it take to get from the  
4 central sorting facility to the PSI facility?

5 A. That would vary depending on traffic of course.  
6 It could be anywhere from 25 minutes to up depending on  
7 traffic.

8 Q. Were the two workers instructed to go directly to  
9 PSI after they had picked up the absentee ballots from the  
10 central postal sorting facility?

11 A. Yes.

12 Q. They weren't permitted to make side trips or stop  
13 along the way?

14 A. It's my understanding that they were told to move  
15 directly from the postal facility to PSI.

16 Q. What happens when they arrive at PSI?

17 A. Once they arrive at PSI, they offload the mail  
18 that they picked up at the United States Postal Service.

19 Q. Are there political observers at PSI?

20 A. Typically, no.

21 Q. When the trays are offloaded from the trucks at  
22 PSI, do the two Election workers stay with them?

23 A. Yes. The two Election workers remain on site and  
24 observe the process of sorting ballots.

25 Q. Have you been to PSI's facility?

1 A. Yes, I have.

2 Q. Can you describe it.

3 A. It is a big warehouse with sorting equipment,  
4 mail sorting equipment. Very spacious, nicely organized.

5 Q. Is it a single open room, or are there  
6 enclosures?

7 A. They do have office space for their  
8 administrative staff, and the actual sorting machines are  
9 in a large warehouse space.

10 Q. After the trays are delivered by the two  
11 King County workers, what happens to the ballots first at  
12 PSI?

13 A. The ballots are sent down the postal service  
14 equipment, at which point the machine captures data from  
15 the bar code -- one of the bar codes on the outer absentee  
16 envelope, and then appropriately sorts it into a bin which  
17 would correspond to a legislative district.

18 Q. It's a mechanical process done by machines.

19 A. It is. Certainly the mail has to get onto the  
20 machine initially. But, yes, the machine does the  
21 sorting.

22 Q. And each bin is its own batch?

23 A. Not exactly. The mail is sorted into the bins.  
24 And as the bins fill up, an employee from PSI removes the  
25 ballots from that bin and trays it into mail trays.

1 Q. When a bin fills up, someone from PSI takes the  
2 ballots out and puts them in mail trays.

3 Do they divide them in any particular categories?

4 A. The trays are kept -- are numbered so that they  
5 know what particular bin that mail is associated with and  
6 which particular mail tray. If there were, like, four or  
7 five mail trays, which tray that was in order. So this  
8 would be the first tray of mail, then we trade off a bin  
9 No. 1 and then so on.

10 Q. At that stage in the sorting, is there a specific  
11 number of absentee ballot envelopes that are placed in  
12 each tray?

13 A. No. That number can vary as well.

14 Q. So at the end of the sort, PSI ends up with a  
15 series of trays containing absentee ballot envelopes still  
16 sealed and numbered all from the same bin.

17 A. Yes. If you could please clarify the numbered  
18 portion. I didn't --

19 Q. Maybe I can kind of diagram this out.

20 All the absentee ballots are put in the equipment  
21 machine that sorts them into various bins according to the  
22 legislative district, doesn't it?

23 A. That is correct.

24 Q. So there are many different bins.

25 A. That is correct.

1 Q. And then as each bin fills up, someone from PSI  
2 empties out those absentee ballot envelopes into mail  
3 trays; is that right?

4 A. That is correct.

5 Q. And the mail trays associated with the particular  
6 bin are numbered or identified in some way as relating to  
7 that particular bin.

8 A. That is correct.

9 Q. What's the next step in the process after the  
10 absentee ballot envelopes are in the bins?

11 A. The next step in the process is that individuals  
12 from PSI provide a data disk to a representative from  
13 Diebold, who's also a facility for them, to take that data  
14 disk and then create an individual file for each that  
15 relates to each tray of mail.

16 And I can describe that a little bit further, in  
17 that essentially the file they're getting from PSI is a  
18 long string of numbers, and they relate those numbers back  
19 to the AV ID and which tray each range of numbers is  
20 associated with. To do that there's an additional  
21 scanning of the trays of mail. You have to scan the first  
22 ballot in each tray and the last ballot, essentially  
23 telling them, Here's the chunk I'm looking at from the  
24 screen.

25 Q. Let's start with the PSI data disk.

1           Is that something that's manually created, or is  
2 that generated automatically when the ballots are sorted?

3           A.    The PSI data disk would be a data that's captured  
4 at the time the ballots are going down the sorting  
5 equipment, from the bar code.  And the process of  
6 producing a disk of course involves, you know, some manual  
7 activity, pushing buttons.  But the system is, you know,  
8 producing that data on it.

9           Q.    When you talked about scanning the first and the  
10 last ballot in the tray, when does that happen?

11          A.    Following the initial sort -- sorting equipment,  
12 a disk is produced that the PSI employees give to a  
13 Diebold representative.  And at that point they do the  
14 scanning of the first and last ballot in each tray.

15          Q.    Does the Diebold person do that or the PSI  
16 person?

17          A.    The Diebold employees and our two staff folks  
18 with them would simply bring them a tray of mail so they  
19 can expedite the process, facilitate the process.

20          Q.    What is the purpose of scanning the first and  
21 last envelope in a particular tray?

22          A.    My understanding is that the data disk that  
23 Diebold is getting from PSI is a long string -- one  
24 continuous string of numbers -- or potentially two or  
25 three files of long potentially string of numbers.  So the

1 purpose of scanning the first and last ballot in each tray  
2 is to identify a range within that long string of numbers  
3 that is associated with the particular tray of mail that  
4 you're scanning the first and last ballot from.

5 Q. Why does Diebold need that information?

6 A. The purpose of the process is to get a file at  
7 the end that is one file per tray of mail. Without the  
8 information on what is the first tray -- first ballot in  
9 that tray and the last ballot in that tray, you would not  
10 know which range of that large file to grab to associate  
11 with that tray of mail.

12 Q. I think I understand. The PSI disk will have  
13 AV ID information for every absentee ballot envelope in an  
14 entire bin.

15 A. And that is my understanding, that it could be  
16 one bin or it could be multiple bins.

17 Q. In fact, there's only one disk per day -- is that  
18 right? -- that comes out of this process?

19 A. The end result of the process is that we receive  
20 one disk that has multiple files on it, one file  
21 representing each tray of mail.

22 Q. Okay. So the Diebold scanning is just to break  
23 up the list that PSI has given, say which parts of the  
24 list belongs to which tray.

25 A. That is correct. That's the purpose of the

1 scanning portion.

2 Q. What does Diebold do next with these disks or the  
3 data?

4 A. There's really two parts to the process. There's  
5 the scanning of the trays to break out the range from that  
6 larger file that is associated with each tray. Prior to  
7 that, within the computer process, they actually relate  
8 the data that is captured on the PSI equipment to an  
9 AV ID. The data captured on the PSI equipment is not the  
10 AV ID. It's a number plus a source code so they have a  
11 program to relate that to an actual AV ID.

12 Q. That's a Diebold program?

13 A. It is something that they upgraded, yes.

14 Q. And it's a Diebold representative that actually  
15 performs the task of relating the PSI data to the AV ID?

16 A. That is correct.

17 Q. What happens next in the process?

18 A. Chronologically, I imagine -- and this is my best  
19 understanding of the process -- that the conversion of the  
20 data from the PSI data to the AV ID data is done first,  
21 then there is the scanning of the first and last bar code  
22 in each tray, because the bar code that PSI is scanning is  
23 now the three of nine bar code and not the USPS postal bar  
24 code. Once the scanning portion has been done, then  
25 Diebold runs a process to produce the individual files

1 that are put on tray CD.

2 Q. When you say "Diebold runs a process," what do  
3 you mean by that?

4 A. Within their program they have to somehow now  
5 relate the first and last ballot that they've scanned with  
6 the large single list of AV IDs that they've created. So  
7 it's a process that matches those up and then creates a  
8 text file, which they burn onto a CD with other text  
9 files, one for each tray of mail and provide us.

10 Q. Okay. So two King County Election workers go  
11 down to PSI's warehouse in Kent. And after Diebold has  
12 run its process, created files, text files, relating to  
13 each mail tray, what happens next?

14 A. The Diebold representative will give them the  
15 data disk that contains all those.

16 Q. Gives it to the two King County workers?

17 A. Two King County workers. They will load up all  
18 the mail that they delivered. And there they're being  
19 extremely careful at this point to keep those mail trays  
20 in the order of which they were sorted, because, again, to  
21 make goal of the sort the data captures. So when the  
22 verifiers are going through the tray, the signatures that  
23 they see in the system are in the same order in which the  
24 mail list is in the tray.

25 Q. Before leaving the PSI facility, do they count

1 the number of absentee ballot envelopes in each tray?

2 A. They do not count the number of ballots in each  
3 tray. They do a --

4 MR. PORTER: Wait. Object. The question's  
5 vague. Did you mean, do the King County employees count  
6 the number of ballots?

7 MR. MAGUIRE: Yes.

8 BY MR. MAGUIRE:

9 Q. Do the King County employees count the number of  
10 absentee envelopes in each tray?

11 A. They do not do a physical hand count, no, of  
12 absentee envelopes in each tray.

13 Q. Does anyone do a physical hand count?

14 A. No.

15 Q. Do you know whether they spot-check a few trays?

16 A. No. They would not do a spot-check of count or  
17 spot-check a tray. They do a thorough walk-through of the  
18 facility and the sorting machine that we were using to  
19 ensure that no mail has been left on the machine and make  
20 sure that they capture all of that -- all the mail that  
21 they brought to the facility with them.

22 Q. After they load the trays onto their box truck,  
23 take the CD from Diebold, what do they do next?

24 A. Then they're instructed to drive directly to our  
25 Mail Ballot Operations --

1 Q. Without detour or diversion?

2 A. The instructions that they've been given are not  
3 to do that, without detour or distraction or diversion.

4 Q. Did you have any reports of any frolics or  
5 detours?

6 A. I'm not sure that I have reports from the general  
7 election of frolics and detours.

8 Q. From other elections you have?

9 A. Certainly they've been doing this process for a  
10 long time and there have been an incident or two.

11 Q. Can you describe those incidents.

12 A. I could if you would like me to.

13 Q. I would very much like you to.

14 A. Well, we had an incident where an individual --

15 MR. PORTER: I'll ask you to be specific in time,  
16 relating to a particular election, if you could.

17 MR. EVEN: Thank you.

18 THE WITNESS: Okay. I'm actually not certain  
19 when this event occurred. But it was an individual  
20 that -- they did make a stop at a gas station or espresso  
21 stand on the way back to the Mail Ballot Operations  
22 Satellite and proceeded to back up and hit a light post.  
23 So that is --

24 MR. HAMILTON: Let me just interrupt and ask a  
25 clarification in time.

1 THE WITNESS: I believe this happened -- to the  
2 best of my knowledge, it happened in September.

3 BY MR. MAGUIRE:

4 Q. As part of the primary?

5 A. As part of the primary.

6 Q. Was the truck damaged in such a way that it had  
7 to stay at the espresso stand until help arrived?

8 A. No, the truck was not damaged.

9 Q. The light pole was damaged.

10 A. The light pole was damaged, and there was some  
11 additional damage.

12 Q. Additional damage to what?

13 A. There was a vehicle, I believe, that received  
14 some damage.

15 Q. About how long was the truck at the espresso  
16 stand?

17 A. I don't have a good estimate of the duration of  
18 time.

19 Q. Were there any other instances you recall of  
20 frolic and detour?

21 MR. PORTER: Object to the legal conclusion.

22 BY MR. MAGUIRE:

23 Q. Do you remember any other instances of  
24 individuals not proceeding directly from PSI to  
25 King County?

1           MR. HAMILTON: And I'll also object on the lesser  
2 point. The November 2004 General Election is beyond the  
3 scope of relevant information or information likely to  
4 lead to relevant information.

5           THE WITNESS: I don't recall any other instances  
6 where people had not proceeded directly to and from the  
7 facility.

8           BY MR. MAGUIRE:

9           Q. How about from the central mail sorting facility  
10 to PSI?

11          MR. PORTER: From the post office to PSI?

12          MR. MAGUIRE: Yes.

13          THE WITNESS: There has been an incident where on  
14 the way from the postal facility to PSI there was some  
15 delay in getting the ballots to the sorting facility.

16          BY MR. MAGUIRE:

17          Q. What was the delay caused by?

18          MR. HAMILTON: Can we ask for clarification on  
19 time frame.

20          MR. MAGUIRE: We'll get to that.

21          MR. HAMILTON: Thank you.

22          THE WITNESS: I'm not certain when this  
23 particular event occurred. It did occur during the fall.  
24 And I believe there was issues with the vehicle at that  
25 point -- mechanical issues with the truck they were using.

1 BY MR. MAGUIRE:

2 Q. Are there radios in the truck?

3 A. There are not. These are rental trucks.

4 Q. Are the workers provided with cell phones for the  
5 trip?

6 A. I'm not certain as to whether the workers during  
7 the fall were provided with cell phones.

8 Q. When we're talking about this in the fall, you're  
9 not sure whether it's the primary or the general election,  
10 but it's one of those?

11 A. I'm not certain. I couldn't say with certainty  
12 whether it was one or the other.

13 Q. But it was one of the two?

14 A. Yes. Not both.

15 Q. What happened with the vehicle problems?

16 A. To the best that I can recall, when our Mail  
17 Ballot Operations supervisor was informed of the vehicle  
18 problems, we sent out an additional vehicle to retrieve  
19 the mail and continue it through its process, its cycle.  
20 And there were two individuals that of course accompanied  
21 the mail through that process.

22 Q. How did the two individuals in the truck notify  
23 King County that they were having vehicle problems?

24 A. I believe that one of the individuals of the  
25 truck did have a cell phone. Whether it was issued by

1 King County or personal, I do not know.

2 Q. Do you remember where the vehicle had problems?

3 Was it en route, or was it at the post office?

4 A. It was en route, is my understanding.

5 Q. Somewhere between the post office and the PSI  
6 facility in Kent, the vehicle broke down?

7 A. To the best that I can recall. And I'm not sure  
8 what type of mechanical issue it had.

9 Q. Was it the mechanical issue that forced them to  
10 stop the vehicle?

11 A. Apparently so.

12 Q. Do you know about how long the vehicle was  
13 delayed?

14 A. I do not.

15 Q. Okay. Let's go back to the vehicle moving from  
16 PSI to King County.

17 If everything goes according to instruction, the  
18 two individuals take the ballots to the Mail Ballot  
19 Operations Satellite?

20 A. That is correct.

21 Q. What do they do when they get there?

22 A. When they get there they unload the mail and turn  
23 over the data disk to one of the supervisors, over to  
24 potentially the upload staff. The staff is doing the data  
25 upload.

1 Q. Do they get any help unloading, or is it just the  
2 two of them?

3 A. I can't say for certain what the process was,  
4 what happened each day during the election, but it would  
5 not surprise me if people did assist in that process.

6 Q. Do you know whether political party observers  
7 came outside and watched the unloading process?

8 A. I do not know for certain if that happened.

9 Q. Does it happen outside, or do they pull into a  
10 bay?

11 A. There are two options for the vehicle. They  
12 could pull into a bay and load it off the truck that way,  
13 or they could load it off the back of the truck with the  
14 liftgate down to ground level. We have a ground-level bay  
15 in which they can do that.

16 Q. Do you know which ones they used?

17 A. I do not know which one they used or which ones  
18 they used or if they were consistent in their choice of  
19 bay doors.

20 Q. When the trays of absentee ballots are unloaded  
21 from the trucks, where are they taken?

22 A. The trays would be taken to one of two places  
23 within the facility. They typically would go into the  
24 area that we've designated for verification, but they  
25 could potentially be taken to our ballot storage cage as

1 well.

2 Q. In what circumstances would they be taken to the  
3 ballot storage cage?

4 A. If space dictated that there was not room for  
5 them within our verification area or that they were not  
6 actively being processed at that time.

7 Q. Does anyone do a physical count of the number of  
8 absentee ballot envelopes in the trays when they arrive at  
9 MBOS?

10 A. No.

11 Q. What happens to the data disk?

12 A. The data disk is -- the data on the data disk is  
13 uploaded using utility in DIMS.

14 Q. Can that be done at any of the terminals, or is  
15 there a particular terminal set aside for this process?

16 A. Technically it can be done at any terminal  
17 that -- I should clarify. It needs to be done by a user  
18 that has access to that particular module within the  
19 Election Management Voter Registration System.

20 Q. Who were the people who had that access and were  
21 involved in the upload in DIMS?

22 A. I don't think that process was limited, but I  
23 think the key individuals that were doing that were  
24 individuals named Dan Grant and Sherry Madson. And I  
25 think I stated before that other individuals could do that

1 if they were trained on the process.

2 Q. Were you trained on the process?

3 A. I have been trained on the process, yes. I am  
4 confident that I could probably upload.

5 Q. Was Nicole Way?

6 A. Certainly she has the ability to do that.

7 Q. So in DIMS there's an absentee ballot module; is  
8 that right?

9 A. That is correct.

10 Q. And this data disk that reflects data from PSI  
11 that has been put together by Diebold is uploaded into the  
12 absentee module in DIMS.

13 A. It's uploaded using a different module. There's  
14 a utility known as the Wanda utility within DIMS.

15 Q. What does the Wanda utility do?

16 A. It reads in the data from those datafiles. And  
17 based on parameters set by the user at the time of the  
18 upload, assigns a return date and a batch number.

19 Q. Prior to the Wanda utility, these ballots didn't  
20 have batch numbers associated with them?

21 A. That is correct. I will clarify that the  
22 datafiles that we receive from Diebold are numbered  
23 sequentially. So in practice, it is common that the batch  
24 file or the datafile that you upload would potentially  
25 have the same batch number within the DIMS system. Is it

1 necessary? No. Was that always the case? To my  
2 knowledge it was. However, that could -- you might want  
3 to seek clarification from a Mail Ballot Operations  
4 supervisor.

5 Q. So the Wanda utility assigns a return date as  
6 well.

7 A. Yes.

8 Q. Is that the date that the absentee envelopes  
9 arrive at MBOS?

10 A. That date can be assigned by the user, but  
11 typically, yes, it would be the date that they arrive at  
12 MBOS. It defaults to the current date when you open up  
13 the utility.

14 Q. Were individuals instructed to use any different  
15 date?

16 A. No. Different than the date that it arrives?

17 Q. At MBOS.

18 A. At MBOS, yes.

19 Q. So once Wanda assigns a return date and batch  
20 number, what happens to the data?

21 A. Are you asking about the data disk or --

22 Q. You tell me. Wanda creates something when it's  
23 done? The utility creates something?

24 A. The Wanda utility, from my understanding, is that  
25 it reads in the data from the text file. And, again, that

1 data is the AV IDs associated with the ballots in that  
2 particular tray. It goes to the record for that AV ID and  
3 assigns a batch number and a return date. It reads itself  
4 through the entire file that you've selected. The Wanda  
5 utility produces a report at that point and also takes  
6 that file that you've uploaded and renames and saves it to  
7 a drive.

8 Q. At some point is that information transferred  
9 into the absentee ballot module itself?

10 A. The absentee ballot module is essentially a set  
11 of forms and processes with which you can access the  
12 absentee data. And the Wanda utility is going into the  
13 absentee data and assigning those batch numbers and dates.  
14 So upon upload, that data is essentially in the database.  
15 The absentee module simply lets you see that data.

16 Q. When the Wanda utility assigns a batch number,  
17 does somebody identify that batch number and put a label  
18 on the physical trays of ballots with the batch number  
19 listed?

20 A. Each batched ballots, once the upload process is  
21 complete, receives a batch slip, and that details what  
22 batch it is and the initial count at the time of upload.  
23 And that batch then goes in the tray of mail. So when the  
24 verifier picks it up, they know that it's batch 22 or 23  
25 or whatever batch it happens to be.

1 Q. Earlier, in talking with Mr. Hamilton, you talked  
2 about ballots that were initially rejected by the DIMS  
3 system after the upload.

4 A. That is correct.

5 Q. The number that is the original count, that's  
6 part of the upload that you were just talking about?

7 A. Right.

8 Q. Is that before the DIMS rejections?

9 A. The number that is written on the batch slip --  
10 in practice, the way the process is set up should include  
11 the Wanda rejects. So it should include everything that's  
12 in that tray.

13 Q. So it could account for the physical number of  
14 ballots regardless of whether they're valid or not.

15 A. Right. It should include the Wanda rejects.

16 Q. Okay.

17 A. And I guess I'd like to clarify that that is a  
18 handwritten number by the user that's uploading.

19 MR. PORTER: Can we take five?

20 MR. MAGUIRE: Sure. Let's go off the record.

21 (Whereupon, a short recess was taken, after which  
22 a correspondence from the Office of the Prosecuting  
23 Attorney, dated April 15, 2005, was marked as Exhibit-6  
24 for identification.)

25 BY MR. MAGUIRE:

1 Q. Mr. Fell, the court reporter has handed you a  
2 document marked as Exhibit 6.

3 A. That is correct.

4 Q. First page of this exhibit is a cover letter from  
5 Mr. Porter to Mr. Hamilton, Mr. Ahearne, and to me, base  
6 No. B/King 004767. Mr. Porter's letter indicates that  
7 he's enclosing two data disks containing information  
8 relating to absentee ballot tracking, along with some  
9 other documents.

10 The second page of the exhibit is a photocopy of  
11 one of the data disks that I received with this letter.  
12 It's entitled Batch Information Summary, April 13, 4/13.  
13 The next section of Exhibit 1 are screen prints of some of  
14 the information contained on that data disk.

15 Do you recognize any of these?

16 A. Certainly.

17 Q. What are they?

18 A. There are two Excel spreadsheets and a file that  
19 says November data disks. Once you go in to November data  
20 disks, it appears there are folders, one for each date, a  
21 particular date. And then it appears that you file under  
22 a particular date, 11/03/04. Then we have the text files,  
23 and these appear to be batch text files that we would have  
24 received from Diebold/PSI.

25 Q. This is before the upload?

1 A. This is before the upload.

2 Q. Batch No. 1794, printed-up text file.

3 Does that look like a typical datafile provided  
4 by PSI to Diebold?

5 A. The format is typical to what I have seen.

6 Q. Are these lists of AV ID numbers?

7 A. That is correct.

8 Q. On the page marked B/King 004650cd.6 there are  
9 some lines on the batch file that have quotation marks but  
10 no numbers in them.

11 Do you see those?

12 A. Yeah, I see those.

13 Q. What's the significance of those entries?

14 A. It is my understanding that those entries  
15 represent potentially places within the tray and an  
16 envelope specifically within the tray where the bar code  
17 was captured by the sorting machine, but they were unable  
18 to make an association within the Diebold process with the  
19 particular AV ID.

20 Q. So that could be an e-mail ballot or a fax  
21 ballot?

22 A. Unlikely.

23 Q. Why is that?

24 A. Those ballots -- when we run the mail down the  
25 sorting machine, if it does not have a bar code, that mail

1 should be rejected off the machine and kind of side stack.  
2 This could represent a ballot in which -- which is in the  
3 tray but for which the AV ID associated with that ballot  
4 they were unable to make the association.

5 Q. Under what circumstances would they be unable to  
6 make an association with an AV ID number?

7 A. If there was a misread on the machine.

8 Q. Any other circumstances?

9 A. There is the potential also if the AV ID or the  
10 data that PSI captured, if there's not a corresponding  
11 AV ID in the program that Diebold has, be it that  
12 there's -- the AV ID isn't tabulated in their conversion  
13 table, this could occur when we produce additional  
14 mailings. We have the ability to print the outer reply  
15 envelope in-house, and we can print them with a postal  
16 code. That would be sortable by the PSI equipment.  
17 However, Diebold would not necessarily have the AV ID if  
18 they had not updated their conversion table since our  
19 initial mailing.

20 Q. How frequently did Diebold update their  
21 conversion table?

22 A. It's my understanding they try to update it  
23 daily. However, that is a process that is sort of in  
24 their hands to update. It's not something I'm privy to  
25 how that process works.

1 Q. You don't know how they get the updated  
2 information?

3 A. I do know where they get the updated information  
4 from. They would get it from -- the process in which we  
5 print these envelopes with the postal bar codes is a  
6 process called the remote, in which we upload data to a  
7 secure website, and it's a process that's set up by  
8 Diebold to allow us to print the postal bar codes and  
9 voter information on envelopes. When we upload to that  
10 site, they can use the data we've uploaded with these new  
11 additional AV IDs of voters that are now in the election  
12 and take that data to upload their -- or update their  
13 sorting processing data capture program.

14 Q. Okay. So we've identified two situations that  
15 would cause the missing AV ID number. One is a misread on  
16 the machine.

17 Which machine were you talking about?

18 A. I'm talking about the PSI postal sorting machine.

19 Q. Then the second category is where Diebold might  
20 not have the updated information about mailings at the  
21 Elections offices sent out recently and produced  
22 themselves; is that right?

23 A. I'll give you credit for that answer, but I want  
24 to clarify that.

25 Q. We'll talk about crediting in a little bit.

1           MR. HAMILTON: We'll object to that part of the  
2 discussion.

3           THE WITNESS: I'd clarify that they don't have --  
4 they're creating a conversion table, and they don't have  
5 the AV IDs for these new voters that we're sending ballots  
6 to.

7           BY MR. MAGUIRE:

8           Q. Okay. But these quotation marks with blanks in  
9 them represent real ballots that existed in the trays.

10          A. That is the impression I've been -- that I  
11 understand from talking with our vendor, yes.

12          Q. So when this information is uploaded, is there  
13 any consequence of not having an AV ID number attached to  
14 a particular ballot?

15          A. There is a consequence in the sense that that  
16 ballot does not get automatically included in the upload  
17 process. It's in the tray, but there is no AV ID to  
18 associate the batch and return date with.

19          Q. So when they verify or get to one of these  
20 ballots in the tray, they're not able to pull it up on  
21 their system?

22          A. Again, the images are coming up in groups of  
23 four. So if there's a blank within -- if they're unable  
24 to update an AV ID for that particular ballot, you would  
25 have an extra ballot in the tray; that when you're looking

1 at the system, it would appear that a ballot was skipped.  
2 You'd have a signature for one envelope. You'd have an  
3 envelope in there without a signature, and it would go  
4 immediately to the next envelope behind.

5 Q. So what should the verifier do when that happens?

6 A. That ballot is pulled out and is designated as an  
7 extra in a sense that it was an extra ballot in the batch.  
8 They check to make sure when they pull out that ballot  
9 that it's not one of their Wanda rejects, because those  
10 could also be in the batch. It wouldn't appear on the  
11 screen.

12 Q. What happens to the extra after it's taken out?

13 A. The extras will be put in in-house batches.  
14 In-house batches are the ones that we create by hand  
15 scanning the AV IDs off of the three of nine bar code on  
16 the outer reply envelope.

17 Q. Okay. Back on Exhibit 1, the text file that's  
18 printed out for batch 1794 --

19 MR. HAMILTON: You mean Exhibit 6?

20 MR. MAGUIRE: I'm sorry. Exhibit 6. You're  
21 right.

22 BY MR. MAGUIRE:

23 Q. The text file printed out for 1794, assuming  
24 that's a complete printout of the text file, we could  
25 determine the number of ballot envelopes in that batch by

1 counting each set of quotation marks in each line?

2 A. You can use the data in this file to determine  
3 the number of ballots that should be in that batch.

4 Granted, again, it is a piece of equipment. There's a  
5 potential that there may be an extra batch because of the  
6 sorting process and two ballots got stuck together.

7 MR. EVEN: An extra ballot?

8 THE WITNESS: Yes. I apologize. An extra ballot  
9 in that batch.

10 BY MR. MAGUIRE:

11 Q. So aside from -- go ahead. Sorry.

12 A. I guess aside from -- aside from any equipment  
13 anomalies, certainly you could go in and get a good  
14 estimate of the number that should be in there, fairly  
15 confident number within that batch.

16 Q. Each line on this printout represents a different  
17 ballot?

18 A. Yes. When everything's working perfectly, that's  
19 how it would work.

20 Q. So if we added up the number of lines in a  
21 particular -- one of these text files, that would tell us,  
22 if everything worked properly, the number of absentee  
23 ballot envelopes in that particular batch as received from  
24 PSI.

25 A. Yes. At this point I can't think of any reason

1 there should be a ballot in that batch that would not be  
2 represented by a line in that field.

3 (Whereupon, a photocopy of batch slips was marked  
4 as Exhibit-7 for identification.)

5 Q. Mr. Fell, the court reporter has handed you a  
6 document marked Exhibit 7, base No. RC 106316 through  
7 -319.

8 These are photocopies of some batch slips; is  
9 that right?

10 A. That is correct.

11 Q. I'm trying to understand how in the process  
12 Election workers get from the text file in Exhibit 6 to  
13 the batch slip on Exhibit 7.

14 The first number, according to the top left-hand  
15 corner of Exhibit 7, is the batch number itself. Is that  
16 right?

17 A. That is correct.

18 Q. And that's something that is written by whom?

19 A. That would be written by the person doing the  
20 upload of the data disk.

21 Q. And does that same person write down the original  
22 count number on the batch slip?

23 A. They would write down the original count number  
24 as well, yes.

25 Q. And where do they get that number?

1           A.    They get that number from a report that is  
2 printed off at the time the file is uploaded in the  
3 system.

4           Q.    Is that a report printed out or just on the  
5 screen?

6           A.    It first comes to the screen, and our process  
7 dictates that the user -- the person doing the upload  
8 prints out two copies of that report, one copy to be  
9 placed with the batch that goes with the tray of mail for  
10 the verifier and one copy of the report as an additional  
11 backup and something we can refer to as that proceeds  
12 through the process.

13          Q.    I don't have the batch number -- or batch slip  
14 for the same batch as identified in Exhibit 6.  But if I  
15 did and I counted the number of lines in the text file in  
16 Exhibit 6 for that batch, the number of lines in the text  
17 file should match the original count number on the batch  
18 slip?

19          A.    Not necessarily.

20          Q.    What circumstances wouldn't it?

21          A.    The batch that we have in Exhibit 6, I think,  
22 includes those blank ellipses, and those, when you're  
23 uploading into the system, would not be recognized as an  
24 AV ID.  I'm uncertain as to whether or not they'd be  
25 recognized as a Wanda reject or simply be included in the

1 tray as an extra ballot.

2 Q. Are Wanda rejects included in the original count  
3 of batch slips?

4 A. It's my understanding that Wanda rejects would be  
5 included.

6 Q. But extras are not?

7 A. But extras are not.

8 Q. That's because extras will end up in a different  
9 batch?

10 A. That's because extras were not recognized by the  
11 system on the initial uploading, yes. They will be  
12 included in an in-house batch.

13 Q. So if we took the text file for a particular  
14 batch, added up all the lines, subtracted the number that  
15 were just blank quotations marks that didn't have AV ID  
16 numbers, that number should match the original count on  
17 the batch slip?

18 MR. HAMILTON: Objection. Lack of foundation. I  
19 think the witness testified he wasn't sure.

20 THE WITNESS: Again, I'm uncertain how those  
21 blank lines would be, if they'd be Wanda rejects or just  
22 extra ballots in the system so --

23 BY MR. MAGUIRE:

24 Q. You've been trained in uploading; right?

25 A. I have been trained in the upload process.

1 Q. And you are familiar with batch slips.

2 A. I am familiar with batch slips, yes.

3 Q. But you're unsure whether the blank quotation  
4 marks in the upload file are Wanda rejects which would be  
5 reflected on the batch slip's original count number?

6 A. Right.

7 Q. Who would know?

8 A. Our DIMS administrators might know the answer to  
9 that.

10 Q. Do you think Nicole Way would know?

11 A. Potentially.

12 Q. Other than Wanda rejects and extras, are there  
13 any other categories of ballots that would be reflected in  
14 the upload file and not reflected in the original count  
15 file -- original count on the batch slip?

16 A. To my knowledge, no.

17 Q. And on the batch slip, the number rejected, is  
18 that something that's also recorded by the person doing  
19 the upload?

20 A. No, that is not. That is something that's  
21 recorded by the verifier.

22 Q. Earlier you talked about a few categories of  
23 ballots that are rejected by DIMS during the initial  
24 upload, I believe.

25 Where is it after the initial upload?

1 A. There are both potentials.

2 Q. You talked about suspend and reissue, AV ID can't  
3 be read, and registration's canceled.

4 A. That is correct. Those would be potential Wanda  
5 rejects rejected by the system at the time of the upload.

6 Q. And you're not sure whether Wanda reject  
7 information is reflected on the batch slip?

8 A. It is my understanding that the number they --  
9 that the process was to put down the number of Wanda  
10 rejects and the number is --

11 Q. Okay.

12 MR. MAGUIRE: Let's go off the record for a  
13 second.

14 (Whereupon, a short recess was taken, after which  
15 a Chapter 7 - Envelope Signature Verification was marked  
16 as Exhibit-8 for identification.)

17 BY MR. MAGUIRE:

18 Q. Mr. Fell, the court reporter has just handed you  
19 a document marked as Exhibit 8. It's two chapters from  
20 the DIMS-Net Guide; is that right? Chapter 7 - Envelope  
21 Signature Verification, and Chapter 8, PSI Disk Upload  
22 Process?

23 A. That is correct. It appears -- yes. Part of  
24 chapter 9 is --

25 Q. Chapters 7, 8, and 9 -- they're part of the

1 document.

2 A. Yes.

3 Q. If you could turn to the beginning of Chapter 8  
4 which is base No. 3636. That would be the B/King number.

5 This chapter is entitled PSI Disk Upload Process;  
6 is that right?

7 A. That is correct.

8 Q. Is this the description of the process of  
9 uploading the information from the PSI disk into the Wanda  
10 utility?

11 A. That is correct.

12 Q. And the report you referred to, that was not the  
13 Wanda Errors Report, was it?

14 A. That is the name of the report, yes, that I was  
15 referring to when I said that we produce a report upon  
16 uploading each batch.

17 Q. So that information in Chapter 8 actually  
18 occurs -- or the process described in Chapter 8 -- prior  
19 to the Envelope Signature Verification process, Chapter 7?

20 A. That is correct.

21 Q. Let's talk about the verification process.

22 This morning you indicated that approximately  
23 20 people were involved in the verification process in the  
24 November election; is that right?

25 A. Yes. Twenty verifiers, probably some supports as

1 well, supervisors and people generally assisting in the  
2 movement of materials.

3 Q. You're one of the people who trains those  
4 individuals?

5 A. I am not.

6 Q. Who did?

7 A. The training portion of the signature  
8 verification fell to Nicole Way, Mail Ballot Operations  
9 Satellite supervisor, and her staff. I believe that she  
10 also received assistance from one of our temporary  
11 employees who did some work as a term-limited temporary,  
12 again, temporary employee in the transition for the  
13 project that brought on the new system through Election  
14 Management Registration System.

15 Q. You're familiar with the signature verification  
16 process?

17 A. I'm familiar with the process, yes.

18 Q. After the upload of the PSI data into the Wanda  
19 utility, a report is printed and the individual doing the  
20 upload begins to record numbers on a batch slip for that  
21 particular batch; is that right?

22 A. Right. The individual doing the upload does fill  
23 out the initial data on the batch slip, that being the  
24 batch number and the original count.

25 Q. And would that person take the batch slip to the

1 trays of ballots?

2 A. Yes. That individual would take the batch slip  
3 and put it into the tray of mail that corresponds to that  
4 batch they uploaded.

5 Q. And what happens to that tray of ballots next?

6 A. Then that tray of ballots -- in addition to the  
7 batch of tray of mail, they'd also put a copy of the  
8 report that's produced at the time of upload. That's the  
9 Wanda Errors Report. Then they put that in the batch of  
10 tray of mail as well. Then that batch is essentially  
11 ready to begin the verification process. So it's staged  
12 with trays of mail that are ready to be verified.

13 Q. How does it -- or where is it stored in MBOS?

14 A. If mail is actively being processed, it may be in  
15 the same area as the verifiers. All mail, when not  
16 actively being processed at the end of the day, is secured  
17 in kind of our ballot cage portion of our facility.

18 Q. When a verifier retrieves a new batch, do they  
19 complete a sign-out sheet along the lines of what's on the  
20 first page of Exhibit 8?

21 A. I believe there was a sign-out sheet in November  
22 that they were completing, yes.

23 Q. And they'd take the tray of ballots, the batch  
24 slip, and the Wanda reject report back to their computer  
25 terminal?

1 A. That is correct.

2 Q. The second page of Exhibit 8, at the top it says,  
3 The batch slip is a three-paged multicolored, white,  
4 yellow, pink, slip in the front of your batch. Is that  
5 correct?

6 A. Yes, it's a three-part form.

7 Q. So it would be, Exhibit 7, if this wasn't in  
8 black and white, we'd see different colors?

9 A. No, you would not see different colors. You  
10 would see the top color of three parts. So it's  
11 essentially a carbonless three-part form. They could be  
12 separated on the top. The top portion would -- any  
13 writing on the top portion would be transmitted to the  
14 pieces or pages underneath.

15 Q. It's a form in triplicate. You fill out the top  
16 page, it records the information on the second and third  
17 pages as well.

18 A. That is correct.

19 Q. Then the verifier logs into the DIMSNET system?

20 A. That is correct.

21 Q. It indicates that it selects the dropdown for  
22 absentee ballots.

23 A. Yes. They select under the Elections menu the  
24 absentee voter ballots.

25 Q. Then they click on change AVs by AV ID number?

1           A.    Yes.  This is describing one way to start the  
2 verification process.  There is another method that you  
3 can use, but this is the quickest and simplest way to get  
4 to verifying a batch.

5           Q.    What's the other way?

6           A.    The other way is you go to menu AVs and search  
7 for the first ballot in the batch by the voter data on the  
8 envelope and, I believe --

9           Q.    Step 7-5?

10          A.    You'll essentially come into the process at step  
11 7-6.  You'll be pulling the same information.

12          Q.    So the verifier determines, by looking at the  
13 ballot envelope, the AV ID number of the first envelope?

14          A.    That is correct.

15          Q.    And they type in that number into their computer?

16          A.    Yes.  That's correct.

17          Q.    And that would bring up the batch.

18          A.    That brings up the first voter in that batch and  
19 detailed information about the first voter in that batch.  
20 And that's assuming they do pick the first envelope in the  
21 batch.  If you chose an envelope within the middle of the  
22 tray and started data work on the AV ID, you will be  
23 pulling up in the system that voter.

24          Q.    Start with the first envelope in the batch, I  
25 assume.

1 A. That is correct.

2 Q. After typing the AV ID number, the voter  
3 registration record for that individual appears on the  
4 screen?

5 A. It's the absentee record for that individual.

6 Q. So it's in a different module than the  
7 registration information?

8 A. Right.

9 Q. But it contains the voter ID number, the number  
10 of ballots issued, the date it was issued, the category of  
11 the voter, the manner in which the ballot was issued and  
12 manner in which it was returned and the return date?

13 A. That information is on the screen, yes.

14 Q. And the signature from the original voter  
15 registration.

16 A. That is correct. I would say the signature that  
17 we captured. Whether or not that's the original  
18 registration or a subsequent registration would depend.

19 Q. Signature found on the voter registration card.

20 A. Correct.

21 Q. And four signatures appear at a time?

22 A. Yes. The next step, once they have that first  
23 record, would be to click the view batch. It's one of the  
24 buttons that's kind of gray at the bottom of the form  
25 there. And that would pull up the batch and the -- for

1 the time VU.

2 Q. The person, then, checks the signature. And if  
3 the voter's signature is outside the view bold clipped  
4 area, in some instances they may be able to view the  
5 voter's registration form; is that right?

6 A. That is correct. They have the ability within  
7 DIMS to view the original record.

8 Q. That will pull up the entire voter registration  
9 card, not just the signature section?

10 A. It depends on what was captured at the time.  
11 There are -- the majority of our signatures will probably  
12 be just the clipped image, because that's what was  
13 captured in the old system, not the entire --

14 Q. So since moving to the new system, King County  
15 started imaging the entire registration card?

16 A. Yes. And then a clip of that is taken, which  
17 appears in the windows here.

18 Q. If the signature on the envelope does not match  
19 the signature on the voter registration image, the person  
20 uses a dropdown menu to enter a challenge code; is that  
21 right?

22 A. That is correct.

23 Q. Those challenge codes are listed in Exhibit 8,  
24 from pages B/King -3627 through -3632?

25 MR. HAMILTON: Which pages, Counsel?

1 MR. MAGUIRE: -3627 through -3632.

2 THE WITNESS: That is correct. There is the  
3 potential that there are additional challenge codes within  
4 that dropdown. If the system came -- in converting to the  
5 system, some challenge codes were pretty loaded. I don't  
6 know if this encompasses every challenge code that was  
7 available to the verifier.

8 BY MR. MAGUIRE:

9 Q. They include signature mismatches?

10 A. Yes.

11 Q. Signature that bears no similarity to the  
12 original signature on file, but it's the same name of the  
13 voter in question.

14 A. That is the description of the challenge code  
15 area, yes.

16 Q. Is that how King County used the challenge code?

17 A. There was the three points of similarity process  
18 that was implemented, in that the verifier would attempt  
19 to find three points of similarity between the signature  
20 on file and the signature on the ballot. The description  
21 here says no similarity. There could be a point of  
22 similarity but not three points of similarity.

23 Q. Did King County use the X-SIG, the cross  
24 signature, to challenge codes to indicate that someone had  
25 signed the ballot envelope other than the individual

1 listed in the voter registration?

2 A. That is correct.

3 Q. Then there's a challenge code for NSOF, no  
4 signature on file; is that correct?

5 A. That is correct.

6 Q. King County used that challenge code in the  
7 November election?

8 A. We did use that challenge code.

9 Q. There's also a challenge code for a name change,  
10 where a person assigned a different name doesn't match  
11 what's in the original registration?

12 A. That is correct.

13 Q. King County used that challenge code in the  
14 election?

15 A. That is correct.

16 Q. And challenge code for no signature at all on the  
17 ballot?

18 A. That is correct.

19 Q. Some ballots were sent back without signatures?

20 A. Yes. In every election we receive some ballots  
21 back where the voter does not sign.

22 Q. Is there a challenge code for deceased?

23 A. There is a challenge code for deceased.

24 Q. And that challenge code is used when?

25 A. We will receive envelopes back, where somebody

1 will write "deceased" in the signature line and cross out  
2 the voter information. And sometimes there may be no  
3 ballot in the envelope. You can sense that by the  
4 thickness. But these would be coded in the system as  
5 deceased. But we actually got a return envelope  
6 associated with that voter, but it's been indicated that  
7 that voter has passed away.

8 Q. Is one of the challenge codes no AV ID?

9 A. There is no challenge code within DIMS that is no  
10 AV ID.

11 Q. On Exhibit 8, on page -3632, step 7-101, there  
12 are a couple of boxes for no AV ID.

13 But there's not a challenge code within DIMS?

14 A. That is correct. I believe what's trying to be  
15 represented here is the Wanda reject ballots and the need  
16 to pull those out. They are challenged. That is  
17 indicated on the ballot itself when it is pulled, but it  
18 is not reflected in the system because the Wanda rejects  
19 of course don't get uploaded and associated with the  
20 batch.

21 Q. Somebody handwrites on the ballot envelope no  
22 AV ID?

23 A. Whenever we challenge an envelope, the verifier  
24 puts the batch number in which that envelope is associated  
25 with, their initials, and the particular challenge code or

1 reason they are challenging that envelope.

2 Q. They put it both in DIMS and write it on the  
3 envelope?

4 A. In DIMS, if possible, and write it on the  
5 envelope, yes.

6 Q. One of the other challenge codes is NIB for not  
7 in batch; is that right?

8 A. That is correct.

9 Q. And that is used when a voter is showing on the  
10 computer that is in the batch you're verifying but the  
11 actual physical ballot is not in the batch.

12 A. That is correct.

13 Q. If the verifier does not enter a challenge  
14 code -- let's back up.

15 After the person has gone through their entire  
16 batch, a pop-up window appears and says congratulations;  
17 is that right?

18 A. That is correct. An encouraging message does pop  
19 up.

20 Q. And that indicates you're done with your batch.

21 A. That indicates that you've gotten to the last  
22 page and completed the signature verification portion  
23 there.

24 Q. What happens next?

25 A. The process at that point is -- again, while

1 they're going through the batch, voters are pulling out,  
2 removing ballots that they've challenged. They're pulling  
3 out the extras that we talked about earlier and the Wanda  
4 rejects. They account for their Wanda rejects on the  
5 initial challenge report that they've been given, that  
6 Wanda Errors Report that's produced at the time of the  
7 upload. They bundle all their challenges together, with a  
8 copy of that report, and it's placed at the front of the  
9 batch so that the next group that comes through, the  
10 second set of eyes, has all those challenges in one place  
11 that they can look at. They also fill out the information  
12 on the batch slip. At that point they're putting their  
13 name and the date. We do have occasionally sometimes that  
14 they're putting down as well start and stop. And they're  
15 noting the rejects -- or the total number of rejects that  
16 they pulled from that batch.

17 Q. And where do they come up with that number? Is  
18 it a physical count?

19 A. That would be a physical count based on what they  
20 have in their hand.

21 Q. So that should match the number of ballots that  
22 received challenge codes in DIMS.

23 A. Yes. And potentially with the Wanda rejects as  
24 well.

25 Q. Okay. And then the number accepted on the batch

1 slip is recorded by the verifier as well?

2 A. That is correct.

3 Q. Is that simply subtracting the number rejected  
4 from the original count?

5 A. Yes, that would be the math.

6 Q. Is it a report that they do the math?

7 A. They do the math.

8 Q. Does the verifier do a physical count of the  
9 number of accepted ballots?

10 A. They do not do a physical count of the number of  
11 accepted ballots.

12 MR. HAMILTON: I'm sorry. Could you repeat the  
13 answer, please. They do not?

14 THE WITNESS: They do not.

15 BY MR. MAGUIRE:

16 Q. If a challenge code isn't entered for an absentee  
17 ballot during the signature verification process, the  
18 individual is credited with having voted by absentee?

19 A. The individual's AV record is credited with being  
20 verified. The actual crediting of voter and applying that  
21 to the voter record is a process, I believe, that is done  
22 after the election, and applying that data from the AV  
23 module to the voter record.

24 Q. They're credited with having returned the  
25 absentee, then.

1           A.    They're credited with having returned and that  
2    there is a flag within the system that says they've been  
3    verified.  I think on page B/King 003622 you can see  
4    there's a box on the right-hand side of the screen print  
5    that says verified.  That box will be checked once the  
6    signature has been verified.

7           Q.    And is that something that the teams doing the  
8    provisional ballots will know about when they go through  
9    the verification of provisional ballots?

10           MR. HAMILTON:  Objection.  Lack of foundation.

11           THE WITNESS:  The data is in the system.  I'm not  
12    certain as to the process that the provisional ballot  
13    teams were going through.

14           BY MR. MAGUIRE:

15           Q.    Is it within the entire DIMS system, or is it  
16    compartmentalized in a particular module?

17           A.    I'm not familiar enough with the provisional  
18    ballot module or portion of DIMS to say if there is a  
19    verified button that reflects data within the absentee  
20    module.

21           Q.    Okay.  Are the ballots that receive challenge  
22    codes ballots for which people are credited with having  
23    returned ballots?  Does that make sense?

24           A.    That makes sense, yes.  My understanding is that  
25    when we applied credit for voting to individuals' voter

1 registration records, that if you had a challenge code,  
2 you were not credited with voting.

3 Q. So that's the process after the election, you're  
4 talking about?

5 A. Yes.

6 Q. How about the other process you described, where  
7 someone is identified as having returned a ballot?

8 MR. PORTER: Object. It doesn't sound like a  
9 complete question to me, Rob.

10 BY MR. MAGUIRE:

11 Q. Sure. I think you said that ballots that  
12 receive -- do not receive challenge codes, those  
13 individuals are flagged somewhere in the system as having  
14 returned their absentee ballots. Is that right?

15 A. That is correct. Again, if you look at the page,  
16 there will be a return date. And once the signature is  
17 verified, the verified box is checked. That's done  
18 automatically by the system when you're in the four-up  
19 mode. And once you leave that page of those screens, it  
20 checks automatically the verified button for those records  
21 or, more accurately, populates the field in a table and  
22 says that that voter's been verified.

23 Q. But the individuals who receive challenge codes  
24 on their ballots, do they still have a return date?

25 A. They still have a return date, yes.

1 Q. They just don't have it verified.

2 A. They do not.

3 Q. Unless later down the road they're verified.

4 A. If they are verified, the challenge code would be  
5 removed. So if we are able to verify that their signature  
6 matches, their challenge code would be removed. If they  
7 have a challenge code, they should not have a verified  
8 check in that box. The system is such that it allows for  
9 both the user to go into the record right there and put  
10 both a check and a challenge code.

11 Q. And when the verifier finishes a batch,  
12 congratulations window, reassuring message pops up, person  
13 clicks okay on it, do they have to do anything else to  
14 complete that batch in the computer?

15 A. No. At that point, once they click that okay,  
16 the batch should have -- they have fully verified that  
17 batch.

18 Q. They don't need to go to a file tree and click on  
19 the folder containing that batch and drag it somewhere  
20 else?

21 A. No.

22 Q. Are individuals who return federal write-in  
23 absentee ballots included in the DIMS system?

24 A. I'd start by saying that an individual can return  
25 a federal write-in ballot and also return a regular

1 absentee ballot. So if they have returned a regular  
2 absentee ballot, they would be in the system. There are  
3 certain voters that -- they return a federal write-in  
4 ballot, that's their only ballot, they would not  
5 necessarily be in the system.

6 Q. What happens to their ballots in the verification  
7 process?

8 A. If there's not a voter record within the system,  
9 there's nothing within DIMS to track that we received a  
10 ballot from this person a federal write-in ballot. My  
11 understanding is that the ballots themselves -- the  
12 information on the federal write-in ballot was accurately  
13 documented, and they signed the oath, that that serves as  
14 an application for that one election, and their ballot is  
15 to be counted.

16 Q. Are the number of federal write-in ballots  
17 returned to King County recorded anywhere?

18 A. I believe at some point during the time --  
19 beginning of the -- the start of the general election to  
20 now, there has been a hand count of federal write-in  
21 ballots.

22 Q. Do you know how many were returned in the  
23 November 2004 election?

24 A. I do not have that number off the top of my head.

25 Q. What's the best document for us to look at to

1 find that number?

2 A. There was a fact sheet provided, I believe, by  
3 the Records, Elections and Licensing Services Division  
4 following the election sometime in January that has some  
5 numbers. Whether or not those are the best numbers --

6 Q. You're not sure if the fact sheet is accurate?

7 A. At this point I can't recall where those numbers  
8 were derived from.

9 (Whereupon, a Fact Sheet was marked as Exhibit-9  
10 for identification.)

11 Q. The court reporter has handed you a document  
12 that's marked as Exhibit 9.

13 Is this January 5, 2005, fact sheet what you were  
14 just referring to?

15 A. This is, yes, the fact sheet.

16 Q. The second page of this exhibit indicates the  
17 number of federal write-in ballots received as 1,342; is  
18 that right?

19 A. That's what the fact sheet says, yes.

20 Q. And 1,081 were validated and counted; is that  
21 right?

22 A. That's what the fact sheet says.

23 Q. But you don't know whether it's accurate.

24 A. I do not know whether or not -- whether that's  
25 accurate or not.

1 Q. Who would know?

2 A. I think the person that created the document  
3 would know where they received the numbers from, and the  
4 person that provided those numbers would know if they were  
5 accurate. Who those individuals are, I'm not 100 percent  
6 certain.

7 Q. The return of federal write-in ballots is within  
8 your area of responsibility; correct?

9 A. That is correct.

10 Q. But you're not sure who accounted for the number?

11 A. Although it is within my area of responsibility,  
12 it is not -- although it's an area -- within an area of my  
13 responsibility, it would not be unimaginable -- out of the  
14 ordinary that in retrieving information regarding federal  
15 write-ins or any of these categories, that staff superiors  
16 of mine might go to subordinate staff and I might not know  
17 about that.

18 Q. Mr. Huennekens or Mr. Logan might have talked to  
19 someone who works for you to obtain federal write-in  
20 ballots?

21 A. Certainly. And they may have asked somebody to  
22 do a count on those particular ballots or direct them to  
23 do something. I don't recall specifics about this  
24 particular document and whether or not I was involved in  
25 its creation.

1 Q. Independent of this document, did you track the  
2 number of federal write-in ballots returned to  
3 King County?

4 A. I believe that we did record some data regarding  
5 that, using hand count of returns. Specifically, no.  
6 That would be something that staff in the Mail Ballot  
7 Operations Satellite area would be capturing.

8 Q. They don't provide to you a report of ballots  
9 returned, that includes federal write-in ballots?

10 A. There is no standard report that they provide to  
11 me that would include federal write-in ballots. Whether  
12 or not a report was prepared following this election that  
13 included federal write-in ballots, I don't recall at this  
14 point. It is a potential that I did receive a document  
15 that had that number on it -- or a number on it.

16 (Whereupon, a January 10, 2005, website posting  
17 was marked as Exhibit-10 for identification.)

18 Q. Mr. Fell, the court reporter has handed you a  
19 document marked Exhibit 10. It's a January 10, 2005,  
20 posting on a King County website. Is that right?

21 A. It appears to be that, yes.

22 Q. Four paragraphs from the bottom on the first page  
23 is written, Staff confirmed 69 Address Confidentiality  
24 Program voters cast ballots and 251 federal write-in  
25 absentee ballots were tabulated.

1           Is that right?

2           A.    That is what the report says, yes.

3           Q.    That's two days after the fact sheet marked as  
4 Exhibit 9; is that right?

5           A.    That is correct.

6           Q.    Exhibit 9 indicated 1,081 federal write-in  
7 ballots. Two days later, on Exhibit 10, King County is  
8 indicating 251 for absentee write-in ballots; is that  
9 right?

10          A.    That is correct.

11          Q.    Do you know whether 251 federal write-in absentee  
12 ballots is the correct number?

13          A.    I do not know how the 251 number was derived, so  
14 I can't say that I know that's the correct number.

15          Q.    Do you know why the numbers changed between  
16 January 5 and January 7?

17          A.    I do not recall at this point why the numbers  
18 changed.

19          Q.    Were you involved in reporting the number for the  
20 January 7 press release?

21          A.    At this point I don't recall if I was involved in  
22 reporting that number.

23          Q.    Are individuals who cast federal write-in ballots  
24 credited in King County?

25          A.    Again, there are two types of voters that make

1 federal write-in ballots. If the voter is a registered  
2 voter in King County and that is the only ballot which  
3 they returned, they certainly would be credited with the  
4 voting. There are also voters that are not permanently  
5 registered but the federal write-in ballot, in my  
6 understanding, serves as a registration for that one  
7 election. They would not be credited within the DIMS  
8 system.

9 Q. So other than individuals who send in both a  
10 federal write-in ballot and normal absentee -- an  
11 individual who casts a federal write-in ballot will not be  
12 credited with voting in King County.

13 MR. HAMILTON: Object to the form of the  
14 question.

15 THE WITNESS: Can you repeat that one.

16 BY MR. MAGUIRE:

17 Q. Sure. I think you've talked about two different  
18 circumstances involving federal write-in ballots. I  
19 think. The first, person who sends out the federal  
20 write-in ballot and a normal absentee ballot; is that  
21 right?

22 A. That is correct.

23 Q. And in that situation the person will be credited  
24 with voting the absentee ballot.

25 A. That is correct.

1 Q. And then there's another situation where a person  
2 sends in only one ballot and that's the federal write-in  
3 ballot; is that right?

4 A. That is correct.

5 Q. And that person is not credited with voting in  
6 King County.

7 A. I don't mean to sound confused, but the first  
8 statement you made was that there is a category of voters  
9 that returned both an absentee and a federal write-in, and  
10 they would be credited with voting. That is correct.  
11 There's also voters that return just a federal write-in  
12 and are registered in our system. Those people, too,  
13 would be credited with voting in our system. Then there's  
14 the third category, which I think is the second category  
15 you talked about, which is voters who return a federal  
16 write-in ballot and are not registered voters. Their  
17 ballot would be counted but there would be no crediting  
18 within DIMS for that vote?

19 Q. Okay. Let's talk about the second category you  
20 identified there, someone who sent back only a federal  
21 write-in ballot and was registered in King County as well.  
22 Okay?

23 A. Okay.

24 Q. If that person is credited with voting, in what  
25 manner are they credited? Are they credited as having

1 voted absentee?

2 A. They would be credited -- it is my understanding  
3 that they would be manually credited within the system --  
4 I believe that that would be in the absentee module. To  
5 the best of my knowledge, that's where it would be.

6 Q. Who does that manual crediting?

7 A. That will be the absentee staff.

8 Q. Including Nicole Way?

9 A. Nicole Way would be the supervisor of that staff.

10 Q. Are individuals in the Address Confidentiality  
11 Program credited with voting?

12 A. Individuals that are within the Address  
13 Confidentiality Program are not within DIMS. They are not  
14 tracked with any database. There is no crediting done to  
15 their record within DIMS because they are not in DIMS.

16 Q. Exhibit 10, the January 7 release from  
17 King County, indicates that 69 Address Confidentiality  
18 Program voters cast ballots.

19 Do you know if that's correct?

20 A. I do not know if that number is correct, but it  
21 is possible.

22 Q. Who will know the correct number in the Address  
23 Confidentiality Program?

24 A. I believe that Nicole Way may be able to confirm  
25 that number.

1 Q. Are there any documents showing the number of  
2 people who cast ballots in the Address Confidentiality  
3 Program?

4 A. The potential documents that would show how many  
5 people voted would be the return envelopes of those  
6 voters.

7 Q. Is there any report listing the number other than  
8 Exhibit 10?

9 A. Not that I am aware of.

10 Q. Were you ever asked to determine the number?

11 A. At this point I can't recall if we've been asked  
12 to determine that number or if we were asked during the  
13 general election to return that and document that number.

14 Q. The person receiving an absentee ballot over the  
15 counter, returns it, it's verified and tabulated.

16 Are they credited with voting?

17 A. Certainly.

18 Q. And they're credited with voting in their home  
19 precinct, not in the Admin Building?

20 A. They're credited with voting in the precinct from  
21 which they've been issued a ballot. Issuing a ballot over  
22 the counter does not mean that the person receiving the  
23 ballot over the counter -- their address is the Admin  
24 Building. Their address is what their address is in the  
25 voter registration system.

1 Q. If they get a ballot over the counter in the  
2 Admin Building, it would be the same ballot they would  
3 have gotten at the precinct in which they're registered?

4 A. That is correct.

5 Q. So they'll be credited with voting in that  
6 precinct where they're registered.

7 A. They will be, yes. They will be credited with  
8 voting in their precinct.

9 Q. Other than individuals in the Address  
10 Confidentiality Program, in one of the categories you  
11 identified federal write-in ballots.

12 Are there any other categories of ballots that do  
13 not receive credit?

14 MR. HAMILTON: Object to lack of foundation.

15 THE WITNESS: At this point I can't think of any  
16 other categories that could include voters whose -- or the  
17 ballots were counted but they did not receive credit.

18 BY MR. MAGUIRE:

19 Q. Earlier we were talking about the crediting  
20 process a little bit.

21 You said it occurs after the election; is that  
22 right?

23 A. The history of voting in an election is applied  
24 to the voter registration record following the election,  
25 yes.

1 Q. When was that done for absentee ballots with  
2 respect to the November election?

3 A. I don't recall the exact date the crediting was  
4 applied or voter history was applied to absentee voters.  
5 I believe it was sometime in December.

6 Q. What do you mean when you say history is applied  
7 to voters?

8 A. Every voter has associated with them a history of  
9 what elections they've voted in and, to my information,  
10 regarding their voting history. In our old system we were  
11 able to make, I believe, six previous elections that they  
12 voted in. Our new Election Management Voter Registration  
13 System, I believe, allows for additional history.

14 Q. So the voter history information is input for a  
15 voter during the election or after the election?

16 A. It's applied after the election.

17 Q. So there's information in an absentee module as  
18 to whether the person has submitted a verified ballot  
19 during the election.

20 A. That is correct. That's my understanding.

21 Q. How does the information -- that information make  
22 its way to the voter history in DIMS?

23 A. I don't know the exact process that that follows.

24 Q. Who has it?

25 A. This is something that's done by the DIMS

1 administrators.

2 Q. Scott Turnbull and Travis Elsom?

3 A. That is correct.

4 Q. Did King County try to reconcile the number of  
5 absentee ballots cast with the number of voters credited  
6 with voting by absentee for the November election?

7 A. King County has performed work to ensure that as  
8 close as possible. Like crediting within DIMS accurately  
9 reflects the ballots that were cast.

10 Q. With respect to absentees?

11 A. With respect to absentees.

12 Q. What was the work that King County did?

13 A. I believe there was follow-up work to go back and  
14 adjust crediting on voters in January to reconcile some  
15 differences.

16 Q. At the end of that process, was there a  
17 discrepancy between the number of absentee ballots cast  
18 and the number of individuals credited with voting by  
19 absentee?

20 A. I believe --

21 MR. HAMILTON: Object to the form -- hold on a  
22 second.

23 Object to the form of the question on relevance  
24 ground.

25 MR. EVEN: I join in that.

1           THE WITNESS: I believe that the process that  
2 we've done there exists, the difference between the number  
3 of voters credited within DIMS and the ballots tabulated  
4 with respect to absentees.

5           BY MR. MAGUIRE:

6           Q. With respect to absentees, what is that  
7 discrepancy?

8           A. I do not know that discrepancy.

9           Q. Do you know if it's in the hundreds or the  
10 thousands or a smaller number?

11          A. I do not know that off the top of my head.

12          Q. Was a report done that indicates discrepancy?

13          A. I believe there was some work done. Whether or  
14 not it reported a number --

15          Q. Who did the work?

16          A. I believe that there was some work done by the  
17 Mail Ballot Operations supervisor at the direction of Bill  
18 Huennekens. I guess that would qualify as part of the  
19 work that I described going on in January to correct  
20 voting credit -- crediting of absentee voters.

21          Q. Is that the work reflected in the January 7 press  
22 release marked as Exhibit 10?

23          A. Yes, that is the work that I recall and am  
24 referring to.

25          Q. Are you aware of any work done since January 7th

1 with respect to crediting absentee ballots or voters from  
2 the November election?

3 A. I am not aware of any additional work that's been  
4 done since this body of work the beginning of January.

5 Q. What are the reasons that could cause a  
6 discrepancy between the number of absentee ballots cast  
7 and the number of voters credited with voting by absentee?

8 A. Two reasons that we talked about were the Address  
9 Confidentiality Program voters and the federal write-in  
10 voters that are not within the DIMS system. Additional  
11 discrepancies could be accounted for human error in the  
12 work that is done in crediting voters.

13 Q. What kind of human error can occur in the work  
14 done by workers crediting voters for casting absentee  
15 ballots?

16 A. We talked about earlier that voters -- when our  
17 verifiers are verifying signatures, there's initially --  
18 they have an opportunity to challenge a voter's signature.  
19 Those challenged ballots -- in many cases we can receive  
20 information back from the voter that would allow us to  
21 then count that ballot in order. To ensure that the  
22 crediting process is accurate, an individual has to go  
23 into that record and remove the challenge code and make  
24 sure that the verified button is checked, and then that  
25 ballot is sent forward to opening and tabulation. That's

1 a manual process through DIMS with each individual voter.  
2 In removing those challenge codes, errors within that  
3 process could result in discrepancy.

4 Q. Any others?

5 A. There are reasons where there could be a  
6 discrepancy that are not necessarily associated with  
7 errors but will be associated with the fact that a voter  
8 can be credited with voting based on the matching of the  
9 signature in our system to the signature they've supplied  
10 on the envelope. But then when that ballot moves forward  
11 to opening, we may discover in that process that a ballot  
12 was not returned. If that's discovered at a point where  
13 we have separated the inner security envelope from the  
14 outer security envelope, it is impossible to know which  
15 voter to remove credit from. And it would be our practice  
16 to remove credit from voters if they return the envelope  
17 but choose or for some other reason do not return a ballot  
18 that's inside the envelope.

19 Q. In those instances, for each one, that would  
20 result in the individual being credited with voting, one  
21 more person being credited with voting than there are  
22 ballots tabulated; is that right?

23 A. In that particular instance, yes.

24 Q. Can you think of any other examples of human  
25 error that can lead to discrepancies in the absentee

1 crediting process?

2 A. At this point I can't recall or remember any  
3 other -- or think of any other reasons there would be a  
4 discrepancy due to human error.

5 Q. You came up with two. The first one is a person  
6 initially has a challenge code entered for their ballot.  
7 After further investigation of that ballot, it's  
8 determined that the ballot will be tabulated and that the  
9 worker needs to go back into DIMS for that record and  
10 remove the challenge code.

11 A. That is correct.

12 Q. And if they fail to remove the challenge code,  
13 that person will not be credited with voting, but their  
14 ballot would be tabulated.

15 A. That is correct.

16 (Whereupon, a short recess was taken.)

17 Q. Mr. Fell, before the break we were talking about  
18 the crediting process with respect to absentees and the  
19 human error that can occur in that process.

20 Do you remember that discussion?

21 A. I do.

22 Q. I believe you identified two types of human  
23 errors that can affect the crediting process. First, the  
24 ballot, when it's initially processed, is given a  
25 challenge code in the database, set aside. It's later

1 determined that the ballot can be verified and tabulated,  
2 and the individual has to remove the challenge code from  
3 DIMS, or else a crediting error will occur. Is that  
4 right?

5 A. That is correct.

6 Q. The other category was, the individual is  
7 credited with having voted, but when their envelope is  
8 opened up, there's no absentee ballot inside.

9 A. That is correct.

10 Q. At the time you couldn't recall any other types  
11 of human errors that could affect the crediting process;  
12 is that right?

13 A. I can't recall any additional human errors, yes.

14 Q. Those errors that affect the crediting process  
15 are random; is that right?

16 A. They would be random, yes.

17 Q. Is there any reason that a pattern might exist in  
18 crediting errors?

19 MR. HAMILTON: Objection. Calls for speculation.

20 THE WITNESS: There could be a pattern or an  
21 apparent pattern. I can't think of any reason that  
22 there'd be a pattern.

23 (Whereupon, a Selected Precincts with Large  
24 Differences in Absentee Crediting was marked as Exhibit-11  
25 for identification.)

1 BY MR. MAGUIRE:

2 Q. Mr. Fell, the court reporter has handed you a  
3 document marked as Exhibit 11. This is an illustrative  
4 exhibit that we put together based on data from the manual  
5 recount, countability spreadsheet, and the voter tapes  
6 produced by King County, marked as December 29, January 7  
7 and January 8.

8 Are you familiar with those documents? Data  
9 sets?

10 A. I am familiar with the countability spreadsheets.  
11 I am not familiar with what voter file you were -- the  
12 parties were given.

13 Q. But you're familiar with voter file --

14 A. Voter file in general.

15 Q. Based on those sets of data, we looked at the  
16 precincts with the highest discrepancies and absentee  
17 crediting in King County. The precincts with the two  
18 greatest positive discrepancies, meaning more ballots  
19 tabulated than voters credited, are shown on Exhibit 11,  
20 in Table 1, as is the percentage of votes Dino Rossi  
21 received in those precincts.

22 In Table 2 the precincts with the two greatest  
23 negative discrepancies, where more voters were credited  
24 than ballots tabulated, are precincts in which Dino Rossi  
25 received more votes than Christine Gregoire.

1           Do you see the presentation of the tables?

2           A.    I do see the presentation of the tables.

3           Q.    Do you understand what we're trying to represent  
4    in those two tables?

5           A.    I believe I understand what you're trying to  
6    represent, yes.

7           Q.    Can you think of any reason why the greatest  
8    positive discrepancy in crediting, in other words, more  
9    ballots tabulated than voters credited, would be in two  
10   precincts in which Dino Rossi received only 22 percent of  
11   the vote?

12          A.    I cannot.

13          Q.    Can you think of any reason why the two greatest  
14   negative discrepancies in crediting, in other words, more  
15   voters credited than ballots tabulated, would be in two  
16   precincts that Dino Rossi won?

17          A.    I cannot.

18          Q.    After the verification process with absentees, do  
19   the ballots move to openers?

20          A.    That is correct.

21          Q.    That's the next step?

22          A.    That will be the next step.  Again, the  
23   challenged ballots are reviewed by a person that's doing  
24   sort of a reconciliation or a rescan -- reexamination of  
25   those challenged ballots.  But the batch itself would

1 proceed to opening.

2 Q. If we could jump back to Exhibit 7, which has  
3 some copies of batch slips, we talked about the original  
4 count and the number rejected and the number accepted on  
5 the top line.

6 Does the opener record information on the batch  
7 slip as well?

8 A. The opener does record on a batch slip.

9 Q. Which information?

10 A. The opener, I believe, would complete the box  
11 that says opener and date and put their name and the date  
12 at which that batch of ballots was opened. They also  
13 complete the portion on the right side of the batch slip  
14 that says no ballots, canvass, write-ins, duplicates,  
15 total, and the box that says amount ready to tabulate.  
16 There is an additional empty box on the right-hand side,  
17 which is an area where you would likely see additional  
18 notations by an opener.

19 Q. What kind of additional notations?

20 A. It's a space where they could detail any  
21 variances or anomalies that they see.

22 Q. What kind of variances or anomalies would they  
23 encounter?

24 A. It is certainly possible that the number of  
25 ballots that they say are ready for tabulation, which is

1 based on a hand count of the ballots after opening, plus  
2 all the various ballots that are pulled out during the  
3 opening phase, which are detailed in the column no  
4 ballots, canvass, write-ins, duplicates, total, may not  
5 equal the accepted amount. They may provide additional  
6 information if they feel they have some as to what the  
7 variation can be attributed to.

8 Q. So the opener opens up envelopes, pulls out the  
9 ballots, records the number of instances in that batch  
10 where there are no ballots contained in envelopes?

11 A. That is correct.

12 Q. And then the number that needs to be sent to the  
13 canvassing board is based on the opener's first look at  
14 them?

15 A. That is correct. Each ballot goes through a  
16 visual inspection, and the opener can determine that a  
17 ballot needs to go to canvass.

18 Q. And the opener looks at every ballot in the batch  
19 and records the number of ballots containing write-in  
20 votes for the --

21 A. That is correct. And they segregate those  
22 write-in votes out.

23 Q. They're removed from the batch?

24 A. They are removed from the batch. They have to go  
25 into another batch of write-ins. Essentially a batch that

1 has ballots that have write-ins also.

2 Q. The write-in ballots are all batched together?

3 A. Correct.

4 Q. And then if there are any ballots that require  
5 duplication which -- first of all, what are the reasons a  
6 ballot requires duplication?

7 A. There could be multiple reasons that a ballot  
8 would require duplication. On visual inspection the  
9 ballot openers are instructed to look at the timing marked  
10 areas on the ballot. These are marks in the area that  
11 allow the tabulation equipment to read the ballot. We  
12 hope that voters do not make marks within these areas  
13 because it will cause the ballot to be rejected by the  
14 machine initially. If there are marks in this area, that  
15 would be a reason to duplicate or, in the case of the fall  
16 election, cast that ballot.

17 Also, voters are given instructions at the top of  
18 the ballot that tell them how to correct a vote if they  
19 vote in error. The openers are looking for corrections  
20 made per the ballot instruction, and those would go to  
21 duplication or enhancement file.

22 Q. Any other reasons why it will go to duplication?

23 A. During the general election, there the openers  
24 are also looking at how well the votes were marked for  
25 particular ballots. And if there was an indication that a

1 clear mark for a candidate could not be read, that was  
2 sent for duplication.

3 Q. So on the batch slip where it says duplicates,  
4 there's also -- any that are sent to the enhancement group  
5 is also noted on the same line?

6 A. That is correct. The duplicates number includes  
7 both enhancements and ballot need to be duplicated.

8 Q. So the opener identifies ballots that fall into  
9 the four categories --

10 A. That is correct.

11 Q. -- on the batch slip, write-ins, duplicates,  
12 canvass, no ballots, and physically removes those from the  
13 batch; is that right?

14 A. That is correct.

15 Q. And writes down the number on the batch slip for  
16 each category and the total.

17 A. That is correct.

18 Q. Then there's an amount ready to tabulate that's  
19 recorded by the recorder; is that right?

20 A. That is correct.

21 Q. Is that a hand count of the remaining ballots in  
22 the batch after the no ballots, canvass, write-ins,  
23 duplicates are removed?

24 A. That is a hand count of those ballots, yes.

25 Q. So that amount ready to tabulate, plus the total

1 of duplicates, write-ins, canvass, and no ballots should  
2 be equal to the number accepted identified by the  
3 verifier; is that right?

4 A. That is correct.

5 Q. Did it happen that the numbers would not match?

6 A. There are certainly examples where the numbers do  
7 not balance.

8 Q. Were openers given any instructions as to what  
9 they should do when the numbers don't balance?

10 A. As to the specific instructions that they were  
11 given, I'm not aware, that that would be something that  
12 the Mail Ballot Operations supervisor could detail. It  
13 was my understanding that when there were batches that did  
14 not match, they would call over a supervisor to assist in  
15 determining why the ballot did not -- or the batch did not  
16 balance.

17 Q. And if the ballots were moved to canvass,  
18 write-ins, or duplicates, they end up in other batches; is  
19 that right?

20 A. That is correct.

21 Q. So at the end of the election, the total number  
22 tabulated -- excuse me -- total number in each batch --  
23 let me rephrase that.

24 The total number of ballots from all of the  
25 batches should still be the same?

1           MR. HAMILTON: Object to the form of the  
2 question. Asks for comparison. Compared to what?

3           BY MR. MAGUIRE:

4           Q. We've got a certain number of batches to start  
5 with, and then a number of ballots are removed from those  
6 batches, write-ins, duplicates, or the canvass; is that  
7 right?

8           A. That is correct.

9           Q. And they just end up in new batches?

10          A. That is correct. With regards to the canvass  
11 ballot, that's assuming that the canvass board gets  
12 direction to count that ballot.

13          Q. Okay. The fact that they're put in new batches  
14 doesn't affect the total number of ballots that are in the  
15 process.

16          A. No. The total should balance since they were  
17 taken out of a batch but put into another batch.

18          Q. Did King County try to balance the number  
19 accepted by the verifier with the amount ready to tabulate  
20 identified by the opener and take into consideration the  
21 balance that were moved in the other batches?

22          MR. PORTER: Object to the form of the question.  
23 It's compound.

24          MR. HAMILTON: I join in that objection.

25          THE WITNESS: King County staff did examine data

1 regarding the batches in an attempt to reconcile where  
2 possible differences between the amount accepted and the  
3 amount tabulated, considering the amount pulled out of the  
4 batch from those various categories.

5 BY MR. MAGUIRE:

6 Q. King County did try to do that?

7 A. Yes. We did look at batches that had problems  
8 and tried to resolve -- or that had apparent discrepancies  
9 and tried to resolve those.

10 Q. Was that done prior to the certification of the  
11 hand recount?

12 A. Yes. In fact, it's part of the process prior to  
13 the certification of the original election to look at  
14 discrepancies and try to resolve those.

15 Q. Was King County able to resolve those  
16 discrepancies?

17 A. They were not able to resolve all of the  
18 discrepancies, no.

19 Q. What discrepancies were not resolved?

20 A. I do not have a comprehensive list of those  
21 discrepancies.

22 Q. Do you remember any of them?

23 A. Not off the top of my head. It's apparent, based  
24 on this batch slip, that there's a discrepancy whether or  
25 not --

1 Q. The batch slip on Exhibit 7 has a discrepancy?

2 A. Yes.

3 Q. And that discrepancy is that the verified 230  
4 were accepted?

5 A. That is correct.

6 Q. And the opener removed 28 ballots as write-ins  
7 and duplicates?

8 A. That is correct.

9 Q. Which should leave 202 ballots --

10 A. That is correct.

11 Q. -- ready for tabulation?

12 And the opener has indicated 206?

13 MR. HAMILTON: I guess I object to the form of  
14 the question. The document speaks for itself and actually  
15 doesn't reflect the numbers that you just read off. So I  
16 object to the form of the question.

17 MR. MAGUIRE: I think the document does reflect  
18 those numbers, but we'll walk through them again if we  
19 want to describe every notation on the document.

20 MR. HAMILTON: Well, I don't want to delay the  
21 deposition. I'm only pointing out that you're saying  
22 there were 230 accepted. I don't see that actually.  
23 230 plus 3, 233.

24 BY MR. MAGUIRE:

25 Q. In the accepted box, what is the number?

1 A. In the accepted box the number is 230.

2 Q. And below that box someone has written plus 3,  
3 233; is that right?

4 A. That is correct.

5 Q. Who would have recorded that number on the batch  
6 slip in that box?

7 A. It is difficult to say exactly who would have  
8 recorded it. Could possibly be the verifier. Could  
9 possibly be the person doing reconciliation on that batch  
10 if they reconciled the entire batch and were able to add  
11 challenges back in prior to it going to opening. It could  
12 be the opener. It could be a supervisory staff that was  
13 assisting in the process. It's difficult to pinpoint who  
14 that could have been.

15 Q. So the number accepted could be 230, could be 233  
16 for this batch?

17 A. It is unclear. Yes. From that it could be  
18 either/or or something else.

19 Q. And write-ins and duplicates total 28; is that  
20 right?

21 A. On the batch slip the total that's indicated here  
22 is 28, 11 write-ins and 17 duplicates.

23 Q. And 230 minus 28 is 202.

24 A. That is correct.

25 Q. And 233 minus 28 is 205.

1 A. That is correct.

2 Q. And then you're not ready to tabulate. Someone's  
3 written 205 plus 1, 206; is that right?

4 A. That is correct.

5 Q. Where does the plus 1 come from?

6 A. There is no indication as to where the plus 1  
7 comes from on the batch slip. I cannot draw a conclusion  
8 as to where that plus 1 had come from.

9 Q. Do you know what -- you know what numbers the  
10 openers were instructed to record in that box; right?

11 A. Yes, I do.

12 Q. Physical count of the number of ballots remaining  
13 after the write-ins, duplicates, canvass, and no ballots  
14 were removed.

15 A. That is correct. Again, per physical hand count.

16 Q. And the balance moved to tabulation; is that  
17 right?

18 A. That is correct.

19 Q. And on the batch slip the number of ballots  
20 counted, which on the front of Exhibit 7 is 218, is based  
21 on a report from the AccuVote machine?

22 A. That is based on feedback, yes, from the AccuVote  
23 machine. There is an LED screen that tells you the number  
24 of ballots tabulated for that batch as you're feeding them  
25 through. And once you commit that batch to the system, it

1 prints that total on a little paper tape or printed paper  
2 connected to the machine as to the total of ballots  
3 tabulated in the batch.

4 Q. And ballots to dup. Is it the tabulation machine  
5 that rejects a ballot?

6 A. Yes. During tabulation ballots can be rejected  
7 by the machine. Again, it's typically ballots that have  
8 marks within the timing areas on the ballot. That could  
9 also be a ballot that was -- is bent or folded in a manner  
10 that makes it difficult to go through the machine.

11 Q. And those ballots to dup are not the same as the  
12 ballots the opener identified as going to duplication.

13 A. That is correct. The ballots from the openers,  
14 according to the process, should be out of that batch  
15 already.

16 Q. So the opener indicated 205 plus 1, 206, ready to  
17 tabulate.

18 But the AccuVote machine indicates 218 were  
19 tabulated; is that right?

20 A. Somebody has written down that 218 are to be  
21 tabulated -- or were tabulated and date is blank on that  
22 particular batch.

23 Q. If a tabulator noticed a discrepancy between the  
24 ballots counted and the amount ready to tabulate, were  
25 they instructed to do anything?

1           A.    They would bring that to the attention of the  
2    supervisory staff in the tabulation area.

3           Q.    What would the supervisory staff do?

4           A.    There is the potential that they would ask for a  
5    hand count of those ballots to verify that in fact there  
6    wasn't an error by the operator of the tabulation  
7    equipment.

8           Q.    And if the hand recount -- or hand count is done,  
9    that number is recorded on the batch slip as well?

10          A.    Yes, the hand count.  There's an empty box in the  
11   middle of the batch slip, and it's common practice to  
12   record hand counts in that area.

13          Q.    So for the batch slip on the front of Exhibit 7,  
14   218 ballots tabulated by the AccuVote machine, 16 ballots  
15   sent to duplication, and a hand count was done that  
16   indicated that there were 234 ballots sent to the  
17   tabulator.

18          A.    That is correct.  There was a hand count.  The  
19   hand count says 234.

20          Q.    What could account for the discrepancy between  
21   the number of ballots the tabulator had, 234, and the  
22   number the opener indicated were ready to tabulate of 205  
23   plus 1, 206?

24          A.    There is no data within the batch slip that tells  
25   me what could account for that difference.

1 Q. Would supervisory staff investigate that  
2 difference if it's brought to their attention?

3 A. The practice and expectation is that these  
4 batches would be investigated and they'd go into further  
5 research on the batch.

6 Q. What would that further research entail?

7 A. The further research could include several  
8 things. They could go back to the original envelopes for  
9 that batch and do a count of those envelopes. They could  
10 go back to some of the original documents from the  
11 verification stage, the reports that were produced, to  
12 make sure that the original counts, the rejected counts,  
13 were accurate.

14 Q. Was that done every time there was a discrepancy  
15 between the total and batch marked by the tabulator and  
16 you're not ready to tabulate indicated by the opener?

17 MR. HAMILTON: Objection. Lack of foundation.

18 THE WITNESS: I can't say if that was done every  
19 time or not.

20 BY MR. MAGUIRE:

21 Q. What is a rebatch?

22 A. A rebatch includes ballots that have been  
23 initially brought into the system but -- and one example  
24 of that -- primary example of that would be ballots that  
25 were initially challenged but then the challenged -- or

1 the issue for challenging that ballot was resolved. The  
2 ballot was able to be accepted. It would be included in a  
3 rebatch rather than an in-house batch or an original  
4 batch. It's essentially ballots that are in the Election  
5 Management Voter Registration System either having the  
6 voter being credited for returning that ballot or -- let  
7 me back up and try to rephrase that.

8 It includes batches -- ballots where credit has  
9 been given to an envelope and a voter, where it was  
10 initially challenged.

11 Q. Does King County keep the source files for  
12 rebatches?

13 A. Because rebatches are comprised of voters who  
14 have already been uploaded into the system, there is not a  
15 system -- there is not a system data associated with  
16 rebatches. If you try to scan ballots from a rebatch and  
17 upload them again, they would all essentially kick out as  
18 Wanda rejects because they've already been accepted by the  
19 system.

20 Q. What about in-house batches? Does King County  
21 keep source files for those?

22 A. In-house batches would have source files. The  
23 in-house process is such that a tray of mail is hand  
24 scanned using a hand bar code reader. That file is then  
25 uploaded in a process very similar to the Wanda process

1 described in PSI files. The exception is that you aren't  
2 selecting a file to upload, however taking a file from a  
3 scanning device and uploading that directly into the  
4 system. At that time the system does create a file and  
5 saves it out on the system, on a computer. Where it saves  
6 those files is somewhat dependent on the configurations  
7 that had been set by the user at the time they log on.

8 Q. Does King County have all of the source files for  
9 the batches provided by PSI?

10 A. King County received from Diebold data disks  
11 every data we did the sort. There is one data disk in  
12 which the data associated with the batches does not appear  
13 to be on the disk, that it was never initially saved in  
14 the disk, or that there was an issue with the disk itself.  
15 Upon uploading batches from the PSI files, those are -- I  
16 believe I said this before. But the file itself, upon  
17 upload, is renamed and saved. I believe that we do have a  
18 saved version after upload of the batches from the PSI  
19 process.

20 Q. Is that the October 29 batch?

21 A. October 29 data would be in there as well. It  
22 would include all batches. And I am not certain in the  
23 sense that I have not gone out and looked to account for  
24 all of those files personally in the system. But I would  
25 believe that those files would be out there.

1 Q. Earlier we talked a little bit about crediting.  
2 I want to talk to you about reconciliation.

3 Did King County try to reconcile the number of  
4 absentee ballots returned with the number of absentee  
5 ballots counted, plus the number of absentee ballots  
6 rejected?

7 A. I guess I have difficulty answering that question  
8 in a sense that it's -- I'm not sure what the returned  
9 figure would be based on.

10 Q. Did King County try to reconcile the number of  
11 absentee ballots counted plus absentee ballots rejected  
12 with any number of absentee ballots returned?

13 A. The return data that we have is based largely in  
14 part on system data, data provided at the time of upload.  
15 I think the exceptions to that, that we talked about, were  
16 the ACP voters and federal write-ins that aren't credited  
17 in the system. And I believe there were efforts made to  
18 account for the various returned categories.

19 Q. Maybe we're missing each other a little bit.  
20 What kind of efforts were made?

21 A. There were efforts made to reconcile  
22 discrepancies in -- I apologize. Could you rephrase that.

23 Q. Sure. Why don't I come at it from a different  
24 angle.

25 Did anyone have the task of sitting down and

1 determining whether the number of ballots that were  
2 counted plus the number of ballots that were rejected,  
3 would equal to the number of ballots King County actually  
4 received from voters?

5 A. There's a reconciliation process that includes  
6 that -- that process in the sense that --

7 MR. PORTER: Do you have the Mail Ballot Report,  
8 Rob?

9 MR. MAGUIRE: I do.

10 MR. PORTER: Would you try putting that in front  
11 of the witness and ask him where the numbers were derived  
12 from.

13 MR. HAMILTON: And I guess I will state my  
14 concern on the record that the witness appears to be  
15 tired, who's been examined for nine hours straight. I  
16 defer to counsel on whether we ought to proceed here, but  
17 I'll express my concern about the hour.

18 BY MR. MAGUIRE:

19 Q. Mr. Fell --

20 A. I guess that I could add that the number of  
21 ballots returned in our reports is derived from the number  
22 of ballots tabulated plus the number of ballots that  
23 weren't tabulated. And that would be reconciled against  
24 hand counts of the various ballots that were tabulated,  
25 and there will be consideration for the various categories

1 of ballots that --

2 Q. Make sure I understand.

3 The number of ballots returned is something that  
4 King County calculates by just adding the number of  
5 ballots counted plus the number of ballots rejected.

6 A. That is correct.

7 Q. There's no independent check to determine the  
8 number of ballots returned to see whether it reconciles  
9 with the number of ballots counted plus the number of  
10 ballots rejected.

11 A. There is no independent number as a whole total  
12 ballots returned. It is based on a ballot number -- the  
13 total number of ballots accepted, ballots counted, and the  
14 total number of ballots rejected. The various ballots  
15 that were rejected, we reconcile to the best of our  
16 ability that number, and we work to reconcile the number  
17 of ballots accepted and ballots counted.

18 Q. Does King County keep a record showing the number  
19 of absentee ballots issued?

20 A. There are -- there are documents that the  
21 system -- the system does detail to some degree the number  
22 of absentee ballots issued -- and I think we talked about  
23 this a little bit earlier -- as to the individual's  
24 competence level and add-numbering ability to retrieve  
25 that number and what that number means.

1 Q. I think you've already said King County does not  
2 track the precise number of ballots returned by voters.  
3 Is that right?

4 A. It is not an independent count of all ballots.  
5 It is a calculated count based on reconciling the other  
6 various categories that pick up ballots returned.

7 Q. It's assumed that the number of ballots counted  
8 plus the number of ballots rejected must be equal to the  
9 number of ballots King County received from voters; is  
10 that right?

11 A. That is correct. That's how the Mail Ballot  
12 Report for the general election was created.

13 Q. Were there any other reports that weren't created  
14 in a similar fashion with respect to -- let me rephrase  
15 that.

16 In the Mail Ballot Report, the number of ballots  
17 returned is simply the sum of the number of ballots hand  
18 counted plus the number rejected; is that right?

19 A. That is correct.

20 Q. And there aren't any other reports out there that  
21 derived the total number of ballots returned by any means  
22 other than simply adding the totals that were counted and  
23 rejected.

24 A. I cannot say that there are not any other reports  
25 out there that would not have numbers for returns that

1 were derived in another manner.

2 Q. You're not aware of any reports, though.

3 A. I'm aware of a document that was created to track  
4 what has been issued, what has been received, and what has  
5 been accepted by DIMS and verified to date. There is a  
6 document like that.

7 Q. Who created that document?

8 A. I believe that was created and maintained by our  
9 Mail Ballot Operations Satellite supervisor.

10 Q. Was that done before the Mail Ballot Report?

11 A. Yes. That would be done during the course of the  
12 election.

13 Q. And do you know how the number of ballots  
14 received was derived on that report?

15 A. I do not recall how that number was derived.

16 Q. King County does keep a record of the disposition  
17 of each ballot counted; right?

18 A. Yes. The DIMS system does keep a record of  
19 crediting of voters, with the exception of the ACP voters  
20 and federal write-ins.

21 Q. Does King County keep a record of the disposition  
22 of the federal write-in ballots and the Address  
23 Confidentiality Program voters?

24 A. We keep documents related to those in the sense  
25 that we maintain the envelopes associated with those

1 voters. And there might be documents pertaining to those,  
2 that I'm unaware.

3 Q. Other than the envelopes, are there any other  
4 documents that indicate whether a person who's in the  
5 Address Confidentiality Program's ballot was actually  
6 counted?

7 A. The November 2, 2004, General Election, I'm  
8 unaware that there are -- there is. That is something  
9 that I don't know about.

10 Q. One couldn't tell by looking at their envelope  
11 whether their ballot was counted; is that right?

12 A. One could tell certain things about their  
13 envelope, even an indication that it was counted.

14 Q. What kinds of things would give an indication  
15 that the ballot was counted?

16 A. The fact that if the return envelope is opened  
17 and does not contain a ballot in it would indicate that  
18 that ballot was counted.

19 Q. But could also indicate that the voter had not  
20 put a ballot in the envelope, couldn't it?

21 A. It certainly could. However, the opening of  
22 ballots does not occur until it gets past the verification  
23 stage. So I would presume that if the outer envelope is  
24 open and there is no ballot, the most reasonable  
25 explanation is that that ballot counted.

1 Q. But it isn't the only explanation.

2 A. Certainly not.

3 Q. Does King County keep a written record of  
4 security procedures to protect the integrity of ballots  
5 after they're received?

6 A. We do have security procedures. I believe  
7 there's documentation on those procedures for our Mail  
8 Ballot Operations Satellite.

9 (Whereupon, a General & Special Elections Meeting  
10 Agenda was marked as Exhibit-12 for identification.)

11 Q. The court reporter previously handed you a  
12 document marked as Exhibit 12. It is the meeting agenda  
13 of November 2nd, 2004, General and Special Elections from  
14 the meeting that occurred at the King County Board on  
15 November 17th.

16 Contained in the exhibit is a Mail Ballot Report  
17 for the November 2004 election; is that right?

18 A. That is correct.

19 Q. Do you know who created the Mail Ballot Report?

20 A. Yes. This report was created by the Mail Ballot  
21 Operations Satellite supervisor.

22 Q. Nicole Way.

23 A. Nicole Way. In conjunction with myself and  
24 additional workings with the superintendent of Elections,  
25 Bill Huennekens. The actual document was created by

1 Nicole Way, I believe, and the understanding of what went  
2 into the document was shared, to my knowledge, between the  
3 three of us.

4 Q. What was your role in creating the Mail Ballot  
5 Report?

6 A. Simply as an advisory role on what the numbers  
7 were and what the numbers represent and how the numbers  
8 were derived.

9 Q. Prior to the Mail Ballot Report being given to  
10 the canvassing board, did you understand that the total  
11 number of ballots returned on the Mail Ballot Report was  
12 derived simply by adding the total number of ballots  
13 accepted as ballots, and counted, and total number of  
14 ballots rejected?

15 A. Yes, I did.

16 Q. Did you tell Bill Huennekens that is how the  
17 total number of ballots returned was derived?

18 A. Yes, I did.

19 Q. Do you know whether anyone told the canvassing  
20 board that that is how the total number of ballots  
21 returned was derived?

22 A. I do not.

23 Q. Is the Mail Ballot Report accurate?

24 A. The Mail Ballot Report was accurate at the time  
25 of its creation based on hand counts and tabulation

1 counts.

2 Q. Is it no longer accurate?

3 A. The data associated with some of these categories  
4 has changed, and so it is a snapshot at that particular  
5 time, at the time of certification. So I imagine that we  
6 have received more ballots back from the United States  
7 Postal Service. That's the certification of election.  
8 There's a potential for that. So I don't know if that  
9 number is correct.

10 Q. That's 4(a), postmarked after election date?

11 A. That is correct.

12 Q. The 1,700 number there might be different because  
13 after November 17, you might have received more absentee  
14 ballots.

15 A. That is correct.

16 Q. Aside from ballots that were returned to  
17 King County after certification on November 17th, is there  
18 anything else inaccurate now about the Mail Ballot Report?

19 A. I'm unaware of any other inaccuracies, so I  
20 would -- I'm not aware of any other inaccuracies.

21 Q. Are you aware of 95 uncounted absentee ballots  
22 that were discovered by King County in March or early  
23 April of this year?

24 A. I am aware of those, yes.

25 Q. And those were ballots that should have been

1 counted in the November election?

2 A. That is correct.

3 Q. Are they reflected on the Mail Ballot Report?

4 A. No, they are not.

5 Q. Where would they appear -- where should they  
6 appear on the Mail Ballot Report?

7 A. Based on how the Mail Ballot Report was put  
8 together, there is not a line for ballots except for those  
9 ballots but not counted.

10 Q. If the total number of ballots returned was not  
11 derived simply by adding the total number of ballot hand  
12 counted and the total number rejected but was in fact an  
13 accounting by the actual number of ballots that were  
14 returned, wouldn't the 95 have been accounted for in the  
15 total number of ballots returned?

16 A. If the total number of ballots returned was  
17 derived based on an independent count of all ballots  
18 returned, you would likely see a discrepancy of some sort,  
19 certainly.

20 Q. If King County had actually counted the total  
21 number of ballots returned and then tried to reconcile  
22 that number with the number of ballots counted and the  
23 number of ballots rejected, King County would have been  
24 able to determine that 95 returned ballots had neither  
25 been counted nor rejected; is that right?

1 MR. PORTER: Objection. Argumentative.

2 THE WITNESS: If the process in which we use to  
3 count the total number of ballots returned produces an  
4 accurate number, that is correct.

5 (Whereupon, a 2004 Elections Report was marked as  
6 Exhibit-13 for identification.)

7 MR. PORTER: Just want to state on the record,  
8 particularly because Mr. Hamilton, possibly half an hour  
9 ago, suggested that Mr. Fell may be tiring and it might be  
10 impacting his ability to answer questions.

11 It's now 20 minutes to 7:00. And when we agreed  
12 to move forward tonight at about a quarter to 6:00, I  
13 asked Mr. Fell to let us all know if he believed that he  
14 was tiring to the point that it was impacting his ability  
15 to respond to questions, and he agreed that he would do  
16 so. I've just asked him again if he believed that that  
17 was the case, and he said no, he didn't believe that that  
18 was the case, and he wanted to go ahead and move forward.

19 MR. HAMILTON: And I made the observation for the  
20 record because there's some things that a written record  
21 can't reflect about the way the witness is operating or  
22 reacting to the questions and any time it's taking to  
23 reflect. I defer entirely to counsel for King County.  
24 It's his witness. I simply placed the observation on the  
25 record because it is getting late, and I very much -- and

1 I know that Mr. Maguire very much appreciates the  
2 witness's cooperation. But it's rare, in my experience,  
3 that the witness undergoes these many hours of continuous  
4 inquiry.

5 MR. MAGUIRE: We have had breaks. I just want to  
6 make that clear in terms of saying that we've had  
7 continuous testimony.

8 MR. HAMILTON: That's true. We've had a number  
9 of short breaks and a one-hour lunch break. Thank you.

10 MR. PORTER: Let me just summarize by saying that  
11 I'm personally convinced that Mr. Fell is fine. He's  
12 responding perfectly to the questions. He's taking his  
13 time, and he's being deliberate because it's an important  
14 subject matter. I don't believe that he is impacted at  
15 this stage, and I do believe he will tell me if he is.  
16 And I understand that all counsel present agree that we  
17 should stop this process for now. With that, let's go  
18 ahead and go forward.

19 BY MR. MAGUIRE:

20 Q. Mr. Fell, the court reporter handed you a  
21 document marked Exhibit 13 entitled 2004 Elections Report,  
22 King County.

23 Do you recognize this document?

24 A. I do recognize this document, yes.

25 Q. What is it?

1           A.    It is a report put together by the Records,  
2   Elections and Licensing Services Division to Ron Sims  
3   regarding the 2004 elections highlights, sort of the  
4   elections timeline for 2004, some of our accomplishments,  
5   some of the challenges that we faced, and some proposed  
6   performance and action plans to address some of the  
7   challenges that we face.

8           Q.    Did you provide any information for this report?

9           A.    I do not have knowledge of providing direct  
10   information for this report.  I imagine that there could  
11   be information within the report that I provided at some  
12   point.

13          Q.    On base No. RC 009795 the report indicates that  
14   646,468 absentee ballots were issued.

15                    Do you see that?

16          A.    I do see that, yes.

17          Q.    On the Mail Ballot Report, Exhibit 12, the total  
18   number of ballots issued is 646,537.  Is that right?

19          A.    That is correct.

20          Q.    Do you know why the two numbers would be  
21   different?

22          A.    I do not know how the number for the report to  
23   King County Executive was derived, so it's difficult for  
24   me to say why they would be different.

25          Q.    Do you know how the total number of ballots

1 issued on the Mail Ballot Report was derived?

2 A. I don't know a particular report that was run to  
3 derive that number. I believe that was taken, however,  
4 from DIMS.

5 Q. Is there an authoritative source as to the number  
6 of absentee ballots issued for the 2004 General Election?

7 A. I am not sure that there is one number. The  
8 number of ballot issued -- ballots issued can mean a  
9 couple of different things depending on how you interpret  
10 that number, is that, as I said earlier, on our website we  
11 report that number, and it's actually the total number of  
12 voters issued ballots versus the total number of ballots  
13 issued.

14 MR. PORTER: Can I just have a second before you  
15 ask the next question.

16 (Whereupon, an attorney-client conference was  
17 held.

18 BY MR. MAGUIRE:

19 Q. Do you have any additional thoughts on the  
20 difference?

21 A. Yes. It appears that the difference is 69  
22 between the two, and that could be accounted for the  
23 Address Confidentiality voters.

24 Q. On the Mail Ballot Report, Exhibit 12, in the  
25 category that lists a total number of ballots rejected are

1 numerous subcategories, including two that are listed in  
2 After Validation.

3 Do you see that?

4 A. I do.

5 Q. Are there any other categories of the ballots  
6 that would be rejected after a validation?

7 A. There are -- at this point I can't think of any  
8 other categories.

9 Q. And the two that are on the Mail Ballot Report  
10 are wrong election and returned multiple ballots; is that  
11 right?

12 A. That is correct.

13 Q. And wrong election means somebody sent back an  
14 absentee ballot that was from a different election other  
15 than the November 2004 election?

16 A. That is correct.

17 Q. And returned multiple ballots means somebody sent  
18 back more than one absentee ballot?

19 A. That is correct.

20 Q. And there were 203 instances of returned multiple  
21 ballots?

22 A. That is correct.

23 Q. Would the individuals who fall in the wrong  
24 election category be credited with voting in the November  
25 2004 election?

1 A. No, they would not be.

2 Q. That would involve, again, someone manually going  
3 back to DIMS and -- or would they go back and insert a  
4 challenge code after they've opened the ballot?

5 A. They would have to go into DIMS and pull up that  
6 voter and put some sort of challenge code into their  
7 record.

8 Q. Let me back up there.

9 King County would realize that someone had  
10 submitted an absentee ballot for the wrong election only  
11 when they've opened the absentee envelope?

12 A. No. There's the potential for getting a ballot  
13 returned by an individual for a previous election. This  
14 is particularly the case with our closed primary, general  
15 election. So it could be that that is prior to the  
16 opening stage.

17 Q. But it wouldn't be reflected in the Mail Ballot  
18 Report after a validation if the determination had been  
19 made prior to opening? Let me back up again.

20 After validation means after the verification  
21 process; is that right?

22 A. I'm not certain that that is the case. I mean --  
23 can I have just a minute?

24 (Whereupon, a discussion was held off the  
25 record.)

1           MR. PORTER: The record should reflect that it is  
2 now 7:00. We've just excused Mr. Fell for the day.  
3 King County has agreed to continue his deposition tomorrow  
4 at 3:00 but only to go until 5:00 in the afternoon. We  
5 have a scheduled deposition of Nicole Way at 9:00. The  
6 parties are intending to try to be through with her  
7 deposition at 3:00. But the agreement from King County is  
8 only to continue Mr. Fell's deposition tomorrow for a  
9 period until 5:00.

10           MR. HAMILTON: And I'll just put on the record  
11 that I may have some direct examination. I know at the  
12 moment I have about 15 minutes of direct examination.

13           MR. MAGUIRE: And I suggested that if Nicole  
14 Way's deposition seems to be going past 3:00, that we  
15 consider making alternative plans tomorrow.

16           MR. PORTER: Make clear that King County's  
17 position is what I've just stated. We've only agreed to  
18 continue Mr. Fell's deposition for that two-hour time slot  
19 tomorrow. Anything else we have not yet agreed to or may  
20 not.

21           (Whereupon, the deposition of GARTH MARVIN FELL  
22 was concluded at 7:00 p.m.)  
23  
24  
25

CERTIFICATE

1  
2 I, Rita Rivera, do hereby certify that  
3 pursuant to the Rules of Civil Procedure, the  
4 witness named herein appeared before me at the  
5 time and place set forth in the caption herein;  
6 that at the said time and place, I reported in  
7 stenotype all testimony adduced and other oral  
8 proceedings had in the foregoing matter; and that  
9 the foregoing transcript pages constitute a full,  
10 true and correct record of such testimony adduced  
11 and oral proceeding had and of the whole thereof.

12  
13 IN WITNESS HEREOF, I have hereunto set  
14 my hand this 16th day of May, 2005.

15  
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17 \_\_\_\_\_  
18 Signature Expiration Date

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

3	TIMOTHY BORDERS, et al,	)	
		)	
4	Petitioners,	)	No. 05-2-00027-3
	v.	)	
		)	
5	KING COUNTY, et al,	)	
		)	
6	Respondents,	)	
	and	)	
		)	
7	Washington State Democratic Central	)	
8	Committee,	)	
		)	
9	Intervenor Respondent,	)	
		)	
10	and	)	
		)	
11	Libertarian Party of Washington	)	
	State, et al,	)	
12		)	
	Intervenor Respondents.)	)	

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13  
14                           DEPOSITION UPON ORAL EXAMINATION OF

15   GARTH FELL

16   (VOLUME II)

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17  
18   Friday, May 13, 2005

19   4:45 p.m.

20   Davis Wright Tremaine

                                  1501 Fourth Avenue, Suite 2600

                                  Seattle, Washington

21  
22  
23  
24 Laurie E.Heckel,CSR, RPR  
Court Reporter  
25 CSR License No. HE-CK-EL-E386DM

1 Friday, May 13, 2005  
2 Seattle, Washington

3 A P P E A R A N C E S

4 For the Petitioners: ROB MAGUIRE  
5 Attorney at Law  
6 Davis Wright Tremaine  
7 1501 Fourth Avenue, Suite 2600  
8 Seattle, Washington 98101-1688

9 For the Respondents: DON PORTER  
10 Senior Deputy Prosecuting Attorney  
11 E550 King County Courthouse  
12 Seattle, Washington 98104-2312

13 For the Intervenor KEVIN J. HAMILTON  
14 Respondent Washington Attorney at Law  
15 State Democratic Central Perkins Coie  
16 Committee: 1201 Third Avenue, Suite 4800  
17 Seattle, Washington 98101-3099

18 For Secretary of State: JEFFREY T. EVEN  
19 Assistant Attorney General  
20 1125 Washington Street SE  
21 P. O. Box 40100  
22 Olympia, Washington 98504-0100  
23  
24  
25

Friday, May 13, 2005

Seattle, Washington

I N D E X

Witness: GARTH FELL Page

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Examination by Mr. Maguire 253

E X H I B I T S

No. Description Marked/ID'd

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14 Spreadsheet, King County Elections 253

General Election: November 2, 2004

15 Spreadsheet, King County Elections 255

General Election: November 2, 2004

(Updated)

1 GARTH FELL

2 having been called as a witness, was duly sworn and testified  
3 as follows:

4 MR. MAGUIRE: Mark this please.

5 (Exhibit 14 marked for identification.)

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

7 BY MR. MAGUIRE

8 Q Mr. Fell, the court reporter has marked you a spreadsheet, or  
9 handed you a spreadsheet marked as Exhibit 14. This is a  
10 document that was produced by King County. It is was  
11 entitled Accountability GEN041.XLS. Do you recognize this  
12 document?

13 A I do recognize this document.

14 Q What is it?

15 A This was a spreadsheet that was maintained during the general  
16 election that essentially contained the batch slip  
17 information in spreadsheet form.

18 Q Who maintained this?

19 A This was maintained by staff at the mail ballot operation  
20 satellite. I believe they had some temporary individuals  
21 doing data entry into this spreadsheet. And it was something  
22 that the mail ballot operation satellite supervisor would  
23 refer to and potentially do some maintenance on as well as  
24 the individual leading our tabulation effort.

25 Q Are you familiar with the spreadsheet that was entitled

1 Accountability GEN04-32005XLS?

2 A I am familiar with that spreadsheet as well.

3 Q What is the difference between that spreadsheet and Exhibit  
4 14?

5 A The difference between that spreadsheet and Exhibit 14 would  
6 be that that spreadsheet was used during an investigation  
7 into a ballot that was found following election day.

8 Q What ballot?

9 A This ballot was found I believe on March 24th by a worker  
10 that was involved in looking for outer envelopes during  
11 discovery, as a result of some discovery requests.

12 Q This was a part of the 95 uncounted absentee ballots that  
13 were discovered in late March and early April of 2005?

14 A Yes. The number, I'm not sure, is 95 or 94. Off the top of  
15 my head, I don't know what that number is --

16 Q What information was changed on the updated spreadsheet as a  
17 result of finding those uncounted absentee ballots?

18 A The spreadsheet -- on the updated spreadsheet, the purpose of  
19 going to that spreadsheet was to identify other batches that  
20 might have potential additional uncounted ballots. The  
21 director of our division, Dean Logan, had already ordered a  
22 thorough investigation and sort of a reexamination of all the  
23 empty outer envelopes that this spreadsheet was used to again  
24 identify some batches that we particularly want to just look  
25 at and make sure they were in fact empty.

1 Q Why couldn't you use the first spreadsheet to do that?

2 A The purpose of not using the first spreadsheet was to  
3 maintain a record in pristine form before we actually --  
4 maintain a record that -- of how the spreadsheet looked prior  
5 to us going in and making some updates to it. So we wanted  
6 to make a copy of this document and use it as a working  
7 document in our efforts to conduct the investigation.

8 Q Do you know which batch numbers were updated?

9 A I believe on the updated version of that spreadsheet there  
10 were some additional columns added and detailed steps that  
11 were taken with specific batches, and I guess the steps being  
12 whether or not they were looked at, whether or not we --  
13 whether or not we were -- they were looked at specifically by  
14 individuals.

15 MR. MAGUIRE: Mark this an exhibit, please.

16 (Exhibit 15 marked for identification.)

17 Q Mr. Fell, the court reporter has handed you a spreadsheet  
18 marked as Exhibit 15. Is this the updated spreadsheet?

19 A This does appear to be the updated spreadsheet, yes.

20 Q Which is the more accurate accounting of the absentee ballots  
21 from the November 2004 election?

22 A It is unclear if one is more accurate than the other. Again,  
23 the updated version simply has additional information as to  
24 what was done during that discovery process.

25 Q What is intended to be represented in the column on Exhibit

1 15 marked as Original Count?

2 A That is -- that represents the number that is on the batch  
3 slip for the batch that is labeled Original Count as well, I  
4 believe.

5 Q Why would the sum of the original count on the spreadsheet  
6 marked as Exhibit 14 be different than the sum of the  
7 original count on Exhibit 15?

8 A Again, this was a working document, and in trying to address  
9 potential problems, and some updates were made to the updated  
10 spreadsheet, on the original count numbers when -- when it  
11 was discovered that there could be a potential problem with  
12 that initial original count number.

13 Q How could you determine whether there was a problem with the  
14 original count number?

15 A We would refer to the initial DIMS upload reports, the DIMS  
16 challenge reports that were produced with each batch during  
17 the reconciliation of the challenged envelopes. We'd also  
18 refer to the physical batch slip to make sure there weren't  
19 data entry errors. We also potentially had individuals hand-  
20 count some of the bundles of envelopes.

21 Q This all took place at the end of March, beginning of April  
22 2005?

23 A That is correct.

24 Q Was every batch looked at?

25 A No, every batch was not looked at.

1 Q How were the batches selected for review?

2 A We selected batches based on the -- whether or not the check  
3 field was off by one or more, or both the verification  
4 portion of the spreadsheet and/or the opening. I should say  
5 and the opening area of the spreadsheet.

6 Q Help me to understand that. On Exhibit 14, next to the  
7 column, Original Count, the number of ballots rejected, the  
8 number of ballots accepted in a check field, what are those  
9 columns intended to represent?

10 A Well, again, these represent data from batch slips and  
11 these -- the columns themselves correspond to boxes with --  
12 that are on the batch slip, so --

13 Q The original count is something written down by the person  
14 who uploads the data from PSI into the Wanda utility?

15 A That is correct.

16 Q And the number of ballots rejected and the number of ballots  
17 accepted is recorded by the verifier?

18 A That is correct.

19 Q And Check, that first column of Check, what does that mean?

20 A Check is a calculated column based on the total number of  
21 ballots accepted -- or ballots rejected and ballots accepted,  
22 and the Original Count column. It simply adds the number of  
23 ballots rejected and the number of ballots accepted and  
24 subtracts that from the original count to ensure that it's  
25 zero. It was a way to quickly check to see that the

1 information put on the batch slip at least balanced to check  
2 for potential errors.

3 Q The next several columns on the spreadsheet has the name of  
4 the opener, the date opened, the number of ballots to  
5 tabulation. Is the column, Number Of Ballots To Tabulation,  
6 something that's recorded by the opener?

7 A It is on the batch slip. I believe that particular box says  
8 amount ready to tabulate on the batch slip.

9 Q And then the remaining columns, No Ballots, Canvass, Write-  
10 In, Duplicates in the grayed out area are all columns that  
11 the information comes from when an opener writes on a batch  
12 slip?

13 A That is correct.

14 Q And the Check column that follows there --

15 A Yes.

16 Q -- is checking the number of ballots to tabulation against  
17 what number?

18 A It's against the -- my understanding in remembering the  
19 formula is that it takes the columns from the -- columns from  
20 the five columns that we just described, the ballots --  
21 Number Of Ballots To Tabulation, the No Ballots, the Canvass,  
22 the Write-Ins, and the Duplicates, and adds those together  
23 and subtracts the number of ballots accepted to again see  
24 that there is balance on the batch slip.

25 Q That's the number of ballots accepted as identified by the

1 verifier?

2 A That is correct.

3 Q And the columns that are in the white area reflect  
4 information provided by the tabulator; is that right?

5 A That is correct.

6 Q It's the name of the tabulator, the Date Tabulated, the Total  
7 Tabulated/Ballots Counted, Duplicates, Canvass, Check, and  
8 GEMS Card Count; is that right?

9 A The GEMS card count is not added by the tabulator.

10 Q Who adds that?

11 A I believe that is a count that we got from our GEMS software  
12 on the number of ballots tabulated for that particular batch.

13 Q And the Difference column in white? Is that the difference  
14 between the GEMS card count and the total tabulated column?

15 A Yes, that is.

16 Q And the last column on the right-hand side it says, Hand  
17 Count, question mark. What does that column represent?

18 A That represents an area where data regarding a hand-count  
19 could be put. Again, this data would come from a batch slip.

20 Q That would reflect the number of ballots that should be  
21 tabulated according to a hand-count in a batch?

22 A It would represent a hand-count of the ballots sent to  
23 tabulation.

24 Q So it may include some that needed to go to duplication after  
25 the tabulator tried to run them through the Accuvote machine?

1 A It is my understanding that it may include some ballots that  
2 are in the Duplicates or Canvass column.

3 Q When was Exhibit 14 created?

4 A Exhibit 14 was created, again, during the time of the  
5 election.

6 Q Prior to certification?

7 A Prior to certification, yes.

8 MR. PORTER: Rob, I've got one minute after 5:00. So  
9 we're to the point where King County had agreed to continue  
10 the deposition only between 3:00 and 5:00 today. So we're  
11 going to have to stop it.

12 MR. MAGUIRE: Well, my examination is not complete. The  
13 subpoena indicated that the deposition would continue until  
14 the witness was discharged. I am not yet ready to discharge  
15 the witness. I do not believe Mr. Hamilton is either, that  
16 he has questions. So I'd request that the witness remain and  
17 answer more questions until our examination is complete.

18 MR. HAMILTON: And I'll just pitch in here as long as  
19 we're going around in the circle, I do have additional  
20 questions. I think that Mr. Maguire and petitioner should  
21 have a fair opportunity to ask them. I did not understand  
22 the limitation on the continuation to be between 3:00 and  
23 5:00 today. I understood, and the record will speak for  
24 itself, that Mr. Maguire and I would try and complete Nicole  
25 Way's deposition by 3:00 o'clock, and if we were able to do

1 so, then this witness would be produced for an additional  
2 session between 3:00 and 5:00. I never agreed to limit it to  
3 that two-hour session, much less to something shorter than  
4 that. All that said, I only have about 15 more minutes of  
5 questions at this point, and so I'm not in a position to  
6 release the witness from the subpoena that we issued until  
7 the examination is complete.

8 MR. PORTER: Do you want to make a record of how much  
9 more time you think you have of the witness, Rob?

10 MR. MAGUIRE: I believe that I could complete the  
11 examination in approximately an hour.

12 MR. PORTER: Well, we can't do it tonight, and I made  
13 myself clear yesterday at approximately 7:00, and I'm not  
14 necessarily saying that there was an agreement among the  
15 parties and King County as to how we were approaching this,  
16 but I did make it clear that King County's position was that  
17 there had been a fair and reasonable opportunity to examine  
18 Mr. Fell yesterday. We went until 7:00. We agreed to  
19 continue the deposition between 3:00 and 5:00 o'clock today  
20 if the parties finished with Nicole Way, and that was the  
21 extent of any agreement to continue his deposition. So I'm  
22 afraid we really do have to leave at this point.

23 MR. MAGUIRE: While we're still on the record then, if  
24 King County's position is that the intervenor's subpoena has  
25 been satisfied, petitioners have issued another subpoena for

1 Mr. Fell to appear next Friday for a deposition to answer all  
2 questions.

3 MR. HAMILTON: We can go off the record now.

4 (Whereupon, at 5:05 p.m. the deposition was adjourned.)

5 (Signature was reserved.)  
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C E R T I F I C A T E

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STATE OF WASHINGTON )  
 )  
COUNTY OF KING )

I, the undersigned Notary Public in and for the State of Washington, do hereby certify:

That the annexed transcript of Friday, May 13, 2005 deposition of GARTH FELL (Volume II) was taken stenographically by me and reduced to typewriting under my direction;

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, and that I am not financially interested in the said action or the outcome thereof;

I further certify that the annexed Friday, May 13, 2005 deposition of GARTH FELL (Volume II) is a full, true and correct transcript, including all objections, motions and exceptions of counsel, made and taken at the time of the foregoing proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my signature this 16th day of May, 2005.

\_\_\_\_\_  
Notary Public in and for the State of Washington, residing at Seatac.  
My commission expires 2/14/06  
CSR License No. HE-CK-EL-E386DM

S I G N A T U R E

I, GARTH FELL, hereby certify that I have read the foregoing transcript of my deposition (Volume II) 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 \_\_\_\_\_